IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.458 of 2023

Arising Out of PS. Case No.-82 Year-2016 Thana- VIGILANCE District- Patna

==========

Animesh Kumar Son Of Sri Bharat Bhushan Kumar Resident Of Village- Jadopur, P.S.- Harsiddhi, District- East Champaran

... ... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Home Department, Government Of Bihar, Patna Bihar

2. The Principal Secretary, Home Department, Government Of Bihar, Patna Bihar

3. The Secretary Cum Legal Remembrance, Law Department, Government Of Bihar, Patna Bihar

4. The Principal Secretary, Vigilance Department, Government Of Bihar, Patna Bihar

5. The Vigilance Bureau Of Investigation, Bihar, Patna Through Its Director General Bihar

6. The Director General, Vigilance Investigation Bureau, Bihar, Patna Bihar

... ... Respondent/s

==========

Acts/Sections/Rules:

- Indian Penal Code - Sections 109 and 120 (B)
- Prevention of Corruption Act - Sections 13(2), 13(1)(e)

Cases referred:

- State of Tamil Nadu Vrs. R. Soundirarasu & Ors. ((2023) 6 SCC 768)

Writ - filed for quashing FIR, Charge-sheet, Sanction order, Order of Cognizance - Allegation against petitioner is that he acquired huge amount of wealth in his own name and in the name of his family members beyond known source of income. Case under the Prevention of Corruption Act and the general provision of the IPC was registered against Petitioner. - Petitioner contends that legitimate sources of income were not taken into consideration and thus wrong calculation of the petitioner's total income was done, which resulted in levelling the allegation of accumulation of enormous wealth beyond the known source of income.

Held - The phrase “known sources of income” means qua the public servant, whatever he gets from his service. Other income which can conceivably be income qua the public servant will be in the regular receive from (a) his property or (b) his investment. - Explanation to Section 13(1)(e) is procedural provision which seeks to define the expression “known sources of income” as source known to the prosecution and not to the accused. - At the preliminary stage of taking cognizance of offence on the basis of charge-sheet, the prosecution is only required to prove that a strong *prima facie* case has been established against the accused. - even at the stage of Section 239 CrPC, the accused cannot come up with the documents to prove his known sources of income. It is at the time of defence only when the accused can rebut the prosecution case and such rebuttal is not in the nature of preponderance of property but the accused must prove that he does not have disproportionate asset to his known sources of income. - Writ dismissed

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.458 of 2023

Arising Out of PS. Case No.-82 Year-2016 Thana- VIGILANCE District- Patna

==========

Animesh Kumar Son Of Sri Bharat Bhushan Kumar Resident Of Village- Jadopur, P. S.- Harsiddhi, District- East Champaran

... ... Petitioner/S

Versus

1. The State of Bihar Through The Principal Secretary, Home Department, Government Of Bihar, Patna Bihar
2. The Principal Secretary, Home Department, Government Of Bihar, Patna Bihar
3. The Secretary Cum Legal Remembrance, Law Department, Government Of Bihar, Patna Bihar
4. The Principal Secretary, Vigilance Department, Government Of Bihar, Patna Bihar
5. The Vigilance Bureau Of Investigation, Bihar, Patna Through Its Director General Bihar
6. The Director General, Vigilance Investigation Bureau, Bihar, Patna Bihar

... ... Respondent/s

==========

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Shashi Shekhar Prasad, Advocate Mr. Abhay Shanker, Advocate
For the Respondent/s	:	Md. Nadim Seraj, APP
For the Vigilance	:	Mr. Anil Singh, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 22-03-2024

1. The petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for the following reliefs.:-

(a) For quashing the F.I.R. bearing Vigilance P. S. Case No. 82 of 2016 instituted on 26.08.2016 under Sections 109 and 120 (B) of the Indian

Penal Code and under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, pending in the Court of learned Special Judge, Vigilance, Patna.

(b) For quashing the charge-sheet no. 41/2022, dated 10.08.2022 submitted in the Court of learned Special Judge, Vigilance, Patna in connection with abovesaid F.I.R. bearing Vigilance P. S. Case No. 82 of 2016.

