IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 26th OF SEPTEMBER, 2023

WRIT PETITION No. 10363 of 2022

BETWEEN:-

SANJEEV KUMAR GHOSH S/O SHRI KASHIRAM GHOSH, AGED ABOUT 32 YEARS, OCCUPATION: GRAM ROJGAR SAHAYAK R/O DHAMNA, TEHSIL JATARA, DISTRICT- TIKAMGARH, M.P. (MADHYA PRADESH)

.....PETITIONER

(BY SHRI AVINASH ZARGAR AND SHRI B.P.YADAV- ADVOCATES)

AND

1. **STATE OF M.P. THROUGH ITS PRINCIPAL PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT MANTRALAYA, VALLABH BHAWAN, BHOPAL (M.P.) (MADHYA PRADESH)**

2. **MADHYA PRADESH RAJYA ROZGAR GUARANTEE PARISHAD THROUGH ITS COMMISSIONER BLOCK 1 ARERA HILLS BHOPAL MAIN OFFICE 59 ARERA HILLS NARMADA NAGAR 2ND FLOOR BHOPAL (MADHYA PRADESH)**

3. **COMMISSIONER SAGAR SAGAR DIVISION DISTRICT SAGAR M.P. (MADHYA PRADESH)**

4. **COLLECTOR TIKAMGARH DISTRICT TIKAMGARH M.P. (MADHYA PRADESH)**

5. **CHIEF EXECUTIVE OFFICER ZILA PANCHAYAT TIKAMGARH DISTRICT TIKAMGARH M.P. (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MOHAN SAUSARKAR- GOVERNMENT ADVOCATE)

……

This petition coming on for admission this day, the court passed the following:

ORDER

This Petition under Article 226 of Constitution of India has been filed seeking following reliefs:-

> "(i) Call for the entire material record pertaining to passing of the impugned orders dated 12.04.2022, 06.04.2022 and 27.04.2022 for its kind consideration.
> (ii) To quash and set aside the impugned orders dated 12.04.2022 (Annexure P/1), 06.04.2022 (Annexure P/2) and 27.04.2022 (Annexure P/3).
> (iii) Any other relief/reliefs that this Hon'ble Court may deem fit and proper may be granted to petitioner."
> (iv) Cost of the instant lis be awarded to petitioner.

2. The petitioner was the Gram Rojgar Sahayak of Gram Panchayat Vermadang, Janpad Panchayat Jatara, District Tikamgarh. It is the case of petitioner that by impugned order dated 06.04.2022, a direction has been issued to take serious action and send the report. It is not out of place to mention here that in Writ Petition No.9743/2022, a direction was issued to lodge an F.I.R. on the basis of report submitted by National Level Monitor Team (NLM) against petitioner and others for committing irregularities in Gram Panchayat, Vermadang, Janpad Panchayat, Jatara, District Tikamgarh in an arbitrary manner and FIR has also been lodged.

3. Heard the learned counsel for the parties.

4. Order dated 06.04.2022 reads as under :-.

मध्यप्रदेश राज्य रोजगार गारंटी परिषद

(म.प्र. शासन, पंचायत एवं ग्रामीण विकास विभाग के अधीन गठित पंजीकृत संस्था)
ब्लाक–1 पर्यावास भवन अरेरा हिल्स भोपाल
(मुख्य कार्यालय – 59 अरेरा हिल्स नर्मदा भवन द्वितीय तल भोपाल)

क्रमांक / 162 / MGNREGS-MP/NR-3/2022 भोपाल, दिनांक 06 / 04 / 2022

प्रति,

कलेक्टर एवं जिला कार्यक्रम समन्वयक,
महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारंटी स्कीम,
जिला – टीकमगढ़ (म.प्र.)।

विषय– टीकमगढ़ जिले में महात्मा गांधी नरेगा योजना के क्रियान्वयन में अनियमितताओं के आक्षेपों की जांच पर कार्यवाही का प्रतिवेदन भेजने बाबत्।

–00–

अवर सचिव (महात्मा गांधी नरेगा), ग्रामीण विकास मंत्रालय, ग्रामीण विकास विभाग, भारत सरकार से प्रमुख सचिव महोदय को संबोधित पत्र क्रमांक L-11015/01/2021-RE(iv)(374748) दिनांक 24.02.2022 की प्रति संलग्न है। पत्र में National Level Monitor (NLM) की टीम द्वारा टीकमगढ़ जिले में दिनांक 20.09.2021 से 23.09.2021 तक मनरेगा योजना क्रियान्वयन में की गयी जांच में पायी गयी अनिमितताओं के प्रतिवेदन की प्रति संलग्न हैं। प्रतिवेदन अनुसार जिले से निम्नानुसार कार्यवाही अपेक्षित है :–

प्रतिवेदन का बिन्दु क्र.	जतारा जनपद की वित्तीय अनियमितता वाली ग्राम पंचायतों के नाम व वसूली योगय राशि	वित्तीय अनियमितता हेतु उत्तरदायी अधिकारी / कर्मचारी	वित्तीय अनियमितता हेतु उत्तरदायी अधिकारी / कर्मचारियों के विरूद्ध जिले से अपेक्षित कार्यवाही
A-4	नादिया– 35.64 लाख	मुख्य कार्यपालन अधिकारी, जनपद पंचायत जतारा, जिला टीकमगढ़, सहायक यंत्री, उपयंत्री, सहायक लेखाधिकारी, प्रधान / सचिव / ग्राम रोजगार सहायक ग्राम पंचायत नादिया	1. 5 ग्राम पंचायत में पायी गयी वित्तीय अनियमितता में वसूली योगय राशि रूपये 147.96 लाख रूपये की सभी अनियमितता करने वाले अधिकारी / कर्मचारी से समान रूप से वसूली।
	मझगवां– 28.93 लाख		2. मुख्य कार्यपालन अधिकारी, जनपद पंचायत जतारा श्री आनंद शुक्ला के विरूद्ध अनुशासनात्मक कार्यवाही का प्रस्ताव

			आयुक्त सागर संभाग सागर को भेजा जावे।
	बिन्दरईखास (बिन्दारी)– 31.48 लाख		3. माप पुस्तिका में बगैर मूल्यांकन/बगैर बिल दर्ज किये हुये भुगतान करने हेतु सहायक लेखाधिकारी एवं मुख्य कार्यपालन अधिकारी, जनपद पंचायत जतारा के विरूद्ध आर्थिक अनियमितता का प्रकरण दर्ज करते हुये कार्यवाही।
	बर्माडांग– 27.71 लाख		4. माप दर्ज करने वाले उपयंत्री व मापों का सत्यापन करने वाले सहायक यंत्री के विरूद्ध नियमानुसार कार्यवाही।
	देवखा– 24.20 लाख		5. संबंधित ग्राम पंचायतों के प्रधानों के विरूद्ध पंचायत अधिनियम की धारा 92 के तहत पद से पृथक करना।
			6. संबंधित ग्राम पंचायत सचिवों के विरूद्ध अनुशासनात्मक कार्यवाही का प्रस्ताव।
			7. संबंधित ग्राम रोजगार सहायकों को पद से पृथक करने की कार्यवाही।
A-5	नंदनवारा, डंगायनाखुर्द, बरेठी, बिजरावन, जगतनगर, मऊबुजुर्ग, धामना, लोहार गुवन, बेलगांव, रमपुरा–बिहारीपुरा, रानीपुरा एवं बैदउ	जांच प्रतिवेदन के आधार पर दोषी पाये जाने वाले अधिकारी/कर्मचारी	तदैव
A-6	नादिया	मुख्य कार्यपालन	ग्राम पंचायत नादिया की

