State Of Maharashtra & Ors vs Ishwar Piraji Kalpatri on 30 November, 1995

Equivalent citations: 1996 AIR 722, 1996 SCC (1) 542, AIR 1996 SUPREME COURT 722, 1996 AIR SCW 15, 1996 CRIAPPR(SC) 57, 1996 SCC(CRI) 150, 1996 CRILR(SC&MP) 158, (1996) 1 CRICJ 547, (1996) 1 RAJ LW 2, (1996) 1 SCJ 240, (1995) 4 CRIMES 769, (1996) 1 ALLCRILR 15, (1996) 1 CURCRIR 97, (1996) 2 MAH LJ 263, (1996) 2 RECCRIR 844

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Bench: B.N Kirpal, M.K Mukherjee

PETITIONER:
STATE OF MAHARASHTRA & ORS.

Vs.

RESPONDENT:
ISHWAR PIRAJI KALPATRI

DATE OF JUDGMENT30/11/1995

BENCH:
KIRPAL B.N. (J)
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KIRPAL B.N. (J)
MUKHERJEE M.K. (J)

CITATION:
1996 AIR 722 1996 SCC (1) 542
JT 1995 (9) 345 1995 SCALE (6)674

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T KIRPAL,J.

These are appeals by special leave granted against the judgment of a Single Judge of Bombay High Court in exercise of his jurisdiction under Section 482 Criminal Procedure Code (hereinafter referred to as the Cr.P.C.') and Article 227 of the Constitution of India whereby the proceedings under the Prevention of Corruption Act, 1988 which were pending against the respondent herein before the Special judge at Greater Bombay, were quashed.

The respondent had joined the police force as a P.S.I. Cadet on 1.6.1966 and after completion of his training, he was posted as Police Sub-Inspector in the Police force in 1968. He was promoted to the post of Police Sub-Inspector in September, 1974 and in *,1981, he was promoted to the post of * Commissioner of Police. It was the case of the respondent that he had held various important assignments and that his record was unblemished.

It appears that one A.C.P.R.B. Kolekar of Anti- corruption Bureau, Bombay on 1.1.1987 made enquiries with regard to the respondent who was, at that time, holding the post of Vigilance Officer in the office of the Transport Commissioner, Bombay. A first information report was recorded by ACP Kolekar on 16.2.1988 and the case was registered vide C.R.No. 4/88 under Section 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the Act). Thereafter vide a letter dated 8.6.1988, respondent was informed that the Bureau was investigating an offence under Section 5(2) read with Section 5(1) (e) of the Act and the case had been registered on 16.2.1988 for possession of assets disproportionate to his known sources of income. As Section 5(10) (e) of the Act envisaged that the public servant should satisfactorily account for the pecuniary resources and property standing in his name or in the names of others, the respondent was, by the said letter dated 8.6.1988, required to attend the office of Anti Corruption Bureau on 20.6.1988 for the purpose of giving a satisfactorily explanation in respect of properties valued at Rs.15,00,764.06/- which were found to be in his possession or in the names of others on his behalf. By his reply dated 20.6.1988, the respondent wrote back saying that as the Anti Corruption Bureau had registered a complaint against him, he was protected by Article 20(3) of the Constitution of India and, therefore, he could not be compelled to make statement which may prejudice his case. The respondent, accordingly, stated that he will not say anything regarding the queries put to him.

