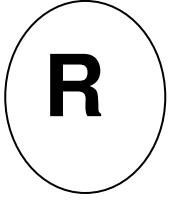




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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 22483 OF 2023 (GM-RES)

C/W

CRIMINAL PETITION NO. 9086 OF 2023,

CRIMINAL PETITION NO. 514 OF 2024 ,

WRIT PETITION NO. 19512 OF 2022 (GM-RES),

WRIT PETITION NO. 19380 OF 2023 (GM-RES),

WRIT PETITION NO. 19662 OF 2023 (GM-RES),

WRIT PETITION NO. 20697 OF 2023 (GM-RES),

WRIT PETITION NO. 22626 OF 2023 (GM-RES),

WRIT PETITION NO. 27760 OF 2023 (GM-RES)

IN WRIT PETITION NO. 22483 OF 2023:

BETWEEN:

SRI. SATHISH S
S/O LATE SRINIVASAISH N
AGED ABOUT 54 YEARS,
WORKING AS RFO, CHANNGIRI TALUK,
DAVANAGERE-577 213
PERMANENT R/AT NUMBER #137
DALORS COLONY,
NEAR ADHINATH JAIN TEMPLE,
KRUSHI NAGAR,
SHIVAMOGGA-577 204.

...PETITIONER

(BY SRI. K.N. PHANINDRA, SENIOR COUNSEL FOR
SRI. CHANDRAKANTH R. PATEL, ADVOCATE)





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AND:

THE KARNATAKA LOKAYUKTA POLICE INSPECTOR
LOKAYUKTA POLICE STATION,
DAVANAGERE-577 001
REPRESENTED BY ITS REGISTRAR COMPLAINANT

...RESPONDENT

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE FIR DATED 15/08/2023 IN CRIME NO.14/2023 PENDING ON THE FILE OF THE LEARNED DISTRICT AND SESSIONS AND SPECIAL COURT, DAVANAGERE FOR THE OFFENCE PUNISHABLE UNDER SECTION 13(1)(b) AND 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988 REGISTERED BY THE RESPONDENT (ANNEXURE-A) AND CONSEQUENTLY, QUASH THE SOURCE INFORMATION REPORT DATED 14/08/2023, PREPARED BY THE RESPONDENT POLICE (ANNEXURE-B) AND ETC.

IN CRIMINAL PETITION NO. 9086 OF 2023:

BETWEEN:

SRI. VENKATESHAPPA N
S/O LATE NARAYANAPPA,
AGED ABOUT 56 YEARS,
EXECUTIVE OFFICER,
TALUKA PANCHAYAT,
BANGARPET, KOLAR DISTRICT,
R/O NO.1475, 6TH MAIN,
3RD CROSS, VIVEKANANDA NAGAR,
BANGARPET, KOLAR DISTRICT - 563 114.

...PETITIONER

(BY SRI. BIPIN HEGDE, *ADVOCATE FOR
SRI. KARTHIK V., ADVOCATE)

*Page Nos.2, 10, 13, 17, 45, 47, 48, 49 and 54 are retyped and replaced vide court order dated 24.07.2024



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AND:

1. THE STATE OF KARNATAKA BY
KARNATAKA LOKAYUKTHA,
KOLAR DISTRICT,
REPRESENTED BY KARNATAKA LOKAYUKTHA,
DR. B.R. AMBEDKAR ROAD,
M.S. BUILDING, BENGALURU-560 001.
REP. BY ITS SPL.P.P.
M.S. BUILDING.
2. THE SUPERINTENDENT OF POLICE
KARNATAKA LOKAYUKTHA,
KOLAR DISTRICT,
KOLAR - 563101

...RESPONDENTS

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE FIR IN CR.NO.03/2023 DATED 21.04.2023 VIDE ANNEXURE-A REGISTERED IN LOKAYUKTHA POLICE KOLAR DISTRICT, KOLAR PENDING BEFORE THE PRINCIPAL DISTRICT AND SESSIONS JUDGE KOLAR, OF THE OFFENCES P/U/S 13(1)(b) R/W 13(2) OF CORRUPTION ACT AND ETC.

IN CRIMINAL PETITION NO. 514 OF 2024:

BETWEEN:

SHRI NAGESH A
S/O ANDANIGOWDA
AGED ABOUT 57 YEARS,
OCC: ASST. EXECUTIVE ENGINEER,
MYSORE URBAN DEVELOPMENT AUTHORITY,
MYSURU-570 005
R/AT NO.388, 2ND CROSS, A AND B BLOCK,
MUDA EMPLOYEES LAYOUT,



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RAMAKRISHNANAGARA, MYSURU
KARNATAKA-570 022.

...PETITIONER

(BY SRI. SANDESH J. CHOUTA, SENIOR COUNSEL FOR
SRI. KARTHIK V., ADVOCATE)

AND:

STATE OF KARNATAKA
BY LOKAYUKTA POLICE, MYSORE
REP. BY SPECIAL PUBLIC PROSECUTOR
KARNATAKA LOKAYUKTA
HIGH COURT BUILDING COMPLEX
BANGALORE-560 001.

...RESPONDENT

(BY SRI. VENKATESH S. ARBATTI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE SOURCE INFORMATION REPORT DATED 08.05.2023 AND FIR IN CRIME NO.8/2023 DATED 30.05.2023 REGISTERED BY THE LOKAYUKTHA POLICE, MYSURU FOR THE OFFENCES P/U/S 13(1)(b) R/W 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988 PENDING BEFORE III ADDITIONAL DISTRICT AND SESSION AND SPL.COURT, MYSORE.

IN WRIT PETITION NO. 19512 OF 2022:

BETWEEN:

BK. SHIVAKUMAR
S/O LATE A. KEMPAIAH
AGED ABOUT 52 YEARS
R/AT NO.48, 3RD CROSS
3RD MAIN, KIRLOKSKAR COLONY
1ST STAGE, BASAVESHWARA NAGAR
BANGALORE-560 079.

...PETITIONER



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(BY SRI. P.P. HEGDE, SENIOR COUNSEL FOR
**SMT. ANUPARNA BORDOLOI, ADVOCATE)

AND:

THE KARNATAKA LOKAYUKTA
(FORMERLY ANTI-CORRUPTION BUREAU)
M.S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU CITY-560 001
REPRESENTED BY REGISTRAR.

...RESPONDENT

(BY SRI. VENKATESH S. ARBATTI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE SOURCE REPORT DATED 08.03.2022 SUBMITTED BY R1 AS THE SAME IS ILLEGAL, ARBITRARY AND WITHOUT ANY AUTHORITY OF LAW ANNEXURE-A; QUASH THE FIR DATED 15.03.2022 SUBMITTED BY R1 IN CRIME NO.21/2022 ON THE FILE OF XXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU FOR OFFENCES PUNISHABLE U/S 13(1)(b) R/W 13(2) OF PREVENTION OF CORRUPTION ACT AS THE SAME IS ILLEGAL, ARBITRARY AND WITHOUT ANY AUTHORITY OF LAW ANNEXURE-B AND ETC.

IN WRIT PETITION NO.19380 OF 2023:

BETWEEN:

SRI. LAKSHMIPATHI
S/O LATE NARAYANAPPA
AGED ABOUT 45 YEARS
R/AT NO.680/09, BRINDAAVAN LAYOUT,
BETTAHALLASUR POST, JALA HOBLI
BANGALORE NORTH,
BENGALURU-562 157.

...PETITIONER

** corrected vide chamber order dated 7.8.2024



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(BY SRI. SOMASHEKAR K.H., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTHA,
REPT. BY ITS REGISTRAR
DR. AMBEDKAR VEEDHI,
BENGALURU - 560001.

...RESPONDENT

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH, FIR IN CRIME NO.35/2023, DATED 16/08/2023, REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTION 13 (1)(b) AND 13(2) OF PREVENTION AND CORRUPTION ACT 1988, AMENDED ACT 2018, AGAINST THE PETITIONER PER ANNEXURE-B, ON THE FILE OF 23RD CITY CIVIL AND SESSIONS JUDGE BANGALORE AND ETC.

IN WRIT PETITION NO. 19662 OF 2023:

BETWEEN:

SRI. SHIVARAJU
S/O BASAVEGOWDA,
AGED ABOUT 59 YEARS,
(AS ALLEGED IN FIR TAHASILDAR GRADE-2)
REVENUE DEPARTMENT,
M.S. BUILDING , BANGALORE)

PRESENTLY WORKING AS
TAHASILDAR
DEVANAHALLI TALUK OFFICE
DEVANAHALLI,
BANGALORE RURAL



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R/AT NO.A-503, OZONE APARTMENT,
KANNAMANGALA VILLAGE,
DEVANAHALLI TALUK,
BANGALORE.