		अधिकारी, जनपद पंचायत जतारा, जिला टीकमगढ़, सहायक यंत्री, उपयंत्री, सहायक लेखाधिकारी, प्रधान/सचिव/ग्राम रोजगार सहायक ग्राम पंचायत नादिया	ग्रेवल रोड निर्माण मेन रोड से पंचायत भवन तक, ग्रेवल रोड निर्माण सिमरिया से आंगनवाडी, तालाब निर्माण राजू के खेत के पास, तालाब जीर्णोद्धार एवं बेस्ट बियर निर्माण कार्य मोरईहार नादिया की माप पुस्तिकाएं NLM को समय पर निरीक्षण हेतु उपलब्ध नही कराना एवं माप पुस्तिकाओं में manipulation करने के कारण संबंधितों के विरूद्ध सख्त कार्यवाही की जावे।
A-7	ग्राम पंचायत खकरी एवं देवखा–सामग्री भुगतान ग्रेवल रोड एवं गौशाला निर्माण FTO No. 564277 and 428342, दिनांक 22.01.2021	मुख्य कार्यपालन अधिकारी, जनपद पंचायत जतारा श्री आनंद शुक्ला एवं सहायक लेखाधिकारी, जनपद पंचायत जतारा	अधूरी माप पुस्तिका के आधार पर सामग्री का भुगतान करने के कारण संबंधितों के विरूद्ध आर्थिक अनियमतिता का प्रकरण दर्ज करते हुये अनुशासनात्मक कार्यवाही करना एवं संविदा कर्मचारी होने की स्थिति में संविदा समाप्ति की कार्यवाही करना।
A-9	ग्राम पंचायत कुरई 1. नवीन तालाब निर्माण भजनी के पास 2. नवीन तालाब निर्माण यदयदा के पास 3. नवीन तालाब निर्माण गौचर हार	मुख्य कार्यपालन अधिकारी, जनपद पंचायत जतारा, जिला टीकमगढ़, सहायक यंत्री, उपयंत्री, सहायक लेखाधिकारी, प्रधान/सचिव/ग्राम रोजगार सहायक ग्राम पंचायत नादिया	उपरोक्त चारों तालाब बिन्दु क्रमांक A-9 के अनुसार निजी भूमि में किये गये है। जो गंभीर अनियमितता की श्रेणी में आते है। अतः प्राक्कलन बनाने वाले उपयंत्री, तकनीकी स्वीकृति देने वाले सहायक यंत्री/कार्यपालन यंत्री प्रशासकीय स्वीकृति जारी करने वाले अधिकारी/प्रधान/ सचिव

	के पास 4. नवीन तालाब निर्माण विद्याहार के पास		ग्राम पंचायत कुरई मस्टरोल बनाने वाले रोजगार सहायक एवं DPR फ्रीज करने वाले अतिरिक्त कार्यक्रम अधिकारी एवं उक्त निजी भूमि में निर्मित तालाबों पर भुगतान करने वाले सहायक लेखाधिकारी एवं मुख्य कार्यपालन अधिकारी, जनपद पंचायत के विरूद्ध संपूर्ण व्यय की गयी राशि की वसूली एवं इन सभी के विरूद्ध FIR दर्ज करना।
A-10	देवखा, धमना एवं मऊबुजुर्ग	ग्राम पंचायत प्रधान/ सचिव/ग्राम रोजगार सहायक, उपयंत्री	बिन्दु क्रमांक A-10 के अनुसार उपरोक्त तीनों ग्राम पंचायतों में JCB मशीनों से कार्य कराया जाना एवं फर्जी मजदूरों/मृत मजदूरों के नाम मस्टरोल में दर्ज करने वालों के विरूद्ध नियमानुसार कठोर कार्यवाही की जावे।
A-11	ग्राम पंचायत नादिया	ग्राम पंचायत प्रधान नादिया, श्रीमती मीरा यादव, सचिव श्रीमती सूरज जैन के स्थान पर सरपंच पुत्र श्री रंजीत यादव एवं सचिव पति श्री संजू जैन द्वारा ग्राम पंचायत के पूरे कार्य स्वयं करना सरपंच एवं सचिव मात्र कटपुतली बनकर सिर्फ हस्ताक्षर करना।	सरपंच पुत्र श्री रंजीत यादव एवं सचिव पति श्री संजू जैन के द्वारा ग्राम पंचायत नादिया के समस्त कार्यों में दखल अंदाजी करते हुये निर्माण कार्यों को करना, NLM द्वारा ग्राम पंचायत नादिया के दस्तावेज मांगने पर उनको अनाधिकृत रूप से आग के हवाले करने के कारण एवं मुख्य कार्यपालन अधिकारी, जनपद पंचायत जतारा द्वारा इनको ovelook करने के कारण मुख्य कार्यपालन

			अधिकारी जनपद पंचायत जतारा श्री आनंद शुक्ला के विरूद्ध कठोर कार्यवाही करना।

NLM के प्रतिवेदन के साथ संलग्न जांच प्रतिवेदन दिशा बैठक दिनांक 23.12.2020 जिसमें कार्यपालन यंत्री ग्रामीण यांत्रिकी सेवा संभाग टीकमगढ़ के मार्गदर्शन में उक्त 5 पंचायतों की जांच की जाना तथा ग्राम पंचायत नादिया में सुदूर सड़क निर्माण सिमरिया से आंगनवाड़ी तक कार्य के निरीक्षण दिनांक 28.02.2021 के अनुसार मौंके पर कोई कार्य नहीं पाये जाने का लेख है, जबकि नरेगा पोर्टल पर इस कार्य में व्यय राशि 0.91 लाख पायी जाना प्रतिवेदित किया गया है। अतएव इस प्रकरण में कार्य की क्रियान्वयन एजेंसी, मस्टररोल संधारणकर्ताए मूल्यांकनकर्ता एवं भुगतानकर्ता अधिकारी/कर्मचारियों के विरूद्ध FIR दर्ज कराये जाने की कार्यवाही की जावे।

जिला कलेक्टर के पत्र क्रमांक 134 दिनांक 26.12.2020 के अनुसार गठित जांच कमेटी द्वारा अपने जांच प्रतिवेदन में ग्राम पंचायत वर्माडांग, मजगुंवा, नाडिया, देवखा एवं बिंदरईखास में राशि रूपया 147.96 लाख की राशि वसूली योग्य पायी जाना प्रतिवेदित किया गया है। NLM के प्रतिवेदन में इस गंभीर वित्तीय अनियमितता का मास्टर माइंड मुख्य कार्यपालन अधिकारी जनपद पंचायत जतारा श्री आनंद शुक्ला एवं सहायक लेखाधिकारी, संबंधित सहायक यंत्री, उपयंत्री, संबंधित ग्राम पंचायतों के प्रधान/सचिव/ग्राम रोजगार सहायक के विरूद्ध नियमानुसार सख्त कार्यवाही करते हुए परिषद कार्यालय को 07 दिवस में प्रतिवेदन भेजा जाना सुनिश्चित किया जावे, जिससे प्राथमिक कार्यवाही से ग्रामीण विकास मंत्रालय भारत सरकार को अवगत कराया जा सके।

