IN THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE DISTRICT COURTS,
NEW DELHI.

CBI No. 55/2023 (CNR No.DLCT11-00338-2023)
CBI Vs. Ashutosh Kumar & Anr.
RC DAI-2016-A-0020
ACB/CBI/New Delhi

U/s 109 IPC R/w Section 13 (2) R/W 13(1) (e) of PC Act.

Central Bureau of Investigation (CBI)

V.

1. Ashutosh Kumar @ Ashutosh Kumar Singh ..(A-1)

2. Monika Sahay ..(A-2)

ORDER ON CHARGE:-

1. This order shall decide the applications (both numbered as IA-11/2024) under Section 227 Cr.P.C seeking discharge of Ashutosh Kumar @ Ashutosh Kumar Singh (A-1) and Monika Sahay (A-2) as well as the framing of charges against (A-1) and (A-2).

Brief Matrix of the Case as Per the Chargesheet.

Allegations in the FIR

2. The facts of the case are that the present case was

registered on the written complaint of B.S Chauhan, the then Dy. S.P, CBI, ACB, against A-1 Ashutosh Kumar, who was the then Dy. G.M Handicrafts and Handoom Exports Corporation **(hereinafter referred as HHEC)** of India Ltd, Noida, U.P.

2.1 It is further submitted that the present case is an offshot of CBI case No. RC-11(A)/2016-DLI **(hereinafter referred to as 'Trap Case')** registered against one Kehar Singh, the then Inspector, P.S Janak Puri and A-1, the then Dy.GM (Marketing) HHEC. During the investigation, both of them were arrested while demanding/accepting bribe on 01.05.2016. Thereafter, searches were conducted at the office and residential premises of A-1 which resulted into seizure of large number of incriminating documents including documents of huge immovable/assets acquired by A-1.

2.2 During the investigation, it transpired that A-1 while working as a public servant in HHEC of India Ltd and OSD/PS to various Ministers in the Govt of India at different places, has amassed huge movable and immovable assets in his name, in the name of his family members and others during the period from **01.01.2008 to 30.04.2016** which are disproportionate to his known sources of income to the tune of Rs.25,70,82,371/-.

<u>Investigation</u>

3. The investigation revealed that A-1 joined Indian Silk Export Promotion Council (hereinafter referred as ISEPC) as Assistant Officer on 04.12.1992 and later on joined HHEC on

01.10.2004 as Marketing Manager on deputation basis from Indian Silk Export Promotion Council. Later on, he was permanently absorbed as Sr. Marketing Manager in HHEC on 09.12.2005. He was re-designated/upgraded as Chief Marketing Manager w.e.f date of his permanent absorption in HHEC on 09.12.2005.

3.1 It is further stated that at the time of registration of the Trap Case, A-1 though was posted as Dy. General Manager (Marketing) in HHEC, but was already under suspension w.e.f 12.10.2015

3.2 The investigation further revealed that on 29.04.2005, he joined as Private Secretary/OSD to Ms. Suryakanta Patil, the then Minister of State/Rural Development and Parliamentary Affairs, Govt of India and worked there till 31.12.2008. On 09.01.2009 he was appointed as Dy. General Manager consequent to direct recruitment through open advertisement in pay scale of Rs. 17500-400-22300. He was placed under suspension by HHEC of India Ltd w.e.f 12.10.2015. The service details of A-1 are given in **16.9** of the chargesheet.

4. The investigation further revealed that A-1 got married to Monika Sahay (A-2) in the year 1997. A-2 is a house-wife. During investigation, she could not explain legitimate source of such huge amount of money spent in acquiring the assets in her name as well as in the name of her husband. She was also not able to offer any plausible explanation regarding agricultural income generated out of non-existent agricultural land in the name of Ratneshwar Sahai,

HUF.

4.1 The investigation also revealed that A-1 never informed about movable/immovable properties purchased by him through his personal resources/HUF account as per entries/documents/details available in his personal/service book. No document is placed in his service book to show that A-1 had inherited any agricultural land/ ancestral property/ properties in his own name or in the name of his family members/HUF account. Further, there is no document in his service book to show which shows any business activity being run by him or his wife or other family members.

4.2 During investigation, the check period for calculation of assets, income, expediture etc has been taken from *01.01.1997 to 31.12.2008.*

(Statement-A).

Assets At The Beginning of Check Period On 01.01.1997

Sl. No.	Description of Property	Amount in Rs. (At the time of Acquisition)
1	Bungalow no.-92-104, RSC-2, SVP Nagar, Versova, Andheri (West), Mumbai purchased vide unregistered agreement dated 29/30-04.1993 from Taher Khan in the name of Monika Sahay w/o Ashutosh Kumar	4,51,000/-
2.	Gross salary received by Ashutosh Kumar up to 31.12.1996 (after deducting 1/3rd amount as non-verifiable expenditure of Rs.55,420/-)	1,10,842/-
	Total	**5,61,842/-**

(Statement-B)

Assets At The End of Check Period upto 31.12.2008

Sl. No	Description of Asset	Value (Rs.)
	Immovable Assets	
1.	Plot/Residence No. C-18, Shiv Darshan Co-operative Housing Society, Versova, Andheri (West), Mumbai, purchased vide unregistered sale deed dated 07.07.2001 from Sh. Premji Karmashi Patel in the name of Sh. Ashutosh Kumar. The property was not got registered in 2012, i.e after the end of check period therefore, the Stamp Duty and registration fee amounting to Rs.99,840/- paid in year 2011 are not considered.	3,00,000
2.	Flat no. A-9, 2nd Floor, Aakar Co-operative Housing Society Ltd. Plot No.RH-28, MIDC, Dombivali (East), Mumbai, purchased vide Agreement to Sale dated 25.07.1997 from Sh. Shankar Sakharam Parab (Transferer) in the name of Sh. Ashutosh Kumar (Transferee) (later on the property was got registered on 16.10.2020 i.e after the end of check period, therefore, the stamp duty of Rs. 38,200/- and registration fee of Rs. 18,600/- paid in the year 2020 are not considered.	3,60,000
3.	Sale consideration amount of Rs.5,00,000/- (paid in 2007) by Sh. Ashutosh Kumar to Sh. Kushal Raj Parmar, Prop. Rajmandir Developers towards purchase of property/plot of land area measuring about 192.73 Sq. Mtrs on Survey No. 100, 1/D Village Ghodhunder District Thane) (later on the property was got registered by Ashutosh Kumar in year 2015 by paying an amount of Rs. 9,36,000/- as stamp duty and Rs.30,000/- as registration fee. Therefore, amount considered as Rs.-5,00,000/-	5,00,000
	Movable Assets	

4.	Car Make Chevrolet Model 2008	6,74,858
5.	Premium paid for LIC policy no. 112387462 in the name of Ashutosh Kumar from 1997 to 2005 = Rs. (6307 X 9) = Rs.56,763/-	56,763
6.	Premium paid for LIC policy no. 114259653 in the name of Ashutosh Kumar from 2005 to 2008 = Rs. (10064 X 4) = Rs.40,256	40,256
7	Premium paid for LIC policy no. 112389082 in the name of Monika Sahay from 1997 to 2008 = Rs. (6258 X 12) = Rs.75,096/-	75,096
8	Premium paid for LIC policy no. 112915129 in the name of Master Vinayak Ratanthrough Ashutosh Kumar (Proposer) from 2000 to 2008 = Rs. (26524 X 9) = Rs.2,38,716/-	2,38,716
9	Premium paid for LIC policy no. 112498379 in the name of Master Kartikeyan Sahai through Ashutosh Kumar (Proposer) from 1998 to 2008 = Rs. (26524 X 11) = Rs.2,91,764/-	2,91,764/-
10	Balance available as on 31.12.2008 in Account No.1007650909 of Ashutosh Kumar in Central Bank of India, Udyog Bhawan Branch, New Delhi	34,665
11	Balance available as on 31.12.2008 in PPF Account No.10617407648 of Ashutosh Kumar in SBI, Lajpat Nagar Branch, New Delhi	7,06,450
12	Balance available as on 31.12.2008 in Account No.10617311366 of Ashutosh Kumar & Monika Sahai in SBI, Lajpat Nagar Branch, New Delhi	4,41,930
13	Kisan Vikas Patra in the name of Ashutosh Kumar and Monika Sahai (10,000X 2) = Rs.20,000/-	20,000
14	Kisan Vikas Patra in the name of Ashutosh Kumar and Monika Sahai (50,000X 20) = Rs.10,00,000/-	10,00,000/-
15	Transfer Fee paid on 22.01.2004 to MHADA in respect of Bungalow no.92-104 RSC-2, SVP Nagar, Versova, Andheri	54,268/-

	(West), Mumbai	
16	Balance available as on 31.12.2008 in FD of Ashutosh Kumar in Axis Bank, Andheri (West), Mumbai in the name of Monika Sahay	3,70,182/-
17	Purported agricultural income claimed vide ITRs by Ratneshwar Sahai HUF, for FY 2005-06, 2006-07, 2007-08 and 2008-09 during the check period which was actually his unaccounted asset	8,89,95,250/-
	Total	**941,60,198**

5. The investigation further revealed that A-1 fraudently created Ratneshwar Sahai HUF (PAN AHHR4339C) in 2004 whereas he has claimed to have created the HUF on 03.03.1999 i.e from the date of the death of his father Ratneshwar Sahai. A-1 himself became *'Karta'* of 'Ratneshwar Sahai HUF'. A-1 applied for PAN Card in the name of Ratneshwar Sahai HUF in October 2003 based on forged documents including rent receipt purportedly issued by Ms. Pushpa Suri. The said HUF was formed dishonestly and fraudulently by A1 after the death of his father to legitimatize his ill-gotten wealth. The bank account in the name of said HUF was opened only on 18.02.2004 after about four years since the purported date of creation of HUF, in State Bank of Patiala (now State Bank of India), Safdarjung Enclave Branch, New Delhi. There is no record pertaining to account statements, income etc of Ratneshwar Sahai HUF prior to 18.02.2024. Thus, it is clear that there was no corpus/property existed in the name of Ratneshwar Sahai HUF prior to 03.03.1999 or even prior to 18.02.2004. However, from the year 2004-2005 onwards, Ratneshwar Sahai

HUF showed huge agricultural earnings. The said HUF claimed to have 900 acres of land whereas the investigation revealed only 1.55 acre of land stood in the name of Ratneshwar Sahai at time of his death.