...PETITIONER

(BY SRI. K.N. PHANINDRA, SENIOR COUNSEL FOR
SRI. VINAYAKA B. VISHNU BATT, ADVOCATE)

AND:

KARNATAKA LOKAYUKTHA POLICE
REPRESENTED BY ITS SUPERINTENDENT OF POLICE
CITY DIVISION
KARNATAKA LOKAYUKTHA
M.S. BUILDING
BENGALURU-560 001.

...RESPONDENT

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE IMPUGNED ORDER DATED 16.08.2023 VIE ORDER NO.KLA/INV/BCD/SP-2/8/2023 PASSED BY THE SUPERINTENDENT OF POLICE-2 ATTACHED TO RESPONDENT PRODUCED AT ANNEXURE-A; QUASH THE FIR NO.36/2023 DATED 16.08.2023 FOR THE OFFENCE PUNISHABLE U/S 13(1)(b) R/W 13(2) OF PC ACT REGISTERED BY THE RESPONDENT PENDING IN THE FILE OF XXIII ADDL CITY CIVIL AND SESSION JUDGE AT BANGALORE PRODUCED AT ANNEXURE-B AND ETC.

IN WRIT PETITION NO. 20697 OF 2023:

BETWEEN:

SRI NAGARAJAPPA N J
S/O LATE N. JAYAPPA,



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AGED ABOUT 55 YEARS,
WORKING AS TAHSILDAR,
GRADE - I, SHIVAMOGGA TALUK,
TALUK OFFICE, SHIVAMOGGA - 577 201
PERMANENT R/AT #1216/1057, SITE NO.6,
13TH CROSS, CHANNKESHWANAGARA,
SHIKARIPURA TOWN,
SHIVAMOGGA - 577 427.

...PETITIONER

(BY SRI JAYAKUMAR S. PATIL, SENIOR COUNSEL FOR
SRI. CHANDRAKANTH R. PATEL, ADVOCATE)

AND:

THE KARNATAKA LOKAYUKTA
POLICE INSPECTOR,
LOKAYUKTA POLICE STATION,
DAVANAGERE - 577 001
REPRESENTED BY ITS N.H. ANJANAYA
S/O NEELAPPA.

...RESPONDENT

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE FIR DATED 21/04/2023 IN CRIME NO.11/2023 FOR THE OFFENCE PUNISHABLE UNDER SECTION 13(1)(b) AND 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988 REGISTERED BY THE RESPONDENT (ANNEXURE-A) AND ETC.

IN WRIT PETITION NO. 22626 OF 2023:

BETWEEN:

1. SRI. K.T. SRINIVAS MURTHY
S/O K V THIMMEGOWDA



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AGED ABOUT 48 YEARS
OCCUPATION: SURVEY SUPERVISOR
R/AT NO.02, KASABA HOBLI S. KODIGEHALLI PALYA
KODIGEHALLI, C. KODIGENAHALLI
TUMAKURU, KARNATAKA -572213.

2. SMT. RAJESHWARI B H
W/O SRI K.T. SRINIVAS MURTHY
AGED ABOUT 37 YEARS
R/AT NO.02, KASABA HOBLI
S. KODIGEHALLI PALYA
KODIGEHALLI, C. KODIGENAHALLI
TUMKURU, KARNATAKA-572 213.

3. PUSHPAKALA K T
W/O LATE PANDU L R
AGED ABOUT 43 YEARS
R/AT LAKSHMI NILAYA
6TH CROSS, NEAR CHURCH
SARASWATHIPURAM
TUMKURU, MARALUR TUMKURU
KARNATAKA-572 105.

...PETITIONERS

(BY SRI. SANDESH J. CHOUTA, SENIOR COUNSEL FOR
SRI. SAMPREETH V., ADVOCATE)

AND:

STATE BY LOKAYUKTA POLICE
DR. AMBEDKAR VEEDHI, M.S. BUILDING
BANGALORE CITY POLICE STATION
REPRESENTED BY SPECIAL PUBLIC
PROSECSUTOR
HIGH COURT BUILDING

...RESPONDENT

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)



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THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO CALL FOR THE RECORDS PENDING ON THE FILE OF XXIII ADDL. CITY CIVIL AND SESSIONS JUDGE FOR PREVENTION OF CORRUPTION ACT AT BENGALURU (CCH-24) QUASH AND SET ASIDE THE FIR IN CRIME NO.39/2023 DTD 21.08.2023 REGISTERED BY THE R1 HERETO PRODUCED AS ANNEXURE-A AND ALL SUBSEQUENT CRIMINAL PROCEEDINGS QUA THE PETITIONERS PENDING ON THE FILE OF XXIII ADDL. CITY CIVIL AND SESSIONS JUDGE FOR PREVENTION OF CORRUPTION ACT AT BENGALURU (CCH-24) AS AGAINST THE PETITIONERS FOR OFFENCES PUNISHABLE U/S 420, 468, 471 AND 120B OF IPC, 1860 AND SECTION 12, 13(1)(d) R/W SECTION 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988 AND ETC.

IN WRIT PETITION NO. 27760 OF 2023:

BETWEEN:

SRI. NATARAJA S
S/O SIDDAVEERAPPA
AGED ABOUT 55 YEARS,
NO.380, BDA AVALAHALLI PARK, 8TH MAIN,
NEAR KUVEMPU AUDITORIUM BSK 3RD STAGE,
BANGALORE - 560 085.

...PETITIONER

(BY SRI. BIPIN HEGDE, *ADVOCATE FOR
SRI. SAMPREETH V., ADVOCATE)

AND:

STATE BY KARNATAKA LOKAYUKTHA
POLICE STATION, M.S. BUILDING,
BENGALURU - 560 001.

...RESPONDENT

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA AND READ WITH SECTION



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482 OF CODE OF CRIMINAL PROCEDURE 1973 PRAYING TO QUASH THE FIR IN CRIME NO.38/2023 PENDING ON THE FILE OF HONBLE 23RD ADDL. CITY CIVIL AND SESSION JUDGE BENGALURU REGISTERED BY TH RESPONDENT POLICE FOR THE OFFENSES UNDER SECTION 13(1)(b) R/W SECTION 13(2) OF PREVENTION OF CORRUPTION ACT 1988 VIDE ANNEXURE-A AND ETC.

THESE PETITIONS, COMING ON FOR FURTHER DICTATION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The challenge in all these petitions pertains to the registration of the First Information Report (FIR) for offenses under Sections 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act, 1988').

2. The petitioners fall under the definition of public servants as per Section 2(c) of the Act, 1988. First Information Reports (FIRs) have been registered against them on allegations of possessing assets disproportionate to their known sources of income.

3. A police inspector from the respondent—Karnataka Lokayukta—prepared a source report detailing the movable and immovable assets owned by the petitioners, their spouses, and other family members. This source report, along with covering letters, was submitted to the Superintendent of Police, Lokayukta.



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4. The Superintendent of Police, invoking the Second Proviso to Section 17 of the Act, 1988, authorized the police inspectors / Dy. Superintendent of Police of the respective Lokayukta Police Stations to investigate the case. Following this authorization, FIRs were registered, and the investigation commenced.

5. Sri Jayakumar S. Patil, Sri K.N. Phanindra, Sri Sandesh J. Chouta and Sri P.P. Hegde, learned senior counsels argue as follows:

i) The orders issued by the Superintendent of Police under the second proviso to Section 17 of the Act, 1988, which authorize police inspectors / Dy. Superintendent of Police to conduct investigations, are uniform in content except for the names of the accused and the Superintendent of Police. These orders lack any reasoning or evidence of thoughtful consideration regarding the decision to investigate the case against the petitioners.

ii) The purpose of the second proviso is to prevent the unwarranted harassment of public servants who perform their duties under challenging conditions. The use of the term "without order" implies a higher standard than mere requirements for authorization, approval, consent, or sanction. Therefore, the orders



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issued by the Superintendent of Police do not meet the requirements set forth in the second proviso. As a result, the registration of the FIRs and the subsequent investigations are invalidated.

