REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1452-1453 OF 2022
(Arising out of Special Leave Petition (Crl.) Nos. 3445-3446 of 2019)

STATE THROUGH ....APPELLANT(S)
DEPUTY SUPERINTENDENT Of POLICE

VERSUS

R. SOUNDIRARASU ETC. ....RESPONDENT(S)

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. Since the issues raised in both the captioned appeals are the same, those were heard analogously and are being disposed of by this common judgment and order.

3. These appeals are at the instance of the State of Tamil Nadu through the Deputy Superintendent of Police, Vigilance and

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Anti-Corruption, Salem District, Tamil Nadu and are directed against the two judgments and orders passed by the High Court of Madras dated 27.04.2017 allowing the criminal revision applications preferred by the respondents herein (original accused persons) discharging them from the prosecution under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, "Act 1988") read with Section 109 of the Indian Penal Code (for short, "the IPC").

FACTUAL MATRIX

4. The Respondents in these appeals are husband and wife. The Respondent No.1 - R. Soundirarasu at the relevant point of time was serving as a Motor Vehicle Inspector (Grade 1) at Namakkal during the check period, i.e., from 01.01.2002 to 31.03.2004. The Respondent No. 2, namely, Suguna is the wife of the Respondent No. 1.

5. The Respondent No. 2 is a commerce graduate and claims to be having a separate source of income. She was a partner in a partnership firm running in the name of S.K. Mat Industries along with one R. Kumar w.e.f. 23.10.1993. The partnership came to be

dissolved on 31.03.2003, and, thereafter she continued as a sole proprietor.

6. It is the case of the Respondent No. 2 that she has been paying the income tax from 1990 onwards and her IT Returns are being scrutinized by the appropriate authorities.

7. It appears from the materials on record that a First Information Report (FIR) came to be registered against the Respondent No. 1 herein dated 19.09.2005 at the Police Station, Vigilance and Anti-Corruption, District Salem for the offences under the Act 1988 as enumerated above.

8. For better and effective adjudication of the present appeals, we deem it necessary to reproduce the entire FIR as under:

> *"**Column No. 12 in FIR Cr. No.9/AC/2005/SL/SU***
>
> *Tr. R. Sundararasu was working as Motor Vehicle Inspector Grade-1 at the office of the Regional Transport Officer, Namakkal, Rasipuram and Sankari from March 98 to May 2000 to July 2002 and September 2002 to September2004 respectively and again in Namakkal from 27.09.2004. He is a Public Servant as defined u/s 2 (C) of Prevention of Corruption Act, 1988.*
>
> *The accused Tr. R. Sundararasu, Motor Vehicle Inspector Grade-1 hailed from an ordinary agricultural family. He is a second son to his parents. Tr. Ramasamy*

and Tmt. Krishnammal. He has got diploma in Mechnaical Engineering and got B.E., degree by attending evening classes. He got married one Suguna D/o Tr. Duraisamy of Kavai on 12.2.90. He has got one son by name Sarankumar who is studying VIIth standard in Holy Matriculation School, Salem.

On receipt of credible information that the accused has acquired and he is in possession of assets in the form of house sites, lands, house building etc in his name and in the name of his wife and father-in-law, worth more than his known sources of income, a preliminary verification made, during which the following information has come to notice.

As on 1.1.2002, the accused is found to have been in possession of assets in his name and in the name of h h a

(i)	*Constructed a terraced house worth about Rs.7,99,500/- in the name of his wife Tmt. Suguna at Door No.555, situated in S.No.11/1266 of Ganapathy Village, Ganapathypuram, Coimbatore after demolishing the old terrace house.*
(ii)	*Purchased a terraced building worth Rs.8,61,270 /- with a plinth area of 70 Sq. metre on the ground floor and 10 Sq. Metre on the 1st floor in Bodinaikanpatty village S.No.69/1-A1 in the name of his father-in-law Tr.Duraisamy under Doc.No.499/2004 dt. 6.2.2004 of SRO, Sooramangalam and the same was transferred in the name of Sarankumar, the minor son of the accused, by way of Settlement Deed in Doc.No.645/2004, Dt. 16.02.2004 by the said Tr.Duraisamy incurring a sum of Rs.5,160/- towards stamp duty and registration fees.*

The Total value of the properties and pecuniary resources acquired by the accused during the period from 1.1.2002 to 29.2.2004 has been tentatively estimated to be Rs.14,66,430/-

Accused's wife Smt. Suguna is a house wife. She is found to have had no sufficient sources of income of her own to acquire the aforementioned assets. So also, Tr. Duraisamy, the father-in-law of the accused appears to have had no necessity for the purchase and transfer of the property in the name of the grand son (son of the accused). Thus, the accused appears to have acquired the above properties in the name of aforesaid persons as his benami (benamis).

The total income of the accused and his family members and expenditure of the accused and his family during the above said period (i.e.1.1.2002 to 29.2.2004) have been tentatively assessed as Rs.8,84,486 and 11,00, 198 respectively and hence there was no likely savings for the above said period and on the contrary there was an excess expenditure over the income of the accused to the extent of Rs.2,15,712/-.

There are grounds to believe that the aforesaid assets are for beyond and disproportionate to the known sources of income of the accused for the above said period to the extent of Rs.16,82,142 (Rs.14,66,430+2,15,712).

The above information discloses an offence of

criminal misconduct by public servant punishable u/ s 13(2) r /w 13(1)(e) of prevention of Corruption Act, 1988, against the accused and requires a detailed investigation.

I am therefore, registering a case in Cr.No.9/AC/2005/SL/SU against the accused for the above said offence for the purpose of taking up investigation.

(SdXXX)
(K.PERIYASAMY)
DSP, V&AC, Spl.Cell,
Salem."

9. It appears that vide the letter dated 16.10.2007 the investigating officer called for the explanation from the Respondent No. 1 as regards the allegations levelled in the FIR.

10. The Respondent No. 1 vide his letter dated 1.11.2007 offered his explanation stating that he does not possess or had acquired any assets disproportionate to the known source of his income. The Respondent No. 1 also placed on record the income tax returns filed by his wife from 1990 onwards and that of the partnership firm too from 1993.

11. It appears that in the course of investigation the role of the Respondent No. 2 as the wife of the Respondent No. 1 also surfaced

as an abettor.

12. Upon conclusion of the investigation, the Investigating Agency filed charge-sheet in the Court of the Special Judge, Salem for the offences enumerated above. The filing of the charge-sheet culminated in the registration of the Special Criminal Case No. 36/2008 in the Court of the Special Judge, Salem.

13. In such circumstances referred to above, the Respondents preferred Crl. M.P. Nos. 87 and 86 of 2014 resply under Section 239 of the Code of Criminal Procedure (for short, 'the CrPC') seeking discharge from the trial essentially on the ground of lack of any *prima facie* case against them.

