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M. KRISHNA

v.

STATE OF KARNATAKA

FEBRUARY 19, 1999

B

[G.B. PATTANAIK AND M.B. SHAH, JJ.]

C

*Criminal Procedure Code, 1973—Sections 161, 482—Prevention of corruption Act, 1988—Sections 13(1)(e), 13(2)—Complaint of possession of disproportionate assets—'B' form in earlier FIR accepted by competent court—Earlier check period covered in second FIR—Whether the second FIR is liable to be quashed on this ground—Held, No—It cannot be a ground for quashing the FIR.*

D

*Prevention of Corruption Act, 1988—Sections 13(1)(e), 13(2)—Valuation of assets—Whether assets valued at a particular rate in earlier proceeding can be enhanced later—Held, cannot be valued higher in a later proceeding unless any positive ground is there for valuation.*

E

A complaint was drawn in 1989 against the appellant, a Class-I Officer of Karnataka Administrative Service under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988, on the ground of possession of disproportionate assets. After investigation a 'B' report was submitted in 1991 and it was accepted by the Special Judge. The appellant's properties were released from attachment. Later, in 1995 an FIR was filed against the appellant for offences under Section 13(1)(e) read with Section 13(2) of the Act of 1988 on the allegation that between 1.8.1978 and 25.7.1995 the appellant had acquired assets disproportionate to his known sources of income, and investigation was ordered.

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G

The appellant challenged the FIR under Section 482 Cr.P.C. on the ground that the second FIR is not maintainable for the period 1.8.1978 to 24.8.1989. The High Court dismissed the petition holding that the FIR cannot be quashed.

H

On appeal before this Court, the appellant contended, that the assets of the appellant for the period 1.8.1978 to 24.8.1989 having been the subject matter of an investigation in Crime Case No. 22 of 1989 a 'B' form having been filed by the investigating agency which was approved by the

Magistrate, inclusion of the said period in the fresh FIR is itself bad and the FIR is liable to be quashed, that after the FIR is given whatever statements are received are in course of investigation under Section 161 of Cr.P.C. and there cannot be two FIRs for the same period; that in view of Section 13(1)(e) of Prevention of Corruption Act the explanation offered by the appellant in respect of prior proceedings having been accepted the said assets could not have been again taken into account for a subsequent criminal case; that the assets of the Government Servant are to be valued on the date of acquisition and not on the date of verifying of the fact as in the present case and such valuation itself is an unfair investigation causing undue harassment to the accused appellant.

The respondents contended that the present case does not fall within the parameters set by the court for quashing an FIR; that acceptance of a 'B' form by the court cannot be held to be order of acquittal after trial, and there is no legal impediment to have a fresh FIR for the entire service period of a government servant and investigate into the assets of the employee for the entire period; that the assets of the employee shall be valued on the date of acquisition and on the date when the criminal case was instituted, and that the investigating agency is duty bound to take into consideration the fact of 'B' form and the order of the Magistrate, before ultimately filing the chargesheet or the 'B' form as the case may be but the very investigation cannot be quashed at this stage.

Disposing of the appeal, the Court

**HELD :** 1. There is no provision in Cr.P.C. which debars the filing of an FIR and investigating into the alleged offences merely because for an earlier period namely, 1.8.1978 to 24.8.1989 there was First Information Report which was duly investigated into and culminated in a 'B' form which was accepted by a competent court. [785-B]

2. The conclusion of the High Court that the present proceeding relates to fresh alleged assets and fresh check period is not wholly correct, in as much as admittedly the check period from 1.8.1978 till 24.8.1989 was the subject matter in the Crime Case No. 22 of 89 and the same ended in submission of 'B' form. Though the earlier period also could be a subject matter of investigation for variety of reasons like some assets not being taken into account or some materials brought during investigation not being taken into account yet at the same time the results to the earlier

**A** investigation cannot be totally obliterated and ignored by the Investigating Agency. But that cannot be a ground for quashing of the First Information Report itself and for injecting the investigating authority to investigate into the offence alleged. [785-B-D]

