

(2015) 04 DEL CK 0089
In the Delhi High Court
Case No : Criminal M.C. 5389 of 2014

K. Dhanalakshmi

APPELLANT

Vs

The Central Bureau of Investigation

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 109
Prevention of Corruption Act, 1988 — Section 13 (1) (e), 13 (2), 13(1) (e), 13(1)(e), 13(2)

Citation : (2015) 04 DEL CK 0089

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Gopal Sankaranarayanan and Vikramaditya, for the Appellant;
Narender Mann, SC, Manoj Pant and Utkarsha, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.P. Vaish, J.—By way of the present petition filed under Section 482 of Code of Criminal Procedure, 1973 (referred to as "Cr.P.C."), the petitioner impugns registration of FIR bearing No. 2172011A0012, under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC Act") / Section 109 IPC registered at Police Station CBI/ACU(V), New Delhi dated 23.11.2011.

2. The concise facts of the present case as set out in the petition are that on 23.11.2011, on the basis of source information CBI registered the impugned FIR against the petitioner Smt. K. Dhanalakshmi, IAS Officer of Batch 2000 (UP Cadre) and Smt. M. Parvathamma, the mother of Smt. K. Dhanalakshmi for committing offences under Section 109 IPC and Section 13 (2) read with 13(1) (e) of the P.C. Act on the allegations, inter alia, that the petitioner presently on Central deputation and posted as Deputy Secretary, Ministry of Social Justice and Empowerment, Govt. of India, New Delhi has amassed assets disproportionate to

her known sources of income, in her name and in the name of her mother Smt. M.Parvathamma. It is alleged in the FIR and Source Report that the petitioner has amassed assets disproportionate to her known sources of income to the tune of Rs.3,15,92,163/- (Rupees Three Crores, Fifteen lakhs, Ninety Two Thousands and One Hundred and Sixty Three only) in her name as well as in the name of her mother Smt. M. Parvathamma during the check period from 12th September 2000 till 23rd November, 2011. It is also alleged that during the said period, the petitioner acquired a large number of benami properties in the name of her mother Smt. M. Parvathamma (accused No. 2), a house wife who abetted the petitioner to acquire assets in her name and disproportionate assets are beyond her known sources of income.

3. Feeling aggrieved by the registration of the impugned FIR, the petitioner has filed the present petition for quashing of the said FIR registered by the respondent and all proceedings emanating therefrom.

4. Learned counsel for the petitioner raised the first contention that the income of the petitioner is in much excess over her assets, thus the provisions of Section 13 (1) (e) of the Act cannot be invoked. In furtherance of the contention learned counsel for the petitioner submitted that the basis of the impugned FIR is that the petitioner is holding assets disproportionate to her known sources of income and CBI in its calculations has included the properties in the name of petitioner's mother in the FIR. Further, it was contended on behalf of the petitioner that since the CBI has filed an affidavit that a closure report will be filed against Smt. M. Parvathamma, mother of the petitioner and as per affidavit filed in CrI. M.C. No. 5352/20014 by Mr. Surender Malik, Deputy Superintendent of Police, CBI who is investigating officer, the assets in the name of the mother of the petitioner as shown in the FIR are wholly excluded from the present case, hence the FIR against the petitioner ought to be quashed.

5. Learned counsel for the petitioner further contended that if the assets in the name of mother are excluded, only assets at Sl.Nos.1 and 10-12 of the Chart inserted in the FIR could be considered, which have a total value of Rs.17,12,088/- (Rupees Seventeen Lakhs Twelve Thousand and Eighty Eight only). Further, as per calculations stated in the additional written submissions submitted before this Court are as under:

i) The Petitioner's assets: Rs.17,12,088

ii) The Petitioner's income: Rs.6,27,21,255

iii) The Petitioner's expenditure: Rs.2,46,22,000

iv) Total money spent (i) + (iii): Rs.2,63,34,088

On the basis of the aforesaid it was urged that even if the income, assets and expenditure of the petitioner is taken at its face value, there is no case made out under Section 13(1)(e) of P.C. Act 1988 against the petitioner.

