The State Of Chhattisgarh vs Aman Kumar Singh on 1 March, 2023

Author: Dipankar Datta

Bench: Dipankar Datta, S. Ravindra Bhat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS…… OF 2023
(@SLP (CRL.) NOS.1703-1705 OF 2022)

THE STATE OF CHATTISGARH & ANR. … APPELLANTS

VS.

AMAN KUMAR SINGH & ORS. ETC. ETC. … RESPONDENTS

WITH

CRIMINAL APPEAL NOS……. OF 2023
(@SLP(CRL.) NOS.1769-1770 OF 2022)

UCHIT SHARMA … APPELLANT

VS.

THE STATE OF CHATTISGARH
& ORS. ETC. ETC. … RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

Leave granted.

2. These 5 (five) appeals are at the instance of, inter alia, the State of Chhattisgarh (hereafter 'the State', for short) and Sri Uchit Sharma (hereafter 'US', for short). The appellants call in question a common judgment and order dated 10th January, 2022 passed by the Chhattisgarh High Court at Bilaspur, whereby 3 (three) writ petitions [WPCR 88 of 2020, WPCR 154 of 2020 and WPCR 206 of 2020] were disposed of. WPCR 88 of 2020, presented by Sri Aman Singh (hereafter 'AS', for short), was allowed by quashing FIR No. 9/2020 dated 25th February, 2020 (hereafter 'the FIR", for short) under section 13(1)(b) and (2), Prevention of Corruption Act, 1988 (hereafter 'P.C. Act", for short) read with section 120B, Indian Penal Code (hereafter 'IPC", for short), registered by the Economic Offences Wing/Anti-Corruption Bureau of the State. WPCR 154 of 2020, instituted by the wife of AS, Smt. Yasmin Singh (hereafter 'YS', for short), was partly allowed. The spouses were the joint petitioners in WPCR 206 of 2020, which was also allowed.

3. A complaint dated 11th October, 2019 was lodged by US in the office of the Chief Minister of the State. It was alleged therein that AS [an Indian Revenue Service (IRS) officer and the former Principal Secretary to the erstwhile Chief Minister of Chhattisgarh], his wife YS, [former consultant to the Govt. of Chhattisgarh, who had worked on contract as the Director, Communication and Capacity Development Unit (CCDU), Department of Public Health Engineering, Govt. of Chhattisgarh from 14th November, 2005 to 31st March, 2015, and as Director, ICE & Capacity Building, Dept. of Panchayat & Rural Development, Govt. of Chhattisgarh from 1 st April, 2015 to 10th December, 2018] and his family were involved in corruption and money laundering, and that he also held assets which are disproportionate to his known sources of income.

4. Upon the complaint being received, the Chief Minister by a handwritten order directed the Chief Secretary of the State to have the complaint enquired into by the Economic Offences Wing (EOW). Although, the date "14th OCT, 2019" appears just above the handwritten order of the Chief Minister, it is not too clear whether he made such order on 14 th October, 2019 or on 15th October, 2019.

5. Be that as it may, vide a forwarding letter dated 21st October, 2019, the complaint was forwarded by the General Administration Department of the State (hereafter 'GAD', for short) to the Economic Offences Wing/Anti-Corruption Bureau (hereafter 'ACB/ EOW', for short) for the purpose of conducting inquiry into the allegations leveled therein. Acting in furtherance of the said letter dated 21st October, 2019, the ACB/EOW registered a preliminary inquiry bearing no. P.E.35/2019.

6. Prior to these developments, YS had invoked the writ jurisdiction of the High Court by instituting a writ petition [W.P. (S)6521/2019], essentially questioning a departmental inquiry initiated against her. She had prayed for quashing and/or setting aside of an order dated 10th May, 2019 whereby the GAD had instituted an inquiry against her. Such inquiry appears to have been initiated on the basis of a complaint dated 12th April, 2019 lodged by one Vikas Tiwari (spokesperson of the Chhattisgarh unit of the Indian National Congress party). With the initiation of P.E.35/2019, in terms of the letter dated 21st October, 2019, YS filed an interim application (I.A.04/2020) seeking a stay thereof. By an order dated 16th January, 2020, the High Court directed the State not to take any steps to her prejudice pursuant to the letter dated 21 st October, 2019. The order of 16th January, 2020 refers to, inter alia, an earlier order dated 21st October, 2019 which, however, is not on record.

7. The letter dated 21st October, 2019 of the GAD, referred to above, was also challenged by AS by instituting a writ petition [WPCR 88/2020] before the High Court on 29 th January, 2020. In such writ petition, AS urged the court to pass an order for production of the entire records pertaining to the letter dated 21 st October, 2019 for its perusal, for quashing the said letter as well as any consequential step/action taken by the State including P.E.No.35/2019.

8. During the pendency of WPCR 88/2020, the FIR was registered against AS and YS.

9. Within a few days of registration of the FIR, on 28 th February, 2020 to be precise, AS applied for an amendment of WPCR 88/2020 seeking to mount a challenge to the FIR. He had also applied for interim relief for stay of effect/operation of the FIR.

10. YS too, on 2nd March, 2020, instituted WPCR 154/2020 seeking an order, inter alia, for quashing of the FIR.

11. By an order dated 28th February, 2020, the High Court allowed the application for amendment and also directed that no coercive steps be taken against AS till the next date of hearing.

12. On 15th April, 2020, WPCR 206/2020 was jointly instituted by AS and YS seeking appropriate order for listing of WPCR 88/2020 and WPCR 154/2020 for final hearing immediately upon resumption of normal functioning of the Court (which was then curtailed due to the pandemic caused by Covid-19) and also for an order declaring the action of the ACB/EOW in directing HDFC Bank Ltd., respondent no.5, to put a hold on the funds in the salary account of AS, as void and illegal.