संलग्न – उपरोक्तानुसार।

(सूफिया फारूकी वली IAS)
आयुक्त
म.प्र. राज्य रोजगार गारंटी
परिषद

पृ.क्र/163/MGNREGS-MP/NR-3/2022 भोपाल, दिनांक 06/04/2022

प्रतिलिपि –

1. अवर सचिव (मनरेगा), ग्रामीण विकास मंत्रालय, ग्रामीण विकास विभाग, भारत सरकार, कृषि भवन, नई दिल्ली की ओर सूचनार्थ।
2. आयुक्त, सागर संभाग, सागर की ओर सूचनार्थ। एवं आवश्यक कार्यवाही हेतु प्रेषित।

आयुक्त
म.प्र. राज्य रोजगार गारंटी
परिषद

4. In a connected **Writ Petition No.9743/2022 (Meera Yadav Vs. The State of M.P.)** decided today by this Court by a separate order, it has been held as under :-

> **"**This petition under Article 226 of Constitution of India has been filed seeking following reliefs:-
>
> *"(i) To issue a writ in the nature of certiorari letter datd 22.04.2022 may kindly be quashed.*
>
> *(ii) To issue a writ in the nature of mandamus respondents may kindly be restrained to take any coercive action against the petitioner.*
>
> *(iii) Any other writ or direction as the Hon'ble Court may deems fit in the circumstances of the case."*
>
> 2. It is the case of petitioner that by impugned order dated 22.04.2022, a direction has been issued to lodge an F.I.R. on the basis of report submitted by National Level Monitor Team (NLM) against petitioner and others for committing irregularities in Gram Panchayat, Nadiya in an arbitrary manner.
>
> 3. It is submitted that direction has been issued contrary to the mechanism, which has already been provided under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short 'MGNREGA Act') and Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'Adhiniyam 1993') by which the loss and misappropriation can be recovered. It is further submitted that the act of the officers is protected under Section 28

and 30 of MGNREGA Act. It is further submitted that although there was an order not to take any coercive step but during the pendency of petition, FIR has been lodged at Police Station and accordingly the petitioner by incorporating amendment has also challenged the FIR dated 29.04.2022. It is the case of petitioner that as per Sections 28 and 30 of Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short 'MGNREGA Act') anything which has been done in good faith is exempted from prosecution or other legal proceedings. It is further submitted that allegations made against petitioner in the letter written by Collector are completely vague. There were no allegations against petitioner in spite of that CEO has written to the SHO, Police Station, Digoda District Tikamgarh to lodge FIR against several persons including petitioner. It is further submitted that even otherwise, allegations made against petitioner would not *prima facie* make out a cognizable offence and under the facts and circumstances of case, preliminary enquiry was desirable as held by Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and Others** reported in **(2014) 2 SCC 1**. It is further submitted that Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam is a complete Act in itself according to which, unless and until an enquiry is conducted under Sections 89 and 92 of Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, no civil liability can be imposed on the petitioner and accordingly, lodging of FIR is not warranted.

4. *Per contra*, petition is vehemently opposed by counsel for State and it is submitted that lodging of FIR is not dependent upon the findings recorded under Section 89 and 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. Furthermore, the protection as provided under Section 30 of MGNREGA Act will be applicable only if it is found that the act of petitioner was in good faith. Whether the petitioner had acted in good faith or not is a disputed question of fact.

5. Considered the submissions made by counsel for parties.

Whether, the petitioner is entitled for benefit of Section 28 and 30 of MGNREGA Act or not.

6. Section 28 and 30 of MGNREGA Act reads as under:

> **28. Act to have overriding effect**.- The provisions of this Act or the Schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law:
>
> Provided that where a State enactment exists or is enacted to provide employment guarantee for unskilled manual work to rural households consistent with the provisions of this Act under which the entitlement of the households is not less than and the conditions of employment are not inferior to what is guaranteed under this Act, the State Government shall have the option of implementing its own enactment:
>
> Provided further that in such cases the financial assistance shall be paid to the concerned State Government in such manner as shall be determined by the Central Government, which shall not exceed what the State would have been entitled to receive under this Act had a Scheme made under this Act had to be implemented.
>
> **30. Protection of action taken in good faith**.- No suit, prosecution or other legal proceedings shall lie against the District Programme Coordinator, Programme Officer or any other person who is, or

> who is deemed to be, a public servant within the meaning of section 21 of the Indian Penal Code in respect of anything which is in good faith done or intended to be done under this Act or the rules or Schemes made thereunder.

7. Before adverting to the above mentioned sections, this Court would like to consider the report of NLM. The petitioner was the Sarpanch of Nadiya. The allegations were that without constructing a road, an amount of Rs.0.91 Lakh has been misappropriated and further although the petitioner was the Sarpanch but her son had hijacked the working of the Panchayat and the petitioner was simply acting as a puppet and was putting her signatures and when the documents were demanded, the same were set on fire. Section 30 of MGNREGA Act provides that no suit, prosecution or any other legal proceedings shall lie against the District Program Coordiantor, Program Officer or any other person who is or who is deemed to be a public servant within the meaning of Section 21 of Indian Penal Code in respect of anything which is in **good faith or intended to be done** under this Act.

8. Now, the primary question for consideration is as to what is the meaning of good faith. Section 52 of Indian Penal Code reads as under:-

> *"***52. "Good faith".—** *Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."*

9. Therefore, anything which is not done with due care and attention, cannot said to have been done in good faith. The allegations in the present case are that although the petitioner was Sarpanch but all the works of the Gram Panchayat were being done by her son and petitioner was acting as a puppet and was simply signing the documents.

Furthermore, when the documents were demanded by the Inspection Team, they were put on fire. Although, the table was not found burnt but only some documents were found on the table is burnt/semi burnt condition and thirdly that although the road was not constructed but an amount of Rs.0.91 Lakhs was misappropriated. By no stretch of imagination, it can be said that the above mentioned acts of the petitioner were done in good faith. Therefore, this Court is of the considered opinion that petitioner is not entitled for protection under Section 30 of MGNREGA Act.

Whether direction to lodge the FIR is correct or not ?
And
Whether in the light of provisions of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, which provides for enquiry under Section 89 and 92 of the Act the FIR can be directed to be lodged or not ?

10. It is well established principle of law that FIR is not an encyclopedia. It is the case of petitioner that vide order dated 19.04.2022, the Collector, Tikamgarh had directed the CEO, Janpad Panchayat, Jatara, District Tikamgarh to lodge a report against the executing agency, employees responsible for maintenance of muster role, employees who have valuated the work as well as the persons who are responsible for payment.

11. It is submitted that the said direction is completely vague in nature and it does not name the petitioner. However, CEO, Janpad Panchayat, Jatara, Tikamgarh by his letter dated 22.04.2024 addressed to SHO, Police Station Digaura has directed to lodge FIR against petitioner also. Under these circumstances, it is submitted that the FIR lodged against the petitioner is bad in law. It is further submitted that once the Section 89 and 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 provides for recovery of loss,

then in the teeth of aforesaid sections, FIR cannot be lodged.