14. The Special Judge adjudicated both the aforesaid applications filed by the respondents and thought fit to reject those by two separate orders dated 29.03.2016. While rejecting the Crl. M.P. No. 86 of 2014 filed by the respondent No. 2 (wife of respondent No. 1), the Special Judge observed as under :-

> *"15. Yet another ground urged by the petitioner is that the income derived by the petitioner being partner in S.K. Mat Industries and by doing money lending business was not given due credit by the Investigating Officer and as such the decision arrived at by the Investigating Officer that the petitioner has no*

wherewithals to acquire the properties standing in her name and described in Statement II and to treat the said properties as the properties acquired by the 1st accused in the name of the petitioner is totally wrong. The Investigating Officer in his final report has categorically mentioned that no documents were produced during investigation, either by the petitioner or her husband, to showcase the income derived by the petitioner by doing money lending business. Even in the present application there is no whisper in this regard by the petitioner. The contentious issue as to whether the petitioner derived income from S.K. Mat Industries and through money lending business can be decided only during trial based on the evidence placed before the court in this regard. Hence this court decides that the above ground urged by the petitioner is a pre-matured one and thus cannot be entertained at the time of framing charges.

16. In the present case the total value of assets and pecuniary resources held by the petitioner, her husband and son at the end of the check-period has been computed by the Investigating Officer at Rs.31,69,498/- as set out in Statement II. During investigation the petitioner and her husband have not produced any documents except the Income-Tax returns of the petitioner to trace the source of income of the petitioner to acquire the properties that stood recorded in her name during the check-period. Hence the Investigating Officer has proceeded to treat the properties standing in the name of the petitioner and her minor son as the properties of the petitioner's husband, the lst accused, which cannot be found fault at this stage more so when the petitioner's husband has not disclosed the acquisition of properties by his wife, the petitioner herein, to the concerned Department as required under Tamil Nadu Government Servants

Conduct Rules. Hence this court decides that, at this stage, there is no substance in the contention' of the petitioner that the methodology adopted by the Investigating Officer in computing the value of the assets of the petitioner's husband is erroneous.

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18. The materials produced by the Investigating Officer along with the final report prima facie disclose the existence of all the ingredients essential to constitute the offence U / s 13 (2) r/w 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act read with Sec : 109 of the IPC alleged to have been committed by the petitioner. Since the offence alleged against the petitioner and her husband are grave in nature the petitioner cannot be let scot free without facing trial and without affording an opportunity to the prosecution to establish the case during trial by adducing evidence.

19. Hence on a conspectus evaluation of all legal and factual aspects involved in the application, this court decides that there is no merit in the contention that the charge levelled against the petitioner is groundless on the face of materials available on record. Hence this court decides that the petitioner is not entitled for an order of discharge as prayed for."

15. While rejecting the Crl. M.P. No. 87 of 2014 filed by the Respondent No. 1 (husband), the Special Judge observed as under:-

"8. Now let us consider the grounds urged by the petitioner in seriatum.

I. The Income-Tax returns submitted by the petitioner's wife, was not considered by the Investigating Officer in the proper perspective.

The learned counsel for the petitioner assiduously

argued that through the Income-Tax returns submitted by the wife of the petitioner, who is arrayed as 2nd accused in the main case, it established beyond doubt that the petitioners wife had sufficient source to acquire properties mentioned in Statement II but the Investigating Officer in total disregard to the Income-Tax returns has treated the properties standing in the name of the petitioner's wife as the properties of the petitioner on the premise that the petitioner has purchased the properties benami in the name of his wife and as such the computation made by the Investigating Officer in arriving at the total value of the assets acquired by the petitioner during the check period at Rs. 28,23,492/- as set out in Statement V is grossly erroneous. As already pointed out the fact that the petitioner's wife, the 2nd accused is an Income-Tax assessee and that she had submitted her Income-Tax returns to the concerned Income-Tax authorities regularly is not seriously disputed. The petitioner is making an adroit effort to impress upon the court that particulars set out in the Income-Tax returns unequivocally establish the financial capabilities of the wife of the petitioner to purchase properties and hence the properties standing in the name of the wife of the petitioner has to be treated as self-acquired properties of the wife of the petitioner.

11.(II). Income derived by the petitioner's wife through money lending business not given due consideration.

According to the petitioner, his wife, the 2nd accused by doing money lending business was deriving size able income but the same was not considered by the Investigating Officer and as such the conclusion arrived at by the Investigating Officer that the 2nd accused is an ostensible owner of the properties standing in her name and that the petitioner is the true owner of the said

properties is absolutely wrong. The Investigating Officer has categorically mentioned that in respect of the so called money lending business no documents were produced before him either by the petitioner or his wife during investigation. Even in the present application the petitioner has not claimed that there are documents to establish the money lending business carried out by his wife and the income derived by her through the said business. The contentious issue as to whether the petitioner wife was deriving income by doing money lending business can be decided only during trial based on the evidence placed in this regard. Hence this court decides that above contention raised by the petitioner is pre-matured one and thus cannot be entertained at the stage of framing charges. On a conspectus evaluation of the legal and factual aspects involved in the case, this court decides that the claim of the petitioner for an order of discharge alleging that the Investigating Officer has erred in treating the properties standing in the name of the petitioner's wife as the properties of the petitioner ignoring the separate income of the petitioner's wife through money lending business is not sustainable under law.

12. (III). The methodology adopted by the Investigating Officer in arriving at the total value of assets standing in the name of the petitioner at the end of the check-period erroneous:-

According to the petitioner the income derived by the petitioner's wife other than from S.K. Mat Industries during the relevant period of Rs. 5,90,342/- but the same has not been considered by the Investigating Officer even though the same has been set out in the Income-Tax returns submitted by the petitioner's wife, the 2nd accused Suguan. The petitioner further allege that the properties of the petitioner's wife and son more

fully described in Statement II ought to have been excluded but strangely the Investigating Officer has included the same, which again clearly demonstrate that computation has not been made in proper line. Based on the above said contentions the petitioner challenging the very methodology adopted by the Investigating Officer, seek an order of discharge. As elaborately discussed in the earlier part of this order, the question as to whether the properties standing in the name of the petitioner's wife and son are in reality their self acquired properties or whether those properties were in fact acquired by the petitioner through his financial resources can be decided only at the time of trial based on the evidence adduced by both parties in this regard. Since the nature of properties standing in the name of the petitioner's wife and son cannot be decided at this stage, at no stretch of imagination it can be contended that the methodology adopted by the Investigating Officer in arriving at the total value of assets and financial resources standing in the name of the petitioner at the end of the check period is erroneous.

13.Hence considering the materials available on record in the back drop of the principles of law propounded by our Apex Court in the case of Suresh Rajan referred supra, this court decides that the petitioner is not entitled for an order of discharge alleging that the methodology adopted by the Investigating Officer is erroneous.