13. We need not at this stage refer in detail to the intervening events of issuance of notice to AS to join the investigation as well as interim orders passed on the writ petitions from time to time. Suffice it to note, in an order dated 6 th September, 2021, the High Court observed that there was a dispute with regard to the income of AS and YS and the ACB/EOW was called upon to produce the case diary as well as figures in tabulated form showing income and expenditure for perusal by the Court whether there is disproportionate income or not.

14. Faced with such an order, the State filed an application seeking exemption to produce the case diary and the figures in tabulated form as well as applied for vacation of an earlier order dated 28th February, 2020 whereby the ACB/EOW was restrained from taking coercive steps against AS. The fate of these applications does not clearly appear from the records. However, for the reasons recorded in the impugned judgment and order dated 10th January, 2022, the High Court while allowing WPCR 88/2020 quashed the FIR. In view of the FIR having been quashed, the High Court held that relief sought by YS in WPCR 154/ 2020 in relation to the FIR had lost its significance. However, the Court rejected the prayer of YS to prosecute US, the original complainant and J.P. Kujur, the Investigation Officer, under section 211, IPC. WPCR 154/2020, thus, stood partly allowed. Insofar as WPCR 206/2020 is concerned, the Court made the following directions in paragraph 70:

> "70. Since this Court while hearing WPCR No. 88 of 2020 has already quashed the FIR bearing No. 09/2020 registered against the petitioners at Police Station-EOW/ACB, District- Raipur (C.G.), therefore, the relief sought in this petition has lost its significance and the bank account No. 50100 28338 9868 of petitioner No. 1 shall inoperative (sic) after quashing the FIR in WPCR No. 88 of 2020, therefore, no further direction is required to be passed."

15. Since, the High Court has quashed the FIR and we are called upon to examine the legality and propriety of the impugned judgment, we propose to refer to the material portions of the FIR after noting the rival contentions.

16. Mr. Sibal, learned senior counsel appearing in support of the appeals preferred by the State, contended that the High Court committed gross error of law in quashing the FIR by transgressing the legal bounds for quashing a first information report. Placing reliance on the decision of this Court in CBI & Ors. Vs. Tapan Kumar Singh1, he contended that a first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported; what is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide the basis for the police to suspect the commission of a cognizable offence. At the stage of registration of a first information report, the police officer on the basis of the information given has to suspect the commission of a cognizable offence and not that he must be convinced or satisfied 1 (2003) 6 SCC 175 that a cognizable offence has been committed. If he has reasons to suspect on the basis of the information received that a cognizable offence may have been committed, he is bound to record the information and investigate, without it being necessary for him to satisfy himself about the truthfulness of the information.

17. According to Mr. Sibal, when a first information report could be lodged on the basis of suspicion, the High Court in the present case erred in law in quashing the FIR on the ground that it was based on "probabilities". Criticizing the impugned judgment as wanting in appreciation of the aforesaid basic principle, he urged that the High Court overstepped its limits.

18. Mr. Sibal also contended that in the present case, AS challenged the FIR a few days after the same was registered on 25 th February, 2020 and obtained an order from the High Court to the effect that no coercive steps be taken against him. Armed with such an order, AS did not join the investigation despite a notice having been issued. There was no order staying the investigation. Even if the investigation had proceeded, there was no imminent fear of arrest. If indeed, AS and YS do have papers and documents to satisfactorily account for the pecuniary resources and property and that they do not possess assets disproportionate to their known sources of income, such papers and documents could have been produced before the Investigating Officer thereby enabling him to hold that there is no substance in the complaint lodged by US, and then to file an appropriate closure report before the concerned court to be considered in accordance with Law. However, the Investigating Officer could not proceed with the investigation effectively and meaningfully in view of the restraining orders passed by the High Court resulting in the investigative process being aborted.

19. Our attention was next invited by Mr. Sibal to the decisions of this Court in State of Uttar Pradesh Vs. Naresh & Ors.2 and Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.3, in support of the contention that when an investigation by the police is in progress, the courts should not go into the merits of the allegations in the FIR; on the contrary, the police must be permitted to complete the investigation. It was also contended that if after investigation the Investigating Officer does not find any substance in the complaint/first information report, he is obliged to file appropriate closure report before the concerned court for its due consideration in accordance with law; however, it would be premature to pronounce any conclusion that the first information report does not disclose any cognizable offence based on hazy facts. 2 (2011) 4 SCC 324 3 2021 SCC OnLine SC 315

20. Mr. Sibal, thus, prayed that the impugned judgment and order of the High Court be set aside and investigation into the FIR be permitted to be taken to its logical conclusion.

21. Mr. Sanjay Hegde, learned senior counsel for the other appellant, i.e., US, contended that the High Court clearly applied a wrong test while quashing the FIR. According to him, the test of a prima-facie or probable case is only required to be shown at the time of framing of charge; however, for an investigation to proceed on the basis of a first information report, all that is required to be shown is that the contents of the complaint/first information report, when taken at face value, make out an offence.

22. It was further contended by Mr. Hegde that the High Court conducted a mini-trial while arriving at a conclusion that no offence against AS and YS has been made out in the FIR which, this Court has repeatedly held, cannot be conducted in proceedings for quashing of a first information report. At the stage of considering a prayer for quashing of first information report, the probable defence of the accused cannot be considered.

