

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

WRIT PETITION NO.28052 OF 2023

BETWEEN:

SRI. CHANNAKESHAHA.H.D.
S/O DODDAPPAIAH,
AGED ABOUT 52 YEARS,
OCCUPATION: EXECUTIVE ENGINEER,
BESCOM,
JAYANAGAR DIVISION,
BENGALURU CITY,
R/AT FLAT NO.208.
2ND FLOOR, A BLOCK,
MITHUNA WHITE WATER APARTMENT,
SRIRAMAPURA MAIN ROAD,
AMRUTAHALLI, JAKKUR,
BENGALURU - 560 064.

...PETITIONER

(BY SRI. PRASANNA KUMAR P., ADVOCATE)

AND:

1 . STATE OF KARNATAKA BY
LOKAYUKTA PS,
BENGALURU DISTRICT,
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR,
OFFICE OF KARNATAKA LOKAYUKTHA,
M. S. BUILDNG,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.

2 . SRI. GIRISH B
S/O BHEEM RAO,
AGED ABOUT 47 YEARS,
DEPUTY SUPERINTENDENT OF POLICE - 09,
KARNATAKA LOKAYUKTA,
BENGALURU CITY STATION,
MS BUILDING,
BENGALURU CITY - 560 001.

...RESPONDENTS

(BY SRI. B.S.PRASAD, SPECIAL COUNSEL FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C. PRAYING TO QUASH THE FIR AND COMPLAINT / SOURCE REPORT IN CRIME NO.54/2023 DATED 04/12/2023 AND 05/10/2023 REGISTERED BY THE R1 / LOKAYUKTA POLICE, BENGALURU CITY AS AGAINST THE PETITIONER HEREIN WHO IS ARRAYED AS ACCUSED ALLEGING THE COMMISSION OF OFFENCE PUNISHABLE UNDER SEC. 13(1)(b) READ WITH SECTION 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988, WHICH IS PENDING ON THE FILE OF THE HON'BLE XXIII ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY, IN SO FAR AS THE PETITIONER / ACCUSED IS CONCERNED (PRODUCED VIDE ANNEXURE-A AND B).

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.04.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

RESERVED FOR ORDERS ON: 22.04.2024
PRONOUNCED ON : 25.04.2024

ORDER

This writ petition is filed by the petitioner-accused under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. for quashing the FIR in Crime No.54/2023 registered by the Lokayuktha Police, Bangalore for the offences punishable under Section 13(1)(b) read with Section 13(2) of Prevention of Corruption Act (hereinafter referred to as 'P.C.Act') pending on the file of 23rd Additional City Civil Judge and Sessions Judge, Bangalore.

2. The case of the petitioner is that in the year 1998, the petitioner was appointed an Assistant Engineer in Karnataka Power Transmission Corporation Limited, Munirabad. Thereafter, he was transferred to Koramangala Division and Hebbala Division of BESCO

and worked as Executive Engineer. The respondent police registered FIR based upon the source report dated 05.10.2023 wherein it is alleged that, when the petitioner was working as Executive Engineer at BESCO from 11.11.1998 till 30.09.2023, he has amassed assets to the tune of Rs.6,64,67,000/- (92.54%) disproportionate to the known source of his income. The Police registered FIR by obtaining the order Section 17 of Prevention of Corruption Act., which is under challenge.

3. The learned counsel for the petitioner has contended that the registration of FIR is bad in law and unsustainable in the eye of law. The petitioner is innocent of the alleged offence. The case has been registered to harass him. There is no order passed as per proviso (ii) to Section 17 of Prevention of Corruption Act which is mandatory for investigating the

matter under Section 13(1)(b) of the Prevention of Corruption Act. It is further contended that the police officer not below the rank of Dy.S.P. shall not investigate the matter, but the Police Inspector registered and took up investigation, which is in contravention of Prevention of Corruption Act.

4. It is further contended by the counsel for the petitioner that, in catena of decisions, the Hon'ble Apex Court has held that, in order to protect the interest of the government servant, preliminary enquiry has to be conducted against the government servant prior to registering FIR and thereafter, an FIR shall be registered, if the cognizable offence is made out. It is further contended that on perusal of the source report, the assets declared by the petitioner during the joining service has not been considered, it was mentioned as 'Zero' in respect of statement 'A', but only considered

the other properties and registered the FIR. They have not verified the income tax returns and APRs in preliminary enquiry before taking the investigation. It is further contended that the FIR was registered on 04.12.2023 and the source report was filed on 5.10.2023, there is delay of 60 days in filing the FIR.

