Central Bureau Of Investigation (Cbi) vs Thommandru Hannah Vijayalakshmi @ T.H. ... on 8 October, 2021

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Bench: B V Nagarathna, Vikram Nath, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1045 of 2021
(Arising out of SLP (Crl) No. 1597 of 2021)

Central Bureau of Investigation (CB) and Anr. .... Appellants

Versus

Thommandru Hannah Vijayalakshmi .... Respondents

@ T. H. Vijayalakshmi and Anr.

JUDGMENT Dr Dhananjaya Y Chandrachud, J This judgment has been divided into sections to facilitate analysis. They are:

A The Appeal

B Factual and procedural history

C Counsel's submissions

D Whether a Preliminary Inquiry is mandatory before registering an FIR D.1 Precedents of this Court D.2 CBI Manual D.3 Analysis E Whether the FIR should be quashed E.1 Scope of review before the High Court E.2 Whether the FIR is liable to be quashed in the present case F Conclusion PART A A The Appeal 1 The appeal arises from a judgment dated 11 February 2020 of a Single Judge of the High Court for the State of Telangana, by which: (i) a writ petition 1 filed by the respondents

under Article 226 of the Constitution of India was allowed; and (ii) the First Information Report 2 dated 20 September 2017 registered against the respondents was set aside, together with proceedings taken up pursuant to the FIR. 2 The first respondent is a Commissioner of Income Tax while the second respondent is her spouse. The second respondent is a Member of the Legislative Assembly 3 and is a Minister in the State government of Andhra Pradesh. The FIR4 dated 20 September 2017 has been registered against the first respondent for being in possession (allegedly) of assets disproportionate to her known sources of income. The second respondent is alleged to have abetted the offence. The FIR has thus been registered for offences punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act 1988 5 and Section 109 of the Indian Penal Code 1860 6. The allegation is of possession of Disproportionate Assets to the tune of Rs 1,10,81,692, which was 22.86 per cent of the income earned during the check period between 1 April 2010 to 29 February 2016. 3 While quashing the FIR, the High Court held that: (i) the information about the respondents' income can be ascertained from their 'known sources of income' under Writ Petition No 8552 of 2018 "FIR" "MLA" FIR No RC MAl 2017 A 0021 "PC Act" "IPC" PART B Section 13(1)(e) of the PC Act, such as their Income Tax Returns, information submitted to their department under the Central Civil Services (Conduct) Rules 1964 7 and affidavit filed under the Representation of the People Act 1951 8 and the Rules under it; (ii) to counter the veracity of the information from these sources, the appellant, Central Bureau of Investigation 9, should have conducted a Preliminary Enquiry under the Central Bureau of Investigation (Crime) Manual 200510 before registration of the FIR; and (iii) on the basis of the information ascertained from these 'known sources of income', the allegations against the respondents in the FIR prima facie seem unsustainable. This view of the High Court has been called into question in these proceedings.

B Factual and procedural history

4 Since 1992, the first respondent is a Civil Servant of the Indian Revenue

Services 11, and was working as Commissioner of Income Tax (Audit -II), Tamil Nadu & Pondicherry when the FIR was registered against her. She is presently working as Commissioner of Income Tax (Audit) at Hyderabad. The second respondent is the spouse of the first respondent, and was also a Civil Servant working in the Indian Railway Accounts Services till 2009. At the time of the registration of the FIR, he was and continues to be, at present, an MLA of the State of Andhra Pradesh and "CCS Rules" "RP Act" "CBI" "CBI Manual" "IRS" PART B holds the post of the Minister of Education for the State of Andhra Pradesh. He was also a Member of the Committees on Assurances, SC&ST Welfare and Public Accounts.

5 The FIR was registered against the respondents by CBI's Anti-Corruption Branch 12 in Chennai on 20 September 2017. The FIR noted that the "check period" was between 1 April 2010 and 29 February 2016. The FIR records that it was registered on the basis of "source information" received by the CBI ACB Chennai on the same date, at about 4 pm. There are four tabulated statements in the FIR. Statement A provides that the respondents' assets at the beginning of the check period (1 April 2010) were in the amount of Rs 1,35,26,066 while Statement-B indicates that their assets at the end of the check period (29 February 2016) were Rs 6,90,51,066. Hence, their assets earned during the

check period (i.e., between 1 April 2010 to 29 February 2016) were alleged to be to the tune of Rs 5,55,25,000. According to Statement-C, the respondents' income during the check period was Rs 4,84,76,630 while according to Statement-D their expenditure during the check period was Rs 40,33,322. Hence, the respondents are alleged to have acquired assets/pecuniary advantage to the extent of Rs 5,95,58,322 (adding the Assets, Rs 5,55,25,000 and Expenditure, Rs 40,33,322) against an Income of Rs 4,84,76,630 earned during the check period. Therefore, their Disproportionate Assets 13 during the check period were computed at Rs 1,10,81,692, which is 22.86 per cent of the total income earned by them. The computation reflected in the FIR is as follows:

> "ACB" Calculated by adding the Assets and Expenditure during the check period, and subtracting the Income from it.
>
> PART B "Calculation of Disproportionate Assets:-

Sl. No.	Particulars of Assets	Amount (Rs.)
A.	Assets at the beginning of the check period	13,526,066
B.	Assets at the end of the check period	69,051,066
C.	Assets during the check period (B-A)	55,525,000
D.	Income during the check period	48,476,630
E.	Expenditure during the check period	4,033,322
F.	Assets + Expenditure – Income (DA)	11,081,692
	DA percentage	22.86%

"

> On the basis of the FIR dated 20 September 2017, the CBI ACB Chennai registered a case 14 against the respondents for offences punishable under Sections 13(2) read with 13(1)(e) of the PC Act and Section 109 of the IPC.

6 On 5 March 2018, the respondents filed a writ petition before the Telangana High Court under Article 226 of the Constitution seeking quashing of the FIR. In their writ petition, the respondents averred that: (i) the FIR is politically motivated since the second respondent belongs to a rival political party; (ii) the appellant did not conduct a Preliminary Enquiry before registering the FIR; and (iii) the particulars in the FIR did not constitute an offence and would not, as they stand, result in the respondents' conviction. Further, the petition pointed out inconsistencies in the FIR where certain assets had been allegedly over-valued while income had been under- valued, without any explanation. Hence, the petition before the High Court urged that the FIR was liable to be quashed. To support their contentions, the respondents annexed their Income Tax Returns, immovable property declarations for the period Case RC 21(A)12017 PART B between 2010 to 2017 made by the first respondent under the CCS Rules, affidavit filed by the second respondent under the RP Act and Rules thereunder in 2014 and letters under the CCS Rules explaining the cost/value of construction of their house. 7 In response, the appellant filed a counter-affidavit before the Telangana High Court where it was stated, inter alia, that: (i) the writ petition was filed belatedly, two years after the

registration of the FIR; (ii) in any case, the writ petition should have been filed before the Madras High Court since the Court of the Principal Special Judge for CBI Cases, (VIIIth Additional City Civil Court), Chennai had jurisdiction over the case and the respondents were aware of this, and the FIR had also been registered by the CBI ACB at Chennai; (iii) the FIR had been registered on the basis of source information, and the case was still under investigation; (iv) the respondents would be provided a chance to explain their case during the investigation, and there was no requirement to conduct Preliminary Enquiry before the registration of the FIR; and (v) the respondents' income and assets cannot be conclusively ascertained from the documents annexed by them, since their veracity has to be determined during the investigation. Hence, the appellants urged that the FIR could not be quashed.

8 As noted earlier in this judgment, the Telangana High Court allowed the respondents' writ petition by its impugned judgement dated 11 February 2020 and quashed the FIR, and set aside all proceedings initiated pursuant to it. The appellant CBI has now moved this Court for challenging the decision of the High Court.

P

C Counsel's submissions

9 Assailing the judgment of the Telangana High Court, Ms Aishwarya Bhati, Additional Solicitor General 15 appearing on behalf of the CBI has urged the following submissions:

> (i) The Telangana High Court did not have the jurisdiction to entertain the writ petition filed by the respondents since:
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> a. The FIR had been registered by the CBI ACB at Chennai; and b. It had been submitted to the Principal Special Judge for CBI Cases, (VIIIth Additional City Civil Court), Chennai. Hence, only the Madras High Court had jurisdiction to entertain the writ petition;
>
> (ii) The CBI Manual does not make it mandatory to conduct a Preliminary Enquiry before the registration of the FIR and its provisions are directory;
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> (iii) A Preliminary Enquiry is only conducted when the information received is not sufficient to register a Regular Case. However, when the information available is adequate to register a Regular Case since it discloses the commission of a cognizable offence, no Preliminary Enquiry is necessary.