23. Inviting our attention to the interim order dated 6 th September, 2021 passed by the High Court, Mr. Hegde contended that such an exercise could not have been undertaken by the Court in exercise of its jurisdiction under Article 226 of the Constitution.

24. Referring to the decision of this Court in Central Bureau of Investigation & Anr. Vs. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi & Anr.4, Mr. Hegde submitted that a similar exercise that was undertaken by the relevant high court was held to be impermissible by this Court.

25. The decisions of this Court in R.P. Kapur Vs. State of Punjab5 and State of Haryana Vs. Bhajan Lal and Ors. 6 were next cited for highlighting the categories of cases where inherent jurisdiction can and should be exercised by the high courts to quash proceedings; however, having regard to the facts and circumstances of the case presented before the High Court by AS and YS, Mr. Hegde contended that the court ought to have declined interference.

26. Mr. Hegde further relied on the decision of this Court in Rajesh Bajaj Vs. State (NCT of Delhi)]7 for the proposition that if the factual foundation for the offence has been laid in the complaint, the

court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. According to him, quashing of a first information report is a step which is 4 (2021) SCC OnLine SC 923 5 (1960) 3 SCR 388 6 1992 SUPP. (1) SCC 335 7 (1999) 3 SCC 259 permitted only in extremely rare cases such as, the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. The FIR, in the present case, does contain definite particulars making out the offences complained of. That apart, the preliminary inquiry carried out before registration of the FIR has revealed disproportionate assets to the tune of 20% of the income of AS; hence, it was not an appropriate case where the power to quash the FIR should have been exercised.

27. While concluding, Mr. Hegde submitted that the High Court having travelled beyond the well-settled parameters of exercise of jurisdiction under Article 226 of the Constitution, the impugned judgment and order merits to be set aside.

28. Mr. Mahesh Jethmalani, learned senior counsel appearing for AS and YS, opposed the appeals. Reiterating the contentions that found favour with the High Court, he contended that the High Court rightly concluded that investigation of the FIR, which did not prima facie disclose commission of any cognizable offence by either AS or YS, would be nothing but an abuse of the process of law and compelling AS and YS to join the investigation would amount to undue and unnecessary harassment.

29. By referring to the facts preceding registration of the FIR, Mr. Jethmalani sought to impress us that ever since the political dispensation underwent a change in the State of Chhattisgarh, AS and YS have been the target of the new dispensation. Misusing the police machinery, no stone has been left unturned to falsely implicate AS and YS. Initially a departmental inquiry was initiated against YS vide an order dated 10th May, 2019 and no sooner had the High Court by an order dated 21 st October, 2019 granted interim protection to YS, further action was taken to initiate a preliminary inquiry against AS and YS on 11 th November, 2009. That apart, quite mischievously, the FIR was suddenly registered during the pendency of WPCR 88/2020 to render the same infructuous.

30. It was thereafter contended by Mr. Jethmalani that a bare perusal of the FIR would reveal non-disclosure of the 'check period' which is a sine qua non in a case of disproportionate assets. Further, the FIR did not disclose the basic ingredients of establishing an offence under section 13(1)(b) read with section 13(2) of the P.C. Act. The FIR also did not disclose the extent of alleged investment either in figures or in percentage.

31. Referring to the decision in T.H. Vijayalakshmi (supra), it was Mr. Jethmalani's endeavor to show that the investigating agency in that case had set out/specified the extent of disproportionality in a tabular form, in rupees and percentage, in the first information report therein. The High Court, therefore, was not in error when it required the State to produce the case diary as well as figures in tabulated form showing income and expenditure for perusal by the Court by its interim order dated 6 th September, 2021.

32. Mr. Jethmalani further urged that no material being there to justify registration of the FIR is borne out from the fact that the State had applied for exemption from complying with the High Court's order dated 6th September, 2021.

33. It was next argued by Mr. Jethmalani that a first information report based on sheer conjectural possibility of finding some more assets in future is wholly impermissible. Law, according to him, is well settled that a mere mention of the possibility will not entitle the ACB/EOW of the State to lodge a first information report and conduct investigation. Unless the first information report discloses cognizable offence, such report based on possibilities would become a tool of witch hunting and consequently harassment, which would be a clear violation of Article 21 of the Constitution. It was also argued that there is a casual allegation of a criminal conspiracy between AS and YS without there being a whisper about its basic elements.

34. Mr. Jethmalani further contended that even if it is assumed that 2004 to 2018 is the check period, it is clear that a fishing inquiry is intended by the State and its officers with a view to scandalize AS and YS.

35. It was also the contention of Mr. Jethmalani that there has been no disproportionality at all, which would warrant an investigation even into the allegations leveled by US in the complaint, or for that matter, the FIR, and the High Court was right in its interference to prevent abuse of the process of law.

36. The contention of the respondents that the High Court had applied a 'non-existent legal test' was refuted by terming it as entirely misleading. Passages from the impugned judgment were referred to, to show how the High Court was right in returning the finding that the FIR did not disclose any offence rendering it liable to interdiction.

37. While concluding, Mr. Jethmalani contended that there was no material to justify registration of the FIR and that there being no 'legitimate prosecution', the same has rightly been quashed and set aside by the impugned judgment; hence, the appeals are liable to be dismissed.

