

State Of Karnataka Vs. Yoga Ramesh

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Court : Karnataka

Decided On : Jul-15-2022

Judge : K.Somashekar

Appeal No. : CRL.RP 854/2016

Appellant : State Of Karnataka

Respondent : Yoga Ramesh

Judgement :

R :

1. : IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE15H DAY OF JULY, 2022 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL REVISION PETITION No.854 OF 2016 BETWEEN State of Karnataka By Lokayuktha Police Rep. by PSI Lokayuktha Police Bengaluru - 560 001. ... Petitioner (By Sri. Prasad B.S - Advocate) AND Yoga Ramesh S/o. H.T. Hutchappa Aged about 53 years Motor Vehicle Inspector Shivamogga R/o No.1030, 3rd Main Road 4th Cross, Vijayanagar Bengaluru - 560 034 Permanent Address: Honnavalli Village Arakalagudu Taluk Hassan District. ... Respondent (By Sri. A.N. Radhakrishna - Advocate) :

2. : This Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the order dated 08.01.2016 passed by XXIII-Addl. City Civil and Sessions Judge and Special Judge, Bengaluru in

Spl.C.C.No.277/2010. This Criminal Revision Petition coming on for Dictating Judgment, this day, the court made the following:

ORDER

In this petition the petitioner / State is challenging the impugned order passed by the trial court in Spl.C.C.No.277/2010 dated 08.01.2016 discharging the accused for the offence punishable under Section 13(1)(e) which is punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to the P.C.Act). In this petition the State is seeking intervention of the impugned order by considering the grounds as urged and to set-aside the impugned order passed by the trial Court.

2. The factual matrix of this petition is as under: :

3. : In pursuance of securing the reports against the respondent who is arraigned as accused who joined the service as Motor Vehicle Inspector on 09.12.1991 in his capacity as a public servant and in the said capacity he has served in various places at Karnataka. During the check period between 01.01.1995 to 19.12.2007 the known source of the income of the accused was Rs.78,70,114/-. The value of the property of the accused and his family members was found Rs.95,22,289/-. The expenditure of the accused during the said period was found at Rs.53,07,182/-. The total value of the properties and the expenditure was found at Rs.1,48,29,471/-. It is further alleged that the accused acquired properties of the value of Rs.69,59,357/- which is disproportionate to his known source of income. The said disproportionate income is more than 88.43% of the known source of income. It is the case of the prosecution that the accused has committed the offence as defined under Section 13(1)(e) which is punishable under Section 13(2) of the P.C.Act. :

4. :

3. Subsequent to initiation of the criminal prosecution against the accused by recording the FIR and also report collected in respect of respondent / accused, the investigating agency / Lokayukta filed the charge sheet against the accused before

the Special Court having jurisdiction.

4. Subsequent to laying of the charge sheet against the accused, he filed an application under Sections 227 and 239 of Cr.P.C. seeking discharge of the alleged offences. The accused had produced certain documents along with the application filed by him. Subsequent to making the application, the State / Lokayukta had filed detailed objection to the said application. Subsequent to hearing the arguments advanced on both the sides, the trial Court allowed the application vide order dated 08.01.2016 and discharged the accused from the alleged offences. It is this order which is challenged under this petition by urging various grounds.

5. Learned Spl.PP for Lokayukta has taken me through the allegations made against the accused and :

5. : also the report collected by the investigating agency during the course of investigation. But the trial Court has committed serious error in discharging the respondent/accused when the allegations therein prima- facie show the offence committed by the accused. Further, it is contended that the trial Court has committed serious error in not considering the fact that the accused was working as a public servant at the time occurrence of the offence. The trial Court has not considered the facts relating to the involvement of the accused and relating to the commission of offence in respect of disproportionate assets to known source of income. But the trial Court has come to conclusion that the property acquired by the father of the respondent and also benami transaction is not at all concerned to the accused and it is also opined that the investigating officer has taken into consideration of his fathers assets as well as benami asset. But whereas the investigating officer has collected the documentary evidence to show that those assets were taken by the respondent in the name of his father and respondent himself acquired those assets in :

6. : the name of his father. But the trial Court erroneously came to conclusion that it is his fathers asset and discharged the accused accordingly.