This will depend on the facts and circumstances of each case, and the Preliminary Enquiry cannot be made mandatory for all cases of alleged corruption. This proposition finds support in the judgments of this Court in "ASG" PART C Lalita Kumari v. Govt. of UP and others 16 ("Lalita Kumari") and The State of Telangana v. Managipet 17 ("Managipet");

(iv) The FIR was registered on the basis of reliable source information collected during the investigation of another case18 in which the first respondent was one of the accused. During the investigation of that case, CBI conducted searches at four places belonging to the first respondent during which documents were seized and she was also examined. On the basis of such information and documents, the FIR was registered in the present case. Hence, there was no need for a Preliminary Enquiry;

(v) There is also no need to conduct a Preliminary Enquiry since the respondents will be provided with an opportunity to explain each and every acquisition of their assets, and their income and expenditure during the check period, during the investigation. Hence, it was not necessary to provide this opportunity before the registration of an FIR (through a Preliminary Enquiry) since there would have been a risk of tampering with or destruction of evidence by the accused persons;

(vi) The Investigating Officer has no duty to call for any explanation from the accused in relation to their assets before registering an FIR against them since doing so would further lengthen the proceeding. In any case, such an opportunity is available to the accused persons at the stage of trial. This principle emerges from the judgments of this Court in K. Veeraswami (2014) 2 SCC 1, paras 31-35, 37-39, 83-86, 89-92, 93-96, 101-105, 106-107, 111-112, 114-119 and 120 (2019) 19 SCC 87, paras 33-34 RC MA1 2016A 0019-CBl/ACB/Chennai PART C v. Union of India19 ("K. Veeraswami"), Union of India and another v. W.N. Chadha 20, State of Maharashtra v. lshwar Piraji Kalpatri 21, Narendar G. Goel v. State of Maharashtra 22 and Samaj Parivarthan Samudhaya v. State of Karnataka23;

(vii) The FIR has been registered against the second respondent under Section 109 of the IPC as an abettor, being in a fiduciary relationship with the first respondent as her spouse. As such, no consent of the Speaker was required before the registration of the FIR against the second respondent. A general consent has been accorded to the CBI by the State of Tamil Nadu 24 under Section 6 of the Delhi Special Police Establishment Act 1946 25 for the offences under the PC Act, which have been notified under Section 3 of the DSPE Act. The first respondent is an officer of the Union Government, serving in the IRS;

(viii) While hearing a petition seeking the quashing of an FIR, the High Court has to consider the contents of the FIR and whether the allegations made in it prima facie constitute an offence. This is a settled principle, reiterated recently by this court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others 26 ("Neeharika Infrastructure"). In the present case, the High Court has gone beyond the scope of its powers and (1991) 3 SCC 655, para 75 (1993) Supp (4) SCC 260, paras 90-98 (1996) 1 SCC 542, paras 16-17 (2009) 6 SCC 65, paras 11-16 (2012) 7 SCC 407, paras 49-50 and 60 Notification dated 2 July 1992 "DSPE Act" 2021 SCC OnLine SC 315, paras 36-37, 46, 50-51, 57 and 80 (xii-xviii) PART C conducted a mini-trial while considering the evidence put forward by

the respondents, in order to quash the FIR;

(ix) The High Court has erred in relying upon the Income Tax Returns and other documents filed by the respondents while quashing the FIR, since their veracity as "lawful sources of income" will have to be determined during the investigation, which has been ongoing for more than two years. The decision of this Court in State of Karnataka v. J. Jayalalitha 27 ("J. Jayalalitha") reiterates this principle;

(x) The High Court has solely relied on the documents filed by the respondents while calculating their income, expenditure and value of assets to hold that they did not possess any Disproportionate Assets. However, no explanation has been provided about why the calculations done by the CBI resulting in the filing of the FIR and during its subsequent investigation should be overlooked in favor of the respondents' documents; and

(xi) Pursuant to the stay granted by this Court of the impugned judgment of the High Court, while issuing notice in the present proceedings, the investigation has resumed and is nearly complete. Nearly 140 witnesses have been examined, and 7500 documents have been obtained, and it has been stated that the investigation would be completed within a period of two to three months.

(2017) 6 SCC 263 PART C 10 Mr Siddharth Luthra and Mr Siddharth Dave, Senior Counsel appearing on behalf of the respondents opposed the submissions and urged that:

(i) The Telangana High Court had jurisdiction to entertain the writ petition since:

a. No assets of the respondents are located in the State of Tamil Nadu, while many of the properties are located in the State of Andhra Pradesh. The jurisdiction of the High Court under Article 226 of the Constitution should be exercised liberally while quashing an FIR in order to prevent the abuse of process of law. This finds support in the judgments of this Court in Shanti Devi Alia Shanti Mishra v. Union of India28, Navinchandra N. Majithia v. State of Maharashtra 29, Pepsi Foods Ltd. v. Special Judicial Magistrate 30 and Kapil Agarwal v. Sanjay Sharma 31; and b. In any case, CBI admitted to the jurisdiction of the Telangana High Court when it did not challenge its initial order dated 24 September 2019 admitting the respondents' writ petition;

(ii) In view of the decision of this court in Vineet Narain v. Union of India 32 ("Vineet Narain"), the provisions of the CBI Manual must be followed strictly by the CBI. This has been reiterated in Shashikant v. CBI 33 (2020) 10 SCC 766, para 33 (2000) 7 SCC 640, paras 16-18 and 22 (1998) 5 SCC 749, para 29 (2021) 5 SCC 524, paras 18-18.2 (1998) 1 SCC 226, para 58(12) (2007) 1 SCC 630, paras 9, 11, 19 and 25 PART C ("Shashikant"), CBI v. Ashok Kumar Aggarwal 34 ("Ashok Kumar Aggarwal") and State of Jharkhand v. Lalu Prasad Yadav35;

(iii) According to para 9.1 of the CBI Manual, a Preliminary Enquiry must be conducted before an FIR is registered in order to collect sufficient material which prima facie establishes the commission of an offence. This is emphasized in the judgments of this Court in Shashikant (supra) and Nirmal Singh Kahlon v. State of Punjab 36 ("Nirmal Singh Kahlon");

(iv) A Preliminary Enquiry before the registration of an FIR is a necessary requirement in cases of alleged corruption involving public servants, including those of Disproportionate Assets, since undue haste would lead to registration of frivolous and untenable complaints which could affect the careers of these officials. The judgments of this Court in Yashwant Sinha v. CBI 37 ("Yashwant Sinha"), Charansingh v. State of Maharashtra 38 ("Charansingh"), P. Sirajuddin v. State of Madras 39 ("P. Sirajuddin"), Nirmal Singh Kahlon (supra) 40 and Lalita Kumari (supra) 41 support this formulation;

(v) The FIR states that it was filed on the basis of source information received by the CBI ACB Chennai at 4 pm on 20 September 2017, following which the FIR was registered and sent to the Court of the Principal Special (2014) 14 SCC 295, paras 22-24 (2017) 8 SCC 1, paras 67-69 (2009) 1 SCC 441 (2020) 2 SCC 338, paras 114-115 and 117 (2021) 5 SCC 469, paras 10-15 (1970) 1 SCC 595, para 17 (2009) 1 SCC 441, para 30 Paras 89, 92, 117, 120.5 and 120.6(d) PART C Judge for CBI Cases, (VIIIth Additional City Civil Court), Chennai at 5 pm and was received there by 6.25 pm. Hence, it is evident that no verification or Preliminary Enquiry was conducted before registering the FIR;

(vi) The failure of CBI to conduct a Preliminary Enquiry has adversely affected the right of defence of the respondents since their right to explain their income/expenditure/assets has been taken away and an FIR has been directly registered against them;

(vii) In accordance with the CBI Manual, only the Director of CBI and not any of its designated officers, has the power to register a case in terms of Annexure 6A to the CBI Manual or pass an order for a Preliminary Enquiry. Under para 14.39 of the CBI Manual, an investigation in a Disproportionate Assets case has to be completed within 18 months, while it has been ongoing for more than two years in the present case;

(viii) In regard to the second respondent, CBI has no authority to investigate a complaint since:

a. While the second respondent may be a public servant under the PC Act, the consent for his prosecution can only be provided by the Speaker and not the Central Government. Support for this proposition arises from the judgments of this Court in P.V. Narasimha Rao v.