7. In support, reliance is placed on the following decisions:

- a) State of Haryana -vs- Bhajan Lal - 1992 Supp (1) SCC 335.
- b) CBI -vs- Hemendhra Reddy - AIR OnLine 2023 SC 468.
- c) State of Karnataka -vs- B Narayana Reddy - 2001 SCC OnLine Kar 673.
- d) Udaya Ravi -vs- State of Karnataka - WP 104906/2023.
- e) K L Gangadharaiah -vs- The Karnataka Lokayukta Police (WP No.11822/2023 DD 28.7.2023):

8. In a case involving disproportionate assets, conducting a preliminary **enquiry* is not only desirable but mandatory. This preliminary **enquiry* is crucial to assess the credibility and veracity of the information received. It ensures that only genuine cases of disproportionate assets proceed to a full investigation.



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Furthermore, it serves to protect the reputation of individuals from unfounded accusations. In support, a reliance is placed on the following decisions:

- a) Charansingh v. The State of Maharashtra and others ((2021) 5 SCC 469)
- b) Mr. Navneet Mohan N v. The Station Officer and Another (W.P.No.43817/2018)
- c) J. Gnanendra Kumar v. The Chief Secretary and Another (W.P.No.8170/2022)
- d) Balakrishna H.N v. The State of Karnataka (W.P.No.15886/2022)
- e) Sri L. Satish Kumar v. The State of Karnataka (W.P.No.6732/2023)

9. Additionally, Sri Sandesh J Chouta, learned Senior Counsel, argued that there is a clear distinction between the registration of a First Information Report (FIR) under Section 154 of the Code of Criminal Procedure (Cr.PC) and the subsequent investigation under Section 156 of the Cr.PC. The restriction imposed by the second proviso to Section 17 of the Prevention of Corruption Act, 1988 pertains to the conduct of the investigation and not the registration of an FIR under Section 154. Upon receiving information indicating that a public servant is in possession of assets disproportionate to their known income, the



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police inspector is mandated to register the FIR immediately. Subsequently, the inspector should submit the source report along with the preliminary enquiry report and FIR to the concerned Superintendent of Police. Therefore, the registration of the FIR post authorization has resulted in vitiating the investigation. In support, reliance is placed on the following decisions:

- a) Kailash Vijayavargiya -vs- Rajalakshmi Chaudhari and other - 2023 SCC OnOLine SC 569.
- b) Lalitha Kumari -vs- State of UP - (2014) 2 SCC 1.
- c) State of MP -vs- Ram Singh - (2000) 5 SCC 88.
- d) Udaya Ravi -vs- State of Karnataka - WP 104906/2023.
- e) N Satish Babu -vs- State of Karnataka - WP 3107/2024.
- f) G M Shivakumar -vs- State of Karnataka - WP 17248/2022.
- g) Sudhakar Reddy -vs- State of Karnataka - Crl.LP No.13460/2023.
- h) Circular dated 11.5.2023 issued by the Director General of Police, Karnataka Lokayukta.
- i) Ram Singh -vs- State of MP - (2000) 5 SCC 88.

10. Submission of the learned counsel for the respondent - Lokayukta is as follows:-



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i) The mere fact that the orders contain text similar to other orders issued under the second proviso to Section 17 of the Act, 1988, does not, by itself, demonstrate a lack of consideration. The orders issued under this provision, which include details such as the names of the accused, the nature of the offense, the authority of the Superintendent of Police to delegate investigative power to a junior officer, and the extent of the disproportionate assets involved, clearly indicate thoughtful deliberation. Therefore, the petitioners' claim that these orders were issued mechanically and lack the necessary application of mind is unfounded.

ii) Sri Venkatesh Arabatti, learned counsel representing the Lokayuktha further argued that the case of K. L. Gangadharaiyah, is not relevant to the present circumstances. The cited decision was based on several typographical and other errors found in the orders in that specific case, which is not the situation here. Furthermore, the said decision is subject matter of challenge before the Apex Court.

11. In support, reliance is placed on the following decisions:-



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- a) S K Paramesh -vs- State of Karnataka - CrIP No.464/2013 (DD 23.5.2013).
- b) State of M P –vs- Ram Singh - (2000) 5 SCC 88
- c) Sri D M Padmanabha & ors. -vs- The State by Karnatak Lokayuktha (WP No.2413/2024) (DD 27.5.2024)

12. The conducting of a preliminary **enquiry* before registering an FIR is not a mandatory requirement. The necessity of such an **enquiry* depends on the specific facts and circumstances of each case. The petitioners have not demonstrated how their rights were adversely affected by the absence of a preliminary **enquiry* prior to registration of the FIR. When the information received indicates the commission of a cognizable offense, an FIR can be registered without conducting a preliminary **enquiry*. In support, reliance is placed on the following decisions of the Hon'ble Supreme Court:

- a) CBI -vs- Thommandru Hannah Vijayalakshmi - (2021) 18 SCC 135.
- b) State through DSP -vs- R Soundirarasu - (2023) 6 SCC 768.

13. Sri Venkatesh Arbatti, learned counsel, argues that an FIR registered by a police inspector can only be done so after the



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inspector has been authorized to investigate the offense under the second provision of Section 17. According to Section 157 of the Cr.P.C., an Investigating Officer can register an FIR only if they are empowered to do so under Section 156 of the Cr.P.C. Consequently, the argument that the registration of the FIR must precede the authorization to investigate lacks any substance.

14. The arguments presented by the learned counsel for both parties have been duly considered.

15. The points that arise for consideration are as follows:

i) Whether the orders of the Superintendent of Police passed under second proviso to Section 17 authorizing to investigate against criminal misconduct of intentional illicit enrichment during the period of office under Section 13(1)(b), should be elaborate with clearly discernible reasons?

ii) Whether the conducting of preliminary enquiry is mandatory before registering the FIRs or the petitioners have made out any case for the desirability to conduct preliminary enquiry?

iii) Whether the registration of the FIRs must precede the orders authorizing to investigate?



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Point No.(i):

16. Before addressing this point, it is pertinent to cite the relevant provisions of the Prevention of Corruption Act, 1988, and the legal principles established by the Apex Court, as well as this Court, with reference to the said provisions.

17. Section 17 is reproduced as hereunder -

CHAPTER IV - INVESTIGATION INTO CASES UNDER THE ACT

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) in the case of the Delhi Special Police Establishment, of an Inspector of police;*
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973(2 of 1974), of an Assistant Commissioner of Police;*
- (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



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Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

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 offense without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant:

Provided further that an offense referred to in [clause (b) 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.

18. In the case of **Bhajanlal (supra)**, the Apex Court, with reference to Section 5-A of the Prevention of Corruption Act, 1947—which corresponds to Section 17 of the Act, 1988—the Apex Court ruled that the second proviso to Section 5-A is mandatory, not merely directory. The Apex Court emphasized that the investigation by the designated police officer is the rule, while the investigation by an officer of a lower rank is an exception. Moreover, the requirement to disclose the reasons for granting permission for such an exception is a significant legal obligation. This disclosure ensures transparency and accountability in the investigative process, reinforcing the integrity of the legal framework governing corruption investigations.



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19. In the case of **State of MP v. Ramsingh (supra)**, the Apex Court ruled that an order of the Superintendent of Police (SP), even when in a proforma format, which indicates the name of the accused, the FIR number, the nature of the offense, and the authority of the SP to permit a junior officer to investigate, along with the timing between the registration of the FIR and the issuance of the order, demonstrates the application of mind. Furthermore, the Apex Court emphasized that procedural delays and legal technicalities should not be allowed to defeat the objectives of the Act. The overarching public interest and social purpose of the Act must be considered while interpreting its various provisions and deciding cases under it.

20. In the case of **State of Karnataka v. B Narayana Reddy (supra)**, the coordinate Bench of the Court, while referring to the Bhajanlal and Ramsingh cases, held that reasons must be provided for entrusting an investigation to a lower-ranking officer when the Superintendent of Police issues an order under the second proviso to Section 17 of the Act, 1988. In this case, the learned Single Judge discharged the petitioner from the offense punishable under Section 13(1)(e) read with Section 13(2) of the Act, concluding that the orders passed by the Superintendent of Police were deficient in reasons for assigning the investigation to a lower-ranking officer, specifically an Inspector of Police.



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21. Therefore, it is evident that the decision of the Apex Court in Ramsingh's case (supra) should be confined to the specific facts of that case. The principle established in Bhajanlal's case remains authoritative: the requirement to provide reasons for entrusting an investigation to a lower-ranking officer is imperative. This ensures transparency and accountability in the investigative process, aligning with the fundamental legal framework designed to combat corruption.