38. The High Court did not in the impugned judgment assign mala fide as a ground for quashing the FIR. In course of hearing before us, Mr. Jethmalani attempted to build up a case of mala fide by referring to how the incumbent Chief Minister perceived AS to be a 'super CM' and also that AS has become the victim of political vendetta, being caught in the crossfire between the incumbent Chief Minister and the former Chief Minister. Reference was made to clause (7) of paragraph 102 of the decision in Bhajan Lal (supra), where it was held that a first information report could be quashed by the high courts "where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

39. In his rejoinder, Mr. Hegde canvassed that there are no pleadings to this effect in the writ petition filed before the High Court and, therefore, a new case ought not to be allowed to be set up de hors the pleadings. The immediate reaction of Mr. Jethmalani was that the writ petitions are

replete with allegations of mala fide, which form the plinth for registration of the FIR as well as the departmental inquiry against YS.

40. Before reserving judgment, we had permitted Mr. Jethmalani to file short written notes of arguments within a week together with a few other relevant documents which he intended to file though not part of the pleadings before the High Court or this Court.

41. The written notes together with documents annexed thereto marked as annexures R/1A to R/1K have been considered.

42. In Part 1 of the written notes, reference has been made to Circular No. 29/2020 of the Central Bureau of Investigation (hereafter 'CBI', for short) providing the methodology for registering first information reports in cases of disproportionate assets and for conducting investigation. The contention advanced is that the FIR, in the present case, does not conform to the guidelines laid down by the CBI in Circular No. 29/2020 (hereafter 'CBI Circular', for short). Part II centers around the contention that the FIR contains several statements styled as facts, which were false to the knowledge of the ACB/EOW of the State. The third and final part is dedicated to "fabrications and manipulations" in the FIR which were the result of political vendetta against AS, who was the Principal Secretary to the Chief Minister in the previous regime.

43. We ought to place on record that little over a week of reserving judgment, on 20th January, 2023 to be precise, Mr. Vikas Singh, learned senior counsel mentioned the criminal appeals and prayed for recall of the order reserving judgment on the ground that an application for directions was in the process of being filed by AS and YS and that the same ought to be considered before the judgment on these appeals is pronounced. Orally, we permitted the application to be filed for being taken into consideration at an appropriate time.

44. The application, which has since been filed on 20 th January, 2023, refers to certain newspaper reports and WhatsApp messages/chats exchanged allegedly between important functionaries of the Government of Chhattisgarh and based thereon it has been the contention that there exists conclusive material in public domain establishing that the FIR against AS and YS has been registered at the behest of one Sri Anil Tuteja and other high- ranking public officials in the State, at the instance of the present Chief Minister. Since the materials brought on record by such application are sufficient to drive home the conclusion that political vendetta is the real cause for registration of the FIR, to tarnish the reputation of AS and YS, it has been urged that all the evidence ought to be summoned by this Court for just disposal of the present proceedings. Such application contains the following prayers:

> "PRAYER In the facts and circumstances stated hereinabove, this Hon'ble Court may graciously be pleased to:
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> a) Direct to take on record the new facts and materials, as has emerged from the news report dated 18.01.2023 (titled "The Chhattisgarh Files: Docs, Chats show how prime accused was himself 'managing' NAN scam investigation, Baghel issued hitlist' to

implicate Raman Singh, others') in the web news portal www.opindia.com and direct further hearing in the present case; and/or

b) Direct to summon the records pertaining to the 'WhatsApp' Chats relating to the conspiracy to implicate the Respondent Nos. 1 & 4 from the Enforcement Directorate; and/or

c) Direct to summon the records of the Preliminary Enquiry bearing No. 35 of 2019 initiated by the Petitioner-

State's EOW/ACB in respect to the complaint made by Respondent No. 2 on 11.10.2019; and/or

d) Direct to tag the present special leave petition with W.P. (Crl) No. 506 of 2021 titled 'Directorate of Enforcement v. Anil Tuteja & Ors.' Pending before this Hon'ble Court; and/or

e) Pass such other or further order (s) as may be deemed fit and appropriate by this Hon'ble Court in the facts and circumstances of the present case."

45. We have heard the parties, perused the materials on record, and considered the decisions cited at the bar.

46. The High Court, upon perusal of the FIR and consideration of the arguments advanced by the parties as well as the decisions cited at the Bar, recorded in the impugned judgment, inter alia, as follows: -

"49. From bare perusal of the FIR, the allegation of disproportionate income is made out or not, it is expedient for this Court to examine whether from bare perusal of the contents of FIR, offence said to have been committed is made out or not, then only the FIR can be quashed by this Court. Therefore, whether the prima facie case is made out or not, has to be seen. This Court in foregoing paragraphs has extensively quoted the FIR, which clearly demonstrates that the FIR is based on probabilities with regard to disproportionate income. The FIR is silent with regard to quantum of the disproportionate income, which is the paramount factors for involving any person in implicating any person for commission of offence under Section 13(1)(b), 13(2) of the Act, 1988. These basic ingredients are not reflected from the bare perusal of the FIR.

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56. The FIR further states that there is possibility of having various properties in the name of the petitioner and his wife. The FIR further states that there is reasonable possibility that the petitioner has invested himself for his wife and other dependent family members and it was also stated that there is a possibility that a huge amount of money is being deposited in the bank account of his wife. The FIR nowhere

discloses commission of any offence with definite facts and figures.

The FIR is based upon probabilities. As per the Act, 1988, it is for the prosecution to establish prima facie offence under Section 13(1)(b) read with Section 13 (2) of the Act, 1988 against Government servant by reflecting in the FIR, which is initiation of prosecution, then only, prosecution can be started to investigate the offence as mentioned in the FIR. In absence of any specific allegation made in the FIR, merely on probability, the petitioner cannot be prosecuted. The FIR has been registered on the basis of complaint made by one Uchit Sharma. The allegation in the FIR that the petitioner has not filed a single APR while being employed with the Government of Chhattisgarh due to fear that his disproportionate assets will get exposed. It may seriously violate all the conduct rules of Government of India and Chhattisgarh Civil Services (Conduct) Rules, 1965, but the petitioner cannot be prosecuted for commission of offence under Section 13(1)(b) read with Section 13(2) of the Act, 1988 for non-submission of APR with the department. The FIR is not disclosing the fact that even not disclosing the APR with the Government what disproportionate income, the petitioner has earned during the period from 2004 to 2018."

