REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1662 OF 2019
(ARISING OUT OF SLP (CRIMINAL) NO. 3632 OF 2019)

THE STATE OF TELANGANA .....APPELLANT(S)

VERSUS

SRI MANAGIPET @ MANGIPET SARVESHWAR REDDY .....RESPONDENT(S)

W I T H

CRIMINAL APPEAL NO. 1663 OF 2019
(ARISING OUT OF SLP (CRIMINAL) NO. 4074 OF 2019)

J U D G M E N T

HEMANT GUPTA, J.

1. The order dated 24th December, 2018 passed by the High Court of Judicature at Hyderabad is the subject matter of challenge in the present appeals, one by the State and the other by the Accused Officer.

2. The High Court partly allowed the petition filed by the Accused Officer under Section 482 of the Code of Criminal Procedure, 1973[1] *qua* the proceedings arising out of Crime No. 28/ACB-CIU-HYD/2011

1 for short, 'Code'

dated 9th November, 2011.

3. Such FIR was registered on the basis of the statement given by Ch. Sudhakar, Deputy Superintendent of Police[2] at about 10 am. The FIR reads as under:

> "On receipt of credible information that Sri. Managipet @ Mangipet Sarveshwar Reddy S/o. Late Narsimha Reddy, Age 51 years, Occ: OSD, Rang Reddy District, Vikarabad R/o Flat No. 401, Venkatadri Apartments, Behind HPCL Petrol Pump, Gachibowli, Hyderabad is a native of Chilkatonipally (V) Veltoor (Post), Wanaparthy Tq., Mahaboobnagar District. The S.O. joined Govt. service on 19-09-1985 as Sub Inspector of Police and promoted as Inspector of Police on 04-04-1995 and Dy. Supdt. of Police, in the year 2007. He worked as SI at Rayadurgam, Hayathnagar, Malkajigiri, as Circle Inspector at Huzurnagar of Nalgonda District Narsingi, Uppal, Rajendranagar of Cyberabad Commissionerate, R.R. District as ACP., Rajendranagar for about 4 years and presently working as OSD, Ranga Reddy District, Vikarabad.
>
> During the period of his service he acquired Six Multistoried Buildings, One Multistoried commercial complex, 27 plots and 26 Acres of land at Hyderabad, Ranga Reddy and Mahboobnagar Districts and one Scorpio car, one Hyundai Verna car and Maruti Car, all worth Rs.3,55,61,500/-.
>
> The probable income of the A.O. and his family members from all their known sources of income when calculated roughly would be Rs.60,00,000/-. The probable expenditure of the accused officer including household expenditure and expenditure on children education is tentatively estimated at Rs.23,00,000/-.
>
> The likely savings of the accused officer is Rs.37,00,000/- i.e., the probable income of Rs. 60,00,000 - minus the probable expenditure of Rs.23,00,000/-.
>
> As against the likely savings of Rs.37,00,000/- the Accused Officer has acquired assets approximately worth Rs.3,55,61,500/-. Thus, the A.O. is in possession of assets worth Rs.3,18,61,500/- which are disproportionate

2 for short, 'DSP'

> to the known sources of his income for which he cannot satisfactorily account for and thereby committed the offence punishable U/s 13(2) r/w 13(1)(e) of P.C. Act 1988.
>
> Permission has been obtained from the competent authority to register a case against the above official U/s 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.
>
> Hence, the FIR."

4. A charge sheet was filed on 9th October, 2017 on completion of the investigations. As per the Report, the Accused Officer was said to be in possession of assets worth Rs.3,18,61,500/- alleged to be disproportionate to his known sources of income. The total worth of the property against his savings of Rs.37 lakhs was found to be approximately Rs.3,55,61,500/-. During the investigations, as many as 114 witnesses were examined. Ch. Sudhakar, DSP, CIU, ACB, Hyderabad and five more investigating officers conducted the investigations and prepared the final report.

5. The High Court in a petition for quashing of the charge sheet, held that there was no authorization to register the crime and that the informant cannot be the investigating officer and, thus, quashed the same. The State is aggrieved against the said two findings whereas, the Accused Officer has challenged the findings of the High Court not accepting the grounds pressed by him in seeking the quashing of the charge sheet - that there is no preliminary inquiry before the registration of the crime; that there is no sanction and that there is a delay in the completion of the

investigation which has prejudiced the rights of the Accused Officer.

