

**HIGH COURT OF KARNATAKA**

**Bench: Hon'ble Mr. Justice M. Nagaprasanna**

**Date of Decision: 18 November 2023**

CRIMINAL PETITION No.9821 OF 2022

**SRI.ZAMEER AHMED KHAN                      ... PETITIONER**

**VS**

**1 . THE STATE OF KARNATAKA BY LOKAYUKTA P.S.,**

**2 . SRI BASAVARAJ MAGDUM                      ... RESPONDENTS**

Sections, Acts, and Rules Mentioned:

Section 482 of the Criminal Procedure Code (Cr.P.C.)

Section 13(1)(b) and Section 13(2) of the Prevention of Corruption Act, 1988

Sections 420 and 120B of the Indian Penal Code (IPC)

Enforcement Case Information Report (ECIR) under the Enforcement Directorate

Section 66 of the Prevention of Money Laundering Act, 2002

Section 154 of Cr.P.C.

Section 17 of the Prevention of Corruption Act, 1988

Section 18 of the Prevention of Corruption Act, 1988

Section 50 of the Prevention of Money Laundering Act, 2002

Section 17 of the Prevention of Money Laundering Act, 2002

Subject of Judgment:

Challenge against registration of FIR by Anti Corruption Bureau (ACB) for alleged disproportionate assets and corruption, based on information from the Enforcement Directorate.

Headnotes:

**Challenge against FIR – Petitioner, an MLA, challenging FIR registered by Anti Corruption Bureau (ACB) for offences under the Prevention of Corruption Act, 1988 based on Enforcement Directorate's information – FIR questioned for lack of preliminary inquiry and authorization – Dismissal of petition due to statutory backing of FIR and necessity of investigation. [Paras 1-16]**

**Preliminary Inquiry – Necessity in Corruption Cases – Contention that no preliminary inquiry conducted before registering FIR – Refuted by court, highlighting the three-month gap between Enforcement Directorate's communication and FIR registration as period of preliminary inquiry. [Paras 6, 10, 14]**

**Enforcement Directorate's Role – Validity of Information Sharing – Enforcement Directorate's report under Section 66(2) of Prevention of Money Laundering Act, 2002 used as basis for FIR – Court upholds validity, stating**

that the report and subsequent ACB's source report justify FIR against the petitioner. [Paras 10-11, 15]

Assets Disproportionate to Income – Allegations of Disproportionate Assets – ACB's source report indicating petitioner's assets disproportionate by 2031% to known income – Court finds prima facie case warranting investigation under Prevention of Corruption Act. [Para 12]

Investigation Proceedings – Interim Stay by Apex Court – Pending petition before Apex Court challenging refusal of interim stay on investigation – High Court suspends operation of its order dismissing the criminal petition for 30 days. [Para 16]

Decision – FIR against MLA for disproportionate assets to continue – Criminal petition challenging FIR dismissed – High Court's order suspended for 30 days considering the pending appeal before Apex Court. [Para 17]

**Referred Cases:**

- Lalita Kumari V. State Of U.P., (2014) 2 Scc 1
- P. Sirajuddin V. State Of Madras, (1970) 1 Scc 595
- Cbi V. Tapan Kumar Singh, (2003) 6 Scc 175
- Mukesh Singh V. State (2020) 10 Scc 120
- Charansingh V. State Of Maharashtra (2021) 5 Scc 469
- Vijay Rajmohan V. Central Bureau Of Investigation (2023) 1 Scc 329
- Vijay Madanlal Choudhary V. Union Of India 2022 Scc Online Sc 929
- Navaneeth Mohan V. State W.P.No.43817 Of 2018 Disposed On 21.04.2021

Representing Advocates:

For the Petitioner: Sri V. Lakshminarayana, Senior Counsel, assisted by Sri Chandra L., Advocate.

For the Respondents: Sri B.B. Patil, Advocate.

