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CHARANSINGH

v.

STATE OF MAHARASHTRA AND OTHERS

(Criminal Appeal No. 363 of 2021)

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MARCH 24, 2021

**[DR. DHANANJAYA Y. CHANDRACHUD
AND M.R. SHAH, JJ.]**

Code of Criminal Procedure, 1973: Preliminary enquiry – Corruption case – A complaint was received against the appellant in the office of the Director General, Anti-corruption Bureau, Maharashtra State, Mumbai on 7.2.2018, wherein various allegations were made against the appellant and his brothers with regard to accumulating the assets disproportionate to his known sources of income – At that time the appellant was a Member and President of Municipal Council – In connection with the said complaint, Police Inspector, Anti-corruption Bureau had issued notice dated 04.03.2020 to the appellant asking him to provide documents relating to his property, assets, bank statements, income tax returns and to give statement to the police – Feeling aggrieved with the said notice calling upon the appellant to personally remain present before the investigating officer of the Anti-corruption Bureau, Nagpur to give his statement in an ‘open enquiry’ in respect of the property owned by him along with the information on the points stated in the said notice, the appellant preferred writ petition before the High Court – High Court dismissed the writ petition – In the instant appeal, question which arose for the consideration was whether such an enquiry at pre-FIR stage would be legal – Held: An enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income – After the enquiry/enquiry at pre-registration of FIR stage/ preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged – However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings

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will be put in motion and further investigation will be carried out in terms of the Code of Criminal Procedure – Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. A

Code of Criminal Procedure, 1973: Preliminary enquiry – Extent of, permissibility – By the impugned notice, during the course of the ‘open enquiry’, the appellant was called upon to give his statement and to carry along with the information on the points, which are referred for the purpose of recording his statement – The information sought on the said points had direct connection with the allegations made against the appellant, namely, accumulating assets disproportionate to his known sources of income – However, such a notice, while conducting the ‘open enquiry’, shall be restricted to facilitate the appellant to clarify regarding his assets and known sources of income – The same cannot be said to be a fishing or roving enquiry. Such a statement cannot be said to be a statement under s.160 and/or the statement to be recorded during the course of investigation as per the Code of Criminal Procedure – Such a statement even cannot be used against the appellant during the course of trial – Statement of the appellant and the information so received during the course of discrete enquiry shall be only for the purpose to satisfy and find out whether an offence under s.13(1)(e) of the PC Act, 1988 is disclosed – Such a statement cannot be said to be confessional in character, and as and when and/or if such a statement is considered to be confessional, in that case only, it can be said to be a statement which is self-incriminatory, which can be said to be impermissible in law – Prevention of Corruption Act, 1988 – s.13(1)(e). B C D E F

Dismissing the appeal, the Court

HELD: 1.1 While considering the larger question, whether police is duty bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in the case of *Lalita Kumari* has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general G H

- A rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be
- B strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is further observed that if the information received does not disclose a
- C cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case. As per the decision of this Court, the categories of cases in
- D which preliminary enquiry 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.
- E These are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. [Para 8.1][720-A-G]

P. Sirajuddin v. State of Madras (1970) 1 SCC 595 : [1970] 3 SCR 931; *Lalita Kumari v. Government of Uttar Pradesh* (2014) 2 SCC 1 : [2013] 14 SCR 713 –
F relied on.

- 1.2 While expressing the need for a preliminary enquiry before proceeding against public servants who are charged with the allegation of corruption, it is observed in the case of *P. Sirajuddin* that “before a public servant, whatever be his status,
- G is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of indulging into corrupt practice and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person who is occupying the top position in a department, even if baseless, would
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do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department". It is further observed that "when such an enquiry is to be held for the purpose of finding out whether criminal proceedings are to be initiated and the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the person against whom the allegations are made and documents bearing on the same to find out whether there is a *prima facie* evidence of guilt of the officer, thereafter, the ordinary law of the land must take its course and further enquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report". [Para 9][722-E-G; 723-A]

2. An enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses *prima facie* a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. [Para 9.1][723-B-D]

3. Even as held by this Court in the case of *Superintendent of Police, CBI v. Tapan Kumar Singh*, a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same.

