

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

WRIT PETITION NO.3107 OF 2024

BETWEEN:

SRI. N SATISH BABU,
S/O LATE SRI. T. NARASIMHAIAH,
AGED ABOUT 52 YEARS,
OCCUPATION: SUPERINTENDENT ENGINEER,
PUBLIC WORKS PORTS AND INLAND WATER
TRANSPORT DEPARTMENT,
BUILDING CIRCLE,
2ND FLOOR, KR CIRCLE,
BENGALURU,
R/AT: 23/A, 6TH CROSS,
3RD MAIN ROAD ,
JAYAMAHAL LAYOUT,
BENGALURU - 560 046.

...PETITIONER

(BY SRI. P. PRASANNA KUMAR, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
LOKAYUKTA POLICE STATION,
BENGALURU CITY,
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR,
OFFICE OF KARNATAKA LOKAYUKTA,
M. S BUILDING,

DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.

2 . SRI. K G RAMAKRISHNA
S/O K P GANGARAJU,
AGED ABOUT 52 YEARS,
DEPUTY SUPERINTENDENT - 06,
KARNATAKA LOKAYUKTA,
BENGALURU CITY,
M S BUILDING,
BENGALURU - 560 001.

...RESPONDENTS

(BY SRI. B. LETHIF, ADVOCATE FOR R1 & R2 KARNATAKA
LOKAYUKTHA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C. PRAYING TO QUASH THE FIR AND COMPLAINT/SOURCE REPORT IN CRIME NO.03/2024 DATED 08.01.2024 REGISTERED BY THE R1. KARNATAKA LOKAYUKTA POLICE, BENGALURU CITY AS AGAINST THE PETITIONER HEREIN WHO IS ARRAYED AS ACCUSED ALLEGING THE COMMISSIONER OF OFFENCE PUNISHABLE U/S 13(1)(B) R/W SECTION 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988 (AMENDMENT ACT 2018), WHICH IS PENDING ON THE FILE OF THE HONBLE XXIII ADDL. CITY CIVIL AND SESSIONS COURT, BENGALURU CITY, INsofar AS THE PETITIONER / ACCUSED IS CONCERNED (PRODUCED VIDE ANNEXURES-A AND B.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.02.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed by the petitioner/accused under Articles 226 and 227 of Constitution of India, read with 482 of Cr.P.C for quashing the FIR in Crime No.3/2024 registered by the Karnataka Lokayuktha police, Bengaluru, for the offences punishable under Section 13(1) (b), read with 13(2) of Prevention of Corruption Act, 1988 (Amendment Act 2018) (hereinafter referred to as 'PC Act').

2. Heard the learned counsel for the petitioner and learned special counsel for the respondent Nos.1 and 2.

3. The case of the prosecution is that on the suo-motu complaint registered by the Lokayuktha police, Bengaluru, against the petitioner alleging that the petitioner was appointed as Industrial Extension Officer, Shikaripura Industries and Commerce Department on 24.10.1994. Then he was appointed as Junior Engineer in 2002 and worked in various departments of Public Works Department (for short 'PWD'). Now he is Executive Engineer in PWD. As per the source report collected by the police on 18.11.2023, FIR has

been registered, alleging that during his tenure as public servant he has amassed wealth to the tune of Rs.3,62,50,000/- about 110% disproportionate to his known source of income in his name, from check period 24.10.1994 till date. Accordingly, the investigation has taken up which is under challenge. Learned counsel for the petitioner has vehemently challenged the proceedings/investigation mainly on the ground, that the DySP of Lokayuktha filed a source report against the petitioner without conducting preliminary enquiry as mandated under the law by the ***Lalita Kumari vs. Government of Uttar Pradesh and others*** reported in ***(2014) 2 SCC 1***, passed by Hon'ble Supreme Court. Further contended that the superintendent of police without conducting preliminary enquiry/verification and without satisfying himself of the genuineness of the source report and without application of mind, in contravention of the proviso to Section 17 of the PC Act, had permitted the respondent No.1 to register the FIR and conduct the investigation which is bad in law.