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLIANT DATED 05.05.2022 AND FIR DATED 05.05.2022 IN CR.NO.39/2022 REGISTERED BY THE RESPONDENT ACB POLICE STATION PRODUCED AT ANNEXURE A AND B PENDING ON THE FILE OF THE 23<sup>rd</sup> ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, AT BENGALURU NOW IT HAS BEEN TRANSFERRED TO LXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (CCH-82) FOR THE OFFENCE P/U/S.13(1)(b) R/W SEC.13(2) OF PREVENTION OF CORRUPTION ACT 1988 AGAINST THE PETITIONER HEREIN.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.11.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner is before this Court calling in question registration of a crime in Crime No.39 of 2022 by the then Anti Corruption Bureau ('ACB' for short) for offences punishable under Section 13(1)(b) r/w Section 13(2) of the Prevention of Corruption Act, 1988 ('the Act' for short).

2. Heard Sri V.Lakshminarayana, learned senior counsel appearing for the petitioner and Sri B.B. Patil, learned counsel appearing for the respondents.

3. Facts, in brief, adumbrated are as follows:-

The petitioner is said to be the Member of Legislative Assembly from Chamarajpet Constituency. A complaint comes to be registered on 09-06-2019 which becomes a crime in Crime No.73 of 2019 for offences punishable under Sections 420 and 120B of the IPC against the promoter of I-Monetary Advisory Private Limited ('IMA' for short) – Sri Mohammed Mansoor Khan.

Immediately thereafter, the Enforcement Directorate also registers an Enforcement Case Information Report ('ECIR' for short) against the said promoter. During the investigation by the Enforcement Directorate, the Investigating Officer found the role of the petitioner and then searched the office and residence of the petitioner. Certain information was gathered on the conduct of such search by the Enforcement Directorate with regard to certain transactions between the petitioner and the promoter of IMA which was to the tune of `9.38 crores by way of cheque. Further the statement tendered by the promoter was that he had given cash up to `29.38 crores and further `25/- crores to the petitioner as loan and the same was not returned. Based upon this information, a report is submitted to the then ACB, who based upon the said report registers the impugned crime in Crime No.39 of 2022 for offences punishable under Section 13(1)(b) r/w 13(2) of the Act. It is the registration of crime that led the petitioner to this Court in the subject petition.

4. This Court in terms of its order dated 06-04-2023 rejected I.A.No.1 of 2022 by which further investigation by the ACB was permitted to continue on rejecting the application filed by the petitioner for stay. The petitioner challenges the said order of rejection on I.A.No.1 of 2022 before the Apex Court in Special Leave to Appeal (Criminal) No.5437 of 2023. The Apex Court in terms of its order dated 28-04-2023 while issuing notice grants an interim stay of the order dated 06-04-2023 which had dismissed I.A.No.1 of 2022 filed by the petitioner for stay.
  
5. The matter was heard and reserved on 11-08-2023. since the matter was pending before the Apex Court in the SLP on the order passed by this Court on I.A.No.1 of 2022, only on consent of both the learned counsel appearing for the parties, the subject petition was taken up for consideration, on its merit. The matter was posted for further hearing later with regard to pendency of the SLP before the Apex Court. The learned senior counsel for the petitioner submitted that what is challenged before the Apex Court is only an order on I.A.No.1 of 2022 which had rejected stay of further investigation and this Court has no impediment to consider the main matter, as there is no stay of further proceedings before this Court. It is, therefore, the matter was reheard and rereserved.
  
6. The learned senior counsel Sri V.Lakshminarayana, representing the petitioner would vehemently contend that the crime so registered for offences punishable under Section 13(1(b) r/w 13(2) of the Act is loosely registered. No preliminary inquiry which is necessary to be conducted is not even conducted, no source report is drawn and there is no permission from the Competent Authority to register the crime. He would contend that the report of the Enforcement Directorate cannot become the basis of registration of

crime, under the Act, while the converse can be legally valid. He would seek to place reliance upon the judgments of the Apex Court in the cases of **MUKESH SINGH v. STATE**<sup>1</sup>; **CHARANSINGH v. STATE OF MAHARASHTRA**<sup>2</sup>; **VIJAY RAJMOHAN v. CENTRAL BUREAU OF INVESTIGATION**<sup>3</sup>; **VIJAY MADANLAL CHOUDHARY v. UNION OF INDIA**<sup>4</sup> and a judgment rendered by this Court in the case of **NAVANEETH MOHAN V. STATE**<sup>5</sup>.