State (CBI/SPE) 42 and State of Kerala v. K. Ajith and others 43;

(1998) 4 SCC 626, paras 98-99 Criminal Appeal No 698 of 2021, paras 24, 33, 36-39 and 61-64 PART C b. Even according to the decision of this Court in State of West Bengal v.

Committee for Protection of Democratic Rights 44, the CBI can exercise powers and jurisdiction under the PC Act against an MLA or an MP only on a direction of this Court/High Court or on an order from the Speaker;

c. The CBI has no authority since under the DSPE Act:

i. No notification has been issued by the Central Government specifying the offences against an MLA to be investigated by the CBI (Section 3 of the DSPE Act);

ii. No order has been passed by the Central Government extending the powers and jurisdiction of CBI in the State of Telangana in respect of the offences specified under Section 3 (Section 5 of the DSPE Act);

iii. Consent of the State Government has not been obtained for the exercise of powers by the CBI in the State of Telangana (Section 6 of the DSPE Act); and iv. In support of this, reliance is placed upon judgments of this Court in Mayawati v. Union of India 45, M. Balakrishna Reddy v. CBI 46, Central Bureau of Investigation v. State of Rajasthan 47 and Kazi Lhendup Dorji v. CBI 48;

(2010) 3 SCC 571, para 68 (2012) 8 SCC 106, paras 29-30 (2008) 4 SCC 409, para 19 (1996) 9 SCC 735, para 26 1994 Supp (2) SCC 116, para 13 PART C

(ix) The FIR also deserves to be quashed since:

a. It does not differentiate in relation to the separate role of the two respondents and clubs the charges against them, which vitiates their independent right of defense. Further, the FIR has been filed against the second respondent in Chennai even though he has never held any public office there and no cause of action arises there; and b. The complaint is completely false since the respondents do not have any Disproportionate Assets in the check period but rather have an excess of income. To support this, the following chart has been filed along with the counter-affidavit of the first respondent:

SL	Description	Amount as per FIR (in Rs.)	Actual Amount (in Rs.)	Revised DA (in Rs.)
	A1/A2 Disproportionate Assets Check Period	1,10,81,692	-	-

	01.04.2010 – 29.02.2016				
1.	STATEMENT B SL.NO. 6&7 CBI has valued the Construction cost of Sl.6-7 property of STM-B as Rs.5,15,50,000/- [RS. 2,59,50,000 + RS. 2,56,00,000]. Even as per the STM B SL6-7, the value is taken from the report dated 11.03.2016 submitted by A1 to her department vide letter dated 14.03.2016. The total value of construction as per the said report is Rs.4,14,21,800/-	5,15,50,000	4,29,71,800	1,10,81,692 - 85,78,200 =25,03,492	

PART C

[Rs.4,14,21,800 + Rs.15,50,000 = Rs.4,29,71,800]

[Rs.5,15,50,000 - Rs.4,29,71,800 = Rs.85,78,200]

2.	STM. B SL-26 Double Entry of Rs.8,00,000/- in re Bangalore property, sold during the check period (admitted by CBI) is wrongly shown as assets at the end of check period i.e., in Stm C Sl-9.	8,00,000	- 8,00,000	25,03,492 - 8,00,000 =17,03,492	
3.	STM. B SL-31 Double Entry in re. for purchase and erection of one Oscan escalator at Jubilee Prop. Already part of overall valuation/ construction cost for Stm-B Sl. 6 &7)	10,00,000	- 10,00,000	17,03,492 - 10,00,000 =7,03,492	

4.	STM. C SL-9 Arbitrary Deduction in re Bangalore property (see Sr No. 26 of STM. B) was admittedly sold for a sale consideration of 1 cr, but only Rs.72.5 Lks is shown as sale price in STM. C. [Rs. 1,00,00,000 – Rs.72,50,000 = Rs.27,50,000] Thus, Asset is not disproportionate to income by:	72,50,000	1,00,00,000	7,03,492 - 27,50,000 = -20,46,508 - 20,46,508	

(x) The High Court has not solely relied upon the documents produced by the respondents, while ignoring the material elicited by the CBI through its investigation. The documents produced by the respondent (Income Tax Returns, et al) are lawful sources to determine the source of one's income, PART C and can be relied upon while determining whether a 'public servant' under Section 13(1)(e) of the PC Act has accumulated Disproportionate Assets in comparison to their lawful income. Hence, the High Court could have legitimately assessed the case of Disproportionate Assets against the respondents by relying on such documents. In support of this proposition, reliance is placed upon judgments of this Court in Harshendra Kumar D. v. Rebatilata Koley 49, Suresh Kumar Goyal v. State of U.P. 50, Pooja Ravinder Devidasani v. State of Maharashtra 51, Kedari Lal v. State of M.P. 52 ("Kedari Lal") and State of M.P. v. Mohanlal Soni 53; and

(xi) The FIR deserved to be quashed in terms of the guidelines enunciated in paragraph 102 (1, 3, 5, 6 and 7) of this Court's judgment in State of Haryana & others v. Bhajan Lal54 ("Bhajan Lal").

11 The rival submissions now fall for our consideration. Based on the submissions, this Court is called upon to decide two questions: (i) whether the CBI is mandatorily required to conduct a Preliminary Enquiry before the registration of an FIR in every case involving claims of alleged corruption against public servants; and

(ii) independent of the first question, whether the judgment of the High Court to quash the FIR can be sustained in the present case.

(2011) 3 SCC 351, paras 25-26 (2019) 14 SCC 318, para 12 (2014) 16 SCC 1, paras 15, 17, 23, 27-28 and 30 (2015) 14 SCC 505, paras 10, 12 and 15-16 (2000) 6 SCC 338, paras 4, 6 and 11 (1992) Sup 1

SCC 335 PART D D Whether a Preliminary Inquiry is mandatory before registering an FIR D.1 Precedents of this Court 12 Before proceeding with our analysis of the issue, it is important to understand what previous judgements of this Court have stated on the issue of whether CBI is required to conduct a Preliminary Enquiry before the registration of an FIR, especially in cases of alleged corruption against public servants. 13 The first of these is a judgment of a two Judge Bench in P Sirajuddin (supra), in which it was observed that before a public servant is charged with acts of dishonesty amounting to serious misdemeanor, some suitable preliminary enquiry must be conducted in order to obviate incalculable harm to the reputation of that person. Justice G K Mitter held that:

> "17...Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case 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, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general..." (emphasis supplied)

14 The above decision was followed by another two Judge Bench in Nirmal Singh Kahlon (supra), where it was observed that in accordance with the CBI PART D Manual, the CBI may only be held to have established a prima facie case upon the completion of a Preliminary Enquiry. Justice S B Sinha held thus:

> "30. Lodging of a first information report by CBI is governed by a manual. It may hold a preliminary inquiry; it has been given the said power in Chapter VI of the CBI Manual. A prima facie case may be held to have been established only on completion of a preliminary enquiry."

15 The most authoritative pronouncement of law emerges from the decision of a Constitution Bench in Lalita Kumari (supra). The issue before the Court was whether "a police officer is bound to register a first information report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure 1973...or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same". Answering this question on behalf of the Bench, Chief Justice P Sathasivam held that under Section 154 of the Code of Criminal Procedure 1973 55, a police officer need not conduct a preliminary enquiry and must register an FIR when the information received discloses the commission of a cognizable offence. Specifically with reference to the provisions of the CBI Manual, the decision noted:

> "89. Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of CBI. However, this Crime Manual is not a statute and has not been enacted by the

legislature. It is a set of administrative orders issued for internal guidance of the "CrPC" PART D CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that CBI is constituted under a special Act namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act." (emphasis supplied) However, the Court was also cognizant of the possible misuse of the powers under criminal law resulting in the registration of frivolous FIRs. Hence, it formulated "exceptions" to the general rule that an FIR must be registered immediately upon the receipt of information disclosing the commission of a cognizable offence. The Constitution Bench held:

"115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time... [...]

117. In the context of offences relating to corruption, this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.

[...]