5.1 The investigation further revealed that the receipts of Krishi Utpadan Mandi Samiti, Gorakhpur produced before Income Tax Authorities on behalf of Ratenshwar Sahai HUF to claim agricultural income were found to be forged. The relevant Khasras actually belong to Gram Sabha land, pig-house, ponds, road, canal, common village land or belong to other persons. The investigation further revealed that as per the Income Tax Returns (ITRs) filed by Ratneshwar Sahai HUF Karta Ashutosh Kumar, the purported agricultural income during FY-2005-2006 to FY 2008-2009 has been claimed to the tune of Rs. 8,89,95,250/-. The investigation thus revealed that agricultural income claimed by Ratneshwar Sahai HUF is bogus.

5.2 The investigation further revealed the following sources of income of A-1 from all the sources during the check period :-

(Statement-C)

Income During The Check Period 01.01.1997 to 31.12.2008

Sl. No.	Particulars of Income	Amount in Rs.
1	Gross Salary w.e.f 01.01.1997 to 31.12.2008	17,91,891
2	Survival benefit received by insurer from LIC of India in respect of policy no. 112387462 in the name of Ashutosh Kumar.	20,000
3	Survival benefit received by insurer from LIC of	40,000

	India in respect of policy no. 112389082 in the name of Monika Sahay	
4	Interest accrued till 31.12.2008 in FD maintained with Axis Bank, Noida, in the name of Monika Sahay	182
5	Interest accrued till 31.12.2008 in FD maintained with Central Bank of India, Udyog Bhawan Branch in the name of Ashutosh Kumar	57,175
6	Interest accrued till 31.12.2008 in PPF account with SBI, Lajpat Nagar, in the name of Ashutosh Kumar.	2,27,653
7	Interest accrued till 31.12.2008 in S.B in the name of Ms. Monika Sahay and Ashutosh Kumar with SBI, Lajpat Nagar, New Delhi in the name of Ashutosh Kumar and Monika Sahay.	1,91,025
8	Interest accrued till 31.12.2008 in Bank Account, SBI PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	3,57,562
9	Interest accrued till 31.12.2008 in Bank Account, Axis Bank Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	4,24,460
10	Interest accrued till 31.12.2008 in Bank Account No. 30008846532, SBI PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	2,05,275
11	Interest accrued till 31.12.2008 in FD Account (30008846532), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	40,685
12	Interest accrued till 31.12.2008 in FD Account (30008913157), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	8,767
13	Interest accrued till 31.12.2008 in FD Account (30008913215), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	8,767
14	Interest accrued till 31.12.2008 in FD Account (30008913271), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai	8,767

	HUF	
15	Interest accrued till 31.12.2008 in FD Account (30008913351), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	8767
16	Interest accrued till 31.12.2008 in FD Account (30008914388), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	3507
17	Interest accrued till 31.12.2008 in FD Account (30352757670), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	527
18	Interest accrued till 31.12.2008 in FD Account (30448365721), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	2,951
19	Interest accrued till 31.12.2008 in Account (30462159960), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	2,355
20	Interest accrued till 31.12.2008 in Account (30478666495), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	3669
21	Interest accrued till 31.12.2008 in Account (30487965494), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	11,581
22	Interest accrued till 31.12.2008 in Account (30587738819), SBI, PBB, Lokhanwala Andheri (West) Mumbai in the name of Ratneshwar Sahai HUF	312
23	Interest accrued till 31.12.2008 in FD Account (65017581540), State Bank of Patiala (now SBI) Safdarjung Enclave, New Delhi in the name of Ratneshwar Sahai HUF	6,17,688
24	Interest accrued till 31.12.2008 in FD Account (55000704189), SBI in the name of Ratneshwar Sahai HUF	82,860

25	Interest accrued till 31.12.2008 in FD Account (55000704178), SBI in the name of Ratneshwar Sahai HUF	82,860
26	Interest accrued till 31.12.2008 in FD Account (65000243315), State Bank of Patiala (now SBI) Safdarjung Enclave, New Delhi in the name of Ratneshwar Sahai HUF	46,87,972
27	Rent received/credited till 31.12.2008 from SBI in account No. 30008651633 of Ratneshwar Sahai HUF maintained in SBI, Personal Banking Branch, Lokhandwala, Andheri (West), Mumbai for premises Shop No.1 to 5 Ground Floor, Sh. Hari Co-op, Housing Society Ltd., Andheri (W), Mumbai	73,48,308
	Total	**1,62,35,566/-**

(Statement-D)

Expenditure During Check Period from 01.01.1997 to 31.12.2008

Sl. No.	Particulars of Expenditure	Amount in Rs.
1	School Fee of Master Kartikeyan from 2006 to 2008 paid to Amity International School, Sector-44, Noida (U.P) for Std. III onwards	1,07,533
2	School Fee of Master Vinayak from 2006 to 2008 paid to Amity International School, Sector-44, Noida (U.P) for Std. II onwards	1,05,051
3	Purchase of one Alternator 15 KVA vide Retail Invoice No.021, Book No.1, dated 23.10.2008 from M/s Rajdoot International, Ghaziabad, U.P	19,575
4	Purchase of Building Material vide Sale invoice/cash memo Srl. No.026 dated 12.05.2008 from M/s Shiv Iron Store, Noida (U.P)	25,260
5	Purchase of Electrical Items vide retail invoice/ cash memo Srl. No. 137 dated 30.05.2008 from M/s Aggarwal Electric Store, Noida.	10,912
6	Purchase of Electrical Items vide retail	2,115

	invoice/cash memo Srl. No. 137 dated 30.05.2008 from M/s Balaji Paints and Sanitation, Noida	
7	Purchase of Sanitary-ware materials vide various retail invoices dated 18.11.2008, 11.11.2008, 26.09.2008 and 20.09.2008 from M/s FCML Distributors Pvt Ltd, Delhi	1,84,917
8	Purchase of Marbles (Building material) vide retail invoices/cash memo/bills dated 07.09.2008 and 26.10.2008 from M/s Ahluwalia Marbles Pvt Ltd., New Delhi	57,263
9	Purchase of Building Materials vide retail invoices/cash memo/bills dated 05.06.2008 from M/s Ply Samrat (India) Pvt Ltd., Kirti Nagar, New Delhi	2,780
10	Purchase of Building Material vide various retail invoices during 2008 from M/s Bharat Steel, Near Prayag Hospital, Sector-41, Noida	56,051
11	Purchase of hardware and sanitary-ware items vide various sale invoices during 2008 from M/s Krishna Sanitation, Sector-51, Noida	92,461
12	Purchase of Building Material vide retail invoices/cash memo/bills on various dates during 2008	56,430
13	Purchase of ply-board articles vide cash memo/ bill dated 23.05.2008 and another cash memo dated 23.05.2008 from M/s Shanker Timber & Furniture	5693
14	Purchase of Cement (Building Material) vide challan no. 1789 dated 25.04.2008 vide invoice dated 25.04.2008 from M/s Shree Cement Ltd. Bahadur Shah Zafar Marg, New Delhi	11,000
15	Interest paid on Demand Loan account No. 65020777456 maintained in State Bank of Patiala (now SBI), New Delhi	1,733
16	Purchase of Mayanmar Teak Wood in name of Monika Sahay vide Retail Invoice/cash memo dated 27.10.2008 from M/s ANALCO, Mathura Road, New Delhi	5,18,422
17	Purchase of Rawal Plug Vide Challan No. 673	200

	dated 24.06.2008 in name of Monika Sahay from M/s Ceiling Impex Pvt, New Delhi	
18	Un-verifiable expenditure (1/3rd of the total salary received by accused Ashutosh Kumar during the check period) i.e 1/3rd of Rs. 17,91,891/-	
	Total	**18,54,693**

Disproportionate Assets Calculation

A	Assets acquired before the Check Period	5,61,842/-
B	Assets Acquired at the end of Check Period	9,41,60,198/-
(B-A)	Assets Acquired During Check Period	9,35,98,356/-
C	Income	1,62,35,566/-
D	Expenditure	18,54,693/-
(C-D)	Likely Saving (Income-Expenditure)	1,43,80,873
	DA (Assets-Likely Savings i.e (B-A) – (C-D)	7,92,17,483/-
	Percentage of tentative DA= DA X 100/ Income 7,92,17,483 X 100= 487.92% 1,62,35566/-	487.92%

6. In the end it is thus concluded that the evidence as discussed herein-above constitute offence punishable under Section 109 IPC r/w Section 13 (2) r/w 13 (1) (e) of Prevention of Corruption Act 1988 and substantive offences thereof on the part of Ashutosh Kumar (A-1), the then General Manager (Manager), Handicrafts and Handlooms Export Corporation of India Ltd, Noida, and his wife Monika Sahay (A-2).

7. It is further submitted that sanction for prosecution against A-1 (since compulsorily removed from the service w.e.f 31.10.2020) has been accorded by the competent authority which is enclosed with the chargesheet.

8. During the course of the arguments on charge, two separate applications (both numbered as IA-11/2024) came to be moved on behalf A-1 and A-2 seeking discharge.