6. Ms. Bina Madhavan, learned counsel for the State submitted that the Accused Officer joined as Sub Inspector on 19th September, 1985 and was promoted as Inspector on 4th April, 1997. He was further promoted as DSP in the year 2007. In pursuance of the FIR filed, a draft final report was prepared on 30th April, 2015 but the same was submitted on 9th October, 2017 after the Accused Officer retired on 31st May, 2017. Section 17 of the Prevention of Corruption Act, 1988[3] pertains to investigation into cases under the Act. A Police officer not below the rank of Inspector, authorized by the State Government by general or special order, may also investigate any such offence. An offence under clause (e) of sub-section (1) of Section 13 of the Act cannot be investigated without an order of the Police Officer not below the rank of Superintendent of Police. Section 17 of the Act reads as under:

> "17. Persons authorised to investigate.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—
>
> a) xx xx xx
>
> b) xx xx xx
>
> c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

3 for short, 'Act'

> Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:
>
> Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

7. Learned counsel for the State referred to Government Order No. 3168 dated 24th May, 2008 re-employing Sri K. Sampath Kumar, Joint Director, Anti-Corruption Bureau as Officer on Special Duty after his superannuation on 31st May, 2008 for a period of one year. Such order of re-employment was renewed on 5th March, 2009; 13th May, 2010 and on 30th May, 2011, each extending the term of re-employment by one year. It was on 9th November, 2011, the Joint Director, CIU & SES, Anti-Corruption Bureau authorized Ch. Sudhakar, DSP to register a case against the Accused Officer under Section 13(2) read with Section 13(1)(e) of the Act and inspect any premises, bankers books of the Accused Officer or of any other person concerned with the affairs of the Accused Officer and take or cause to be taken certified copies of the relevant entries therefrom for the purpose of investigation. It is in pursuance of such authorization that the FIR was lodged, premises were searched and the Accused Officer was arrested.

8. The High Court relied upon the judgment reported as ***Union Public***

Service Commissioner v. ***Girish Jayanti Lal Vaghela & Ors.***[4] to hold that the statutory rules do not permit to extend the age of superannuation without compliance of Article 16 of the Constitution of India. A person who was appointed for a short period of six months or till availability of a regular selectee, whichever is earlier is practically appointed on a contract basis and could not be called a government servant. The High Court returned the following findings:

> "21. It is neither pleaded nor is there any material to show that the appointment of Respondent 1 had been made after issuing public advertisement or the body authorised under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him. His contractual appointment for six months was dehors the rules. The appointment was not made in a manner which could even remotely be said to be compliant with Article 16 of the Constitution. The appointment being purely contractual, the stage of acquiring the status of a government servant had not arrived. While working as a contractual employee Respondent 1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was he entitled to any pension which are normal incidents of a government service. Similarly, he could neither be placed under suspension entitling him to a suspension allowance nor could he be transferred. Some of the minor penalties which can be inflicted on a government servant while he continues to be in government service could not be imposed upon him nor was he entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that Respondent 1 was a government servant."

9. We find glaring illegality in the line of reasoning and the findings

4 (2006) 2 SCC 482

recorded by the High Court. ***Girish Jayanti Lal Vaghela*** was a case where Shri Vaghela was appointed on a short term contract basis, on a fixed salary till a candidate was selected by the Union Public Service Commission on a regular basis. The advertisement to fill up the post on regular basis contemplated relaxation of five years in age for government servants. He claimed relaxation in age being a government servant for appointment on regular basis. It was held that it was a contract which governed his terms of service and not the rules framed under the proviso to Article 309 of the Constitution of India in as much as he was not appointed in accordance with the Rules and, thus, was not eligible for any relaxation in upper age for appointment on a regular basis in a post advertised by Union Public Service Commission.

10. Article 310 of the Constitution contemplates that except as expressly provided, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office at the pleasure of the President. In respect of the State Services, however, he or she holds office at the pleasure of the Governor. In the present case, Sri K. Sampath Kumar was re-employed for a period of one year by the State Government in exercise of powers conferred under Article 162 of the Constitution of India. There is no prohibition in any of the service rules that there cannot be any re-employment of a person who was once in a civil service of either the Center or the State.

