

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.747 of 2017**

Arising Out of PS. Case No.-1 Year-2017 Thana- VIGILANCE District- Patna

Awadhesh Kumar Ojha, son of Sri Ram Binod Ojha, Resident of 35/A  
Patliputra Colony, P.S. Patliputra, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Director General, Vigilance Investigation Bureau, Department of Vigilance, Govt. of Bihar Patna.
2. The Superintendent of Police, Special Vigilance Unit, Govt. of Bihar, Desh Ratna Marg, Patna.
3. Shri A.K. Sharma, Superintendent of Police, Special Vigilance Unit, Govt. of Bihar, Desh Ratna Marg, Patna.
4. The Deputy Superintendent of Police, Special Vigilance Unit, Govt. of Bihar, Desh Ratna Marg, Patna cum Investigating Officer of the case.

... .. Respondents

**Appearance :**

For the Petitioner	:	Mr.P.K. Shahi, Sr. Advocate Mr. Arun Kumar, Advocate
For the Vig. Investigation Bureau:		Mr.Arvind Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**C.A.V. JUDGMENT**

**Date : 10-10-2022**

The short question which has arisen in the present writ application is whether the Vigilance Investigation Bureau, Department of Vigilance, Government of Bihar, Patna (respondent no. 1) is justified in pursuing the investigation of Special Case No. 16/2017 arising out of Special Vigilance Unit (SUV) P.S. Case No. 01 of 2017 for the offence alleged under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 dated 23<sup>rd</sup> March, 2017 even after expiry of more than five years notwithstanding the fact that on identical allegations/



charges the petitioner has been exonerated in the departmental proceeding in the light of the inquiry reports submitted one after another by the Principal Secretary, Department of Labour, Govt. of Bihar and the Chief Commissioner of Inquiry, Government of Bihar.

**Facts in brief**

2. The petitioner at the relevant time was posted as Divisional Forest Officer, Research, Training and Public Relation, Patna in the Department of Forest, Govt. of Bihar, Patna. His case is that he was at serial no. 1 in the list of candidates whose case were due for consideration by the Union Public Service Commission for promotion in the Indian Forest Service. At this stage, a complaint was filed against him to the I.G., Special Vigilance Unit (hereinafter 'SVU') by one of the employees of the department against whom certain disciplinary action was taken by the petitioner. At the instance of I.G., SVU an inquiry was held by the Chief Vigilance Officer and the Conservator of Forest, Purnea. In course of inquiry, many notices were issued to the complainant but he neither appeared before the Inquiry Officer nor gave any evidence. A report was sent to the Principal Chief Conservator of Forests and the Principal Chief Conservator of Forests sent



his report to the Principal Secretary, Environment and Forest Department, Government of Bihar, and it was ultimately decided to drop the allegations. The Chief Vigilance Officer forwarded the decision of the government to I.G., Special Vigilance Unit vide its letter no. 3699 dated 08.12.2015.

3. Later, on the basis of an unknown source information the SVU registered SVU P.S. Case No. 01/2017 dated 23.03.2017 under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 (hereafter referred to as the "P.C. Act") against the petitioner. A copy of the First Information Report (hereinafter 'F.I.R.')

has been brought on record as Annexure '2'. It is submitted that the F.I.R. contains similar allegations which were earlier made by the employee of the department which had been ultimately dropped. (Annexure '1' to the writ application).

4. It is the specific case of the petitioner that unlike other cases in which the SVU is conducting a preliminary inquiry before registering an FIR, in the present case, no preliminary inquiry was conducted and the judgment of the Hon'ble Supreme Court in the case of **Lalita Kumari Vs. State of U.P. & Ors. reported in 2014(2) SCC 1** which specifically says that in the complaints relating to inter alia a



case of corruption the investigating agency may conduct a preliminary inquiry, has not been followed. It is submitted that in haste the SVU registered the F.I.R. According to the petitioner all these exercises were done hurriedly only to deprive the petitioner from getting into the Indian Forest Service.

5. It is further submitted that from the so-called source information, it would appear that there was an oral information to the 'SVU' that the petitioner has got assets disproportionate to his known sources of income. The said oral information given by the unknown sources were only vague information and it was desirable to verify the same at the preliminary stage. It is pointed out that a circular of the State Government issued by the Personnel Department vide its letter no. 945 dated 24<sup>th</sup> June, 2005 and circulated to all the departments provided that any complaint against a government servant should be accompanied by an affidavit of the complainant and then only enquiry should be made, but, in the present case the SVU went on to lodge the FIR against the petitioner on oral complaint and without any preliminary enquiry.

6. By filing a supplementary affidavit the petitioner



has brought on record the two first information reports bearing SVU P.S. Case No. 01/2018 and 02/2018 which were also lodged against two other government officers on the basis of the source information but prior to lodging those FIRs SVU had conducted a preliminary inquiry. Submission is that very surprisingly in the present case the said procedure was not followed, there was otherwise no reason for lodging the FIR against the petitioner in such a haste. It is submitted that any action done in haste would go a long way to show that the action is malafide. Learned senior counsel has relied upon some of the judgments of the Hon'ble Supreme Court to submit that even though holding of a preliminary inquiry is not a 'must' in all the cases but in the facts and circumstances of the present case, a preliminary inquiry was desirable.

**Initiation of Disciplinary Proceeding on the same set of allegations.**

7. It is stated that during pendency of the present case, when this Court vide it's order dated 17.05.2017 passed an interim order that no coercive step shall be taken against the petitioner, the then Superintendent of Police 'SVU' wrote a letter dated 10<sup>th</sup> July, 2017 calling for an information from the Department of Environment and Forest as to whether the



petitioner has been suspended or not and a disciplinary proceeding has been initiated or not. Thereafter, a departmental proceeding was initiated against the petitioner vide memo no. 3365 dated 17.10.2017. The resolution contains the charges which were totally based on the allegations contained in the FIR of this case (Annexure '14' to the supplementary affidavit). The entire charges were sought to be proved on the strength of the communications received from the 'SVU' and the F.I.R. A detail enquiry was conducted against the petitioner by the then Principal Secretary, Labour Resources Department-cum-Additional Departmental Enquiry Commissioner, Bihar, Patna, who vide its enquiry report dated 28.08.2018 categorically stated that the charges leveled against the petitioner were not proved. A copy of the enquiry report dated 29.08.2018 has been brought on record as Annexure '15' to the supplementary affidavit.

**Exoneration of the petitioner in the Disciplinary Proceeding.**

8. It is stated that subsequently the Environment, Forest & Climate Change Department of the State Government vide letter no. 11.09.2019 directed for a further enquiry into the charges no. 2 and 3 leveled against the



petitioner and accordingly, the then Chief Enquiry Commissioner, Bihar, Patna held the enquiry in relation to the charges. Once again a detail enquiry report was submitted vide memo no. 448 dated 18.06.2021. The Chief Enquiry Commissioner concluded that the charges of holding disproportionate assets by this petitioner were not proved. Subsequently, the said enquiry report was accepted by the government and the departmental proceeding was brought to an end. The petitioner has been exonerated of all the charges leveled against him. Annexure '18' to the supplementary affidavit is the notification as contained in memo no. 1950 dated 28.07.2021 clearly holding that all the three charges leveled against the petitioner were not proved and the petitioner has been exonerated from all the charges.

9. Learned senior counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Ashoo Surendranath Tiwari Vs. The Deputy Superintendent of Police, EOW, CBI & Anr.** reported in (2020) 9 SCC 636 (paragraph 8 to 13) to submit that once the petitioner has been exonerated from all the three charges by the Chief Enquiry Commissioner and the same has been accepted by the Government of Bihar and the petitioner has been issued



integrity certificate, there is no reason why the present FIR should continue. In any case, it is submitted that the respondents have failed to complete the investigation for more than 5 ½ years, that further strengthens the case of the petitioner that the SVU was acting in haste in registering the FIR and had they done a preliminary enquiry, the petitioner would have been saved from the damages which he had suffered in his career.

