

**IN THE COURT OF THE PRL.SESIONS JUDGE,  
KODAGU AT MADIKERI.**

**PRESENT**

**SRI. MALLIKARJUNAGOUD, B.A.,LL.B., (Spl),,**  
PRL.DISTRICT AND SESSIONS JUDGE,  
KODAGU, MADIKERI.

**Dated, this the 26<sup>th</sup> day of August, 2020**

**Spl.Case (Corp n) NO.: 61/2016**

**COMPLAINANT:-**

The State of Karnataka.  
Represented by P.I,  
Karnataka Lokayuktha P.S,  
Madikeri, Kodagu District.  
(By Spl. Public Prosecutor,  
Madikeri.)

**-VS-**

**ACCUSED:-**

Sri. N.K.Rangaswamy, S/o late  
N.B.Kalegowda, Aged 58 years,  
Earlier working as Police  
Inspector, Cubbon Park Traffic  
P.S, Bengaluru City,

Now working as Dy.S.P, Rajya  
Gupta Varthe, (Central  
Intelligence Bureau),  
Bengaluru, Residing at  
No.1072, 7<sup>th</sup> Sector, 5<sup>th</sup> Main  
road, 20<sup>th</sup> cross, H.S.R.Layout,  
Bengaluru.

(By Sri. C.V.Sudheendra and  
Sri.M.N.Shashikanth,  
Advocates)

**P.T.O.**

**ORDER**

In this case the counsel for the accused filed an application u/Sec. 227 R/w 239 of Cr.P.C., requesting the Court to discharge the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of Prevention of Corruption Act, 1988.

2. The averments made in the petition are that:-

The Lokayuktha Police Inspector has generated a false Source Report against the accused. On the basis of the same, on 17/04/2013 the Lokayuktha S.P has ordered for registering a case against the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of PC Act, 1988. On the basis of that Order, the Madikeri Lokayuktha Police have registered a case in their P.S Crime No:4/2013 for the above said offences and commenced investigation. In the final report the cheque period is mentioned as 30/11/1993 and 23/05/2013 and the disproportionate assets of the accused is considered as Rs.1,17,77,986/- and its percentage is considered as 129.18%. During investigation this accused has submitted his schedule before the I.O by explaining about the assets possessed by him and his family members. After verifying the same, the Lokayuktha police considered the disproportionate assets of the accused as Rs.99,86,482/- and its percentage as 91% and

filed charge sheet against the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of PC Act, 1988.

3. By looking into the Source Report and final report submitted by the Lokayuktha police, it indicates that there are no sufficient grounds to proceed against the accused for the offences alleged against him. Further, the grounds alleged in the final report for filing charge sheet against the accused do not make out a case that there are sufficient evidence against the accused. The grounds urged in the final report for filing the charge sheet are baseless. The important requirements of Sec. 154 of Cr.P.C., are not fulfilled by the Lokayuktha police for registering a case and investigate the matter. There is no mention in the final report with regard to the best information for registering the case and same is not mentioned in the Station House Diary. Noncompliance of the same is illegal and Lokayuktha police ought not have investigate into the matter.

4. As per Sec. 17(2) of PC Act, 1988, the offence U/Sec. 13(1)(e) shall not be investigated by any Police Officer without the authorisation of Superintendent of Police. In this case, the Source Report is generated and conducted the confidential enquiry by virtual investigation, therefore, it is clear violation of law. There is no mention in the Source Report with regard to the date

of receiving the credible information. The I.O has not considered the explanation given by the accused by filing schedule-1 to 23 with respect to the properties considered as the properties of accused in the final report. As per the provisions of Sec. 13(1)(e), mere possession of disproportionate assets perse is not an offence as explanation given by the accused are satisfactory. By looking into the explanation given by the accused to the I.O, it is clear that this accused was not possessing any disproportionate assets as alleged against him, so the I.O ought to have accept the said schedule as satisfactory. As per the provisions of P.C Act, 1988, while authorizing any person to investigate into the matter by the Superintendent of Police, he ought to have state in the authorisation letter about the competency of that Police Officer, his integrity and other capability to investigate the matter. In this case, no such explanation is forthcoming in the authorisation letter issued by the Superintendent of Police, authorizing one Sri.S.Raju, Police Inspector, Lokayuktha Police, Madikeri to register the case and investigate into the matter.

5. There is delay in generating Source Report and registration of the case and such delay is not satisfactorily explained. The I.O has not considered the explanation submitted by the accused to the notice issued during investigation. Non considering of the schedule

submitted by the accused before the I.O is illegal and violation of the rights of the accused.