(c) It is further prayed to quash the sanction order issued vide memo no. 402, dated 24.06.2022 in connection with abovesaid F.I.R. bearing Vigilance P. S. Case No. 82 of 2016 as the same has been issued by the sanctioning authority without appreciating the facts of the case in a proper manner. More so, the sanction order has been issued under the order of the Hon'ble Governor of Bihar but the concern file notings on perusal suggest that the said case has never been put before the Hon'ble Governor of Bihar before the grant of impugned order sanction order.

(d) It is further prayed that during the pendency of instant writ application the learned Special Judge Vigilance, Patna be directed not to proceed in the instant matter, i.e., Vigilance P. S.

Case No. 82 of 2016 instituted on 26.08.2016 under Sections 109 and 120 (B) of the Indian Penal Code and under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act.

(e) To pass such other order(s) direction(s) for which petitioner is entitled in the facts and circumstances of instant case.

2. Be it mentioned at the outset that during pendency of the instant case, learned Special Judge, Vigilance, Patna took cognizance of offences under Sections 109 and 120 B of the IPC and Section 13(2) read with Section 13 (1) (e) of the Prevention of Corruption Act. The petitioner has also prayed for quashing of the order of cognizance taken by the learned Special Judge, Vigilance, Patna.

3. The petitioner is a Member of Bihar Administrative Service. He joined service in the year 1996 and till 2014, he honestly and diligently performed his duties to the satisfaction of the State Government. In the year 2014, he was posted as District Transport Officer (DTO), Kaimur till June, 2016 and during this period, he raised unprecedented Government revenue for the State Government. Because of relentless and devoted work of the

petitioner, many antisocial people having political nexus became the enemies of the petitioner. In the year 2016, a case under the Prevention of Corruption Act and the general provision of the IPC was registered against him, being Vigilance P.S. No. 82 of 2016.

4. The allegation against the petitioner, in short, was that while working in the capacity of DTO, Kamur, he acquired huge amount of wealth in his own name and in the name of his family members beyond known source of income. On completion of investigation, Investing Officer submitted charge-sheet against the petitioner under Sections 109 and 120B of the IPC, read with Section 13(1)(e) and 13(2) of the Prevention of Corruption Act.

5. The petitioner has challenged the FIR and consequent charge-sheet on the ground that the investigation and charge-sheet are products of non-application of mind. The Investigation Officer intentionally made wrong calculation of the petitioner's total income, which resulted in levelling the allegation of accumulation of enormous wealth beyond the known source of income and ultimately it was alleged that the amount was highly disproportionate to his known source of income. Thirdly, it is submitted by the

petitioner that the Investigation Officer did not consider petitioner's other sources of income and submitted the charge-sheet on false allegations. It is alleged in the charge-sheet that during the check period between January, 1996 to June, 2016, total income of the petitioner as per charge-sheet was as follows:-

Total Income of Petitioner As per The Chargesheet

Earning under different heads	Earning (in Rs.)
Earning through salary	45,51,621/-
Agricultural income	8,35,028/-
Earning through insurance	88,145/-
Earning through loan	26,50,000/-
Earning through bank interest	40,922/-
Earning after selling house	36,00,000/-
Total	1,17,65,716/-

6. It is stated by the petitioner that in the year 2010, the petitioner intended to purchase a flat at Noida at a consideration price of Rs. 4,016,816 lakhs. The petitioner paid Rs. 13,78,416 lakhs as an advance. After obtaining permission from the State Government to purchase the said flat, the petitioner took monetary assistance of Rs. 8 lakhs from his father. Practically, the Investigation Officer did not subtract the said amount from the income of the petitioner.