9. In the application under Section 227 Cr.P.C moved on behalf of A-1 seeking discharge, it is inter alia, pleaded that the present FIR is the outcome of another case RC-DAI-2016-A-0011 which is pending trial before this Court. It is further pleaded that in the present FIR, a list of 27 properties were mentioned, out of which 20 properties were in the name of M/s Ashutosh Kumar HUF and the applicant being its Karta. Further, the CBI after completing the investigation found the case of the applicant herein to be correct for the check period w.e.f 01.01.2008 to 30.04.2016. The assets and sources of M/s Ashutosh Kumar HUF were found to be well explained. However, CBI thereafter changed the check period as 01.01.1997 to 31.12.2008, when the applicant herein worked with ISEPC and different Ministers of Govt of India on deputation as well as HHEC. The primary basis of the present chargesheet is the ITR returns of M/s Ratneshwar Sahai HUF of which the applicant was the Karta.

9.1 It is further pleaded that the scope of Section 227 Cr.P.C is well explained by the Hon'ble Supreme Court in numerous judgments including that of **Yogesh @ Sachin Jagdish Joshi V. State of Maharashtra (2008) 10 SCC 394 and P. Vijayan V. State of Kerala & Anr. (2010) 2 SCC 398** that the stage of charge/discharge, the Court can frame the charges only if the evidence produced gives rise to grave suspicion instead of suspicion only. Even the documents of sterling quality produced by the Defence can be looked by the Court at this stage. Reliance in this regard is placed upon the judgment titled **Rukmini Narvekar Dharmananda v. Gopal Sheelum Reddy & Anr (2018) 2 SCC 93.**

10. As far as the discharge is concerned, A1 has primarily pleaded the following grounds in the application:

(A) Distinction between HUF & Its Karta

11. It is pleaded that applicant while submitting his representation dated 12.05.2017 before CBI explained about the manner of creation of HUF and the PAN card being applied. The Deed of Declaration of M/s Ashutosh Kumar HUF as well as M/s Ratneshwar Sahai HUF were also supplied to CBI. But the said documents have been suppressed and not filed alongwith the chargesheet. It is further pleaded that HUF is separate legal entity as defined under Section 2 (31) (i) & (ii) of Income Tax Act. The assets of the HUF cannot be imposed upon the Karta which is the case herein . In this regard, the reliance is placed upon the following judgments:

(1) CIT, Ludhiana Vs. Om Prakash (1999) 6 SCC 349

(II) Jagatram Ahuja Vs. Commissioner of Gift Tax, Hyderabad (2000) 8 SCC 249

(III) M.D. Dhanwatey Vs. CIT, Madhya Pradesh, AIR 1968 SC 682 (Constitution Bench)

(IV) CIT, West Bengal Vs. Kalu Babu Lal Chand, AIR 1959 SC 1389

(V) The Commissioner of Gift TAX, Madras Vs. N.S. Chettiar, (1971) 2 SCC 741

(VI) Kapurchand Shrimal Vs. Tax Recovery Officer, Hyderabad & Ors., AIR 1969 SC 682.
(VII) Bharti Cellular Ltd V. UO & Ors (2010) 10 SCC 174
(VIII) Shyam Telelink Ltd V. UOI (2010) 10 SCC 165
(ix) UOI & Anrs V. N. Murugesan & Ors (2022) 2 SCC 25
(x) Mumtaz Yarud Dowla Wakf V. Bedam Balakrishna Hotel Pvt Ltd 7 Ors 2023 SCC OnLine SC 1378

11.1 It is further pleaded that before attributing the income and assets of Ratneshwar Sahai HUF on the applicant herein, CBI should have taken note of the above referred settled legal principles which makes it quite apparent that HUF is a separate and distinct legal entity.

(B) Approbation and Reprobation at the same time is not permissible .

12. It is further pleaded that CBI in the chargesheet has approbated and reprobated at the same time by placing reliance upon the ITR of Ratneshwar Sahai HUF for the financial year 2005-2006 to 2008-2009. The income of the said HUF for the said FY to the tune of Rs. 8,89,95,250/- on one hand has been claimed to be

bogus and fabricated and on the other hand, the said income has been treated as assets for calculating the disproportionate assets of applicant/A1

(C) **Applicant was not a Public Servant during Check Period (01/01/1997) to 31/12/2008)**

13. It is further pleaded that applicant was not a public servant as he joined ISEPC in the year 1992. Thereafter, he went to HHEC on deputation and for most of the check period, he was on deputation with different Ministers, Govt of India. He also brought on record of CBI that he never worked with HHEC and no public duty was assigned to him as required under Section 2 (c) (viii) of PC Act. The CVC report dated 04.07.2012 which is part of the chargesheet also concludes the fact that the ISEPC is not a State owned Company or Corporation. Therefore, the period of his employment with ISEPC also does not come under the definition of Section 2 (c) of PC Act.

13.1 The record also reflect that he also worked with HHEC only from 01.10.2004 to 28.04.2005 for which he can be termed as Public Servant. For the remaining period from 17.10.1999 to 30.09.2004 or from 29.04.2005 till end of the check period, he remained attached as PS/Additional P.S/OSD with various Ministers of Govt of India. The personal staff of the Ministers cannot be termed as Public Servant as they do not perform any public duty as defined under the P.C Act. Even no salary was paid to applicant from 01.01.2007 till 08.01.2009.

(D) Defective Sanction

14. It is further pleaded on behalf of the applicant/A1 that the prosecution sanction order dated 27.03.2023 has been granted by CMD HHEC without any application of mind. The concerned authority in a mechanical manner looked into the entire check period 01.01.1997 to 31.12.2008. He never worked with HHEC prior to 01.10.2004. No sanction has been accorded by ISEPC who was his employer prior to 1.10.2004.. Hence, the said sanction is defective and without application of mind. In this regard, reliance is placed upon the judgments viz; **"Mansukhlal Vithaldas Chauhan Vs. State of Gujarat" (1997) 7 SCC 622, "Prakash Singh Badal & Anr. Vs. State of Punjab & Ors." (2007) 1 SCC 1, "State of Karnataka Vs. Ameerjan" (2007) 11 SCC 273, "State of Maharashtra through CBI Vs. Mahesh G Jain."**

(E) Infirmities in the Chargesheet.

15. The last ground taken is the repetition of earlier grounds pleaded wherein the deficiencies with respect to the sanction, duties performed with ISEPC, HHEC, legal status of Ratneshwar Sahai HUF etc have been discussed.

Apart from above, the following judgments are also relied upon by A1/applicant herein :

(i) DSP, Chennai vs. K. Inbasagaran [(2006) 1 SCC 420]

(ii) Ashok Tshering Bhutia Vs. State of Sikkim [(2011) 4 SCC 402]
(iii) Kedari Lal Vs. State of Madhya Pradesh & Ors. [(2015) 14 SCC 505]

Hence, it is prayed that A1 be discharged of the offences in the present FIR.

16. In the separate application under Section 227 of Cr.P.C moved on behalf of A-2 Monika Sahay, it is pleaded that she is the wife of A1 and was not named in the FIR. The allegations in the chargesheet qua her are that she was unable to offer any plausible explanation as regards the fictitious agricultural income generated out of non-existing agricultural land in the name of M/s Ratneshwar Sahai HUF. It is pleaded that applicant herein is not coparcener of above-referred HUF as is reflected from Deed of HUF Declaration dated 25.03.1999. She has no role at all with the ITRs of Ratneshwar Sahai HUF for the Financial Year2005-2006 to 2008-2009 and therefore, cannot be prosecuted for the alleged misdeed if any, committed by the said HUF. She has been named merely being the wife of A1. Hence, prayer is made for discharging A2 as well.

Arguments of CBI

17. Ld. Senior (Sr.) Public Prosecutor for CBI argued that they have filed the present chargesheet against A1 and A2. A2 is named as abettor having abetted A1 in accumulation of disproportionate assets (DA).

17.1 Further, it is argued that the principle accused i.e A1 joined Indian Silk Export Promotion Council **(ISEPC)** as Assistant Officer (Trainee) on 04.12.1992. Later on, he joined Handicrafts & Handloom Exports Council **(HHEC)** of India Ltd on 01.10.2004 on deputation. During the period in between w.e.f 17.10.1999 to 30.09.2004 while A1 was employed with ISEPC, he also went on deputation with various Ministers of Govt. of India as Assistant P.S, Additional P.S, OSD etc. After having joined HHEC on deputation, he again worked with Minister of State/Rural Development and Parliamentary Affairs as Personal Secretary from the year 2005 till 2009. A-1 was, also, permanently absorbed as Senior Marketing Manager of HHEC of India Ltd on 09.12.2005 and on 09.01.2009, he was appointed as Deputy General Manager. The check period taken for A1 qua accumulation of disproportionate assets is **01.01.1997 to 31.12.2008.**

17.2 It is further argued that during investigation, the accused came up with false plea of creation of Ratneshwar Sahai HUF which he allegedly created on 03.03.1999 i.e the date of death of his father. The said plea of HUF creation or HUF having the assets was found to be false. His father had land only of 1.55 acre approximately and therefore, the claim of substantial agricultural income of the HUF is nothing but A1's ill-gotten wealth.

17.3 It is further argued on behalf of CBI that A1 never intimated his department regarding acquisition of immovable properties. Ld. Sr.P.P also placed reliance upon the statement of PW-2, the C.A which proves that ill-gotten wealth was deposited in the acocunt of HUF.

17.4 The claim of A1 in his application for discharge that he was not the public servant during the relevant period is a false plea. ISEPC is an autonomous organization sponsored by Ministry of Textiles. Therefore, A1 is covered within the definition of Public Servant under Section 2(cxii) of P.C Act of 1988. The other claim of accused that he never received any salary from various Ministries when he was on deputation from HHEC is not relevant as the salary received during the check period is explained by LW-1.