14.In the present case the total value of the assets and pecuniary resources of the petitioner and his family members at the end of the check-period has been computed by the Investigating Officer at Rs.31,69,498/- as set out in Statement II. During investigation of the case, the petitioner has not

produced any documents before the Investigating Officer except the Income-Tax returns of his wife, the 2nd accused, to trace the source of income of the petitioner's wife to acquire the properties standing in her name. Hence the Investigating Officer proceeded to treat the properties standing in the name of the petitioner's wife and his son as the properties of the petitioner, which cannot be found fault at this stage more so when the petitioner has not disclosed the acquisition of properties by his wife to the concerned department as required under the Tamil Nadu Government Servants conduct rules. Hence this court, at this stage, decides that there is no substance in the contention of the petitioner that the methodology adopted by the Investigating Officer in computing the value of the assets of the petitioner is erroneous.

15. Conclusion :

The materials placed by the Investigating Officer along with the Final Report disclose grave suspecion against the petitioner of having committed the alleged offence U / s 13 (1) (e) of the Prevention of Corruption Act. The guilt or otherwise of the petitioner has to be decided by court by affording an opportunity to the prosecution to march in evidence in support of its case. The materials placed by the Investigating Officer along with the final report prima facie disclose the existence of all the essential ingredients constituting the offence U/s 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act 1988. Hence this court decides that the petitioner is not entitled for an order of discharge.

16. In the result the application is dismissed."

16. Thus, while rejecting the discharge applications filed by the

respondents herein, the learned Special Judge recorded a categorical finding that there was more than a *prima facie* case against the accused persons to put them to trial for the alleged offence. The learned Special Judge recorded a clear finding that the charges levelled against the accused persons cannot be said to be groundless so as to discharge them from the prosecution in exercise of powers under Section 239 of the CrPC.

17. The respondents, being dissatisfied with the orders passed by the Special Court rejecting their discharge applications, went before the High Court and challenged the orders by filing Criminal Revision Application Nos. 702 and 703 of 2016 resply. Both the Revision Applications came to be heard by the High Court analogously and came to be allowed by the common impugned judgment and order dated 27.04.2017. The respondents herein came to be discharged from the prosecution. While allowing the Revision Applications, the High Court held as under :

> *"41. Taking into consideration all the relevant facts and circumstances, this Court is of the view that the Investigating Officer had not considered the explanation submitted by the first accused and also not taken into account any assets of the petitioners/ Al and A2.*

42. This Court has also perused the statements of the listed witnesses along with the impugned orders. As already discussed in the foregoing paragraphs and as decided in State of Maharashtra Vs Wasudeo (AIR 1981 SC 1186:19813sec199) cited supra, the nature and the extent of burden cast on the accused is well settled and the accused is not bound to prove his innocence beyond all reasonable doubt. All that he would do is to bring out a preponderance of probability. In so far as this case is concerned, the petitioners have brought out a preponderance of probability by way of establishing their case. As enunciated in Explanation to clause (e) of Sub Section (1) to Section 13, the petitioners have intimated their income received from lawful source to the income tax authorities concerned in accordance with the provisions of the Income Tax Act, which is applicable for the first accused being the public servant to intimate his known source of income and therefore, this Court is of the view that the prosecution has miserably failed to make out a prima facie case against the petitioners/ Al and A2.

43. It is the cardinal principle that the accused is presumed to be innocent unless proved to be guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. Thus, giving false information or failing to prove his innocence is no ground to base conviction of accused and on the contrary it offends the very basic principle of criminal jurisprudence which lays the burden on the prosecution to prove the offence against the accused.

44. In criminal cases, the guilt should be proved beyond any reasonable doubt that a reasonable man with ordinary prudence can have. There should. be no doubt whether the accused is guilty or not. If there is

slightest doubt, no matter how small it is, the benefit will go to the accused. In Indian legal system the provision regarding burden of proof and how it is to be discharged are grandeurly laid down in Chapter VII of the Evidence Act, 1872. The rule is that whoever alleges a fact must prove it. In a criminal trail it is the prosecution who alleges that the accused has committed the offence with requisite mens rea and so the burden lies upon the prosecution to prove the same.

45. As observed in the preceding paragraphs the accused is not bound to prove his innocence beyond all reasonable doubt. All that he has to do is, to bring out a preponderance of probability. The phrase 'preponderance of probability' appears to have been taken from Charless R.Cooper V F.W.Slade, (1857-59) 6 HLC 746. The observations made therein make it clear that what 'preponderance of probability' means is 'more probable and rational view of the case', not necessarily as certain as the pleadings should be.

46. Section 397(1) confers a sort of supervisory power. The purpose is to rectify miscarriage of justice. The main consideration was whether substantial justice was done since this Section confers the revisional jurisdiction upon both the Sessions Court as well as the High Court (Criminal). Nobody can claim it as a matter of right as it confers supervisory jurisdiction. When there is a clear illegality in the order passed by the lower Court, a revision could be entertained.

47. On coming to the provisions of Section 401 of the Code, as it is understood, the object behind this Section is to empower the High Court to exercise the powers of an Appellate Court to prevent failure of justice in cases where the Code does not provide for

appeal.

48. The power, however, is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to :
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(i) a defect in the procedure or
(ii) a manifest error on a point of law;
(iii) excess jurisdiction,
(iv) abuse of power, &
(v) where the decision upon which the trial Court relied has since been reversed or overruled when the revision petition was being heard.

49.As observed by the Supreme Court in State of M.P. Vs. S.B.Johari, (AIR 2000 SC 665: (2000) 2 sec 57: 2000 SCC (Crl) 311 : 2000 Crl.L.J.944), under Section 401 of Criminal Procedure Code quashing of the charge by the High Court would be justified if even on considering the entire prosecution evidence, the offence is not made out.

50. Viewing it from any angle, this Court is of considered opinion that the prosecution has not made out any case as against the petitioners/ Al and A2 to proceed with.

51.In the result, Criminal Revision Case Nos. 702 and 703 of 2016 are allowed and the impugned orders, dated 29.03.2016 and made in Crl.M.P.Nos.87 and 86 of 2014 in Special CC.No.76 of 2014 on the file of the learned Special Judge (for Corruption Cases), Salem are set aside and the petitions in Crl.M.P.Nos.87 and 86 of 2014 in Special CC.No.76 of 2014 are allowed. The petitioners/ Al and A2 are discharged from the clutches of the charges."

18. Thus, from the aforesaid, it appears that the High Court thought fit to discharge both the accused essentially on the following counts.

a) The Investigating Officer wrongly declined to consider the explanation offered by the Respondent No. 1 as regards the allegations and also failed to take into consideration the lawful assets of the Respondents.

b) The accused persons had disclosed their income to the income tax authorities in accordance with the provisions of the Income Tax Act and, in such circumstances, no *prima facie* case could be said to have been made out against them.

c) The accused in a prosecution under the Act 1988, more particularly for the offences punishable under section 13(1)(e) of the Act, is obliged only to explain as regards the alleged assets disproportionate to the known sources of his income on the principle of preponderance of probability.

d) As no *prima facie* case could be said to have been made out against the accused persons, they deserve to be discharged from the prosecution in exercise of revisional powers meant for doing

substantial justice.