6. The Sanctioning Authority has failed to discharge the statutory obligations while issuing the prosecution sanction. By looking into the schedule submitted by the accused before the I.O, it clearly indicates that all the properties are not the benami properties of the accused as contended by the Lokayuktha police. Though all the assets mentioned in the final report are not the assets of this accused, by showing the said properties as the assets of this accused, they have prepared a false final report and submitted the same before the Court. If all the materials placed before the Court are verified, it clearly indicates that, there are no sufficient materials to proceed against the accused and the allegations against the accused in the final report are groundless to frame charge and prosecute him for the offences alleged against him. In view of all these reasons and in view of other reasons stated in the petition, he requested the Court to allow the petition and discharge the accused for the offences alleged against him.

7. Said application is opposed by the learned Spl.Public Prosecutor by filing objection contending that the averments made in the petition are false, frivolous and vexatious one. By looking into the Source Report

generated by the Lokayuktha Inspector, it indicates that the Source Report generated against the accused is genuine and valid. By considering the said Source Report, the S.P, Lokayuktha, Mysuru has accorded permission to register a case against the accused and investigate the matter. After registering the case, the Madikeri Lokayuktha Police have conducted investigation. During investigation, they collected so many documents pertains to the assets possessed by the accused in his name and in the name of his wife and relatives. Considering the properties standing in the name of the wife and relatives of the accused, the I.O held the same as Benami properties of the accused. The total assets possessed by the accused and his family members was Rs.2,09,10,156/-. The known source of income of the accused and his family members from all sources was Rs.79,38,781/-. During investigation by considering the explanation submitted by the accused, the I.O, held that, this accused was possessing disproportionate assets worth Rs.99,86,482/- and its percentage was 91.420%. On the basis of the documents collected by the I.O during investigation, he held that the accused was possessing disproportionate assets in his name and in the name of his other family members. In view of the same, I.O did not consider the explanation given by the accused stating that same are not satisfactory. Hence, he submitted charge sheet against

the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of PC Act, 1988.

8. The prosecution has obtained valid sanction from the competent authority to prosecute this accused for the offences alleged against him. At the time of issuing sanction, the sanctioning authority has considered the fact of prima facie case against the accused to prosecute him for the offences alleged, by considering the materials placed before it. After submitting the final report, this Court verified the charge sheet and took cognizance against the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of PC Act, 1988 and ordered for issuance of summons. The close reading of charge sheet reveals that this accused has amassed illegal gratification in his name and in the name of his other family members to the extent of Rs.99,86,482/- and it was not out of his known source of income. No permission is necessary for conducting preliminary enquiry by the Lokayuktha Police Inspector with regard to the allegations against a public servant regarding his illegal assets. As per the Notification of 1992, a Lokayuktha Inspector is authorized to investigate into the offence p/u/Sec. 13(1) (e) r/w Sec. 13(2) of PC Act, 1988. The averments made in the charge sheet clearly makes out a prima facie case against the accused to prosecute him for the offences alleged, so this application is not maintainable.

9. After going through the entire papers produced before the Court, there are no latches on the part of the I.O to investigate into the matter for assessing the assets possessed by the accused in his name and in the name of his other family members and about its percentage.

10. Initially the accused has filed a Criminal Petition No: 8882/2016 before the Hon'ble High Court for discharge. By an Order dated, 13/01/2017 said application came to be rejected. Since there is a strong suspicion against the accused for having committed the offences alleged against him and as materials placed before the Court are sufficient to hold that the accused is the guilty for the offences alleged against him, hence framing of charge against the accused to prosecute him for the offences alleged in the charge sheet is necessary. In view of these reasons and other reasons stated in the objection petition, the learned Spl.Public Prosecutor requested the Court to dismiss the application.

11. Heard Arguments.

12. After hearing arguments, after perusal of the petition, objections of the Public Prosecutor and submissions of both the sides, the points arise for consideration of this Court is:-

1. Whether the accused proves that there are no sufficient grounds for proceeding him for the offence p/u/Sec. 13(1)(e) r/w Sec. 13(2) of PC Act, so he is entitle for discharge for the reasons stated in the petition ?

2. What Order?

13. My findings on the above points are as under:-

Point No.1: In the Negative,

Point No.2: As per final Order,  
the following....

### **REASONS**

14. **POINT NO.1:-** In this case, the Lokayuktha Police have registered a case against the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of Prevention of Corruption Act, 1988 on the authority given by Superintendent of Police, Lokayuktha, Mysuru on that basis, a Source Report was prepared by one Victor Syman, Police Inspector, Karnataka Lokayuktha, Madikeri.