**B** 3. The contention of the appellant that the assets which were valued in the earlier investigation proceeding at a particular value cannot be valued higher in the present proceeding unless any positive ground is there for such valuation is correct. [785-D-E]

**C** (The Court observed that though the FIR is not quashed it is made clear that the investigating authority will certainly look into the earlier proceedings and the result of investigation thereunder and the submission of 'B' Form which was duly accepted by the competent Court while investigating into the present proceeding as well as the observations made by the Court in this Judgment.) [785-E-F]

**D** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 216 of 1999.

From the Judgment and Order dated 3.4.97 of the Karnataka High Court in Crl. P. No. 617 of 1995.

**E** Kapil Sibal, Siddharth Dave, Lakshmi Narayan, Ms. Beena Gupta, Ms. Rakhi Ray, S.K. Kulkarni, Ms. Sangeeta Kumar, P. Mahale, S.V. Mahale and K.R. Nagaraja for the appearing parties.

The Judgment of the Court was delivered by

**F** PATTANAİK, J. Leave granted.

**G** The appellant is a Class-I officer of Karnataka Administrative Service. On 24.8.1989 a report was drawn up against him under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act alleging therein that he has assets disproportionate to his known source of income. After investigation the Inspector General of Police, Bureau of Investigation, Karnataka Lokayukta authorised the Investigating Officer to submit a 'B' report before the Special Judge, Bangalore where the matter was pending and after issuance of a public notice in the prescribed form inviting objections to the aforesaid 'B' report from the interested persons

**H** by order dated 11.4.1991, the said 'B' report was accepted by the learned

Special Judge. Properties of the appellant which had been earlier attached were directed to be released. On 25.7.95 the Supdt. of Police Karnataka Lokayukta authorised the Deputy Supdt. of Police to investigate into the assets of the appellant and find out whether an offence has been committed under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. On the same day an FIR was filed alleging commission of offence against the appellant under Section 13(1)(e) read with Section 13(2) of the Act and the gravamen of the allegation is that between the period from 1.8.78 to 25.7.95 the appellant has acquired assets amounting to Rs. 58,77,000 as against his known source of income of Rs. 9,90,000 and thereby the disproportion is to the tune of Rs.52,17,000. The appellant filed a Criminal Petition before the High Court of Karnataka invoking jurisdiction under Section 482 of the Code of Criminal Procedure praying for quashing of the FIR in LAC Crime no. 21 of 95 *inter alia* on the ground that Crime No.22 of 89 having been registered against the appellant for a check period 1.8.78 till 24.8.89 and after due investigation a 'B' report having been filed and the same being accepted it was not proper for the investigating Authority to file another FIR which includes the earlier check period of 1.8.78 till 24.8.89. The learned Judge of the High Court, however, was not persuaded to agree with the aforesaid submission of the learned counsel appearing for the appellant, and on examining the FIR and the allegations made therein came to the conclusion that it was a set of fresh allegations in respect of fresh alleged assets during a fresh check period and as such, question of quashing the FIR does not arise. It is against the aforesaid order of the learned Single Judge of Karnataka High Court the present appeal has been preferred.

Mr. Sibbal, the learned senior counsel appearing for the appellant contended that the assets of the appellant for the period 1.8.78 till 24.8.89 having been the subject matter of an investigation pursuant to Crime Case No. 22 of 89 and a 'B' form having been filed by the investigating Agency which was approved by the Magistrate, inclusion of the said period in the fresh FIR is itself bad and, therefore, the FIR is liable to be quashed. Mr. Sibbal, also contended that in view of Sub-Section (8) of Section 173 of the Code of Criminal Procedure the Investigating Agency has the right to file fresh report on the basis of fresh materials but that not having been done the impugned FIR for the period 1.8.78 till 25.7.95 cannot be sustained. According to Mr. Sibbal the very fact that the Investigating Agency is not aware of the earlier criminal proceeding and the investigation thereupon

