CASE NO.:
Appeal (crl.) 1997 2000

PETITIONER:
STATE BY CENTRAL BUREAU OF INVESTIGATION

Vs.

RESPONDENT:
SHRI S. BANGARAPPA

DATE OF JUDGMENT: 20/11/2000

BENCH:
R.P.Sethi, K.T.Thomas

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J
J U D G M E N T

THOMAS, J. Leave granted. A case has been charge-sheeted by the Central Bureau of Investigation (CBI) against S. Bangarappa, one time Chief Minister of Karnataka State, alleging that he had amassed wealth grossly disproportionate to his known sources of income during a check period when he held public offices either as Minister or Chief Minister. The offence under Section 13(2) of the Prevention of Corruption Act, 1988, (for short the Act) was pitted against him, read with Section 13(1)(e) thereof on the ground that he was in possession of pecuniary resources and assets so disproportionate that he could not satisfactorily account for them. When respondent (S. Bangarappa) moved the High Court of Karnataka for quashing the said criminal proceedings, a single judge of the High Court, as per the order impugned in this case, quashed the same. This appeal, by special leave, is at the instance of the CBI in challenge of the said order.

The check period is nearly a decade (between 9.8.1988 and 31.10.1997) during which the respondent held public offices either as MLA or as a Minister in the State cabinet or as Chief Minister of the State or as a Member of Parliament. According to the CBI the total income which respondent had from all his known sources of income, during the aforesaid period, was around 30 lakhs and after deducting his expenses (which were worked out approximately to be 22 lakhs) he could not have made a saving of more than 7 lakhs of rupees. But the CBI found that during the said period the respondent had acquired assets worth more than Rs.1,16,00,000/- (one crore sixteen lakhs) for which he had no explanation whatsoever.

When respondent was brought before the trial court he pleaded for a discharge from the prosecution for which he raised various contentions. The special judge heard arguments at that stage for a long time spreading over to a number of days. He then passed a very detailed order (running into 57 closely typed pages) just for holding that there is a prima facie case against the accused person to frame charge under Section 13 read with Section 13(1)(e) of

the Act and to proceed with the trial.

Respondent then moved the High Court under Section 482 of the Code of Criminal Procedure (for short the Code) challenging the aforesaid order. Three contentions were mainly raised by him before the High Court. First was that the investigation was not conducted in the manner specified under Section 17 of the Act. Second was that the court which ordered to frame the charge had no jurisdiction to try the case because no notification had been issued under Section 4 of the Act. Third was that on the merits it is not safe to rely on the statements alleged to have been made by some of the witnesses.

Learned single judge of the High Court upheld all the above three contentions raised by the respondent and consequently the proceedings taken against him were quashed in full measure.

Shri Harish Salve, learned Solicitor General of India, contended that the High Court has grossly erred on all the three points and there was absolutely no necessity for the High Court to have interfered with the case at that preliminary stage. When the trial court has chosen to decide that the accused had to be tried for the offence, he could not understand the wisdom of the High Court in making a meticulous scrutiny of the evidence proposed to be adduced by the prosecution and to scuttle further proceedings of the trial without waiting for the trial to reach its normal culmination. Shri Kapil Sibal, learned senior counsel, who argued for the respondent, has fairly conceded that he could not validly countermand the contentions of the learned Solicitor General of India in respect of the first and second points referred to above, but he made a bid to sustain the order on the ground that there was no sufficient materials to frame the charge.

Learned single judge reminded himself that public men should have crystal clear and transparent personality and that Caesars wife must be above suspicion. He made a close scrutiny of the materials and felt that there is no option except to quash the proceedings against the respondent. However, learned single judge made the following general observations:

No doubt corruption affects the normal fabric of the society. The citizens loose their faith in the political leaders who shout that they are for the people. No doubt many people go unpunished although corruption causes considerable damage to the economy of the nation. The roots of corruption are so deep that it is an uphill task to eradicate them. It is only possible if and only if each citizen in our country follows the philosophy of contentment. To quench the thirst of greed and lust one must be drenched in shower of honesty and the fountain of sublime love should sprinkle the magical drops on the eyes of everyone who has shut his eyes for the reality of the life. Unless one tries to find a golden key to open the gates of wisdom, the heavenly life remains as a myth and we are all making the futile effort to attain divinity in our life. The public man should have crystal clear and transparent personality. Caesars wife must be above suspicion.