Subsequently, in the year 2011, the petitioner wanted to transfer the said flat to one Arwind Kumar Dwivedi at same consideration price. The amount was received by the petitioner in the account of his wife. However, the said amount was not taken into account by the Investigation Officer while calculating the total income of the petitioner. It is also contended by the petitioner that his father transferred certain amount of money in the savings account of the petitioner through cheque, but the same has also not been included in the total income of the petitioner. The interest on NSC was also not calculated as income of the petitioner. Moreover, the petitioner had 12 kathas of land at village Yadavpur in the district of East Champaran, which he sold away to one Vijay Kumar Sirvastava at a consideration money of Rs. 4,40,000. Further, case of the petitioner is that he belongs to joint family. The family owns around 15 acres 40 decimals of land at village Yadavpur in the district of East Champaran. The petitioner earns considerable amount of money from the agricultural land. It is reported by the Circle Officer, Harsiddhi Block in the District of Sitamarhi in his report, dated 17th February, 2022, that total agricultural income of the petitioner during the check period would be

around Rs 2,51,89,125.70. The Investigating Officer did not incorporate half of the said amount to the income of the petitioner. The petitioner demanded that his legitimate income, which have not been taken into account by the Investigating Officer, is as follows:-

Legitimate Income Of Petitioner Which Have Not Been Taken Into Account By Investigating Officer

Source of income	Amount
Amount transferred by the father of the petitioner in his savings bank account no. 025001006873 of ICICI Bank	Rs. 4,25,000/-
Amount transferred by the father of petitioner directly to J.P. Infra for the purchase of petitioner's flat at NOIDA	Rs. 8,36,016/-
Agricultural income	Rs. 1,17,58,546.80/-
Amount earned by petitioner after selling his agricultural land	Rs. 4,40,000/-
Amount earned by petitioner through NSC	Rs. 21,315/-
Amount received by sale of J.P. Infra flat of NOIDa	Rs. 2,00,000-/
Total	Rs. 1,35,80,877,80/-

7. The petitioner has also alleged that for calculating the income of the petitioner's wife, the Investigating Officer has taken only some of her income. Her total income was not calculated or taken into

consideration by the Investigating Officer. Moreover, some of the legitimate earnings of the petitioner's wife have been left out by the Investigating Officer while calculating her total income. The petitioner further states that the wife of the petitioner used to file her Income Tax Returns for the different financial year, and the I.T.R. would show that during the period between 2002 and 2009, petitioner's wife filed I.T.R. for every financial year, and as per such return, the total income of the petitioner’s wife during that period was Rs 11,00,188/-. However, the Investigating Officer has taken only one Rs. 1531/- as an income of the petitioner's wife which she earned from a slimming centre at Dwarka. The wife of the petitioner purchased one Indigo Car in the year 2004 taking loan from the bank, the said car was sold to one Satish Kumar in the year 2015 at a consideration price of Rs. 1,25,000/-. The said amount was not included in the total income of the petitioner's wife. According to the petitioner, the legitimate income of the petitioner’s wife was Rs. 27,47073/-. In all, legitimate earnings of the petitioner and his wife which have been left out by the Investigating Officer amounts to Rs. 1,64,27,940/- during the check period. The Investigating Officer also did not deduct the

expenses of the petitioner during the said check period. In the charge-sheet, the Investigating Officer recorded that total expenditure made by the petitioner through his bank accounts was Rs. 84,31,188/- based on different transactions made by him. The said expenses was wrongly calculated by the Investigating Officer and a false charge-sheet has been filed against him.

8. Hence, the instant writ petition.

9. The Respondent Nos. 5 and 6 being the Vigilance Bureau of Investigation represented through its Director General and the Director General, Vigilance Investigating Bureau, Bihar have filed counter affidavit stated through the Deputy Superintendent of Police of Vigilance denying entire material allegations made out by the petitioner in the instant writ petition. It is specifically submitted by the answering respondents that the petitioner while posted as DTO, Kaimur illegally collected money from the vehicles passing through Karamnasa Check Post, Kaimur. Vigilance Intelligence Bureau took lawful action against the petitioner and seized excess money of Rs. 5.48 lakhs from his person at Karamnasa Check Post, Kaimur. When the Vigilance Officer inquired about the excess money

from the DTO, he was unable to give proper explanation for the possession of such huge amount of money to the officer also conducted raid against the petitioner. Thereafter, Vigilance P.S. No. 41 of 2016 under Section 409, 420, 467, 468, 471 and 120B of the IPC as well as 13(2) read with Section 13(1) (c) (d) of the Prevention of Corruption Act was registered against the petitioner. Subsequently, Vigilance P.S. Case No. 82 of 2016 was registered against the disproportionate asset of the petitioner and his wife Smt. Mala Singh. During investigation, all the legitimate income as well as the asset and the expenditure of both the petitioner and his wife were taken into consideration and it was found that during the check period from the year 1996 to 2016, the total income of the petitioner was Rs. 122,26,091/- while assets and expenditure was found to be of Rs. 2,42,29,367/-. Therefore, disproportionate assets was found to be of Rs. 1,20,03,056/-. On completion of an investigation, police submitted charge-sheet it against the petitioner under Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988 read with section 109 and 120 B of the IPC.