15. In the Source Report, the said Lokayuktha Police Inspector has stated about the details of assets possessed by the accused and in the name of his family members with its values and the known source of income of the accused. Based on the same, he ascertained that

the accused was possessing disproportionate assets to the tune of Rs.1,22,75,486/- and its percentage was 129.18.

16. After registering the case against the accused by Madikeri Lokayuktha Police in their PS Crime No: 4/2013, they investigated the matter. After completion of entire investigation, CW-111 B.Parashurama has submitted the charge sheet against the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of Prevention of Corruption Act, 1988. stating that on the thorough investigation, he revealed that, this accused possessing assets worth of Rs.99,86,482/- disproportionate to his known source of income and its percentage was 91.420.

17. After appearance of the accused, the copy of charge sheet was supplied to him as required u/Sec. 207 of Cr.P.C., and he was enlarged on bail. Later, the counsel for the accused filed this discharge application and submitted before the court stating that, the properties possessed by Smt. K.A.Kamala and Smt. K.A.Indira are wrongly considered as his benami properties. During the raid on the properties of Kamala and Indira, they did not recover any documents to show that this accused has financially supported them to purchase the said properties. On the basis of wrong conclusion, they arrived that the assets of Kamala and Indira are the benami properties of this accused. If the

assets and expenditures of Kamala are taken away, there is no disproportionate assets of this accused. Therefore, there is no sufficient materials against the accused to frame charge and prosecute.

18. The prosecution has not obtained a valid sanction from the competent authorities to prosecute the accused for the offences alleged against him. There is no mention in the requisition submitted by Lokayuktha Police about prima facie case against the accused for obtaining the prosecution sanction and there is no proper explanation by the Sanctioning authority about the prima facie case in the sanction order. Said order is blindly issued without the application of mind.

19. During investigation, the accused submitted his schedule before the I.O, but the I.O did not consider the same by assigning valid reason. If the schedule submitted by the accused was properly considered, there is no disproportionate assets possessed by the accused as alleged in the charge sheet.

20. On 26/07/2018 amendment to the earlier Prevention of Corruption Act 1988 was brought into effect. In the amended Act, several changes with regard to trap and raid cases and the procedures to be adopted by the police for investigation are mentioned. As per the said

provisions, the present penal Section of 13(e) is repealed and same was inserted as 13(b). On that ground also, the prosecution is not supposed to prosecute the accused for the offence p/u/Sec. 13(1)(e) of PC Act.

21. From the day one of preparing the Source Report till the filing of charge sheet, so many illegalities are committed by the I.O. On the ground of illegality the accused is entitled for discharge. Usually any amendment to the statute in the nature of procedural law will take retrospective effect. On the ground of the amendment to PC Act and in view of insertion of Sec. 17-A, the investigation done by the I.O without prior permission of the higher authority of the accused is illegal. In view of all these reasons and in view of other reasons stated in the petition and the written arguments submitted by the counsel for the accused, he requested the Court to allow the petition and discharge the accused.

22. In support of the case of the accused, his counsel relied on the following decisions.

1. AIR 2018 SC 3853 in between (Mohanlal Vs. State of Punjab)
2. 1997 CrL.L.J 2377 in between (State of Maharashtra Vs. Ahmed Gulam Nabi Shaikh and others)

3. 2015(5) Kar L.J 435 in between (S.R.Chowdaiah Vs. State of Karnataka).
4. AIR 2002 SC 3126 in between (General Finance Co.Assistant Commissioner of Income Tax, Punjab).
5. AIR 2000 SC 811 in between (Kolhapur Canesugar Works Ltd., Vs. Union of India and others).
6. 2012 (284) ELT 185 (Kar) MANU/KA/2649/2011 in between (The Commissioner of Income Tax Vs. Ranka).
7. (2018) 400 ITR 9 (SC) in between (The Director of Income Tax Vs. S.R.M.B Dairy Farming (P) Ltd., )
8. AIR 1990 SC 209 in between Gurbachan Singh Vs. Saptal Singh and others)
9. (2017) 9 Scale 458 in between (SEBI Vs. Classic Credit Ltd., )
10. AIR 1994 SC 2623 in between (Hitendra Vishnu Thakur Vs. State of Maharashtra)
11. AIR 1965 SC 444 in between (Rattan Lal Vs. State of Punjab).
12. AIR 1983 SC 150 in between (T.Barai Vs. Henry Ah Hoe).
13. Crl.Revision Petition No.834/2015 in between (B.A.Srinivasan Vs. Station House Officer).