47. Confined to what the High Court has held in the impugned judgment and order, the short question that emerges for a decision is whether the High Court was justified in its interference with the FIR.

48. The additional question that we are called upon to answer in view of the plea of mala fide raised by Mr. Jethmalani and the contents of the application for directions filed on behalf of AS and YS is, whether and to what extent would a court exercising power under Article 226 of the Constitution or section 482 of the Code of Criminal Procedures (hereafter 'Cr. P.C.', for short) be justified to quash a first information report registered under section 13 of the P.C. Act while the police embarks on an investigation against a public servant particularly in view of what has been laid down in clause (7) of paragraph 102 of the decision in Bhajan Lal (supra).

49. We preface our discussion, leading to the answers to the above two questions, taking note of a dangerous and disquieting trend that obviously disturbs us without end. Though it is the preambular promise of the Constitution to secure social justice to the people of India by striving to achieve equal distribution of wealth, it is yet a distant dream. If not the main, one of the more prominent hurdles for achieving progress in this field is undoubtedly 'corruption'. Corruption is a malaise, the presence of which is all pervading in every walk of life. It is not now limited to the spheres of activities of governance; regrettably, responsible citizens say it has become a way of one's life. Indeed, it is a matter of disgrace for the entire community that not only on the one hand is there a steady decline in steadfastly pursuing the lofty ideals which the founding fathers of our Constitution had in mind, degradation of moral values in society is rapidly on the rise on the other. Not much debate is required to trace the root of corruption. 'Greed', regarded in Hinduism as one of the seven sins, has been overpowering in its impact. In fact, unsatiated greed for wealth has facilitated corruption to develop like cancer. If the corrupt succeed in duping the law enforcers, their success erodes even the fear of getting caught. They tend to bask under a hubris that rules and regulations are for humbler mortals and not them. To get caught, for them, is a sin. Little wonder, outbreak of scams is commonly noticed. What is more distressing is the investigations/inquiries

that follow. More often than not, these are botched and assume the proportion of bigger scams than the scams themselves. However, should this state of affairs be allowed to continue? Tracking down corrupt public servants and punishing them appropriately is the mandate of the P.C. Act. "We the people", with the adoption of our Constitution, had expected very high standards from people occupying positions of trust and responsibility in line with the Constitutional ethos and values. Regrettably, that has not been possible because, inter alia, a small section of individuals inducted in public service for 'serving the public' appear to have kept private interest above anything else and, in the process, amassed wealth not proportionate to their known sources of income at the cost of the nation. Although an appropriate legislation is in place to prevent the cancer of corruption from growing and developing, wherefor maximum punishment by way of imprisonment for ten years is stipulated, curbing it in adequate measure, much less eradicating it, is not only elusive but unthinkable in present times. Since there exists no magic wand as in fairy tales, a swish of which could wipe out greed, the Constitutional Courts owe a duty to the people of the nation to show zero tolerance to corruption and come down heavily against the perpetrators of the crime while at the same time saving those innocent public servants, who unfortunately get entangled by men of dubious conduct acting from behind the screen with ulterior motives and/or to achieve vested interests. The task, no doubt, is onerous but every effort ought to be made to achieve it by sifting the grain from the chaff. We leave the discussion here with the fervent hope of better times in future.

50. Insofar as the merits of the controversy is concerned, we must necessarily begin with a reading of the relevant provisions of the P.C. Act. "Public servant" is defined in section 2(c). It is not disputed that AS as well as YS is comprehended within such meaning. Section 13(1) of the P.C. Act defines "criminal misconduct". A public servant is said to commit the offence of criminal misconduct if (a) he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do, or (b) he intentionally enriches himself illicitly during the period of his office. Thus, intentional enrichment illicitly by a public servant during the period of his office is a criminal misconduct. There are two explanations in section 13(1). The first explanation provides that a person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for. The other explanation defines "known sources of income" to mean income received from any lawful sources. To attract this provision, the officer sought to be proceeded against must be a public servant. He must be found to be in possession of, by himself, or through any person on his behalf, at any time during the period of his office, pecuniary resources or property disproportionate to his known sources of income. If he is unable to satisfactorily account for the same, he shall be liable to be proceeded against for having committed criminal misconduct and suitably punished and fined if the charge is proved for such period, as provided in sub-section (2). Undoubtedly, this is a presumptive finding but that finding is based on three facts, viz. being a (i) public servant, (ii) if at any time during the period of his office, he has been in possession, by himself or through any person on his behalf, of pecuniary resources or property disproportionate to his known sources of income, then (iii) he is enjoined to satisfactorily account for the same. The offence of criminal misconduct is committed by a public servant if (ii) is proved and (iii) does not happen. Therefore, if a prosecution is launched under sub-section (1) of section 13 of the P.C. Act

and the allegation is proved at the trial, the concerned public servant is liable to punishment under sub-section (2) thereof.