22. The coordinate Bench of this Court in the case of **S.K. Parmesh v. State of Karnataka (in Crl P. No. 464/2013 : DD 23.05.2013)** relying on the decision of the Apex Court in the case of Ram Singh (supra) held that sufficient attention to detail is devoted in entrusting the investigation to the police inspector although the authorization order being a typed proforma.

23. In the case of **D. M. Padmanabha and ors. v. The State of Karnataka by Lokayuktha (WP No.2413/2024 : DD 27.5.2024)**, the coordinate Bench of this Court ruled that perusal of the order of the Superintendent of Police would go to show that, along with the source report, the material which was the basis for the preparation of the source report was also made available and upon verification of the same, being satisfied that there was a case



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made out for investigation for the alleged offenses, the SP of the police proceeded to pass an order in exercise of the power under Section 17 of the PC Act. Therefore, it cannot be said that there was no application of mind by the SP of the Police before passing an order under the second proviso of section 17 of the PC Act.

24. In the case of **Babu Rao Chinchanasur v. State by Lokayuktha 2013 SCC OnLine Kar 10386 : 2014 Cri LJ 3310**, the coordinate Bench of this Court has ruled as follows:

- 1) A Special Judge has to apply his mind to any complaint under Section 200 of Cr.PC to make out whether the complainant discloses any offense or not, and thereafter, order an investigation under Section 156(3) of the Cr.P.C. Thus, the discretion given to the police officer to determine the existence of any sufficient ground to enter on an investigation is taken away by the issuance of order under Section 156(3).
- 2) It further observed that with respect to the second proviso to Section 17, the Superintendent of Police or an officer superior to him is required to apply his mind to the information and thereafter, come to an opinion that the investigation on such allegations is necessary.



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3) The second proviso to Section 17 of the Act is but an additional safeguard and protection in relation to the investigation of the offense referred to in Clause (e) of sub-Section 1 of Section 13, and that when a complaint under Section 200 of the Cr.P.C. alleging the said offence is made, it shall be required to be referred to a police officer of the rank of a rank not less than Superintendent of Police, who shall on application of his mind and on satisfaction that an investigation is necessary, direct an investigation into the allegations in the complaint. Furthermore, it held that if this mode were to not be adopted, it would defeat the statutory protection enshrined in the second proviso to Section 17 of the PC Act, 1988.

25. In the case of State through **CBI v Hemendhra Reddy AIR Online 2023,SC 468** the Apex Court has ruled that the second proviso is in the nature of additional safeguard for the public servant who are accused of the offence punishable under Section 13(1)(e) of the Act, 1988 against the investigation without the knowledge and consent of a superior police officer not below the rank of Superintendent of police. A superior police officer of the rank of Superintendent of police is required to pass an order before an investigation and before directing such investigation, is required



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to apply his mind to the information and come to an opinion that the investigation on such allegations is necessary.

26. In the case of **K.L. Gangadhariah v. Karnataka Lokayukta (WP 1182/2023 DD 28.07.2023)** a coordinate bench of this Court had held that the action of Lokayuktha must inspire confidence of the Court and that the duration of the check period must either end with the date of registration of the crime or must immediately precede the date of registration of crime. The source information report must be scrutinized in its entirety, as a faulty (meaning inaccurate herein) check period shall inevitably render the source information report faulty. It is relevant to note that this judgment is subject matter of challenge before the Hon'ble Supreme Court.

27. I am in complete concurrence with the view taken by the coordinate bench that where an order is issued under the second proviso of section 17 of the Act, 1988 directed an investigation without arriving at a logical reason as to why the "clock of the check period in the source information report" came to an abrupt halt 8 years prior to the date of presentation of the source report and registration of the crime, it would constitute an incurable transgression of a substantive right vested in the accused public servant under the second proviso of Section 17 of the Act,



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1988. Interpreting the wordings used in the second proviso, the Apex Court in the much earlier case of **Inspector of Police v. Surya Sankaram Karri 2006 7 SCC 172** had held the second proviso of the Section 17 of the said Act to be of a mandatory character and order under the said proviso had to be passed in writing.

28. The proviso therefore, imposes a graver obligation on the Superintendent of the Police to verify the contents of the source information report and other relevant materials so as to arrive at a prima facie conclusion that there exists sufficient ground to investigate a case. An order based on the summary reading in a routine manner, for a fleeting moment does not cut muster with the legislative intent and object of preventing frivolous and speculative investigation and irreparable harm caused to the reputation of public servants by motivated, reckless and unsubstantiated allegations of criminal misconduct. Thus, the order issued under the second proviso must be made upon a comprehensive scrutiny of the source information report.

29. In view of decisions of the Apex Court and of this Court in cases alluded to above, the ratio enunciated is summarized as follows:



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- 1) The second proviso is mandatory, not merely directory. Investigation by the designated police officer is the Rule, while the investigation by an officer of a lower rank is an exception.
- 2) It is imperative that the reasons for granting permission to a lower rank officer to conduct the investigation be disclosed. The requirement ensures transparency and accountability in the investigative process.
- 3) The order under second proviso must demonstrate the application of mind even if it is in a proforma format.
- 4) The decision in Ram Singh case should be confined to its specific facts, and the ratio enunciated in Bhajanlal case remains authoritative.
- 5) The order under second proviso must disclose that the material forming the basis of the source report was verified and there was prima facie satisfaction that the case is made out for investigation.

30. In light of the above precedents and findings enunciated above, the true meaning of an order made under the second proviso to the Section 17 of the Act, 1988 requires to be considered.



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31. An order means a conclusive opinion supported by reasons. A person affected by an order has an opportunity to understand the reasons behind it and therefore, aligns with principles of natural justice. Moreover, it ensures transparency, accountability and fairness. Requiring reasons acts as a safeguard against arbitrary or abusive use of investigative powers. It prevents authorities from conducting investigations based solely on speculation or personal bias, thereby protecting individuals from unwarranted intrusion into their privacy or affairs.

32. The Hon'ble Supreme Court in the case of **Steel Authority of India Ltd. v. Sales Tax Officer, Rourkela I Circle and Ors. (2008) 9 SCC 407** referencing the observations made in the case of **Raj Kishore Jha v. State of Bihar (2003) 11 SCC 519** held that reasons are the heartbeat of every conclusion as it introduces clarity in the order. It further continued to underscore the importance of reasons in an order as an objective expression of an opinion that stands the tests of judicial review. Furthermore, it evidences application of mind, and is in congruence with the time honored principles of natural justice.

33. In the case of **Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. M/s Shukla & Brothers (2010) 4 SCC 785**, where an appeal was



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preferred against the dismissal of a revision petition by the High Court in a one line cryptic order, the Hon'ble Supreme Court expounded the doctrine of '*audi alteram partem*' into 3 essential ingredients - firstly, a person against who an order is required to be passed or whose rights are likely to be adversely affected must be granted an opportunity of being heard; secondly, the concerned authority should provide a fair and transparent procedure; and lastly, the authority must apply its mind and dispose of the matter by a reasoned order.

34. It further held that "reasons are the soul of orders", and "non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice." It further held that these principles were applicable not only to administrative and executive actions but also to judicial pronouncements.

35. In **Birla Corporation Ltd. v. Adventez Investments and Holdings Ltd. and Ors (2019) 16 SCC 610**, where the Apex Court was arrested with the subject of issuance of process under Section 204 of Cr.P.C., it observed that "to be summoned / to appear before the criminal court as an accused is a serious matter affecting one's dignity and reputation in the society" and that a



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criminal case cannot be registered as a matter of course on a complaint filed otherwise than on a police report, but on application of mind as to whether the allegations in the complaint constitute essential ingredients of the offense and whether there are sufficient grounds for proceeding against the accused.

36. It further observed that the Magistrate before taking cognizance must on application of mind, be prima facie satisfied on scrutiny and assessment of the allegations in the complaint, the statement of the complainant and other materials along with the record of the case as to whether there exists sufficient ground for proceeding against the accused.

37. In the present cases, the orders passed under second proviso to Section 17 are extracted as follows.

WP.NO.22483/2023:

PROCEEDINGS OF THE SUPERINTENDENT OF
POLICE KARNATAKA LOKAYUKTA, KOLAR
DIVISION, KOLAR.

I have gone through the source report submitted by Smt. Renuka.A.V, P.I, KLA, Kolar, relating to her receipt of credible information that Sri.N.Venkatesh, E.O, Bangatpet Taluk panchayath, kolar district, has acquired properties disproportionate to his known source of income to the extent of Rs.1,09,52,291/- with extent of



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108% and thereby committed an offence U/s 13(1) (b) R/W 13(2) of Prevention of Corruption Act-1988. (Amendment-2018).