17.5 On the aspect of prosecution sanction against A1, it is argued that the prosecution sanction has been obtained from HHEC being the last employer of the accused/A-1 and being competent to remove him from service as stipulated under Section 19 of P.C Act. It is further argued that after absorption of A1 with HHEC, the role of previous employer i.e ISEPC came to an end.

17.6 It is further argued on behalf of CBI that the claim of purported agricultural income of Ratneshwar Sahai HUF has been found to be based upon forged property documents. Therefore, the charge of forgery of documents is also made out against the accused persons. Thus, it is prayed that charges be framed against both the accused.

18. *Per contra*, Ld. Counsel for the accused persons argued

that the check period for purposes of accumulation of disproportionate assets in the FIR registered against him was 01.01.2008 to 30.04.2008. However, CBI during investigation arbitrarily changed the check period to 01.01.1997 to 31.12.2008.Therefore, the allegations in the FIR itself have been put into the dock by the Investigating Authority. The twenty five properties mentioned in the FIR too do not find mention in the chargesheet filed against him. Further, it is argued that A1 had given the detailed representation in the year 2017 to the Investigating Authority, but the issues raised in the detailed representation have not been investigated and the chargesheet has been filed on the basis of false allegations.

18.1 It is further argued by Ld. Counsel for accused on merits that the Investigating Authority has clearly mis-interpreted the law of the land governing Hindu Undivided Families (HUF). There is clear distinction between HUF and the properties owned by the Karta. The properties of the HUF cannot be imputed upon the Karta as he is only a member of the Hindu Undivided Family and not the sole owner of the properties.

18.2 In the present case in hand, in the FIR the properties owned by Ashutosh Kumar HUF were imputed against him for purposes of calculating the disproportionate assets which during the investigation was found to be satisfactorily explained. During the investigation, the Investigating Authority then took up the assets in the name of Ratneshwar Sahai HUF by lifting the veil of said HUF. The properties of HUF have to be imputed upon him despite the fact that he was merely one of the member of the said HUF.

18.3 It is further argued that there is nothing which prevents the creation of HUF from the back date as is alleged by the CBI in the chargesheet. The date of creation can relate back which is the case herein. Even the format of PAN application provides the said facility of relating back as to the date of creation of HUF. Therefore, the assets and the income owned by the Ratneshwar Sahai HUF cannot be imputed upon him which is clearly against the well settled law.

19. On the legal aspect, it has been argued that the first and foremost requirement of prosecution of A1 under the Prevention of Corruption Act is that he should fall within the category of 'Public Servant' as defined under Section 2 (c) of P.C Act. In the present case in hand, ISEPC wherein the accused was employed till 09.12.2005 was not a government owned company or society as has been held by the C.V.C in the Inquiry Report dated 04.07.2012.

19.1 As far as the subsequent check period from 09.12.2005 till 31.12.2008 is concerned, the same concerns the time when he was part of HHEC. Even during the said period, he was paid only for the period of six months i.e 01.10.2004 till 28.04.2005, while he was on deputation with HHEC. For the remaining period, no amount of salary was paid either by HHEC or the borrowing department i.e when he worked as P.S to the Minister of State/Rural Development and Parliamentary Affairs, Govt of India.

19.2 It is further argued that no 'public duty' was assigned or performed by him while he was attached as P.S to the Minister of State or during his short period with HHEC. Further there is no joining of duty at HHEC after his absorption on 09.12.2005. In the said backdrop, the case of the applicant/A1 is not covered within the definition of Public Servant under Section 2 (c) of P.C Act.

19.3 On the aspect of prosecution sanction as mandatorily required under Section 19 of P.C Act, it is argued that the sanction order dated 27.03.2023 of CMD, HHEC filed by the prosecution is without any application of mind. For the entire check period i.e 01.01.1997 till 31.12.2008, the sanction has been accorded by CMD of HHEC despite the fact that he was not employed with HHEC prior to 01.10.2004. Even as per the CBI, the applicant/A1 worked with HHEC only during 01.10.2004 till 28.04.2005.

19.4 In the light of the said facts, the prosecution sanction accorded by the CMD, HHEC is illegal and without application of mind. Thus A1 is liable to be discharged.

19.5 It is further argued that as far as A-2 is concerned, the entire chargesheet is silent concerning her role. She had no connection at all with Ratneshwar Sahai HUF as she was never the member of the same. Merely because, she is wife of A1 cannot be ground to presume that she abetted in accumulation of disproportionate assets.

19.6 In support of his arguments, Ld. Counsel for the accused persons has placed reliance upon the following judgments :

1. M. Krishna Reddy Vs. State, Dy. Supt. of Police, Hyderabad (1992) 4 SCC 45
2. State of M.P. Vs. Mohan Lal Soni (2000) 6 SCC 338.
3. State of M.P. Vs. Awadh Kishore Gupta & Ors. (2004) 1 SCC 691.
4. State, Inspector of Police Vs. Surya Sankaram Karri (2006) 7 SCC 172.
5. Vasant Rao Guhe Vs. State of Madhya Pradesh (2017) 14 SCC 442
6. Kanchan Kumar Vs. State of Bihar (2022) 9 SCC 577
7. Rukmini Narvekar Vs. Vijaya Satardekar & Ors. (2008) 14 SCC
8. Nitya Dharmananda @ K Lenini & Anr. Vs. Gopal Sheelum Reddy (2018) 2 SCC 93
9. State of Uttarakhand Vs. Yogendra Nath Arora & Anr. (2013) 14 SCC 299
10. Kedari Lal Vs. State of Madhya Pradesh & Ors. (2015) 14 SCC
11. Krishnanand Agnihotri Vs. The State of Madhya Pradesh (1977) 1 SCC 816
12. P. Nallammal and Anr. Vs. State Rep. by Insp. of Police (1999) 6 SCC 559
13. Kalabharti Advertising Vs. Hemant Vimal Nath Narichania & Ors. (2010) 9 SCC 437

20. **Heard and considered.**

21. The legal position of law on the point of charge is well

settled through series of pronouncements of the Constitutional Courts. It has been repeatedly held that at the stage of charge, the trial court only has to see whether there is *prima facie* case against the accused named on the basis of material presented before the court by the prosecution or not. Even if the material on record if raises grave suspicion which is unexplained, it will also justify the framing of the charge. The Court, at this stage, though is not permitted to go into the veracity of the evidence presented before it by the prosecution, though it can sift the evidence only for the limited purpose of finding out the *prima facie* case against the accused persons. In this regard, I am guided by the judgment of the Hon'ble Supreme Court, in case of **Sajjan Kumar v. C.B.I. (2010) 9 SCC 368**. The relevant portion of the judgment is reproduced herein-under:

> "21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:
>
> (i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. The test to determine *prima facie* case would depend upon the facts of each case.
>
> (ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.
>
> (iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there

cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

(Emphasis supplied)

Appreciation of Arguments

22. In the light of said settled proposition of law, the first and

foremost legal issue is the applicability of Prevention of Corruption Act against A1.

22.1 It is disputed on behalf of A1 that he was never the ‘Public Servant’ during the check period on two accounts. The first limb of the argument is that the period from 1997 till 01.10.2004, he worked with ISEPC which is not a government controlled company, society or organization. He was not performing any public duty and therefore, the said period of his service cannot come within the definition the term “Public Servant” as defined under Section 2(c) of P.C Act 1988. As far as the remaining period from 01.10.2004 till 31.12.2008 is concerned, it is the argument on behalf of the accused that out of the said period, he was paid only for period of six months by HHEC and for the remaining period he was not paid any salary or remuneration. Therefore, the said period too cannot be considered nor he can be termed as ‘Public Servant’ under the P.C. Act 1988.

22.2 Before adverting the factual matrix of the present case, the scope and purport behind the exhaustive definition Section 2 (c) of P.C Act 1988 needs discussion here. An exhaustive definition has been provided by the Legislature keeping in view the objects and reasons behind enactment of the P.C. Act. The statement of objects and reasons to the said Act explains the same, wherein it is explained that the Bill envisages **widening the scope of definition of ‘Public Servant’** ***vis-a-vis*** **the definition as ealier provided under**

Indian Penal Code (IPC). So, the intent of the Legislature was to widen the scope of the P.C. Act by making it applicable to wide array of officials and not merely confining to the officials in the payroll of the Union/State Government, local authority, corporation etc. Rather, the stress was that any person who holds the office by virtue of which he authorised or required to perform 'public duty' was to be construed as 'Public Servant' under the P.C. Act. The intent behind widening the scope of definition of the public servant is to ensure the probity in public life, thereby enhancing the efficiency of working of various institutions be it government or otherwise provided they are performing public duty.

22.3 The said scope and purport of the definition of public servant has been recently enunciated by the Hon'ble Supreme Court in **Aman Bhatia V. State of GNCT of Delhi 2025 INSC 618** wherein even the stamp vendors were deemed to be 'public servant' for purpose of Prevention of Corruption Act 1988. The relevant Paras of the said judgments are reproduced hereunder for the sake of convenience:

> **"11.Under the repealed 1947 Act, the definition of "public servant" was restricted to public servants as defined in Section 21 of the Indian Penal Code, 1860 (for short, "IPC"). In order to curb bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of "public servant" was introduced in Section 2(c) of the PC Act.**
>
> ***12.When the legislature has used such a comprehensive definition of "public servant" to achieve the purpose of***

punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of the definition clause by a construction which would be against the spirit of the statute. The definition of "public servant", therefore, deserves a wide and purposive construction. In construing the definition of "public servant" in Section 2(c) of the PC Act, the Court is required to adopt a purposive approach as would give effect to the intention of the legislature.