19. In view of the aforesaid, the State being aggrieved and dissatisfied with the impugned orders passed by the High Court is here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT

20. Mr. V. Krishnamurthy, the learned Additional Advocate General appearing on behalf of the State vehemently submitted that the High Court committed a serious error in discharging the accused persons from the prosecution. He would submit that the whole approach of the High Court, more particularly the finding that *"when the prosecuting agency has come forward with a specific occasion, that the petitioners have amassed wealth which is disproportionate to their known source of income, it is incumbent on the part of the prosecution, to prove the indictment with clinching and impeccable evidence beyond all reasonable doubts, because the allegations made against the petitioners would definitely affect their private rights and their self-respect as well"* is erroneous and unsustainable.

21. He would submit that the High Court has erroneously cast a

burden on the prosecution to prove the case against the accused persons beyond all reasonable doubt even at the stage of framing charge. The scope and ambit of inquiry before framing the charge or at the stage of discharge has been well settled by this Court.

22. He would submit that the High Court grossly erred in taking into consideration the documents produced by the accused persons in their defence such as the Income Tax Assessments of A2 and other records, to come to the conclusion that the properties disclosed therein ought to be eschewed from consideration. The learned counsel submitted that the practice of looking into the documents produced by the accused at the stage of framing of charge has not been approved by this Court in the case of ***State of Orissa v. Debendra Nath Padhi***, (2005) 1 SCC 568***.***

23. He would submit that the High Court could be said to have conducted a mini trial while considering the discharge applications filed by the accused persons. In other words, at the stage of framing of charge, roving and fishing inquiry is impermissible and that would defect the object of the Code.

24. In the last, he submitted that the High Court overlooked the

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dictum as laid by this Court in the ***State of Tamil Nadu by Inspector of Police, Vigilance and Anti-Corruption vs.*** **N. Suresh Rajan and others**, (2014) 11 SCC 709 @ 721 para 29, wherein this Court held that:

> *"It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."*

25. In such circumstances referred to above, the learned counsel appearing for the State prayed that there being merit in his two appeals, those may be allowed and the impugned orders passed by

the High Court may be set aside.

SUBMISSIONS ON BEHALF OF THE ACCUSED

26. Mr. K. Radhakrishnan, the learned senior counsel appearing for the accused persons, on the other hand, vehemently opposed both the appeals submitting that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned orders discharging the accused persons from the prosecution.

27. The learned senior counsel would submit that without considering the explanation furnished by the respondent No. 1 and without calling for any explanation from his wife (second accused), the chargesheet for the offences punishable under Sections 13(2) r/w 13(1)(e) of the Act 1988 and Section 109 of the IPC could not have been filed. The learned counsel, relying on the decision of this Court in the case of ***N. Suresh Rajan*** (supra), submitted as a proposition of law that any property in the name of an income tax assessee, by itself, cannot be a ground to assume that such property belongs to the assessee.

28. He would submit that this Court in ***N. Suresh Rajan*** (supra) was dealing with a factual situation wherein the parents of the accused to whom the property belonged were not having any independent source of income unlike in the facts of the present case where the wife of the respondent is a commerce graduate and an entrepreneur. She has her own independent source of income and had purchased the properties out of her own income and that one of those has been gifted by her father. She has been an income tax assessee from the year 1990 and has been regularly filing her income tax returns.

29. He would submit that the Investigating Officer failed to consider the explanation furnished by the Respondent No. 1. Relying on the decision of this Court in the case of ***State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar***, (1981) 3 SCC 199, the learned counsel submitted that the nature and extent of burden cast on the accused is not to prove his innocence beyond reasonable doubt. All that the accused is obliged in law is to explain on preponderance of probability. In so far as the present case is concerned, the respondents have brought out a preponderance of

probability by way of establishing their case.

30. The learned counsel in his written submissions has stated as under:-

i. *"In determining the assets of the respondent, the assets standing in the name of his wife and their son must be eschewed.*

ii. *Income of Tmt. Suguna, wife of the respondent R. Soundirarasu could not be clubbed along with the income of her husband when she is particularly having independent source of income and pays income tax.*

iii. *Further, the investigating Officer has called for the explanation from the respondent R. Soundirarasu, which was not considered by the IO.*

iv. *However, the IO has not called for the explanation from Tmt. Suguna. This approach of the IO is contrary to the law laid down by this Hon'ble Court. This Hon'ble Court in the case of Devine Retreat Centra Vs. State of Kerala (2008) 3SCC 542, has held that no judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results drastic consequences of affecting one's own reputation.*

v. *Respondent-R. Soundirarasu in his explanation had explained that his wife Tmt. Suguna has independent source of income. She is a commerce graduate and was a partner in a S.K. Matt Industries along with one R. Kumar with effect from 23.10.1993. The partnership was dissolved on 31.3.2003 and thereafter she continued as the sole proprietor. She had been paying income tax from 1990 onwards and her IT returns were scrutinized by the appropriate authorities. She had*

been regularly filed her income tax returns even beyond the end of the check period.

vi. *It is respectfully submitted that the Investigating Officer while collecting necessary details from both the income tax authority as well as the respondent R. Soundirarasu, had failed to consider them in proper perspective which do establish that his wife Tmt. Suguna had acquired properties from her own income. But the investigating officer has erroneously stated in the final report that she had no source of income and that her father also did not possess any means to acquire property.*

15. It is submitted that Statement No. 1 appended to the letter dated 16.10.2007 and the Charge Sheet is the assets and pecuniary resources that stood to the credit of respondent and his family members. The check period, as per the prosecution has been determined from 1.1.2002 to 31.3.2004. In statement No. 1, 14 items have been shown. In so far as Statement I is concerned, properties mentioned at item Nos, 01,02,08,10,12 and 14 are exclusively the investments of his wife out of her own resources.

16. It is submitted that in so far as Statement II is concerned.

i. *Item 1, the house was constructed at the cost of Rs. 4,15,344/- by respondent's wife Tmt. S. Suguna from her independent resources derived from S.K. Mat Industries and other income and LIC Finance Housing Loan.*

ii. *Item No. 2 was purchased by respondent's wife out of her independent income derived from S.K. Mat Industries.*

iii. *Item no. 12, the Land measuring 0.67.½ cents comprised in Survey No. 12/1Q situated at M. Chettipatti, Omalur Taluk, Salem District was inherited by respondent's mother Krishnammal and subsequently settled this property in favour of her three sons and thereby he had received 1/3rd share.*

iv. *Item No. 13 was purchased by respondent's father-in-law Thiru. T. Duraisamy with his own resources and later gifted by way of dhana settlement to his son Thiru. S.S.Saran Kumar on 16.02.2004. This property should be taken into account as a gift and the value thereof should not have been included in the Statement.*

v. *Item No. 14, was inherited by respondent's wife Tmt. S.Suguna by virtue of Dhana settlement.*

vi. *Item No. 15 was purchased by respondent's mother-in-law Tmt. D. Shantha out of her own funds in the name of his son and that neither he nor his wife had invested any money in this transaction.*

vii. *Item Nos. 17, 18, were purchased by respondent's wife Tmt. S. Suguna out of her own resources.*

viii. *Items 19, 21 are related to respondent's wife Tmt. S. Suguna and the same cannot be attributed to the respondent.*

17. It is submitted that items 2, 3, 4, 5 of Schedule III pertains to respondent's wife Tmt. S. Suguna and the same cannot be attributed to the respondent.