7. On the other hand, the learned counsel Sri B.B. Patil representing the respondents would vehemently refute the submissions of the learned senior counsel to contend that it is always open to the Enforcement Directorate to inform the agency of what it has gathered during any investigation. He would contend that the crime was already registered, against the promoter of IMA in which, the role of the petitioner was writ large to the tune of several crores. It is, therefore, all the proceedings have sprung. The ACB had drawn up a source report correctly. The source report contains assets disproportionate to the known source of income of the petitioner to the tune of 2031% (Two Thousand and Thirty one per cent) and, therefore, registration of crime cannot be termed to be illegal at all. He would seek dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are all a matter of record and they would not require reiteration. What is necessary to be considered

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<sup>1</sup> (2020) 10 SCC 120

<sup>2</sup> (2021) 5 SCC 469

<sup>3</sup> (2023) 1 SCC 329

<sup>4</sup> 2022 SCC OnLine SC 929

<sup>5</sup> W.P.No.43817 of 2018 disposed on 21.04.2021

is:

***“Whether registration of crime against the petitioner for the aforesaid offences requires interference?”***

10. The genesis of the problem is when a crime comes to be registered in Crime No.73 of 2019 on 09-06-2019, against one Mr. Mohammed Mansoor Khan, a promoter of IMA, and a simultaneous registration of an ECIR by the Enforcement Directorate against the said promoter. The petitioner did not figure in the said crime. A search comes to be conducted in the house of Mr. Mohammed Mansoor Khan, where certain transactions between him and the petitioner emerged, what is found is transactions to the tune of several crores. This leads the Enforcement Directorate to search the residence, and office premises of the petitioner. Here again certain documents revealed enormous assets of the petitioner. This is reported to the ACB. The report to the ACB, by the Enforcement Directorate becomes the fulcrum of the crime against the petitioner. The report is made by the officers of the Enforcement Directorate, in terms of Section 66 of the Prevention of Money Laundering Act, 2002 ('2002 Act' for short). Therefore, I deem it appropriate to notice Section 66 of the Act. Section 66 deals with disclosure of information and it runs as follows:

***“66. Disclosure of information.—(1) The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to— (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or***

***(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.***

***(2) If the Director or other authority specified under subsection (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.”***

*(Emphasis supplied)*

Section 66(2) is what is pressed into service for furnishing of information. Section 66(2) directs that if the Director or any other authority, on the basis of information or material in his possession, is of the opinion that the provisions of any other law are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.

11. After the search was conducted at the residence and office premises of the petitioner, a communication is made immediately by the Additional Director of Enforcement Directorate, bringing in detail as to what are the assets that were found at the time when the search was conducted by the officers of the Enforcement Directorate. Gist of the communication/information shared under Section 66(2) of the 2002 Act reads as follows:

*"F.No.ECIR/BGZO/03/2019/247      Date: 28-02-2022*  
*To*

*Shri Seemanth Kumar Singh, IPS*  
*Addl. Director General of Police/Inspector*  
*General of Police, No.49, Khanija Bhawan,      Race*  
*Course Road, Bengaluru-560 001.*

*Respected Sir,*

*Sub: Sharing of information under Section 66(2) of Prevention of Money Laundering Act, 2002 in the case of Zameer Ahmed Khan -reg.*

*Kindly refer to the above.*

*In this connection it is submitted that during the course of investigation in ECIR/BGZO/03/2019, searches were carried out in Bengaluru, Karnataka at the residence and official premises related to Zameer Ahmed Khan (hereinafter referred to as ZAK) and it is noticed that ZAK using his political influence and official position has amassed wealth disproportionate to his known sources of income. The prima facie abuse of official position and misconduct by ZAK is discussed below:*