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- A However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required
- B to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects
- C the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed,
- D considering the observations made by this Court in the case of *P. Sirajuddin* and considering the observations by this Court in the case of *Lalita Kumari* before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-corruption & Prohibition Intelligence
- E Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage. [Para 9.2][723-E-H; 724-A-B]

Superintendent of Police, CBI v. Tapan Kumar Singh
(2003) 6 SCC 175 : [2003] 3 SCR 485 – relied on.

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4. In the present case, the office of the Director General, ACB, Maharashtra State, Mumbai had received a complaint against the appellant and his three brothers, wherein various allegations have been made against the appellant with regard to
- G accumulating the assets disproportionate to his known sources of income. At that time, the appellant was a Member and President of the Municipal Council, Katol, District Nagpur. On the basis of the said complaint, the Superintendent of Police, Anti-corruption Bureau, Nagpur initiated a discrete enquiry against the appellant with regard to the allegations in the complaint through the officers
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working under him. After conducting a discrete enquiry, report dated 27.2.2020 has been submitted to the Superintendent of Police, ACB, Nagpur. After scrutiny of the said report, the same has been forwarded to the Director General of Police, ACB. After considering the report, the Director General of Police, ACB had directed the Superintendent of Police who in turn had directed the Police Inspector, ACB, Nagpur to conduct an 'open enquiry' and during the course of conducting an 'open enquiry', the appellant against whom the allegations are made of accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the PC Act, has been served with the impugned notice, impugned before the High Court. A detailed procedure is provided under the Maharashtra State Anti-corruption & Prohibition Intelligence Bureau Manual of Instructions 1968, while conducting open enquiries. Discrete enquiry is permissible as per para 14 of the said Manual and the 'open enquiry' is permissible as per para 15 of the said Manual. While conducting open enquiries, the enquiry officer who is conducting the 'open enquiry' is required to follow the following instructions: As soon as an application or information is received by him for making an open enquiry, it should be entered in the Enquiry Register and further developments recorded in it from time to time. (For proforma of the Register see Appendix XX). The number of the file allotted to the enquiry should be cited in all references. The contents of the application or information should be scrutinized carefully and various allegations contained therein be noted seriatum. A plan of action should be prepared, indicating therein – The Director's file number and the date of receipt, Serial number of the allegation, Allegations in brief, Name of witnesses to be examined or likely to be examined, Papers or documents to be collected and Probable date of completion of the enquiry. The plan of action prepared by the Enquiry Officer as above, should be submitted within seven days of the receipt of the enquiry to the Director. The statement of the applicant should be recorded noting therein all the circumstances within his knowledge with regard to the allegations. The statements of all the witnesses whose names might transpire during the examination of the applicant and also of other witnesses, if any, should be recorded. All available

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- A documentary evidence in support of the allegation should be collected. The statement of the person against whom the allegations have been made should be recorded, giving him an opportunity to explain each allegation against him. The application should not be shown to him in any circumstances. The name of the applicant should not be disclosed, if the applicant so expressly desires. The statements of all persons cited in defence should be recorded and the relevant documentary evidence collected. After recording the evidence of both the sides and collecting the necessary documents, the entire record should be examined to formulate a definite opinion on each of the allegations. The papers of enquiry, with the final report, should be submitted to the Director. A copy of a 'Roznama' containing details showing the day-to-day progress of the enquiry should be maintained as from the date of the receipt of the application and attached to the papers of enquiry and the final report. [Para 10][724-C-H; 725-A-H; 726-A-C]

- D 5. After completing the enquiry, a final report along with the papers of the enquiry is required to be sent to the Director General, ACB. Even, while submitting the final report and the papers of the enquiry, which are the points to be considered and/or borne in mind are stated in para 16 of the Manual. Only thereafter and if it is found that a cognizable offence is made out and there is substance in the allegations, an FIR would be lodged and further investigation will be carried out after following the procedure as per the Code of Criminal Procedure. Therefore, a fool proof safeguard and procedure is provided before lodging an
- E FIR/complaint before the Court against the public servant, who is facing the allegations of corrupt practice. However, such an enquiry would be conducted to ascertain whether a cognizable offence is disclosed or not. Even at the stage of registering the first information report, the police officer is not required to be satisfied or convinced that a cognizable offence has been
- F committed. It is enough if the information discloses the commission of a cognizable offence as the information only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. Therefore, as such, holding such an enquiry, may be
- G discrete/open enquiry, at pre-registration of FIR stage in the case
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of allegation of corrupt practice of accumulating assets disproportionate to his known sources of income, cannot be said to be *per se* illegal. [Para 10.1][726-C-G]