From the material placed before me and with the application of my mind, I am satisfied that a prima facie case is made out against Sri. N.Venkatesh, E.O, Bangarpet Taluk panchayath, warranting a statutory investigation for and offence U/s 13(1)(b)R/W 13(2) of Prevention of Corruption Act-1988 (Amendment-2018).

ORDER NO.LOK/INV(G) KLR/SP/01/2023.
DATED:21/04/2023.

Therefore by virtue of the powers vested in me under the provisions of section 17(c) of the prevention of corruption Act-1988, (Amendment-2018), I B.K.Umesh, Superintendent of Police, Karnataka Lokayukta, Kolar, order that Sri.V. Suryanarayana Rao DySP, KLA, Kolar to register a case under section 13(1)(b) r/w 13(2) of Prevention of Corruption Act-1988(amendment-2018) against AGO Sri. N.Venkatesh, E.O, Bangarpet Taluk panchayath and to investigate the said case. I know Sri. V. Suryanarayana Rao, Deputy Superintendent of police and he is having the knowledge of investigation of the cases registered under P.C act. And also he is having previous experience of investigation of disproportionate of asset cases.

Further, I authorise Sri. V.Suryanarayana Rao, Dy.SP, KLA, Kolar, under the Provisions of section 18 of the P.C.Act-1988 to inspect the banker books in so far as it relates to the accounts of the persons suspected to be holding money on behalf the said. AGO Sri.N.Venkatesh E.O, Bangar pet taluk panchayath, and



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take or cause to be taken certified copies of the relevant entries there from and the bankers concerned shall be bound to assist the Police Officer Sri.V.Suryanarayana Rao, KLA Kolar in the powers under the said section of law.

Given under my Signature and seal of this Office on 21/04/2023.

Crl.p.No.514/2024:

Source Report submitted by Sri.RAVIKUMAR.A, Police Inspector, Karnataka Lokayukta, Mysuru P.S. Dated: 08.05.2023

I have gone through the source report submitted by Sri. RAVIKUMAR.A, Police Inspector, Karnataka Lokayukta, Mysuru. relating to his receipt of credible information that Sri A.Nagesh, Assistant Executive Engineer, Mysuru Urban Development Authority, Mysuru has acquired properties disproportionate to his known source of income to the extent of Rs. 1,38,50,000-00 and thereby committed an offence under section 13(1) (b) r/w 13(2) of Prevention of Corruption Act 1988, (Amendment Act 2018)

From the material placed before me and with application of my mind I am satisfied that a prima-facie case is made out against Sri A.Nagesh, Assistant Executive Engineer, Mysuru urban development authority, Mysuru Warranting a statutory investigation for an offence under section 13(1) (b) r/w 13(2) of Prevention of Corruption Act 1988, (Amendment Act 2018)



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ORDER NO.KLA/MYS/SP/INV/MYSURU/03/2023,
DATED 30.05.2023.

Therefore by virtue of the power vested in me under provisions of section 17 of the Prevention of Corruption Act 1988, (Amendment Act 2018) I, S. Sureshababu, Superintendent of Police, Karnataka Lokayukta, Mysuru Division, Mysuru order that Sri Malteesh S.K. Deputy Superintendent of Police-2, Karnataka Lokayukta, Mysuru Station Mysuru, to register a case under Section 13(1) (b) r/w 13(2) of Prevention of Corruption Act 1988, (Amendment Act 2018) against Sri A.Nagesh, Assistant Executive Engineer, Mysuru Urban Development Authority, Mysuru, and to investigate the said case. I know Urban Desh S.K. Deputy Superintendent of Police-2 and he is having the knowlegde of investigation of the cases registered under P.C Act and also he is having previous experience of investigation of disproportionate Asset cases.

Further I authorise Sri Malteesh S.K. Deputy Superintendent of Police-2, Karnataka Lokayukta, Mysuru Station Mysuru, under the provision of the section 18 of the Prevention of Corruption Act 1988, (Amendment Act 2018) to inspect the bank accounts in so for as it related to the accounts of the persons suspected to be holding money on behalf of the said A.Nagesh, Assistant Executive Engineer, Mysuru Urban Development Authority, Mysuru and to take or cause to be taken certified copies of the relevant statements of bank accounts there from and the bankers concerned shall be bound to assist the police officer Sri Malteesh S.K. Deputy Superintendent of Police-2, Karnataka Lokayukta, Mysuru Station Mysuru in the exercise of the power under the said section of law.



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WP.no.19512/2022:

PROCEEDINGS OF THE SUPERINTENDENT OF
POLICE,
ANTI CORRUPTION BUREAU, BANGALORE CITY

Sub: Possession of properties disproportionate to known source of income by Sri Shivakumar B.K, Additional Director, of commerce and Industry, Department, Khanija bhavan Bengaluru.

Ref: Source Report submitted by Sri Nayaz Baig. Police Inspector, Anti Corruption Bureau, Bangalore City P.S, Dated 08-03-2022.

I have gone through the source report submitted by Sri Nayaz Baig, Police Inspector, Anti Corruption Bureau, Bangalore City P.S, relating to his receipt of credible information that Sri Shivakumar.B K. Additional Director, commerce and Industry Department, Khanija bhavan Bengaluru has acquired properties disproportionate to his known source of income to the extent of Rs. 3,42,76,000-00 and there by committed an offence under section 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988.

From the material placed before me and with application of my mind I am satisfied that a prima-facie case is made out Sri Shivakumar B.K, Additional Director, commerce and Industry Department, Khanija bhavan Bengaluru, Warranting a statutory investigation for an offence under section 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988.



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ORDER NO.ACB/INV/B.CITY/SP/16/2022, DATED
15.03.2022

Therefore by virtue of the powers vested in me under provisions of Section 17 of the Prevention of Corruption Act 1988, I, Yatish chandra.G.H. IPS, Superintendent of Police, Anti Corruption Bureau, Bangalore City Divison, Bangalore order that Sri K.Ravi Shankar, Deputy Superintendent of Police, Anti Corruption Bureau, Bangalore City Police Station, Bangalore to register a case under Section 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988 against Sri Shivakumar.B.K. Additional Director, commerce and Industry Department, Khanija bhavan Bengaluru and to investigate the said case. I know Sri. K Ravi Shankar, Deputy Superintendent of Police and he is having the knowledge of Investigation of the cases registered under P.C. Act and also he is having previous experience of investigation of disproportionate Asset cases.

Further I authorize Sri K.Ravi Shankar, Deputy Superintendent of Police, Anti Corruption Bureau, Bangalore City Police Station, Bangalore, under the provisions of the section 18 of the Prevention of Corruption Act 1988 to inspect the bank accounts in so far as it relates to the accounts of the persons suspected to be holding money on behalf of the said Sri Shivakumar.B.K, Additional Director, commerce and Industry Department, Khanija bhavan Bengaluru and to take or cause to be taken certified copies of the relevant statements of bank accounts there from and the bankers concerned shall be bound to assist the police officer Sri K. Ravi Shankar, Deputy Superintendent of Police, Anti Corruption Bureau, Bangalore City Police



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Station, Bangalore, in the exercise of the powers under the said section of law.

Crl.p.No.9086/2023:

PROCEEDINGS OF THE SUPERINTENDENT OF
POLICE KARNATAKA LOKAYUKTA, KOLAR
DIVISION, KOLAR.

Sub: Possession of property disproportionate to the known Source of income by AGO Sri. N.Venkatesh, E.O, Bangarpet Taluk panchayath, Kolar District. R/O of Bangarpet Town.

Ref: 1)Source Report submitted by Smt. Renuka A.V, PI, KLA Kolar, dated: 24/03/2023.

2) Lok/IGP/MEMO/SIR-08/2023 Dated: 20.04.2023

I have gone through the source report submitted by Smt Renuka A.V, P.I. KLA, Kolar, relating to her receipt of credible information that Sri. N. Venkatesh, E.O, Bangarpet Taluk panchayath, kolar district, has acquired properties disproportionate to his known source of income to the extent of Rs.1,09,52,291/- with extent of 108 % and thereby committed an offence U/s 13(1) (b) R/W 13(2) of Prevention of Corruption Act-1988. (Amendment-2018).

From the material placed before me and with the application of my mind, I am satisfied that a prima facie case is made out against Sri. N.Venkatesh, E.O, Bangarpet Taluk panchayath, warranting a statutory investigation for an offence U/s 13(1)(b)R/w 13(2) of Prevention of Corruption Act-1988 (Amendment-2018).