18. It is submitted that in respect of Statement IV,

i. *Item No. 2, the expenditure towards repayment of LIC housing loan to the extent of Rs. 1,19,934.30 cannot be shown towards respondent's expenditure as the loan was availed and repaid by his wife Tmt. S. Suguna out of her own resources.*

ii. *Similarly, the expenditure being Rs. 1,80,000/- shown under item No. 3 should not have been shown in respondent's account, since the loan was obtained by his wife independently and repaid so far with interest by her, out of her own resources.*

iii. *Item No. 5, Telephone charges of Rs. 26,854/- were paid by respondent's wife out of her own resources.*

iv. *Item No. 10, the house tax was paid by respondent's wife out of her own resources.*

v. *Item No. 09, the transaction pertains to respondent's wife. Therefore, the loss should not have been shown in respondent's account.*

vi. *Item No. 11 is subscription towards Sri Ram Chits was made by respondent's wife out of her own resources.*

vii. *Item No. 12 the house tax for the house at Ganapathy is paid by respondent's wife out of her own resources.*

viii. *Item No. 14, the income tax paid by his respondent's wife out of her own resources has been shown in his account.*

19. It is submitted that the calculation made by the petitioner is incorrect. It is submitted that the correct computation as has been explained by the respondent in his explanation is as follows,

i. *The value of assets that stood to respondent's credit as well as to the credit of his family members at the beginning of the check period is Rs. 1,31,254/-.*

ii. *The value of the assets that stood to respondent's credit as well as to the credit of his family members at the end of the check period is Rs. 1,37,430/-*

iii. *Therefore, the value of assets acquired during the check period is Rs. 6,176/-.*

iv. Income derived by him and his family members during the check period is Rs. 3,11,547/-.

v. Expenditure during the check period is Rs. 1,91,910/-.

vi. Thus, the savings during the check period is Rs. 1,19,636.80

Therefore, it is submitted that the assets acquired by the respondent (R. Soundirarasu) are not disproportionate to his known source of income.

20. It is submitted that in his explanation respondent (R. Soundirarasu), has referred to the provisions of the Tamil Nadu Government Servant Conduct Rules 1973 as amended up to September 2006, Rules 7 (1) (a), which reads as follows:

(1)(a) No Government servant, shall except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family.

Such a notice will be necessary even where any immovable property is acquired by any member of the family of the Government servant out of the resources of the Government servant:

Provided that the previous sanction of the prescribed authority shall not be necessary for the acquisition of immovable property in respect of house-site assigned by the Government in favour of the Government servant.

Explanation-A Government servant is not required to give notice to the prescribed authority or seek prior

permission from the prescribed authority for acquisition or disposal of immovable properties by the members of his family under clause (a), if the immovable property in question is not acquired from the resources of the Government servant concerned.

The IO ought to have considered this provision before taking the properties and other resources into account.

21. It is respectfully submitted that the High Court has decided the matter by following the principles of law laid down by this Hon'ble Court. The High Court has only looked at the materials relied upon in the chargesheet to ascertain whether a prima facie case is made out or not. It is submitted that the High Court has rightly arrived at the conclusion that the prosecution has not examined the materials and the explanation afforded by the respondent. After examining the facts emerging from of the materials brought on record by the prosecution, the High Court has concluded that prima facie the materials on record does not disclose the existence of all the ingredients constituting the offences alleged against the respondents. The High Court has rightly concluded that the evidences tagged along with the final report are also not in consonance with the accusation made in the final report. The High Court has rendered the judgment discharging the accused to avert miscarriage of justice and to erase the prejudice caused to the accused at the instance of the investigating officer by not examining the explanation rendered by the first accused in proper perspective and without calling for the explanation from the second accused. Prejudice is also caused by the finding of the Special judge to the effect that there are no materials/ evidence to prove that the second accused has separate and independent source of income."

(Emphasis supplied)

In such circumstances referred to above, the learned counsel prayed that there being no merit in the two appeals filed by the State, those may be dismissed.

31. If we have to give a fair idea as regards the case put up by the Prosecution against the accused persons, we may do so as under:-

(a) There are 14 items shown in the Statement No. 1, i.e. Assets and pecuniary sources that stood to the credit of the accused and his family members at the beginning of the check period i.e., 01.01.2002 such as lands, house sites, shares, jewels and other movables valued at Rs.3,46,006-00.

(b) There are 21 items shown in the Statement No. II i.e., assets and pecuniary source that stood to the credit of the accused and his family members at the end of the check period as on 31.03.2004, valued at Rs. 31,69,498-00.

(c) There are 6 items shown in the Statement No. III as income derived by the accused and his family members during the check period i.e., 01-01-2002 to 31-03-2004, calculated at Rs. 9,97,888-00.

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(d) There are 15 items shown in the Statement No. IV i.e., expenditure incurred by the accused and his family members during the check period from 01-01-2002 to 31-03-2004 as family consumption expenditure, education, electricity charges, housing loan, LIC premiums, telephone charges etc. is calculated at Rs. 6,16,376-50.

(e) The value of assets acquired by the accused and his family members at the end of the check period i.e., 31-03-2004 as shown in Statement No. V is at Rs. 28,23,492-00 (i.e. Rs. 31,69,498 (-) Rs. 3,46,006-00).

(f) The likely savings of the accused and his family members during the check period as shown in Statement No. VI is arrived at Rs. 3,81,512-00 (i.e.,) Rs. 9,97,888-00 (-) Rs. 6,16,376-50).

(g) The value of disproportionate assets acquired by the accused and his family members as shown in the Statement No. VII is calculated at Rs. 24,41,980-00.

(h) The percentage of disproportionate assets acquired by the

accused and his family members to the known sources of their income is calculated at 244.71% (Rs.24,41,980-00 divided by Rs.9,97,888-00 multiplied by 100).

Thus, in view of the aforesaid, the case of the prosecution is that the accused No. 1 (public servant) was found to be in possession of assets disproportionate to the known sources of his income to the extent to Rs. 24,41,980/- as on 31.03.2004.

ANALYSIS

32. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in discharging both the accused from the charges levelled against them?

33. We have no hesitation in observing that the impugned orders passed by the High Court are utterly incomprehensible. We shall explain in details why we say so.