11. Entry 2 of List II of the State List is the Police (including railway and village police) subject to the provisions of Entry 2A of List I. Therefore, various facets of Policing in the State fall within the legislative competence of the State and the re-employment of a retired personnel who was a member of Indian Police Service, falls within the executive power of the State. As a re-employed officer, he was holding a civil post as his salary was being paid from the State Exchequer. He was discharging duties and responsibilities in the Anti-Corruption Bureau.

12. In ***P.H. Paul Manoj Pandian*** v. ***P. Veldurai***[5], it has been held that the executive power of the State is coterminous with the legislative power of the State Legislature i.e. if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it. This Court held as under:

> "48. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations. Such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject. Thus, the High Court was not justified in brushing aside the Government Order dated

5 (2011) 5 SCC 214

16-11-1951 on the ground that it contained administrative instructions."

13. In ***Bishambhar Dayal Chandra Mohan & Ors.*** v. ***State of Uttar Pradesh & Ors.***[6], it was held that the executive power of the State Government cannot be circumscribed if it does not go against the provisions of the Constitution or any law. The Court held as under:

> "20. ..... In *Ram Jawaya Kapur* v. *State of Punjab* [AIR 1955 SC 549 : (1955) 2 SCR 225 : 1955 SCJ 504] Mukherjea, C.J., dealt with the scope of Articles 73 and 162 of the Constitution. The learned Chief Justice observed that neither of the two Articles contains any definition as to what the executive function is or gives an exhaustive enumeration of the activities which would legitimately come within its scope. It was observed: "Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away." It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill."

14. Sri K. Sampath Kumar was re-employed initially for a period of one year after his retirement. He was not being recruited for holding a civil post for the first time which may warrant compliance of rigour of Article 16 of the Constitution. He had crossed all bridges, when

6 (1982) 1 SCC 39

he was appointed and discharged duties before attaining the age of superannuation. Such re-employment by the State is in exercise of the powers conferred under Article 162 of the Constitution of India. Such executive powers of the State do not contravene any other statutory provisions; therefore, re-employment in this regard is supplementing the statutory rules and regulations and not supplanting them. Therefore, Sri K. Sampath Kumar has discharged the duties of Joint Director in the Anti-Corruption Bureau in exercise of the powers conferred by the State Government.

15. We further find that Sri K. Sampath Kumar's acts whilst discharging the duties of Joint Director in the Anti-Corruption Bureau were within the scope of the assumed official authority in public interest and not for his own benefit. Therefore, acts undertaken in this regard by the officer will be taken to be valid. This Court in a judgment reported as ***Gokaraju Rangaraju*** v. ***State of Andhra Pradesh***[7] held as under:

> "17. A judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief…
>
> 19. In our view, the de facto doctrine furnishes an answer to the submissions of Shri Phadke based on

7 (1981) 3 SCC 132

> Section 9 of the Criminal Procedure Code and Article 21 of the Constitution. The judges who rejected the appeal in one case and convicted the accused in the other case were not mere usurpers or intruders but were persons who discharged the functions and duties of judges under colour of lawful authority. We are concerned with the office that the Judges purported to hold. We are not concerned with the particular incumbents of the office. So long as the office was validly created, it matters not that the incumbent was not validly appointed. A person appointed as a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, would be exercising jurisdiction in the Court of Session and his judgments and orders would be those of the Court of Session. They would continue to be valid as the judgments and orders of the Court of Session, notwithstanding that his appointment to such Court might be declared invalid. On that account alone, it can never be said that the procedure prescribed by law has not been followed. It would be a different matter if the constitution of the court itself is under challenge. We are not concerned with such a situation in the instant cases. We, therefore, find no force in any of the submissions of the learned Counsel."

16. The aforesaid judgment relies upon ***Pulin Behari Das*** v. ***King Emperor***[8], wherein Justice Mookerjee held the following:-

> "The doctrine that the acts of officers *de facto* performed by them within the scope of their assumed ??? authority in the interest of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts of officers *de jure*, dates as far back as the Year-Books, and it stands confirmed, without any qualification or exception, by a long line of adjudications. Viner says "acts done by an officer *de facto* and not *de jure* are good, for the law favours one in a refuted authority" (Abridgment, Tit. Officers and Officers G. 4). In fact the question for determination in cases involving the application of the *de facto* doctrine, is not, as a rule, whether the challenged acts, assuming the officer to be *de facto*, as such are valid, but whether the person whose title is questioned is or was really a *de facto* officer.