119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, PART D then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR." (emphasis supplied) The judgment provides the following conclusions:

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

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.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. [...] 120.5. 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:

> PART D [...]
>
> (d) Corruption cases [...] The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry." (emphasis supplied) The Constitution Bench thus held that a Preliminary Enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a Preliminary Enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a Preliminary Enquiry will depend on the facts and circumstances of each case. As an illustration, "corruption cases" fall in that category of cases where a Preliminary Enquiry "may be made". The use of the expression "may be made" goes to emphasize that holding a preliminary enquiry is not mandatory. Dwelling on the CBI Manual, the Constitution Bench held that: (i) it is not a statute enacted by the legislature; and (ii) it is a compendium of administrative orders for the internal guidance of the CBI.

16 The judgment in Lalita Kumari (supra) was analyzed by a three Judge Bench of this Court in Yashwant Sinha (supra) where the Court refused to grant the relief of registration of an FIR based on information submitted by the appellant-informant. In his concurring opinion, Justice K M Joseph described that a barrier to granting the relief of registration of an FIR against a public figure would be the observations of PART D this Court in Lalita Kumari (supra) noting that a Preliminary Enquiry may be desirable before doing so. Justice Joseph observed:

> "108. Para 120.6 [of Lalita Kumari] deals with the type of cases in which preliminary inquiry may be made. Corruption cases are one of the categories of cases where a preliminary inquiry may be conducted... [...]
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> 110. In para 117 of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court referred to the decision in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and took the view that in the context of offences related to corruption in the said decision, the Court has expressed a need for a preliminary inquiry before proceeding against

public servants.

[...]

112. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , one of the contentions which was pressed before the Court was that in certain situations, preliminary inquiry is necessary. In this regard, attention of the Court was drawn to CBI Crime Manual... [...]

114. The Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , had before it, the CBI Crime Manual. It also considered the decision of this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] which declared the necessity for preliminary inquiry in offences relating to corruption. Therefore, the petitioners may not be justified in approaching this Court seeking the relief of registration of an FIR and investigation on the same as such. This is for the reason that one of the exceptions where immediate registration of FIR may not be resorted to, would be a case pointing fingers at a public figure and raising the allegation of corruption. This Court also has permitted preliminary inquiry when there is delay, laches in initiating criminal prosecution, for example, over three PART D months. A preliminary inquiry, it is to be noticed in para 120.7, is to be completed within seven days." (emphasis supplied) 17 The decision of a two Judge Bench in Managipet (supra) thereafter has noted that while the decision in Lalita Kumari (supra) held that a Preliminary Enquiry was desirable in cases of alleged corruption, that does not vest a right in the accused to demand a Preliminary Enquiry. Whether a Preliminary Enquiry is required or not will depends on the facts and circumstances of each case, and it cannot be said to be mandatory requirement without which a case cannot be registered against the accused in corruption cases. Justice Hemant Gupta held thus:

> "28. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused.

Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that prima facie, the allegations levelled against the accused in the complaint are credible...

29. The Court concluded that the registration of an 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...

30. It must be pointed out that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry may be conducted pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. The judgment of this Court in Lalita Kumari [Lalita Kumari v. PART D State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] does not state that proceedings cannot be initiated against an accused without conducting a preliminary

inquiry.

[...] 32...The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 :

(2014) 1 SCC (Cri) 524] .

33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fides 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.

34. Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari [Lalita Kumari v. State of U.P., PART D (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient." (emphasis supplied) 18 In Charansingh (supra), the two Judge bench was confronted with a challenge to a decision to hold a Preliminary Enquiry. The court adverted to the ACB Manual in Maharashtra and held that a statement provided by an individual in an "open inquiry" in the nature of a Preliminary Enquiry would not be confessional in nature and hence, the individual cannot refuse to appear in such an inquiry on that basis. Justice M R Shah, writing for the two Judge bench consisting also of one of us (Justice D Y Chandrachud) held:

> "11. 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 Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

11.1. 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 Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 :

> PART D (2014) 1 SCC (Cri) 524] 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.

[...]

14. In the context of offences relating to corruption, in para 117 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court also took note of the decision of this Court in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] in which case this Court expressed the need for a preliminary enquiry before proceeding against public servants.

[...] 15.1. 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 PART D 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.

15.2. Even as held by this Court in CBI v. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305] , 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 a 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 observations made by this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and considering the observations by this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] 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 has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage." (emphasis supplied) PART D 19 Hence, all these decisions do not mandate that a Preliminary Enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted. The decision in Managipet (supra) dealt specifically with a case of Disproportionate Assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a Preliminary Enquiry.

20 This conclusion is also supported by the judgment of another Constitution Bench in K. Veeraswami (supra). The judgment was in context of Section 5(1)(e) of the old Prevention of Corruption Act 1947, which is similar to Section 13(1)(e) of the PC Act. It was argued that: (i) a public servant must be afforded an opportunity to explain the alleged Disproportionate Assets before an Investigating Officer; (ii) this must then be included and explained by the Investigating Officer while filing the charge sheet; and (iii) the failure to do so would render the charge sheet invalid. Rejecting this submission, the Constitution Bench held that doing so would elevate the Investigating Officer to the role of an enquiry officer or a Judge and that their role was limited only to collect material in order to ascertain whether the alleged offence has been committed by the public servant. In his opinion for himself and Justice Venkatachaliah, Justice K Jagannatha Shetty held thus:

> "75...since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression "for which he cannot PART D satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued

that that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet." (emphasis supplied) Therefore, since an accused public servant does not have a right to be afforded a chance to explain the alleged Disproportionate Assets to the Investigating Officer before the filing of a charge sheet, a similar right cannot be granted to the accused before the filing of an FIR by making a Preliminary Enquiry mandatory.

PART D

21 Having revisited the precedents of this Court, it is now necessary to consider the provisions of the CBI Manual.

D.2 CBI Manual 22 In the judgment in Vineet Narain (supra), a three Judge Bench of this Court noted that the provisions of the CBI Manual must be followed by the officers of the CBI strictly, and disciplinary action should be taken against those who deviate from them. Chief Justice J S Verma noted:

"58. As a result of the aforesaid discussion, we hereby direct as under:

I. Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC) [...]

12. The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning.

It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned." 23 In the later judgment of a two judge Bench in Shashikant (supra), it was held that the CBI cannot be faulted for conducting a Preliminary Enquiry in accordance with the CBI Manual. Justice S B Sinha held:

> "9...It is also not disputed that the CBI Manual was made by the Central Government providing for detailed procedure as PART D regards the mode and manner in which complaints against public servants are to be dealt with.
>
> [...]
>
> 11. The CBI Manual provides for a preliminary inquiry. By reason thereof a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry in terms of para 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence.

[...]

19. When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein.

[...] 25...The procedure laid down in the CBI Manual and in particular when it was required to inquire into the allegation of the corruption on the part of some public servants, recourse to the provisions of the Manual cannot be said to be unfair..." (emphasis supplied) 24 In Ashok Kumar Aggarwal (supra), a two judge Bench observed that the provisions of the CBI Manual require strict compliance. Justice B S Chauhan held:

> "24...the CBI Manual, being based on statutory provisions of CrPC, provides for guidelines which require strict compliance. More so, in view of the fact that the ratio of the judgment of this Court in M.M. Rajendran [State of T.N. v. M.M. Rajendran, (1998) 9 SCC 268 : 1998 SCC (Cri) 1000] has been incorporated in the CBI Manual, the CBI Manual itself is the best authority to determine the issue at hand. The court has to read the relevant provisions of the CBI Manual alone and no judgment of this Court can be a better guiding factor under such a scenario." PART D

25 Hence, it is necessary to scrutinize the provisions of the CBI Manual. Chapter 8 of the CBI Manual is titled "Complaints and Source Information". Para 8.1 notes that the CBI must register every complaint it receives, whatever be its source, before it starts verifying it. Para 8.6(ii) provides that verification can be undertaken for "[c]omplaints containing specific and definite allegations involving corruption or serious misconduct against public servants etc., falling within the ambit of