12. Considered the submissions made by counsel for petitioner.

13. It is the case of the petitioner that Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 is complete Act in itself and therefore, the FIR cannot be lodged for the loss caused to the Gram Panchayat or to the State. The aforementioned submission made by counsel for petitioner is no more *res integra*.

14. The Supreme Court in the case of **State of M.P. v. Rameshwar**, reported in **(2009) 11 SCC 424**, has held as under:-

> "**48.** Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved."

15. The Supreme Court in the case of **Dhanraj N Asawani v. Amarjeetsingh Mohindersingh Basi and Others** decided on **25.07.2023** in **Criminal Appeal No.2093/2023** has held as under:-

> "15. Section 4 of the CrPC provides that all offences under the IPC shall be investigated, inquired, and tried according to the provisions of

the CrPC. Section 4(2) structures the application of the CrPC in situations where a special procedure is prescribed under any special enactment.7 Section 4 is extracted below:

> **4. Trial of offences under the Indian Penal Code and other laws**.
> — (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

16. Section 4(2) lays down that the provisions of the CrPC shall apply to all offences under any other law apart from the IPC. However, the application of the CrPC will be excluded only where a special law prescribes special procedures to deal with the investigation, inquiry, or the trial of the special offence. For instance, **in Mirza Iqbal Hussain v. State of Uttar Pradesh**, this Court was called upon to determine whether the trial court had jurisdiction to pass an order of confiscation under the Prevention of Corruption Act, 1947. This Court held that the provisions of the CrPC would apply in full force because the Prevention of Corruption Act, 1947 did not provide for confiscation or prescribed any mode by which an order of confiscation could be made. Therefore, it was held that a court trying an offence under the Prevention of Corruption Act, 1947 was empowered to pass an order of confiscation in view

of Section 452 of the CrPC. In determining whether a special procedure will override the general procedure laid down under the CrPC, the courts have to ascertain whether the special law excludes, either specifically or by necessary implication, the application of the provisions of the CrPC.

17. The CrPC provides the method for conducting investigation, inquiry, and trial with the ultimate objective of determining the guilt of the accused in terms of the substantive law. The criminal proceedings kick in when the information of the commission of an offence is provided to the police or the magistrate. Section 154 of the CrPC details the procedure for recording the first information in relation to the commission of a cognizable offence. It provides that any information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced into writing by them or under their direction. The information provided by the informant is known as the FIR.

18. In **Lalita Kumari v. Government of U P**, a Constitution Bench of this Court held that the main object of an FIR from the point of the view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity to take suitable steps to trace and punish the guilty. The criminal proceedings are initiated in the interests of the public to apprehend and punish the guilty.11 It is a well settled principle of law that absent a specific bar or exception contained in a statutory provision, the criminal law can be set into motion by any individual.

19. In **A R Antulay v. Ramdas Sriniwas Nayak**, a Constitution Bench of this Court held that the

concept of locus standi of the complainant is not recognized in the criminal jurisprudence, except in situations where the statute creating an offence provides for the eligibility of the complainant. The Court observed that the right to initiate criminal proceedings cannot be whittled down because punishing an offender is in the interests of the society:

> "This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(n) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. **Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception**."
>
> (emphasis supplied)

21. The respondents have relied on the decision of this Court in **Jamiruddin Ansari** (supra) to contend that the 1960 Act, being a special law, will prevail over the provisions of the CrPC. In **Jamiruddin Ansari** (supra) the issue before a two-Judge Bench of this Court was whether Section 23(2) of the Maharashtra Control of Organized Crime Act, 199914 excludes the application of Section 156(3) of the CrPC. The MCOCA is a special law enacted by the state legislature to prevent and control crimes by organized crime syndicates or gangs.

> Section 23 of MCOCA begins with a non-obstante clause. Section 23(2) provides that the special judge cannot take cognizance of any offence under the MCOCA without the previous sanction of a police officer not below the rank of the Additional Director General of Police. The relevant clause is extracted below: 23. (1) Notwithstanding anything contained in the Code,— (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police; (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police. (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

22. In **Jamiruddin Ansari** (supra), this Court held that the provisions of the MCOCA will prevail over the provisions of the CrPC. The Court held that a Special

Judge is precluded from taking cognizance of a private complaint and order a separate inquiry without the previous sanction of the police officer not below the rank of Additional Director General of Police:

> 67. We are also inclined to hold that in view of the provisions of Section 25 of MCOCA, the provisions of the said Act would have an overriding effect over the provisions of the Criminal Procedure Code and the learned Special Judge would not, therefore, be entitled to invoke the provisions of Section 156(3) CrPC for ordering a special inquiry on a private complaint and taking cognizance thereupon, without traversing the route indicated in Section 23 of MCOCA. In other words, even on a private complaint about the commission of an offence of organised crime under MCOCA cognizance cannot be taken by the Special Judge without due compliance with sub-section (1) of Section 23, which starts with a non obstante clause.

23. In view of the stringent provisions of the MCOCA, Section 23 provides a procedural safeguard that no information of an offence alleged under the MCOCA shall be recorded without the prior approval of an officer below the rank of the Deputy Inspector General of Police. No investigation can be carried out by an officer below the rank of Deputy Superintendent of Police. Section 23(2) contains a specific bar against the taking of cognizance by a Special Judge without the previous sanction of a police officer not below the rank of Additional Director General of Police. In **Rangku Dutta v. State of Assam**, 15 this Court interpreted the purport of Section 20-A(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987,16 which was similar to Section 23 of the MCOCA. Section 20-A of the TADA is extracted below:

> "**20-A.Cognizance of offence**.—(1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.
>
> (2) No court shall take cognizance of any offence under this Actwithout the previous sanction of the Inspector General of Police, or as the case may be, the Commissioner of Police."

This Court held that the above provision was mandatory for two reasons: first, it commenced with an overriding clause; and second, it used the expression "No" to emphasize its mandatory nature. The Court observed that the use of the negative word "No" was intended to ensure that the provision is construed as mandatory.

25. Further reliance has been placed by the respondent on the decision of this Court in **Jeewan Kumar Raut** (supra) to contend that Section 81(5B) debars by necessary implication any person other than the auditor or the Registrar from filing an FIR. In that case, the issue before this Court was whether the provisions of the Transplantation of the Human Organs Act, 199417 barred the applicability of Section 167(2) of the CrPC pertaining to the grant of default bail. Section 22 of the TOHO Act prohibits taking of cognizance by courts except on a complaint made by an appropriate authority. This Court held that the TOHO Act is a special statute and will override the provisions of the CrPC so far as there is any conflict between the provisions of the two enactments. The Court further held that the police report filed by the CBI can only be considered as a complaint petition made by an appropriate

authority under Section 22 of the TOHO Act. Therefore, the filing of a police report in terms of Section 173(2) of the CrPC was held to be forbidden by necessary implication. Since CBI could not file a police report under Section 173(2), Section 167(2) of the CrPC was also held to be not applicable.