8 1911 SCC OnLine Cal 159 : (1911-12) 16 CWN 1105

xx xx xx

> It is not necessary for our present purposes to investigate exhaustively all the qualifications or limitations subject to which the *de facto* doctrine has to be applied. The substance of the matter is that the *de facto* doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where those interests were involved in the official acts of persons exercising the duties of an office without being lawful Officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted at his or their pleasure to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers, on the ground of irregular existence or defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society their authority must be upheld until in some regular mode their title is directly investigated and determined, [See the observations in *Scadding* v. *Lorant* [???] and *Norton* v. *Shelby County* [118 U.S. 425 (1886).] In the matter now before us, the sanction under sec. 196 of the Criminal Procedure Code was granted by the *de facto* Local Government and the cognizance of the case has been taken by the *de facto* Sessions Judge. In my opinion, it is not open to the Appellants to question collaterally the legality of the conviction upon the allegation that the Local Government was irregularly constituted and the Sessions Judge irregularly appointed. The first ground upon which the legality of the trial is assailed must consequently be overruled."

17. The *de facto* doctrine as encapsulated above has been reiterated by this Court, even in the context of an executive appointment, in the judgment reported as ***Pushpadevi M. Jatia v. M. L. Wadhawan, Additional Secretary, Government of India and Ors.***[9]. In this case, the Additional Secretary to the Government of

9 (1987) 3 SCC 367

India had detained Mohanlal Jatia vide a Government order under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, on being satisfied that it was necessary to detain him. Herein, the Additional Secretary relied on statements recorded by one R.C. Singh whom the appellant contended was not a "gazetted officer" of enforcement under FERA, and therefore statements recorded by the officer could not be relied upon to detain him. It was discussed:

> "17. In any event, the learned Counsel further contends that R.C. Singh was clothed with the insignia of office and he was purporting to exercise the functions and duties of a gazetted officer of Enforcement under Section 40(1) of the FERA and therefore the de facto doctrine was attracted. He relies upon the decision of this Court in *Gokaraju Rangaraju* v. *State of Andhra Pradesh* [(1981) 3 SCC 132: 1981 SCC (Cri) 652: (1981) 3 SCR 474] enunciating the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. In other words, he contends that where an officer acts under the law, it matters not how the appointment of the incumbent is made so far as the validity of his acts are concerned.
>
> 18. We are inclined to the view that in this jurisdiction there is a presumption of regularity in the acts of officials and that the evidential burden is upon him who asserts to the contrary. The contention that R.C. Singh was not a gazetted officer of Enforcement within the meaning of Section 40(1) of the FERA appears to be wholly misconceived besides being an afterthought. The validity of appointment of R.C. Singh to be an officer of Enforcement under this Act cannot be questioned…….
>
> 20. … Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of his acts are concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as valid under the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. In *Gokaraju Rangaraju*

> *case* [(1981) 3 SCC 132 : 1981 SCC (Cri) 652 : (1981) 3 SCR 474] Chinnappa Reddy, J., explained that this doctrine was engrafted as a matter of policy and necessity to protect the interest of the public."

18. Further, a Full Bench of Kerala High Court in a judgment reported as ***P.S. Menon*** v. ***State of Kerala***[10] held that the *de facto* doctrine was engrafted as a matter of policy and necessity to protect the interest of the public as well as the individuals involved in the official capacity of persons exercising the duty of an officer without actually being one in strict point of law. These officers may not be the officers *de jure* but by virtue of particular circumstances, their acts should be considered valid as a matter of public policy.

19. In another Division Bench judgment reported as ***P. Mahamani*** v. ***Tamil Nadu Magnesite, Ltd., Salem & Ors.***[11], the Madras High Court held as under:

> "12. An officer *de facto* is one who by some colour or right is in possession of an office and for the time being performs his duties with public acquiescence, though having no right in fact. Whereas an intruder is one who attempts to perform the duties of an office without authority of law, and without the support of public acquiescence. No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private rights, the acts of officers *de-facto* arc not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose. In all other cases the acts of an officer *de facto* are as valid and effectual, while he is suffered to retain the office as though he were an officer by right, and the same legal consequences will flow from them