15.While holding that a deemed university would fall within the ambit of the PC Act, a three-Judge Bench of this Court in Mansukhbhai Kanjibhai Shah (supra) observed that it falls upon the courts to interpret provisions of an anti-corruption legislation in a manner to strengthen the fight against corruption. It was further added that in case two views are possible, the court should accept the one that seeks to eradicate corruption over the one which seeks to perpetuate it. The relevant observations are reproduced hereinbelow:

> "25. However, we are concerned herein with interpreting the provisions of the PC Act. There is no dispute that corruption in India is pervasive. Its impact on the nation is more pronounced, due to the fact that India is still a developing economy. Presently, it can be stated that corruption in India has become an issue which affects all walks of life. In this context, we must state that although anti-corruption laws are fairly stringent in India, the percolation and enforcement of the same are sometimes criticised as being ineffective. Due to this, the constitutional aspirations of economic and social justice are sacrificed on a daily basis. It is in the above context that we need to resolve the issues concerned herein.

22.4 Thus, the intent of the Legislature in defining the term 'Public Servant' under the P.C. Act is to ensure that the law works in such a fashion that it strengthens the fight of the nation against the corruption. Even if two views regarding scope of definition are permissible, the Court has to adopt the view which fulfills the object of the Act and not otherwise. The traditional view of the officials termed as 'public officials' has shifted towards to the individuals/ officials who now perform 'public duties'.

23. In light of the said object and expansive interpretation of the term 'Public Servant', it is to be seen herein as to whether the case of the A1 falls within four corners of definition of term 'Public Servant' or not.

23.1 It has been alleged that A1 during the check period i.e 01.01.1997 to 31.12.2008 was firstly employed with ISEPC and later on from 10.10.2024 with HHEC. The first limb of the argument on behalf of A1 is that ISEPC is not a Government organization, company or society as has been held by the CVC in their inquiry report dated 08.07.2012. The said inquiry report (Part of D-7C) is perused wherein a regular departmental inquriy was initiated against A1, the then DGM, HHEC India Ltd and the articles of charges framed against him are as under :

> **ARTICLES OF CHARGE-**
>
> **1. That the initial appointment on deputation of said Shri Ashutosh Kumar, presently Deputy General Manager, HHEC and on extraordinary leave, as Marketing Manager, in the pay scale of Rs. 13000-350-18250, vide office order No.87/2004 dated 2nd November, 2004 read with letter No. HHEC/9(2)/2002-Hars. dated 27.9.2004, is illegal as he was not qualified and eligible for appointment by way of deputation as per Section II, Rule 2 of the Handicrafts & Handlooms Exports Corporation of India Ltd. Recruitment Rules.**

> **2. That the subsequent absorption in HHEC, promotions to the post of Chief Marketing Manager and selection as DGM as internal candidate is illegal as the initial appointment by way of deputation was against the Rules of the Corporation.**

24. So, the issue was raised with respect to the qualification/eligibility for his appointment by way of deputation with HHEC from ISEPC. The said article of charge after inquiry was found to be proved and his initial appointment on deputation and subsequent absorption was found to be illegal.

24.1 At this stage, the Court is not concerned with legality of the said findings and the only limited issue is as to whether any finding has been given qua the status of ISEPC. The finding on Article of Charge-1 concerns the status of ISEPC. However, the context of said finding makes it apparent that same has been given vis-a-vis the Recruitment Rules of HHEC i.e Handicrafts and Handloom Exports Corporation of India Ltd, New Delhi (Recruitment Rules). So, by interpreting the said Rules, the Enquiry Officer came to the conclusion that the 'deputation' only has to be there from 'State owned companies or corporations'. As ISEPC was not State owned company or corporation, the deputation and absorption of A1 in HHEC was found to be illegal.

24.2 However, as far as the definition of Public Servant under Section 2(c) (xii) which has been relied by the prosecution is concerned, it is not the employees of merely State owned company or corporation which are covered therein. **Rather, it is a expensive clause wherein any employee of any educational, scientific, social etc or other institution are also covered. The only condition being that the said institution is receiving or has received financial assistance from Central Govt., State Govt, Local or other Public Authority**. Thus, the State owned companies or corporations are not alone which are covered herein.

24.3 The issue to be seen is as to whether ISEPC falls within the category of said institutions which were receiving or had received from financial assistance from Central Govt. or not. The CVC inquiry report dated 04.07.2012 (Part of D-7C) itself records the fact that ISEPC is one of the export promotion council which acts as a Nodal Agency for promotion of natural silk goods from India. Though it is an autonomous body, however, if the Central Govt frames any uniform bye-laws for its constitution or transaction of its business, it is supposed to follow the same.

25. Interestingly, in Para- 2.1 of Inquiry Report, A1 herein who was the CO (Charged Officer) made a categorical averment and admission that ISEPC is under administrative control of Central Government and the status of ISEPC is similar to HHEC India Ltd. The relevant para is reproduced hereunder for the sake of convenience and clarity:

> **2.1 Further, CO has quoted the judgment of Hon'ble Supreme Court in case of "The Mysore Paper Mills Ltd. Vs. The Mysore Paper Mills Officers**

> **Association &Anr. AIR 2002 SC 609" and different provisions of MoU of ISEPC to say that his former employer i.e. Indian Silk Export Promotion Council (ISEPC) is also under the administrative control of the Central Government. Infact, the status of ISEPC is similar to HHECIL, since the Govt. of India exercises deep and pervasive financial and administrative control over both the entities, therefore, in the legal sense both ISEPC and HHECIL qualify as 'agency and instrumentality of State' in definition of 'State' under Art. 12 of Constitution of India."**

25.1 Thus, it is apparent that a categorical admission has been made by the A1 himself that ISEPC is the body under the administrative control of Central Government and Government of India exercises deep and pervasive financial/ administrative control over the same.

25.2 The said admission of A-1 is further fortified through his personal record (D-4). The said personal record has series of communications of ISEPC addressed to the subsequent employer HHEC or Ministry of Textile. The communication of ISEPC on their official letter-heads also reflect the status of the said organization. It is clearly stipulated that ISEPC is sponsored by Govt of India, Ministry of Textiles. Apart from that, the communications of Ministry of Textiles, Govt of India addressed to ISEPC also reflect the pervasive, administrative as well as financial control of Ministry of Textile over the said organization. The letter of the then Minister of State, (Independent Charge) Statistics and Programme Implementation, Govt of India dated 02.09.2004 {Part of D4(iii)} which was addressed by the Hon'ble Minister to Secretary, Ministry of Textile, Govt of India thereby enclosing the bio-data of A-1 herein working as Deputy Secretary, ISEPC, Ministry of Textiles. In the said letter, the Hon'ble Minister clearly asserted about the status of ISEPC and it being organization of Govt of India working under Ministry of Textiles. Vide the said letter recommendation was made for A-1 being appointed to the rank of Director /G.M in Cottage Industries or HHEC which too were autonomous bodies under the Ministry of Textiles. It also reflects as how political influence helped him to join HHEC where he was subsequently absorbed, which later on was found to be illegal.

26. Lastly, the O.M dated 05.05.2005 (D4 (ii)) of Ministry of Textiles, Govt of India again fortifies the said assertion of administrative and financial control over the said organization by Govt of India. The said O.M again categorically refers that A1 is the regular officer of ISEPC which is working under Ministry of Textiles.

27. The other letters which are part of said personal record {D4 (i), (ii) & (iii) } also reflects that while giving the no objection for the accused to be sent on deputation with HHEC in the year 2004 and subsequently his permanent absorption in HHEC in Oct.2005, ISEPC forwarded the pay-scale record, leave record and other desired documents to them. It reflects that even service record was duly maintained by ISEPC. All the said factors regarding

following of the pay-scale equivalent to pay-scale of Govt of India or maintaining the leave record be it E.L or Half Pay Leave or the service record reflect it being organization working under the control of Govt of India being sponsored by it.

28. In light of the said material at this stage, it has to be observed that officials of ISEPC falls within the category of Section 2(c) (xii) of Prevention of Corruption Act 1988.

29. The other argument advanced on behalf of A-1 is that his case is also not covered under Section 2 (viii) of P.C Act as he was not performing any 'public duty' or having not drawn any salary from HHEC or various Ministers with whom A-1 had gone on deputation with effect from 29.04.2005 to 08.01.2009.

29.1 The crucial aspect of the said averment on behalf of the accused is that he never performed any 'public duty' while he worked as the PS/OSD of Ministers concerned, during the check period. Further, he did not discharge any work with HHEC as is reflected from the letter of HHEC dated 24.09.2015.

30. Before discussing the merits of the averment concerning not discharging any public duty, the sequence of service of the A-1 right from the start of check period 01.01.1997 till 31.12.2008 requires consideration. During the period from 01.01.1997 till 30.09.2004, the employer of A-1 was ISEPC. The personal file { D4 (ii) }has the letter dated 25.10.2005 of Uday

Sarnayak, Assistant Secretary, ISEPC addressed to B.G. Mathur, Personal Manager, HHEC. The information was sought from ISEPC before passing the absorption order in HHEC qua status of employment and other details of A1. ISEPC informed that A1 joined their organization on 04.12.1992 as Assistant (Textile). It was also informed that during the said period from 1992 till Oct.2004 {Part of D4(ii)}, he remained on deputation as under:

e) Deputation Record:

i) Period from 17th October, 1999 to 22nd November, 1999 as Assistant PS to Minister of State for Parliamentary Affairs, (Shri. Sriram Chauhan) Govt. of India.

ii) Period from 22nd November 1999 to 18th April, 2000 as Assistant PS to Minister of State for Consumer Affairs, Food and Public Distribution (Shri. Sriram Chauhan) Govt. of India.

Period from 1st March, 2001 to 1st July, 2002 as Additional PS/OSD to Minister of State for Labour (Shri. Munilal) Govt. of India.

iv) Period from 15th July, 2002 to 31st October, 2002 as Additional PS to Union Minister for Labour (Shri. Saheb Singh Varma).

v) Period from 1st November, 2002 to 30th April, 2004 as Additional Private Secretary to Minister of State for Consumer Affairs Food and Public Distribution (Shri. Srinivas Prasad).

vi) Period from 25th May, 2004 to 30th September, 2004 as OSD to Minister of State of Home Affairs (Shri. Sriprakash Jaiswal).

vii) Period from 1st October, 2004 to 28th April, 2005 as Marketing Manager in The Handicrafts and Handlooms Export Corporation of India Ltd.