6. The next question posed for the consideration of this Court is, whether to what extent such an enquiry is permissible and what would be the scope and ambit of such an enquiry. By the impugned notice, impugned before the High Court, and during the course of the 'open enquiry', the appellant has been called upon to give his statement and he has been called upon to carry along with the information on the points, which are referred for the purpose of recording his statement. The information sought on the aforesaid points is having a direct connection with the allegations made against the appellant, namely, accumulating assets disproportionate to his known sources of income. However, such a notice, while conducting the 'open enquiry', shall be restricted to facilitate the appellant to clarify regarding his assets and known sources of income. The same cannot be said to be a fishing or roving enquiry. Such a statement cannot be said to be a statement under Section 160 and/or the statement to be recorded during the course of investigation as per the Code of Criminal Procedure. Such a statement even cannot be used against the appellant during the course of trial. Statement of the appellant and the information so received during the course of discrete enquiry shall be only for the purpose to satisfy and find out whether an offence under Section 13(1)(e) of the PC Act, 1988 is disclosed. Such a statement cannot be said to be confessional in character, and as and when and/or if such a statement is considered to be confessional, in that case only, it can be said to be a statement which is self-incriminatory, which can be said to be impermissible in law. [Para 11][726-H; 727-A-D]

7. At this stage, it is required to be noted that in the present case as such the appellant has produced the relevant documents of some of the properties owned by him and the appellant has joined the 'open enquiry'. It also appears from the counter filed on behalf of the Anti-corruption Bureau that on the basis of the information given by the appellant, letters have been issued to various authorities/banks, seeking further and better particulars. Partial statement of the appellant has already been recorded.

- A However, such a statement/enquiry would be restricted only to ascertain whether a cognizable offence is disclosed or not. Such a statement cannot be said to be a confessional statement. After having been satisfied and after conclusion of the enquiry and on the basis of the material collected, if it is found that there is substance in the allegations against the appellant and it discloses
- B a cognizable offence, FIR will be lodged and the investigating agency has to collect the evidence/further evidence to substantiate the allegations/charge of accumulating the assets disproportionate to his known sources of income. However, if during the enquiry at pre-registration of FIR stage, if the appellant
- C satisfies on production of the materials produced relating to his known sources of income and the assets, in that case, no FIR will be lodged and if he is not able to clarify his assets, *vis-à-vis*, known sources of income, then the FIR will be lodged and he will be subjected to trial. Therefore, as such, such an enquiry would be to safeguard his interest also which may avoid further harassment to him. [Para 12]
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Case Law Reference

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| | [2013] 14 SCR 713 | relied on | Para 3.2 |
| | [1970] 3 SCR 931 | relied on | Para 9 |
| E | [2003] 3 SCR 485 | relied on | Para 9.2 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 363 of 2021.

- F From the Judgment and Order dated 25.11.2020 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Writ Petition No. 226 of 2020.

Subodh Dharamadhikari, Sr. Adv., Mohit P. Khajanchi, Mahesh Dhatrak, Gaurav Agrawal, Advs. for the Appellant.

- G Raja Thakare, Sr. Adv., Rahul Chitnis, Sachin Patil, Aaditya A. Pande, Geo Joseph, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- H 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.11.2020 passed by the High Court of Judicature at

Bombay, Nagpur Bench, Nagpur in Criminal Writ Petition No. 226 of 2020, by which the High Court has dismissed the said writ petition challenging notice dated 04.03.2020 issued by the Police Inspector, Anti-Corruption Bureau, Nagpur, calling upon the appellant to personally remain present before the investigating officer of the Anti-corruption Bureau, Nagpur to give his statement in an 'open enquiry' in respect of the property owned by him along with the information on the points stated in the said notice, the appellant has preferred the present appeal.

2. That a complaint was received against the appellant in the office of the Director General, Anti-corruption Bureau, Maharashtra State, Mumbai on 7.2.2018, wherein various allegations have been made against the appellant and his brothers with regard to accumulating the assets disproportionate to his known sources of income. It appears that at that time the appellant was a Member and President of Municipal Council, Katol, District Nagpur. That in connection with the said complaint, Police Inspector, Anti-corruption Bureau, Nagpur had issued a notice to the appellant asking him to provide documents relating to his property, assets, bank statements, income tax returns and asking the appellant to give statement to the police.