6. The other limb of the argument addressed by the learned Spl. PP relating to the property in question is that the respondent / accused purchased a property in the name of his brother and the same will be revealed after full-fledged trial that the accused himself has given money to purchase the said property. It is further contended that the trial Court erred in coming to the conclusion before recording the evidence that some of the properties are purchased by the father-in-law of the respondent from his own income. Even on this ground also the impugned order requires intervention.

7. It is also the contention of learned Spl.PP that the trial Court failed to appreciate the fact that since from 1996-2002 the wife of accused and his second daughter and his father-in-law jointly constructed a Kalyana Mantapa and wife of accused invested the amount and so also the investment of constructing second floor of :

7. : residential house at Vijayanagar. These are all not considered by the trial court while discharging the accused. The trial Court also failed to notice that the accused has also purchased different immovable properties in the name of his father-in-law and during the investigation, the investigating officer collected the statement of seller and also the respondent has also participated in the sale proceeding but the trial Court has not at all considered those evidence on record. The trial Court has also failed to consider the fact that the father of the accused is an agriculturist and he has 8 children and they are depending on agriculture and they have no other source of income but the father of accused purchased the immovable properties to show the same there is a material evidence placed before the Court, but the trial Court has not at all given proper finding to that effect. Hence, the impugned order is liable to be set-aside.

8. Lastly it is contended by learned Spl.PP that the trial Court ought to have considered the materials placed before the Court and that whether there is prima-facie or :

8. : not at the time of considering the discharge application. The trial Court ought to have taken into consideration the materials produced by the Lokayukta at the time of filing charge sheet whether prima facie case is there or not to proceed with the case and after recording the evidence and conclusion of the trial has to

consider the document and its evidential value along with the evidence deposed before the court by the witnesses. But before that discharging the accused is not at all sustainable under law.

9. Further, learned Spl.PP has addressed his arguments relating to income tax and whereby the self- declaration of income tax is not proper and whatever the contention regarding the income tax it ought to have been tested by the trial Court only after the accused entering into the trial. But the trial Court erroneously passed the impugned order allowing the application seeking discharge. In this regard he placed reliance of the Honble Supreme Court in the case of State of Tamil Nadu v. :

9. : N.Suresh Rajan (2014) 11 SCC709 Para 32.3 of the reliance reads as under: While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law.

10. On all these premises, learned Spl.PP vehemently argued and also facilitated certain reliances which are aptly applicable to the present case and seeks for setting aside the impugned order passed by the trial Court discharging the accused of the offences punishable under the P.C.Act, if not, the gravamen of the incident :

10. : narrated by the complainant / Lokayukta shall be the sufferer and there shall be miscarriage of justice.

11. In support of his contention, learned Spl.PP has placed reliance of K.Veeraswamy vs. Union of India and others (1991) 3 SCC655 wherein the scope

of Sections 5 and 6 of the P.C.Act has been addressed.

12. In the reliance of Sajjan Kumar v. Central Bureau of Investigation (2010) 9 SCC368 the scope of Sections 227 and 228 - framing of charge/ discharge of accused - exercise of jurisdiction - scope - explained. In foot note - B the scope of Sections 227 and 482 - discharge - grounds for - delay in proceedings - continuation of prosecution and framing of charges on basis of statements made by PWs after a gap of about 23 years - propriety - held that though delay may be a relevant ground, however, in light of materials available before Court through CBI, without testing the same at trial, proceedings cannot be quashed merely on ground of delay - those material shave to be tested in context of :

11. : prejudice to accused only at trial. This was extensively addressed at paras 31 to 39 of the said judgment.

13. In the instant case, the investigating officer / Lokayukta has laid the charge sheet against the accused by securing the materials and also recording the statement of witnesses relating to the disproportionate assets to the known source of income. But there was no test and subjected to chief examination and cross-examination by the counsel. But in the instant case mere because of filing of the application by the accused under Sections 227 and 239 of Cr.P.C. the same ought not to have been considered by the trial Court and discharged the accused.