On 3.2.1990, the Government of Maharashtra accorded, in exercise of its powers under Section 197 (1)(b) of the Cr.P.C. and clause (b) of sub-section (1) of Section 6 of the Act, 1947 (equivalent to clause (b) of sub-section (1) of Section 19 of the Act, 1988, sanction to the prosecution of the respondent. In the recital of the said sanction order, it was stated that the Government of Maharashtra had fully examined the material before it and it had considered all the facts and circumstances discussed therein and was satisfied that there was a prima facie case made out against the respondent and that it was necessary in the interest of justice that he would be prosecuted in the court of competent jurisdiction for the said offence. In the schedule to the charge-sheet, the only person who was accused was the respondent and the said schedule also contained the allegations on the basis of which he was accused of having committed the said criminal mis-conduct. It was, inter alia, stated that during the course of his service between 1.1.1965 to 16.2.1988, he was found to be in possession of pecuniary resources or Property in his name and/or in the names of the members of his family, close relations and associates which were found to be disproportionate to his known sources of income to the extent of 5,66,604,01/-. The annexures

to the schedule indicated the details of properties in his name and in the name of his family members and close relations and associates as well as the total income derived by him and members of his family from their known sources, the total minimum expenditure estimated to have been incurred by him and members of the family as well as the savings which the respondent may have had. It was also stated therein that the respondent's wife, his nephew, second brother-in-law and two other associates had aided and abetted the respondent in the commission of the aforesaid offence by holding the pecuniary resources or properties in their names, for and on behalf of the accused persons as particularised in one of the annexures to the said schedule attached to the sanctioned order. Soon after the sanction was received, charge-sheet was filed on 8.2.1990 against the respondent, Tarulata Ishwar Kalpatri, his wife, Ramesh Dharmaji Kalpatri, his nephew, Ravindra Nagendra Pakale (brother-in-law) and Mukesh Bagwandas Goglani (a friend).

The respondent then filed Criminal Writ Petition No. 854 of 1991 and the case was mentioned for admission before Mr. Justice M.F. Saldanha. After the rule was issued, an affidavit in reply was filed and by the impugned judgment dated 16.10.1992, the proceedings, then pending before the Special Judge, Greater Bombay being Special Case No. 18/90 were quashed. Simultaneously, orders such as attachment etc. were also set aside and the appellants were directed that whatever assets were seized or taken charge of, shall be restored forthwith.

The High Court allowed the said writ petition despite an objection having been taken on behalf of the appellant herein that the Court should refrain from exercising its jurisdiction under Section 482 Cr.P.C. or under Article 227 of the Constitution once the First Information Report had been lodged, government sanction received and charge-sheet filed. This contention was not accepted and the High Court quashed the criminal proceedings by, inter alia, holding that:

> (a)Principles of natural justice had been denied and the provisions of the Section 5 of the Act had not been complied with because the respondent should have been given an opportunity of giving an explanation prior to the registration of the offence alleged against him and the failure to do so was fatal to the prosecution;
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> (b) That it was essential for the Sanctioning Officer to mention in the body of the Sanction Order that the property was disproportionate to his known sources of income and that the public servant could not satisfactorily account for the same and this statement had not been recorded in the said order;
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> (c) While granting the sanction, there had been a non-

application of mind on the part of the sanctioning authority;

(d) The manner in which the respondent had been suspended and the suspension order served on him at the time when his juniors were ordered to be promoted and other circumstances showed the mala fides of the authorities and on this ground alone, the proceeding was liable to be quashed.

Impugning the judgment of the aforesaid Single Judge of the Bombay High Court, it had been contended by Mr. S.K. Dhoklakia, learned Sr. Counsel for the appellant, that the learned Single Judge ought not to have interfered with the prosecution, once it had been launched and it would have been open to the respondent herein to raise any contention which he wanted before the Special Judge. It was also open to the respondent, it was submitted, to apply to the Special Judge and make a case for his discharge. In support of his contention, learned counsel has relied on the following decisions, namely; K.Veeraswami Vs. Union of India and others, (1991)3 SCC 655, State of Bihar and other Vs. P.P.Sharma, IAS and another, 1992 Supp (1) SCC 222, Minakshi Bala Vs. Sudhir Kumar and others, (1994) 4 SCC 142 and Mrs, Ruoan Deol Bajaj & Anr, Vs. Kanwar Pal Singh Gill and another, JT 1995 (7) SC 299. It was also contended that the learned Single Judge had not only erred in law in quashing the prosecution but had also not appreciated the facts, on record, correctly.