**10.** It is submitted that the Hon'ble Supreme Court in the case of **Ashoo Surendranath Tiwari** (supra) held that once the petitioner in the said case has been exonerated on merits by CVC and the allegations found to be not sustainable at all and the accused held innocent, the criminal prosecution on the same set of facts and circumstances, cannot be allowed to continue, on the underlying principle of higher standard of proof in criminal cases. In the said case a charge-sheet had already been filed against the petitioner in the criminal case but the Hon'ble Supreme Court quashed the criminal proceeding and discharged the petitioner.

**Integrity certificate and promotion to the Indian Forest Service**

**11.** It is submitted that the petitioner has been granted



integrity certificate dated 13.09.2021 under the signature of the Chief Secretary, Government of Bihar and the State Government has certified the integrity of the petitioner with reference to the entries made in his annual confidential report. The concerned department of the Government of Bihar communicated to the Union Public Service Commission to include the name of the petitioner unconditionally in the select list of the year 2017, 2018 and 2019 and a further request was made for proper recommendation of his promotion to the Indian Forest Service from the select list of 2017. Accordingly selection committee in its meeting held on 5<sup>th</sup> of March, 2021 allocated the Bihar Cadre of the Indian Forest Service to the petitioner and a notification dated 26<sup>th</sup> October, 2021 has been issued as contained in Annexure '22'.

**Submissions as to prejudice**

**12.** The petitioner has specifically pleaded by filing a second supplementary affidavit sworn on 29.08.2017 that the investigating officer of the case was visiting the department of Forest and Environment and was threatening the senior officer of the department to suspend or initiate the departmental proceeding against the petitioner. To strengthen his submissions he has brought on record a copy of letter dated 10<sup>th</sup> July, 2017



issued by the Superintendent of Police, Special Vigilance Unit, Bihar wherein he has sought information from the department as to whether the petitioner has been suspended or not and also if any departmental proceeding has been initiated against him or not. It is stated that it is under this threat that the senior officials of the department proceeded ultimately vide memo no. 2622 dated 21<sup>st</sup> August, 2017 to initiate a departmental proceeding on the same and similar charges as mentioned in the impugned first information report.

**13.** The statement made by the petitioner petitioner in it's supplementary affidavit sworn on 31<sup>st</sup> August, 2021 and 04<sup>th</sup> August, 2022 have not been denied by the respondents. This Court finds that the copy of the supplementary affidavits were duly served upon learned Special Public Prosecutor of the Special Vigilance Unit and thereafter the matter was adjourned on the request of learned Special P.P. but the statements made in those two supplementary affidavits have not been controverted.

**Delay in investigation – Sufferance caused to the petitioner**

**14.** It is lastly submitted that the whole purpose of the institution of the first information report was to debar the petitioner from the zone of consideration and to that extent the rivals/opponents of the petitioner have almost succeeded. Had



the petitioner been given the Cadre of Indian Forest Service in the year 2017 itself, he would have superannuated from the post of Conservator of Forest but because of the delay, he superannuated from the post of Deputy Conservator of Forest only resulting into the huge loss of salary during his service period as well as fixation of amount of pension. It is stated that the juniors to the petitioner in the said select list of 2017 were given promotion to the Indian Forest Service in the year 2017 itself. The petitioner has, thus besides suffering from monetary loss suffered humiliation as well. It is stated that even after 5 ½ years from the date of lodging of the FIR, till date the investigation has not been concluded. In the meantime, petitioner has retired from service on 31.12.2021. It is, thus, submitted that there being an inordinate delay of over 5½ years in continuing with the investigation, it has seriously pre-judiced the petitioner and there is an infringement of the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India. Learned counsel, therefore, submits that the F.I.R. is fit to be quashed on this ground alone. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in the case of **Hussainara Khatoon & Ors vs. Home Secretary, State of Bihar [(1980) 1 SCC 81]; Abdul Rehman**



**Antulay Vs. R.S. Nayak [(1992) 1 SCC 225]; Maneka Gandhi v. Union of India [(1978) 1 SCC 248]; Bishwanath Prasad Singh v. State of Bihar [1994 Supp. (3) SCC 97]; Vakil Prasad Singh [(2009) 3 SCC 355]; Superintendent of Police, Karnataka Lokayukta and Another Vs. B. Srinivas [(2008) 8 SCC 580].**

15. Learned senior counsel for the petitioner submits that even though there is no hard and fast rule that a preliminary enquiry must be conducted before registering an FIR but a public authority must act sensibly and with a bonafide approach towards each and all, failing which grave injustice may be caused to a person by registering an FIR against him at the time when he was expecting his promotion in the Indian Forest Services.

16. Learned senior counsel further submits that in the nature of the present case the SVU has not come out with any material to justify delay of over 5 ½ years in completion of investigation. If it is so, the delay in completion of investigation has seriously prejudiced the petitioner who has already retired from service on 31.12.2021. It is submitted that right to speedy investigation is a part and parcel of right to speedy trial which has been held to be imbibed under Article 21 of the Constitution



of India as a fundamental right of an accused.

**Stand of the Special Vigilance Unit**

17. A counter affidavit has been filed on behalf of the respondent no. 2 to 4. It is stated that under the P.C. Act the investigating agency gets information from the various sources like government department, banks, private persons, friends/relatives of suspect officer and thereafter the agency registers FIR. The stand is that there is no need of a signed complaint for registering an FIR. Instances have been given to show that a large number of cases under the P.C. Act which are registered by the CBI are based on source information and in substantial number of such cases those have ended in conviction.

18. The further stand of the respondents is that the standard practice of registering FIR has been adopted and so far as the judgment of Hon'ble Constitution Bench of the Supreme Court of India in the case of **Lalita Kumari** (supra) is concerned, the Hon'ble Supreme Court had carved out an exception in some category of cases, so far as the corruption cases are concerned only where the complaint/information does not clearly disclose the commission of cognizable offence a preliminary inquiry may be conducted. It is submitted that



where there is fear of manipulation by the investigating agency if the F.I.R. is not registered immediately and there is no infringement of the right of an accused if an F.I.R. is registered, in case of a cognizable offence there would be no need to conduct a preliminary inquiry. According to the respondents, the information collected in the present case from different sources *prima-facie* disclosed the commission of offence and it was not possible to single out a single source who should have signed the information. According to the respondents, the petitioner will be offered an opportunity to give his explanation regarding the acquisition and disposal of movable and immovable properties after conclusion of investigation in this case.

**19.** In its reply cum supplementary counter affidavit the respondents have reiterated their stand and supported the registration of F.I.R.

**20.** Mr. Arbind Kumar, learned Special Public Prosecutor for the Special Vigilance Unit (SVU) has opposed this writ application. This Court has taken note of his submission in its order dated 29.08.2022. It is stated that merely because the petitioner has been exonerated in the departmental proceeding, this Court need not interfere with the first information report.



**21.** There is, however, no denial or contest to the submissions of learned senior counsel for the petitioner based on specific statement made in the supplementary affidavits that the petitioner has been exonerated in the departmental proceeding from all the three charges which are identical to the allegations in the first information report and those charges were sought to be proved on the basis of the same set of materials.

**Consideration**

**22.** Having heard learned senior counsel for the petitioner and learned Special P.P. for the SVU, this Court finds itself in agreement with the submissions of learned senior counsel for the petitioner that the SVU has lodged the FIR against the petitioner in a hot-haste. While it is not in quarrel that in each and every case involving corruption the prosecuting agency need not conduct a preliminary inquiry but at the same time it is also expected that the prosecuting agency shall act sensibly and with complete accountability keeping in mind the nature of allegations and the materials prima-facie available with them to demonstrate commission of cognizable offence.

**23.** In such cases where the complaint discloses commission of a cognizable offence, there cannot be a second opinion but to lodge the first information report. In the present



case, it is the stand of the Vigilance that the FIR was lodged on oral information received from different sources. Instances are available on the record to show that when similar kind of oral informations were received against the two officers who were made accused in Vigilance P.S. Case No. 01/2018 and 02/2018 the SVU decided to conduct a preliminary inquiry and only on being satisfied with the preliminary inquiry report FIRs in the matter of disproportionate assets held by those government servants were lodged. Petitioner has made a specific statement in paragraph 10 of his supplementary affidavit that very surprisingly in the present case, on the basis of so-called information from the source, on the same very date and just after two hours the first information report was lodged even without getting the identity of the so-called source being verified and authenticated. This specific statement of the petitioner has not at all been controverted on behalf of the SVU.