14. In the reliance of State of Tamil Nadu vs. N.Suresh Rajan (2014) 11 SCC709 the scope of Sections 227, 228, 239 and 240 - framing of charges/discharge of accused. In foot note - B in respect of Sections 227, 239, 244 and 245 - provisions relating to discharge of accused - difference in language employed in Sections 227, 239 and 245 - effect - common approach to :

12. : be adopted by court held notwithstanding differences in provisions relating to discharge under Sections 227, 239 and 245 and whichever provisions may be applicable, Court at this stage of considering discharge of accused is only required to see if there is a prima facie case for proceeding against accused. Further, Sections 227, 239 and 245 - discharge of accused - on facts, found not valid - allegations against two ministers (public servant) of acquiring and possessing

properties disproportionate to their known sources of income in names of family members and friends (also made accused in the case) - all accused persons were discharged holding that properties were owned by such accused (family members and friends) who had independent sources of income and who were also assessed under income tax provisions and hence, properties could not be added as properties of accused Ministers. This issue has been addressed by the Honble Supreme Court whereby challenging the discharge of accused under Sections 13(2) r/w 13(1)(e) of P.C.Act. :

13. :

15. On all these grounds, learned Spl.PP for Lokayukta contends that the ingredients of the complaint disclose alleged offence committed by the accused and there is a prima-facie case made out against the accused. Therefore, the impugned order passed by the trial court discharging the accused from the offences as alleged against him, requires to be set-aside by considering the grounds as urged in this petition.

16. On controvert to the arguments advanced by learned Spl.PP for Lokayukta, learned counsel Sri A.N.Radhakrishna for respondent - accused vehemently contended that the trial Court has considered all the materials collected by the investigating agency during the course of investigation in order to laying of charge sheet against the accused for the offences as alleged. There is no dispute that the respondent who is an accused is a public servant who was working as Motor Vehicle Inspector. He contends that there is no prima facie case made out against the accused to frame the charge, since the materials on record disclose that the accused has not :

14. : acquired properties disproportionate to his known source of income and the trial Court has rightly discharged the accused of the offence defined under Section 13(1)(e) which is punishable under Section 13(2) of the P.C.Act. The properties acquired by the accused are not disproportionate to his known source of income. The trial Court on meticulous appreciation of all records made available by the prosecution and also the records made available by the accused before the investigating officer during the course of investigation has found that there is no

prima facie case to proceed against the accused. Mere because the learned Spl.PP contends that it requires by the trial Court for arrival of proper conclusion and so also arrival of justification relating to the commission of offence, it is only on admission of oath of a witness before the court of law and unless the witness is let into the witness box and also subjected to examination and cross- examination, it cannot be proper to discharge the accused of the offence. But the trial Court on consideration of oral and documentary evidence available on record has rightly discharged the accused of the offences alleged against :

15. : him. On all these premises, learned counsel for respondent / accused in this matter contends that there is no bone of contention and there are no substances as contended by learned Spl.PP for intervention of the impugned order relating to discharge of accused for the offences as alleged. There is no perversity, absurdity or illegality committed by the trial Court for intervention of the impugned order. The accused is similarly gravamen of the accusation made against him by laying of the charge sheet by the Lokayukta. Mere because registration of crime and registration of complaint, mere because securing the statement of witnesses, it cannot be the genuinity of charge sheet laid by the investigating officer against the accused relating to facing of trial for the offences charged. In this context counsel for respondent / accused contends that the impugned order passed by the trial Court is justified and it will not amount for intervention of the grounds as urged by learned Spl.PP for Lokayukta which is challenged under this petition. Therefore, petition being devoid of merits deserves to be rejected. :

16. :

17. In this context of the contentions as taken by learned Spl.PP and equally the contentions made by learned counsel for respondent / accused, it is relevant to refer Section 13(1)(e) punishable under Section 13(2) of the P.C.Act which reads as under: Section 13(1)(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. Section 13(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

18. It is also relevant to refer Section 154 of Cr.P.C. which reads as under:

154. Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a :

17. : police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. (2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant. (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

19. Subsequent to criminal law was set into motion Section 173(2) of Cr.P.C. has to be followed by the investigating agency and during the course of investigation, the investigating officer has to record statement of witnesses and equally to secure the materials :

18. : as against the accused. But in the instant case even though the investigating officer has laid the charge sheet against the accused by following requisite provisions of Cr.P.C. but it is relevant to refer Sections 169 and 170 of Cr.P.C. relating to sufficiency of evidence and deficiency of evidence. The same reads as

under:

169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

170. Cases to be sent to Magistrate, when evidence is sufficient. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, :

19. : shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed. (2) When the officer in charge of a police station forward an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused. (3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons. (4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

20. Sections 227 and 239 of Cr.P.C. are in common parlance relating to discharge. But Section 239 of Cr.P.C. is relating to Magisterial powers that the offences has to :

20. : be with the special judge relating to discharge and for consideration of application under Section 227 of Cr.P.C. But it is relevant to refer Section 19 of the P.C.Act which reads as under:

19. Previous sanction necessary for prosecution.- (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,- (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office. (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office :

21. : at the time when the offence was alleged to have been committed. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),- (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby; (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice; (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation

to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. (4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.-For the purposes of this section,- (a) error includes competency of the authority to grant sanction; :

22. : (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

21. However, keeping in view the submission made by learned Spl.PP for Lokayukta and similarly, Sri A.N.Radhakrishna it is deemed appropriate for dwelling in detail the charge sheet materials laid by the investigating officer. But the case is of the year 2010 and the order of discharge has been passed by the trial Court on 08.01.2016. But whatever the materials collected by the investigating officer, but in detail even for testing before the Court of law by securing the witnesses and also subjected to examination and subjected to cross- examination under the relevant provisions of Indian Evidence Act, 1872. However, it is almost 12 years after initiation of criminal prosecution against the accused and also laying of the charge sheet by the Lokayukta by collecting huge material documents relating to movable and immovable and landed properties which alleged to be standing in the name of family members of accused. That :

23. : violations even though has been made by the investigating agency during the course of investigation the same was also considered by the trial Court relating to consideration of application filed under Sections 227 and 239 of Cr.P.C. for seeking discharge.

22. The materials were collected by the IO during the course of investigation in order to laying of the charge sheet against the accused invoking the offence under Sections 13(1)(e) which is punishable under Section 13(2) of the Prevention of Corruption Act, 1988. If the trial Court finds that there are any material evidence which finds place in the record then the only it has to proceed for framing of

charge and even after going through the oral and documentary evidence which collected during the course of the investigation. In this regard, it is relevant to refer Section 239 of Cr.P.C. which reads as under:

239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such :

24. : 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 23. Though the investigating agency has laid the charge sheet against the accused under Section 173(2) of Cr.P.C. by following requisite conditions and so also recording of statement of witnesses as contemplated under Section 161 and 164 of Cr.P.C. but in the instant case, mere recording the statement of witnesses, it cannot be specifically said that the incriminating materials were attributed specifically against accused.

24. However, keeping in view the ambit and scope of this Section it is always the domain vested with the prosecution to proceed if circumstances are warranting. But in the instant case, the accused has been discharged from the offences by the trial Court by allowing the :

25. : application filed by him under Sections 227 and 239 of Cr.P.C. However, Section 239 of Cr.P.C. is under what circumstances the accused shall be discharged. If upon considering the police report and the document sent with it under Section 173 of Cr.P.C. 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. In the instant case, the Court below has considered the application for discharge, after going through the entire material, statements of witness, oral and documentary evidence and came to the conclusion, that there is no sufficient evidence to proceed against accused.

25. In the instant case, the trial Court has considered the application filed under Sections 227 and 239 of Cr.P.C. by accused seeking discharge. In this :

26. : regard it is relevant to refer Section 227 of Cr.P.C. which reads as under:

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.

26. Section 239 of Cr.P.C. which postulates 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. In the instant case, the Magisterial powers has been exercised by the rank of the District and Sessions Judge in Spl.CC.No.277/2010 as where the accused had filed an application under Sections 227 and 239 of Cr.P.C seeking discharge. :

27. :

27. In the instant case, it is necessary to examine the scope of such exercise made by the Special Judge and even under Section 227 of Cr.P.C. part of Chapter 18 which applies to trial before the Sessions court. But in the instant case, the Special Judge is of the rank of District and Sessions Judge. 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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.' The language of Sections 239 and 227 are different. The scope of power exercisable to grant discharge under Section 227 is less compared to the power of discharge conferred on the Magistrate under Section 239. But in the instant case, the Magisterial power is conferred to the Special Judge being rank of District and

Sessions Judge. It is for this reason Sessions Judge is required to examine only the record of the case :

28. : and documents submitted therewith for ascertainment as to whether a case is made out for framing charge or discharge. But under Section 239, the requirement is different. It envisages ' If upon consideration 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.' But in the instant case, the application was filed by accused and the said application was allowed by considering all oral and material documents secured by the investigating agency by laying the charge sheet as against the accused as contemplated under Section 173(2) of Cr.P.C.