1. *Sh.Zameer Ahmed Khan is a four times MLA from Chamarajpet Constituency, Karnataka from 2005. He was sworn in as Cabinet Minister for Haj and Wakf Board in 2005 and was also Cabinet Minister for Food and Civil Supplies in Government of Karnataka in 2018.*

2. ***During the course of investigation in a money laundering case bearing No.ECIR/BGZO/03/2019 in the case of I-Monetary Advisory (IMA), Bengaluru, registered on the basis of FIR No.73/2019 dated 09-062019 on the allegation u/s 420 and 120B of IPC Mohd. Mansoor Khan, promoter of IMA, in his statement recorded u/s 50 of PMLA deposed that he has made payment of `9.38 Cr. To Sh. Zameer Ahmed Khan through banking channel against the purchase of Plot at Richmond Town, Serpentine Road and has also made payment of ₹29.38 Cr. In cash, over and above the registered value of the property. He further deposed that apart from the said property deal, he has given `25/- Cr. In cash to ZAK as loan which he had not received back. As the said payments to ZAK, aggregating to `63/- Cr. Approx. were made out of the proceeds of crime generated by IMA in the offence of money laundering, searches were conducted under Section 17 of PMLA, 2002 at the residence of ZAK and individuals/entities connected with him on 5-08-2021 - 6-08-2021. During the course of search, documents were seized and after completion of searches, documents/information were collected from various other persons/agencies. ITRs, balance sheets, vehicles details, bank account statements, details of loans/advances (assets/liabilities), copies of sale deeds of the properties purchased/sold were obtained from ZAK under relevant provisions of PMLA, 2002. The analysis of documents/information has revealed that ZAK is in possession of assets beyond his known sources. The key findings of the investigation conducted so far are summarized hereunder for ready reference.***

.....”

*(Emphasis added)*

The information *supra* is shared under Section 66(2) of the 2002 Ac. Section 66(2) is quoted *supra*, what becomes of this, is germane to be noticed. After receipt of information, as contended by the learned senior counsel for the petitioner that, no source information report is drawn or a preliminary inquiry is made, is all a figment of imagination. The ACB did conduct preliminary inquiry, has drawn a source report, and then registered the crime. The source report is drawn on **05-05-2022** based on the communication from the Enforcement Directorate *supra* is on **28-02-2022**, three months after the said communication under Section 66(2) of the Act. The submission of the learned counsel, for the ACB/Lokayuktha is that, preliminary enquiry was conducted for more than three months. This stands to reason on noticing the date of communication by the Enforcement Directorate and drawing up of the source report, they have a time lag of three months. The source information report reads as follows:



“Respected Sir,

*The source information report is regarding amassing wealth beyond his known source of income by Shri Zameer Ahmed Khan, Member of Legislative Assembly (MLA). He has been four times MLA from Chamarajpet Constituency, Karnataka since 2005. He was also sworn in as Cabinet Minister for Haj and Wakf Board in 2005 and was also Cabinet Minister for Food & Civil Supplies in GOK till 2018. He is a member of Legislative Assembly (MLA) hence he is a public servant as per Section 2(c) of PC Act, 1988.*

2. *The Source information has been generated based on the reliable source and the information shared by Enforcement Directorate u/s 66(2) PMLA Act vide letter dated 28-02-2022 in F.No.ECIR/BGZO/03/2019/247 has revealed that he has amassed wealth beyond his known source of income and he has engaged himself in various land dealing using his official position as MLA and Minister to amass huge wealth illegally.*

3. *Source information has revealed that based on the FIR No.73/2019 dated 09-06-2019 u/s 420, 120B IPC against Mohammad Mansoor Khan, promoter IMA and others Directorate of Enforcement registered a Money Laundering case registered against Mohamad Mansoor Khan, promoter IMA and others vide ECIR/BGZO/03/2019. During the investigation of the said case by Directorate of Enforcement role of Shri Zameer Ahmad Khan was also disclosed. Based on the Money Laundering case the residence and office premises were searched by the Directorate of Enforcement. Further it is revealed that he has used his official position to amass wealth illegally beyond his known source of income.*