5. It is further contended by the learned counsel for the petitioner that there is manipulation of the FIR in respect of the order passed by the Superintendent of Police under Section 17 of the Prevention of Corruption Act. There is two different dates in respect of source report. Therefore, prayed to quash the FIR.

6. In support of his arguments, the learned counsel has relied upon the judgments of the Hon'ble Supreme Court and also the Co-ordinate Bench of this Court.

7. The learned Special Counsel for the respondent has filed the statement of objections and argued that there is an order passed by the Superintendent of Police under Section 17 of the Prevention of Corruption Act, which was not verified by the petitioner, and by misleading the Court, obtained the stay order. It is further contended that based upon the source report, the Superintendent of Police has conducted the preliminary enquiry and thereafter, passed the order for registering the FIR. The learned counsel also contended that the preliminary enquiry is not necessary in this case as the police officer has prepared the source report, and that itself is preliminary enquiry, and no more preliminary enquiry is required, unlike the complaint filed by the private individual. The judgment of the Hon'ble Supreme Court

in the case of **LALITA KUMARI VS. STATE OF UTTAR PRADESH AND OTHERS** reported in **(2012)4 SCC 1** is not applicable to this case. The preliminary enquiry is necessary only when the private complaint is filed against the public servant and authorisation is given to the police inspector as there is general order passed by the State Government. It is further contended that the documents produced by the petitioner cannot be looked into as the petitioner is having opportunity to produce the same before the investigation officer, there is disproportionate assets to the tune of 92.54%. Therefore, the matter is required for investigation. There is no flaw in the FIR. Hence, prayed for dismissing the petition.

8. The learned Special Counsel for the respondent has also relied upon the judgments of the Hon'ble Supreme Court in **CBI VS. THOMMANDRU**

HANNAH VIJAYALAKSHMI AND ANOTHER reported in **(2021) SCC 923, LALITA KUMARI VS. STATE OF UTTAR PRADESH AND OTHERS** reported in **(2012)4 SCC 1**

9. In reply, the learned counsel for the petitioner has contended that the DGP of Lokayuktha has issued a circular on 11.05.2023 by issuing the guidelines to be followed by the investigation officer while conducting the investigation in disproportionate assets case. As per the said circular, the source report shall be forwarded to the Superintendent of Police, and thereafter, the Superintendent of Police after thorough verification will send to the DGP or ADGP, thereafter obtain the order from the DGP or ADGP containing ABCD statement and calculation of D.A. Thereafter, the Superintendent of Police on being satisfied with the source report, pass an order to get the FIR registered

and to investigate the matter. It is further contended that the investigation officer shall not be the same who has prepared the source report. It is contended that the guidelines were not followed by the respondent. Therefore, prayed for quashing the FIR. It is also submitted that he has not relied upon the documents produced by the petitioner in respect of APR and income tax returns.

10. Having heard the arguments of learned counsel for the parties, perused the records.

11. On perusal of the same, the Lokayuktha police prepared a source report dated 5.10.2023 and the same was forwarded to the Superintendent of Police, Lokayuktha contending that the petitioner being the Executive Engineer working in BESCO amass the property or assets in the names of family members,

his name to the tune of Rs.12,95,91,000/- and his expenditure was Rs.86,99,000/- and income was Rs.7,18,23,000/- and the disproportionate assets was Rs.6,64,67,000/- to the tune of 92.54%. Therefore, requested the Superintendent of Police to permit for registering the FIR. Accordingly, the Superintendent of Police sent the source report to the Dy.SP and the Dy.SP given a report on 24.11.2023, and based upon the Dy.SP report, again the Superintendent of Police passed an order on 04.12.2023 under Section 17 of the Prevention of Corruption Act directing the police inspector Srikant to register the FIR. Subsequently, the police inspector registered the FIR for the offences punishable under Section 13(b) read with section 13(2) of P.C. Act, which is under challenge.

12. Learned counsel for the petitioner has contended that there is manipulation in the registration

of FIR, the reference number made in the FIR as per the order of the Superintendent of Police is altogether different from the order passed by the Superintendent of Police under Section 17 of the Prevention of Corruption Act. In this regard, it is convenient to mention the order of the Superintendent of Police as under:

KARNATAKA LOKAYUKTA

No. LOK/SP/Bengaluru City-1/Source-14/2023 M.S.Buildings,

Dr.B.R.Abmedkar Veedhi,
Bengaluru, dt:04/12/2023.