**24.** In the case of **Lalita Kumari** (supra) the Hon'ble Supreme Court concluded it's directions in paragraph 120 to 120.8 which are being reproduced hereunder:

“**120.** In view of the aforesaid discussion, we hold:

**120.1.** Registration of FIR is mandatory under [Section 154](#) of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.



**120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

**120.3.** If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

**120.4.** The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

**120.5.** The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

**120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

**120.7.** While ensuring and protecting the rights of the



accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

**120.8.** Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

**25.** It is evident from perusal of paragraph 120.5 and 120.6 above that as regards the cases in which preliminary enquiry is to be conducted, one of the categories of cases as cited by the Hon’ble Supreme Court is the ‘corruption cases’. Paragraph 120.7 states that while ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. Further paragraph 120.8 says that all information received in a police station relating to cognizable offence, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected.

**26.** On the question of need to conduct preliminary inquiry that Hon’ble Supreme Court has settled the law that an



accused cannot ask for preliminary enquiry as a matter of right. A preliminary inquiry has not been made mandatory by any judgment of the Hon'ble Supreme Court even in corruption cases. The conditions which will warrant the need of preliminary inquiry before the registration of FIR will depend upon the facts and circumstances of each case. There is no said format or manner in which the preliminary inquiry is to be conducted. In a situation where there remains an iota of doubt as to whether cognizable offence is made out or not a preliminary inquiry becomes not only permissible but desirable especially in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known source of income. The reason being that not only the reputation of a public servant is on a stake in such situation but also of the department of the government to which such public servant is attached. In the case of **Central Bureau of Investigation vs Thommandru Hannah Vijayalakshmi** reported in **(2021) Online SC 923 = Live Law SC 551**; a three Judges Bench of the Hon'ble Supreme Court held that preliminary inquiry cannot be asked as a matter of right and an FIR will not stand vitiated because a preliminary inquiry has not been conducted.



**27.** In the case of **K. Veeraswami Vs. Union of India and Ors.** reported in **1991 (3) SCC 655** which was in the context of Section 5(1)(e) of the old Prevention of Corruption Act,1947 which is similar to Section 13(1)(e) of the P.C. Act. The Hon'ble Supreme Court held that the an accused public servant does not have a right to be afforded a chance to explain the alleged disproportionate assets to the Investigating Officer before filing of the charge-sheet, a similar right cannot be granted to the accused before the filing of an FIR by making a preliminary inquiry mandatory.

**28.** In the case of **State of Telangana vs Managipet @ Mangipet Sarveshwar** reported in (2019) 19 SCC 87; the Hon'ble Supreme Court held that there would be no need of preliminary inquiry unless it is necessary to make out the prima-facie case of the commission of cognizable offence. It was also pointed out that the Hon'ble Supreme Court has not held that a preliminary enquiry is a must in all cases. The scope and ambit of a preliminary enquiry being necessary before lodging an FIR depend upon the facts of each case. There is no set format or manner in which the preliminary enquiry is to be conducted.

**29.** Notwithstanding the aforementioned judgments the importance of conducting a preliminary enquiry in an



appropriate case cannot be under-valued. In the case of **Charan Singh Vs. State of Maharashtra** reported in **(2021) 5 SCC 469** the Hon'ble Supreme Court held in para 15.1 that an enquiry at pre-FIR stage is 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 source of income. After the enquiry at pre-registration of FIR stage/preliminary enquiry, if on the basis of the materials collected during such enquiry, it is found that the complaint is fictitious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the materials discloses prima-facie a commission of offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and further investigation will be carried out in terms of the Code of Criminal Procedure.

**30.** Keeping in view the above judgments of the Hon'ble Supreme Court when the facts and circumstances of the present case are looked into, this Court finds that in this case there was no written complaint and at the stage of lodging of F.I.R. it would have been a prudent approach on the part of the 'SVU' to conduct a preliminary inquiry in a time bound manner. This view of the Court further gathers strength from the fact that



even after expiry of more than 5½ years by now the ‘SVU’ has not completed its investigation. Nowhere it is the stand of the respondent that in course of investigation so far the allegations have been found true.

**31.** To this Court, thus, it appears that the SVU was in a hurry. In these circumstances, the submission on behalf of the petitioner that he was being targeted by his rivals/opponents cannot be easily thrown out when this Court finds from the materials available on the record that after this Court passed an interim order dated 17.05.2017 directing no coercive action to be taken against the petitioner, the then Superintendent of Police, SVU wrote a letter to the department on 10<sup>th</sup> July, 2017 calling for an information as to whether the petitioner has been suspended or not and also if any departmental proceeding has been initiated against him or not. This Court finds no plausible reason as to why the then Superintendent of Police, SVU would call upon the department to furnish such information. The specific case of the petitioner is that during this period the I.O. of the case was regularly visiting to the department and he was threatening the senior officials of the department to suspend or initiate departmental proceeding against the petitioner. Even as this Court would not record any finding on this issue but a



cumulative effect of the above mentioned facts and circumstances would *prima-facie* impress upon this Court that during the relevant period when the petitioner was waiting for his promotion in the Indian Forest Service and he was at no. 1 in the list, the F.I.R. was lodged in haste and efforts were made further to get initiated a departmental proceeding against him. At this stage, one interlocutory application being I.A. No. 1563/2017 was filed on behalf of the petitioner praying for staying further investigation. On 29.08.2017 this Court directed for listing of I.A. with the writ application for hearing. No interim order of stay on investigation was passed.

**32.** Be that as it may, this Court is of the considered opinion that only on the ground that a preliminary inquiry was not conducted it would not be lawful, prudent and safe to quash the F.I.R. The submission of learned senior counsel for the petitioner that the FIR was lodged in haste without conducting a preliminary inquiry is to be kept in mind while dealing with his further submissions that in the present case the investigation has been kept pending for more than 5 ½ years without there being any justifiable ground and that no reason at all has been shown to this Court for the delay in completion of investigation.



**Case laws on the speedy investigation and trial**

**33.** In the case of **Hussainara Khaton & Ors vs. Home Secretary, State of Bihar** reported in **(1980) 1 SCC 81**, the Hon'ble Supreme Court observed thus: "We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in **Maneka Gandhi v. Union of India** reported in **(1978) 1 SCC 248**. In the case of **Abdul Rehman Antulay Vs. R.S. Nayak** reported in **(1992) 1 SCC 225** the Constitution Bench of the Hon'ble Apex Court while taking note of the judgment in **Hussainara Khaton (I)** noticed as follows:-

"The learned Judge, however, posed a question which he left to be answered at a later stage. The question posed was: What is the consequence of denial of this right? Does it necessarily entail the consequence of quashing of charges/trial? That question we shall consider separately but what is of significance is, this decision does establish the following propositions:

(1) Right to speedy trial is implicit in the broad sweep and content of Article 21.

(2) That unless the procedure prescribed by law ensures a speedy trial it cannot be said to be reasonable, fair or



just. Expeditious trial and freedom from detention are part of human rights and basic freedoms and that a judicial system which allow incarceration of men and women for long periods of time without trial must be held to be denying human rights to such undertrials.”

**34.** In the case of **Bishwanath Prasad Singh v. State of Bihar** reported in **1994 Supp. (3) SCC 97** the Hon’ble Supreme Court noticed that the petitioner in the said case was suspended on 02.07.1977 on the allegation of corruption, he was dismissed from service, his provident fund and gratuity were forfeited. He had crossed the age of superannuation. In the said case investigation remained pending for more than five years but charge-sheet had been filed on 09.02.1983. The Hon’ble Apex Court observed “Maybe, this being a case of misappropriation of public funds, the investigation may have taken a longer time but it cannot certainly take more than five years, having regard to the facts and circumstances of the case.” The Apex Court, therefore, allowed the Special Leave Petition taking a view that at this stage calling upon the appellant to enter into defence is bound to cause prejudice to him.