CBI, which can be verified". Paras 8.8-8.9 describe the process of verification where the officers are to examine records informally and discreetly without making written requisitions, and that this process ordinarily should not take more than three months but can take up to four months for complicated cases. Para 8.24 indicates that the officer entrusted with verification must submit a detailed report at the end of the process with specific recommendations, including whether a Preliminary Enquiry is required or if a Regular Case should be registered directly. 26 The FIR in the present case has been registered on the basis of "Source Information". Both during the course of the hearing and in the affidavit filed by CBI, it has been explained that CBI found information and documents while investigating another case. Para 8.26 of the CBI Manual notes that every officer of the CBI can develop source information "regarding graft, misuse of official position, possession of disproportionate assets, fraud, embezzlement, serious economic offences, illegal trading in narcotics and psychotropic substances, counterfeiting of currency, smuggling of antiques, acts endangering wildlife and environment, cybercrimes, serious frauds of banking/financial institutions, smuggling of arms and ammunition, PART D forgery of passports, etc. and other matters falling within the purview of CBI and verify the same to ascertain whether any prima facie material is available to undertake an open probe". However, while doing so, they are to keep their superior officer 'well informed'. Further, para 8.27 describes the process once such "source information" is developed and submitted to the superior officer. It reads as follows:

> "8.27. The source information once developed must be submitted in writing giving all available details with specific acts of omissions and commissions and copies of documents collected discreetly. The internal vigilance enquiries or departmental enquiry reports should normally not be used as basis for submitting the source information. The SP concerned after satisfying himself that there is prima facie material meriting action by CBI and further verification is likely to result in registration of a regular case, would order verification if it falls within his competence. In the cases which are within the competence of higher officers, he will forward his detailed comments to the DIG and obtain orders from superior officer competent to order registration. The verification of SIRs must begin only after the competent authority has approved its registration. At this stage a regular SIR number will be assigned to the SIR which will also be entered in the source information sub-module of Crimes Module with all other details." The superior officer thus has to verify whether the developed "source information" prima facie would result in the registration of a case by the CBI; if yes, they then have to direct the verification of such information. Verification is governed by para 8.29, which speaks of a process similar to para 8.9. Para 8.32 provides that verification of "source information" shall be completed within three months and approval of the Competent Authority is required to carry out verification beyond that period. Similar to para 8.24, under para 8.33, the officer entrusted with verification PART D has to submit a report with specific recommendations on whether a Preliminary Enquiry is required or if a Regular Case should be registered directly.

27 If a Preliminary Enquiry is necessary, it is covered by Chapter 9 of the CBI Manual. Para 9.1 notes:

> "9.1 When, a complaint is received or information is available which may, after verification as enjoined in this Manual, indicate serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 Cr.P.C., a Preliminary Enquiry may be registered after obtaining approval of the Competent Authority...When the verification of a complaint and source information reveals commission of a prima facie cognizable offence, a Regular Case is to be registered as is enjoined by law. A PE may be converted into RC as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. When information available is adequate to indicate commission of cognizable offence or its discreet verification leads to similar conclusion, a Regular Case must be registered instead of a Preliminary Enquiry. It is, therefore, necessary that the SP must carefully analyze material available at the time of evaluating the verification report submitted by Verifying Officer so that registration of PE is not resorted to where a Regular Case can be registered..." (emphasis supplied) Hence, two distinct principles emerge from the above: (i) a Preliminary Enquiry is registered when information (received from a complaint or "source information") after verification indicates serious misconduct on part of a public servant but is not enough to justify the registration of a Regular Case; and (ii) when the information available or after its secret verification reveals the commission of a cognizable PART D offence, a Regular Case has to be registered instead of a Preliminary Enquiry being resorted to necessarily.

28 Paras 9.7-9.8 note that once it is decided that a Preliminary Enquiry is required, a "PE Registration Report" is required to be prepared. Para 9.10 specifies that in cases of corruption, the Preliminary Enquiry should be limited to a scrutiny of records and talking to the bare minimum persons. Para 9.11 notes that the records should be collected under a proper receipt memo (unlike the process of verification) and that the statements herein should be collected in the same manner as they would be at the investigation stage. However, it is clarified that notices under Sections 91 and 160 of the CrPC shall not be resorted to during a Preliminary Enquiry. Paras 9.12-9.14 then discuss the procedure for converting a Preliminary Enquiry into a Regular Case, which has to happen the moment sufficient material is available which discloses the commission of a cognizable offence which could result in result in prosecution. Finally, para 9.16 provides that a Preliminary Enquiry must be completed within three months.

D.3 Analysis 29 The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a Preliminary Enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in Lalita Kumari (supra) holds that if the information received discloses the commission of a cognizable offence at the outset, no Preliminary Enquiry would be required. It also PART D clarified that the scope of a Preliminary Enquiry is not to check the veracity of the information received, but only to scrutinize whether it discloses the commission of a cognizable offence. Similarly, para 9.1 of the CBI Manual notes that a Preliminary Enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a Preliminary Enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the

commission of a cognizable offence. A similar conclusion has been reached by a two Judge Bench in Managipet (supra) as well. Hence, the proposition that a Preliminary Enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in Lalita Kumari (supra) but would also tear apart the framework created by the CBI Manual. 30 This view is also supported by the decision of a three judge Bench of this Court in Union of India v. State of Maharashtra 56, which reversed the decision of a two Judge Bench in Subhash Kashinath Mahajan v. State of Maharashtra 57 which had, inter alia, held that "a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the [Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act 1989 58] and that the allegations are not frivolous or motivated". However, in the three Judge Bench decision, it was held that such a direction was impermissible since neither the CrPC nor the Atrocities Act mandate a preliminary inquiry. Justice Arun Mishra held:

> (2020) 4 SCC 761 (2018) 6 SCC 454 "Atrocities Act" PART D "68. The direction has also been issued that the DSP should conduct a preliminary inquiry to find out whether the allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognizable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible.

Moreover, it is ordered to be conducted by the person of the rank of DSP. The number of DSP as per stand of the Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered, in such a case how a final report has to be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-à-vis to the complaints lodged by members of upper caste, for latter no such preliminary investigation is necessary. In that view of the matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989." (emphasis supplied) 31 In a recent decision of a two Judge Bench in Vinod Dua v. Union of India and others 59, a direction of the Court was sought for requiring "that henceforth FIRs against persons belonging to the media with at least 10 years standing be not registered unless cleared by a committee…". In refusing such a prayer, the Court observed that doing so would be akin to instituting a preliminary inquiry which was 2021 SCC OnLine SC 414 PART D not mandated by the statutory framework. Justice U U Lalit, speaking for the Bench held:

> "101…the directions issued in Dr. Subhash Kashinath Mahajan regarding holding of a preliminary inquiry were not found consistent with the statutory framework. The second prayer made in the Writ Petition is asking for the constitution of the Committee completely outside the scope of the statutory framework. Similar such

> exercise of directing constitution of a Committee was found inconsistent with the statutory framework in the decisions discussed above...Any relief granted in terms of second prayer would certainly, in our view, amount to encroachment upon the field reserved for the legislature. We have, therefore, no hesitation in rejecting the prayer and dismissing the Writ Petition to that extent."

32 In view of the above discussion, we hold that since the institution of a Preliminary Enquiry in cases of corruption is not made mandatory before the registration of an FIR under the CrPC, PC Act or even the CBI Manual, for this Court to issue a direction to that affect will be tantamount to stepping into the legislative domain. Hence, we hold that in case the information received by the CBI, through a complaint or a "source information" under Chapter 8, discloses the commission of a cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence.

33 The above formulation does not take away from the value of conducting a Preliminary Enquiry in an appropriate case. This has been acknowledged by the decisions of this Court in P Sirajuddin (supra), Lalita Kumari (supra) and Charansingh (supra). Even in Vinod Dua (supra), this Court noted that "[a]s a PART E matter of fact, the accepted norm - be it in the form of CBI Manual or like instruments is to insist on a preliminary inquiry". The registration of a Regular Case can have disastrous consequences for the career of an officer, if the allegations ultimately turn out to be false. In a Preliminary Enquiry, the CBI is allowed access to documentary records and speak to persons just as they would in an investigation, which entails that information gathered can be used at the investigation stage as well. Hence, conducting a Preliminary Enquiry would not take away from the ultimate goal of prosecuting accused persons in a timely manner. However, we once again clarify that if the CBI chooses not to hold a Preliminary Enquiry, the accused cannot demand it as a matter of right. As clarified by this Court in Managipet (supra), the purpose of Lalita Kumari (supra) noting that a Preliminary Enquiry is valuable in corruption cases was not to vest a right in the accused but to ensure that there is no abuse of the process of law in order to target public servants.

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E     Whether the FIR should be quashed


E.1   Scope of review before the High Court


34    Having answered the first question in the negative, that leaves the court with
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the second question of whether the FIR should be quashed in the present case. In order to answer this, we must first consider the scope of the review that a High Court exercises while entertaining a petition for quashing of an FIR under Article 226 of the Constitution or Section 482 of the CrPC.