On behalf of the respondent, Mr. G.L. Sanghi, Sr. Counsel reiterated the contentions which had found favour with the learned Single Judge and it was submitted that the respondent would be unduly and unnecessarily narassed if he was required to take part in a protracted trial. It was submitted that there were serious allegations of mala fides against the authorities and principles of natural justice were violated because no opportunity was granted to the respondent before the First Information Report was filed. Faced with some difficulty, Mr. Sanghi submitted during the course of his argument, that the respondent should be allowed to withdraw the original writ petition and he should be permitted to agitate all the contentions which he had raised before the Special Judge. According to the learned counsel, the effect of allowing the withdrawal of the writ petition, at this stage, would be that the judgment of the Single Judge of the Bombay High Court would become non est and no prejudice would be caused to any party.

Taking the last submission first, it appears strange that when a petition had been filed in the High Court, judgment obtained and the losing party comes to the Superior Court, then in order to avoid an unfavourable order, a request should be made for the withdrawal of the original proceeding in an effort to avoid an adverse decision from the Superior Court with a view to re-agitate the same contentions once again before the subordinate court. The High Court had exercised its jurisdiction by observing that there was no proper sanction accorded by the Government, principles of natural justice had been violated and conduct of the appellant showed the mala fides. In our opinion there was no warrant for the High Court coming to the said conclusion and the judgment has to be set-aside. A party to the proceedings cannot be allowed, at this stage at least to take a chance and if he gets the impression that he will not succeed to seek permission to withdraw the original proceedings obviously with a view to regitate the same contentions, which have been or may be, adjudicated upon, by a higher court before the subordinate court though in different proceedings. We strongly deprecate a practice like this, if it exists. This will be opposed to judicial discipline and may lead to unhealthy practices which will not be conducive. On the facts this case, we see no justification for permitting the respondent to withdraw his writ petition.

In coming to the conclusion that the order of the sanction was not valid, the High Court first held that "in the absence of sanctioning authority recording and holding that the accused could not satisfactorily account for disproportionate assets, no sanction could ever have been granted". Without going into the question as to whether in the order according sanction it is necessary for

such an averment being made, the record clearly discloses that in the schedule annexed to the sanction dated 3.2.1990, such a statement was made. After stating that the respondent and his family and/or associates were found to be in possession of pecuniary resources or properties disproportionate to the extent of Rs. 5,66,604.01/-, it was specifically stated that with regard to this "the accused person failed to satisfactorily account for". It is clear that the learned Judge had wrongly observed that such a statement was absent.

Another reason as given by the High Court for quashing the sanction was that the order of sanction was Single Judge made observations to the effect that the manner in which the sanction order had been passed would show that a rather cavalier treatment has been meted out in the present case. We do not see any justification for the court making such observations in the present case because the perusal of the order of sanction does not show any legal infirmity and such remarks by the Judge were clearly uncalled for.

The main thread which runs throughout the judgment is the alleged non-compliance with the principles of natural justice insofar as applicability of Section 5(1)(e) of the Act is concerned, which Section reads as follows:

> "5(1)(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

Interpreting this provision, the learned Judge had come to the conclusion that opportunity to satisfactorily account for must be afforded before an offence is registered. In this connection, it was observed as follows:

> "Having regard to the procedure followed in relation to the investigation of corruption charges under Section 5(1)(e) of the Prevention of Corruption Act, one needs to bear in mind that unlike in the case of offences under the I.P.C., substantial inquiries/investigations are carried out and completed prior to arriving at a conclusion as to whether or not, there is ground to hold that an offence has been completed. That procedure cannot be one-sided in the face of a statutory requirement which prescribes that the accused must be afforded an opportunity of being heard. Undisputedly, therefore, that opportunity has to come prior to the stage when conclusions are reached, if at all it is to be meaningful."