**35.** In the case of **Vakil Prasad Singh [(2009) 3 SCC 355]** which went to the Hon’ble Supreme Court from the



decision of this Court, the Hon'ble Apex Court held in paragraph 19, 20 and 24 as under:-

“19. The exposition of Article 21 in Hussainara Khatoon (1) case<sup>5</sup> was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak<sup>6</sup>. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines.”

“20. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (A.R. Antulay case<sup>6</sup>, SCC pp. 270-73, para 86)

- (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;
- (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial;
- (iii) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay?;
- (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant

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5. (1980) 1 SCC 81  
6. (1992) 1 SCC 225



circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on— what is called, the systemic delays;

(v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

(vi) ultimately, the court has to balance and weigh several relevant factors—‘balancing test’ or ‘balancing process’—and determine in each case whether the right to speedy trial has been denied;

(vii) ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint;

(ix) an objection based on denial of right to speedy



trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.”

“**24.** It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.” (underline is mine)

**36.** In the case of **Vakil Prasad Singh** (supra) the allegation was that of demanding of a sum of Rs. 1000/- as illegal gratification for release of the civil work executed by him and in the trap laid to catch the culprit chemically treated currency notes were recovered from the appellant’s pocket. The FIR was lodged on or about 08.04.1981 and the charge-sheet was filed on 28.02.1982 whereupon the learned Magistrate took cognizance on 09.12.1982, but thereafter nothing substantial



happened till 06.07.1987. This Court vide its order dated 07.12.1990 quashed the order taking cognizance with a direction to the prosecution to conclude the investigation within a period of three months but thereafter no progress was made in the case till the year 1998. Under these circumstances the appellant moved this Court under Section 482 Cr.P.C. seeking quashing of the entire criminal proceeding against him on the ground that the re-investigation in the matter had not been initiated even after a lapse of seven-and-half years. The High Court dismissed the petition while acknowledging that there had been a substantial delay in conclusion of proceedings against the appellant and some prejudice may have been caused to the appellant. The Hon'ble Supreme Court, however quashed the entire criminal proceedings on the ground of delay.

**37. In the case of Superintendent of Police, Karnataka Lokayukta and Another Vs. B. Srinivas** reported in **(2008) 8 SCC 580** the Hon'ble Supreme Court observed in paragraph '10' as under:-

“10. There is no general and wide proposition of law formulated that whenever there is delay on the part of the investigating agency in completing the investigation, such a delay can be a ground for quashing the FIR. It would be difficult to formulate inflexible guidelines or rigid principles in determining as to whether the accused has been deprived of fair trial on account of delay or



protracted investigation; it would depend on various factors including whether such a delay was reasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether the delay was inevitable in the nature of things or whether it was due to dilatory tactics adopted by the accused. It would depend upon certain peculiar facts and circumstances of each case i.e. the volume of evidence collected by the investigating agency, the nature and gravity of the offence for which the accused has been charge-sheeted in a given case. The nexus between whole and some of the above factors is of considerable relevance. Therefore, whether the accused has been deprived of fair trial on account of protracted investigation has to come on facts. He has also to establish that he had no role in the delay. Every delay does not necessarily occur because of the accused.”

**38.** In the present case, there was no interim order of stay on the investigation, the respondents have not come out with any pleading that the delay in completion of investigation has resulted due to any plausible reason or that the petitioner being an accused has played dilatory tactics. There is no such case of the respondents, thus a presumptive proof of prejudice to the petitioner is very much available in this case. Applying the balancing test, in this case, the Court would come to a conclusion that the unexplained inordinate delay of over 5½ years in completion of investigation has caused serious prejudice to the petitioner and at this stage when he has retired



from service and there is no near end of the investigation/inquiry and trial, it is nothing but an infringement of the inalienable right of the petitioner under Article 21 of the Constitution of India.

**39.** In addition to the above, this Court has perused the charges leveled against the petitioner in the departmental proceeding. For a ready reference the charges as per **Prapatra 'Ka'** are being reproduced hereunder:-

“आरोप प्रपत्र ‘क’”

1. नाम :-	श्री अवधेश कुमार ओझा, बि०व०से०
2. पदनाम :-	वन प्रमंडल पदाधिकारी
3. स्थापना :-	शोध प्रशिक्षण एवं जन सम्पर्क प्रमंडल, पटना
4. वेतनमान :-	15600-39100 ग्रेड वेतन 7600/-
5. जन्म तिथि :-	22.12.1961
6. सेवानिवृत्ति की तिथि :-	31.12.2021

क्र०	आरोप का मद	आरोप का विवरणी	साक्ष्य
1	बिहार सरकारी सेवक आचार नियमावली, 1976 के नियम 3 का उल्लंघन	श्री अवधेश कुमार ओझा, बि०व०से०, वन प्रमंडल पदाधिकारी, शोध प्रशिक्षण एवं जन सम्पर्क प्रमंडल, पटना के पद पर आप दिनांक 01.06.2016 से पदस्थापित है। बिहार वन सेवा के पद पर आपके द्वारा दिनांक 02.04.1990 को प्रथम योगदान किया गया था। भ्रष्टाचार निरोधक अधिनियम 1988 के तहत धारा 13(2) सह पंहित 13(1)(e) अन्तर्गत विशेष निगरानी इकाई थाना कांड सं०-01/17 दिनांक 23.03.17 दर्ज किया गया है, जिसमें आपके विरुद्ध प्रत्यानुपातिक धर्नाजन का आरोप है। दर्ज प्राथमिकी के अनुसार अबतक के सेवा काल में प्रथम दृष्टया आपके एवं आपकी पत्नी द्वारा विभिन्न स्रोतों से अर्जित आय रूपया 1,23,30,300/- के विपरीत रूपया 66,70,137/- का व्यय के पश्चात् कुल 54,37,137/- के बचत तथा आपकी सम्पत्ति के रूप में रूपये 1,11,28,298/- का आकलन किया गया है। अतएव सरकारी सेवक के लिए ज्ञात स्रोतों से आय एवं बचत के विरुद्ध कुल 56,91,161/- रूपये का प्रत्यानुपातिक धर्नाजन आपके द्वारा किया गया है, जो बिहार सरकारी सेवक आचार नियमावली 1976 के नियम-3 का स्पष्ट उल्लंघन है।	विशेष निगरानी इकाई, बिहार, पटना, का पत्रांक 350/01/2017/SVU/Patna, दिनांक 23.03.2017 की छायाप्रति (सानूलग्नक)
2	आदेशों का उल्लंघन	पुलिस महानिरीक्षक, विशेष निगरानी इकाई, बिहार, पटना का पत्रांक 350/01/2017/SVU/Patna दिनांक 23.03.2017 का छायाप्रति संलग्न करते हुए विभागीय पत्रांक 1602, दिनांक 09.05.2017 द्वारा आपसे प्रत्यानुपातिक धर्नाजन के संबंध में पंद्रह (15) दिनों के अन्दर स्थिति स्पष्ट करने का निदेश दिया गया। पुनः विभागीय पत्रांक 2076, दिनांक 22.06.2017 द्वारा वांछित स्पष्टीकरण अविलम्ब समर्पित करने हेतु आपको स्मारित किया गया। आपके विभागीय निदेशों का उल्लंघन करते हुए आपने पत्रांक 402, दिनांक 11.07.2017 के माध्यम से माननीय उच्च नयायालय, पटना द्वारा C.W.J.C No. - 747/2017 Awadhesh Kumar Ojha Versus The State of Bihar Through The Director General, Vigilance Investigation Bureau, Department of Vigilance, Govt. of Bihar, Patna & Ors. में पारित दिनांक 17.05.2017 का आदेश की छायाप्रति संलग्न करते हुए यह कहा है कि दर्ज प्राथमिकी विधि सम्मत नहीं है तथा आपने प्रत्यानुपातिक धर्नाजन नहीं किया है, किन्तु ज्ञात स्रोतों से आय से अधिक धर्नाजन के संबंध में विशेष निगरानी इकाई के प्रतिवेदन के विरुद्ध न तो कोई साक्ष्य दिया गया है और न ही कोई स्पष्टीकरण। आपका यह आचरण स्पष्ट रूप से विभागीय आदेश का उल्लंघन है।	पत्रांक 1602, दिनांक 09.05.2017 एवं पत्रांक 2076, दिनांक 22.06.2017 की छायाप्रति
3	बिहार सरकारी सेवक आचारी नियमावली, 1976 का नियम 19 का उल्लंघन	बिहार सरकारी सेवक आचार नियमावली 1976 के नियम 19 के तहत प्रत्येक वर्ष सरकारी सेवक द्वारा अपनी सम्पत्ति एवं दायित्वों का घोषणा किया जाना है वर्ष 2016-17 के लिए समर्पित सम्पत्ति एवं दायित्व घोषणा पत्र में आपके द्वारा उन सम्पत्तियों की घोषणा नहीं की गयी है जो विशेष निगरानी इकाई द्वारा पायी गयी सम्पत्ति/दायित्वों में अंकित हैं आपका यह कृत्य स्पष्टतः बिहार सरकारी सेवक आचार नियमावली 1976 के नियम 19 का उल्लंघन है।	वर्ष 2016-17 का सम्पत्ति विवरणी की छायाप्रति। 2. विशेष निगरानी इकाई, बिहार,