26. Exclusion by necessary implication can be inferred from the language and the intent of a statute.18 In **Jeewan Kumar Raut** (supra), this Court looked at the words of the statute as well as the overall scheme of investigation under the CrPC to infer that Section 22 of the TOHO Act bars the applicability of Section 167(2) of the CrPC by necessary implication. In the present case, the 1960 Act casts a positive obligation on the auditor or the Registrar to file an FIR when they discover a financial irregularity in a co-operative society. Section 81(5B) demands accountability and vigilance from the auditor and the Registrar in performance of their public duty. Moreover, a plain reading of the said provision does not lead to the conclusion that the legislature intends to debar any person other than the auditor or the Registrar from registering an FIR. Section 81(5B) cannot be interpreted to mean that any other person who comes to know about the financial irregularity on the basis of the audit report is debarred from reporting the irregularity to the police. In the absence of any specific provision or necessary intendment, such an inference will be against the interests of the society. The interests of the society will be safeguarded if financial irregularities in co-operative banks are reported to the police, who can subsequently take effective actions to investigate crimes and protect the commercial interests of the members of the society. In view of the above discussion, it is not possible for us to infer that Section 81(5B) of the 1960 Act bars

by necessary implication any person other than an auditor or the Registrar from setting the criminal law into motion.

27. From the narration of submissions before this Court, it appears that on 31 May 2021, the Minister in-charge of the Co-operative department has set aside the audit report while directing a fresh audit report for 2016-2017 and 2017-2018. The order of the Minister has been called into question in independent proceedings before the High Court. This Court has been apprised of the fact that the proceedings are being heard before a Single Judge of the High Court. The proceedings which have been instituted to challenge the order of the Minister will have no bearing on whether the investigation by the police on the FIR which has been filed by the appellant should be allowed to proceed. The police have an independent power and even duty under the CrPC to investigate into an offence once information has been drawn to their attention indicating the commission of an offence. This power is not curtailed by the provisions of 1960 Act. There is no express bar and the provisions of Section 81(5B) do not by necessary implication exclude the investigative role of the police under the CrPC.

28. The High Court has relied on the decision of this Court in State of **Haryana v. Bhajan Lal** to quash the FIR. In that case, this Court held that the High Court can exercise its powers under Article 226 of the Constitution or Section 482 of the CrPC to quash an FIR where there is an express legal bar engrafted in any provisions of a special law with respect to the institution and continuance of the proceedings. As held above, Section 81(5B) does not contain any express or implied bar against any person from setting the criminal law in motion.

> 29. In the circumstances, we are of the view that the High Court has erred in quashing the FIR which was lodged by the appellant. It is correct that the FIR adverted to the audit which was conducted in respect of the affairs of the co-operative society. However, once the criminal law is set into motion, it is the duty of the police to investigate into the alleged offence. This process cannot be interdicted by relying upon the provisions of sub-section (5B) which cast a duty on the auditor to lodge a first information report.

16. Counsel for petitioner could not point out any provision of law, which expressly or impliedly bars the application of provisions of Cr.P.C. and IPC. Merely because procedure has been provided under Section 89 and 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 for recovery of the civil liability, it cannot be said that the provisions of Cr.P.C. and IPC have been ousted. For registration of FIR commission of cognizable offence is necessary and the locus of complainant so far as it relates to criminal jurisprudence is concerned has no relevance. Anybody can set criminal agency in motion. In absence of any bar under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 it cannot be said that the FIR could not have been lodged. Accordingly, the aforesaid contention is hereby rejected.

Whether the allegations made in the FIR as well as in the enquiry report makes out a cognizable offence or not ?

17. It is submitted by counsel for petitioner that even if the entire allegations are accepted, still it would be clear that no cognizable offence is made out, therefore, the lodging of FIR is bad in law. It is submitted that the findings given in the enquiry report are incorrect and in fact the road was constructed. There is no question of any

embezzlement. In fact, the petitioner was working as Sarpanch and allegation that the petitioner was acting as a puppet whereas the entire work of the Panchayat was hijacked by her son is false. The documents got burnt in an accident and it was not a deliberate act.

18. Considered the submissions made by counsel for petitioner.

19. It is well established principle of law that this Court while exercising power under Section 482 of Cr.P.C. has to rely upon the allegations made in the complaint. The defence of suspect cannot be looked into. If the allegations made in the FIR *prima facie* discloses a cognizable offence, then interference in the investigation is not proper and it should be done only in rarest of rare cases.

20. The Supreme Court in the case of **Teeja Devi v. State of Rajasthan**, reported in **(2014) 15 SCC 221** has held as under:-

> "**5.** It has been rightly submitted by the learned counsel for the appellant that ordinarily power under Section 482 CrPC should not be used to quash an FIR because that amounts to interfering with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases where the court is satisfied that the prosecution is malicious and vexatious."

21. The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan**, reported in **(2012) 4 SCC 547** has held as under:

> "**8.** It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation."
>
> **9.** In *State of W.B.* v. *Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : (1982) 3 SCR 121] , emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)
>
> > "*65. … An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the*

offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. *If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed*. …

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence*."

(emphasis supplied)

10. On a similar issue under consideration, in *Jeffrey J. Diermeier* v. *State of W.B.* [(2010) 6 SCC 243 : (2010) 3 SCC (Cri) 138 : (2010) 2 SCC (Civ) 656] , while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

"*20*. … The section itself envisages three circumstances under which the inherent

> jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code; (*ii*) to prevent abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

22. The Supreme Court in the case of **XYZ v. State of Gujarat**, reported in **(2019) 10 SCC 337** has held as under:

> "**14.** Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order [*Kenal Vrajmohan Shah* v. *State of Gujarat*, 2018 SCC OnLine Guj 432] granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by clicking inappropriate pictures of the appellant has

> blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings."

23. The Supreme Court in the case of **Varala Bharath Kumar v. State of Telangana**, reported in **(2017) 9 SCC 413** has held as under:

> "**6.** It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to

prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the first information report/the complaint or the outcome of investigation as found in the charge-sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the first information report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure may be exercised.

7. While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a court of appeal or revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised *ex debito justitiae* to do real and substantial justice, for the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard-and-fast rule can

> be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

24. Thus, for ascertaining as to whether the FIR discloses commission of offence or not, this Court has to take allegations as it is on their face value. This Court cannot look into the defence of the suspect and it is for the suspect to prove his defence in the trial. If the allegations made in the FIR are considered on their face value as well as inquiry report submitted by NLM, it is clear that triable allegations have been made against the petitioner and, therefore FIR cannot be quashed in exercise of power either under Article 226 of Constitution of India or under Section 482 of Cr.P.C.

Whether, the FIR has been lodged with mala fide intention or not ?

25. It is submitted by counsel for petitioner that FIR has been lodged with mala fide intentions.

26. The Supreme Court in the case of **Renu Kumari v. Sanjay Kumar**, reported in **(2008) 12 SCC 346** has held as under:-

> *"9.11.* As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence

has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal* v. *H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and *Raghubir Saran (Dr.)* v. *State of Bihar* [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See *Dhanalakshmi* v. *R. Prasanna Kumar* [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , *State of Bihar* v. *P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *State of Kerala* v. *O.C. Kuttan* [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , *State of U.P.* v. *O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri)

497] , *Rashmi Kumar* v. *Mahesh Kumar Bhada* [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , *Satvinder Kaur* v. *State (Govt. of NCT of Delhi)* [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and *Rajesh Bajaj* v. *State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401].]"