14. AIR 2004 SC 5100 in between (Zile Singh Vs. State of Haryana and others).

15. AIR 2005 SC 3685 in between (Govt of India and others Vs. Indian Tobacco Association).

16. AIR 2005 SC 2731 in between (Pratap Singh Vs. State of Jharkand and others).

17. Supreme Court Civil Appeal No.10824 of 2018 in between (Sushila N.Rungta Vs. Tax Recovery Officer).

23. Contrary to this, the learned Spl. Public Prosecutor submitted before the Court stating that, there is no illegalities or irregularities either in preparing the Source Report or in the investigation done by the I.O. The Police Officer who prepared the Source Report has specifically stated about the details of the assets possessed by the accused in his name and in the name of his family members. On the basis of that Source Report, a case against the accused is registered in Madikeri Lokayuktha PS Crime No:4/2013 and investigation was conducted. During investigation, the I.Os collected various documents pertains to the properties possessed by the accused in his name, in the name of his wife, son and sister-in-law K.A.Kamala. Though the accused is having brother-in-laws and other sister-in-laws, their properties are not considered as the assets of the accused. By looking into the transaction between K.AKamala and the family members of the accused ie., wife and son, it indicates that, this accused

has nominally purchased the properties in the name of Kamala and subsequently he got transferred the same in the name of his son by way of gift. There is no iota of evidence to show that the said Kamala and Indira were having any means to purchase the properties in their name. The properties in the name of said Kamala and Indira are purchased after the marriage of the accused with Indira. By considering purchase of properties jointly in the name of Indira and Kamala and some properties in the name of Kamala and getting it transferred in the name of his family members, goes to show that the said transaction is a banami transaction.

24. In the final report submitted before the Court, I.O has specifically stated about the number of properties possessed by the accused in his name and in the name of other family members with its value. Considering the value of the said assets and considering the known source of income of the accused, the I.O has rightly held that, the accused was possessed disproportionate assets worth of Rs.99,86,482/- and its percentage was 91.42.

25. Here in this case, the prosecution is contending that the properties standing in the name of family members of the accused are his benami properties. When the prosecution asserts that the said properties are the benami properties of the accused, the initial burden is

on the prosecution to prove the same by examining its witnesses. At the time of hearing on the discharge application, the Court has to consider as to whether there are sufficient materials to prosecute the accused for the offences alleged against him by framing charge or not. The result of the case regarding acquittal or conviction of the accused is immaterial. Only the fact to be considered by the Court is a strong suspicion against the accused in the charge sheet.. If there is strong suspicion against the accused on the basis of the materials placed before the Court, that itself is sufficient to frame charge against the accused to prosecute him for the offence p/u/Sec. 13(1)(e) r/w Sec. 13(2) of Prevention of Corruption Act, 1988. Further he has contended that, the provisions of Sec.17-A of PC Act do not attract to the case on hand, so that application is also liable to be dismissed. In view of all these reasons and for other reasons stated in his objection petition, he requested to dismiss the petition with costs.

26. In support of his case, he relied on the following decisions.

1. 2001 SAR (Criminal) 32 SC in between (State by Central Bureau of Investigation Vs. S.Bangarappa).

2. 2017(1) Kar.L.J 290 in between (Dr.Y.Manjunath Vs. State of Karnataka).

3. ILR 2018 KAR 2319 in between (Sri.T.R.Shivaramu Vs. Anti Corruption Bureau, rep. By Inspector of Police, Bangalore, Urban police station).

4. ILR 2018 KAR 2893 (SC) in between (State by Lokayuktha Police Vs. H.Srinivas).

5. 2018 SAR (Criminal) 201 SC in between (State by the Inspector of Police, Chennai Vs. S.Selvi and another).

6. 2015 SAR (Criminal) 298 in between (State through Inspector of Police Vs. A.Arun Kumar and another).

7. AIR 1979 SC 366 in between (Union of India Vs. Prafulla Kumar Samal and another).

8. ILR 2017 KAR 3531 in between (Dr.H.C.Sathyan Vs. The State of Karnataka by Police Inspector, Karnataka Lokayuktha, Mysuru).

9. 2016 CrI.L.J 546 (Chhattisgarh High Court) in between (Pushyamitra Mishra Vs. CBI, A.C.B branch, Bhilai, District Durg, Chhatisgarh).

10. 2016 CrI.L.J 612 (Chhattisgarh High Court) in between (Pappu Singh Rajput Vs. State of Chhattisgarh).

11. 2014 SAR (Criminal) 490 SC in between (State of Bihar and others Vs. Rajmangal Ram).