31. Thus, for the part check period of 01.01.1997 till 30.09.2004 when he was with ISEPC, the major period was spent by A1 on deputation either as Assistant P.S/ Additional P.S or OSD to various Ministers of State, Govt of India. The personal file has also the ACRs { Part of D4 (i) } of the A1 for the said relevant periods as well as the bio-data submitted by him while seeking appointment as Assistant P.S/ Additional P.S or OSD to various Ministers of State, Govt of India. The said ACRs have been filled by the Competent Authority i.e Minister of States with whom A1 worked as Assistant P.S/ Additional P.S or OSD. The Part.II-under the heading Self Appraisal of the said ACRs which is to be filled by the officer reported upon,reflects the brief description of duties and brief resume of work done by him during the year. The said Self Appraisal filled by A1 itself reflects that he was performing crucial tasks which included preparing final note for the Parliament/Paper laying on the table to the Speaker, office administration, house-keeping, electronic media, liason with senior officers of Govt of India, Union Ministers, State Ministers and concerned department for official work, Constituency development work etc. Thus, the said ACRs which have been approved by the concerned Ministers of State reflect the nature of crucial duties performed by A1 while being attached with office of Minister of State of the concerned Ministry, Govt of India. If the said duties are not public duties then what else can be termed as Public Duties.

32. In the said backdrop, the argument advanced on behalf

of the accused that he while working in the personal staff of Minister concerned was not performing any public duty is a preposterous argument. Rather, A-1 while working as Assistant P.S/ Additional P.S or OSD the Ministers of State, Govt of India, was performing crucial duties attached to the Ministries assigned to the Minister. He used to have deep control over the entire work being performed by the Minister concerned. Due to the said work performed by him, the Ministers in the ACR Part.III (Assessment) even recommended for assigning him higher responsibilities. Therefore, at this stage it has to be observed that the work performed by him as staff of the Minister concerned indeed comes within the scope of 'Public Duty' as defined under Section 2 (viii) of P.C Act.

32.1 As far as the remaining period from 01.10.2004 when he was on deputation firstly and thereafter absorbed w.e.f 9.12.2005 in HHEC till 31.12.2008 is concerned, again he remained on deputation as PS to Minister to State/Rural Development and Parliamentary Affairs or OSD .Only for few months he worked with HHECand the said period is not disputed by A1. During the said period only, he was permanently absorbed by HHEC vide order dated 09.12.2005 {D4 (iii) }as Senior Marketing Manager. Again the personal file {D4 (i) } has the ACRs of A1 written by the reporting officer, the then Minister of State Ms. Surya Kanta Patil . In Part.II Self Appraisal, again the accused herein admitted to the fact that he was looking after the official files, administration of the office, Parliamentary business including Parliamentary questions, laying of papers in the House Statements, handling of all letters received by post for perusal of the Minister of States, handling of all official meetings and briefings, finalising the official programme and accompanying MoS to the official tours, looking after the important projects related to the Constituencies, looking after Press Conferences etc. The reporting officer in Part.III (Assessment) again assessed that A1 was super-excellent in handling office administration, Protocol Duty, Parliamentary Affairs, Press and Public Work and thus, can be assigned higher responsibilities. Thus again, it has to be prima facie observed at this stage that while working with Minsters on deputation from HHEC during the said period 1.10.2004 to 31.12.2008 he was looking after crucial work assigned to the Minister of State concerned. By no stretch of imagination, the scope of work as discussed above can be said to be not falling under the category of 'Public Work' as has been argued on behalf of the A1. Thus, the argument advanced on behalf of the accused on the said account is rejected and at this stage, it has to observed that he was indeed 'Public Servant' under the PC Act during the check period. The argument of salary being not paid by HHEC or Ministries concerned is not material as both the entities never discarded the entitlement of payment of salary. However the dispute occurred as to who was liable to pay the Salary as appointment on deputation with Ministers concerned was later on not approved by DoPT, GOI. As far as date of joining with HHEC is concerned, it is a matter of trial. Even otherwise no such dispute as to he having never joined the HHEC on absorption was raised by A1 in CVC inquiry (D-7C).

Prosecution Sacntion

33. The next legal issue raised on behalf of A1 is the validity of prosecution sanction dated 27.03.2023. The crux of the argument on behalf of A1 is that the prosecution sanction the same has been accorded by CMD HHEC without application of mind for the entire check period . The part of the check period i.e 01.01.1997 to 30.09.2004, A1 had no connection at all with HHEC. He at that point of time was a regular employee of ISEPC and therefore, CMD HHEC had accorded the sanction despite not being the Competent Authority.

34. On the contrary, Ld. Sr. PP for CBI argued that A1 herein went on deputation with HHEC on 01.10.2004 and was thereafter subsequently absorbed permanently therein on 09.12.2005. Thus, for all practical purposes, the employer after the absorption was HHEC only as the absorption order snapped all his connect with the previous employer i.e ISEPC.

34.1 It is not in dispute that A1 being the public servant in order to face the prosecution under the Prevention of Corruption Act is entitled to the protection of previous sanction under Section 19 of PC Act before such prosecution can be initiated against him.

35. Before considering the issue as to whether the sanction

accorded by CMD HHEC for the entire check period can be said to be valid or not, the object behind the said provision of obtaining previous sanction for prosecution of public servant requires consideration.

36. It has been repeatedly held by the Hon'ble Supreme Court that the object behind obtaining prosecution sanction against the public servant concerned is to accord protection against malicious or frivolous prosecution. It is in a way a shield accorded to a public servant so that they can act freely, without having any fear in discharge of their public duties. However intent is not arm the dishonest public servants to use the said protection as a shield.

36.1 Further the issue of adequacy of the material before the Sanctioning Authority too cannot be gone into by the Court. The Sanctioning Authority is only supposed to take a prima facie view to reach to the satisfaction that the facts constitute the offence requiring prosecution of the public servant concerned. The issue has been extensively dealt with by Hon'ble Supreme Court in Vinod Kumar Garg vs State of NCT of Delhi AIR 2020 SUPREME COURT 1797 as under :

> "On the said aspect, the later decision of this Court in State of Maharashtra v. Mahesh G. Jain4 has referred to several decisions to expound on the following principles of law governing the validity of sanction:
>
> 14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

> 14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.
>
> 14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.
>
> 14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
>
> 14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.
>
> 14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.
>
> 14.7. ***The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity .”***

37. Now, coming to the factual matrix concerning the prosecution sanction against A1 herein and wether the same prima facie satisfies the standards as discussed above . It is reflected from the record that the prosecution sanction dated 27.03.2023 has been accorded by CMD & Managing Director, HHEC who claims to be the Competent Authority to remove A1, the then Deputy General Manager, Marketing, HHEC from service. It is also a matter of record that the said sanction order concerns the entire check period

i.e 01.01.1997 to 31.12.2008. It is also matter of record that during the period from 01.10.1997 till 30.09.2004, A1 was employed with ISEPC which is an autonomous body working under Ministry of Textiles, GOI.

37.1 It is also matter of record that while A1 was employed with ISEPC, he went on deputation with HHEC and assumed the said charge on 01.10.2004. The deputation order No. 87/2004 to 11/2004 { D4 (i) }records the fact that he was also eligible to deputation duty allowance in case he exercises the option of drawing his grade-pay. The said option was exercised by A1 vide his letter dated 22.11.2009 {D4 (i) } to avail his own grade pay plus deputation duty allowance. Lastly, during the said deputation period, he came to be permanently absorbed in HHEC vide Office Order No.96/2005 dated 09.12.2005 w.e.f 09.12.2005.

37.2 The said order itself records the fact that his resignation has been accepted from ISEPC w.e.f 09.12.2005. The copy of the said absorption order of HHEC was forwarded to Executive Director, HHEC, Mumbai with the request to arrange to remit the amount in respect to his gratuity, leave encashment, CPF etc. **Thus, after absorption, his employer for all legal purposes was HHEC only. There was no break in service and rather his benefits were protected as ISEPC was directed to remit the entire record of gratuity, leave encashment, CPF etc.**

37.3 The letter of ISEPC dated 27.08.2007 of ShRajiv Aggrawal, Executive Director , ISEPC addressed to Sh. P.L Sharma, Under-Secretary, Govt of India, Ministry of Textiles{ part of D4(i)} also throws light over the said issue. It was categorically informed that Ashutosh Kumar is no longer in service roll of ISEPC and has been permanently absorbed by HHEC and all his service book as well as related documents have been forwarded to them. The said letter was issued in view of the OM dated 22.06.2007 { DoPT, OM dated 2.08.2007 (Ministry of Rural Development) Part of D4(i) }. The DoPT requested for initiating penalty such as removal from service etc without prejudice to the right to Govt to prosecute the Govt. Servant concerned. The said issue was raised by DoPT on the directions of Appointment Committee of Cabinet which found false information being furnished by A1 concerning his educational qualification while seeking appointment. Thus, the response was sent by ISEPC to the said request of initiating disciplinary proceedings by informing that A1 is no longer in service roll with them and request was made to forward the disciplinary proceeding request to HHEC. ISPEC was not the disciplinary authority after his absorption.