10. All other factual assertions made by the

petitioner in the writ petition was denied by the answering respondents.

11. The petitioner has filed a supplementary affidavit as well as reply to the counter affidavit filed by the Respondent Nos. 5 and 6 and he reiterates the same averment made in the writ petition.

12. Mr Sanjay Singh, learned Senior Counsel appearing on behalf of the petitioner, at the outset, submits that in respect of Vigilance P.S. Patna Case No. 41 of 2016, dated 8th of April, 2016, under Section 420, 409, 467, 468 471, 120 B of the IPC read with section 13(2) and 13(1) (c) (d) of the P.C. Act, no charge-sheet has been filed till date. However, in respect of the subsequent Vigilance P. S. Case No. 82 of 2016, Vigilance Investigation Bureau submitted charge-sheet against the petitioner

13. It is further submitted by the learned Senior Counsel on behalf of the petitioner that the basic rule of criminal administration of justice is that an accused need not prove his innocence to the hilt. If he or she is able to show that there was a suspicious circumstance which led rejection of the FIR and charge-sheet, petitioner is entitled to get relief.

14. With such introduction, learned Senior Counsel appearing on behalf of the petitioner has pointed out that as per the charge-sheet, the disproportionate asset outside the known source of income of the petitioner amounts to Rs. 1,20,03,056/-. However on the self-same allegation, the petitioner was subjected to disciplinary proceedings. In the disciplinary proceedings, the Investigating Officer of Vigilance P.S. Case No. 82 of 2016 was appointed as the Presenting Officer. Disciplinary proceedings ended with the finding that the petitioner was not in possession of disproportionate asset amount to Rs. 1,20,03,056/-, but the amount of disproportionate asset of the petitioner was Rs 19,21,992/-.

15. In view of such finding of fact by the Disciplinary Authority, a question naturally arises as to whether the case of the persecution was justified or not.

16. The learned Senior Counsel, on behalf of the petitioner, on question of law, submits that initiation of Vigilance P.S. Case No. 82 of 2016 is not legally permissible.

17. Referring to a decision of the Hon'ble Supreme Court in the case of ***Vinay Tyagi vs. Irshad Ali @***

Deepak & Others reported in ***2013 5 SCC 762,*** it is submitted by the learned Senior Counsel on the behalf of the petitioner that investigation can be ordered in varied forms and at different stages, right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Cr.P.C. Investigation can be of the following kinds:

(*i*) Initial investigation,
(*ii*) Further investigation,
(*iii*) Fresh or de novo or re-investigation.

18. "Initial Investigation" is the one which the empowered police officer to conduct in furtherance of registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Cr.P.C. and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the Court of competent jurisdiction in terms of Section 156(3) of the Code. "Further Investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8) of Cr.P.C. This is a kind of accentuation of previous

investigation. The basis of further investigation is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence or incidental thereto. In other words, it has to be understood in complete contradistinction of “reinvestigation”, “fresh or de novo investigation”. The scope of further investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. The report submitted in pursuance of the further investigation is commonly described as “supplementary report”. As the subsequent investigation is meant and intended to supplement the primary investigation, though there is no specific requirement in the provisions of Section 173(8) of the Cr.P.C. to conduct “further investigation” or file supplementary report with the leave of the court. The investigating agencies have not only understood but also adopted it as a legal practice and procedure of propriety to seek permission of the courts to conduct “further investigation” and file “supplementary report”. The matter which are understood and implemented as a legal practice and are not opposed to basic rule of law

would be permissible with the aid of doctrine of *contemporanea expositio*. Even otherwise to seek such leave of the court to the meet the ends of justice and also provide adequate safeguard to a suspect/accused, in paragraph 54 of the aforesaid reported decision, the Hon'ble Supreme Court held as hereunder:-