6. Learned counsel for the petitioner further submitted that as confirmed by the respondent CBI, income, assets as well as expenditure of Smt. M.Parvathamma, the mother of the petitioner are different from the income, assets and expenditure shown as that of the petitioner, which have been computed separately. Even if the value provided by CBI in the FIR is accepted on the face of it, the position would be:

7. From the above, it is evident that the income of the petitioner is well in excess of her assets and expenditure even when the FIR and the Source Report relating to the income, assets and expenditure of the petitioner are taken at its face value.

8. Learned counsel of the petitioner further contended that the case squarely falls under the illustration given in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , wherein it has clearly been stated that the entire proceedings need to be quashed 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.

9. Further, counsel for the petitioner placed on record the Annual Property Returns filed by the petitioner from 2004 to 2012 received through Right to Information Act, 2005. Learned counsel for the petitioner contended that voluntary Immoveable Property Returns (IPRs) of the petitioner give clear details of the assets held by the petitioner, their value (in some cases, even higher than that claimed by the CBI) and the manner in which they came to be acquired by the petitioner.

10. Learned counsel for the petitioner further contended that on each occasion well before 2011, the petitioner voluntarily intimated the State Government's Secretary of Appointments of the acquisition of immovable properties even before such acquisitions took place.

11. The other major contention raised by the learned counsel for the petitioner is that CBI has failed to take sanction under Section 6 of the Delhi Special Police Establishment Act and registered the FIR without any sanction, thus the FIR is liable to be quashed. To support this contention, learned counsel for the petitioner relied upon the Entry 2 of List II of the Seventh Schedule to the Constitution which places "Police" in the State List, the Central Government does not possess any power to investigate until the necessary consent is granted by the State Government. Learned counsel has relied upon that G.O. of the State of Uttar Pradesh dated 15.06.1989 and contended that the said order prohibits any investigation into cases relating to the officers under the control of the State Government except with the State's permission. Further counsel for the petitioner relied upon the G.O. of the Central Government dated 23.08.1990 and contended that the same is accepted by the Central Government as final and the

same is binding upon the respondent.

12. Mr. Gopal Shankarnarayanan, learned counsel for the petitioner also urged that the petitioner is an officer of the State Government and was merely on deputation with the Central Government at the time the FIR was registered. On the above basis it was contended by learned counsel for the petitioner that the control, therefore, remains with that of the State Government for federal purposes, and the CBI has not sought such permission from the State of Uttar Pradesh for the purpose of investigating the case of its officer, thus the registration of the FIR is illegal and liable to be quashed.

13. It is also the case of the petitioner that the FIR ought to be quashed as no preliminary enquiry was conducted by the CBI before registration of the FIR. Counsel for the petitioner has relied upon the judgment passed in the matter of P. Sirajuddin, etc. Vs. State of Madras, etc., AIR 1971 SC 520 : (1971) CriLJ 523 : (1970) 1 SCC 595 : (1970) 3 SCR 931 and the Constitution Bench judgment in Lalita Kumari Vs. Govt. of U.P. and Others, (2013) 12 AD 209 : AIR 2014 SC 187 : (2014) CriLJ 470 : (2013) 6 CTC 353 : (2014) 1 JCC 1 : (2013) 14 JT 399 : (2013) 4 RCR(Criminal) 979 : (2013) 13 SCALE 559 : (2014) 2 SCC 1 : (2014) 1 SCJ 68 .

14. In support of his submission, counsel for the petitioner has relied upon the judgments with regard to quashing of the FIR in, Sarabjit Singh Vs. State of Punjab and Others, (2013) 7 AD 301 : (2013) 4 JCC 2777 : (2013) 14 JT 606 : (2013) 4 RCR(Criminal) 463 : (2013) 7 SCALE 571 : (2013) 6 SCC 800 ; P.S. Rajya Vs. State of Bihar, (1996) 4 AD 627 : (1996) 6 JT 480 : (1996) 4 SCALE 344 : (1996) 9 SCC 1 : (1996) 2 SCR 631 Supp ; Ajay Mitra Vs. State of M.P. and Others, AIR 2003 SC 1069 : (2003) CriLJ 1249 : (2003) 1 JT 418 Supp : (2003) 1 SCALE 487 : (2003) 3 SCC 11 : (2003) 1 SCR 622 : (2003) AIRSCW 592 : (2003) 2 Supreme 602 ; Pratibha Vs. Rameshwari Devi and Others, (2008) CriLJ 329 : (2007) 2 DMC 583 : (2007) 11 JT 122 : (2007) 11 SCALE 174 : (2007) 9 SCR 1038 : (2007) AIRSCW 5933 : (2007) 6 Supreme 554 ; Kishan Singh (D) through LR's. Vs. Guralp Singh and Others, AIR 2010 SC 3624 : (2010) CriLJ 4710 : (2010) 9 JT 69 : (2010) 8 SCC 775 : (2010) AIRSCW 5527 : (2010) 6 Supreme 516 ; Parminder Kaur Vs. State of U.P. and Another, AIR 2010 SC 840 : (2010) CLT 258 : (2010) CriLJ 895 : (2009) 13 JT 507 : (2009) 13 SCALE 424 : (2010) 1 SCC 322 : (2009) 15 SCR 430 ; M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another, AIR 2010 SC 201 : (2009) CLT 1697 : (2009) CriLJ 4642 : (2009) 10 JT 590 : (2009) 11 SCALE 573 : (2009) 9 SCC 682 : (2009) 13 SCR 444 ; and State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp .

15. Learned counsel for the petitioner has also relied upon judgment of the Apex Court in State of Orissa Vs. Debendra Nath Padhi, AIR 2005 SC 359 : (2005) 99 CLT 348 : (2005) 1 CTC 134 : (2004) 10 JT 303 : (2004) 10 SCALE 50 : (2005) 1 SCC 568 : (2004) AIRSCW 6813 : (2004) 8 Supreme 568 , wherein it was

observed as under:

"29. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in BhajanLal case."

(emphasis supplied)

16. Learned counsel for the petitioner urged that the respondent is working with an agenda to falsely implicate the petitioner, knowing fully well that there is no evidence against the petitioner. He further submits that the I.O. has gone to the extent of intentionally and wrongfully inflating the actual figures to create a prejudice against the petitioner and the petitioner has already filed an affidavit to this effect. A bare perusal of the record will prove that the figures have been wrongfully and intentionally mentioned in the FIR and have been inflated and falsely created.

17. Another submission of learned counsel for the petitioner is that the assets and liabilities of the petitioner, Smt. K. Dhanalakshmi and Smt. M. Parvathamma have been segregated during investigation and admittedly there are 9 fixed assets as mentioned in the FIR out of which 8 belong to Smt. Parvathamma (item No. 2-9) and stand in her name and as per the report 1 property (item No. 1) belongs to the petitioner.

18. Per contra, Mr. Mann, learned special public prosecutor for CBI contended that the petition is not maintainable under Section 482 Cr.P.C. as the allegations made in the FIR and the investigation conducted prima facie disclosed the commission of offence under Section 13(1)(e) read with 13(2) of PC Act, 1988 by the petitioner for acquiring assets disproportionate to her known sources of income and the present petition is premature. He further contended that the prosecution has processed the file for seeking sanction from the competent authority prior to filing of the present petition.

19. Learned special PP for CBI also contended that the petitioner is not protected under Section 6 of the Delhi Special Police Establishment Act, 1946 as she was employed in connection with the affairs of the Union of India and was then posted as Dy. Secretary, Ministry of Social Justice and Empowerment, Govt. of India i.e. under the control of Govt. of India at the time of registration of FIR and no prior consent was required from the State of Uttar Pradesh. In this regard he has relied upon judgment in P. Nallammal Etc. Vs. State Rep. by Inspector of Police, AIR 1999 SC 2556 : (1999) CriLJ 3967 : (1999) ECR 22 : (1999) 5 JT 410 : (1999) 4 SCALE 501 : (1999) 6 SCC 559 : (1999) 1 SCR 135 Supp : (2000) 1 SLJ 320 .

20. I have carefully considered the submissions made by learned counsel for the petitioner and learned special PP for CBI. I have also gone through the material on record.

21. The scope of exercising power under Section 482 of Cr.P.C. and the categories of cases where the High Court can exercise this power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were laid down by the Hon''ble Supreme Court of India in "State of Harayana and Ors. vs. Ch. Bhajan Lal and Ors." (supra). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative cases indicated by the Apex Court in the said matter are as follows: -

(i) 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.

(ii) 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.

(iii) 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.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) 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.

(vi) 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.

(vii) Where a criminal proceeding is manifestly attended with malafide 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.