PREVENTION OF CORRUPTION ACT, 1988

34. Section 13(1)(e) of the Act 1988 including explanation thereto reads as under :-

> *"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.*
>
> *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."*

35. The explanation to Section 13(1)(e) defines the expression "known sources of income" and states that this expression means the income received from any lawful source and also requires that the receipt should have been intimated by the public servant in accordance with any provisions of law, rules or orders for the time being applicable to a public servant. This explanation was not there in the Prevention of Corruption Act, 1947 (for short, "Act 1947"). Noticing this fact in ***Jagan M. Seshadri v. State of Tamil Nadu***, (2002) 9 SCC 639, this Court has observed as under:-

> *"7. A bare reading of Section 30(2) of the 1988 Act shows that any act done or any action taken or purported to have been done or taken under or in pur-*

> *suance of the repealed Act, shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act. It does not substitute Section 13 in place of Section 5 of the 1947 Act. Section 30(2) is applicable "without prejudice to the application of Section 6 of the General Clauses Act, 1897". In our opinion, the application of Section 13 of the 1988 Act to the fact situation of the present case would offend Section 6 of the General Clauses Act, which, inter alia provides that repeal shall not (i) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or (ii) affect any investigation, legal proceedings or remedy in respect of any such rights, privilege, obligation, penalty, forfeiture or punishment. Section 13, both in the matter of punishment as also by the addition of the Explanation to Section 13(1)(e) is materially different from Section 5 of the 1947 Act. The presumption permitted to be raised under the Explanation to Section 13(1)(e) was not available to be raised under Section 5(1)(e) of the 1947 Act. This difference can have a material bearing on the case."*

36. The explanation to Section 13(1)(e) of the Act 1988 has the effect of defining the expression “known sources of income” used in Section 13(1)(e) of the Act 1988. The explanation to Section 13(1)(e) of the Act 1988 consists of two parts. The first part states that the known sources of income means the income received from any lawful source and the second part states that such receipt should have been intimated by the public servant in accordance with the

provisions of law, rules and orders for the time being applicable to a public servant.

37. Referring to the first part of the expression "known sources of income" in ***N. Ramakrishnaiah v. State of A.P.***, 2009 Crl.L.J. 1767, this Court observed as under:

> *"15. The emphasis of the phrase "known sources of income" in Section 13(1)(e) (old Section 5(1)(e)) is clearly on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is classic and has a wide connotation. Whatever comes in or is received is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and being further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "Income". Therefore, it can be said that, though "income" in receipt in the hand of its recipient, every receipt would not partake into the character of income. For the public servant, whatever return he gets of 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. A receipt from windfall, or gains of graft crime or immoral secretions by persons prima facie would not be receipt for the "known source of income" of a public servant."*

38. The above brings us to the second part of the explanation, defining the expression "such receipt should have been intimated by the public Servant" i.e. intimation by the public servant in accordance with any provisions of law, rules or orders applicable to a public servant.

39. The language of the substantive provisions of Section 5(3) of the Act 1947 before its amendment, Section 5 (1)(e) of the Act 1947 and 13(1)(e) of the Act 1988 continues to be the same though Section 5(3) before it came to be amended was held to be a procedural Section in the case of ***Sajjan Singh v. State of Punjab***, AIR 1964 SC 464. Section 5(3) of the Act 1947 before it came to be amended w.e.f. 18th December, 1964 was interpreted in the case of ***C.D.S. Swami v. State***, AIR 1960 SC 7, and it was observed:-

> *"5. Reference was also made to cases in which courts had held that if plausible explanation had been offered by an accused person for being in possession of property which was the subject-matter of the charge, the court could exonerate the accused from criminal responsibility for possessing incriminating property. In our opinion, those cases have no bearing upon the charge against the appellant in this case, because the section requires the accused person to "satisfactorily account" for the possession of pecuniary resources or property disproportionate to his known sources of income. Ordi-*

narily, an accused person is entitled to acquittal if he can account for honest possession of property which has been proved to have been recently stolen (see illustration (a) to Section 114 of the Indian Evidence Act, 1872). The rule of law is that if there is a prima facie explanation of the accused that he came by the stolen goods in an honest way, the inference of guilty knowledge is displaced. This is based upon the well- established principle that if there is a doubt in the mind of the court as to a necessary ingredient of an offence, the benefit of that doubt must go to the accused. But the legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily", and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.

6. Another argument bearing on the same aspect of the case, is that the prosecution has not led evidence to show as to what are the known sources of the appellant's income. In this connection, our attention was invited to the evidence of the investigating officers, and with reference to that evidence, it was contended that those officers have not said, in terms, as to what were the known sources of income of the accused, or that the salary was the only source of his income. Now, the expression "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Evidence Act. The prose-

cution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund. We are not, therefore, impressed by the argument that the prosecution has failed to lead proper evidence as to the appellant's known sources of income. It may be that the accused may have made statements to the investigating officers as to his alleged sources of income, but the same, strictly, would not be evidence in the case, and if the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by the prosecution."

(Emphasis supplied)

40. Even after Section 5(3) was deleted and Section 5(1)(e) was enacted, this Court in the case of ***Wasudeo Ram Chandra Kaidalwar*** (supra) has observed that the expression "known sources of

income" occurring in Section 5(1)(e) has a definite legal connotation which in the context must mean the sources known to the prosecution and not sources relied upon and known to the accused. Section 5(1)(e), it was observed by this Court, casts a burden on the accused for it uses the words "for which the public servant cannot satisfactorily account". The onus is on the accused to account for and satisfactorily explain the assets. Accordingly, in ***Wasudeo Ram Chandra Kaidalwar*** (supra) it was observed:-

> *"11. The provisions of Section 5(3) have been subject of judicial interpretation. First the expression "known sources of income" in the context of Section 5(3) meant "sources known to the prosecution". The other principle is equally well- settled. The onus placed on the accused under Section 5(3) was, however, not to prove his innocence beyond reasonable doubt, but only to establish a preponderance of probability. These are the well-settled principles: see C.S.D. Swamy v. State; Sajjan Singh v. State of Punjab and V.D. Jhingan v. State of U.P. The legislature thought it fit to dispense with the rule of evidence under Section 5(3) and make the possession of disproportionate assets by a public servant as one of the species of the offence of criminal misconduct by inserting Section 5(1)(e) due to widespread corruption in public services.*
>
> *12. The terms and expressions appearing in Section 5(1)(e) of the Act are the same as those used in the old Section 5(3). Although the two provisions operate in two different fields, the meaning to be assigned to them*

must be the same. The expression "known sources of incomes" means "sources known to the prosecution". So also, the same meaning must be given to the words "for which the public servant cannot satisfactorily account" occurring in Section 5(1)(e). No doubt, Section 4(1) provides for presumption of guilt in cases falling under Section 5(1)(a) and (b), but there was, in our opinion, no need to mention Section 5(1)(e) therein. For, the reason is obvious. The provision contained in Section 5(1)(e) of the Act is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. When Section 5(1)(e) uses the words "for which the public servant cannot satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets. The High Court, therefore, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under Section 5(2) read with Section 5(1)(e) of the Act unless the prosecution disproves all possible sources of income.