28. But while considering the case of discharge the trial Judge has to exercise his judicial mind to the facts of the case in order to determine whether the case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the :

29. : evidence recorded by the police or documents produced before the court which ex-facie disclosed that there was suspicious circumstance against the accused. Then the trial Judge has to apply his mind to proceed with the case in further to framing of charge and so also, facing of trial by the accused. This Section 227 of Cr.P.C. is in Chapter XVIII - Trial before a court of session. But the trial court i.e., XXIII Addl.City Civil and Sessions Judge and Special Judge, Bengaluru in Spl.C.C.No.277/2010 has considered the application filed under Sections 227 and 239 of Cr.P.C by accused. But the trial Judge is a rank of District and Sessions Judge but the concept of Section 239 of Cr.P.C the charge sheet is laid before the Magistrate but the trial Judge of the rank of District and Sessions Judge as in a special cases having Magisterial powers. Therefore, even to exercise the power as contemplated under Section 239 of Cr.P.C seeking discharge as the trial Court having Magisterial powers also be discharging the accused as the trial Judge has to apply its mind to the facts of the case in order to

determine whether a case for trial has been made out by :

30. : the prosecution. The materials which secured by the IO during the course of investigation other than those produced by the prosecution can also be looked into and should be considered even at the time of framing of charge to find out whether prima-facie case is made out or not.

29. But in the instant case, the charge sheet is laid by the Lokayukta under Section 173(2) of Cr.P.C. Mere because of laying of charge sheet against the accused by the investigating agency for the offences which lugged in the charge sheet, but the accused is having right of recourse to file an application under Sections 239/227 of Cr.P.C. seeking discharge if there are no sufficient evidence or materials secured by the IO to framing of a charge. If there are no strong materials find place in the charge sheet case, then the trial Judge has to apply his mind to consider the application filed by the accused seeking discharge. But in the instant case, accused has filed application under Sections 227 and 239 of Cr.P.C. seeking discharge. Subsequent to filing of an application :

31. : by him, the Special Public Prosecutor has filed objections to the said application in detail by referring the statement of witnesses and so also referring the material documents secured by the IO and ultimately came to the conclusion that upon appreciation/consideration of the entire materials there is no prima facie case made out against the accused to frame the charge and consequently, discharged from the case. Therefore, in this petition, there is no merits or otherwise to say there is no substance to call for interference of this Court and no warranting circumstances has arised for intervention of the impugned order passed by the trial court in Spl.C.C.No.277/2010 dated 08.01.2016 as contended by the counsel.

30. The accused joined into service on 09.12.1991. The check period is from 01.01.1995 to 19.12.2007. But the allegations made against the accused that known sources of income of accused was Rs.78,70,114/-. According to the prosecution the value of property of the accused and his family members was Rs.95,22,289/- . :

32. : Further, the expenditure of the accused during the said period was at Rs.53,07,182/-. The total value of the properties and the expenditure was found at Rs.1,48,29,471/- and the allegations against the accused is that he acquired properties of the value of Rs.69,59,357/-. This is the report against the accused in terms of the charge sheet laid by the investigating officer by securing the report and also recording the statement of witnesses and then laid the charge sheet against the accused before the Court having jurisdiction. But it is relevant to refer relating to the rental income of the accused. According to the investigation report the rental income is assessed at Rs.54,000/-. Relating to the rental report including the advance works out at Rs.1,03,500/- and then the calculation made by the investigating agency is Rs.54,000/- is incorrect. But no material is placed by the investigating officer to show that the accused has refunded the advance and therefore rental income including advance has to be considered at Rs.1,03,500/- :

33. :