27. Therefore, if the complaint made against suspect makes out a cognizable offence, then the mala fide of the informant would be of secondary importance. It would be erroneous on the part of the Court to assess the material before trial is initiated and concluded.

Whether, the preliminary enquiry is required or not ?

28. It is submitted by counsel for petitioner that Supreme Court in the case of **Lalita Kumari v. Govt. of U.P.**, reported in **(2014) 2 SCC 1** has held that the preliminary enquiry is desirable and since preliminary enquiry has not been done, therefore lodging of FIR is bad.

29. Considered the submissions made by counsel for petitioner.

30. The Supreme Court in the case of **Lalita Kumari** (supra) has held as under:-

*"**Conclusion/Directions***

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(*a*) Matrimonial disputes/family disputes

(*b*) Commercial offences

(*c*) Medical negligence cases

(*d*) Corruption cases

(*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter

without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

31. Paragraph-120.4 of the judgment passed in **Lalita Kumari** (supra) caste a duty upon SHO to register an offence if the information discloses the cognizable offence. It has also been clarified that the scope of preliminary enquiry is not to verify the veracity and otherwise of the information received but the purpose is only to ascertain whether the information reveals any cognizable offence or not.

32. Now, the only question for consideration is as to whether the non holding of preliminary enquiry will vitiate the FIR or not ?

33. The Supreme Court in the case of **Central Bureau of Investigation (CBI) and Anr. v. Thommandru Hannah Vijayalakshmi @ T. H.**

Vijayalakshmi and Anr. decided on **08.10.2021** in **Criminal Appeal No.1045/2021** has held as under:-

> "9 (iii) A Preliminary Enquiry is only conducted when the information received is not sufficient to register a Regular Case. However, when the information available is adequate to register a Regular Case since it discloses the commission of a cognizable offence, no Preliminary Enquiry is necessary. This will depend on the facts and circumstances of each case, and the Preliminary Enquiry cannot be made mandatory for all cases of alleged corruption. This proposition finds support in the judgments of this Court in **Lalita Kumari v. Govt. of UP and others (—Lalita Kumari) and The State of Telangana v. Managipet (—Managipet);**
>
> (iv) The FIR was registered on the basis of reliable source information collected during the investigation of another case18 in which the first respondent was one of the accused. During the investigation of that case, CBI conducted searches at four places belonging to the first respondent during which documents were seized and she was also examined. On the basis of such information and documents, the FIR was registered in the present case. Hence, there was no need for a Preliminary Enquiry;
>
> (v) There is also no need to conduct a Preliminary Enquiry since the respondents will be provided with an opportunity to explain each and every acquisition of their assets, and their income and expenditure during the check period, during the investigation. Hence, it was not necessary to provide this opportunity before the registration of an FIR (through a Preliminary Enquiry) since there would have been a risk of tampering with or destruction of evidence by the accused persons;

(vi) The Investigating Officer has no duty to call for any explanation from the accused in relation to their assets before registering an FIR against them since doing so would further lengthen the proceeding. In any case, such an opportunity is available to the accused persons at the stage of trial. This principle emerges from the judgments of this Court in **K. Veeraswami v. Union of India (—K. Veeraswamiǁ), Union of India and another v. W.N. Chadha, State of Maharashtra v. lshwar Piraji Kalpatri , Narendar G. Goel v. State of Maharashtra and Samaj Parivarthan Samudhaya v. State of Karnataka;**

D Whether a Preliminary Inquiry is mandatory before registering an FIR

D.1 Precedents of this Court

12. Before proceeding with our analysis of the issue, it is important to understand what previous judgements of this Court have stated on the issue of whether CBI is required to conduct a Preliminary Enquiry before the registration of an FIR, especially in cases of alleged corruption against public servants.

13. The first of these is a judgment of a two Judge Bench in P Sirajuddin (supra), in which it was observed that before a public servant is charged with acts of dishonesty amounting to serious misdemeanor, some suitable preliminary enquiry must be conducted in order to obviate incalculable harm to the reputation of that person. Justice G K Mitter held that: **—**

> 17…**Before a public servant, whatever be his status, is publicly charged with acts of**

> **dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations** by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general...
>
> (**emphasis supplied**)

14. The above decision was followed by another two Judge Bench in Nirmal Singh Kahlon (supra), where it was observed that in accordance with the CBI Manual, the CBI may only be held to have established a prima facie case upon the completion of a Preliminary Enquiry. Justice S B Sinha held thus: ―

> 30. Lodging of a first information report by CBI is governed by a manual. It may hold a preliminary inquiry; it has been given the said power in Chapter VI of the CBI Manual. A prima facie case may be held to have been established only on completion of a preliminary enquiry.

15. The most authoritative pronouncement of law emerges from the decision of a Constitution Bench in Lalita Kumari (supra). The issue before the Court was whether ―a police officer is bound to register a first information report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure 1973…or the police officer has the power to conduct a ‗preliminary inquiry' in order to test the

veracity of such information before registering the same‖. Answering this question on behalf of the Bench, Chief Justice P Sathasivam held that under Section 154 of the Code of Criminal Procedure 197355, a police officer need not conduct a preliminary enquiry and must register an FIR when the information received discloses the commission of a cognizable offence. Specifically with reference to the provisions of the CBI Manual, the decision noted: ―

> 89. Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that CBI is constituted under a special Act namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act.
>
> (emphasis supplied)

However, the Court was also cognizant of the possible misuse of the powers under criminal law resulting in the registration of frivolous FIRs. Hence,

it formulated ―exceptions‖ to the general rule that an FIR must be registered immediately upon the receipt of information disclosing the commission of a cognizable offence. The Constitution Bench held:

> ―115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time…
>
> […]
>
> **117. In the context of offences relating to corruption, this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.**
>
> […]
>
> 119. Therefore, in view of various counterclaims regarding registration or non-registration, **what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for**

> **the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith**. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.
>
> (**emphasis supplied**)

The judgment provides the following conclusions:—

> 120. In view of the aforesaid discussion, we hold:
>
> 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> 120.2. **If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not**.

> […]
>
> **120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence**.
>
> **120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under**:
>
> […]
>
> **(d) Corruption cases**
>
> […]
>
> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.
>
> (**emphasis supplied**)

The Constitution Bench thus held that a Preliminary Enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a Preliminary Enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a Preliminary Enquiry will depend on the facts and circumstances of each case. As an illustration, ―corruption cases‖ fall in that category of cases

where a Preliminary Enquiry ―may be made‖. The use of the expression ―may be made‖ goes to emphasize that holding a preliminary enquiry is not mandatory. Dwelling on the CBI Manual, the Constitution Bench held that: (i) it is not a statute enacted by the legislature; and (ii) it is a compendium of administrative orders for the internal guidance of the CBI.

16. The judgment in Lalita Kumari (supra) was analyzed by a three Judge Bench of this Court in Yashwant Sinha (supra) where the Court refused to grant the relief of registration of an FIR based on information submitted by the appellant-informant. In his concurring opinion, Justice K M Joseph described that a barrier to granting the relief of registration of an FIR against a public figure would be the observations of this Court in Lalita Kumari (supra) noting that a Preliminary Enquiry may be desirable before doing so. Justice Joseph observed:

> ―108. Para 120.6 [of Lalita Kumari] deals with the type of cases in which preliminary inquiry may be made. Corruption cases are one of the categories of cases where a preliminary inquiry may be conducted…
>
> […]
>
> 110. In para 117 of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court referred to the decision in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and took the view that in the context of offences related to corruption in the said decision, the Court has expressed a need for a preliminary

inquiry before proceeding against public servants.