37.4 In the said backdrop, the issue is that the allegations in hand against A1 concerns the period (i.e the check period) of his employment with ISEPC and HHEC. The issue to be is as to whether the prosecution sanction was to be accorded by both the employers or not. The answer to the said issue is addressed by the plain language of Section 19 of PC Act itself. The sanction is only to be accorded by the authority who was competent to remove him from his office under Section 19 (i) (c). **The authority which is competent to remove him from the office is only required to accord the previous prosecution sanction.**

38. In the case in hand, as on date of registration of the FIR i.e 31.0.5.2016 or the day when request for sanction was moved by CBI i.e 10.01.2023, ISEPC was not having any jurisdiction or authority to remove A1 from his office as all the ties with said organization got snapped after his absorption in HHEC on 09.12.2005. Their above referred OM letter dated 22.06.2007 also categorically admits to the said situation though it concerns the fake educational qualifications certificates furnished by A1 for gaining employment. It is HHEC who was the competent authority to remove him from his office on the allegations of misuse of the office. The said issue has been directly dealt with by **Hon'ble High Court of Chhattisgarh in case titled Gorelal Thakur V. State of Chattisgarh 2018, MANU/CG/0795/2018.** It was a disproportionate assets case only and the concerned public servant during the check period was employed with two different organization. The relevant Para-12 and 13 of the judgment are reproduced hereunder for the sake of convenience :

> **"12. It may happen in a particular case that a person may accumulate mass in a Department 'A' over and above his source of income and thereafter on transfer or absorption to Department 'B', he do not accumulate any property over and above his source of income. Then in such situation, will it**

be the Department A, which could alone grant sanction for prosecution? The answer certainty would be in negative. To clarify the situation relevant part of section 19 of the P.C. Act which deals with part of sanction are reproduced here under:

> "19. Previous sanction necessary for prosecution.-(1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction-
>
> > (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
> >
> > (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
> >
> > (c) in the case of any other person, of the authority competent to remove him from his office.

Reading of aforesaid section makes it clear that where a public servant is working lastly the Authority Competent to remove him from the office can also be the Authority who can grant a sanction for prosecution."

13. It has been contended by the respondent No. 4, Chhattisgarh Tourism Board, that the petitioner was absorbed in the Department of Tourism on 19.2.2008. The document prima facie has been also placed on record. In the light of aforesaid absorption letter if the provisions of section 19(1)(c) are looked into it lays down that sanction can be given for prosecution under the P.C. Act when the authority was competent to remove and the sanction can be granted under section 19 of the PC Act. The petitioner having absorbed in the Tourism Department, the petitioner could have been removed by the authority i.e., Managing Director. This can also be looked from the other angle. If a particular person passes through different department

> **deputation or otherwise and during such tenure of job in different department accumulates properties more than from his known source of income, which gives rise to the setting into motion, section 13(2) of the P.C. Act then in such case it would be too technical to hold that no department could allow the sanction under section 19 of P.C. Act as different tenure was at different department were spent and the department could not ascertain during which tenure the properties were gathered. In such analogy the entire object of P.C. Act would be defeated."**

39. It is thus, clearly interpreted that Section 19 (i) (c) of PC Act has to be looked into in such type of cases and the authority which at the point of registration of FIR or request being made having authority to remove the said public servant from the office would be competent to grant the prosecution sanction which is the case also herein. In these circumstances, the argument advanced on behalf of applicant/A1 is liable to be rejected. No adverse finding can be given at this stage qua the prosecution sanction accorded by CMD, HHEC.

The judgments relied upon by A1 concerning prosecution sanction are distinguishable on facts and do not apply herein

Income of Ratneshwar Sahai, HUF.

40. Now, coming to the factual aspects of the case in hand wherein the prosecution has alleged that A1 was found in possession of disproportionate assets to the tune of Rs.**7,92,17483/-** at the end of check period which has remained unexplained. Apart from that it is also alleged that A-2 being the wife of A1 abetted in acquisition of said disproportionate assets.

41. On the factual matrix, Ld. Counsel for A1 & A2 has primarily questioned the case of the prosecution on two accounts. The first and foremost account is the issue of legal entity of HUF vis-a-vis its Karta. It is his case that both Ratenshwar Sahai HUF and its Karta are separate and distinct entities . The assets of HUF cannot be imputed upon the Karta which has been done by the CBI herein.

41.1 The second issue raised on behalf of accused is that on the one hand, the purported agricultural income of M/s Ratneshwar Sahai HUF for the financial year 2005-2006 to 2008-2009 has been termed as bogus but at the same time, the said amount has been taken as asset and imputed against A1. This amounts to approbation and reprobation at a same time.

42. As far as the first argument of accused concerning the separate legal identity of HUF from that of its Karta, there is no dispute and the judgments relied upon by accused persons in CIT, Ludhiana Vs. Om Prakash (spra), Jagatram Ahuja Vs. Commissioner of Gift Tax (supra), M.D. Dhanwatey Vs. CIT, Madhya Pradesh (supra) CIT, West Bengal Vs. Kalu Babu Lal Chand (supra) The Commissioner of Gift TAX, Madras Vs. N.S. Chettiar (supra), Kapurchand Shrimal Vs. Tax Recovery Officer, Hyderabad(supra), Bharti Cellular Ltd V. UO & Ors (supra), Shyam Telelink Ltd V. UOI (supra), UOI & Anrs V. N. Murugesan & Ors (supra) Mumtaz Yarud Dowla Wakf V. Bedam Balakrishna Hotel

Pvt Ltd (supra) clearly lay down the law on the said issue.

43. But the issue herein is not the separate identities of HUF and its members ,rather it is the validity of the creation of claimed HUF Ratneshwar Sahai itself .Before discussing the legal issue of HUF, the mode of its creation and the role of Karta therein, the factual matrix concerning the said issue requires consideration herein.

44. It has already come on record that the FIR was registered against A1 herein for offences punishable under Section 13 (1) (e) read with 13 (1) of P.C Act and the check period for the offence in the FIR was 01.01.2008 to 31.12.2016. But after investigation, the Investigating Authority concerning the allegation of disproportionate assets pushed back the check period and the check period, now, is 01.01.1997 to 31.12.2008. As far as the said wisdom of Investigating Authority after investigation having pushed back the check period is concerned, there is nothing in the law which prevented them to do so. It is not as if entirely a new case was opened on the basis of the FIR registered against A1. Rather it is the same case of disproportionate assets which after investigation was found to be concerning the period different from that of the period as alleged in the FIR.

45. Now, coming to the allegations in the chargesheet vis-a-vis the M/s Ratneshwar Sahai HUF. The assets of agricultural

income to the tune of Rs.8,89,95,250/- for Financial Year 2005-2006 to 2008-2009 has been taken as income against the accused on the grounds that said HUF was formed by A1 dishonestly and fraudulently after death of his father in order to legitimise his ill-gotten wealth . The date of creation of said HUF is though claimed to be 03.03.1999 ie. the date on which his father had expired, whereas the first account in the name of HUF was only opened on 18.02.2004. Even the PAN in the name of HUF was applied in October 2003.

45.1 The A1 in order to vouch for the genuineness as to the creation of M/s Ratneshwar Sahai HUF placed reliance upon Deed of HUF Declaration dated 25.03.1999 **Annexure-A4** in the discharge application. As per the said Deed of HUF Declaration, the HUF came into existence from date of death of late Ratneshwar Sahai (father of A1 and father-in-law of A2). Though the said document cannot be considered at this stage , however keeping aside the said issue , it is to be seen as to whether the said Deed of HUF Declaration probablises the valid creation of HUF or not. The answer lies in negative.

45.2 As per the contents of the said Deed of HUF Declaration, it is claimed that it has been created under **HUF Creation Law Rules and Regulation** between adult co-parceners and minor co-parceners comprising of A1 being the Karta, Ms Nandni Sahai being the adult co-parcener and lastly Ms. Jiya Sahai. Firstly there are no such Rules or Regulation regarding creation of HUF. The issue regarding the creation of HUF after the enactment of Hindu Succession Act,1956 which governs the parties herein, addresses the said issue in hand.

45.3 It has been held way back in the year 1986 in the landmark case titled **Commissioner of Wealth Tax, Kanpur Vs. Chander Sen & Ors (1986) 3 SCC 567 and Yudhishter V. Ashok Kumar,(1987) 1 SCC 204** that after the year 1956 merely on account inheritance of ancestral property, the HUF cannot come into existence. Purport of the said judgment has been elaborated upon by the Hon'ble Delhi High Court in **Dayanand Rajan & Anr. V Ram Lal Khattar, RFA No.1064/2017 & RFA No. 1065/2017, dated 03.01.2018.**

> "8. I do not find any fault whatsoever with the reasoning and conclusions given by the trial court because an HUF can come into existence prior to passing of the Hindu Succession Act in the year 1956 by a person inheriting property from his paternal ancestors up to four degrees or after the year 1956 an HUF can come into existence only if a person throws his property into a common hotchpotch. *After the year 1956, merely on account of inheritance of ancestral property an HUF does not come into existence and this is so held by the Supreme Court in the judgments in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC 567 and Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204.*
>
> I have had an occasion to examine this aspect in detail in the judgment in the case of Surinder Kumar Vs. Dhani Ram and Others, 227 (2016) DLT 217 and the relevant paras of the Surinder Kumar (supra), and which

judgment applies the ratios of the cases of Chander Sen (supra) and Yudhishter (supra), read as under:-

> "5. The Supreme Court around 30 years back in the judgment in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC 567, held that after passing of the Hindu Succession Act, 1956 the traditional view that on inheritance of an immovable property from paternal ancestors up to three degrees, automatically an HUF came into existence, no longer remained the legal position in view of Section 8 of the Hindu Succession Act, 1956. This judgment of the Supreme Court in the case of Chander Sen (supra) was thereafter followed by the Supreme Court in the case of Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204 wherein the Supreme Court reiterated the legal position that after coming into force of Section 8 of the Hindu Succession Act, 1956, inheritance of ancestral property after 1956 does not create an HUF property and inheritance of ancestral property after 1956 therefore does not result in creation of an HUF property.
>
> 6. In view of the ratios of the judgments in the cases of Chander Sen (supra) and Yudhishter (supra), in law ancestral property can only become an HUF property if inheritance is before 1956, and such HUF property therefore which came into existence before 1956 continues as such even after 1956. In such a case, since an HUF already existed prior to 1956, thereafter, since the same HUF with its properties continues, the status of joint Hindu family/HUF properties continues, and only in such a case, members of such joint Hindu family are coparceners entitling them to a share in the HUF properties.
>
> 7. On the legal position which emerges pre 1956 i.e before passing of the Hindu Succession Act, 1956 and post 1956 i.e after passing of the Hindu Succession Act, 1956, the same has been considered by me recently in the judgment in the case of Sunny (Minor) & Anr. vs. Sh. Raj Singh & Ors., CS(OS) No.431/2006 decided on 17.11.2015. In this

judgment, I have referred to and relied upon the ratio of the judgment of the Supreme Court in the case of Yudhishter (supra) and have essentially arrived at the following conclusions:-

(i) If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person, inheritance of an immovable property of such a person by his successors- in-interest is no doubt inheritance of an „ancestral" property but the inheritance is as a self-acquired property in the hands of the successor and not as an HUF property although the successor(s) indeed inherits „ancestral" property i.e a property belonging to his paternal ancestor.