12. 2014 SAR (Criminal) 620 SC in between (P.L.Tatwal Vs. State of Madhya Pradesh).

13. 2016 SAR (Criminal) 435 in between (Balbhadra Parashar Vs. State of Madhya Pradesh).

14. 2005(1) Kar.L.J 41 (SC) in between (State by Police Inspector Vs. T.Venkatesh Murthy).

27. After considering the petition, objections of Spl.Public Prosecutor, their submissions, documents placed before the Court and after going through the citations relied upon by the counsel for the accused and Spl.Public Prosecutor, now the point remains for consideration of this Court is, whether the accused is entitled for discharge on the grounds mentioned in the petition or not, is the fact to be decided by the Court. It is true that, u/Sec. 227 of Cr.P.C., the Sessions Judge is authorized to discharge the accused if he satisfies that there is no sufficient ground for proceeding against the accused for the offences alleged against him in the charge sheet. Like so, U/Sec. 238 of Cr.P.C., a Magistrate is empowered to discharge the accused if he considers that the charges against the accused are to be groundless. For deciding that fact prima facie at this stage, the Court has to look into the materials placed before the Court and it cannot hold pretrial for deciding that fact. It is the bounden duty of the Court to verify the charge sheet papers produced before the Court to ascertain as to whether the materials placed before the Court are sufficient and the grounds urged in the same are

sufficient to proceed against the accused for framing charge to hold trial or not.

Secs. 227 and 238 of Cr.P.C., reads as follows:-

**“227. Discharge-** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”.

**“238. Compliance with section 207.-** When, in any warrant- case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207”.

28. After considering the said provisions, it is clear that the Court is the duty bounden to ascertain the fact as to whether the grounds urged in the charge sheet are sufficient to frame charge against the accused or not. At the time of entertaining the discharge application, the Court has to consider the fact whether there is strong suspicion against the accused to prosecute him for the offence alleged against him or not. At the time of hearing before the charge, the result of the case with regard to acquittal or conviction of the accused is immaterial. The said fact has to be considered by the Court only after holding full fledged trial. At the time of framing charge, the Court has to consider the fact that whether there is strong

suspicion against the accused to frame charge for the offences alleged against him or not.

29. Here in this case, the counsel for the accused submitted before the Court that, the Officer who generated the Source Report of the assets of the accused and the I.O have not discharged their duties properly to ascertain as to what are the assets to be considered as the assets of the accused on the basis of his income. Considering the properties possessed by the sister-in-law of the accused namely, K.A.Kamala and considering the property gifted by Kamala to the son of the accused as the properties of the accused, the I.O has erred and come to a wrong conclusion. I have gone through the Source Report and final report produced before the Court along with seized documents. In the Source Report, the I.O has specifically stated about the total value of the assets possessed by the accused, his wife, his sister-in-law K.A.Kamala. Further he has considered the income of the accused from the salary and other sources. Like so, the income of his other family members. In the Source Report, the concerned Police Inspector has stated about the loans borrowed by Kamala and the accused from various financial institutions and their income from the said properties. In the Source Report the I.O has stated that the properties jointly standing in the name of his sister-in-law Kamala and his wife Indira are the benami properties

of the accused as the said properties are nominally purchased in their names after the marriage of the accused. Based on the Source Report and after registering the case, CW-111 B.Parashurama, the P.I, Lokayuktha has conducted investigation, collected various documents and other bank statements, income tax returns of the accused, his wife Indira and his sister-in-law Kamala from the concerned authorities.

30. In the Source Report, the Police Inspector Victor Syman has stated that on 01/01/1996, the father-in-law of the accused namely, K.N.Appaji has distributed the properties to his children through a family settlement deed. As per that settlement deed, all the immovable properties are allotted to the shares of his sons and only an amount of Rs.24,000/- per annum was ordered to be payable by his children to his unmarried daughter K.A.Kamala and his wife Smt. K.A.Nanjamma. To rebut this fact, no evidence is placed by the accused before the I.O along with his schedule. Further, said Kamala has not produced any documents before the I.O with regard to her actual known source of income for acquiring the properties in her name. By looking into the various properties purchased by her and her sister in and around Kodagu District, it indicates that, all the said properties are jointly purchased. There is no explanation from K.A.Indira stating as to why she has jointly purchased the properties along

with her sister even after her marriage with the accused. All the said properties are purchased in their names after the marriage of Indira with the accused. It is the contention of the prosecution stating that Kamala is a spinster. By taking the advantage of the same, the accused has purchased the properties jointly in the name of Kamala and Indira to screen his illegal gratification holding that purchasing the properties in their name is safe. All the properties standing in the name of Indira and Kamala purchased at Bangalore and in and around Kodagu District are purchased only after the marriage of Indira with the accused.