10 AIR 1970 Ker 165
11 (1993) 2 LLN 353

> for the protection of the public and of third parties. There is an important principle, which finds concise expression in the legal maxim that the acts of officers *de facto* cannot be questioned collaterally. A person may be entitled to his designation although he is not a true and rightful incumbent of the office, yet he is no more usurper but holds it under colour of lawful authority. The *de facto* doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where these interests were involved in the official act of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and lo preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, lo collaterally challenge the authority of and lo refuse obedience lo the Government of the State and the numerous functionaries through whom it exercised its various powers on the ground of irregular existence of defective title insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be up held until in some regular mode their title is directly investigated and determined. When one holds office under colour of lawful authority, whatever be the defect of his title lo the office, acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy and acts done by an officer *de jure*. The defective appointment of a *de facto* officer may be questioned directly in a proceeding lo which he may be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence lo the officer concerned. So the writ petitioner cannot be heard to say that Sri Madhavan Nair, the second respondent had no authority to preside over the meeting of the Board of Directors wherein it was resolved lo place him under suspension and initiate disciplinary action."

20. The *de facto* doctrine was reiterated yet again in a recent Supreme Court judgment reported as ***Veerendra Kumar Gautam & Ors.*** v. ***Karuna Nidhan Upadhyay & Ors.***[12].

12 (2016) 14 SCC 18

21. Therefore, we find that Sri K. Sampath Kumar was discharging the duties of Joint Director in Anti-Corruption Bureau under the authority conferred by the State. The authorisation in favour of Ch. Sudhakar was issued when he was performing his duties in public interest and not for his own benefit. Therefore, such authorisation is valid and binding as if it was an act of an officer *de jure.*

22. We further find that the High Court, while deciding a petition for quashing of proceedings under Section 482 of the Code, could not have commented upon the nature of employment of Sri K. Sampath Kumar, as such a question does not fall within the jurisdiction of the High Court whilst deciding the aforementioned petition.

23. Sri K. Sampath Kumar has authorised Ch. Sudhakar and the final report had been filed after the investigation conducted by the latter, in terms of clause (c) of Section 17 of the Act. In this regard, it cannot be said that the investigation was not conducted in a manner contemplated under law. Thus, Ch. Sudhakar was an authorized Officer, competent to investigate and file a report for the offences under the Act including of an offence under Section 13(1)(e) of the Act.

24. Another finding recorded by the High Court is that the informant cannot be the investigating officer. Such a finding is based upon Ch. Sudhakar being both the informant and the initiator of the investigations. The High Court derives support from the judgment

of this Court reported as ***Mohan Lal*** v. ***State of Punjab***[13] to hold that a fair investigation is the very foundation of fair trial, which necessarily postulates that the informant and the investigator must not be the same person.

25. The said judgment however has been held to be prospective in the judgment reported as ***Varinder Kumar*** v. ***State of Himachal Pradesh***[14] wherein, this Court has succinctly put as under:

> "18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in *Mohan Lal* (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal* (supra) shall continue to be governed by the individual facts of the case."

26. Thus, we find that the orders of the High Court to quash the proceedings against the Accused Officer are not sustainable and are consequently, set aside. Accordingly, the appeal filed by the State is allowed and the matter is remitted back to the learned trial court for further proceedings in accordance with law.

27. Coming to the appeal filed by the Accused Officer, Mr. Guru Krishna Kumar, learned senior counsel vehemently argued that a preliminary inquiry before the registration of a crime is mandatory. Reference was made to a judgment reported as ***Lalita Kumari*** v.

13 (2018) 17 SCC 627
14 2019 SCC OnLine SC 170

Government of Uttar Pradesh & Ors.[15] as well as the judgment reported as ***State by Karnataka Lokayukta Police Station, Bengaluru*** v. ***M.R. Hiremath***[16].

28. In ***Lalita Kumari***, the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused. Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that prima facie, the allegations levelled against the accused in the complaint are credible. It was thus held as under:-

> "73. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action."

15 (2014) 2 SCC 1
16 (2019) 7 SCC 515

29. The Court concluded that the registration of an FIR is mandatory under Section 154 of the Code if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. This court held as under:

> "111. In view of the aforesaid discussion, we hold:
>
> i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
>
> iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
>
> iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
>
> v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
>
> vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
>
> a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases."

30. It must be pointed that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry may be conducted pertaining to Matrimonial disputes/family disputes, Commercial offences, Medical negligence cases, Corruption cases etc. The judgment of this court in ***Lalita Kumari*** does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.