4. *Further it is revealed that Shri Zameer Ahmad Khan had sold a landed property to Mohammad Mansoor Khan against which he had received `9.38 crores received by way of cheque. And as per statement of Shri Mohammad Mansoor Khan, a cash of `29.38 Crores and further a loan of `25/- crores was received by Shri Zameer Ahmad Khan and not returned to Mohammad Mansoor Khan. Hence totally `63 Crores received by Shri Zameer Ahmad Khan. Searches were conducted at the residence of Shri Zameer Ahmad Khan and other individuals connected to Shri Zameer Ahmad Khan by ED in IMA case on 05/06.08.2021 and various documents were collected from IT, Banks, RTO, Sub-Registrars which revealed that Shri Zameer Ahmad Khan is in possession of properties beyond his known sources.*

5. *That Shri Zameer Ahmad Khan using his official position has got huge cash deposited in the accounts held by Shri Zameer Ahmad Khan in Janatha Sewa Cooperative Bank, State Bank of India and Karnataka State Apex Bank. 2010-11 to 2021-22 an amount of `8,48,55,500/- was deposited in cash in the above said 3 accounts and that during Demonetization period `1,84,67,200 was deposited in cash in Janatha Sewa Co-op. Bank.*

6. *That the Income Tax returns filed by Shri Zameer Ahmad Khan shows annual income of `20 to 25 lakhs only as and his net income from 2010 to 2020 (10 years) is `2,80,15,982. Further that as per his IT*

returns his only sources of income are his salary as MLA, income from partnership firm, interest income on deposits in Bank.

7. ***It is further revealed during the investigation of the ED he had indulged in falsification of records and submission of forged details/documents in an attempt to explain the source of cost of construction and accordingly filed false report before IT, ED and other agencies. For example he has claimed that the investment is `22/-crores towards the house and site whereas actual cost is `50,35,17,300.00 as per the Govt. approved valuer namely S. & V Engineering Enterprises, Bangalore.***

8. ***Reliable sources have revealed that Shri Zameer Ahmad Khan has shown false creditor and receivables which clearly indicate that he has engaged in falsification of records and giving false information to Income Tax Department.***

9. ***The documents collected from the IT department and ED has stated that the suspect using his official position has shown huge unsecured loan to the extent of `31,03,00,000/-. All these loans were taken by Shri Zameer Ahmad Khan without any supporting documents such as loan agreement, no repayment was made, No legal action for non-payment was taken, found mismatch in the figures. Further cash was deposited in various accounts and later transfer to Shri Zameer Ahmad Khan. Hence, Shri Zameer Ahmad Khan had indulged in falsification of records. That the suspect has done huge unexplained expenditure and he is leading lavish life style and huge expenditure was incurred on marriage of his daughter to the extent of `6 crores.***

10. ***It is further submitted that suspect public servant, Shri Zameer Ahmad Khan, MLA and Ex-Minister, Karnataka State in public life since 2005 is suspected to have amassed more wealth which is in disproportionate to his known source of income which is about 87,44,05,057.00 to the extent of 2031%. The Source Information Report (SIR) is enclosed for necessary action.***

*Encl: Information shared by Enforcement Directorate along with documents u/s 66(2) Prevention of Money Laundering Act, 2002.*

*Yours faithfully,*

*Sd/- Basavaraj Magadum*

*Dy.SP., Anti Corruption Bureau,  
Bangalore.”*

*(Emphasis added)*

After the source information, the same is placed before the

Competent Authority – the Superintendent of Police who on

05-05-2022 permits registration of crime by authorizing the Deputy

Superintendent of Police to do the needful. The order dated

05-05-2022 reads as follows:

*"I have gone through the source report submitted by Sri Basavaraj Magadam, Deputy Superintendent of Police, Anti Corruption Bureau, Bengaluru City P.S. relating to his receipt of credible information that Shri Zameer Ahmad Khan, Ex. Minister and present MLA, Chamarajpet Constituency, Bangalore, Karnataka State has acquired properties disproportionate to his known source of income to the extent of `87,44,05,057.00 and thereby committed an offence under Section 13(1)(b) r/w 13(2) of Prevention of Corruption Act, 1988.*