31. From the day one of generating the Source Report till the completion of investigation and submitting the charge sheet, it is the contention of the prosecution that, the properties in the name of Kamala and Indira are the benami properties of the accused. When the prosecution has taken that contention, it ought to have been rebutted by Kamala and Indira by submitting their explanations with regard to their properties. Here in this case, though the notice was issued to Kamala to submit her explanation with regard to her income, assets and properties, she declined to submit her explanation stating that she will submit her explanation before the Income Tax authority only if they demand the same. When they issued show cause notice and she was fair, there was no any

financial assistance by the accused for purchase of her properties jointly in her name and in the name of Indira, she ought to have disclosed her known source of income for purchase of said properties. When she fails to submit her submissions with cogent evidence before the I.O, that itself creates doubt in the mind of the Court about the contention of the accused stating that the properties standing in the name of Kamala and Indira are their absolute properties. When the prosecution has taken contention stating that the properties in the name of Kamala and Indira are benami properties of the accused, the initial burden of proof is on the prosecution to prove that fact beyond all reasonable doubt.

32. In the discharge application the counsel for the accused has taken contention stating that there is no valid sanction for prosecuting this accused for the offences p/u/Secs. 13(1)(e) r/w Sec. 13(2) of Prevention of Corruption Act, 1988. It is true that as per Sec. 19 of PC Act says that, previous sanction of a competent authority to prosecute a public servant is must. The very object of introducing that provision is to see that, no honest public servant shall be prosecuted illegally on the false allegations. At the time of issuing sanction order, the sanctioning authority is not empowered to hold any preliminary enquiry or examination any of the witnesses for its satisfaction. The materials placed before the

concerned authority are sufficient to decide as to whether there is a prima facie case against the public servant for issuance of sanction order or not. Here in this case, before filing charge sheet the I.O has forwarded all the charge sheet papers to the sanctioning authority for its scrutiny. After receiving the said papers, CW-86 Sri.B.K.Bhuvanendra Kumar, the Under Secretary to the Government of Karnataka (Police Department) Vidhana Soudha, Bangalore placed all the said records before the competent authority. After verifying the said records and after satisfaction the authority has accorded sanction to prosecute the accused for the offences alleged against him. So, prima facie at this stage, this Court held that the said sanction is valid.

33. Here by looking into the final report and documents seized at the time of investigation, it indicates that, several properties are purchased in the name of the accused, his wife and his sister-in-law K.AKamala in and around Bangalore and other villages of Kodagu District. In the final report, the I.O has specifically stated about the assets of each of the family members of the accused and his sister-in-law Kamala along with documentary evidence. During investigation, the I.O has collected several revenue documents and bank statements from the concerned institutions about the loans, their income, deposits and savings in their bank account. Considering the values of

all the properties standing in their name as stated above, the I.O has rightly come to the conclusion that the accused is possessing disproportionate assets worth Rs.99,86,882/- and its percentage is 91.420. It is true that, the said assets includes the assets of the sister-in-law of the accused namely, Kamala and his wife Indira. When the documents collected by the I.O during investigation shows that said properties are jointly standing in the name of Kamala and Indira, wherein some properties are gifted by Kamala in the name of children of the accused, that itself creates a strong suspicion in the mind of the Court with regard to the bonafideness of the accused for the stand taken in his defence stating that those are not his benami properties as contended in the petition. There is dispute with regard to the properties jointly standing in the name of Kamala and Indira are the benami properties of the accused. As per the contention of the accused, said properties are their absolute properties. Under such circumstances, this Court cannot adjudicate that matter without holding full fledged trial, so that fact can be decided by this Court by holding full fledged trial after recording the charge against the accused. Hence, this Court held that, the grounds urged in the petition filed by the counsel for the accused in the discharge application are not satisfactory.

34. I have gone through the decisions relied upon by the counsel for the accused stated supra. Most of

the judgments do not pertain to Prevention of Corruption Act cases. However in some cases, it is the principles with regard to the facts are to be considered for deciding the allegations against the accused. The ratio involved in the most of the judgments are to be considered by the Court at the time of judgment, but not at the time of adjudicating the discharge application. It is true that, in AIR 2018 SC page 3853 Head Note-B, their Lordships held that the complainant should not be Investigating Officer. Here in this case, the Police Officer who generated the Source Report is different and the I.O who conducted the investigation is different, so he cannot take the benefit of that decision. In other judgments of Hon'ble High Court of Karnataka and Hon'ble Supreme Court, are with regard to tax matters and trap cases. The ratio involved in the said decisions are entirely different from the case on hand, so he cannot take the benefit of said decisions for his discharge for the reasons stated supra. The ratio involved in **Crl.Appeal No.165/2010 dated, 09/07/2015** in between **(Sri.S.R.Chowdaiah Vs. State of Karnataka)** is with regard to the offences p/u/Secs. 7, 13(1)(d) r/w Sec. 13(2) of PC Act, 1988 and the ratio of the said cases are different.