31. In ***M.R. Hiremath***, this Court set aside an order on an application for discharge under Section 239 of the Code, *inter alia,* for the reason that a certificate under Section 65B of Evidence Act had not been produced while relying upon the evidence of a spy camera. An argument was raised that the spy camera has been given by the investigating officer even before investigations were formally started. On the strength of such fact, an argument was raised by Mr. Guru Krishna Kumar, learned counsel for the Accused Officer, that without conducting a preliminary inquiry the FIR could not have been lodged. This Court in ***M.R. Hiremath*** held that when the investigating officer had handed over the spy camera to the complainant, the purpose was to ascertain, in the course of the preliminary inquiry, whether information furnished by the complainant could form the basis of lodging an FIR. It was held to be a preliminary inquiry to ascertain whether the information

revealed a cognizable offence. The Court held as under:

> "23. In the present case, on 15-11-2016, the complainant is alleged to have met the respondent. During the course of the meeting, a conversation was recorded on a spy camera. Prior thereto, the investigating officer had handed over the spy camera to the complainant. This stage does not represent the commencement of the investigation. At that stage, the purpose was to ascertain, in the course of a preliminary inquiry, whether the information which was furnished by the complainant would form the basis of lodging a first information report. In other words, the purpose of the exercise which was carried out on 15-11-2012 was a preliminary enquiry to ascertain whether the information reveals a cognizable offence."

32. The said judgment does not help the learned counsel for the Accused Officer. The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in ***Lalita Kumari***.

33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the Accused Officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of *prima facie* allegations disclosing a

cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court reported as ***State of Haryana*** v. ***Bhajan Lal***[17] wherein, this Court held *inter alia* that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. Therefore, we hold that the preliminary inquiry warranted in ***Lalita Kumari*** is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of

17 1992 Supp (1) SCC 335

information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.

35. We also do not find any merit in the argument that there has been no sanction before the filing of the report. The sanction can be produced by the prosecution during the course of trial, so the same may not be necessary after retirement of the Accused Officer. This Court in ***K. Kalimuthu*** v. ***State by DSP***[18] held as under:

> "15. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage…"

36. The High Court has rightly held that no ground is made out for quashing of the proceedings for the reason that the investigating agency intentionally waited till the retirement of the Accused Officer. The question as to whether a sanction is necessary to prosecute the Accused Officer, a retired public servant, is a question which can be examined during the course of the trial as held by this Court in ***K. Kalimuthu***. In fact, in a recent judgment in ***Vinod Kumar Garg*** v. ***State (Government of National Capital Territory of Delhi)***[19], this Court has held that if an investigation was not conducted by a police officer of the requisite rank and status required under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity results in causing preju-

18 (2005) 4 SCC 512
19 Criminal Appeal No. 1781 of 2009 decided on 27th November, 2019

dice, conviction will not be vitiated or be bad in law. Therefore, the lack of sanction was rightly found not to be a ground for quashing of the proceedings.

37. Mr. Guru Krishna Kumar further refers to a Single Bench judgment of the Madras High Court in ***M. Soundararajan*** v. ***State through the Deputy Superintendant of Police, Vigilance and Anti Corruption, Ramanathapuram***[20] to contend that amended provisions of the Act as amended by Act XVI of 2018 would be applicable as the Amending Act came into force before filing of the charge sheet. We do not find any merit in the said argument. In the aforesaid case, the learned trial court applied amended provisions in the Act which came into force on 26th July, 2018 and acquitted both the accused from charge under Section 13(1)(d) read with 13(2) of the Act. The High Court found that the order of the trial court to apply the amended provisions of the Act was not justified and remanded the matter back observing that the offences were committed prior to the amendments being carried out. In the present case, the FIR was registered on 9th November, 2011 much before the Act was amended in the year 2018. Whether any offence has been committed or not has to be examined in the light of the provisions of the statute as it existed prior to the amendment carried out on 26th July, 2018.

20 Crl. A. (MD) No. 488 of 2018 and Crl. M.P. (MD) No. 8712 of 2018 decided on 30th October, 2018.

38. In view thereof, we do not find any merit in the reasonings recorded by the High Court in respect of contentions raised by the Accused Officer. The arguments raised by the Accused Officer cannot be accepted in quashing the proceedings under the Act. Accordingly, Criminal Appeal No. 1663 of 2019 filed by the Accused Officer is dismissed whereas Criminal Appeal No. 1662 of 2019 filed by the State is allowed.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
DECEMBER 06, 2019.