*From the material placed before me and with application of mind I am satisfied that a prima facie case is made out against Shri Zameer Ahmad Khan, Ex. Minister and present MLA, Chamarajpet Constituency, Bangalore, Karnataka State warranting a statutory investigation for an offence under Section 13(1)(b) r/w 13(2) of Prevention of Corruption Act, 1988.*

**ORDER NO.ACB/INV/BENGALURU CITY/SP/26/2022**  
**DATED 05-05-2022**

*Therefore, by virtue of the powers vested in me under provisions of Section 17 of the Prevention of Corruption Act, 1988, I, Yathish Chandra G.H., IPS, Superintendent of Police, Anti Corruption Bureau, Bengaluru City Division, Bengaluru order that Sri K.Ravi Shankar, Deputy Superintendent of Police, Anti Corruption Bureau, Bengaluru City Police Station, Bengaluru to register a case under Section 13(1)(b) r/w 13(2) of Prevention of Corruption Act, 1988 against Shri Zameer Ahmad Khan, Ex Minister and present MLA Chamarajpet Constituency, Bangalore, Karnataka State and to investigate the said case. I know Sri K.Ravi Shankar, Deputy Superintendent of Police and he is having the knowledge of investigation of the cases registered under P.C. Act and also he is having previous experience of investigation of disproportionate of asset cases.*

*Further, I authorize Sri K.Ravi Shankar, Deputy Superintendent of Police, Anti Corruption Bureau, Bengaluru City Police Station, Bengaluru, under the provisions of the Section 18 of the Prevention of Corruption Act, 1988 to inspect the bankers books insofar as it relates to the accounts of the persons suspected to be holding money on behalf of the said Shri Zameer Ahmad Khan, Ex. Minister and present MLA, Chamarajpet Constituency, Bangalore Karnataka State and to take or cause to be taken certified copies of the relevant entries there from and the bankers concerned shall be bound to assist the Police Officer Shri K. Ravi Shankar, Deputy Superintendent of Police, Anti Corruption Bureau, Bengaluru City Police Station, Bengaluru in the exercise of the powers under the said section of law."*

12. On a coalesce of all the aforesaid i.e., Section 66 of the 2002 Act, information under Section 66(2) to the ACB, the source report and the order permitting registration of crime if considered, what would unmistakably emerge is, untenability of the submissions made by the learned senior

counsel for the petitioner. As alleged or contended it is not a case where no crime is registered in which involvement of the petitioner is absent. The crime is registered against the promoter of IMA and the premises and office of the petitioner is searched in connection with the said crime.

Investigation in the said crime is still pending. The information that is received from the Enforcement Directorate under Section 66 cannot be termed to be a nothing in law, for it to become a foundation for registration of the subject crime. It has statutory credence under Section 66(2). If the communication under Section 66(2) of the 2002 Act was alone made as the foundation for the entire proceedings, it would have been an altogether different circumstance. The ACB did conduct a preliminary inquiry, the preliminary inquiry led to drawing up of a source report and the source information report led to registration of crime for offences punishable under Section 13(1)(b) r/w 13(2) of the Act. Sections 13(1)(b) and 13(2) read as follows:

***“13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—***

(a) ...

(b) *if he intentionally enriches himself illicitly during the period of his office.*

*Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.*

*Explanation 2.—The expression “known sources of income” means income received from any lawful sources.*

*(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.”*

Section 13 deals with criminal misconduct by a public servant. Section 13(1)(b) mandates that proceedings can be initiated if the public servant has intentionally enriched himself illicitly during the period of his office. The other provision is Section 13(2). Section 13(2) directs that any public servant who

commits a criminal misconduct shall be punishable for a term not less than 4 years which may extend up to 10 years. The Explanation to Section 13(1)(b) directs that a person shall be presumed to have intentionally enriched himself illicitly if he is in possession of or has at any time during the period of his office in possession of pecuniary source or property disproportionate to his known source of income which the public servant cannot satisfactorily account for. A perusal at the source information report or the communication under Section 66(2) of the Enforcement Directorate would *prima facie* bring the petitioner under the ambit of Section 13(1)(b) of the Act.