31. Insofar total interest from the bank accounts of the accused and his wife works at Rs.81,805/-. But the wife of accused has won the lottery of Rs.5,00,000/- and accused had won one lottery of Rs.20,00,000/- as found in file No.66 volume No.5, sheet Nos.1 to 7. Out of the lottery ticket of the face value of Rs.5,00,000/- the wife of the accused received cash of Rs.2,22,000/- and National Savings Certificates of value of Rs.1,25,000/-. The accused has received Rs.40,000/- towards maturity value of LIC policies. Insofar as Item No.64 of volume 2 of the Investigating agency would show that the accused has invested a sum of Rs.1,00,000/- in Vijaya Bank and Rs.20,000/- in Apex Bank. But the same is not taken into account by the investigating agency for the reasons that the accused has not declared the same in the statement of annual assets and liabilities and also in the income tax returns. But that observation will not stand for the reason on the ground of failure on the part of the accused to declare in the income tax returns and the statement of assets and liabilities is the matter to be considered by the concerned authorities. Therefore, the said investment of :

34. : Rs.1,20,000/- needs to be considered and income of Rs.22,900/- out of the said investment needs to be taken into account.

32. Insofar as the statement of assets and liabilities of the accused for the year 2003-04 he has declared cash and bank balance of Rs.3,93,950/-. Insofar as statement of assets and liabilities for the year 2005 the accused has declared purchased 30 acres of land for Rs.2,77,965/- and cash as well as bank balance of Rs.10,14,208/-. These are all the materials which collected by the investigating officer and so also the assets and liabilities in respect of the accused has been considered by the trial Court relating to consideration of application seeking discharge from the offence under Section 13(1)(e) r/w 13(2) of the P.C.Act.

33. Insofar as the wife of accused, she has declared income of Rs.7,65,000/- for the period from 2003 to 2006 in the income tax returns and paid income tax of Rs.1,59,284/-. Even the unnumbered sheet No.25 of Volume - I furnished by the accused is the copy of the :

35. : statement of the chartered accountant which shows the income of the wife of the accused for the period from 31.03.1997 to 31.03.2007. Even after deducting the income tax of Rs.14,044/- paid on the said income the income works out at Rs.11,15,781/-. Insofar as sheet Nos.3 to 5 of file No.31 of Volume - 4 of the investigating officer, the wife of the accused received a sum of Rs.9,82,000/- by way of clearance of cheque. Thus, the total income of the wife of the accused works out at Rs.46,89,980/-.

34. Insofar as transactions as alleged in the name of the father, mother and brother of the accused are concerned, it is seen that the father of the accused purchased 4 acres of land bearing sy.no.105/1 at Anegundi Kaval for Rs.1,00,000/- on 2.6.2004, an extent of 1.04 acres in sy.no.19/3 at Devarahatti village on 17.12.2009. These are all the materials that have been collected by the investigating officer and the same has been considered by the trial Court relating to :

36. : consideration of application filed by the counsel seeking discharge.

35. Insofar as the brother of the accused purchased an extent of 8.36 acres of land in sy.no.1/1/1J at Echalagudde village on 26.7.2004 for Rs.70,000/- an extent of one gunta of land in sy.no.235/4 at Guddehosahalli of Mandya District for

Rs.1,000/- on 27.09.2004. According to the investigating agency, the father and brother of the accused had no sufficient income for purchase of these lands and that the accused has flown funds for purchase of these lands. On the basis of the certificate of Dr.M.Mallappa at page No.123 of volume-2 made available by the accused, it is noticed that share of the father of the accused in the joint family properties income in the year 1996 as derived out from the materials has also been appreciated by the trial Court and also considered the same for consideration of the application filed by the accused seeking discharge from the offence under the provisions of P.C.Act, 1988. :

37. :

36. Insofar as the view expressed by the investigating officer that the landed properties purchased by the father and brother of the accused is benami transaction of the accused cannot be accepted. Insofar as income of the father-in-law of the accused mentioned in sheet No.5, file No.16 of volume - 4 of the investigating officer and unnumbered sheet No.26 of volume-1 of the accused are one and same. When the income tax is deducted, then the take home income of the father-in-law of the accused during the above period worked out at Rs.57,00,869/-. Though volume-1 was made available to the investigating officer by the accused, records would not show that the accused has appreciated the same and therefore that much of income declared by the father-in-law of the accused needs to be appreciated.