35. The ratio involved in Appeal (Criminal) No.442/1994 dated, 04/09/2002 of Supreme Court is with regard to the tax matter and the ratio involved in that decision are not similar to the case on hand. The ratio

involved in Crl.Appeal No.2132/1994 dated, 01/02/2020 is with regard to the Central Excise matter and the ratio involved in the same are different. The ratio involved in ITA No.3191/2005 is with regard to income tax, like so, the ratio involved in Crl.Appeal No.601/1989 dated, 26/09/1989 is with regard to IPC case, wherein the question of acquittal was challenged in the appeal, so he cannot take the benefit of said decision. Like so, other decisions are also pertains to various other cases, so he cannot take that benefit. It is true that Crl.Revision Petition No.834/2015 of Hon'ble High Court of Karnataka in between (B.S.Srinivasan Vs. Station House Officer, C.B.I/A.C.B/Bangalore) is with regard to PC Act case. It is true that in that case the accused was discharged on the ground of non obtaining of sanction. Here in this case, the prosecution has obtained valid sanction as contended by the Spl.Public Prosecutor, so he cannot take the benefit of said decision for discharge. Since the ratio involved in the decisions relied upon by the counsel for the accused are entirely different from the ratio involved in the case on hand, so the said decisions are not considered for his discharge.

36. I have gone through the ratio involved in the decisions relied upon by the Spl.Public Prosecutor. In most of the decisions the ratio involved in the said decisions are aptly applicable to the case on hand, so same

are considered. That the ratio involved in the 2001 SAR (Criminal) 32 SC in between (State of Central Bureau of Investigation Vs. S.Bangarappa), wherein in Head Note-C, it reads as follows:-

**“Framing of charge- State for** - At the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility- The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the Court to proceed further - In present case the materials which prosecution enumerated are sufficient to frame the charge for the offence under Sec. 13(2) r/w Sec. 13(1)(e) of the Prevention of Corruption Act, 1988”.

The said decision is aptly applicable to the case on hand.

37. In a decision reported in 1976 CrL.J 1230 Allahabad High Court, in between (State of U.P Vs. Kanhaiya Lal), in Head Note-A, their Lordships discussed about investigation by Junior Officer and in that decision, their Lordships held as follows:-

“The trial held by an Officer below the rank of a Deputy Superintendent of Police would be visited only if it could be shown that the irregularity had prejudiced the accused and had resulted in a miscarriage of justice. Merely because there was some irregularity in the investigation or that the investigating officer had some animus against the accused or that the investigation was being supervised by a person who was interested cannot by itself, lead to an inference that the accused had necessarily been denied a fair trial. Before an accused can, in such circumstances, claim that he has been prejudiced he has to indicate precisely the manner in which a fair trial has been denied to him”.

38. In a decision reported in **2017(1) Kar.L.J 290** in between **(Dr.Y.Manjunath Vs. State of Karnataka)**, is with regard to quashing of FIR on the ground of admissibility or otherwise of the evidence said to have been obtained pursuant to faulty investigation. The said ratio is not applicable to the case on hand, so the same is not considered.

39. In a decision reported in **ILR 2017 KAR 3531** in between **(Dr.H.C.Sathyan Vs. The State of Karnataka, by Police Inspector, Karntaka Lokayuktha, Mysuru)**, wherein his Lordships held with regard to sanction and it reads as follows:-

**“PREVENTION OF CORRUPTION ACT 1988 (for short ‘P.C.Act’) - Section 19(4) - Order of sanction passed by the Competent Authority for the alleged offences under Sections 13(1)(e) and 13(2) of the P.C Act - Validity of the Sanction Order - Challenge to - Prevention of Corruption Act is a social legislation - Duty of Courts is to protect and advance the real object and purpose of the enactment- Courts to look into overall circumstances and the materials against the accused- Mere small doubts or confusions are not sufficient to up-root the Sanction Order”.**

40. In some other citations also similar views are expressed by the Hon’ble High Court of Karnataka and Hon’ble Supreme Court and other High Courts, so the said decisions are considered as ratio involved in the same are applicable to the case on hand.