			पटना का पत्रांक 350/01/20 17 / SVU /Patna दिनांक 23.03. 2017 की छायाप्रति (सानुलग्नक)
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₹0/-  
09.08.17  
(रत्नेश झा)  
सरकार के संयुक्त सचिव।”

**40.** The first charge against the petitioner is a reiteration of the allegations made against him in the F.I.R. Allegations and the alleged amount of disproportionate assets are identically the same and one. It has been sought to be proved on the basis of letter no. 350/01/2017/SVU/Patna dated 23.03.2017. The charge no. 2 is a peculiar kind of charge. It says that when the petitioner was called upon to submit his explanation vide departmental letter no. 1602 dated 09.05.2017 enclosing therewith a copy of letter no. 350/01/2017/SVU/Patna dated 23.03.2017 he violated the department's direction and vide his letter no. 402 dated 11.07.2017 together with the order dated 17.05.2017 passed by the Hon'ble High Court in Cr.WJC No. 747/2017 took a plea that the FIR has not been lodged in accordance with law. The third charge against the petitioner was that he had not declared those assets and liabilities which are mentioned in the letter of the SVU in his declaration of assets and liabilities in the year 2016-17.



**41. The charges leveled against the petitioner were enquired into in departmental proceeding no. 43/2017. The list of documents on which the department relied upon to prove the charges are the letters of the SVU, Bihar, Patna. The Inquiry Officer concluded in paragraph '8' as under:-**

“8. विश्लेषण :- श्री अवधेश कुमार ओझा के ऊपर लगाये गये आरोप तथा इसके समर्थन में दिये गये साक्ष्य श्री ओझा के द्वारा दिया गया विस्तृत बचाव बयान एवं अनुलग्नक, विभाग के द्वारा दिया गया विभागीय मन्तव्य एवं श्री ओझा द्वारा दिये गये प्रतित्तर तथा की गयी सुनवाई के आधार पर निम्नांकित बिन्दु स्पष्ट होते हैं :-

(i) इस मामले में विभाग द्वारा विशेष निगरानी इकाई द्वारा दर्ज प्राथमिकी एवं उसके साथ संलग्न प्रतिवेदन को ही विभागीय कार्यवाही का आधार बनाया गया है। सुनवाई के दौरान विभाग से यह स्पष्ट रूप से पृच्छा की गयी थी कि वे अगर कोई गवाही करना चाहते हैं तो इस संबंध में गवाह की सूची दे तथा उनकी गवाही कराये, परन्तु विभाग द्वारा लिखित रूप में सूचित किया गया कि उन्हें इस मामले में किसी गवाह को उपस्थित नहीं कराना है एवं इसे दिनांक - 07.05.2018 को आदेश फलक में दर्ज किया गया है।

(ii) इस मामले में विभाग के द्वारा साक्ष्य के रूप में केवल प्राथमिकी की प्रति दी गयी है, जिसमें श्री ओझा की आय एवं व्यय विवरणी तथा परिसम्पत्ति विवरणी दर्शाते हुए इसके आधार पर प्रत्यानुपातिक धनोपार्जन का मामला माना गया है। इसके अलावा केवल श्री ओझा द्वारा दायर वर्ष 2016-17 के सम्पत्ति विवरणी की छाया प्रति दाखिल की गयी है विशेष निगरानी इकाई द्वारा किस आधार पर उनके आय एवं व्यय का आंकलन किया गया है इस संबंध में कोई विस्तृत ब्यौरा न तो प्राथमिकी के साथ संलग्न अनुलग्नक में दर्ज है एवं न ही विभाग के द्वारा इसके बाद दिया गया है।

(iii) श्री ओझा ने अपने बचाव बयान में अपने आय और व्यय की विस्तृत विवरणी दी है तथा सभी के समर्थन में उन्होंने प्रासंगिक कागजात यथा बैंक स्टेटमेंट की छाया प्रति, आयकर रिटर्न की छाया प्रति एवं शपथ पत्र, अंचलाधिकारी द्वारा निर्गत भूमि एवं आय विवरणी इत्यादि संलग्न किये हैं, जिसके संबंध में विभाग ने कोई प्रतिकूल मन्तव्य नहीं दिया है एवं मात्र यह कहा है कि इसमें से कुछ कागजात प्राथमिकी दर्ज होने की तिथि के बाद के हैं। कागजातों के संबंध में यह स्पष्ट नहीं किया गया है कि कौन से कागजात प्राथमिकी के तिथि के बाद के हैं, परन्तु ऐसा प्रतीत होता है कि उन्होंने शपथ पत्र के संबंध में इंगित किया है।

(iv) श्री ओझा द्वारा साक्ष्य सहित दिये गये कागजात के आधार पर उनकी कुल आय 1,16,76,791/- (एक करोड़ सोलह लाख छिहतर हजार सात सौ इकानवें) रुपये, उनकी पत्नी की आय 69,49,313/- (उनहतर लाख उनचास हजार तीन सौ तेरह) रुपये एवं उनके पिता की संयुक्त सम्पत्ति से उन्हें प्राप्त आय 76,44,013/- (छिहतर लाख चौवालीस हजार तेरह) रुपये इस प्रकार कुल 2,62,72,117/- (दो करोड़ बारसठ लाख बहतर हजार एक सौ सतरह ) रुपये होती है, जिसके विरुद्ध उनके द्वारा कुल व्यय 91,78,824/- (इकानवे लाख अठतर हजार आठ सौ चौबीस) रुपये एवं कुल परिसम्पत्ति लगभग 50.00 लाख रुपये होती है। इस प्रकार कुल मिलाकर 1,40,00,000/- (एक करोड़ चालीस लाख) रुपये व्यय एवं परिसम्पत्ति होती है। इस प्रकार इसमें आय से अधिक सम्पत्ति का मामला नहीं बनता है।

(v) अगर प्राथमिकी में दर्ज खर्च एवं परिसम्पत्ति को भी माना जाय तो प्राथमिकी के अनुसार कुल व्यय 66,70,137/- (छियाड़सठ लाख सतर हजार एक सौ तेरह) रुपये एवं कुल परिसम्पत्तियाँ 1,11,28,298 /- (एक करोड़ ग्यारह लाख दो सौ अठानवें) रुपये होती हैं इस प्रकार कुल मिलाकर व्यय एवं परिसम्पत्तियाँ लगभग 1.78 करोड़ रुपये की होती है, इसके विरुद्ध जो आय आरोपित पदाधिकारी श्री अवधेश कुमार ओझा के द्वारा दिखायी गयी है, उसके अनुसार उनके संयुक्त आय लगभग 2.62 करोड़ की होती है। इस प्रकार इस अनुसार भी आय से अधिक सम्पत्ति का मामला नहीं बनता है।

(vi) इस प्रकार उपरोक्त विश्लेषण के आधार पर तथा बचाव बयान में दिये गये विस्तृत विवरणी एवं मद्दार ब्यौरा जिसको विस्तार से ऊपर उल्लेख किया गया है, के आधार पर इस मामले में आय से अधिक सम्पत्ति का मामला प्रमाणित नहीं होता है।