In our opinion, there is a complete mis-reading of the aforesaid provision by the High Court. It is, no doubt true that a satisfactory explanation was required to be given by the Delinquent Officer. But this opportunity is only to be given during the course of the trial. It is no doubt true that evidence had to be gathered and a prima facie opinion found that the provisions of Section 5(1)(e) of the Act are attracted before a first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other querries made. For the formation of a prima facie opinion that an officer may be guilty of criminal

mis-conduct leading to the filing of the First Information Report, there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a court is also borne out from the judgment of this Court in Veeraswami s case (supra) where referring to Section 5(1)(e) of the Act at page 713 of the said judgment, it was observed as follows:

> "Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The Section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression "satisfactorily account". The exphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused, however, could discharge that burden of proof "on the balance of probabilities" either from the evidence of the prosecution and/or evidence from the defence."

(emphasis added) The aforesaid passage leaves no manner of doubt that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e) of the Act of satisfactorily explaning about his assets and resources is before the Court when the trial commences and not at an earlier stage. The conclusion arrived at by the learned Single Judge that principles of natural justice had been violated, as no opportunity was given before the registration of the case, is clearly unwarranted and contrary to the aforesaid observations of this Court in K. Veeraswami's case (supra).

Further the conclusion of the learned Judge that the opportunity of hearing must be granted and the non-grant of the same would vitiate the order of sanction is clearly contrary to the following observations of this Court in P.P. Sharma's case (supra) which reads as under:

> "It is equally well settled that before granting sanction the authority or the appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and the appropriate Government would apply their mind to those facts. The order of sanction is only an administrative act and not a quasi-judicial one nor is a is involved. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by Sri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. The question of giving an opportunity to the public servant at that stage as was contended for the respondents does not arise. Proper application of mind to the

> existence of prima facie evidence of the commission of the offence is only a precondition to grant or refuse to grant sanction. When the Government accorded sanction, Section 114(e) of the Evidence Act raises presumption that the official acts have been regularly performed. The burden is heavier on the accused to establish the contra to rebut that statutory presumption. Once that is done then it is the duty of the prosecution to produce necessary record to establish that after application of mind and consideration thereof to the subject the grant or refusal to grant sanction was made by the appropriate authority. At any time before the court takes cognizance of the offence the order of sanction could be made. It is settled law that issuance of the process to the accused to appear before the court is sine qua non of taking cognizance of the offence. The emphasis of Section 197(1) or other similar provisions that "no court shall take cognizance of such offence except with the previous sanction" posits that before taking cognizance of the offence alleged, there must be before the court the prior sanction given by the competent authority. Therefore, at any time before taking cognizance of the offence it is open to the competent authority to grant sanction and the prosecution is entitled to produce the order of sanction. Filing of charge-sheet before the court without sanction per se is not illegal, nor a condition precedent. A perusal of the sanction order clearly indicates that the Government appears to have applied its mind to the facts placed before it and considered them and then granted sanction. No evidence has been placed before us to come to a different conclusion. Accordingly we hold that the High Court committed manifest error of law to quash the charge-sheets on those grounds."

(emphasis added) The last ground which had been given by the learned Judge for quashing the prosecution is that the appellants are quality of mala fides. What is the ingredient of showing mala fide, according to the learned Judge, was that the rules of natural justice had not been followed prior to the lodging of the First Information Report. This ground, for the reasons stated hereinabove, is clearly untenable. Reference has also been made by the learned Judge to the service of the suspension order by affixation at the respondent's residence. It is to be noted that the suspension order was passed on 17.10.1988 and it was served by affixation on 19.1.1989. The comment which has been made by the learned Judge was that the respondents were unable to give any respectable or plausible explanation for not having served the suspension order on the petitioner for over three months. In this connection and as a circumstance showing mala fides, the learned Judge has also observed as under:

> "The petitioner has pointed out a list of officers against whom corruption charges were under investigation or were pending and who have not been suspended and the irresistible conclusion, therefore, is that the order of suspension itself which has its roots in the present corruption charges was being used as a handle to cover up for the supersession."