37. In unnumbered sheet No.27 volume - 1 furnished by the accused would show the income of M/s.Tirumalesh Community and Samudaya Bhavan for the period from 31.03.2001 to 31.3.2008. The total income upto 31.3.2007 works out at Rs.4,22,673/- out of which father- :

38. : in-law has his share as partner of that concern. Taking into consideration it seems that the said income is included in unnumbered page 26 of volume-1 and therefore, the income as mentioned in unnumbered page 27 of volume-1 need not be again taken into consideration.

38. Insofar the purchase of lands by the father-in-law of the accused is concerned, records would show that in the year 1996 the father-in-law of the accused purchased an extent of 9.15 acres of lands in Sy.no.22 of Devarahalli village for Rs.1,80,000/-. Even file No.16 volume-4 of the investigating agency there remained balance of rs.1,03,943/-. The income of the previous year of the father-in-law of the accused is not assessed by the investigating officer. In file No.16 of volume-4 of investigating officer shows that in the year 1998 the income of the father-in-law deducting the income tax is Rs.1,72,284/- and therefore, it needs to be concluded that the purchase of this property is out of the independent income of the father-in-law of the accused. In file No.16 of :

39. : volume - 4 of the investigating officer shows that in the year 2002 the income of the father-in-law of the accused was Rs.3,29,841/- and therefore, the purchase of this property equally needs to held that the same is out of the independent income of the father-in-law of the accused. Insofar as file No.16 of volume - 3 furnished by the investigating officer, the father-in-law and mother-in-law contributing a sum of Rs.10,75,000/- and Rs.1,50,000/- respectively towards their share in respect of Thirumala Samudhaya Bhavana. The records would show that the father-in-law of the accused has also raised a loan of Rs.20,00,000/- for the said property. Therefore, the expression of the investigating officer that the father-in-law of the accused acquired that property out of the contribution of the accused cannot be accepted. Therefore, the conclusion arrived at by the investigating officer that acquisition of properties by the father-in-law of the accused and mother-in-law of the accused is benami transaction of the accused cannot be accepted. :

40. :

39. Insofar as page Nos.66 and 67 of volume-2 furnished by the investigating officer, he has assessed the value of the properties purchased by the accused, his wife, his father-in-law and his brother, it is mentioned that the total value of the properties of the accused, his wife, father-in-law and brother is Rs.84,42,460/-. Since as mentioned above, the properties purchased by the father, brother and father-in-law of the accused is not benami transaction as in accordance with the

materials which collected by the investigating officer and whereby laying the charge sheet against the accused person.

40. Insofar as page 69 of volume-2 of the materials which collected by the investigating officer that the accused has spent Rs.6,27,979/- towards food, Rs.97,887/- towards LIC premium, income tax of Rs.6,00,000/- out of the winning of lottery, income tax of Rs.1,53,500/- towards the winning of lottery by the wife, income tax of Rs.9,358/- paid by the accused and his wife from 2003 to 2007, medical expenses of Rs.3,400/-, educational expenses of children at Rs.4,51,801/-, :

41. : expenses towards passport at Rs.2,500/-, foreign tour expenses of Rs.30,000/-, registration charges of the properties at Rs.6,94,818/- investment towards site No.979 at Rs.2,00,740/-, investment by the accused and wife towards shares at Rs.9,95,215/- expenses towards rent and other expenses while the accused was working in various places at Rs.24,6910/-, cultivation expenses of lands at Rs.1,81,100/-, prepayment of bank loan at Rs.1,86,886/-, prepayment of KSFC loan by the father and wife of the accused at Rs.4,12,121/-, purchase of site No.979 at Rs.40,800/- and other expenses. Thus according to the investigating officer total expenses at Rs.53,07,182/-. These are all materials considered by the trial Court for consideration of the application filed by the accused seeking discharge from the offences as levelled against him.