(vii) आरोप संख्या -2 भी प्रमाणित नहीं होता है, क्योंकि विभाग के द्वारा दिये गये कागजात के अनुसार ही श्री ओझा द्वारा विभाग के पत्र का जवाब माह जुलाई, 2017 में ही दिया गया था। साथ ही श्री ओझा ने स्पष्ट किया है की विभाग द्वारा जब उन्हें प्रपत्र-क की प्रति दी गयी तब भी उन्होंने निर्धारित समय-सीमा के अन्दर विभाग को उसका जवाब समर्पित किया। इस प्रकार आरोप संख्या-2 भी प्रमाणित नहीं होता है।

(viii) आरोप संख्या -3 में आरोप की विवरणी में यह स्पष्ट नहीं किया गया है कि किन परिसम्पत्तियों को श्री ओझा द्वारा उल्लेख नहीं किया गया है, परन्तु श्री ओझा द्वारा दी गयी तुलनात्मक विवरणी से यह स्पष्ट है कि उन्होंने सभी परिसम्पत्तियों का उल्लेख विभाग में दाखिल वार्षिक सम्पत्ति विवरणी में किया है। इस प्रकार यह आरोप भी उनके ऊपर प्रमाणित नहीं होता है।

9. अंतिम निष्कर्ष :- इस प्रकार ऊपर दिये गये विस्तृत बचाव बयान, विभागीय मन्तव्य पर किये गये विश्लेषण एवं आरोपित पदाधिकारी द्वारा दिये गये कागजात के आधार पर आरोपित पदाधिकारी के ऊपर आरोप संख्या -1 से 3 प्रमाणित नहीं होता है।”



42. After the aforementioned enquiry report was submitted, another enquiry was ordered to be conducted on charge no. 2 & 3 vide letter no. 3202 dated 11.09.2019 through the Chief Enquiry Commissioner. The Chief Enquiry Commissioner conducted the enquiry and concluded as under:

“12. विश्लेषण एवं जाँच परिणाम :-

12.1 आरोपित पदाधिकारी श्री अवधेश कुमार ओझा, वन प्रमंडल पदाधिकारी, शोध, प्रशिक्षण एवं जन सम्पर्क प्रमंडल, पटना के विरुद्ध विशेष निगरानी इकाई द्वारा दायर प्राथमिकी थाना कांड संख्या-01/2017, दिनांक 23.03.2017 के आलोक में पर्यावरण एवं वन विभाग के संकल्प ज्ञापक-वि.व.से.(आ.) - 01/2017-3365/प.व. दिनांक 17.10.2017 के द्वारा बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली, 2005 के नियम-17 के अधीन विभागीय कार्यवाही प्रारम्भ किया गया था। इस विभागीय कार्यवाही का संचालन अपर विभागीय जाँच आयुक्त ने पूर्ण कर अपने पत्रांक 1761, दिनांक 29.08.2018 के द्वारा प्रतिवेदन समर्पित किया, जिसमें अपर विभागीय जाँच आयुक्त द्वारा सभी आरोपो (तीन आरोपों) को प्रमाणित नहीं पाया था। तत्पश्चात् प्रशासी विभाग ने इस प्रतिवेदन की समीक्षा कर पत्रांक 3202, दिनांक 11.09.2019 द्वारा आरोप संख्या-(1) के संबंध में समर्पित प्रतिवेदन को स्वीकार करते हुए संशोधित आरोप संख्या-(2) और संशोधित आरोप संख्या— (3) के संबंध में अग्रतर जाँच करने का निर्णय लिया गया। आरोपित पदाधिकारी ने अपना बचाव बयान दिनांक 09.01.2020 को समर्पित किया था, जिसपर प्रशासी विभाग अपना मंतव्य पत्रांक 640, दिनांक 19.02.2020 के द्वारा समर्पित किया। आरोपित पदाधिकारी ने पत्रांक शून्य, दिनांक 09.03.2020 को विभागीय मंतव्य पर अपना प्रत्युत्तर समर्पित किया। सचिव, स्वास्थ्य विभाग-सह-जाँच आयुक्त ने सुनवाई पूरी कर आरोप संख्या-(2) के संबंध में अपना प्रतिवेदन दिनांक 04.12.2020 को समर्पित कर दिया था तथा आरोप संख्या - (3) के संदर्भ में आरोपित पदाधिकारी द्वारा प्रशासी विभाग में समर्पित वार्षिक सम्पत्ति विवरणी से बचाव बयान के साथ अनुलग्नक के रूप में सम्पत्ति विवरणी का मिलान करने हेतु प्रस्तुतीकरण पदाधिकारी को निदेश दिया था। इसी बीच सचिव, स्वास्थ्य विभाग-सह- जाँच आयुक्त का स्थानांतरण होने के पश्चात् पुनः आरोपित पदाधिकारी एवं प्रस्तुतीकरण पदाधिकारी को दिनांक 09.04.2021 को आरोप संख्या - (2) एवं आरोप संख्या-(3) के संबंध में विस्तृत रूप से सुना गया। आरोपित पदाधिकारी ने अपने बचाव बयान में यह भी जिक्र किया है कि अग्रतर जाँच हेतु सक्षम अधिकार का अनुमोदन प्राप्त नहीं किया गया। इस बिन्दु पर प्रशासी विभाग स्वयं समीक्षा कर सकता है।

12.2 आरोपित पदाधिकारी के विरुद्ध आरोप संख्या-(2) विभागीय आदेश के उल्लंघन से संबंधित है। जिसमें यह लिखा गया है कि प्रशासी विभाग के द्वारा माँगे गये स्पष्टीकरण के आलोक में आरोपित पदाधिकारी ने अपने कार्यालय पत्रांक पत्रांक 402, दिनांक 11.07.2017 के द्वारा प्रत्यानुपातिक धनांजन से संबंधित आरोप से इन्कार करते हुए माननीय उच्च न्यायालय द्वारा सी.डब्ल्यू.जे.सी. संख्या-747/2017 में दिनांक 17.05.2017 को पारित आदेश की प्रति लगा कर आरोप के बिन्दु पर कोई तथ्यात्मक साक्ष्य सहित अपना पक्ष नहीं रखा। परन्तु इन्हीं आरोपों के संबंध में अपर विभागीय जाँच आयुक्त के समक्ष विस्तृत जवाब समर्पित किया है। इस प्रकार आरोपित पदाधिकारी द्वारा विभाग के समक्ष पक्ष नहीं रखा गया, जो कि विभागीय आदेश का उल्लंघन है। इस आरोप के संबंध में आरोपित पदाधिकारी का कहना है कि सी.डब्ल्यू.जे.सी. संख्या-747/2017 में दिनांक 17.05.2017 को माननीय उच्च न्यायालय द्वारा पारित आदेश में यह स्पष्ट रूप से लिखा हुआ है कि विशेष निगरानी इकाई को कोई भी coercive step लेने से मना किया गया था और चूंकि विशेष निगरानी इकाई द्वारा उनके विरुद्ध दर्ज किया गया मुकदमा गलत, विधि-विरुद्ध एवं अज्ञात सोर्स के बयान पर आधारित है, इसी आलोक में मेरे द्वारा सिर्फ न्यायालय के आदेश से विभाग को अवगत कराते हुए प्रत्यानुपातिक धनांजन के आरोप से इन्कार किया गया है। मैंने माननीय उच्च न्यायालय के इस आदेश के आलोक में इस मामले के अंतिम निष्पादन तक विशेष निगरानी इकाई द्वारा दायर मुकदमा के आलोक में किसी भी प्रकार के कार्रवाई को स्थगित करने का अनुरोध किया था। फिर भी विभागीय कार्यवाही प्रारम्भ करने के पश्चात मेरे द्वारा विभागीय कार्यवाही में पूर्ण सहयोग करते हुए समय बचाव बयान एवं सभी सम्पत्ति का विवरण समय समर्पित किया गया था। अपर विभागीय जाँच आयुक्त द्वारा अपने प्रतिवेदन (पत्रांक 1761, दिनांक