**PROCEEDINGS OF THE SUPERINTENDENT OF
POLICE, KARNATAKA LOKAYUKTA, BENGALURU
CITY-1**

Sub: Possession of properties disproportionate to the known sources of income by Sri Channakeshava H.D. Executive engineer, KPTCL, present working at Bescom, Jayanagara Division Bengalore.

Ref: 1. Source report submitted by Shri Girish.B., DySP-09, KLA, Bengaluru City-1 on 05.10.2023

2. Verification report submitted
by Shri Basavaraj R Magadum
DySP-05, KLA, Bengaluru City-
1 on 27.11.2023

With respect to the above cited subject and reference-1 & 2, it is ascertained that Sri Channakeshava H.D. Executive engineer, KPTCL, present working at Bescom, Jayanagara Division Bengalore has acquired properties disproportionate to his known sources of income to the extent of Rs. 6,64,67,000/- i.e., 92.54% and thereby committed an offence punishable under Sec. 13(1)(b) r/w 13(2) of the Prevention of Corruption Act-1988.

From the material placed before me and with the application of my mind, I am satisfied that a prima-facie case is made out against Sri Channakeshava H.D. Executive engineer, KPTCL, present working at Bescom, Jayanagara Division Bengalore warranting a statutory investigation for an offence punishable under Sec. 13(1)(b) r/w 13(2) of the Prevention of Corruption Act-1988.

Hence I pass the following Order

ORDER NO. LOK/INV(G)/CITY/54/2023,

DATED:04/12/2023

Therefore, by virtue of the powers vested in me under the provisions of Sec. 17(c) of the Prevention of Corruption Act - 1988, I, Joshi Shrinath Mahadev, IPS., Superintendent of Police, Karnataka Lokayukta, Bengaluru City-1 order that Sri S.Srikanth, PI-01, Karnataka Lokayukta, Bengaluru City-1 to register a case under Sec. 13(1)(b) r/w 13(2) of the Prevention of Corruption Act - 1988 against Sri Channakeshava H.D. Executive engineer, KPTCL, present working at Bescom, Jayanagara Division Bangalore and to investigate the said case.

Further, I authorize Sri S.Srikanth, PI-01, Karnataka Lokayukta, Bengaluru City-1 under the provisions of Section 18 of the Prevention of Corruption Act - 1988 to inspect the Banker Books in so far as it relates to the accounts of the persons suspected to be holding money on behalf of the said Sri Channakeshava H.D. Executive engineer, KPTCL, present working at Bescom, Jayanagara Division Bangalore and to take or cause to be taken certified copies of the relevant entries there from and the bankers concerned shall be bound to assist Sri S.Srikanth, PI- 01, Karnataka Lokayukta, Bengaluru City-1 the police officer in the

exercise of the powers under the said section of law.

*(Joshi Shrinath Mahadev, IPS.,)
Superintendent of Police,
Karnataka Lokayukta,
Bengaluru City -1.*

13. On perusal of the reference number made by the Superintendent of Police which reveals No.LOK/SP/Bengaluru City-1/Source-14/2023, and based upon the said order, the FIR came to be registered. The learned counsel for the petitioner has contended that the endorsement made in the FIR regarding the order passed by the Superintendent of Police and the number mentioned on the bottom of the FIR is altogether different which is referred as under:

- 1. Annexures (lagathugalu) 1 the source report of the complainant.*
- 2. The order of the S.P. No.KLA/PCD/SP2/source/01/2023 dated 09.02.2023.*

14. On perusal of the order of the Superintendent of Police, which reveals that the source report said to be 1/2023 dated 09.02.2023 in the FIR, whereas the order of Superintendent of Police reveals that the source report was dated 05.10.2023 and the number was No.LOK/SP/Bengaluru City-1/Source-14/2023. On perusal of the same, it is altogether different source report verified by the Superintendent of Police and passed the order, the order of Superintendent of Police is different from the number mentioned in the FIR in respect of registering the case.

15. Even otherwise, on perusal of the endorsement made by the police on receipt of the source report dated 05.10.2023, it is mentioned the order of the Superintendent of Police as LOK/INV(G)/city/54/2024 and this number also

altogether different from the order of the Superintendent of Police, as stated above.