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ORDER NO.LOK/INV(G) KLR/SP/01/2023,
DATED:21/04/2023.

Therefore by virtue of the powers vested in me under the provisions of section 17(c) of the prevention of corruption Act-1988, (Amendment-2018), I B.K.Umesh, Superintendent of Police, Karnataka Lokayukta, Kolar, order that Sri.V. Suryanarayana Rao DySP, KLA, Kolar to register a case under section 13(1) (b) r/w 13(7) of Prevention of Corruption Act-1988 (amendment-2018) against AGO Sri. Venkatesh, E.O, Bangarpet Taluk panchayath and to investigate the said case. I know Sri. V Suryanarayana Rao, Deputy Superintendent of police and he is having The knowledge of investigation of the cases registered under P.C act. And also he is having previous experience of investigation of disproportionate of asset cases.

Further, I authorise Sri. V. Suryanarayana Rao, Dy SP, KLA, Kolar, under the Provisions of section 18 of the P.C.Act-1988 to inspect the banker books in so for as it relates to the accounts of the persons suspected to be holding money on behalf of the said. AGO Sri.N.Venkatesh E.O, Bangar pet taluk panchayath, and take or cause to be taken certified copies of the relevant entries there from and the bankers concerned shall be bound to assist the Police Officer Sri. V. Suryanarayana Rao, KLA Kolar in the powers under the said section of law.

Given under my Signature and seal of this Office on 21/04/2023.



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wp.no.19662/2023:

**PROCEEDINGS OF THE SUPERINTENDENT OF
POLICE-2 KARNATAKA LOKAYUKTA, BANGALORE
CITY.**

Sub: Possession of properties disproportionate to known source of income by Sri Shivaraju S/o Basavegowda, Tahasildar Grade-2, Revenue Department, M.S Building, Bengaluru

Ref: Source Report submitted by Smt.Umadevi R, DYSP, Kamataka Lokayuktha, Bangalore City P.S, Dated 14.08.2023.

I have gone through the source report submitted by Smt Umadevi. R. Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore City P.S. relating to her receipt of credible information that Sri Shivaraju S/o Basavegowda, Tahasildar Grade-2, Revenue Department, M.S Building, Bengaluru has acquired properties disproportionate to his known source of income to the extent of Rs.2.95,55,000/- and thereby committed an offence under section 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988.

From the material placed before me and with application of my mind I am satisfied that a prima-facie case is made out against Sri Shivaraju S/o Basavegowda, Tahasildar Grade-2. Revenue Department, M.S Building, Bengaluru warranting a statutory investigation for an offence under section 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988.



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ORDER NO.KLA/INV/BCD/SP-2/08/2023, DATED
16.08.2023.

Therefore by virtue of the powers vested in me under provisions of Section 17 of the Prevention of Corruption Act 1988. I, Ashok K.V., Superintendent of Police-2, Karnataka Lokayukta, Bangalore City Division, Bangalore order that Sri. Manjunath G Hugar, Police Inspector-05, Karnataka Lokayukta, Bangalore City Police Station, Bangalore to register a case under Section 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988 against Sri Shivaraju S/o Basavegowda. Tahasildar Grade-2. Revenue Department, M.S Building. Bengaluru and to investigate the said case

Further I authorize Sri Manjunath G Hugar. Police Inspector-05, Karnataka Lokayukta, Bangalore City Police Station, Bangalore, under the provisions of the section 18 of the Prevention of corruption Act 1988 to inspect the bankers books in so far as it relates to the accounts of the persons suspected to be holding money on behalf of the said Sri Shivaraju S/o Basavegowda, Thasildar Grade-2 Revenue Department, M.S Building, Bengaluru and to take or cause to be taken certified copies of the relevant entries there from and the bankers concerned shall be bound to assist the police officer Sri Manjunath G Hugar, Police Inspector- 05. Karnataka Lokayukta, Bangalore City Police Station, Bangalore in the exercise of the powers under the said section of law.



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WP.No.20697/2023:

**PROCEEDINGS OF THE SUPERINTENDENT OF
POLICE**

KARNATAKA LOKAYUKTHA, DAVANAGERE.

Subject: Prosession of Properties Disproportionate to the known sources of income by Sri N.J.Nagaraj, Takashildar, Holalkere Taluk office, Chitradurga District.

Reference: Source Report submitted by Sri. Anjaneya. N.H. Police Inspector. Lokayuktha Police Station, Davanagere, No:Lok/DVG/PI-2/ SOURCE REPORT/02/2023 Dtd.:01/04/2023

I have gone through the source report submitted by Sri. Anjaneya.N.H, PI, Lokayuktha Police Station, Davanagere, relating to his receipts of credible information that one Sri N.J.Nagaraj, Tahashildar, Holalkere Taluk office, Chitradurga District, has acquired properties Disproportionate to his known sources of income to the extent of Rs 1,27,49,000/- and there by committed an offence under section 13(1)(b), 13(2) the prevention of corruption act-1988 (amendment act-2018)

From the material placed before me and with application of my mind I am satisfied that a Prima-facie case is made out against Sri N.J.Nagaraj, Tahashildar, Holalkere Taluk office, Chitradurga District, warranting a statutory investigation for an offence under section 13(1)(b), 13(2) the prevention of corruption Act-1988 (amendment Act-2018). 1, Superintendent of Police



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Karnataka Lokayuktha, Davanagere have been specially authorised to investigate cases under the Prevention of Corruption Act-1988 (amendment Act-2018).

ORDER NO: Lok//SP/DVG/02/2023, Date: 21.04.2023.

Therefore by virtue of the powers vested in me under section 17 of the prevention of Corruption Act-1958 (amendment act-2018), 1, M.S.Koulapure, Superintendent of Police, Karanakta Lokayuktha Davanagere order that Sri. Rashtrapathi.I.L.S, PI, Lokayuktha Police Station, Davanagere, to register a case under section 13(1)(b), 13(2) PC Act-1988 (Amendment act- 2018) against Sri N.J.Nagaraj, Tahashildar, Holalkere Taluk office, Chitradurga District. and to investigate the said case.

Further I authorize Sri. Anjaneya.N.H, PI, Loakayuktha Police Station, Davanagere under the Prevention of Corruption Act-1988 to inspect the Bankers books in so for as relates to the accounts of persons suspected to be holding money on behalf of the said Sri Sri N.J.Nagaraj, Tahashildar, Holalkere Taluk office, Chitradurga District, and to take or cause to be taken certified copies of the relevant entries there from and to freeze the bank accounts as per section 102 of Cr.P.C if necessary, the bankers concerned shall be bound to assist the Police Officer Sri. Rashtrapathi.H.S, PI, Lokayuktha Police Station, Davanagere to exercise the powers under the P.C Act-1988 (Amendment Act-2018)



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*The Certified Copy of the Order dated 21.08.2023 passed by the Superintendent of Police under Second proviso of the Section 17 PC Act, 1988:
Rest is in kannada untranslatable.*

Wp.No. 27760/2023:

**PROCEEDINGS OF THE SUPERINTENDENT OF
POLICE,
KARNATAKA LOKAYUKTA, BANGALORE CITY
DIVISION**

Sub: Possession of properties disproportionate to the known sources of income by S. Nataraja, Revenue inspector, Hoodi Ward No.54, Mahadevapura, B.B.M.P., Bengaluru.

Ref: Source report submitted by Shri Basavaraja. G. Pulhari PI-10, KLA, Bengaluru City on 09.08.2023

With respect to the above cited subject and reference, it is ascertained that S. Nataraja, Revenue inspector, Hoodi Ward No.54, Mahadevapura, B.B.M.P., Bengaluru, has acquired properties disproportionate to his known sources of income to the extent of Rs. 3,05,01,000.00/-i.e., 338.90% and thereby committed an offence punishable under Sec. 13(1)(b) r/w 13(2) of the Prevention of Corruption Act-1988.

From the material placed before me and with the application of my mind, I am satisfied that a prima facie case has been made out against S.Nataraja, Revenue inspector, Hoodi Ward No.54, Mahadevapura, B.B.M.P.,



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Bengaluru warranting a statutory investigation for an offence punishable under Sec. 13(1)(b) r/w 13(2) of the Prevention of Corruption Act-1988.

Hence I pass the following Order.