13. That takes us to the difficult question as to the nature and extent of the burden of proof under Section 5(1)(e) of the Act. The expression "burden of proof" has two distinct meanings (1) the legal burden i.e. the burden of establishing the guilt, and (2) the evidential burden i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not

so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under Section 5(2) read with Section 5(1)(e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under Section 5(1)(e), namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (4) 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 these four ingredients are established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under Section 5(1)(e) cannot be higher than the test laid by the Court in Jhingan case i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the dictum of Viscount Sankey, L.C., in Woolmington v. Director of Public Prosecution. The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in Swamy case, the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant found in possession of resources or property disproportionate to his known

> *sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872. Section 106 reads:*
>
> *"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*
>
> *In this connection, the phrase the burden of proof is clearly used in the secondary sense namely, the duty of introducing evidence. The nature and extent of the burden cast on the accused is well settled. The accused is not bound to prove his innocence beyond all the reasonable doubt. All that he need to do is to bring out a preponderance of probability."*

41. While the expression "known sources of income" refers to the sources known to the prosecution, the expression "for which the public servant cannot satisfactorily account" refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden is on the accused as the said facts are within his special knowledge. Section 106 of the Evidence act applies. The explanation to Section 13(1)(e) is a procedural Section which seeks to define the expression "known sources of income" as sources known to the prosecution and not to the accused. The explanation applies and re-

lates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and rowing investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his special knowledge. The effect of the explanation is to clarify and reinforce the existing position and understanding of the expression "known sources of income" i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the explanation does away with the need and requirement for the prosecution to conduct an open ended or rowing enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable

to a public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. As noticed above, the first part of the explanation refers to income received from legal/lawful sources. This first part of the expression states the obvious as is clear from the judgment of this Court in ***N. Ramakrishnaiah*** (supra). (Emphasis supplied)

42. Thus, it is evident from the aforesaid that the expression "known source of income" is not synonymous with the words "for which the public servant cannot satisfactorily account." The two expressions connote and have different meaning, scope and requirements.

43. In the case of ***Central Bureau of Investigation (CBI) and Anr. v. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr***., reported in 2021 SCC OnLine SC 923, this Court, after an exhaustive review of its various other decisions, more particularly the decision in the case of ***K. Veeraswami v. Union of India***, (1991) 3 SCC 655, held that since the 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 chargesheet, a similar right cannot be granted to the accused before the filing of an FIR by making a preliminary inquiry mandatory.

44. The above decision of this Court in the case of ***Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi*** (supra) is a direct answer to the contention raised on behalf of the accused persons that the investigating officer wrongly declined to consider the explanation offered by the public servant in regard to the allegations and also failed to take into consideration the assets lawfully acquired by his wife.

45. In ***K. Veeraswami*** (supra), this Court 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 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)

46. The second contention canvassed on behalf of the accused persons that every bit of information in regard to the assets had been intimated to the Income Tax Authorities and the documents in regard to the same should be sufficient to exonerate the accused persons from the charges is without any merit. In other words, the contention that the High Court rightly took into consideration the

aforesaid for the purpose of discharging the accused persons from the prosecution is without any merit and erroneous more particularly in view of the decision of this Court in the case of ***Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi*** (supra). This Court has observed in paras 58, 60 & 61 resply as under:-

> *"58. 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 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 chargesheet 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. 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 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. 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.

x x x x x

60. 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 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.

61. 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."*
>
> (Emphasis supplied)

47. Now, the reason why we say that the impugned orders passed by the High Court are utterly incomprehensible is because the High Court has not been able to comprehend the true scope and ambit of Section 239 of the CrPC. The High Court has also not been able to comprehend in what set of circumstances the revisional powers under Section 397 read with Section 401 of the CrPC are to be exercised.

48. We have gathered an impression that the High Court seems to be labouring under a serious mis-conception of law as is evident from the two impugned orders and such erroneous mis-conceptions need to be eradicated.

49. The learned counsel appearing for the State rightly submitted that at the stage of consideration of discharge under Section 239 of the CrPC only a *prima facie* case is to be seen and the Special Court having recorded a satisfaction with regard to the existence of a *prima facie* case there cannot be said to be any material error or illegality in the orders assailed before the High Court.

50. The procedure for trial of warrant cases by Magistrate is provided for under Chapter XIX of the CrPC and Sections 239 and 240 resply relate to discharge and framing of charge.

51. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record is not to be gone into.

52. The provisions which deal with the question of framing of charge or discharge, relatable to: (i) a sessions trial or, (ii) a trial of warrant case, or (iii) a summons case, are contained in three pairs of Sections under the CrPC. These are Sections 227 and 228 resply in so far as, the sessions trial is concerned; Sections 239 and 240 resply relatable to the trial of warrant cases; and Sections 245(1) and 245(2) resply in respect of summons case. The relevant provisions read as follows:-

> *"**Section 227. Discharge** - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

Section 228. Framing of charge.—*(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*
>
> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*
>
> *(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.*

Section 239. When accused shall be discharged.—*If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

> ***Section 240. Framing of charge.***—*(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*
>
> *(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.*
>
> ***Section 245. When accused shall be discharged.***— *(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.*
>
> *(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."*

53. The aforestated Sections indicate that the CrPC contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it, cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. The three Sections contain somewhat different provisions in regard to discharge of the

accused. As per Section 227, the trial judge is required to discharge the accused if "the Judge considers that there is not sufficient ground for proceeding against the accused". The obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless". The power to discharge under Section 245(1) is exercisable when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted would warrant his conviction". Sections 227 and 239 resply provide for discharge being made before the recording of evidence and the consideration as to whether the charge has to be framed or not is required to be made on the basis of the record of the case, including the documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 is reached only after the evidence referred to in Section 244 has been taken.

54. Despite the slight variation in the provisions with regard to

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discharge under the three pairs of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary one and the test of "*prima facie*" case has to be applied — if the trial court is satisfied that a *prima facie* case is made out, charge has to be framed.

55. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in ***Onkar Nath Mishra and others v. State (NCT of Delhi) and another***, (2008) 2 SCC 561, and referring to its earlier decisions in the ***State of Maharashtra v. Som Nath Thapa***, (1996) 4 SCC 659, and the ***State of M.P. v. Mohanlal Soni***, (2000) 6 SCC 338, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:-

> *"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged*

> *offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."*

56. Then again in the case of ***Som Nath Thapa*** (supra), a three-Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) Sections 227 and 228 resply in so far as the sessions trial is concerned; (ii) Sections 239 and 240 resply relatable to the trial of warrant cases; and (iii) Sections 245(1) and (2) *qua* the trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).

> *"32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that*

stage."