51. The law of the land abhors any public servant to intentionally enrich himself illicitly during the tenure of his service. Increase in the assets of such a public servant tantamount to constitutionally impermissible conduct and such conduct is liable to be put under the scanner of the P.C. Act. The Constitution Bench of this Court in its decision in Lalita Kumari Vs. Govt. of U.P.8, inter alia, while 8 (2014) 2 SCC 1 observing that cases in which preliminary inquiry is to be conducted would depend upon the facts and circumstances of each case, also categorized cases (though not exhaustively) where preliminary inquiry, before registration of a first information report, could be conducted and included 'corruption cases' in such category. A preliminary inquiry or probe, we believe, becomes indispensable in a complaint of acquisition of disproportionate assets not only to safeguard the interest of the accused public servant, if such complaint were lodged with some malice, but also to appropriately assess the quantum of disproportionate assets should there be some substance in this complaint.

52. In regard to a case of the type under consideration, particularly when the FIR has been registered pursuant to a preliminary inquiry into the complaint of US and is at its nascent stage, it is in course of an investigation that materials are required to be collected and based on such requisite evidence of possession of pecuniary resources or acquisition of assets or property disproportionate to the known sources of income of the concerned public servant that a police report under section 173(2), Cr. P.C. could be laid. At the stage of conducting a preliminary inquiry, exercise of investigative powers being barred, such an inquiry is intended to facilitate the process of formation of opinion as to whether a first information report at all is required to be registered. During the tenure of his office under his employer, the public servant might not have even been suspected of being in possession of pecuniary resources or assets disproportionate to his known sources of income. Such assets or resources might have been held through somebody on his behalf. In such a scenario, it is indeed a difficult task for the Government - the employer - because of its impersonal character and the usual lethargy or indolence at Government levels to connect the officer with the resources or assets illicitly acquired. To weed out corrupt public servants, the Government has to engage sincere and dedicated personnel for collecting and collating the necessary material in this regard. If there be no interventions, the investigation that is likely to follow in terms of the Cr. P.C., could enable the investigating officer to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources in dispute. Since snapping of any link in the chain of circumstances could prove fatal to the whole exercise, it is of utmost necessity that care and dexterity are not compromised.

53. It is in the light of section 13 of the P.C. Act and the above principles that we need to read the FIR and the preceding complaint to assess whether any cognizable offence is made out against AS and, a fortiori, against YS, his wife.

54. The complaint that US lodged with the Chief Minister does specifically allege that although AS came from a very humble background, as evident from his Annual Property Return filed at the time of joining IRS, "he has managed to amass disproportionate assets of more than 2500 crores contrary

to his legal sources of income". One could view it as a tall claim, which is thoroughly unsubstantiated. However, it cannot be wished away because of the revelations of the preliminary inquiry which led to registration of the FIR and have formed part thereof. Although it is true that it is for the prosecution to build up a case that AS, as a public servant, amassed such wealth or even wealth of any lesser value that is disproportionate to his known sources of income, and which could not satisfactorily be accounted for by him, while it files the police report, it does not seem to be a requirement of law when the FIR was registered on 25th February, 2020 that facts and figures with exactitude need to form part of a first information report.

55. Moving forward, it is found on perusal of the FIR that although not specifically mentioned, 2004 to 2018 is the "check period" during which AS and YS have acquired property disproportionate to their known sources of income. There are certain calculations projecting the quantum of money that both AS and YS received towards salaries, interest and value for properties sold. Particulars of immovable properties acquired by AS and YS at different locations with particulars of "price" also find mention therein. It is thereafter stated that in addition to these properties, there is possibility of there being other properties in other places of the country in the names of AS and YS. There are also references to possible investments made by AS abroad, either in his own name or in the names of his wife and dependent members. Deposits of money in lakhs in the bank account of YS regularly have been suspected to be receipt of consideration (profit) from investment of big amounts. It is also revealed from the FIR that Rs.1,01,83,869.00 during April, 2013 to July, 2016 and Rs.75,55,058.00 during October, 2018 to November, 2019 were deposited by Cargill India Pvt. Ltd. and Courtesan Consulting Private Limited, respectively, in the bank account of YS and such financial transactions involving huge amounts prima facie appeared to be conspicuous requiring minute scrutiny. These, along with some other disclosures relating to involvement of AS as promoter of a 'memorial foundation' and YS as partner of a firm, reveals the following contents:

> "***As per the information regarding properties exceeding income, received in the inquiry, commission of a cognizable offence appears prima facie. Keeping it in view, investigation is required so that information may be obtained regarding movable and immovable properties in addition to the aforesaid properties. There is possibility that information regarding not only shares, vehicles and jewelry but also regarding Benami properties in the name of relatives, may be obtained. The income received lawfully by non-applicant Aman Singh and Yasmin Singh during their tenure as public servant, from year 2014 to December, 2018, was found to be Rs. 3,33,71,290, in comparison to which, it was found that immensely disproportionate expenses have been made by non-applicant Aman Singh during the said period in his name and in the name of his wife and dependent members, which was prima facie found to be an offence under Sections 13(1)B, 13(2) of the Prevention of Corruption Act, 1988 as amended by Amendment Act, 2018 and Section 120(B) of the Indian Penal Code."

56. It is true that the FIR could have been drafted better. Since a first information report is the starting point for a long drawn investigative process and such an investigation could be scuttled by an accused taking advantage of inept drafting of such report, this is an area where all the more care and dexterity is called for to prevent many a thing. However, nothing significant turns on the inept

drafting of the FIR in this case since it does make out a case of cognizable offence having been committed by AS and YS. Indeed, if at all there are miscalculations arising out of arithmetical errors or misdescription of properties not belonging to AS and YS, they were/are free to point it out while joining the investigation. It is also open to them to point out to the investigating officer that there has been absolutely no suppression or non-disclosure of properties/assets and also that no activity amounting to 'criminal misconduct' had been committed by them. However, they chose to challenge the FIR on the specious ground that the same did not disclose a cognizable offence.