ORDER NO. LOK/INV(G)/CITY/38/2023,
DATED:16/08/2023

Therefore, by virtue of the powers vested in me under the provisions of Sec. 17 of the Prevention of Corruption Act 1988, I, Ashok.K.V., IPS., Superintendent of Police-2, Karnataka Lokayukta, Bengaluru City hereby authorize Sri Srikanth.S Police inspector-01 Karnataka Lokayukta, Bengaluru City to register a case under Sec. 13(1)(b) r/w 13(2) of the Prevention of Corruption Act-1988 against S.Nataraja, Revenue inspector, Hoodi Ward No.54, Mahadevapura, B.B.M.P., Bengaluru and to investigate the said case.

Further, I authorize Sri Srikanth.S Police inspector-01 Karnataka Lokayukta, Bengaluru City under the provisions of Sec. 18 of the Prevention of Corruption Act -1988 to inspect the Banker Books in so far as it relates to the accounts of the persons suspected to be holding money on behalf of the accused and his family members and benami persons and take or cause to be taken certified copies of the relevant entries there from, the bankers concerned shall be bound to assist the said Police Officer in the exercise of the powers under the said section of law.

38. In the present cases, all orders issued by the Superintendent of Police under the second proviso are in a



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standardized, cyclostyled format. The only variations are the names of the accused, the name of the Superintendent of Police, and the amounts of the disproportionate assets. These orders reveal that, in some instances, the Superintendent of Police has not reviewed the source report. In other instances, the Superintendent of Police has reviewed the source report, considered the materials presented, and has concluded thereafter that a prima facie case warranted investigation.

39. However, the orders do not indicate whether the information that formed the basis of the source report was reviewed. Furthermore, no reasons are provided for forming the opinion that a prima facie case exists, necessitating a statutory investigation against the petitioners. As a result, the orders authorizing police inspectors to conduct investigations are not in compliance with the second proviso to Section 17. They also fail to align with the legal principles established by the Supreme Court and this Court concerning the provision. Consequently, the registration of the First Information Reports (FIRs) is invalidated.

Point No.(ii):

40. The conducting of the preliminary enquiry in the corruption case was considered by the Apex Court in the cases of



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Lalitha Kumari v. Govt of U.P. 2013 14 SCR 713, P. Sirajuddin Etc. v. State of Madras 1971 AIR SC 520, Charan Singh v. State of Maharashtra (2021) 5 SCC 469, and it was ruled that an enquiry at a pre-FIR stage is held to be permissible but not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring asset disproportionate to his known source of income. However, It was clarified in the case of **CBI v. H T Vijayalakshmi (supra)** that the preliminary **enquiry* cannot be demanded by the accused as a matter of right, but is desirable if the information received does not disclose a cognizable offense but indicates the necessity for enquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offense is disclosed or not. It was also observed that as to what type and in which cases the preliminary **enquiry* is to be conducted will depend upon the facts and circumstances of the cases. Referencing the case of **State of Telangana v. Manajipet alias Mangipet Sarveshwar Reddy (2019) SCC OnLine SC 1559**, the Apex Court in the case of Vijayalakshmi upheld the ratio that the object of the preliminary enquiry was to not vest the right to a preliminary enquiry in the accused but to ensure there is no abuse of the process of law in order to target public servants. Moreover, the Apex Court has periodically held referencing the ACB, CBI and the Lokayuktha Manuals that “even when a preliminary enquiry is initiated, it has to



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stop as soon as the officer ascertains that enough the material has been collected which discloses the commission of a cognizable offense.”

41. In the instant cases, on perusal of the source information reports produced, although properties standing in the name of the public servant or the family members are purchased out of loans borrowed from Banks/financial institutions etc., the same is not reflected in the source report.

42. Furthermore, the assets standing in the names of the parents, spouses, major children, married sisters and brothers, who are employed, are also erroneously included in the source report without mentioning the dates of acquisition thereof.

43. The source report must reveal the date and nature of acquisition of assets and not merely state the assets standing in the name of the public servant, his spouse, children and relatives. The valuation of the immovable properties is imaginary and not based on any objective assessment with reference to their market value at the time of their acquisition.

44. The source report should reveal the petitioner’s income from actual salary drawn during the period of the check period. For



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instance, in WP No.19512/2022, the petitioner was appointed as an Assistant Director, Department Industries and Commerce, Government of Karnataka on 4.5.1994 and at present he is working as Additional Director. The income of the petitioner from the date of joining into service till date is taken as Rs.30,00,000/- as against Rs.1,79,79,000/-. Although, the net salary of the petitioner as on February, 2022 is taken as Rs.1,71,427/- and gross salary at Rs.1,09,600/- For thirty years in service, the income of the petitioner has been inaccurately calculated to a mere Rs.30,00,000/-.

45. **Conducting a preliminary *enquiry is advisable under the following circumstances:**

1. When movable or immovable properties are registered in the name of the spouse, major children, or any other family members of the accused, it is imperative to verify whether these acquisitions align with their respective legitimate earnings from professions or employment.

2. When properties have been acquired by spouses, children, or other family members through inheritance or as gifts from individuals who are not public servants, a



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thorough **enquiry* is necessary to confirm the legitimacy of such transfers and their compliance with legal provisions.

3. In cases where there is a significant miscalculation or discrepancy in the reported income of the public servant during the specified check period, a detailed examination is required to accurately determine the actual income earned during that period, ensuring a fair assessment.

4. When alleged assets are registered in the names of unrelated strangers or entities, it is crucial to investigate any potential hidden connections or proxies acting on behalf of the public servant.

5. Verification of the timing of asset acquisitions is essential, especially concerning assets listed in the source information report acquired before the commencement or after the expiry of the check period, ensuring they fall within the relevant scrutiny period.

6. When the source report lacks specific details such as the specified check period, items marked as 'Nil' during the check period, or non-consideration of loans in the income column, a preliminary **enquiry* is essential to clarify



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and obtain precise information regarding the period under investigation and the specific assets involved.

46. By conducting a preliminary *enquiry under these circumstances, investigators can ensure that any further actions are based on well-founded suspicions and accurate information, thereby upholding the principles of fairness and justice.

47. However, it may be pertinent to add that the above guidelines are merely illustrative of circumstances in which a preliminary *enquiry may be conducted and that it may not be possible for Courts of Law to envisage and define precisely the exhaustive gamut of circumstances in which such an enquiry must be conducted. It is incumbent upon the investigators to conduct due verification and scrutiny of the record of the case and the materials submitted therewith, prior to the setting the criminal law into motion.

48. In view of the facts of the instant cases, the petitioners have objectively made out a case for the desirability of conducting a preliminary enquiry.



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Point No.(iii):

49. Section 17 is a non-obstante clause and states that notwithstanding anything contained in the Code of Criminal Procedure, no police officer below the rank specified in clauses (a) to (c) shall investigate any offense punishable under this Act without the order of the jurisdictional Magistrate.

50. The first proviso states that an officer not below the rank of police inspector, who is authorized by the State Government, may also investigate any such offense without the order of the jurisdictional Magistrate.

51. The second proviso states that in respect of an offense referred to in clause (b) of sub-Section (1) of Section 13, the police inspector shall not investigate without the order of a police officer not below the rank of a Superintendent of Police.

52. A reading of the above provisions indicates that there is no bar on registering the FIR by the investigating police officer without obtaining an order of authorization to investigate. In other words, the additional safeguard inherent in the second proviso of Section 17 is attracted only when the stage of investigation is reached. Therefore, the question before us is whether an FIR may



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be registered for alleged offenses punishable under the Act of 1988 before obtaining an order of authorization under the second proviso of Section 17 of the Act, with reference to the provisions contained in Sections 154, 156, and 157 of the Code of Criminal Procedure.

53. Therefore, what is to be considered is whether the procedural safeguards outlined in Section 17 apply strictly to the investigation phase, thereby allowing the registration of an FIR to proceed independently of the need for prior authorization. The relationship between the provisions of the Act of 1988 and the Code of Criminal Procedure must be examined to determine if the initiation of an FIR can precede the investigative authorization stipulated by the second proviso of Section 17.

54. Section 154 of Cr.P.C. places an obligation on a police officer in charge of a police station to record or cause to, the substance of every information relating to the commission of a cognizable offence.

55. Section 156 of Cr.P.C. grants plenary powers to the police officer in-charge of a police station to investigate any cognizable case within the limits of such station, without the order of the jurisdictional Magistrate. The Section employs the word 'may,' indicating the according of discretion to the concerned police



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officer so as to examine from the ascertained facts and circumstances of the case, as to whether there exists sufficient ground to enter on an investigation.