22. Although, there are catena of judgments of the Hon''ble Supreme Court on the exercise of powers under Section 482 of Cr.P.C. However, specific reference can be made to State of Andhra Pradesh Vs. Golconda Linga Swamy and Another,

AIR 2004 SC 3967 : (2004) CriLJ 3845 : (2004) 6 JT 34 : (2004) 6 SCALE 281 : (2004) 6 SCC 522 : (2004) 3 SCR 147 Supp : (2004) AIRSCW 4329 : (2004) 6 Supreme 19 : (2004) 5 Supreme 583 , wherein it was held that while exercising the powers under Section 482 of Cr.P.C., the Court does not function as a Court of appeal or revision and that such a power, though very wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by tests laid down in the Section itself. Section 482 of Cr.P.C. envisages three circumstances under which inherent jurisdiction may be exercised namely; (i) to give effect to an order under Cr.P.C., (ii) to prevent abuse of process of the Court, and (iii) to otherwise secure ends of justice.

23. The Apex Court in *Golconda Linga Swamy's case* (supra) observed that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction in the enactment dealing with the procedure and provide with all cases that possibly arise. When the complaint is sought to be quashed it is permissible to look into material to assess what the complainant has alleged and whether any offence is made out even if the allegation are accepted in toto. Similarly, in the case of *Devendra and Others Vs. State of U.P. and Another*, (2009) CLT 1207 : (2009) 8 JT 120 : (2009) 7 SCALE 613 : (2009) 7 SCC 495 : (2009) 7 SCR 872 , Hon"ble Supreme Court observed that "when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior Court would not encourage harassment of a person in a Criminal Court for nothing".

24. It is well settled law that the High Court is competent to quash the proceedings under Section 482 Cr.P.C. in appropriate cases to prevent the abuse of process of Court or to otherwise secure ends of justice. The inherent power is to be exercised by the High Court, "ex debito justitiae" which implies to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to result into injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In the exercise of its powers the court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to an abuse of the process of court or the quashing of these proceedings would otherwise serve the ends of justice. High Court in its inherent powers is not only competent to quash the proceedings in which there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, it can also quash proceedings where the allegations in the FIR or the complaint, even if they are taken at their face value, do not constitute the offence alleged.

25. In *K. Ramakrishna and Others Vs. State of Bihar and Another*, AIR 2000 SC 3330 : (2000) CriLJ 4597 : (2000) 1 JT 53 Supp : (2000) 6 SCALE 457 : (2000) 8 SCC 547 : (2000) AIRSCW 3580 : (2000) 6 Supreme 609 the Hon"ble

Supreme Court while assessing the extent of inherent powers of the High Court under Section 482 of Cr.P.C. held: -

"3. The inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved."

26. Further, in *Samaj Parivartan Samudaya and Others Vs. State of Karnataka and Others*, AIR 2012 SC 2326 : (2012) 5 SCALE 525 : (2012) 7 SCC 407 : (2012) AIRSCW 3323 : (2012) 3 Supreme 656 , the Hon"ble Supreme held as under: -

"44. Wherever and whenever the State fails to perform its duties, the Court shall step in to ensure that Rule of Law prevails over the abuse of process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or legal obligations in consonance with the procedural and penal statutes."

27. In another case in *Satish Mehra Vs. State of N.C.T. of Delhi and Another*, AIR 2013 SC 506 : (2013) CriLJ 411 : (2013) 1 Crimes 59 : (2013) 2 RCR(Criminal) 883 : (2012) 11 SCALE 193 , the Hon"ble Supreme Court examined the scope of powers under Section 482 Cr.P.C. and it was observed as under: -

"14. Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred Under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this Court in *R.P. Kapur Vs. The State of Punjab*, AIR 1960 SC 866 : (1960) CriLJ 1239 : (1960) 3 SCR 388 wherein the parameters of exercise of the inherent power vested by Section 561A of the repealed Code and CrI. Rev.P.113/2011 of Criminal Procedure, 1898, (corresponding of Section 482 Code

of Criminal Procedure, 1973) had been laid down in the following terms:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;
- (iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
- (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court....."