41. Apart from it, this Court relied on the unreported decisions of Hon'ble High Court, wherein, their Lordships have stated as to what are the facts to be considered by the Court at the time of hearing before the charge. In the unreported decision of Hon'ble High Court of Karnataka in **Crl.Revision Petition No.726/2012 dated, 04/10/2012** in between (**Smt. Yeshodha S and another Vs. State of Central Bureau of Investigation**), wherein at para-10 His Lordships held that:-

“The jurisdiction of the learned Sessions Judge while exercising the power under S.227 of Cr.P.C., is limited. Charge can be framed on the basis of strong suspicion. Marshelling and appreciation of evidence is not the domain of the Court at that stage of the case. Trial Court at that stage of the case cannot prefer the first statement dated, 11.3.2003, to that of the subsequent statement dated, 24.3.2003 of CW-10. At the stage of framing the charge, Trial Court is not required to go into the details of investigation, but to only arrive at a prima facie finding on the material made available as to whether a charge can be sustained as recommended in the charge sheet. Holding of a mini trial at the time of framing charge is not permissible.

In this connection, His Lordships considered the ratio involved in a decision of Supreme Court case of State of Bihar Vs. Ramesh Singh, 1977(4) SCC 39.

42. In another unreported decision of **Hon'ble High Court of Karnataka in Crl.Revision Petition No.64/2014 dated,02/03/2016** in between (**S.P.Raju Vs. Lokayuktha Police**), wherein His Lordships held as follows:-

“Section 13(1)(e) of the Act casts embargo on the accused to satisfactorily account the pecuniary resources in the scheme of Section 13(1)(e) of the Act. The Investigating Officer is expected to make out a case about the income of the accused and if it is shown to be disproportionate, the burden is upon the person to satisfactorily explain the same keeping in mind the principles enunciated by the Hon’ble Supreme Court in the case of C.S.D.Swami. The documents of a vehicle allegedly belonging to some body were found in the locker of the petitioner at the time of conducting raid and hence as indicated by the learned SPP, the accused is to explain about the same satisfactorily in the trial. Therefore, this is not a fit case to interfere with the well considered order passed by the trial Court. In fact, the learned Judge has assigned valid and cogent reasons in paragraph No.21 as to why he is not inclined with the submission on behalf of the accused relating to the receipt of income under different heads. No illegality or perversity to invoke the revisional jurisdiction vested in this Court under Section 397 of Cr.P.C. Accordingly, petition is dismissed”.

43. In another unreported decision of **Hon’ble High Court in CrI.Revision Petition No.113/2014 dated, 21/10/2014** in between **(S.B.Mallikarjuna Vs. The Karnataka Lokayuktha)**, wherein His Lordships considered the ratio involved in a decision of Hon’ble Supreme Court in **(1990) 4 SCC 76** in between **(Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijjaya and others)** and quoted the following para:

“7. xxxx xxxx xxxxx

From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence

of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution stages as gospel truth even if it is opposed to common sense or the broad probabilities of the case”.

44. In an unreported decision of Hon'ble Supreme Court in **Crl.Appeal No.22-23 of 2014 dated, 06/07/2014** in between (**State of Tamilnadu by the Inspector of Police Vigilance and Anti Corruption Vs. N.Suresh Rajan and others**), their Lordships have stated as to what are the facts to be considered by the Court at the time of framing charge. In that decision, their Lordships held that at the stage of framing charge, Court should have appraised the evidence and discharge the accused if there are no sufficient materials for framing charge. In that case, their Lordships held that, when the prosecution has taken the theory of benami, the prosecution has to prove its case against the accused beyond all reasonable doubts. Taking into consideration of the ratio involved in the decisions stated supra, this Court held that, the materials placed by the prosecution before the Court along with the final report are sufficient to hold that there is a strong suspicion against the accused for framing charge and to hold trial against the accused. The contentions taken by the accused is his petition for his discharge are not sustainable for the reasons stated above. Hence, this Court answered Point No.1 in the '**Negative**'.

45. **POINT NO.2:-** In view of all these reasons, this Court proceed to pass the following.....

**ORDER**

The application filed by counsel for the accused u/Sec. 227 and 239 of Cr.P.C., for discharge of the accused is dismissed.

Dictated to the Judgment Writer, transcript revised, then corrected and pronounced by me in Open Court on this the **26<sup>nd</sup> day of August, 2020.**

**Sd/xxx**

**(MALLIKARJUNAGOUD)**

PRL. SESSIONS JUDGE,  
KODAGU, MADIKERI.

Kvg/\*