57. Based on our reading of the FIR, we are unable to appreciate the reasons resting whereon the same has been quashed by the High Court. The High Court was of the opinion that (i) the FIR clearly demonstrates that the same "is based on probabilities with regard to disproportionate income", (ii) the FIR "is silent with regard to the quantum of disproportionate income, which is the paramount factors for involving any person in implicating any person for commission of offence under Section 13(1)(b), 13(2) of the Act, 1988", (iii) these "basic ingredients are not reflected from the bare perusal of the FIR", (iv) the "FIR nowhere discloses commission of any offence with definite facts and figures" and (v) "offence under Section 13(1)(b), 13(2) of the Act, 1988 is not made out".

58. While deciding the challenge to the FIR, the High Court – unwittingly, we presume – did not bear in mind the note of caution in Bhajan Lal (supra) 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; further 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 FIR or the complaint; and also that, the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

59. It seems that such note of caution did not have the desired effect in all cases resulting in this Court, in its subsequent decisions, reemphasizing the need for the high courts to bear in mind the settled principle of law that whenever its powers are invoked either under Article 226 of the Constitution or section 482, Cr. P.C. for quashing a first information report/complaint, the courts would not be justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein (emphasis ours). We may, in this regard, profitably refer to the decision of this Court while dealing with a case under the P.C. Act in State of Maharashtra Vs. Ishwar Piraji Kalpatri9.

60. Very strong reliance has been placed by Mr. Sibal on the decision in Tapan Kumar Singh (supra). There, this Court ruled that:

> "20. *** The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer 9 (1996) 1 SCC 542 concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other

> competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

61. Thus, it being the settled principle of law that when an investigation is yet to start, there should be no scrutiny to what extent the allegations in a first information report are probable, reliable or genuine and also that a first information report can be registered merely on suspicion, the High Court ought to have realized that the FIR which, according to it, was based on "probabilities" ought not to have been interdicted. Viewed through the prism of gravity of allegations, a first information report based on "probability" of a crime having been committed would obviously be of a higher degree as compared to a first information report lodged on a "mere suspicion" that a crime has been committed. The High Court failed to bear in mind these principles and precisely did what it was not supposed to do at this stage. We are, thus, unhesitatingly of the view that the High Court was not justified in its interference on the ground it did.

62. Mr. Hegde is also right in relying on the decisions in R.P. Kapur (supra) and Bhajan Lal (supra) that the FIR in this case did not fit into any of the categories for being quashed on the ground of not disclosing a cognizable offence.

63. Borrowing the words of K.T. Thomas, J. (as His Lordship then was), it can safely be concluded that in the present case the High Court "sieved the complaint through a cullender of finest gauzes for testing" the veracity of the alleged crime. This approach being clearly impermissible at the stage of considering a challenge to a first information report, we are of the considered opinion that the judgment and order under challenge is indefensible.

64. We now move on to consider Circular No. 29/2020 dated 12 th November, 2020 issued by the CBI on the subject of investigation of cases of Illicit Enrichment (possession of pecuniary resources or property disproportionate to known sources of income) (hereafter 'CBI Circular', for short). Having perused the CBI Circular, what we find is that the same provides the methodology to guide registration of a first information report in relation to disproportionate assets cases. To the written notes of arguments is annexed a circular dated 12th April, 2021, by which the State has clarified that the CBI's methodology would apply to the State's ACB/EOW as well (because the manual of the State's ACB/EOW has not been notified) and also that the CBI's methodology will apply in respect of All India and Central Govt. Service Officers. However, the contention on behalf of AS and YS that the methodology provided in the CBI Circular has been observed in the breach has failed to impress us. Evidently, the FIR in the present case was registered on 25 th February, 2020 whereas the CBI Circular was issued on 12 th November, 2020, almost 9 (nine) months after the FIR was registered, and adopted by the State almost a year later. Since the CBI Circular was not in existence on 25th February, 2020, the FIR in the present case cannot be invalidated by reference to the CBI Circular.

It is only just and appropriate that the CBI Circular, having been adopted by the State, would be required to be followed only in respect of registration of first information reports pertaining to cases of acquisition of disproportionate assets, post 12th April, 2021. We, therefore, see no reason to invalidate the FIR for alleged breach of the CBI Circular.

65. We, thus, answer the first question by holding that the High Court was not justified in its interference with the investigative process and committed an error of law in quashing the FIR on the grounds it did.

66. To answer the second question, the challenge to the FIR on the ground that it is vitiated by mala fides is taken up for consideration.

67. Allegations of ulterior motives at the behest of the political dispensation in power in the State and direction given by the Chief Minister to the Economic Offences Wing to conduct an inquiry, which is per se violative of the law, are found in WPCR 88 of 2020 under the heading 'subject matter in brief'. Mirror images of such allegations are also found under the heading 'Facts of the Case'. While amending the writ petition and challenging the FIR and seeking an order for its quashing, AS alleged in the application for amendment as follows:

> "That the action taken by the Chief Minister on the complaint addressed to him is patently contrary to law and in view of the said CM's declared public hostility towards the petitioner as set out elsewhere in the petition, discloses malice" (paragraph 9.29). "The lodging of the FIR during pendency of the hearing of the present writ petition is further evidence of mala fides on part of Respondent State" (paragraph 9.32). "That the FIR is an abuse of police and state power. It is the outcome of personal animosity of the CM of the state against the petitioner" (paragraph 9.33).