56. Section 157 of the Code provides for where it appears to the investigating officer that there is no sufficient ground to enter on an investigation, the said officer may in the exercise of his discretion choose not to investigate the case, with reasons to be recorded in the report to be sent to the jurisdictional Magistrate. Furthermore, in the interest of transparency and accountability, the Code also compels the said officer to forthwith notify the informant of the fact that he will not investigate the case.

57. Sri Sandesh J Chouta, learned senior counsel argued that the Supreme Court in the Kailash Vijayvargiya case clearly distinguished between the responsibilities of the police to register an FIR and to investigate it, treating them as separate functions under the law. In the Lalita Kumari case, the Court underscored the mandatory nature of Section 154(1) of the Criminal Procedure Code (Cr.P.C.). This section mandates that the police must register an FIR whenever they receive information about the commission of a cognizable offense, with no discretion to ignore or delay this process.



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58. The rationale behind this mandate is to prevent any information about such offenses from being ignored, which could otherwise protect the accused unjustly. By removing police discretion in this matter, the law aims to curb arbitrary actions by the police and protect the liberty of individuals. This mandatory registration serves as a crucial right for those seeking justice, ensuring timely investigations and preventing any potential manipulation in criminal proceedings.

59. The Apex Court has ruled that "Section 157 requires more stringent criteria than Section 154 of the Cr.PC," giving the investigating officer discretion to determine whether there is sufficient ground to begin an investigation. Additionally, the Court emphasized that "the Magistrate is involved at all stages of the investigation process."

60. Moreover, in the case of **Shivashankara Murthy (Crl.P No.10109/2024 : DD 25.4.2024)**, a coordinate Bench of this Court referenced a Circular dated 11.05.2023 issued by the Director General of Police, Karnataka Lokayukta. The Bench stated that an FIR must be registered first, and then the Superintendent of Police must authorize the investigation under Section 17 of the Prevention of Corruption Act, 1988.



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61. In the case of **G. M. Shivakumar (supra)**, an FIR was immediately registered following the presentation of the source report. Subsequently, upon the issuance of the order under the second proviso of Section 17 of the Prevention of Corruption Act, 1988, a coordinate bench of this Court quashed the order of cognizance taken by the Trial Court, despite the prior exoneration of the accused in the departmental **enquiry*.

62. The Court remarked that the Superintendent of Police's directive to register an FIR immediately upon receiving the source report, based solely on suspicions of asset accumulation allegedly disproportionate to known sources of income, clearly demonstrated a lack of verification of the contents of the source report. The Court further held that such circumstances unequivocally necessitate the conduct of an **enquiry* to verify the allegations before proceeding with the registration of an FIR.

63. A similar issue was considered by the High Court of Bombay in the case of **Ram Rijhumal Kriplani v. The State, 1957 SCC Online Bom 54**. This case examined Section 5A of the Prevention of Corruption Act, 1947, which corresponds to Section 17 of the Prevention of Corruption Act, 1988. The court made a distinction between the stages of filing the first information report



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(FIR), conducting an investigation, and taking cognizance of the offense.

64. The Court held that the provisions of Section 5A of the 1947 Act only apply once the investigation stage is reached. These provisions do not apply at the stage of filing the FIR. The Court noted that the stage of registering the FIR comes before the stage of investigation and that the FIR is the basis upon which the investigation under Chapter XIV of the Code of Criminal Procedure (Cr.P.C.) begins. It further noted that an FIR represents the informant's initial case.

65. The Court further explained that an investigation into the facts and circumstances of a case can only start once the FIR has been filed and the officer in charge of the police station has sent a report of the suspected offense to the jurisdictional Magistrate. Therefore, the provisions of Section 5A of the 1947 Act (corresponding to Section 17 of the 1988 Act) do not affect or override the provisions related to filing of an FIR for cognizable offenses under Section 154 of the Cr.P.C., which has universal application.

66. Furthermore, this Court in the case of **Babu Rao Chinchansur (supra)** has duly recognised the distinction between



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the two stages, wherein the Court ultimately concluded that whilst a private complaint under Section 200 of the Cr.P.C against an offense punishable under Section 13(1)(e) of the Act, 1988 was maintainable, however, sanction under Section 19 of the Act, 1988 was a condition precedent to entertain the said complaint.

67. The established legal principles enunciated by the Hon'ble Supreme Court and High Courts can be summarized as follows:

- 1) Registration of FIR vs. Authorization of Investigation: Second Proviso to Section 17 of the Prevention of Corruption Act, 1988 mandates that for offenses under the Act, no investigation can proceed without authorization from a Superintendent of Police. However, this authorization requirement applies at the stage of investigation and not to the initial registration of an FIR.
- 2) Mandatory FIR Registration: Section 154 of the Code of Criminal Procedure (CrPC) mandates that police must register an FIR upon receiving information about a cognizable offense, with no discretion to delay or ignore unless the information is non-cognizable.



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- 3) Discretion in Investigation: Section 156 of CrPC grants discretion to the police officer in charge of a police station to investigate any cognizable offense based on the facts and circumstances known to them.

- 4) Judicial Interpretation: The Apex Court and the High Court/s have clarified that the requirement for investigation authorization under Section 17 of the Prevention of Corruption Act comes into play only after the FIR is registered. The initial step of FIR registration is not contingent upon obtaining prior investigation authorization.

- 5) Separation of Powers: The judiciary has upheld the distinction between FIR registration and the subsequent investigation stage, emphasizing that the mandatory registration of FIRs is aimed at preventing any information about offenses from being overlooked or delayed.

68. In essence, while Section 17 imposes strict procedural safeguards for the investigation stage of offenses under the Prevention of Corruption Act, it does not hinder the police from registering an FIR promptly upon receipt of information about such offenses.



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69. Based on the principles established in decisions by the Apex Court and High Courts, when an FIR is mandatorily registered for an alleged offense under Section 13(1)(b) of the PC Act, 1988, the police officer must submit the report to the Magistrate under Section 157 of the Cr.P.C. Additionally, the police officer should forward it to the Superintendent of Police along with the source information report and other materials that form the basis for preparing a credible source report. This is to request an order of investigation under the second proviso of Section 17 of the Act. The right to register an FIR stands independently and is not affected by any statutory bar, specifically in cases involving offenses described in clause (b) of sub-section (1) of section 13 under the 1988 Act.

70. In these cases, the authorization granted to investigate preceded the registration of FIRs and is thus, impermissible and is nullified.

71. Accordingly, I pass the following:

ORDER

i) The petitions are allowed.



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IN WRIT PETITION NO. 22483 OF 2023:

The impugned proceedings In Crime No.14/2023 pending on the file of the learned District and Sessions and Special Court, Davanegere stands quashed.

IN CRIMINAL PETITION NO. 9086 OF 2023:

The impugned proceedings in Cr.No.03/2023 dated 21.04.2023 vide Annexure-A registered in Lokayuktha Police Kolar District, Kolar pending on file of the Principal District and Sessions Judge, Kolar, stands quashed.

IN CRIMINAL PETITION NO. 514 OF 2024:

The impugned proceedings in Crime No.8/2023 registered by the Lokayuktha Police, Mysuru, pending on the file of the III Addl. District and Sessions and Spl. Court, Mysore, stands quashed.

IN WRIT PETITION NO. 19512 OF 2022:

The impugned proceedings in Crime No.21/2022 pending on the file of XXXIII Additional City Civil and Sessions Judge, Bengaluru, stands quashed.



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IN WRIT PETITION NO.19380 OF 2023:

The impugned proceedings in Crime No.35/2023 pending on the file of 23rd City Civil and Sessions Judge Bangalore stands quashed.

IN WRIT PETITION NO.19662 OF 2023:

The impugned proceeding in Crime No.36/2023 registered by the respondent pending in the file of XXIII Addl. City Civil and Session Judge at Bangalore produced -B stands quashed.

IN WRIT PETITION NO. 20697 OF 2023:

The impugned proceedings in Crime No.11/2023 registered by the respondent (Annexure-A) stands quashed.

IN WRIT PETITION NO. 22626 OF 2023:

The impugned proceedings in Crime No.39/2023 registered by the respondent No.1 pending on the file of XXIII Addl. City Civil and Sessions Judge for prevention of Corruption Act at Bengaluru (CCH-24) stands quashed.



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IN WRIT PETITION NO. 27760 OF 2023:

The impugned proceedings in Crime No.38/2023 pending on the file of 23rd Addl. City Civil and Session Judge Bengaluru registered by the respondent police stands quashed.

Sd/-
JUDGE

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