The order of suspension was passed on 17.10.1988. It is not necessary to go into the question as to why the suspension order was not served for three months, but that mala fide should be inferred by reason of the fact that order of suspension was passed and that, in collateral proceedings, the said

suspension order had been set-aside or revoked, is wholly irrelevant. Full facts are not available on the record of this case regarding the other proceedings which had taken place with regard to the passing of the suspension order, the same being set-aside or with regard to the order of transfer which was passed. What is, however, important, is that the order of suspension was passed against the respondent, who was a police officer, after the filing of the First Information Report in the present case. A prima facie opinion had been formed that the provisions of Section 5(1)(e) of the Act were attracted and a notice dated 8.6.1988 had been sent to the respondent asking for his explanation. It is wrong to infer mala fides because of the passing of an order of suspension. While the Single Judge had mentioned about the order of suspension being passed and set-aside, the appellants, in this appeal, have placed on record an order dated 14.1.1991 passed by this Court in Special Leave Petition (c) No. 14487 of 1990 filed against the order dated 10.10.1990 of the Bombay High Court in favour of the respondent herein. This order reads as follows:

> "Heard counsel for the parties.
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> We find that the respondent is now facing a trial in respect of charges under Section 5(2) read with 5(1)(a) of the Act II of 1947 and the charge sheet was submitted on 8.2.1990. He had earlier been suspended and the suspension came to terminate with lapse of time. The present suspension has been vacated by the High Court with a direction that the respondent should be given a posting.
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> We are of the view that taking into account the fact that the respondent is already subjected to a criminal charge, the suspension was not unjustified and the High Court should, in normal course, not have interfered. We accordingly, reverse the order of the High Court and hold that the suspension would revive. We would, however, make it clear that in case the State of Maharashtra is in a position to give a posting to the respondent, not connected with normal police work and away from the place where the trial takes place, the same may be explored.
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> The Special Leave Petition is accordingly, disposed of."
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> Therefore, the aforesaid order seems to suggest that the first suspension order had lapsed and with regard to the second suspension order, this Court observed that the same should not have been interfered by the High Court and it was by order of this Court that the suspension of the respondent was revived.
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> On the facts of this case, we are not satisfied that the appellant had acted in the mala fide manner and we are constrained to observe that the observations made by the High Court with regard to the mala fides were wholly unjustified and without any basis.
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> In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant

was a person who was enimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or mis-conduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not. Allegations of mala fides were also made in P.P.Sharma's case (supra) against the informer. It was held by this Court that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

This Court has consistently taken the view that the Court should not, except in extra-ordinary circumstances, exercise its jurisdiction under Section 482 Cr.P.C. so as to quash the prosecution proceedings after they have been launched. In K.P.S. Gill's case (supra), it was, inter alia, observed, that "we also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the First Information Report or the complaint and that the extra-ordinary or inherent power do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice".

The position of law, in this regard, has been very succinctly stated in the abovesaid case that at the stage of quashing an First Information Report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. This is precisely what has been done by the learned Judge in the present case. The First Information Report having been lodged, the Government of Maharashtra having accorded sanction and thereafter, the charge having been filed, there was absolutely no justification for the High Court to have stopped the normal procedure of the trial being allowed to continue. It cannot be presumed that there was no application of mind when the First Information Report was prepared and the sanction of the Government obtained. The allegations as made in the First Information Report and the order granting sanction, if true, would clearly establish that the respondent was rightly prosecuted and was guilty of criminal mis-conduct. The truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption. There was no justification for the High Court to have exercised its jurisdiction under Article 227 of

the Constitution and Section 482 of the Cr.P.C. in quashing the prosecution. For the abovesaid reasons, the appeals are allowed and the judgment of the High Court is set-aside.