13. Insofar as the judgments relied on by the learned senior counsel for the petitioner are concerned, there can be no qualm about the principles laid down by the Apex Court in the said judgments. The learned senior counsel has placed reliance on a particular paragraph in the judgment of the Apex Court in the case of **MUKESH SINGH** (*supra*). The said paragraph reads as follows:

*“10.2. As observed and held by this Court in Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524: AIR 2014 SC 187], the word “shall” used in Section 154 leaves no discretion in police officer to hold preliminary enquiry before recording FIR. Use of expression “information” without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to further investigate the information, which is reduced in writing.”*

The five Judge Bench of the Apex Court reiterates the judgment of five Judge Bench in the case of **LALITA KUMARI v. STATE OF U.P.**<sup>6</sup> and observes that there shall be a preliminary inquiry held before recording FIR. As observed hereinabove, the communication under Section 66(2) is on 28-02-2022. The FIR is registered only on 05-05-2022. The submission is

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<sup>6</sup> (2014) 2 SCC 1

preliminary inquiry was conducted during the said period. There is no reason to believe that it has not been conducted, on a sheer look at the communication between the officers of the Enforcement Directorate to the officers of the then ACB and registration of crime. Therefore, the said judgment does not render any assistance to the learned senior counsel.

14. The other judgment relied on is in the case of **CHARANSINGH** (*supra*). The learned senior counsel places reliance upon paragraphs 15, 15.1 and 15.2 thereof and they read as follows:

*“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. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595: 1970 SCC (Cri) 240] 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 case [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] , 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.*

**15.2.** *Even as held by this Court in CBI v. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305], a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found.*

*Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the observations made by this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595: 1970 SCC (Cri) 240] and considering the observations by this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524] before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-Corruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage.”*

The Apex Court in the aforementioned judgment was following the judgment in the case of **P.SIRAJUDDIN v. STATE OF MADRAS**<sup>7</sup>

which also indicates that a preliminary inquiry has to be conducted prior to registration of crime. This stands answered in the case at hand, as observed hereinabove.

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<sup>7</sup> (1970) 1 SCC 595

15. In the case of **VIJAY MADANLAL CHOUDHARY** (*supra*) the Apex Court holds that 2002 Act is a complete code by itself, but nonetheless there should be proceeds of crime for the Enforcement Directorate to continue the proceedings and proceeds of crime should arise out of a predicate offence. There can be no qualm about the principles laid down therein as well. In the case at hand, a crime has already been registered against the promoter of IMA, in connection with which the Enforcement Directorate searches the premises and office of the petitioner. It is then a report is sent under Section 66(2) of the 2002 Act. Thus, the registration of crime had preceded the information by the Enforcement Directorate. Merely because information is furnished and a source report is drawn on that basis it would not vitiate the proceedings initiated against the petitioner as they are all backed by the statute. Therefore, none of the armory from the arsenal of the learned senior counsel for the petitioner, would lend any assistance to the contentions so advanced on behalf of the petitioner. Wherefore, finding no merit, the petition would necessarily meet its dismissal, as the matter is at the stage of investigation and the preceding analysis would necessitate investigation, in the least, as the disproportionate assets of the petitioner found is at 2031% to the known sources of income.

16. The result of dismissal of the petition would be revival of the investigation against the petitioner. The petitioner had specifically sought for an interim order of stay of investigation in I.A.No.I of 2022. The co-ordinate Bench rejected it, in terms of its order dated 06-04-2023. This is called in question before the Apex Court. The Apex Court grants interim order of stay, therefore, the investigation is stalled. In the light of the pendency of the petition before the Apex Court in a challenge to the refusal of interim stay and an interim stay granted by the Apex Court, I deem it appropriate to suspend the operation of this order for a period of 30 days.



17. For the aforesaid reasons, I pass the following:

**ORDER**

(i) Criminal Petition stands rejected.

(ii) This order stands suspended for a period of 30 days from the date of receipt of a copy of this order.

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