A which ultimately ended in a 'B' form and accepted by the Court indicates the total non-application of mind and pursuing the appellant maliciously and, therefore, the Court should interfere with the proceeding. According to Mr. Sibbal after the FIR is given whatever statements are received are in course of investigation under Section 161 of the Code of Criminal Procedure and that being the position there cannot be two FIRs for the period 1.8.78 till 24.8.89. The learned counsel also urged that in view of the provisions contained in Section 13(1)(e) of the Prevention of Corruption Act the explanation offered by the accused in respect of the prior proceedings having been accepted the said assets could not have been again taken into account for a subsequent criminal case. Mr. Sibbal also further submitted that in any view of the matter the assets of the Government servant are to be valued on the date of acquisition and not on the date of verifying of the fact and the very asset which was valued in course of earlier proceeding at Rs. one lakh should not have been valued at Rs. three lakhs or Rs. Four lakhs, as in the present case and such valuation itself is an unfair investigation causing undue harassment to the accused appellant.

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Mr. Mahale, the learned counsel appearing for the respondents on the other hand submitted, that the parameters for quashing an FIR having been laid down by this Court in *Bhajan Lal's* case and certain illustrations given by this Court, the present case does not fall within the said parameters and, therefore, the High Court was fully justified in not accepting the prayer of the accused appellant. Mr. Mahale also submitted that acceptance of a 'B' form by the Court cannot be held to be an order of acquittal after the accused being tried as provided under Section 300 of the Code of Criminal Procedure, and therefore, there is no legal impediment to have a fresh First Information Report for the entire service period of a government servant and investigate into the assets of the employee for the entire period. Mr. Mahale, however, fairly stated that the assets of the employee will have to be valued on the date of acquisition and not on the date the Criminal case is being instituted. He also submitted that the investigating Agency is duty bound to take into consideration the fact of 'B' form filed in Criminal Case No. 22 of 89 and the order of the Magistrate passed thereon before ultimately filing the chargesheet or the 'B' form as the case may be, in the present case. But according to him the very investigation cannot be quashed at this stage.

H Having considered the rival submissions made by counsel for the parties and having examined the provisions of the Criminal Procedure

Code as well as the Prevention of Corruption Act we find ourselves unable to agree with the submission of Mr. Sibbal, the learned senior counsel appearing for the appellant that the present FIR itself is bad in law. We do not find any provision in the Code which debars the filing of an FIR and investigating into the alleged offences merely because for an earlier period namely 1.8.78 to 24.8.89 there was First Information Report which was duly investigated into and culminated in a 'B' form which was accepted by a Competent Court. At the same time we are also of the opinion that the conclusion of the High Court that the present proceeding relates to fresh alleged assets and fresh check period is not wholly correct, in as much as admittedly the check period from 1.8.78 till 24.8.89 was the subject matter in the Crime Case No. 22 of 89 and the same ended in submission of 'B' form. Though the earlier period also could be a subject matter of investigation for variety of reasons like some assets not being taken into account or some materials brought during investigation not being taken into account yet at the same time the results of the earlier investigation cannot be totally obliterated and ignored by the Investigating Agency. But that cannot be a ground for quashing of the First Information Report itself and for injuncting the investigating authority to investigate into the offence alleged. We also find sufficient force in the arguments of Mr. Sibbal that the assets which were valued in the earlier investigation proceeding at a particular value cannot be valued higher in the present proceeding unless any positive ground is there for such valuation. For example, a car which was valued in the earlier proceeding at Rs. 60,000 could not have been valued at Rs. 1,70,000 in the present proceedings but at this stage the Court is not required to go into these matters as investigation is only at threshold. For the aforesaid reasons, while we are not in a position to quash the FIR, but we would make it clear that the Investigating Authority will certainly look into the earlier proceedings and the result of investigation thereunder and the submission of 'B' Form which was duly accepted by the competent Court while investigating into the present proceedings as well as the observations made by us in this Judgment. Subject to the aforesaid observations this appeal is disposed of.

V.M.

Appeal disposed of.