PART E 35 The well settled test is whether, as they stand, the allegations contained in the FIR make out an offence. The locus classicus on this issue is the judgment of a two Judge Bench of this Court in Bhajan Lal (supra), where the Court provided an illustrative set of situations where the High

Court may exercise its jurisdiction under Article 226 of the Constitution or Section 482 of the CrPC. Delivering the judgment, Justice S Ratnavel Pandian held:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable PART E offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) 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."

36 In a more recent decision of a three Judge Bench of this Court in Neeharika Infrastructure (supra), Justice M R Shah, speaking for the Bench consisting also of one of us (Justice D Y Chandrachud), enunciated the following principles in relation to the Court exercising its jurisdiction under Article 226 of the Constitution or Section 482 of the CrPC:

> "80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under PART E Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:
>
> i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
>
> ii) Courts would not thwart any investigation into the cognizable offences;
>
> iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
>
> iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
>
> v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
>
> vi) Criminal proceedings ought not to be scuttled at the initial stage;
>
> vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
>
> viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
>
> ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

PART E

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. PART E Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed

and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied." (emphasis supplied) 37 We must now assess whether the Single Judge of the Telangana High Court has, while quashing the FIR, decided within the parameters of the law described above. The High Court has taken note of the following documents filed by the respondents: (i) Income Tax Returns; (ii) disclosures by the first respondent to her Department under the CCS Rules; (iii) an affidavit filed by the second respondent PART E under the RP Act and the Rules; (iv) a letter dated 14 March 2016 by the first respondent to Principal Chief Commissioner of Income Tax (CCA), Chennai in relation to the details of the construction of her house, and proof of it having been taken on the record by an Office Memorandum dated 12 June 2017; and (v) a letter dated 15 June 2016 from the Deputy Commissioner of Income Tax, Hyderabad noting the intimation received from the first respondent in relation to the sale of her property and value realized on 27 February 2016, and the intimation by the first respondent in regard to the investment undertaken by her. After noting these documents, the High Court has held:

> "There is absolutely no dispute that the above documents are true, in the sense they are filed with respective departments and available in the public domain. In view of the law referred above, the income assets and values of assets mentioned in those documents have to be treated as 'known source of income' for the purpose of Section 13 (1) (e) of the Prevention of Corruption Act." There is a fundamental error on the part of the Single Judge in conflating a document which is in the public realm with the truth of its contents.

38 Thereafter, the High Court has gone on to note that in the counter-affidavit filed by the appellant before them, it has been admitted that the FIR has been prepared only on the basis of "source information" and without verifying the Income Tax Returns of the respondents. Hence, while highlighting the fault in the approach of the appellant in not conducting a Preliminary Enquiry, the High Court then holds it has to scrutinize the irregularities in the FIR. The Single Judge observed thus:

> PART E "The source information itself states that the petitioners are in possession of disproportionate assets worth Rs.1,10,81,692/-. This Court is unable to comprehend how the source information would exactly reveal 'the amount of disproportionate assets. Even if it is there, the respondents ought to have confirmed it by calling explanation of the petitioners by holding a Preliminary Enquiry which is not done. This circumstance, as submitted by the learned Senior Counsel for the petitioners, would emphasize that the F.I.R. is registered in a hurry that too 'at Chennai, even without taking pains', to conduct preliminary enquiry to ascertain the truth and correctness of the figures of disproportionate assets mentioned in the F.I.R., because, the counter affidavit speaks that on the sole basis, of source information, directly F.I.R. is registered. This Court is unable to accept the correctness of the arguments advanced by the learned Standing Counsel for the respondent that the correctness of such information will be verified by giving 'opportunity' to the petitioners, during course of investigation. That means, the respondents are accepting their mistake in not conducting preliminary enquiry.
>
> It is in the light of the above legal and factual issues, this Court is inclined to dwell upon the scrutiny of the irregularities pointed out by the petitioners in the statements A to D of the F.I.R. to adjudicate upon the core issue whether the respondents have prima facie material to conclude that the petitioners are in possession of disproportionate assets."

39 The High Court has then quashed the FIR by scrutinizing it in detail and pointing out five major grounds. First, it has dealt with the argument that there is a miscalculation of the respondents' income in the FIR. It has held that while the FIR notes the income of the respondents in the check period to be Rs 1,39,61,014, their Income Tax Returns show it to be Rs 2,47,63,542. Hence, based on the respondents' Income Tax Returns alone, the High Court has directed that the difference in income of Rs 1,08,02,528 be added to Statement-C in the FIR. Second, it deals with the respondents' issue with Serial No 9 of Statement-C of the FIR, that PART E while they sold a property for a sum of Rs 1 crore (in accordance with their Income Tax Returns for FY 2015-16), their income is only mentioned as Rs 72,50,000. The High Court has accepted this submission and rejected the appellant's position that the sum of Rs 72,50,000 was recorded based on their "source information". As such, it directed that a sum of Rs 25,00,000 be added to the respondents' income under Statement-C of the FIR. Third, it notes the respondents' objection to Serial No 26 of Statement-B of the FIR, where the same property has also been included as an asset of the respondents worth Rs 8 lakhs at the end of the check period. It has accepted the respondents' submission and has directed that the amount of Rs 8 lakhs be struck off from Statement-B of the FIR. Fourth, it deals with the respondents' objection that their assets at Serial Nos 6 and 7 of Statement-B of the FIR, which are the eastern and western portions of a house constructed by the first respondent, has been overvalued by an amount of Rs 85,78,200 (the FIR mentions its value to be Rs 5,15,50,000, while the respondents contend it to be Rs 4,14,21,800 based on a valuation report submitted by the first respondent and noted in the letter dated 14 March 2016 by the first respondent to Principal Chief Commissioner of Income Tax (CCA), Chennai). The High Court has then noted the appellant's response in their counter-affidavit that the value of the property in the

FIR was mentioned based on "source information", and thereafter, they have obtained a valuation by the Central Public Works Department60 which valued it at Rs 6,48,85,300. This argument has then been summarily rejected by the High Court by noting that the appellant could not have determined the correct value of the "CPWD" PART E property without conducting a Preliminary Enquiry before registering the FIR. Finally, in relation to this house, the respondents also objected to the value of the elevator in the house being mentioned as 10 lakhs separately in Serial No 31 of Statement-B of the FIR, when they believe it should have already been included within the valuation of the house constructed by them. The High Court held that the appellant could not properly explain why this was included separately and directed for it to be struck off from Statement-B of the FIR, relying upon the letter dated 14 March 2016 by the first respondent to Principal Chief Commissioner of Income Tax (CCA), Chennai in which the valuation report of the house was included. Thereafter, the High Court provided a summary of its conclusions in the form of the following table:

> " I. The following values have to be included in the income of the petitioners shown in Statement-C.
>
> 1. Difference of Salary and arrears received 37,67,242 by the 1st petitioner
>
> 2. Difference of Income of 2nd petitioner 70,35,286
>
> 3. Difference of sale consideration received 27,50,000 by Sale of immovable property in Bengaluru Total amount of income to be added in 1,35,52,528 Statement-C II. The following amounts have to be deducted from Statement-B
>
> 1. Difference of value of the Building 85,78,200 Constructed by the 1st petitioner
>
> 2. Cost of Bengaluru property which was 8,00,000 already sold away by 2nd petitioner
>
> 3. Value of Oscan Elevator which is included 10,00,000 in the value of the construction of building by the 1st petitioner Total amount of income to be added in 1,03.78,200 Statement-B
>
> a) Total Income as modified (Statement-C) 6,20,29,158
>
> b) Total value of assets possessed at the 5,86,72,866 end of check period as modified (Statement-B) " PART E It then provided 'revised' figures (as compared to the FIR) in another table:
>
> " Sl.No. Particulars of Assets Amount A Assets at the beginning of the check 1,35,26,066 period B Assets at the end of the check period 5,86,72,866 C Assets during the check period (B-A) 4,51,46,800 D Income during the check period 6,20,29,158 E Expenditure during the check period 40,33,322 F Assets + Expenditure - Income (DA) -1,28,49,036 " On the basis of this, the High Court

> concluded that no case of Disproportionate Assets against the respondents was made out since their revised income exceeded their expenditure and value of assets in the check period.