> *"54.No investigating agency is empowered to conduct a "fresh", "de novo" or "reinvestigation" in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned Magistrate."*

19. Thus, it is contended on behalf of the petitioner that the Investigating Agency did not have any authority to initiate fresh investigation by registering Vigilance P.S. Case No. 82 of 2016. Vigilance P. S. Case No. 41 of 2016 was instituted on the basis of alleged recovery of

a sum of Rs. 5.28 lakh from the possession of the petitioner. Therefore, the case of disproportionate asset, viz., Vigilance P.S. Case No. 82 of 2016 being second FIR is liable to be quashed.

20. The learned Senior Counsel on behalf of the petitioner refers to a decision of the Apex Court in the case of ***Salib @ Shalu @ Salim vs. State of U.P. & Ors***. *r*eported in ***2023 SCC Online SC 947*** *equivalent to* ***2023 (3) PLJR SC 389***. Learned Senior Counsel on behalf of the petitioner refers to paragraphs 28 to 30 of the said report which extracted hereinbelow:-

> *"28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances*

the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or

Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

29. In the overall view of the matter, we have reached the conclusion that the FIR No. 175 of 2022 dated 11.08.2022 deserves to be quashed in so far as the appellant herein is concerned. It is so apparent that as the State believes that the father-in-law of the appellant namely Iqbal @ Bala is a very hardened criminal, his son-in-law i.e. the present appellant who has been implicated in the further statement of the first informant is also a criminal.

30. In the result, this

appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 175 of 2022 dated 11.08.2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed."

21. Mr. Anil Singh, learned Advocate on behalf of the Respondent Nos. 5 and 6, on the other hand, submits that in a case of disproportionate assets to known source of income, if the accused/petitioners prays for quashing of the FIR, at such stage the High Court has no power to inquire into the material adduced by the petitioners, compare it with information provided by the Investigating Agency in FIR and their counter affidavit and then pronounce a verdict on merits of each individual allegation raised by the petitioner, largely relying upon the statement of accounts based on documents.

22. In support of his contention, the learned Advocate on behalf of the contesting respondents refers to a very recent decision of the Full Bench of the Hon'ble Supreme Court in ***Central Bureau of Investigation vs. Thommandru Hannah Vijayalakshi @ T.H. Vijayalakshmi***

reported in ***2021 (e) PLJR SC 67861*** *equivalent to* ***AIR 2021 SC 5041***.

23. On the above circumstances, it is held by the Hon'ble Supreme Court that the High Court has gone far beyond ambit of its jurisdiction by virtually conducting a trial in an effort to dissolve respondents. While exercising its jurisdiction under Article 226 of the Constitution of India to adjudicate on a petition seeking the quashing of an FIR, High Court could have only considered whether all contents of FIR as they stand and on their face prima facie make out a cognizable offence or not. However, the High Court conducted a mini trial, overlooking binding principles which governed plea for quashing an FIR.

24. On the same point, he also refers to another decision in the case of **State of *Gujurat vs. Dilipsinh Kishorsinh Rao*** reported in ***2023 SCC Online SC 1294*** *equivalent to* ***2023 (4) PLJR (SC) 225***. The learned Advocate for the respondents mainly relies on paragraph 10 of the aforesaid report which reproduced below:-

> *"10. It is settled principle of law that at the stage of considering an application for discharge, the court must proceed on an assumption that the material*

which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

25. Learned Sr. Counsel appearing on behalf of the petitioner has raised a question as to whether the F.I.R. in Vigilance Case No. 82 of 2016 should be treated as second F.I.R. or not, because of the fact that according to the prosecution, the petitioner was held with unaccounted money, amounting to Rs. 5,28,000/- and on the basis of the said recovery by the Vigilance Investigation Bureau, a case being Vigilance P. S. Case No. 41 of 2016 was registered.