Having been reminded himself of all such sublime thoughts on how to eradicate the evil of corruption it would have been appropriate for the High Court to direct the respondent to participate in the trial to reach its logical terminus by affording him the opportunity to explain or account for the excess wealth projected by the investigating agency. But learned single judge, instead of choosing that line, has chosen to scuttle the proceedings at the beginning stage of the trial itself for which he had even upheld the contention that the investigation was illegally conducted.

For arriving at such a finding learned single judge unfortunately bypassed the factual position that the investigation was conducted by the CBI and not the regular police of the State. It appears to us that learned single judge assumed that investigation under Section 17 of the Act could be conducted only by an officer not below the rank of Deputy Superintendent of Police whichever be the investigating agency. The reasoning of the learned single judge on that score is this:

One can understand, if there is no mandatory provision, it is left to the discretion of the Superintendent of Police to assign his work provided the statute permits. But to investigate, Section 17 of the Act is mandatory in nature. No officer below the rank of Deputy Superintendent of Police shall investigate the case. In case if he has not carried on the investigation, there must be some order authorising the other person to go on with the investigation in the case on hand. This is the patent lacuna.

The above is the result of a wrong understanding of the scope of Section 17 of the Act. If the investigation is to be conducted by the CBI the legislative insistence for the rank of the officer to be not below that of Deputy Superintendent of Police is given exception to. This can be discerned even by a reading of the Section in its entirety. We, therefore, extract Section 17 hereunder:

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 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 authoised 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 therefore 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.

There is no dispute that CBI is a Delhi Special Police Establishment. The Superintendent of CBI, Bangalore has issued the following order on 21.10.1997:

Under the provision of Section 17 of P.C. Act, 1988, Sh. B. Pannir Salvem, Inspector of Police Establishment Division, Bangalore is hereby authorised to investigate the said case against Sh. S. Bangarappa, Member of Parliament and Former Chief Minister of Karnataka for the offences under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988.

When there is such an order, any inspector of police attached to the CBI can conduct the investigation. Learned single judge unnecessarily quoted extracts from the decision of this Court in State of Haryana & ors. vs. Bhajan Lal & ors. {1992 Supple.(1) SCC 335} perhaps being misled in believing that even when the investigation was conducted by CBI the requirement contained in clause (c) of Section 17 of the Act has to be followed. The word elsewhere in that clause is clear indication that the insistence for Deputy Superintendent of Police can have application only if it does not fall under clauses (a) and (b). We do not wish to delve more into this aspect as Shri Kapil Sibal, learned senior counsel for the respondent, has fairly conceded that the High Court has gone wrong on that aspect.

Learned single judge thereafter proceeded to consider the contention that the court concerned had no jurisdiction to try the case. While upholding the said contention he has stated thus:

There is no notification in this case that the XXI City Civil and Sessions Judge was empowered to try this case. Mr. Tharanath, learned counsel for respondent relied upon the decision popularly known as Jayalalithas case reported in 1999 AIR SCW 1579. The points involved in that case are entirely different from the facts of this case. The very question of appointing the Special Judge was challenged to try all cases against her. The Honble Supreme Court has held that there is nothing wrong for the appointment of Special Judge to try all the cases as the speedy disposal is one of the criteria. Hence, in my opinion, by close scrutiny of the judgment cited by the learned counsel for CBI is not applicable unless there is notification if any, to try such case. Otherwise, it will be a trial without jurisdiction. In view of these facts and circumstances, I feel that there is some force in the submission of the learned counsel for the petitioner.

We strongly feel that learned single judge has chosen to uphold the contention in a very casual manner without taking into account the fall-out of such a finding on other cases pending in that court. Section 4(1) of the Act says that Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by special judges only. Sub-section (2) enjoins on the special judge concerned to try every offence specified in Section 3(1) of the Act. Power is conferred on the Central Government as well as the State Government to appoint special judges. Such conferment can be discerned from Section 3(1) of the Act which reads thus:

The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:- (a) any offence punishable under this Act; and (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

On 13.6.1990, the State Government of Karnataka had issued a notification which is extracted below:

In exercise of the powers conferred by sub- section (1) of Section 3 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988) and in partial modification of Notification No.HD 192 PCR 82 dated 15/16th February, 1982, No.HD 110 PCR 82 dated 11th May, 1982 and all other Notification issued on the subject, the Government of Karnataka hereby appoints the Sessions Judge specified in col. (2) of the table below as Special Judge for the areas specified in the corresponding entries of Col. (3) thereof for the cases instituted by the Delhi Special Police Establishment in respect of the offences specified in the said sub- section.