68. Mr. Jethmalani, experienced as he is, must have sensed that the judgment under challenge rests on weak foundation; hence, he advanced arguments more touching upon the mala fides that worked in registration of the FIR against AS and YS. As has been noted above, reacting to Mr. Hegde's submission that there are no pleadings of mala fides, he submitted that the writ petitions are replete with such pleadings.

69. As if the submissions of Mr. Jethmalani were not strong enough, we had AS and YS filing the application for directions late in the day seeking to bring on record certain reports/messages/chats to provide proof that mala fide motive is indeed the genesis of the FIR. We have also perused the application for directions, and more particularly the contents of paragraph 13 thereof.

70. For reasons more than one, we are inclined to the view that the writ petitions before the High Court would not have succeeded even if the plea of mala fide were advanced and accepted as a ground of assail to the FIR, based on what has been laid down in Bhajan Lal (supra).

71. We have perused the writ petitions filed by AS and YS and have no hesitation to agree with Mr. Hegde that the pleadings are insufficient to return a finding that the FIR is an outcome of mala fide.

No doubt, certain allegations are levelled against the Government and the Chief Minister; however, such allegations are vague and general in nature. Mala fide motives are required to be affirmatively pleaded and proved. However, no foundation in that behalf has been laid and naturally so, the High Court even did not examine whether exception could have been taken to the FIR on the ground of mala fide.

72. Secondly, neither the head of the political executive (the incumbent Chief Minister) nor that of the administrative executive (the Chief Secretary) was personally arrayed as a party to any of the proceedings. Now, law is well-settled that the person against whom mala fide or bias is imputed should be impleaded as a party respondent to the proceedings eo nomine and that in his/her absence no inquiry into the allegations can be made. This is what the decision in State of Bihar vs. P.P. Sharma 10 lays down. Having regard thereto, since the incumbent holding the office of Chief Minister of the State against whom mala fide is alleged is not on record, we are loath to attach any importance to the allegations of mala fide even if there be any.

73. Thirdly, it must be remembered that when an information is lodged at the police station and an offence is registered in respect of a disproportionate assets case, it is the material collected during the investigation and evidence led in court that is decisive for determining the fate of the accused. To our mind, whether the first information report is the outcome of mala fide would be of 10 1992 Supp. (1) SCC 222 secondary importance. In such a case, should the allegations of mala fide be of some prima facie worth, would pale into insignificance if sufficient materials are gathered for sending the accused up for a trial; hence, the plea of mala fide may not per se form the basis for quashing the first information report/complaint.

74. Finally, following the above, what is of substantial importance is that if criminal prosecution is based upon adequate evidence and the same is otherwise justifiable, it does not become vitiated on account of significant political overtones and mala fide motives. We can say without fear of contradiction, it is not in all cases in our country that an individual, who is accused of acts of omission/commission punishable under the P.C. Act but has the blessings of the ruling dispensation, is booked by the police and made to face prosecution. If, indeed, in such a case (where a prosecution should have been but has not been launched) the succeeding political dispensation initiates steps for launching prosecution against such an accused but he/she is allowed to go scot-free, despite there being materials against him/her, merely on the ground that the action initiated by the current regime is mala fide in the sense that it is either to settle scores with the earlier regime or to wreak vengeance against the individual, in such an eventuality we are constrained to observe that it is criminal justice that would be the casualty. This is because, it is difficult to form an opinion conclusively at the stage of reading a first information report that the public servant is either in or not in possession of property disproportionate to the known sources of his/her income. It would all depend on what is ultimately unearthed after the investigation is complete. Needless to observe, the first information report in a disproportionate assets case must, as of necessity, prima facie, contain ingredients for the perception that there is fair enough reason to suspect commission of a cognizable offence relating to “criminal misconduct” punishable under the P.C. Act and to embark upon an investigation. Having regard to what we have observed above in paragraph 49 (supra) and to maintain probity in the system of governance as well as to ensure that

societal pollutants are weeded out at the earliest, it would be eminently desirable if the high courts maintain a hands-off approach and not quash a first information report pertaining to “corruption” cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes ex proprio vigore may not be applicable to a P.C. Act offence. Majorly, the proper course for the high courts to follow, in cases under the P.C. Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case. Although what would constitute the special features has necessarily to depend on the peculiar facts of each case, interference could be made in exceptional cases where the records reveal absolutely no material to support even a reasonable suspicion of a public servant having intentionally enriched himself illicitly during the period of his service and nothing other than mala fide is the basis for subjecting such servant to an investigation. We quite appreciate that there could be cases of innocent public servants being entangled in investigations arising out of motivated complaints and the consequent mental agony, emotional pain and social stigma that they would have to encounter in the process, but this small price has to be paid if there is to be a society governed by the rule of law. While we do not intend to fetter the high courts from intervening in appropriate cases, it is only just and proper to remind the courts to be careful, circumspect and cautious in quashing first information reports resting on mala fide of the nature alleged herein.

75. For the foregoing reasons, we have no option but to hold that there are no cogent grounds for quashing the FIR in the present case even on the ground of mala fide.

76. Consequently, we set aside the impugned judgment and order and direct dismissal of the writ petitions. The appeals are, accordingly, allowed.

77. Interim protection granted earlier shall continue for a period of three weeks, within which AS and YS may pursue their remedies in accordance with law.

78. Parties shall bear their own costs.

79. It is, however, clarified that the observations made herein are merely for the purpose of disposal of these appeals. Proceedings hereafter shall be taken to its logical conclusion strictly in accordance with law.

.....J.
(S. RAVINDRA BHAT)

NEW DELHI;
1st MARCH, 2023.

.....J
(DIPANKAR DATTA)