41. Insofar as the income of the accused as discussed above, based upon the material collected by the investigating officer and equally appreciated by the trial Court for consideration of application filed by the accused :

42. : by referring to page No.71 of volume -2 of the investigating officer salary of Rs.8,70,968/- as observed in para nos.17 and 43 supra, rent of Rs.1,03,500/- as observed in para nos.18 and 44 supra, availment of loan of Rs.1,00,000/- as observed in para nos.20 and 45 supra, income of Rs.30,00,000/- out of sale of site as observed in para nos.20 and 45 supra, interest of Rs.8,805/- from the bank deposits as observed in paras 21 and 46 supra. These are all the observations made by the trial Court and so also, considered the contentions as made by counsel for the accused and looking into materials as well as considering the

application seeking discharge.

42. The trial Court has referred certain decisions and it is relevant and also benefit for consideration of the contentious contentions made by learned Spl.PP - Sri B.S.Prasad and so also, counter arguments advanced by learned counsel Sri A.N.Radhakrishna for respondent / accused. Insofar as decision reported in 2014(1) crimes 1 (SC) the Honble Supreme Court has held that Section 227 of Cr.P.C. the trial Court is required to discharge the :

43. : accused if it considers that there is no sufficient ground to proceed against the accused. It is also laid down by the Honble Supreme Court that the Court is required to see that there is prima facie case of proceedings against the accused. In the case on hand, upon meticulous appreciation of all the records made available by the prosecution and also the records made available by the accused before the investigating officer during the investigation, the trial Court found that there was no prima facie case to proceed against the accused and discharged him of the offences levelled against him.

43. In the reliance of Om Wati (Smt) and another vs. State through Delhi Administration and others, the Honble Supreme Court has held that the Court is required to record reasons only if it decides to discharge the accused. In the decision of State of M.P. vs. Mohanlal Soni reported in 2000(6) SCC page 338 held that at the stage of framing charges the Court has to prima facie consider whether there is any sufficient grounds for proceeding against the accused but not to appreciate the :

44. : evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

44. In the reliance of Niranjana Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijayya and others reported in (1990) 4 SCC page 76 the Honble Supreme Court has observed that at this stage the Court has to look into all the documents produced by the prosecution in order to ascertain whether there are sufficient grounds to proceed against the accused or if there are any materials which gives rise to a strong suspicion with regard to the complicity of the accused as alleged

by the prosecution.

45. In the decision of Hardeep Singh vs. State of Punjab and others reported in (2014) 3 SCC 92 the Honble Supreme Court has observed that the Court is required to evaluate the materials and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At the stage of framing of charge the Court has to consider the material with a view to find out if there is ground for :

45. : presuming that the accused has committed the offence or that there are sufficient grounds for proceeding against the accused and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. These are all the reliances that has been relied on by the trial Court relating to the consideration of the application filed by the accused for seeking discharge of the offences punishable under Section 13(1)(e) r/w 13(2) of P.C.Act.

46. Even upon appreciation of the entire materials which collected by the investigating officer during the course of investigation relating to laying of the charge sheet against the accused, the same were considered by the trial Court and also by referring to the law laid down by the Honble Supreme Court came to the conclusion that there is no prima facie case made out against the accused to frame charge since the materials on record disclose that the accused has not acquired properties disproportionate to his known source of income and the accused is entitled for discharge as sought for. :

46. :

47. Even at a cursory glance of the impugned order passed by the trial Court and minutely and on closely and scrutinizing the materials even though the allegations has been made against the accused, it is said that the trial Court has rightly come to the conclusion that there is no prima facie case made out against the accused to frame the charge, since the materials on record disclose that the accused has not acquired properties disproportionate to his known source of income and rightly discharged the accused for the offences under Sections 227 and 239 of Cr.P.C.

Therefore, it is said that there is no perversity or absurdity or inapplication of mind by the trial court to set- aside the impugned order as sought for by learned Spl.PP. In view of the aforesaid reasons and findings, I proceed to pass the following:

ORDER

The Criminal Revision Petition filed by the Petitioner/State by Lokayukta Police under Sections 397 r/w 401 of Cr.P.C. is hereby dismissed. :

47. : Consequently, the order passed by the XXIII Additional City Civil and Sessions Judge and Special Judge, Bengaluru in Spl.C.C.No.277/2010 dated 08.01.2016 discharging the accused of the offence defined under Section 13(1)(e) which is punishable under Section 13(2) of the P.C.Act is hereby confirmed. Sd/-
JUDGE DKB

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