29.08.2018) में विस्तृत समीक्षा कर इस आरोप को प्रमाणित नहीं पाया था। पुनः सचिव, स्वास्थ्य विभाग-सह-जाँच आयुक्त के द्वारा इस आरोप की जाँच की गयी थी और उन्होंने अपने दिनांक 04.12.2020 को पारित आदेश में भी यह स्पष्ट किया है कि आरोप संख्या-(2) प्रमाणित नहीं माना जा सकता है। उपर्युक्त तथ्यों एवं विश्लेषण के आधार पर आरोपित पदाधिकारी के विरुद्ध आरोप संख्या-(2) प्रमाणित नहीं पाया जाता है।

12.3 आरोपित पदाधिकारी के विरुद्ध आरोप संख्या-(3) प्रत्यानुपातिक धनांजन से संबंधित आरोप है, जिसमें इस तथ्य का जिक्र है कि आरोपित पदाधिकारी एवं उनकी पत्नी के नाम से दर्शायी गयी नगद एवं अन्य निवेश का योग रूपया 11,35,986/- मात्र है। जबकि विशेष निगरानी द्वारा प्राथमिकी में समर्पित प्रतिवेदन अनुसार उनके एवं उनकी पत्नी के नाम से कुल 23,88,449/- रूपये मात्र दर्शाया गया है अर्थात् लगभग 12 लाख रूपये का अन्तर है। आरोपित पदाधिकारी ने इस 12 लाख रूपये के अन्तर के संबंध में अपने बचाव बयान में विस्तृत रूप से चर्चा करते हुए यह समर्पित किया है कि सावधि जमा से संबंधित मेरे एवं मेरी पत्नी के संयुक्त खाता संख्या - 31841888124 एवं 31841890223 में 720896/- रूपये होने का उल्लेख दर्ज प्राथमिकी में है। मेरे बचाव बयान के अनुलग्नक के साथ संलग्न संबंधित सावधि जमा के बैंक स्टेटमेंट के अनुसार उक्त सावधि जमा दिनांक 27.02.2017 को बन्द कर दी गई। मेरे द्वारा वर्ष 2015-16 की सम्पत्ति विवरणी की प्रति भी अपने बचाव बयान के साथ संलग्न किया गया है जिसमें उक्त सावधि जमा में निवेश की सूचना सरकार को दी गयी है। इस प्रकार 12 लाख रूपये के अन्तर में से 7,20,896/- रूपये का मिलान सम्पत्ति विवरणी से हो जाता है। प्राथमिकी के अनुसार बैंक खाता संख्या-10027615262 में जमा राशि 588557 रूपया दिखलाया गया है। मेरे द्वारा समर्पित बचाव बयान में उक्त खाता का बैंक स्टेटमेंट संलग्न किया गया है जिससे स्पष्ट होता है कि उक्त राशि 16.01.2017 की है। मेरे द्वारा दिनांक 28.02.2017 को 328262.00 रूपया का चेक निर्गत किया गया था जिसकी निकासी दिनांक 01.03.2017 से 07.03.2017 की अवधि में हुई। चूँकि ये सभी चेक सम्पत्ति विवरणी जमा करने की तिथि के पूर्व निर्गत किया गया था, इसलिए सम्पत्ति विवरणी में मैंने Effective Balance अंकित किया। मेरे द्वारा समर्पित 2016-17 की सम्पत्ति विवरणी में एल.आई.सी. में उक्त अवधि में जमा किये गये राशि का ब्यौरा दिया गया है जिसके अनुसार मेरे और मेरी पत्नी के एल.आई.सी. प्रीमियम के लिए मात्र 44782.00 रूपये का ही निवेश वर्ष 2016-17 में किया गया है जिसकी सम्पुष्टी बैंक स्टेटमेंट, इनकम टैक्स के रिटर्न से होती है। Income टैक्स रिटर्न की प्रति संलग्न की गयी है। यह भी कहना है कि प्राथमिकी में दर्ज 731770.00 ₹ की राशि से संबंधित पॉलिसी संख्या अंकित नहीं है। मेरे द्वारा वर्ष 2010 से 2016-17 तक वर्षवार सम्पत्ति विवरणी समर्पित की गई है जिसमें एल.आई.सी. में उस वर्ष में निवेशित राशि बतलाई गई है, जिसे विभाग के द्वारा स्वीकार भी किया गया है। प्राथमिकी मेरे पूरे सेवाकाल अप्रैल 1990 से प्राथमिकी दर्ज करने की तिथि 23.03.2017 तक मेरे द्वारा अर्जित संपत्ति, निवेश एवं व्यय के आधार पर दर्ज की गयी है न की वर्ष 2016-17 के लिए किये गये निवेश के आधार पर। यह अलग बात है कि प्राथमिकी दर्ज करने के पूर्व श्रोत द्वारा मुहैया करायी गयी झूठी जानकारी की सत्यता की जाँच विशेष निगरानी इकाई द्वारा नहीं की गयी है। स्पष्ट है कि वर्ष 2016-17 में मेरे द्वारा एल.आई.सी. में मात्र 44782.00 ₹ का निवेश किया गया है तथा सम्पत्ति विवरणी में उक्त राशि ही दिखलाई गई है। अग्रेतर जाँच में दर्ज प्राथमिकी के आधार पर जीवन बीमा में मेरे पूरे सेवाकाल (23.03.2017 तक) कुल जमा 731770.00 ₹ को सम्मिलित कर निष्कर्ष निकाला गया है जो सही नहीं है। वस्तुस्थिति यह है कि प्राथमिकी में जीवन बीमा पॉलिसियों के लिये कथित रूप से निवेशित 731770.00 ₹ की राशि वर्ष 1990 से प्राथमिकी दर्ज करने की तिथि 23.03.2017 तक के लिये है न कि वर्ष 2016-17 के निवेश को दर्शाया गया है। विभाग ने इसे 2016-17 का निवेश मानते हुये आरोप गठित कर दिया है जो बिल्कुल भ्रामक है एव गलत है। अतएव इस मद में वर्ष 2016-17 में 686988.00 ₹ का अतिरिक्त निवेश की बात झूठी है। सच्चाई यह है कि वर्ष 2007 में बिरला सनलाईफ का पॉलिसी लिया गया था जिसमें कुल 75000.00 ₹ का निवेश वर्ष 2009-10 तक किया गया एवं वर्ष 2010-11 की सम्पत्ति विवरणी में इसे सरकार को दिखलाया गया। इसी प्रकार वर्ष 2013 में एल.आई.सी. का एकल प्रीमियम के 290467.00 ₹ का निवेश किया गया जिसे वर्ष 2014 की सम्पत्ति विवरणी में अंकित किया गया। बिरला सन लाईफ एवं जीवन बीमा निगम की एकल पॉलिसी को 2016-17 में सम्पत्ति विवरणी में भी मेरे द्वारा अंकित कर दिया गया जिसके कारण संभवतया यह भ्रम की स्थिति उत्पन्न हुयी है। विभाग ने इस तथ्य को संज्ञान में नहीं लिया एवं 12 लाख रूपये का अन्तर का आरोप यांत्रिक रूप से जोड़ लिया। सच्चाई यह है कि दिनांक 23.03.2017 तक मेरे द्वारा जीवन बीमा की विभिन्न पॉलिसियों में कुल 1378647/- रूपया का निवेश किया गया है जो वर्ष 1991 से प्रारम्भ हो कर 23.03.2017 (प्राथमिकी दर्ज होने की तिथि) तक का जोड़ है। इस प्रकार मेरे द्वारा दी गयी सम्पत्ति विवरणी के आलोक में एवं विशेष निगरानी इकाई द्वारा दिखाये जा रहे अन्तर की राशि का पूर्ण रूप से स्पष्ट कर दिया गया है और मेरे विरुद्ध आय से अधिक सम्पत्ति अर्जित करने का आरोप प्रमाणित नहीं होता है। प्रशासी विभाग ने विभागीय मंतव्य में सर्वप्रथम 12 लाख रूपये के अन्तर का जिक्र किया था। जब अग्रतर जाँच की कार्रवाई प्रारम्भ की गयी तब आरोपित पदाधिकारी द्वारा समर्पित बचाव बयान पर विभाग ने