28. In *Som Mittal Vs. Govt. of Karnataka*, AIR 2008 SC 1126 : (2008) CriLJ 1610 : (2008) 2 JT 41 : (2008) 2 SCALE 108 : (2008) 3 SCC 753 : (2008) AIRSCW 1003 : (2008) 1 Supreme 598, the purport of the expression "rarest of rare cases" was explained. It was observed that:

"18. We may observe here that despite this Court's consistently held in catena of decisions that inherent power of the High Court should not be exercised according to whims and caprice and it has to be exercised sparingly, with circumspection and in the rarest of rare cases, we often come across the High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine manner at its whims and caprice setting at naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so long as the inherent power of Section 482 is in the Statute Book, exercise of such power is not impermissible but it must be noted that such power has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to "secure the ends of justice. The power under Section 482 is not intended to scuttle justice at the threshold."

29. When the words "rarest of rare cases" are used these words merely emphasize and reiterate what is intended to be conveyed by the words "sparingly

and with circumspection". This implies that power under Section 482 Cr.P.C. to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. Therefore, this court is of the view that powers vested under Section 482 Cr.P.C. even though have to be exercised sparingly and with circumspection, under the prevailing circumstances, where an abuse of process of law appears on the part of the respondent, this court considers it to be an appropriate circumstance for the exercise of extraordinary or inherent powers of the High Court vested to it under Section 482 of Cr.P.C. to quash the F.I.R. itself against the petitioner. It must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Code of Criminal Procedure.

30. Before advertng to the facts of the present case, it would be appropriate to consider the relevant provisions of Section 13(1)(e) of Prevention of Corruption Act, which reads as under:-

"13. Criminal misconduct by a public servant -

(1) A public servant is said to commit the offence of criminal misconduct

xxx xxx xxx

(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."

31. On analysis of provisions of Section 13(1) (e) of the Act, it is manifestly clear that it is not the mere possession of property that constitutes an offence under the provisions of the Act but it is the failure of satisfactory accountability for such assets that makes the possession objectionable as offending the law. To substantiate a charge under Section 13(1)(e) of the Act, the prosecution must prove the essential ingredients namely (i) the prosecution must establish that accused is a public servant; (ii) the nature and extent of the pecuniary resources or property which were found in his possession; (iii) it must be proved that as to what were his known sources of income i.e. known to the prosecution; (iv) it must prove quite objectively that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once the said ingredients are satisfactorily established the offence under Section 13(1)(e) of the Act is complete, unless the accused is able to account for such resources or property. The initial burden is on the prosecution to establish that the accused had acquired the property disproportionate to his known sources of income. It is only after the prosecution has proved the requisite ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts on to the accused.

32. In the instant case, the check period is w.e.f. 12th September 2000 till 23rd November, 2011. As per FIR the total income of the petitioner during the said period was Rs.6,27,21,255/- (Rupees Six Crores, Twenty Seven Lakhs, Twenty One Thousand and Two Hundred and Fifty Five only). The expenditure incurred during the said period was Rs.2,46,22,000/- (Rupees Two Crores, Forty Six Lakhs Twenty Two thousand) and the respondents CBI has taken Assets at the beginning of the Check period as "Nil" and the assets at the end of Check Period at Rs.6,96,91,418/- (Rupees Six Crores, Ninety Six lakhs, Ninety One Thousand and Four Hundred and Eighteen) which includes the assets in the name of the mother of the petitioner namely M. Parvathamma. Thus, as per the FIR the disproportionate assets found in possession of petitioner and her mother at the end of Check Period was Rs.3,15,92,163/- (Rupees Three Crores, Fifteen lakhs, Ninety Thousand, One Hundred and Sixty Three).

33. At the time of the registration of the FIR the respondent included the assets of the mother of the petitioner also while calculating the assets at the end of the check period, but during the course of arguments in the connected matter filed by the mother of petitioner, bearing CrI. M.C. No. 5352/2014 titled as "Smt. M. Parvathamma vs. CBI", the respondent has taken a stand that:

"..... the investigation could not conclusively establish that the properties/assets acquired by her during the check period were acquired for and on behalf of Smt. K. Dhanalakshmi or the assets in the name of Smt. M. Parvathamma were acquired from the funds of Smt. K. Dhanalakshmi....."