4. Learned counsel further contended, while according the permission, the Superintendent of Police (SP), had not at all considered that there is no preliminary enquiry or registering the FIR and he should verify the preliminary enquiry and FIR, then only accord the permission under Section 17 of the PC Act. But the alleged permission reveals he has not verified any FIR and no FIR was registered based upon the source report, the permission has been granted. Therefore, conducting investigation is bad in law and hence prayed for quashing investigation. In support of his case, learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court as under:-

1. **1992 Supp (1) SCC 335** in case of State of Haryana & Ors. V. Bhajan Lal & Ors.
2. **WP No. 16028/2023** in case of Shri. Pramod Kumar NG V. State of Karnataka dated 14.12.2023.
3. **(2021) 5 SCC 469**, in case of Charansingh V. State of Maharashtra & Ors.

4. **W.P. No. 43817/2018 (GM-RES)** in case of Navaneeth Mohan N Vs. SHO, ACB, Bengaluru dated 21.04.2021.
5. **W.P. No. 15886/2022 (GM-RES)** in case of Balakrishna H.N. V. State of Karnataka by ACB, Mysuru, dated: 03.01.2023.

5. Per contra, learned counsel for the respondent Lokayuktha filed statement of objection contending that the petitioner amassed wealth disproportionate to the known source of income to the tune of Rs.3,62,50,000/- i.e., 110%. The accused has purchased various properties and is leading lavish life and purchased benami property in name of his wife, mother-in-law and daughters. The matter is under investigation. The SP after verifying the source report and then passed the order as per proviso to Section 17 of the PC Act. He further contended section 17 (a) of the PC Act, was amended on 26.7.2017. Therefore, it is not applicable to the case. The petitioner cannot seek relief under Section 482 of Cr.P.C. Therefore, prayed for dismissing the petition. In support of his contention learned counsel relied upon the judgment of the Hon'ble Supreme

Court in case of '**CBI Vs Thommandru Hannah Vijayalakshmi alias Vijayalakshmi** reported in **AIR (2021) 18 SCC 135 : 2021 SCC OnLine SC 923 court 5041** and contended that this court cannot verify and sit as a chartered accountant. The petitioner is having right to file his documents and explanation. Therefore, prayed for dismissing the petition.

6. Having heard the arguments, perused the records. The main contention of the learned counsel for the petitioner is that the Section 17, proviso 2 of the PC Act, was not followed, which is mandatory in nature. Prior to according permission, the SP is required to verify the source report and should make preliminary enquiry and to register FIR. Thereafter, shall pass the order under Section 17 of PC Act, for investigating the matter. But here in this case, no FIR was registered and based upon the source report, he has accorded the permission under Section 17 proviso 2 of the PC Act. In support of his case, learned counsel relied upon the judgment of the Hon'ble Supreme Court in **Bhajan**

lal's case stated supra. Hon'ble Supreme Court has held at paragraph 128 as under;

"128. The conspectus of the above decisions clearly shows that the granting of permission under Section 5-A authorising an officer of lower rank to conduct the investigation is not to be treated by a Magistrate as a mere matter of routine, but it is an exercise of his judicial discretion having regard to the policy underlying and the order giving the permission should, on the face of it, disclose the reasons for granting such permission. It is, therefore, clear in the light of the above principle of law that the Superintendent of Police or any police officer of above rank while granting permission to a non-designated police officer in exercise of his power under the second proviso to Section 5-A(1), should satisfy himself that there are good and sufficient reasons to entrust the investigation with such police officer of a lower rank and record his reasons for doing so; because the very object of the legislature in enacting Section 5-A is to see that the investigation of offences punishable under Section 161, 165 or 165-A of Indian Penal Code as well as those under Section 5 of the Act should be done ordinarily by the officers designated in clauses (a) to (d) of Section 5-A(1). The exception should be for adequate reasons which should be disclosed on the face of the order. In this connection, it is worthy to note that the strict compliance with Section 5-A(1) becomes absolutely necessary, because Section 5-A(1) expressly prohibits police officers, below certain ranks, from

investigating into offences under Sections 161, 165 and 165-A, IPC and under Section 5 of the Act without orders of Magistrates specified there- in or without authorisation of the State Government in this behalf and from effecting arrests for those offences without a warrant. See also A.C. Sharma v. Delhi Administration".

7. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in **Charansingh v. State of Maharashtra & Ors**, Hon'ble Supreme Court held in paragraph Nos. 15 and 15.1 are as under;

"15. While expressing the need for a preliminary enquiry before proceeding against public servants who are charged with the allegation of corruption, it is observed in P. Sirajuddin³ that: (SCC p. 601, para 17),

"before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of indulging into corrupt practice and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person who is occupying the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this

kind, no exception can be taken to an enquiry by officers of this Department.