40 From the above, it becomes evident that the Single Judge of the Telangana High Court has acted completely beyond the settled parameters which govern the power to quash an FIR. The Single Judge has donned the role of a Chartered Accountant. The Single Judge has completely ignored that the Court was not at the stage of trial or considering an appeal against a verdict in a trial. The Single Judge has enquired into the material adduced by the respondents, compared it with the information provided by the CBI in the FIR and their counter-affidavit, and then pronounced a verdict on the merits of each individual allegation raised by the respondents largely relying upon the documents filed by them (by considering them to be 'known sources of income' within the meaning of Section 13(1)(e) of the PC Act). This exercised has been justified on account of the appellant not having conducted a Preliminary Enquiry and hence, not having addressed the respondents' PART E objections relying upon the documents adduced by them. The reasons provided by the Single Judge for entering into the merits of the dispute while quashing the FIR are specious, especially so considering our finding that the CBI need not hold a Preliminary Enquiry mandatorily. While exercising its jurisdiction under Article 226 of the Constitution to adjudicate on a petition seeking the quashing of an FIR, the High Court should have only considered whether the contents of the FIR – as they stand and on their face – prima facie make out a cognizable offence. However, it is evident that in a judgment spanning a hundred and seven pages (of the paper-book in this appeal) the Single Judge has conducted a mini-trial, overlooking binding principles which govern a plea for quashing an FIR.

41 The judgment of a two Judge Bench of this Court in Gunmala Sales (P) Ltd. v. Anu Mehta 61 makes it abundantly clear that the High Court does not conduct a mini-trial or a roving inquiry while exercising its powers under Section 482 of the CrPC. Justice Ranjana P Desai held:

> "34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director." (2015) 1 SCC 103 PART E This principle also applies squarely to the exercise of powers by a High Court under Article 226 of the Constitution while considering a writ petition for quashing an FIR.

Further, in numerous judgments of this Court it has been held that a court cannot conduct a mini-trial at the stage of framing of charges 62. Hence, doing so at the stage of considering a petition for quashing an FIR under Section 482 of the CrPC or Article 226 of the Constitution is obviously also impermissible. Therefore, we disapprove of the reasoning provided by the Telangana High

Court in its impugned judgment dated 11 February 2020 for quashing the FIR. E.2 Whether the FIR is liable to be quashed in the present case 42 Now we must independently assess the FIR in order to adjudicate whether it should be quashed. The FIR in the present case discloses an offence under Section 13(1)(e) which, prior to its amendment through the Amending Act 16 of 2018 with effect from 26 July 2018, provided as follows:

> "13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,— [...]
>
> (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568, para 18; Bharat Parikh v. CBI, (2008) 10 SCC 109, para 19; Indu Jain v. State of M.P., (2008) 15 SCC 341, para 39; Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299, paras 33-34 PART E Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant." 43 The ambit of the provision has been explained by a two Judge Bench of this Court in Kedari Lal (supra). Justice U U Lalit held thus:

> "10. The expression "known sources of income" in Section 13(1)(e) of the Act has two elements, first, the income must be received from a lawful source and secondly, the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders for the time being applicable to the public servant. In N. Ramakrishnaiah [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83 : (2010) 4 SCC (Cri) 454] , while dealing with the said expression, it was observed : (SCC pp. 86-87, para 17) "17. '6. ... Qua the public servant, whatever return he gets from his service, will be the primary item of his income. [Other income which can conceivably be] income qua the public servant, will be in the regular receipt from (a) his property, or
>
> (b) his investment.' [Ed. : As observed in State of M.P. v.

Awadh Kishore Gupta, (2004) 1 SCC 691 at p. 697 : 2004 SCC (Cri) 353, para 6.] " The categories so enumerated are illustrative. Receipt by way of share in the partition of ancestral property or bequest under a will or advances from close relations would come within the expression "known sources of income" provided the second condition stands fulfilled that is to say, such receipts were duly intimated to the authorities as prescribed." (emphasis supplied) 44 In the present case, the respondents have filed before us their Income Tax Returns, statements under the CCS Rules, affidavits under the RP Act and all other document filed before the Telangana High Court as well. Based on these PART E documents, the respondents have urged that the calculation of their income, expenditure and value of assets during the check period in the FIR is incorrect. In support of the

proposition that these documents can be relied upon, they have pointed out the following observations in the judgment in Kedari Lal (supra):

> "12. In the instant case, every single amount received by the appellant has been proved on record through the testimony of the witnesses and is also supported by contemporaneous documents and intimations to the Government. It is not the case that the receipts so projected were bogus or was part of a calculated device. The fact that these amounts were actually received from the sources so named is not in dispute. Furthermore, these amounts are well reflected in the income tax returns filed by the appellant.
>
> 13. In similar circumstances, the acquisitions being reflected in income tax returns weighed with this Court in granting relief to the public servant. In M. Krishna Reddy v. State [M. Krishna Reddy v. State, (1992) 4 SCC 45 : 1992 SCC (Cri) 801] , it was observed in para 14 : (SCC p. 49) "14. ... Therefore, on the face of these unassailable documents i.e. the wealth tax and income tax returns, we hold that the appellant is entitled to have a deduction of Rs 56,240 from the disproportionate assets of Rs 2,37,842." [...]
>
> 15. If the amounts in question, which were duly intimated and are reflected in the income tax return are thus deducted, the alleged disproportionate assets stand reduced to Rs 37,605, which is less than 10% of the income of the appellant. In Krishnanand v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190] and in M. Krishna Reddy [M. Krishna Reddy v.

State, (1992) 4 SCC 45 : 1992 SCC (Cri) 801] , this Court had granted benefit to the public servants in similar circumstances. We respectfully follow the said decisions." (emphasis supplied) PART E 45 Further, the respondents have also pointed out five infirmities in the FIR, the first four of which are based on the table reproduced in paragraph 10(ix)(b) of this judgment which notes that the value of the respondents' Disproportionate Assets according to the FIR in the check period was Rs 1,10,81,692. First, it has been pointed out that in Serial No 6 and 7 of Statement-B of the FIR, the value of the first respondents' constructed house is Rs 5,15,50,000, while its actual value (according to the disclosures made by the respondents in their Income Tax Returns) is Rs 4,29,71,800. It has been argued that the value in the FIR is incorrect, by relying upon letter dated 14 March 2016 submitted by the first respondent to Principal Chief Commissioner of Income Tax (CCA), Chennai where she has notified them of the construction of her house and attached a valuation report. According to this report, the total value of the house was Rs 4,14,21,800. To this, an amount of Rs 15,50,000 has been added to reach a final value of Rs 4,29,71,800, which is Rs 85,78,200 less than the value mentioned in the FIR. Further, while the appellant has defended the valuation in the FIR, based on a valuation conducted by the CPWD in 2018 (which valued the house at Rs 6,48,85,300), the respondents have argued that the CPWD valuation has been done after the FIR had been filed and cannot be used to defend the figures therein. Second, it has been argued that Serial No 31 of Statement-B of the FIR records that the respondents have an asset worth Rs 10 lakhs, which is an elevator inside the house mentioned in the assets. The argument against its inclusion is two-fold: (i)

the value of the elevator would have already been included within the value of the house; and (ii) even the appellant's rejoinder, at paragraph 16, admits this to be a mistake and notes that the elevator's value is "subsumed in PART E the construction cost of the house property of the Respondent and hence this value will be reduced". Hence, on the basis of the first two submissions, the respondents argue that the value of the Disproportionate Assets in the FIR will have to be reduced by Rs 85,78,200 and Rs 10 lakhs, giving a new figure of Rs 25,03,492, which is less than 10 per cent of their income during the check period. The third and fourth infirmities have been argued collectively. The respondents have argued that Serial No 26 of Statement-B of the FIR includes a property in Bangalore having a value of Rs 8,00,000. However, Serial No 9 of Statement-C of the FIR adds Rs 72,50,000 to the respondents' income as being derived from the sale of the same Bangalore property. Hence, it is urged that there is an internal contradiction in the FIR where the Bangalore property has been accounted for both as an asset of the respondents while also accounting for the income through its sale. Further, in relation to the income, it has been argued that the respondents' Income Tax Returns show that they received Rs 1 crore from the sale of the Bangalore property, but this has been arbitrarily reduced by Rs 27,50,000. In its rejoinder, the appellant has justified both of these by contesting the acquisition of the Bangalore property on the ground that there was no valid title, and placing a serious doubt about the alleged sale and the very character of the transaction. According to the respondents, the value of the Disproportionate Assets in the FIR will stand reduced by Rs 8,00,000 and Rs 27,50,000, leading to an excess of respondents' income of Rs 20,46,508 during the check period. Finally, it was also argued that the FIR has been filed solely relying upon "source information", which consists of documents seized by the CBI during the investigation of another case, which is unrelated to the present one. PART E Further, the respondents have also produced an order dated 28 February 2019 of the Principal Special Judge for CBI Cases (VIIIth Additional City Civil Court, Chennai) where this other case has been closed upon the submission of a closure report under Section 173 of the CrPC where it is noted that the FIR was closed due to "mistake of fact".