(ii) *The only way in which a Hindu Undivided Family/joint Hindu family can come into existence after 1956 (and when a joint Hindu family did not exist prior to 1956) is if an individual"s property is thrown into a common hotchpotch*. Also, once a property is thrown into a common hotchpotch, it is necessary that the exact details of the specific date/month/year etc of creation of an HUF for the first time by throwing a property into a common hotchpotch have to be clearly pleaded and mentioned and which requirement is a legal requirement because of Order VI Rule 4 CPC which provides that all necessary factual details of the cause of action must be clearly stated. Thus, if an HUF property exists because of its such creation by throwing of self-acquired property by a person in the common hotchpotch, consequently there is entitlement in coparceners etc to a share in such HUF property.

46. Thus it is apparent that firstly there are no Rules and Regulation of Creation of HUF as claimed in Deed of HUF Declaration Annexure-A4 as well as Annexure A3 (concerning Ashutosh Kumar HUF) relied upon by accused. It is also not the case that any such HUF was in existence prior to year 1956. **Secondly, the only way the HUF can come into existence after 1956**

is by throwing of separate self acquired properties into a common hotch-potch by the individual members.

47. In the present case in hand, the said Deed of HUF Declaration is silent with respect to the throwing of any such individual properties into a common hotch-potch. In the said backdrop, *prima facie* it has to be observed that the claim of HUF declaration and creation of M/s Ratneshwar Sahai HUF on 03.03.1999 was for dubious purposes. The said allegations in a way at this stage also are prima facie corroborated from date of opening first bank account which was done on 18.02.2004 or applying of PAN in 2003. If indeed the said HUF was in existence right since the year 1999 and having the flourishing assets including 900 acres of land as is claimed in the Income Tax Record, then why the bank accounts or the PAN were not opened or applied then and there only. Rather no records of flourishing agricultural income etc. were produced during investigation. The said fact alone raises a grave suspicion against A1 with respect to his claim of flourishing income as reflected in the ITR record (D-46) of M/s Ratneshwar Sahai HUF for the financial year 2005-2006 to 2008-2009. Thus, the claim of CBI in rejecting the creation of Ratneshwar Sahai HUF cannot be faulted upon.

47.1 The second objection of the accused with respect to addition of agricultural income of M/s Ratneshwar Sahai HUF to be his assets in **Statement-B** is approbation and reprobation at the same time by prosecution also requires consideration in light of the allegations and documents submitted by A1 with Income Tax Authorities. It is reflected from the ITR record (D-46) only that for the above-referred financial years, ITR was filed on behalf of M/s Ratneshwar Sahai HUF by A1 and the claim of the agriculture income was as under:

FY	Agricultural Income (In Rupees)
2005-06	21,50,000
2006-07	3,89,95,250
2007-08	4,60,00,000
2008-09	18,50,000

47.2 The said agriculture income was found to be bogus and not backed by the agriculture record submitted before Income Tax Authorities. The accused in response to the Income Tax Department notice submitted Kissan Bahi, Jamabandi Record, Aaye Pramaan Patra etc {Part of D-46 (iii)}. The said records were submitted on his behalf by the CA in response to IT Notice. The claim of said flourishing agricultural income was claimed to be generated through 900 acres of land on basis of Jamabandi Record . However, the said claim was found to be fake in investigation as late Ratneshwar Sahai owned only 1.55 acre approximate of land. The khasra numbers provided to the Income Tax Authorities actually belonged to Gram Sabha land, pig-house, ponds, canals etc. The said part of the investigation is not in dock at this stage and the dispute is that once the said claim of income has been found to be fake, then why above-referred agricultural income of Rs.8,899,5250/- has been taken as his asset in Statement-B while calculating DA Assets.

48. The said argument at the first blush appears to be attractive but the issue herein is that it is admission on the part of A1who claimed to be the Karta of M/s Ratneshwar Sahai HUF , before Income Tax Authorities that he earned the said agricultural income which is exempt from income tax purposes. **The claim of income generated during the relevant years is not in dock, rather the issue is under which head it was claimed.** The said head of income has been found tobe false. The said claim of purported income is also reflected from the financial transactions in the bank of accounts opened on behalf of above-referred HUF with Axis Bank Mumbai, State Bank of Patiala, Safdarjung, New Delhi and SBI, Andheri West, Mumbai. The account opening form of all the said banks reflect that it is only A1 who got them opened by claiming himself to be the Karta of M/s Ratneshwar Sahai HUF. All the said accounts were opened during the year 2004 only.

49. In the application form of PAN account (D-15A) of UTI Infrastructure Technology and Service Ltd, the sources of income of the HUF were stated to be agricultural income, interest and other income. The rent receipt was attached with the application in proof of the address and the said address also reflects that it had no connect at all with A1 .Rather it is a fake receipt and no

explanation is furnished by A1 as to said allegation.

50. In the application form for opening the bank account with Axis Bank (D-16A), again A1 is the signatory of the said application form by claiming it to be the Karta of M/s Ratneshwar Sahai HUF. The HUF was stated to be having income from farming, real estate, export and import. Similar is the situation concerning the account opened at State Bank of Patiala, Safdarjung Enclave, New Delhi and SBI, Mumbai. The statement of accounts of the said three bank accounts reflect numerous debit and credit entries during the above said period only when the claim of alleged agricultural income was filed before IT authorities. On the basis of said transactions, the prosecution has taken the claimed agriculture income of M/s Ratneshwar Sahai HUF, to be A1's assets during the check period. At this stage the allegations prima facie justify the assertion of prosecution qua the said assets .

51. In view of the above, it has to be observed that prima-facie there is sufficient material on record to frame charges against A1 for the offence punishable under Section 13 (i) (e) read with 13 (2) of P.C Act 1998 as well as under Section 471 IPC.

The judgment relied upon on the merits of the case by A1 are distinguishable on facts.

52. Now, coming to the allegations against A2. It is the case of A2 that she has been named in the chargesheet merely on the ground that she is wife of A1. It is further pleaded that she is not co-

parcener of M/s Ratneshwar Sahai HUF and having no connection at all with the alleged transactions of said HUF. Therefore, she has no role at all in the present case.

52.1 The prosecution has named A2 as one of abettor who abetted A1 in acquisition of disproportionate assets during the check period. The legal position qua the prosecution of private individual alongwith public servant in disproportionate assets cases has been recently dealt with by Hon'ble Supreme Court in **P. Nallamal V State by Inspector of Police 2025 INSC 643 as under :**

> "There is no doubt that mere registration of disproportionate assets in the name of a public servant's relative or friend does not make that person guilty of abetment of the offence of Section 13(1) (e) of the PC Act. All the same, it is also a settled position of law that a person who is not a public servant still can commit an offence under Section 13(1) (e) and Section 13(2) of the PC Act read with Section 109 of the IPC. I am of the opinion that the appellant was an accomplice in the commission of the crime when she allowed Accused No.1 to register the properties in her name. Where there is abetment by a close relative in corruption matters, such as the spouse in the present case, the culpability of such a relative has to be tested by the surrounding circumstances and his/her overall conduct. This is because, in such cases, there would rarely be direct evidence of abetment. This factor has to be kept in mind."

53. Now coming to the facts of the present case against A2 . No doubt she is not stated to be the member of M/s Ratneshwar Sahai HUF, but the issue herein is not that the offence being committed by the members of the said HUF. Rather, the allegations are that the said created HUF was created just to create a smoke

screen in order to legitimatize the ill-gotten wealth. Rather it is the acquisition of assets beyond the disclosed sources of income which are material herein. As per the allegations, it came on record during investigation that A2 had no independent sources of income during the check period and therefore, the onus shifted upon her to explain about the assets standing in her name during the check period. No such explanation is there on record.

53.1 The Statement B has several entries concerning acquisition of assets in the name of A2 which includes the bank accounts, Kissan Vikas Patra, immovable properties etc., which are unexplained. Therefore,at this stage it has to be observed that material produced by the prosecution prima-facie reflects that unexplained assets were acquired in the name of A2 who abetted A1 in the said process of acquisition.

54. **In view of the above, it has to be observed that *prima-facie* there is sufficient material on record to frame charge against A2 for the offence punishable under Section 109 read with Section 13 (i) (e) read with 13 (2) of P.C Act 1998.**

Accordingly, the applications moved on behalf of A1 and A2 seeking their discharge also stand dismissed.

The charge as stated above be framed separately.

It is clarified that nothing expressed herein shall tantamount to expression of opinion on the merits of the present case at the time of final disposal.

GAGANDEEP SINGH

Digitally signed by GAGANDEEP SINGH
Date: 2025.05.24 16:58:37 +0530

Announced in open Court
on 24.05.2025

(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
RADC, New Delhi