It is further observed that: (P. Sirajuddin case³, SCC p. 601, para 17)

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

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

would be in the interest of the alleged accused also against whom the complaint is made.

8. Learned counsel also relied upon the coordinate bench in **Navaneeth Mohan's case** stated supra at paragraph Nos.15 and 16 as under;

"15. The source report which is part of Annexure-A submitted before Superintendent of Police, ACB, Bengaluru, the note of Superintendent of Police, ACB do not indicate that along with the said report any material was placed before him to grant permission to register the FIR and investigate the matter. In the order of Superintendent Police absolutely, there is no reference to submission of any documents along with the source report. In one stroke the Superintendent of Police says that he is convinced that it is a fit case to register the FIR and investigate the case. He does not even say that any preliminary enquiry was conducted prior to placing source report before him. Therefore, there is clear violation of the direction issued by the Hon'ble Supreme Court in Lalitha Kumari's case in registering the FIR.

16. In the judgment of the Hon'ble Supreme Court in Charansingh Vs. State of Maharashtra and others in Crl.A.No.363/2021 dated 24.03.2021 relied upon by the learned Spl. Public Prosecutor himself, in para 12 it was held

that before registering the FIR a preliminary enquiry shall be conducted either confidential or open enquiry."

9. Another coordinate bench in ***Balakrishna's case*** stated supra also taken similar view and has held at paragraph 12 as under;

"12. If the reasons rendered by Apex Court are noticed, two factors would emerge one, that the prosecution is required to draw up source report after conducting some sort of a preliminary enquiry to know the assets of the Government servant and two, after the source information report is placed before the Superior Officer - Superintendent of Police, he has to verify as to whether a crime should be registered or otherwise. If these principles that would emerge from the judgment of the Apex Court are considered qua the facts obtaining in the case at hand, the registration of the crime would fall foul of the principles laid down by the Apex Court and that of this Court in the afore-quoted judgment. Therefore, on this short ground that the source information report disclosed blatant non-application of mind and non-conduct of preliminary inquiry as is necessary in law only in cases concerning disproportionate assets.

10. In view of the judgment rendered by Hon'ble Supreme Court as well as coordinate benches of this court and looking to the fact of the case, where the superintendent of police have granted permission on 8.1.2024 and directed the Dy.SP to investigate the matter. The said order has been passed just based upon the source report submitted by one Ramakrishna Dy.SP -06. On perusal of the order it does not reveal the application of mind by the SP directing to register and investigate the matter. Just that he has passed the order as per the source report of the Dy.SP-06 and he has authorised to register and investigate the case. But learned SP has not at all applied his mind as to how the said figure was required to be investigated and registered the FIR. The coordinate bench has held in the ***Balakrishna's case*** stated supra, the source report, if makes out a cognizable offence, the police officer can register the FIR by making a preliminary enquiry then forward the FIR as well as preliminary enquiry report, along with the source report to the SP for according permission to investigate the matter. However, herein this

case, it is a clear violation of the mandatory provision of Section 17 (proviso 2) of PC Act. In the **Charan Singh's** case stated supra, has considered the same. Here in this case, even if there is no preliminary enquiry to be conducted by the police in order to know the veracity of the source report and if the cognizable offence is made out, they have registered FIR and then forwarded the same to SP for according the permission to investigate the matter. In this case, after according permission by the SP, the FIR has been registered. Absolutely there is no preliminary enquiry conducted by police. FIR was also not registered prior to order of SP. The coordinate bench of this court while considering the **Lalita Kumari's case** in **Balakrishna's case** stated supra had quashed the criminal proceeding and another coordinate bench in WP.No.43817/2018 in **Navaneeth Mohan's case** also had quashed the criminal proceedings based upon the non-compliance of the guidance issued by the Hon'ble Supreme Court in the **Lalita Kumari's case** and **Charan Singh's case** stated supra.

Therefore, considering the facts and circumstances of the case, there is clear violation of guidelines issued in **Lalita Kumari's** case and **Charan Singh's** case and in view of the judgment of the Hon'ble Supreme Court in **Bhajan Lal's case**, the prosecution launched by the respondent is abuse of process of law. It is not a fit case for investigating the matter and FIR is liable to be quashed.

Accordingly, this petition is **allowed**.

Consequently, the FIR filed against the petitioner/accused in Crime No.3/2024 registered by the Karnataka Lokayuktha police, Bengaluru, is hereby quashed.

**Sd/-
JUDGE**

AKV
CT:SK