3. Feeling aggrieved and dissatisfied with the said notice dated 04.03.2020 issued by the Police Inspector, Anti-Corruption Bureau, Nagpur calling upon the appellant to personally remain present before the investigating officer of the Anti-corruption Bureau, Nagpur to give his statement in an 'open enquiry' in respect of the property owned by him along with the information on the points stated in the said notice, the appellant herein preferred Criminal Writ Petition No. 226 of 2020 before the High Court.

3.1 It was submitted on behalf of the appellant that the Police Inspector, Anti-Corruption Bureau, Nagpur has no power to issue the said notice. It was also submitted that the said notice was issued in a purported exercise of power under Section 160 Cr.P.C., however, Section 160 Cr.P.C. shall not be applicable at all as the appellant is not a witness in the case. It was also the case on behalf of the appellant that there is no statutory provision which would compel any body to give statement to the police. It was also submitted that there is no FIR against the appellant.

3.2 On the other hand, it was the case on behalf of the State that the appellant has been called upon to give his statement in an 'open

- A enquiry' which is in the nature of preliminary enquiry. It was the complaint received by the Anti-Corruption Bureau, Nagpur regarding amassing of huge properties by the appellant. It was submitted that such a preliminary enquiry is permissible, as held by this Court in the case of *Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1*. Heavy reliance was placed upon paragraphs 89, and 120 of the said decision.
- B After following the decision of this Court in the case of *Lalita Kumari (supra)*, the High Court has observed that a preliminary enquiry in order to verify the correctness of the allegations and also to elicit some information/material which may be relevant for deciding the question regarding commission or non-commission of cognizable offence would be
- C permissible. Thereafter, the High Court has further observed that as the notice has been issued only for facilitating the purpose of preliminary enquiry, it cannot be said to be bad in law. The High Court has further observed that it is true that by such notice a person like the appellant cannot be compelled to make his personal appearance before the officer of the Anti-Corruption Bureau. However, the High Court has further
- D observed that not responding to such a notice, may be at the peril of the noticee himself for the reason that the officer of the Anti-Corruption Bureau may draw some adverse inference against the person not co-operating with the preliminary enquiry. For the aforesaid, the High Court took into consideration Condition No. 16 of the State Anti-Corruption
- E Bureau Manual. By observing the above, the High Court, by the impugned judgment and order has dismissed the said writ petition, which has given rise to the present appeal.

4. Shri Subodh Dharmadhikari, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that notice dated
- F 04.03.2020 issued by the Anti-Corruption Bureau by which the appellant has been directed to appear before the investigating officer, Anti-Corruption Bureau, Nagpur and to make a statement in respect of the property owned by him and to give information on the points stated in the said notice has no statutory force.

- G 4.1 It is submitted that the said notice has been issued in purported exercise of power under Section 160 Cr.P.C. However, as the appellant cannot be said to be a witness in the case, Section 160 Cr.P.C. shall not be applicable at all. It is submitted that therefore notice dated 4.3.2020 is beyond the scope and ambit of Section 160 Cr.P.C.

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4.2 It is further submitted that while dismissing the writ petition, the High Court has materially erred in relying upon the decision of this Court in the case of *Lalita Kumari (supra)*. A

4.3 It is further submitted that the High Court ought to have appreciated that such a notice calling upon the appellant to give the statement and more particularly on the points mentioned in the said notice shall be hit by Article 20(3) and 21 of the Constitution of India. It is further submitted that as such notice dated 4.3.2020 is for roving and fishing enquiry which is not permissible under the law and as such it has no statutory backing. B

4.4 It is further submitted that the High Court has failed to appreciate that notice dated 4.3.2020 is a clear example of political vendetta and actuated by malice to harass the political opponent by the ruling party. C

4.5 It is further submitted by the learned counsel appearing on behalf of the appellant that as such the reliance placed upon Condition No. 16 of the State Anti-Corruption Bureau Manual has no statutory force even as observed and held by this Court in the case of *Lalita Kumari (supra)*. D

4.6 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court, as well as, impugned notice dated 4.3.2020 issued by the Anti-Corruption Bureau, Nagpur. E

5. While opposing the present appeal, Shri Raja Thakare, learned Senior Advocate has vehemently submitted that the notice issued by the Police Inspector, Anti-Corruption Bureau, Nagpur is absolutely in consonance with the ACB Manual which permits the discrete enquiries and open enquiries, so as to find out the veracity of the allegations in the complaint. It is submitted that even the same is also permissible as per the decision of this Court in the case of *Lalita Kumari (supra)*. F