26. It is needless to say that Section 13 of the

Prevention of Corruption Act, 1988 has undergone a substantial change w.e.f. 26th of July, 2018. Section 13(1)(a) and (b) states as follows:

> *"13. Criminal misconduct by a public servant:*
>
> *"(1) A public servant is said to commit the offence of criminal misconduct,-*
>
> *(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or*
>
> *(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to*

whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or"

27. Thus, the facts of Vigilance P. S. Case No. 41 of 2016 was that the petitioner accepted illegal gratification other than the legal remuneration as a motive or reward or that he habitually accepts any valuable thing without consideration from others.

28. However, the case involved in Vigilance P. S. Case No. 82 of 2016 relates to an offence punishable under Section 13(1)(e), which says: -

(e) If he or any person on his behalf is in possession or has at any time during the period of his office, be in possession for which the Public Servant cannot satisfactorily account, a pecuniary resources or property ***"disproportionate to his known source of income."***

29. The Hon'ble Supreme Court in ***State of Tamil Nadu Vrs. R. Soundirarasu & Ors.,*** reported in ***(2023) 6 SCC 768*** has elaborately mentioned the meaning and scope of the term "Income" and "known source of Income", in Section 13(1)(e) of the 1988 Act. Paragraph 36

to 42 of the said judgement are absolutely relevant for our purpose to understand the meaning of "known sources of income" and the same is reproduced hereinbelow:

> ***36.*** *The Explanation to Section 13(1)(e) of the 1988 Act has the effect of defining the expression "known sources of income" used in Section 13(1)(e) of the 1988 Act. The Explanation to Section 13(1)(e) of the 1988 Act consists of two parts. The first part states that the known sources of income means the income received from any lawful source and the second part states that such receipt should have been intimated by the public servant in accordance with the provisions of law, rules and orders for the time being applicable to a public servant.*
>
> ***37.*** *Referring to the first part of the expression "known sources of income" in N. Ramakrishnaiah v. State of A.P. [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454] , this Court observed as under : (SCC pp. 86-87, para 17)*
>
> *"17. '... 6. The emphasis of the phrase "known sources of income" in Section 13(1)(e) [old Section 5(1)(e)] is clearly on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is elastic and*

*has a wide connotation. Whatever comes in or is received is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and being further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "Income". Therefore, it can be said that, though "income" in receipt in the hand of its recipient, every receipt would not partake the character of income. Qua the public servant, whatever return he gets from his service, will be the primary item of his income. Other income which can conceivably be income qua the public servant will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft crime or immoral secretions by persons prima facie would not be receipt from the "known source of income" of a public servant.' [**Ed.** : As observed in State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691 at p. 697, para 6] "*

38. *The above brings us to the second part of the Explanation, defining the expression "such receipt should have been intimated by the public servant" i.e. intimation by the public servant in accordance with any provisions of law, rules or orders applicable to a public servant.*

39. *The language of the substantive*

provisions of Section 5(3) of the 1947 Act before its amendment, Section 5(1)(e) of the 1947 Act and Section 13(1)(e)of the 1988 Act continues to be the same though Section 5(3) before it came to be amended was held to be a procedural section in Sajjan Singh v. State of Punjab [Sajjan Singh v. State of Punjab, AIR 1964 SC 464] . Section 5(3) of the 1947 Act before it came to be amended w.e.f. 18-12-1964 was interpreted in C.S.D. Swami v. State [C.S.D. Swami v. State, AIR 1960 SC 7] , and it was observed : (C.S.D. Swami case [C.S.D. Swami v. State, AIR 1960 SC 7] , AIR pp. 10-11, paras 5-6)

"5. Reference was also made to cases in which courts had held that if plausible explanation had been offered by an accused person for being in possession of property which was the subject-matter of the charge, the court could exonerate the accused from criminal responsibility for possessing incriminating property. In our opinion, those cases have no bearing upon the charge against the appellant in this case, because the section requires the accused person to "satisfactorily account" for the possession of pecuniary resources or property disproportionate to his known sources of income. Ordinarily, an accused person is entitled to acquittal if he can account for honest possession of property which has been proved to have been recently stolen [see Illustration (a) to Section 114 of the Evidence Act, 1872]. The rule of law is that if there is a prima facie explanation of the accused that he came by the

stolen goods in an honest way, the inference of guilty knowledge is displaced. This is based upon the well-established principle that if there is a doubt in the mind of the court as to a necessary ingredient of an offence, the benefit of that doubt must go to the accused. But the legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily", and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.