16. In this regard, the learned counsel for the petitioner has relied upon the judgment of the Co-ordinate Bench of this Court in the case of **SANATHANA KALAKSHETHRA Vs. THE STATE OF KARNATAKA** (WP No.16083/2023 (GM-RES) dated 14.12.2023). In the said case, the Superintendent of Police, Ramanagar issued authorisation under Section 17 of P.C. Act whereas the FIR was registered at District Mandya, and the Co-ordinate Bench has quashed the FIR. Here, in this case, the source report for registering the FIR is altogether different from the authorisation issued by the Superintendent of Police and the source report sent by the police inspector and the date also differs. The complaint was registered on the source report 1/2023 dated 9.2.2023 where as the

authorisation issued by the Superintendent of Police on respect of No.14/2023 dated 5.10.2023. Therefore, it is clear that very registering FIR and issuing authorisation is non application of mind. Therefore, both the source reports are together different from each other.

17. As per the judgment of the Co-ordinate Bench of this Court in the case of **NAVANEETH MOHAN N Vs. THE STATION HOUSE OFFICER, ANTI CORRUPTION BUREAU AND ANOTHER** (Writ Petition No.43817/2018 dated 21.04.2021), where the Co-ordinate Bench has quashed the FIR for registering it without doing enquiry and non application of mind. The another Co-ordinate Bench has also quashed the proceedings in the case of **M. PUTTASWAMY AND OTHERS Vs. STATE OF KARNATAKA AND ANOTHER** in Criminal petition No.391/2017 clubbed with matters

dated 16.03.2023 and so many FIRs were quashed by the Co-ordinate Bench of this Court. Following the said decisions, this Court also quashed the FIR in the case of ***N SATISH BABU Vs. STATE OF KARNATAKA, LOKAYUKTA POLICE STATION AND ANOTHER*** (Writ Petition No.3107/2024 dated 01.03.2024).

18. There is no preliminary enquiry conducted by the police before registering the FIR. The source report also insufficient since the beginning period of the property in possession of the petitioner was shown as 'Nil' or 'Zero'. Therefore, the source report is also insufficient and the order passed by the Superintendent of Police is also non application of mind. Apart from that, the FIR could have been registered and submitted to the Superintendent of Police seeking investigation of the matter. Hence, there is lapse on the part of the respondent police in registering the FIR and passing the

order by the Superintendent of Police under Section 17 of P.C. Act.

19. Learned counsel for the petitioner has brought to the notice that there is circular dated 11.05.2023 issue by DGP, Lokayuktha for how to investigate the matter in disproportionate assets case, wherein it is stated as under:

KARNATAKA LOKAYUKTA

LOK/DGP/CIRCULAR-01/2023

Office of the
Director General of Police
Karnataka Lokayukta,
M.S.Building, Bengaluru-560001.
Date: 11/05/2023.

CIRCULAR

***Sub: Guidelines to be followed by the
Investigating officers while
Investigating Disproportionate
Asset (DA) cases-reg.***

With a view to standardise investigation of Disproportionate Asset (DA) cases the following directions are issued for immediate compliance by all the Investigation Officers (I.O) henceforth. These directions will also apply to DA cases under Investigation currently.

- i. All DA cases shall be registered only after
 - a. Submission of detailed Source Information Report (SIR) by the generating officer to the Unit Superintendent of Police (SP), followed by*
 - b. Thorough verification of the SIR by the Unit SP and submission of the same to DGP/ADGP KLA, and*
 - c. Obtaining orders of the DGP/ADGP**
- ii. All SIRs submitted for orders of DGP/ADGP, shall contain A, B, C and D statements and calculation of DA as per Annexure-1 and comments of the Unit SP on being satisfied with the SIR.*
- iii. Upon receipt of orders from DGP/ADGP KI.A, the Unit SP shall get the FIR registered and issue orders under Sec. 17 PC Act 1988 assigning the Investigation Officer (10). The 1.0 shall not be the same as SIR generating officer.*

20. In view of the aforesaid findings and the very police violated their circular in registering the FIR, therefore, the FIR registered by the police is unsustainable and is liable to be quashed

21. Accordingly, the writ petition is allowed. The FIR in Crime No.54/2023 registered by Lokayuktha police, Bangalore, is hereby quashed.

**Sd/-
JUDGE**

CS
CT:SK