5.1 It is submitted that a complaint was received in the office of the Director General, Anti-Corruption Bureau, Maharashtra State, Mumbai, wherein various allegations have been made against the appellant with regard to accumulating the assets disproportionate to his known sources of income. That on the basis of the said complaint, the Superintendent of Police, Anti-Corruption Bureau, Nagpur initiated a discrete enquiry against the appellant with regard to the allegations in H

A the complaint through the officers working under him. Accordingly, a discrete enquiry was conducted and on 27.02.2020, a report was submitted to the Superintendent of Police, Anti-Corruption Bureau, Nagpur. It is submitted that after scrutiny of the said report, the Superintendent of Police, Anti-Corruption Bureau, Nagpur forwarded the same to the Director General of Police, Anti-Corruption Bureau, Maharashtra, Mumbai. That the Director General of Police, Anti-Corruption Bureau, Maharashtra vide his letter dated 28.02.2020 directed the Superintendent of Police, Anti-Corruption Bureau, Nagpur who in turn directed the Police Inspector, Anti-Corruption Bureau, Nagpur to conduct an 'open enquiry'.

C 5.2 It is submitted that the said 'open enquiry' is to find out if an offence under Section 13(e) of the Prevention of Corruption Act is disclosed. It is submitted that Section 13(e) of the PC Act makes it apparent that the person against whom a complaint is received has to satisfy the investigating agency whether his assets are in consonance with his known sources of income and accountable. The information regarding assets may be provided by the source informant or can be detected during the discrete enquiry, however, the sources of his income would be within exclusive knowledge of the person against whom the complaint or information is received. It is submitted that therefore the 'open enquiry' is warranted before the registration of an offence. It is submitted that accordingly the Superintendent of Police, Anti-Corruption Bureau, Nagpur directed the Police Inspector, Anti-Corruption Bureau, Nagpur to conduct an 'open enquiry' with regard to the allegations levelled in the complaint.

F 5.3 It is submitted that the notice has been issued as per the principals of natural justice to facilitate the appellant to clarify regarding his assets and known sources of income, which would enable the investigating officer to ascertain whether cognizable offence is disclosed or not. It is submitted that however Section 160 Cr.P.C. has been inadvertently mentioned in the said notice.

G 5.4 It is further submitted that, as such, despite number of notices issued, the appellant is not co-operating with the investigating agency and is not appearing for giving his statement on the points mentioned in the notice, on one pretext or the other. It is submitted that, as such, the appellant did join the 'open enquiry' and ask for time to collect details and produce the same. It is submitted that even on 7.1.2021, the appellant

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attended the office of the Anti-Corruption Bureau, Nagpur with relevant documents of some of the properties owned by him and his partial statement was recorded and his statement remained incomplete. But the appellant avoided to give details of his assets, liabilities and prominent expenditures and therefore no conclusion could be drawn. It is submitted therefore that once the appellant having presented himself before the investigating authority on 7.1.2021 and his partial statement having been recorded, the issue whether the said notice can compel the appellant to appear in person before the officers of the Anti-Corruption Bureau, Nagpur no longer survives for consideration by this Court.

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5.5 It is submitted that, in fact, the appellant has been summoned for a preliminary enquiry only to ascertain whether cognizable offence is disclosed or not. If the preliminary enquiry discloses the cognizable offence, then a first information report will be registered against the appellant. However, that stage has not been reached as the appellant has only partially recorded his statement before the investigating officer and the preliminary enquiry has remained un-concluded.

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5.6 It is submitted that in the discrete enquiry, the investigating authority has found, *prima facie*, substance in the allegations with regard to the complaint received and therefore it was decided to conduct an 'open enquiry'. It is submitted that the decision with regard to discrete enquiry as well as an open enquiry with regard to allegations against the appellant was taken as per the provisions of the Manual of the Anti-Corruption Bureau, Maharashtra. Heavy reliance is placed on Chapter IV of the Anti-Corruption Manual Rules, which provides for conducting the investigation including discrete enquiry and 'open enquiry'.