पुनः मंतव्य समर्पित किया, जिसमें यह अंकित किया कि आरोपित पदाधिकारी के विरुद्ध दर्ज प्राथमिकी में एल.आई.सी. एवं अन्य बीमा पॉलिसियों में निवेश की राशि 7,31,770/- रुपये दिखायी गयी है, जबकि आरोपित पदाधिकारी द्वारा बचाव बयान के साथ समर्पित विवरणी में वार्षिक प्रीमियम एवं सिंगल प्रीमियम सहित कुल राशि सिर्फ 4,09,042/- होता है अर्थात् करीब 3.23 लाख अन्तर की राशि रह जाती है। इस संबंध में आरोपित पदाधिकारी ने अपने बचाव बयान में स्पष्ट रूप से जिक्र किया है कि मेरे द्वारा विभिन्न वर्षों बीमा पॉलिसियों में जो प्रीमियम जमा किया गया है उसका पूर्ण विवरण मेरे द्वारा विभिन्न वर्षों में विभाग में दाखिल सम्पत्ति विवरणी में भी उल्लेख है। परन्तु निगरानी अन्वेषण ब्यूरो द्वारा दर्ज प्राथमिकी में एक वर्ष में निवेशित प्रीमियम की राशि का उल्लेख न कर विभिन्न वर्षों में निवेशित प्रीमियम की राशि को जोड़कर उल्लेख कर दिया गया है। जिसके कारण अन्तर की राशि करीब 3.23 लाख रुपये होता है। आरोपित पदाधिकारी द्वारा समर्पित इस तथ्य का सत्यापन प्रशासी विभाग से कराया गया और प्रशासी विभाग ने जिसकी पुष्टि अपने पत्रांक 731, दिनांक 03.03.2021 द्वारा किया है। और सुनवाई के दौरान भी प्रस्तुतीकरण पदाधिकारी ने स्पष्ट रूप से समर्पित किया है कि विभागीय मंतव्य में अंकित अन्तर की राशि करीब 3.23 लाख रुपये का अब समाधान हो जाता है। प्रस्तुतीकरण पदाधिकारी ने यह स्पष्ट किया कि अब आय से अधिक धन अर्जित करने से संबंधित आरोप आरोपित पदाधिकारी के विरुद्ध उचित प्रतीत नहीं होता है। अतः उपर्युक्त जाँच, समीक्षा एवं विश्लेषण के आलोक में आरोप संख्या-(3) प्रमाणित नहीं पाया जाता है।

13. अंतिम निष्कर्षः

ऊपर की कंडिका-12 में किये गये जाँच एवं विश्लेषण के आधार पर आरोपित पदाधिकारी श्री अवधेश कुमार ओझा, वन प्रमंडल पदाधिकारी, शोध, प्रशिक्षण एवं जन सम्पर्क प्रमंडल, पटना के विरुद्ध लगे आरोपों का आरोपवार निष्कर्ष निम्न प्रकार से है:-

(1)	आरोप संख्या-(2)	-	प्रमाणित नहीं होता है।
(2)	आरोप संख्या-(3)	-	प्रमाणित नहीं होता है।

लेखापित  
₹0/-  
18.06.2021  
(सुधीर कुमार)  
जाँच आयुक्त

₹0/-  
18.06.2021  
(सुधीर कुमार)  
जाँच आयुक्त\*\*

**43.** The report of Chief Enquiry Commissioner was accepted and the petitioner has been exonerated from all the three charges vide memo no. 1950 dated 28.07.2021 (Annexure '18' to the supplementary affidavit dated 31.08.2021).

**44.** In the case of **Ashoo Surendranath Tiwari (supra)**, an FIR was registered on 09.12.2009 as regards MSME receivable finance scheme operated by the Small Industries Development Bank of India. There were allegations of diversion of funds. The petitioner was one of the accused in the said case and a charge-sheet was filed against him on 26.07.2011. The petitioner relied upon an order of the Central



Vigilance Commission (CVC) dated 22.12.2011 which went into the facts of the case in great detail and concurred with the competent authority that on merits no sanction ought to be accorded and no offence under the penal code was in fact made out. The High Court, however, brushed aside the said report stating that the CVC could not have come to the aforementioned conclusion unless there was evidence to do so. The Hon'ble Supreme Court went through the report and noticed that according to the report, at the highest, the appellant may be negligent without any criminal culpability. In paragraph 8, 9, 10, 11, 12 & 13 the Hon'ble Supreme Court discussed the case laws on the standard of proof in a departmental proceeding and the standard of proof in a criminal proceeding. The Hon'ble Supreme Court took a view that if the High Court had bothered to apply the parameters, then on a reading of CVC report on the same facts, the appellants should have been exonerated. Those paragraphs are being reproduced hereunder:-

“8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In *P.S. Rajya v. State of Bihar*<sup>2</sup> the question before the Court was posed as follows: (SCC pp. 2-3, para 3)

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<sup>2</sup> (1996) 9 SCC 1 : 1996 SCC (Cri) 897



“3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.”

**9.** This Court then went on to state: (*P.S. Rajya case*<sup>2</sup> SCC (Cri) 897] , SCC p. 5, para 17)

“17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.”

**10.** This being the case, the Court then held: (*P.S. Rajya case*<sup>2</sup>, SCC p. 9, para 23)

“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued.

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<sup>2</sup> *P.S. Rajya v. State of Bihar*, (1996) 9 SCC 1 : 1996

<sup>3</sup> *Prabhu Saran Rajya v. State of Bihar*, Criminal Miscellaneous No. 5212 of 1992, order dated 3-8-1993 (Pat)



Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

11. In *Radheshyam Kejriwal v. State of W.B.*<sup>4</sup>, this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31)

“26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In *B.N. Kashyap*<sup>5</sup> the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (SCC OnLine Lah: AIR p. 27)

‘... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.’

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29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

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4 (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721

5. *B.N. Kashyap v. Crown*, 1944 SCC OnLine Lah 46 : AIR 1945 Lah 23



31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.”

12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (*Radheshyam Kejriwal case*<sup>4</sup>, SCC p. 598)

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

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4. *Radheshyam Kejriwal v. State of W.B.*, (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721



(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

**13.** It finally concluded: (*Radheshyam Kejriwal case*<sup>4</sup>, SCC p. 598, para 39)

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.” (underline is mine)

**45.** In the present case, this Court has noticed that both the inquiry reports have categorically held that the charges leveled against the petitioner were not proved. The charges in the departmental proceedings are essentially the same and one which are the subject matter of investigation. There is no denial of the assertions of the petitioner in his two supplementary affidavits sworn on 31.08.2021 and 04.08.2021, copies of which have been duly served upon learned Special P.P. ‘S.V.U.’, Patna.

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<sup>4</sup> *Radheshyam Kejriwal v. State of W.B.*, (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721



46. This Court is of the considered opinion that in the given facts and circumstances where the FIR was, though, lodged alleging that the oral source information was sufficient to take a prima-facie view that the petitioner has committed a cognizable offence but despite a lapse of 5½ years so far the investigation has not been concluded and no reason at all has been placed before this Court to explain this inordinate delay, in the meantime, the petitioner has retired from service on 31.12.2021, he has been granted promotion and the government of Bihar has issued integrity certificate to him with reference to his ACRs and apart from that on identical allegations, in the departmental proceeding the charges could not be proved against him and he has been duly exonerated from all the charges, the petitioner has made out a case for quashing of the first information report.

47. In result, the F.I.R. bearing Special Case No. 16/2017 arising out of Special Vigilance Unit (SVU) P.S. Case No. 01/2017 is hereby quashed. Consequently, I.A. No. 1563/2017 is rendered infructuous.

48. This Writ Application is allowed to the extent indicated here-in-above.

**(Rajeev Ranjan Prasad, J)**

Rajeev/-

<b>AFR/NAFR</b>	<b>AFR</b>
<b>CAV DATE</b>	29.08.2022
<b>Uploading Date</b>	10.10.2022
<b>Transmission Date</b>	10.10.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