[…]

112. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , one of the contentions which was pressed before the Court was that in certain situations, preliminary inquiry is necessary. In this regard, attention of the Court was drawn to CBI Crime Manual…

[…]

114. The Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , had before it, the CBI Crime Manual. It also considered the decision of this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] which declared the necessity for preliminary inquiry in offences relating to corruption. Therefore, the petitioners may not be justified in approaching this Court seeking the relief of registration of an FIR and investigation on the same as such. This is for the reason that one of the exceptions where immediate registration of FIR may not be resorted to, would be a case pointing fingers at a public figure and raising the allegation of corruption. This Court also has permitted preliminary inquiry when there is delay, laches in initiating criminal prosecution, for example, over three months. A preliminary inquiry, it is to be noticed in para 120.7, is to be completed within seven days.

(**emphasis supplied**)

17. The decision of a two Judge Bench in **Managipet** (supra) thereafter has noted that while the decision in **Lalita Kumari** (supra) held that a Preliminary Enquiry was desirable in cases of alleged corruption, that does not vest a right in the accused to demand a Preliminary Enquiry. Whether a Preliminary Enquiry is required or not will depends on the facts and circumstances of each case, and it cannot be said to be mandatory requirement without which a case cannot be registered against the accused in corruption cases. Justice Hemant Gupta held thus:

> **—28. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused**. Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that prima facie, the allegations levelled against the accused in the complaint are credible…
>
> 29. The Court concluded that the registration of an FIR is mandatory under Section 154 of the Code if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation…

30. **It must be pointed out that this Court has not held that a preliminary inquiry is a must in all cases**. A preliminary enquiry may be conducted pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. **The judgment of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry**.

[…]

32…**The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]** .

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

prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. **It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed**. Reference in this regard, is made to a judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. **Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary**

> **inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.**
>
> **(emphasis supplied)**

18. In **Charansingh** (supra), the two Judge bench was confronted with a challenge to a decision to hold a Preliminary Enquiry. The court adverted to the ACB Manual in Maharashtra and held that a statement provided by an individual in an ―open inquiry‖ in the nature of a Preliminary Enquiry would not be confessional in nature and hence, the individual cannot refuse to appear in such an inquiry on that basis. Justice M R Shah, writing for the two Judge bench consisting also of one of us (Justice D Y Chandrachud) held:

> ―11. However, whether in a case of a complaint against a public servant regarding accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, an enquiry at pre-FIR stage is permissible or not and/or it is desirable or not, if any decision is required, the same is governed by the decision of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .
>
> 11.1. While considering the larger question, whether police is duty-bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a

cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 :
(2014) 1 SCC (Cri) 524] has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is 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 each case.

[…]

14. In the context of offences relating to corruption, in para 117 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2

SCC 1 : (2014) 1 SCC (Cri) 524] , this Court also took note of the decision of this Court in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] in which case this Court expressed the need for a preliminary enquiry before proceeding against public servants.

[…]

15.1. **Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income**. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. **However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the**

alleged accused also against whom the complaint is made.

15.2. Even as held by this Court in **CBI v. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305]** , a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. **Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the observations made by this Court in P.**

> **Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and considering the observations by this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State AntiCorruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage.**
>
> (emphasis supplied)

19. Hence, all these decisions do not mandate that a Preliminary Enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted. The decision in Managipet (supra) dealt specifically with a case of Disproportionate Assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a Preliminary Enquiry.

20. This conclusion is also supported by the judgment of another Constitution Bench in **K. Veeraswami** (supra). The judgment was in context of Section 5(1)(e) of the old Prevention of Corruption Act 1947, which is similar to Section

13(1)(e) of the PC Act. It was argued that: (i) a public servant must be afforded an opportunity to explain the alleged Disproportionate Assets before an Investigating Officer; (ii) this must then be included and explained by the Investigating Officer while filing the charge sheet; and (iii) the failure to do so would render the charge sheet invalid. Rejecting this submission, the Constitution Bench held that doing so would elevate the Investigating Officer to the role of an enquiry officer or a Judge and that their role was limited only to collect material in order to ascertain whether the alleged offence has been committed by the public servant. In his opinion for himself and Justice Venkatachaliah, Justice K Jagannatha Shetty held thus:

> ―75…since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression ―for which he cannot satisfactorily account‖ used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the

> course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. **But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet**.
>
> (**emphasis supplied**)

Therefore, since an accused public servant does not have a right to be afforded a chance to explain the alleged Disproportionate Assets to the Investigating Officer before the filing of a charge sheet, a similar right cannot be granted to the accused before the filing of an FIR by making a Preliminary Enquiry mandatory."

> 34. Therefore, it is clear that non holding of preliminary enquiry will not vitiate the FIR. Furthermore, this Court has already come to the conclusion that allegations made against the petitioner makes out a cognizable offence.
>
> 35. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting quashment of FIR or warranting quashment of direction to lodge FIR.
>
> 36. Accordingly, the petition fails and is hereby **dismissed**.
>
> 37. Interim order dated 28.04.2022 is hereby vacated."

6. From the allegations made in the order dated 06.04.2022, it is clear that cognizabale offence is made out. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting quashment of FIR or warranting quashment of direction to lodge FIR.

RECOVERY

7. It is submitted by counsel for petitioner that the recovery has been directed without conducting any enquiry under Section 89 and 92 of the Madhya Pradesh Panchayat Raj Avam Swaraj Adhiniyam, 1993 (for short "Adhiniyam 1993), whereas a direction has also been given to lodge FIR.

8. Considered the submission made by counsel for petitioner.

Whether recovery can be directed without conducting enquiry under Section 89 of Adhihiyam 1993 or not ?

9. The question is no more *res integra*.

10. This Court in the case of **Sunita Gurjar and another v. State of Madhya Pradesh and others** decided on **26.09.2019** in **W.P.No.20220/2019** (Gwalior Bench) has held as under:-

> *"Shri Arun Dudawat, Counsel for the petitioners.*
>
> *Shri RK Soni, Govt. Advocate for the respondents/ State.*
>
> *This petition under Article 226 of the Constitution of India has been filed against the order dated 30/8/2019 passed under Section 92 of the M.P. Panchayat Raj Awam Gram Swaraj, Adhiniyam, 1993 (in short "Adhiniyam").*
>
> *It is submitted by the counsel for the petitioners that a show-cause notice dated 29/8/2018 was issued to the petitioners under Section 92 of the Adhiniyam for recovery of Rs.2,88,000/-.The show-cause notice was duly replied by the petitioners, however, without conducting any enquiry, the impugned order has been passed. Challenging the order dated 30/8/2019, it is submitted by the Counsel for the petitioners, that the respondents have already taken a final decision, which is bad because the provision of Section 92 of Adhiniyam, is merely an execution provision, and unless and until, an enquiry is conducted under Section 89 of Adhiniyam, no action can be taken against the petitioners. To buttress his contentions, the Counsel for the petitioners has relied upon the judgments passed by this Court in the case of* ***Sumitra Dhurve Vs. State of M.P.*** *reported in* ***2016(3) MPWN 83*** *and* ***Kadam Singh Vs. CEO and others*** *reported in* ***2019(1) MPLJ 420****.*
>
> *Per contra, it is submitted by the Counsel for the State that the letter dated 30/8/2019 is not a final order, but it is merely a show cause notice and no action under Section 92 of Adhiniyam would be taken unless and until, an enquiry is conducted under Section 89 of Adhiniyam.*

Considered the submissions made by the Counsel for the parties.