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5.7 It is further submitted that the enquiry is being conducted to verify the truthfulness of the allegations with regard to the accumulation of assets disproportionate to the known sources of income of the appellant. Unless the relevant property details of the appellant are made available to the authorities, the investigating authority will not be able to ascertain as to whether the assets of the appellants are disproportionate to his known sources of income or not. The very nature of the enquiry in respect of offence under Section 13(e) of the PC Act presupposes that it is the person against whom the allegations are made has to explain the details of his property qua his known sources of income. It is submitted that therefore the enquiry initiated should reach to its logical conclusion. It is submitted that at the time of culmination of the inquiry, a decision

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A will be taken on merits and on the basis of the evidence/material collected during the course of ‘open enquiry’, it will be considered whether a cognizable offence is made out or not. It is submitted that if no substance is found during the ‘open enquiry’, the Anti-Corruption Bureau, Nagpur may close the enquiry without any further action.

B 5.8 It is further submitted that calling upon the appellant to disclose his properties, assets etc. cannot be said to be in violation of Articles 20(3) and 21 of the Constitution of India, as alleged. It is submitted to invoke the constitutional right under Article 20(3), an accusation against him must exist. It is submitted that as on date no FIR has been registered against the appellant and the investigating authorities are only conducting
C the preliminary enquiry. It is submitted that it cannot be said that the said notice seeks to make a roving inquiry with regard to the assets and personal details of the appellant or that it is vague.

5.9 Making the above submissions, it is prayed to dismiss the present appeal.

D 6. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that what was challenged before the High Court was notice issued by the Police Inspector, Anti-Corruption Bureau, Nagpur, by which the appellant has been called upon
E to give his statement in respect of the properties owned by him, for the purpose of enquiring the complaint against him, alleging accumulating the assets disproportionate to his known sources of income which, as such, was/is at pre-FIR stage. By the aforesaid notice dated 4.3.2020, the appellant has been called upon to carry along with the information on
F the following aspects for the purpose of recording his statement:

- 1) Record in respect of ancestral and self-acquired property in your name, for example, Registered Deed, Construction Licence, Receipts relating to tax, Sale Deed of Agricultural Land, 7/12 Extract and Mutation Entries, etc.
- G 2) Details of ancestral and self-acquired gold coins and jewellery, likewise sale and purchase of vehicle.
- 3) Passbooks, Certificates, L.I.C., Shares/Debentures Certificates, etc. in respect of investments at bank, insurance and others in your name and in the name of your family members.
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- 4) Details of documentary evidence in respect of loan borrowed by you. A
- 5) Proofs and income tax return in respect of your income other than your remuneration.
- 6) Details of expenditure incurred by you in respect of pilgrimages, functions, hospitals, foreign tours, etc. B
- 7) Information regarding remuneration and allowances received by you.

The High Court, by the impugned judgment and order, has refused to quash the said notice mainly relying upon the decision of this Court in the case of *Lalita Kumari (supra)*. C

7. Therefore, the short question which is posed for the consideration of this Court is, whether such an enquiry at pre-FIR stage would be legal and to what extent such an enquiry is permissible?

7.1 While answering the aforesaid two questions and permissibility of the enquiry at pre-FIR stage, it is required to be noted that on the basis of the complaint against him, the appellant is facing various allegations with regard to accumulating the assets disproportionate to his known sources of income, when the appellant was a member and the President of the Municipal Council, Katol, District Nagpur – a public servant. At that stage and while considering the veracity of the allegation of accumulating the assets disproportionate to his known sources of income, the investigating agency has thought it fit to hold an ‘open enquiry’ and during the course of such ‘open enquiry’ the appellant has been called upon to make his statement along with the information on the points, referred to hereinabove. Whether, such an enquiry, which can be said to be a preliminary enquiry, is permissible under the Maharashtra State Anti-Corruption Manual shall be dealt with and considered hereinbelow. D
E
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8. However, whether in a case of a complaint against a public servant regarding accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, an enquiry at pre-FIR stage is permissible or not and/or it is desirable or not, if any decision is required, the same is governed by the decision of this Court in the case of *Lalita Kumari (supra)*. G

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- A 8.1 While considering the larger question, whether police is duty bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in the case of *Lalita Kumari (supra)* has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case. As per the decision of this Court, the categories of cases in which preliminary enquiry may be made are as under:
- B
- C
- D
- E

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

- F (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.

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

In paragraph 120, this Court concluded and issued directions as under:

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

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120.1. The 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. A

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. B

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. C

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. D

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: E

(a) Matrimonial disputes/family disputes

(b) Commercial offences F

(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. G

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

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A **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.