Sl. Name of the Area No. Judge and Designation ---------- 1. XXI Addl. City Bangalore District Civil and Sessions (including the area Judge. Comprising city of Bangalore declared as Metropolitan area under the Code of Criminal Procedure, 1973) and the District of Bangalore Rural, Chittradurga, Kilar and Tamkur.

Then why did the learned single judge countenance that there was no notification empowering the XXI City Civil and Sessions Judge to try such cases? We are greatly distressed at the degree of superciliousness with which the contention was dealt with by the learned single judge without even checking up whether there was any such notification. That apart, if the High Court found that XXI City Civil and Sessions Judge, Bangalore is not empowered to try such cases, how could that be a ground to quash the criminal proceedings? At the worst that would be a ground to transfer the case from that court to the court having jurisdiction to try the offence, and if no court has been empowered till then, the criminal proceedings can be kept in abeyance till the Government issues a notification conferring such power on any other court. Any way, since the court which ordered framing of charge against the respondent was legally empowered to try the offence alleged against the respondent it is not necessary to keep the criminal proceedings in abeyance so far as this case is concerned. We may point out that on this aspect also Shri Kapil Sibal, learned senior counsel did not dispute the stand adopted by the Solicitor General of India.

Learned single judge then proceeded to discuss the merits of the evidence in this case. He made detailed reference to the materials placed by the prosecution for supporting the charge. When it was contended by the Solicitor General of India that such a detailed analysis at this stage was unwarranted Shri Kapil Sibal pointed out that even the trial court did the same thing for deciding whether

the charge should be framed or not. It is true that the trial court should have avoided discussing the materials in such details when it has chosen to frame charge. This court has stated in Kanti Bhadra Shah and anr. vs. State of West Bengal {2000 (1) SCC 722} that when a trial court decides to frame charge it is not necessary to record reasons thereof. We extract the relevant observations from that decision.

If the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, there is no need to further burden the already burdened trial courts with such extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays.

Learned single judge considered the statement of CW-36 (Annappa) and CW-37 (Puttappa) and a score of other witnesses cited by the prosecution. High Court then entered upon a finding that it is not safe to rely on the statement of some of those witnesses. Learned single judge undertook the said exercise on the ground that trial court also discussed the prosecution case at length to reach the prima facie finding that the sale deeds in the names of Annappa and Puttappa are benami transactions. He reached the finding that the trial court had gone wrong in accepting the statements of the above witnesses.

Shri Harish Salve addressed arguments to show that the purchases made by the respondent in the names of Annappa and Puttappa are all benami transactions and all such properties are actually the properties of the respondent. He referred to other materials for supporting his contention. Shri Kapil Sibal, on the other hand, made an endeavour to show that those properties cannot be counted in the account of the respondent.

Time and again this Court has pointed out that at the stage of framing charge the court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further. (vide State of M.P. vs. Dr. Krishna Chandra Saksena, [1996 (11) SCC 439].

We have no doubt that the materials which prosecution enumerated are sufficient to frame the charge for the offence under Section 313(2) read with Section 13(1)(e) of the Act.

No doubt the prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income and then it is for the public servant to account for such excess. The offence becomes complete on the failure of the public servant to account or explain such excess, [vide M. Krishna Reddy vs. State Dy. Superintendent of Police,

1992(4) SCC 45, P. Nallammal and anr. vs. State, 1999(6) SCC 559]. It does not mean that the court could not frame charge until the public servant fails to explain the excess or surplus pointed out to be the wealth or assets of the public servant concerned. This exercise can be completed only in the trial.[K.Veeraswami v. Union of India (1991 (3) SCC 655; State of Maharashtra vs. Iswar Piraji Kalpatri 1996(1) SCC 542 In the latter decision the court held thus: The opportunity which is to be afforded to the delinquent officer under Sec.5(1)(e) of the Act [corresponding to Sec.13(1)(e) of 1988 Act of] of satisfactorily explaining about his assets and resources is before the court when the trial commences, and not at an earlier stage.

For the above reasons we set aside the impugned judgment of the High Court. We direct the trial court to proceed with the trial in accordance with law and to dispose it of as expeditiously as possible.