46 On the other hand, it has been argued on behalf of the appellant that the documents relied upon by the respondents are not unimpeachable and have to be proved at the stage of trial. Hence, it was urged that the arguments made on the basis of these documents should not be accepted by this Court. The appellant has relied upon the judgment of a two Judge Bench of this Court in J. Jayalalitha (supra), where it has been held that documents such as Income Tax Returns cannot be relied upon as conclusive proof to show that the income is from a lawful source under the PC Act. Justice P C Ghose held thus:

> "191. Though considerable exchanges had been made in course of the arguments, centering around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and

further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the PART E nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge- sheet had been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(e) of the Act.

[...]

200. In Vishwanath Chaturvedi (3) v. Union of India [Vishwanath Chaturvedi (3) v. Union of India, (2007) 4 SCC 380 : (2007) 2 SCC (Cri) 302] , a writ petition was filed under Article 32 of the Constitution of India seeking an appropriate writ for directing the Union of India to take appropriate action to prosecute R-2 to R-5 under the 1988 Act for having amassed assets disproportionate to the known sources of income by misusing their power and authority. The respondents were the then sitting Chief Minister of U.P. and his relatives. Having noticed that the basic issue was with regard to alleged investments and sources of such investments, Respondents 2 to 5 were ordered by this Court to file copies of income tax and wealth tax returns of the relevant assessment years which was done. It was pointed out on behalf of the petitioner that the net assets of the family though were Rs 9,22,72,000, as per the calculation made by the official valuer, the then value of the net assets came to be Rs 24 crores. It was pleaded on behalf of the respondents that income tax returns had already been filed and the matters were pending before the authorities concerned and all the payments were made by cheques, and thus the allegation levelled against them were baseless. It was observed that the minuteness of the details furnished by the parties and the income tax returns and assessment PART E orders, sale deeds, etc. were necessary to be carefully looked into and analyzed only by an independent agency with the assistance of chartered accountants and other accredited engineers and valuers of the property. It was observed that the Income Tax Department was concerned only with the source of income and whether the tax was paid or not and, therefore, only an independent agency or CBI could, on court direction, determine the question of disproportionate assets. CBI was thus directed to conduct a preliminary enquiry into the assets of all the respondents and to take further action

> in the matter after scrutinizing as to whether a case was made out or not.
>
> 201. This decision is to emphasize that submission of income tax returns and the assessments orders passed thereon, would not constitute a foolproof defence against a charge of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the PC Act and that further scrutiny/analysis thereof is imperative to determine as to whether the offence as contemplated by the PC Act is made out or not." (emphasis supplied)

47 In relation to the arguments on the alleged infirmities of the FIR, the contentions of the respondents have been refuted by the appellants by urging that:

> (i) the first submission of the respondents is based entirely upon the letter dated 14 March 2016 submitted by the first respondent to Principal Chief Commissioner of Income Tax (CCA), Chennai, which includes a valuation report. The value set out in in this report cannot be relied upon at this stage, especially when the CPWD Report values the house to have a much higher value; (ii) in relation to the third and fourth submissions, it is argued that the inclusion of the Bangalore property as an asset while including the money from its sale as income is fair since the very sale in itself is being disputed by the appellant. Hence, the veracity of the documents of sale is PART E something that can only be determined at the stage of trial; and (iii) in relation to the final submission, it was argued that the documents which gave rise to the "source information" were seized during another case being investigated by the appellant where the first respondent was one of eight officers of the Income Tax department accused of taking benefits (such as hotel stays) from Chartered Accountants. These documents were seized during four raids conducted at the residences of the first respondent, and she herself was also examined in that case. It has been submitted that the documents which gave rise to the "source information" were seized during the raids conducted at the first respondent's residences in Secunderabad on 27 June 2016 and in Jubilee Hills, Hyderabad on 8 July 2016. Hence, the fact that the other case during whose investigation these documents were seized has now been closed does not affect the FIR in the present case, since the charges against the first respondent are entirely different.

48 At the very outset, we must categorically hold that the documents which have been relied upon by the respondents cannot form the basis of quashing the FIR. The value and weight to be ascribed to the documents is a matter of trial. Both the parties have cited previous decisions of two Judge Benches of this Court in order to support their submissions. There is no clash between the decisions in Kedari Lal (supra) and J. Jayalalitha (supra) for two reasons: (i) the judgment in J. Jayalalitha (supra) notes that a document like the Income Tax Return, by itself, would not be definitive evidence in providing if the "source" of one's income was lawful since the Income Tax Department is not responsible for investigating that, while the facts in PART E the judgment in Kedari Lal (supra) were such that the "source" of the income was not in question at all and hence, the Income Tax Returns were relied upon conclusively; and (ii) in any case, the decision in Kedari Lal (supra) was

delivered while considering a criminal appeal challenging a conviction under the PC Act, while the present matter is at the stage of quashing of an FIR. 49 In the present case, the appellant is challenging the very "source" of the respondents' income and the questioning the assets acquired by them based on such income. Hence, at the stage of quashing of an FIR where the Court only has to ascertain whether the FIR prima facie makes out the commission of a cognizable offence, reliance on the documents produced by the respondents to quash the FIR would be contrary to fundamental principles of law. The High Court has gone far beyond the ambit of its jurisdiction by virtually conducting a trial in an effort to absolve the respondents. During the course of her submissions, Ms Bhati, learned ASG has stated on the instructions of the Investigating Officer, that during the course of the investigation about 140 witnesses have been examined and over 500 documents have been obtained. The investigation is stated to be at an advanced stage and is likely to conclude within a period of two to three months. At the same time, the Court has been assured by the ASG on the instructions of the Investigating Officer that before concluding the investigation, the first and second respondents will be called in order to enable them to tender their explanation in respect of the heads of Disproportionate Assets referred to in the FIR. PART F 50 In relation to the other arguments raised by the respondents to point out infirmities in the FIR, adjudicating those at this stage will trench upon evidentiary proof at the trial. That is the mistake that the Telangana High Court committed, which this Court would be remiss to repeat. The only infirmity pointed out by the respondents which has been acceded to by the appellant is in relation to the addition of the value of the elevator separately when the whole house had already been valued. However, by itself, it only being a value of Rs 10 lakhs, this will not be enough to take away the whole basis of the Disproportionate Assets case against the respondents. Hence, at this stage, we cannot quash the FIR against the respondents and hold that the appellant's investigation pursuant to it shall continue.

F Conclusion

51 Before parting, we also note that extensive arguments had been raised before

us by the respondents in relation to whether the appellant could even register the case against the respondents, since the State of Andhra Pradesh has withdrawn the general consent given to the appellant under Section 6 of the DSPE Act through an order dated 8 November 2018. This has been countered by the appellant by noting:

> (i) that the FIR has been registered in Chennai, and that the general consent by the State of Tamil Nadu under Section 6 of the DSPE Act still stands; (ii) that the first respondent is an employee of the Central Government; and (iii) that the second respondent is alleged to be an abettor under Section 109 of the IPC. Similarly, arguments have also been raised by both sides in relation to the jurisdiction of the PART F Telangana High Court and whether the FIR could have been registered against the second respondent without the consent of the Speaker (since he is a sitting MLA).

However, at this stage, we do not think it is necessary for us to adjudicate them and we are leaving these issues open without commenting upon their merits. 52 Therefore, in conclusion, we set aside the impugned judgment dated 11 February 2020 of the Single Judge of the Telangana High Court quashing the FIR and any proceedings pursuant to it. The appellant can continue with its investigation based upon the FIR.

53 The appeal is allowed and the impugned judgment of the Single Judge of the High Court for the State of Telangana is set aside.

54 Pending applications, if any, also stand disposed of.

……..J. [Dr Dhananjaya Y Chandrachud] ……J. [Vikram Nath] ……J. [B V Nagarathna] New Delhi;

October 08, 2021