B **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,
C as mentioned above.”

9. In the context of offences relating to corruption, in paragraph 117 in the case of *Lalita Kumari (supra)*, this Court also took note of the decision of this Court in the case of *P. Sirajuddin v. State of Madras (1970) 1 SCC 595* in which case this Court expressed the need for a
D preliminary enquiry before proceeding against public servants.

While expressing the need for a preliminary enquiry before proceeding against public servants who are charged with the allegation of corruption, it is observed in the case of *P. Sirajuddin (supra)* that
E “before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of indulging into corrupt practice and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person who is occupying the top position in a department, even if baseless,
F would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department”. It is further observed that “when such an enquiry is to be
G held for the purpose of finding out whether criminal proceedings are to be initiated and the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the person against whom the allegations are made and documents bearing on the same to find out whether there is a *prima facie* evidence of guilt of the officer, thereafter,
H the ordinary law of the land must take its course and further enquiry be

proceeded with in terms of the Code of Criminal Procedure by lodging a first information report”.

9.1 Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses *prima facie* a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

9.2 Even as held by this Court in the case of *Superintendent of Police, CBI v. Tapan Kumar Singh (2003) 6 SCC 175*, a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the

- A observations made by this Court in the case of *P. Sirajuddin (supra)* and considering the observations by this Court in the case of *Lalita Kumari (supra)* before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-corruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-corruption Bureau
- B has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage.

10. In the present case, the office of the Director General, ACB, Maharashtra State, Mumbai had received a complaint against the appellant and his three brothers, wherein various allegations have been made against the appellant with regard to accumulating the assets disproportionate to his known sources of income. At that time, the appellant was a Member and President of the Municipal Council, Katol, District Nagpur. On the basis of the said complaint, the Superintendent of Police, Anti-corruption Bureau, Nagpur initiated a discrete enquiry against the appellant with
- D regard to the allegations in the complaint through the officers working under him. After conducting a discrete enquiry, report dated 27.2.2020 has been submitted to the Superintendent of Police, ACB, Nagpur. After scrutiny of the said report, the same has been forwarded to the Director General of Police, ACB. After considering the report, the Director General of Police, ACB had directed the Superintendent of Police who in turn
- E had directed the Police Inspector, ACB, Nagpur to conduct an 'open enquiry' and during the course of conducting an 'open enquiry', the appellant against whom the allegations are made of accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the PC Act, has been
- F served with the impugned notice, impugned before the High Court. A detailed procedure is provided under the Maharashtra State Anti-corruption & Prohibition Intelligence Bureau Manual of Instructions 1968, while conducting open enquiries. Discrete enquiry is permissible as per para 14 of the said Manual and the 'open enquiry' is permissible as per para 15 of the said Manual. While conducting open enquiries, the enquiry
- G officer who is conducting the 'open enquiry' is required to follow the following instructions:

- (a) As soon as an application or information is received by him for making an open enquiry, it should be entered in the Enquiry Register and further developments recorded in it

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- from time to time. (For proforma of the Register see Appendix XX). The number of the file allotted to the enquiry should be cited in all references. A
- (b) The contents of the application or information should be scrutinized carefully and various allegations contained therein be noted seriatum. B
- (c) A plan of action should be prepared, indicating therein –
The Director's file number and the date of receipt,
Serial number of the allegation,
Allegations in brief, C
Name of witnesses to be examined or likely to be examined,
Papers or documents to be collected and
Probable date of completion of the enquiry.
- (d) The plan of action prepared by the Enquiry Officer as above, should be submitted within seven days of the receipt of the enquiry to the Director. D
- (e) The statement of the applicant should be recorded nothing therein all the circumstances within his knowledge with regard to the allegations. E
- (f) The statements of all the witnesses whose names might transpire during the examination of the applicant and also of other witnesses, if any, should be recorded.
- (g) All available documentary evidence in support of the allegation should be collected. F
- (h) The statement of the person against whom the allegations have been made should be recorded, giving him an opportunity to explain each allegation against him. The application should not be shown to him in any circumstances. The name of the applicant should not be disclosed, if the applicant so expressly desires. G
- (i) The statements of all persons cited in defence should be recorded and the relevant documentary evidence collected.