57. In a later decision in ***Mohanlal Soni*** (supra), this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7)

> *"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."*

58. Reiterating a similar view in ***Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another***, (2013) 11 SCC 476, it was observed by this Court that while framing charges the court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of the materials on record. It needs to evaluate whether there is a ground for presuming that the accused had committed the offence and it is not required to evaluate sufficiency of evidence to convict the accused. It was held that the

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Court at this stage cannot speculate into the truthfulness or falsity of the allegations and contradictions & inconsistencies in the statement of witnesses cannot be looked into at the stage of discharge.

59. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his

reasons for doing so.

60. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See : ***V.C. Shukla v. State through CBI***, AIR 1980

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SC 962).

61. Section 239 of the CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a *prima facie* case against the accused.

62. The learned author Shri Sarkar in his Criminal P.C., 5th Edition, on page 427, has opined as:-

> *"The provision is the same as in S. 227, the only difference being that the Magistrate may examine the accused, if necessary, of also S. 245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in S. 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless, i.e., either there is no legal evidence or that the facts do not make out any offence at all."*

63. In short, it means that if no *prima facie* case regarding the commission of any offence is made out, it would amount to a charge being groundless.

64. In ***Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra***, AIR 1972 SC 545, this Court has stated about the ambit of Section 251(A)(2) of the CrPC 1898, which is in *pari materia* with the wordings used in Section 239 of the CrPC as follows:-

> *"It cannot be said that the Court at the stage of framing the charge has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in S. 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution."*

In para 15, this Court has stated as:-

> *"Under sub-sec. (2), if upon consideration of all the documents referred to in S. 173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to be read along with sub-sec. (3), according to which, if after hearing the arguments and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chap. XXI of the Code within the Magistrate's competence and for which he can*

> *punish adequately, he has to frame in writing a charge against the accused. Reading the two sub-sections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges."* (Emphasis supplied)

65. Thus the word 'groundless', as interpreted by this Court, means that there is no ground for presuming that the accused has committed an offence.

66. This Court has again dealt with this aspect of the matter in ***Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja***, AIR 1980 SC 52. This Court has stated in the said case as:-

> *"At this stage, even a very strong suspicion found upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."*

67. The suspicion referred to by this Court must be founded upon the materials placed before the Magistrate which leads him to form

a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. Therefore, the words "a very strong suspicion" used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion about the existence of the factual ingredients constituting the offence alleged.

68. Section 239 has to be read along with Section 240 of the CrPC. If the Magistrate finds that there is *prima facie* evidence or the material against the accused in support of the charge (allegations), he may frame charge in accordance with Section 240 of the CrPC. But if he finds that the charge (the allegations or imputations) made against the accused does not make out a *prima facie* case and does not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 of the CrPC, the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Indeed, in a case

where the Magistrate takes cognizance of an offence without taking note of Section 468 of the CrPC, the most appropriate stage at which the accused can plead for his discharge is the stage of framing the charge. He need not wait till completion of trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing charge if the facts so justify.

69. The real test for determining whether the charge should be considered groundless under Section 239 of the CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239 of the CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

70. The provisions of discharge under Section 239 of the CrPC fell for consideration of this Court in ***K. Ramakrishna and others v. State of Bihar and another***, (2000) 8 SCC 547, and it was held that the questions regarding the sufficiency or reliability of the

evidence to proceed further are not required to be considered by the trial court under Section 239 and the High Court under Section 482. It was observed as follows:-

> *"4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259] the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charge. Such an endeavour may be justified during trial but not during the initial stage."*

71. In the case of ***State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath***, (2019) 7 SCC 515, this Court observed and held in paragraph 25 as under:-

> *"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction*

have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

> *"29. … At this stage, probative value of the materials has tobe gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the law does not permit a mini trial at this stage.""*

72. The ambit and scope of exercise of power under Sections 239 and 240 of the CrPC, are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be

"groundless". The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.

73. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be “groundless”.

74. The word "ground" according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever.

SPOPE OF EXCERICSE OF REVISIONAL POWER AT THE STAGE OF CHARGE

75. In ***Munna Devi v. State of Rajasthan & Anr***., (2001) 9 SCC 631, this Court held as under:-

> *"3.....The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."*

76. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure.

77. This Court in ***Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation***, (2018) 16 SCC 299, has held that interference in the order framing charges or refusing to discharge is called for in the rarest of rare case only to correct the patent error of jurisdiction.

78. The High Court has acted completely beyond the settled parameters, as discussed above, which govern the power to discharge the accused from the prosecution. The High Court could be said to have donned the role of a chartered accountant. This is exactly what this Court observed in the case of ***Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi*** (supra). The High Court has completely ignored that it was not at the stage of trial or considering an appeal against a verdict in a trial. The High Court has enquired into the materials produced by the accused persons, compared with the information complied by the investigation agency and pronounced a verdict saying that the explanation offered by the accused persons deserves to be accepted applying the doctrine of preponderance of probability. This entire exercise has been justified on account of the investigating officer not taking into the explanation offered by the public servant and also not taking into consideration the lawful acquired assets of the wife of the public servant i.e. the Respondent No. 2 herein.

79. By accepting the entire evidence put forward by the accused persons applying the doctrine of preponderance of probability, the

case put up by the prosecution cannot be termed as "groundless". As observed by this Court in ***C.D.S. Swami*** (supra) that the accused might have made statements before the investigating officer as to his alleged sources of income, but the same, strictly, would not be evidence in the case.

80. Section 13(1)(e) of the Act 1988 makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of properties disproportionate to his known sources of income but the term "known sources of income" would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 of the CrPC. At the stage of Section 239

of the CrPC, the Court has to only look into the *prima facie* case and decide whether the case put up by the prosecution is groundless.

81. In the overall view of the matter, we are convinced that the impugned orders passed by the High Court are not sustainable in law and deserve to be set aside. The circumstances emerging from the record of the case, *prima facie*, indicate the involvement of the accused persons in the alleged offence. Having regard to the materials on record, it cannot be said that the charge against the accused persons is groundless. There are triable issues in the matter. If there are triable issues, the Court is not expected to go into the veracity of the rival versions.

82. In the result, both the appeals succeed and are hereby allowed. The impugned orders passed by the High Court discharging the accused persons from the prosecution are hereby set aside. The Special Court shall now proceed to frame charge against the accused persons in accordance with law and put them to trial.

83. It is clarified that the observations made by this Court in this

judgment shall not be construed as final expressions of the innocence or guilt of the accused persons. The guilt or innocence of the accused persons shall be determined by the trial court on the basis of the evidence that may be led by both the prosecution and the defence. We have confined our adjudication only to consider the legality and validity of the impugned orders passed by the High Court discharging the accused persons.

84. Pending application, if any, also stands disposed of.

.....J.
(DINESH MAHESHWARI]

.....J.
(J.B. PARDIWALA)

NEW DELHI;
SEPTEMBER 5, 2022