6. Another argument bearing on the same aspect of the case, is that the prosecution has not led evidence to show as to what are the known sources of the appellant's income. In this connection, our attention was invited to the evidence of the investigating officers, and with reference to that evidence, it was contended that those officers have not said, in terms, as to what were the known sources of income of the accused, or that the salary was the only source of his income. Now, the expression "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person.

Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Evidence Act. The prosecution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund. We are not, therefore, impressed by the argument that the prosecution has failed to lead proper evidence as to the appellant's known sources of income. It may be that the accused may have made statements to the investigating officers as to his alleged sources of income, but the same, strictly, would not be evidence in the case, and if the prosecution has failed to

disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by the prosecution."

(emphasis supplied)

40. *Even after Section 5(3) was deleted and Section 5(1)(e) was enacted, this Court in Wasudeo Ramchandra Kaidalwar [State of Maharashtra v. Wasudeo Ramchandra Kaidalwar, (1981) 3 SCC 199 : 1981 SCC (Cri) 690] has observed that the expression "known sources of income" occurring in Section 5(1)(e) has a definite legal connotation which in the context must mean the sources known to the prosecution and not sources relied upon and known to the accused. Section 5(1)(e), it was observed by this Court, casts a burden on the accused for it uses the words "for which the public servant cannot satisfactorily account". The onus is on the accused to account for and satisfactorily explain the assets. Accordingly, in Wasudeo Ramchandra Kaidalwar [State of Maharashtra v. Wasudeo Ramchandra Kaidalwar, (1981) 3 SCC 199 : 1981 SCC (Cri) 690] it was observed : (SCC pp. 204-205, paras 11-13)*

"11. The provisions of Section 5(3) have been subject of judicial interpretation. First the expression "known sources of income" in the context of Section 5(3) meant "sources known to the

prosecution". The other principle is equally well-settled. The onus placed on the accused under Section 5(3) was, however, not to prove his innocence beyond reasonable doubt, but only to establish a preponderance of probability. These are the well-settled principles : see C.S.D. Swami v. State [C.S.D. Swami v. State, AIR 1960 SC 7] ; Sajjan Singh v. State of Punjab [Sajjan Singh v. State of Punjab, AIR 1964 SC 464] and V.D. Jhingan v. State of U.P. [V.D. Jhingan v. State of U.P., AIR 1966 SC 1762] The legislature thought it fit to dispense with the rule of evidence under Section 5(3) and make the possession of disproportionate assets by a public servant as one of the species of the offence of criminal misconduct by inserting Section 5(1)(e) due to widespread corruption in public services.

12. The terms and expressions appearing in Section 5(1)(e) of the Act are the same as those used in the old Section 5(3). Although the two provisions operate in two different fields, the meaning to be assigned to them must be the same. The expression "known sources of incomes" means "sources known to the prosecution". So also, the same meaning must be given to the words "for which the public servant cannot satisfactorily account" occurring in Section 5(1)(e). No doubt, Section 4(1) provides for presumption of guilt in cases falling under Sections 5(1)(a) and (b), but there was, in our opinion, no need to mention Section 5(1)(e) therein. For, the reason is obvious. The provision contained

in Section 5(1)(e) of the Act is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. When Section 5(1)(e) uses the words 'for which the public servant cannot satisfactorily account', it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets. The High Court, therefore, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under Section 5(2) read with Section 5(1)(e) of the Act unless the prosecution disproves all possible sources of income.