- A (j) After recording the evidence of both the sides and collecting the necessary documents, the entire record should be examined to formulate a definite opinion on each of the allegations.
- B (k) The papers of enquiry, with the final report, should be submitted to the Director.
- (l) A copy of a 'Roznama' containing details showing the day-to-day progress of the enquiry should be maintained as from the date of the receipt of the application and attached to the papers of enquiry and the final report.

C 10.1 After completing the enquiry, a final report along with the papers of the enquiry is required to be sent to the Director General, ACB. Even, while submitting the final report and the papers of the enquiry, which are the points to be considered and/or borne in mind are stated in para 16 of the Manual. Only thereafter and if it is found that a cognizable offence is made out and there is substance in the allegations, an FIR would be lodged and further investigation will be carried out after following the procedure as per the Code of Criminal Procedure. Therefore, a fool proof safeguard and procedure is provided before lodging an FIR/complaint before the Court against the public servant, who is facing the allegations of corrupt practice. However, as observed

E hereinabove, such an enquiry would be conducted to ascertain whether a cognizable offence is disclosed or not. As observed hereinabove, even at the stage of registering the first information report, the police officer is not required to be satisfied or convinced that a cognizable offence has been committed. It is enough if the information discloses the commission

F of a cognizable offence as the information only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. Therefore, as such, holding such an enquiry, may be discrete/open enquiry, at pre-registration of FIR stage in the case of allegation of corrupt practice of accumulating assets disproportionate to his known sources of income, cannot be said

G to be *per se* illegal.

H 11. However, the next question posed for the consideration of this Court is, whether to what extent such an enquiry is permissible and what would be the scope and ambit of such an enquiry. By the impugned notice, impugned before the High Court, and during the course of the

‘open enquiry’, the appellant has been called upon to give his statement and he has been called upon to carry along with the information on the points, which are referred to hereinabove for the purpose of recording his statement. The information sought on the aforesaid points is having a direct connection with the allegations made against the appellant, namely, accumulating assets disproportionate to his known sources of income. However, such a notice, while conducting the ‘open enquiry’, shall be restricted to facilitate the appellant to clarify regarding his assets and known sources of income. The same cannot be said to be a fishing or roving enquiry. Such a statement cannot be said to be a statement under Section 160 and/or the statement to be recorded during the course of investigation as per the Code of Criminal Procedure. Such a statement even cannot be used against the appellant during the course of trial. Statement of the appellant and the information so received during the course of discrete enquiry shall be only for the purpose to satisfy and find out whether an offence under Section 13(1)(e) of the PC Act, 1988 is disclosed. Such a statement cannot be said to be confessional in character, and as and when and/or if such a statement is considered to be confessional, in that case only, it can be said to be a statement which is self-incriminatory, which can be said to be impermissible in law.

12. At this stage, it is required to be noted that in the present case as such the appellant has produced the relevant documents of some of the properties owned by him and the appellant has joined the ‘open enquiry’. It also appears from the counter filed on behalf of the Anti-corruption Bureau that on the basis of the information given by the appellant, letters have been issued to various authorities/banks, seeking further and better particulars. Partial statement of the appellant has already been recorded. However, as observed hereinabove, such a statement/enquiry would be restricted only to ascertain whether a cognizable offence is disclosed or not. Such a statement cannot be said to be a confessional statement. After having been satisfied and after conclusion of the enquiry and on the basis of the material collected, if it is found that there is substance in the allegations against the appellant and it discloses a cognizable offence, FIR will be lodged and the investigating agency has to collect the evidence/further evidence to substantiate the allegations/charge of accumulating the assets disproportionate to his known sources of income. However, if during the enquiry at pre-registration of FIR stage, if the appellant satisfies on production of the materials produced relating to his known sources of

- A income and the assets, in that case, no FIR will be lodged and if he is not able to clarify his assets, vis-à-vis, known sources of income, then the FIR will be lodged and he will be subjected to trial. Therefore, as such, such an enquiry would be to safeguard his interest also which may avoid further harassment to him.
- B 13. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court and we dismiss the appeal with the above observations and clarifications that the statement of the appellant on the points mentioned in the impugned notice would be only to satisfy whether a cognizable offence is disclosed or not and so as to enable the appellant
- C to clarify the allegations made against him with respect to accumulation of assets disproportionate to his known sources of income and the same shall not be treated as a confessional statement.

14. Appeal is accordingly dismissed with the above clarifications/ observations.

Devika Gujral

Appeal dismissed.