Thus, during the investigation the CBI has not been able to find any material to connect the properties owned by Smt. M. Parvathamma with that of the petitioner. Thus as per the case of the CBI the properties of Smt. M. Parvathamma are not to be included self contradictorily in calculating the assets of the petitioner. Thus the contention raised by the petitioner found support by the affidavit filed by the respondent, as after deducting the assets owned by the mother of the petitioner the assets owned by the petitioner would be well within the income earned by the petitioner even if the contents of the FIR and Source Report are taken at their face value and the ingredients to invoke Section 13 (1) (e) of the Act are not made out as per the facts and submissions made by both the parties.

34. It cannot be overlooked that the co-accused Smt. M. Parvathamma had also preferred a petition praying for quashing the registration of the FIR bearing CrI. M.C. No. 5352 of 2014 against her for the reasons stated therein. The respondent in the said petition filed a status report apprising the Court that the investigation in the said case was complete in all aspects and that the CBI is in the process of filing a charge sheet against both the accused persons. Surprisingly, in absolute contradiction to its earlier stand the CBI filed an additional affidavit and para No. 2 of the said affidavit is reproduced herein below which is relevant in deciding the present matter:

"2. That after completion of the investigation of the case and on the basis of the material collected by the IO/CBI, the Respondent is of the opinion that though the assets of Smt. M. Parvathamma seem highly disproportionate to her known sources of income, the investigation could not conclusively establish that the properties/assets acquired by her during the check period were acquired for and on behalf of Smt. K. Dhanalakshmi or the assets in the name of Smt. M. Parvathamma were acquired from the funds of Smt. K. Dhanalakshmi. The Respondent is of the opinion that the allegations under Section 109 IPC against the Petitioner Smt. M. Parvathamma are not made out as per the material collected till date by the IO."

35. On the basis of the above affidavit filed by the respondent before this court wherein categorical admissions were made by Respondent CBI that the case against Smt. M. Parvathamma mother of the petitioner herein could not be established, and that the respondent will be filing a closure report in respect of the mother of the petitioner and in light of this affidavit the matter was disposed of by this court vide order dated 13.03.2015.

36. Although the judgement of the Hon'ble Constitution Bench in Lalita Kumari's case (Supra) rendered subsequent to the impugned F.I.R., the present case is a perfect example of how an individual's rights have been prejudiced by not conducting a preliminary enquiry before registering the F.I.R. Had the respondent done so, this entire litigation could have been avoided, and the position taken by the respondent before this Court in 2015 could well have been taken in 2011 as part of the preliminary enquiry report on the basis of the F.I.R. being entirely based on the assets of the petitioner's mother and the same having been withdrawn by the Respondents after investigation, nothing remains in it which creates an offence that invites the attention of law.

37. A bare perusal of the FIR and the affidavit filed by the petitioner reflects that the property mentioned in item No. 8 of the FIR was owned/ acquired by the grandmother of the petitioner as early as in the year 1939 and was given to the petitioner by way of release deed in 2010. The value of acquiring the said property can only be NIL.

38. It is also reflected that the balance in Corporation Bank as on date of filing of FIR was not Rs.1,40,52,011/- (Rupees One crore forty lakhs fifty two thousand eleven) as alleged by the CBI but in fact it was only Rs.18,714/- (Rupees Eighteen thousand seven hundred fourteen) and the affidavit filed by the petitioner further fortifies the fact. It is also admitted that the balance in the month of November, 2011 was not more than Rs.35,000/- (Rupees Thirty five thousand) at any point of time.

39. Seeing the overture acts of the I.O. it cannot be ruled out that the I.O. was working with a prejudice mind and has gone to the extent of intentionally manipulating the facts and figures with the sole intention of falsely implicating the petitioner.

40. If the factual position is considered in the background of legal principles elaborated above, this is a fit case to invoke inherent powers of the court since the parameters enunciated in Bhajanlal's case (supra) and in several other cases dealt with here in above are squarely applicable. Therefore in my view, the impugned FIR registered by the respondent against the Petitioner is liable to be quashed to prevent the abuse of process of law and to meet the ends of justice.

41. In the light of the above discussion, the petition is hereby allowed. Consequently, the FIR bearing No. 2172011A0012, under section 13(2) read with 13(1) (e) PC Act / Section 109 IPC registered at Police Station CBI/ACU(V), New Delhi dated 23.11.2011 is quashed qua the petitioner.

Crl.M.A. Nos. 18372//2014 and 1893/2015

These applications are dismissed as infructuous.