13. That takes us to the difficult question as to the nature and extent of the burden of proof under Section 5(1)(e) of the Act. The expression "burden of proof" has two distinct meanings (1) the legal burden i.e. the burden of establishing the guilt, and (2) the evidential burden i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is

discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under Section 5(2) read with Section 5(1)(e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under Section 5(1)(e), namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under Section 5(1)(e) cannot be higher than the test laid by the Court inJhingan case [V.D. Jhingan v. State of U.P., AIR 1966 SC 1762] i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the

dictum of Viscount Sankey, L.C., inWoolmington v. Director of Public Prosecutions [Woolmington v. Director of Public Prosecutions, 1935 AC 462 (HL)] . The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down inSwami case [C.S.D. Swami v. State, AIR 1960 SC 7] , the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872. Section 106 reads:

*'**106. Burden of proving fact especially within knowledge**.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.'*

In this connection, the phrase the "burden of proof" is clearly used in the secondary sense, namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well-settled. The accused is not bound to prove his innocence beyond all the reasonable doubt. All that he need to do is to bring out a preponderance of probability."

(emphasis supplied

41. *While the expression "known sources of income" refers to the sources known to the prosecution, the expression "for which the public servant cannot satisfactorily account" refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden is on the accused as the said facts are within his special knowledge. Section 106 of the Evidence Act applies. The Explanation to Section 13(1)(e) is a procedural section which seeks to define the expression "known sources of income" as sources known to the prosecution and not to the accused. The Explanation applies and relates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and roving investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his special knowledge. (emphasis supplied) The effect of the Explanation is to clarify and reinforce the existing position and understanding of the expression "known sources of income" i.e. the expression refers to sources known to the prosecution and not sources known to the*

accused. The second part of the Explanation does away with the need and requirement for the prosecution to conduct an open ended or roving enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. As noticed above, the first part of the Explanation refers to income received from legal/lawful sources. This first part of the expression states the obvious as is clear from the judgment of this Court in N. Ramakrishnaiah [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454]

42. *Thus, it is evident from the aforesaid that the expression "known source of income" is not synonymous with the words "for which the public servant cannot satisfactorily account." The two expressions connote and have different meaning, scope and requirements.*

30. Thus, the phrase "known sources of income" means qua the public servant, whatever he gets from his service. Other income which can conceivably be income qua the public servant will be in the regular receive from (a) his

property or (b) his investment.

31. The petitioner has taken a plea that during the check period, he earned approximately Rs. 1.17 crore from agricultural income of his joint family property. The petitioner is under an obligation to prove that he not only got such amount during the check period but also received such amount during the past and also in the future.

32. According to expression “known sources of income” is not synonymous with the words from which the public servant cannot satisfactorily account. Explanation to Section 13(1)(e) is procedural provision which seeks to define the expression “known sources of income” as source known to the prosecution and not to the accused.

33. Thus, explanation to Section 13(1)(e) speaks about the income received from any lawful source and such receipt had been intimated in accordance with the provision of any law, rules or orders for the time being applicable to a public servant.

34. It is, therefore, within the special knowledge in which under Section 106 of the Evidence Act of the accused to disclose his sources of income.

35. In R. Soundirarasu (supra), the Hon'ble Supreme Court was pleased to hold that even at the stage of Section 239 Cr.P.C., the accused cannot come up with the documents to prove his known sources of income. It is at the time of defence only when the accused can rebut the prosecution case and such rebuttal is not in the nature of preponderance of property but the accused must prove that he does not have disproportionate asset to his known sources of income.

36. At the preliminary stage of taking cognizance of offence on the basis of charge-sheet, the prosecution is only required to prove that a strong *prima facie* case has been established against the accused.

37. It is not out of place to mention that finding of disciplinary authority against the petitioner saying that he had disproportionate assets of Rs. 19.36 crores is not worthy of quashing the criminal case against the accused because it is disproportionate assets to the known sources of income which matters and not the amount of disproportionate asset which a public servant holds under his possession.

38. I am tempted to record at the penultimate paragraph of my judgement that the factual aspect of R.

Soundirarasu (supra) is also similar to the fact of this case. In the reported decision, the Respondent No. 1 was a Motor Vehicle Inspector and in the instant case, the petitioner is a District Transport Officer dealing with the case of motor vehicles.

39. For the reasons state above, I do not find any merit in the instant revision and the same is dismissed on contest.

40. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

uttam/-skm

AFR/NAFR	AFR
CAV DATE	14.03.2024
Uploading Date	22.03.2024
Transmission Date	22.03.2024