This Court in the case of ***Kadam Singh*** *(Supra) has held as under :*

"9. That the respondents have issued notice under section 92 of the Panchayat Act. The proceeding of section 92 is like an execution proceeding. Before initiating the execution proceeding there has to be an adjudication by the competent authority. Section 89 provides for adjudication. Sections 89 and 92 of the Panchayat Act are reproduced herein below:

> *89.* ***Liability of Panch etc. for loss, misappropriation****.- (1) Every Panch, member, officebearer, officer or servant of Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) shall be personally liable for loss, waste or misapplication of any money or other property of the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) to which he has been a party or which has been caused by him by misconduct or gross neglect of his duties. The amount required for reimbursing such loss, waste, or misapplication shall be recovered by the prescribed authority.*
>
> *Provided that no recovery shall be made under this section unless the person concerned has been given a reasonable opportunity of being heard.*
>
> *(2) If the person concerned fails to pay the amount, such amount shall be recovered as arrears of land revenue and credited to the funds of the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) concerned.*
>
> *92.* ***Power to recover records articles and money****.-(1)Where the prescribed authority is of the opinion that any person has unauthorisedly in*

his custody any record or article or money belonging to the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha), he may, by a written order, require that the record of article or money be delivered or paid forthwith to the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha), in the presence of such officer as may be appointed by the prescribed authority in this behalf.

(2) If any person fails or refuses to deliver the record or article or pay the money as directed under sub-section (1) the prescribed authority may cause him to be apprehended any may send him with a warrant in such form as may be prescribed, to be confined in a Civil Jail for a period not longer than thirty days.

(3) The prescribed authority may- (a) for recovering any such money direct that such money be recovered as an arrear of land revenue; and

(b) for recovering any such record or articles issue a search warrant and exercise all such powers with respect thereto as may lawfully be exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1973 (No.2 of 1974).

(4) No action under sub-section (1) or (2) or (3) shall be taken unless a reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him. (4-A) The case pertaining to recovery of any record or article or money initiated by the prescribed authority shall be disposed of within six months from the date of initiation.

(5) A person against whom an action is taken under this section shall be disqualified to be

member of any Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) for a period of (six) years commencing from the initiation of such action.

10. From bare perusal of section 89 it is clear that every Panch, member, office-bearer, officer or servant of Panchayat shall be personally liable for the loss, waste or misappropriation of any money or other property of the Panchayat to which he has been a party or which has been caused by him by misconduct or gross neglect of his duties. The said amount is liable to be recovered by the prescribed authority. As per the proviso to this section no recovery shall be made under this section unless the person concerned has been given a reasonable opportunity of being heard. That every Panch, member, office-bearer, officer or servant of Panchayat may be existing or ex or removed who has caused loss to the Panchayat by misconduct or gross neglect of his duties and required for reimbursing such loss, waste or misapplication and same can be recovered even after demitting office by them, as the case may be. The section 89 specifically provides that an adjudication must be done and as per the proviso reasonable opportunity of hearing ought to have been given to those persons. In the present case there is no such adjudication under section 89 of the Act.

11. After adjudication under section 89, Section 92 gives power to prescribed authority to recover the records, articles and money belonging to the Panchayat from the custody of any person. Under subsection(2) of section 92 if any person fails or refuses to deliver the record or article or pay the money then the prescribed authority may apprehend him with a warrant for sending him to civil jail and under subsection (3) may recover such money as arrears of land revenue. As such under section 92 powers are given to the prescribed authority for execution of the order passed under

section 89. In the present case there is no adjudication under section 89, therefore, there cannot be any execution proceeding or order order passed therein under section 92 of the Act. The prescribed authority has straight away on the basis of ex-parte enquiry report initiated recovery under section 92. In view of the above, the impugned show cause notice as well as the final order dated 8.10.2015 are hereby set aside. Needless to say that still respondents/authority shall be at liberty to take prompt action against the petitioner under section 89 and 92 of the Panchayat Act."

Thus, the facts of this case are fully covered by the judgment passed by this Court in the case of ***Kadam Singh*** *(Supra).*

Accordingly, it is directed that the respondents shall not effect any recovery or shall not take any coercive step against the petitioners, unless and until an enquiry is conducted under Section 89 of Adhiniyam.

As the letter dated 30/8/2019 is merely show cause notice, therefore, the respondents are directed not to take any coercive steps against the petitioners on the basis of said show cause notice.

The respondents are directed to initiate an enquiry under Section 89 of Adhiniyam and decide the same within a period of six months from today and thereafter, they may proceed further in accordance with law.

With aforesaid observations, the petition succeeds and is hereby ***Allowed****."*

11. Thus, it is clear that before directing for recovery, the respondent must conduct an enquiry under Section 89 of Adhiniyam 1993 and petitioner is entitled for an opportunity of hearing.

12. By order dated 12.04.2022, respondent has directed to initiate enquiry under Section 89 and 92 of Adhiniyam 1993. Accordingly, it is

directed that the said enquiry shall be conducted witho ut any prejudiced mind after giving an opportunity of hearing to petitioner as required under Section 89 of Adhiniyam and thereafter a finding shall be given as to whether any civil liability can be fastened on petitioner or not?

13. Let entire exercise be completed within a period of three months from the date of receipt of this order.

14. Registry is directed to immediately forward a copy of this order to the respondent for necessary information and compliance.

TERMINATION

15. Today by a separate order passed in Writ Petition No.8982/2022 (**Dharmendra Kumar Tiwari Vs. State of M.P. and others)**, this Court has quashed the order of termination with a direction to respondents to issue a fresh show cause notice containing imputations as well as the proposed action and has passed the following order :-

> "This petition has been filed under Article 226 of Constitution of India seeking the following reliefs :-
>
> > "a) To issue a writ in the nature of certiorari order dated 12/04/2022 may kindly be quashed.
> > b) To issue a writ in the nature of mandamus respondents may kindly be directed to reinstate the petitioner with back wages.
> > c) Any other writ or direction as the Hon'ble Court may deems fit in the circumstances of the case."

2. It is the case of petitioner that he was appointed on the post of Sub-Engineer on contractual basis. A show cause notice was issued to the petitioner pointing out the allegations of embezzlement. The said show cause notice was replied; however, the same could not found favour with the respondents and accordingly by impugned order dated 12.04.2022 the contractual services of petitioner have been terminated by passing a stigmatic order.

3. It is submitted by counsel for petitioner that although the respondents have not filed copy of show cause notices issued to petitioner but the petitioner has filed a copy of one of the show cause notice dated 02.09.2021 as Annexure P-7 along with his rejoinder in which it was alleged that 31.48 lacs were spent in excess of the actual construction work, as a result irregularity and negligence have been committed by petitioner and the petitioner was also called upon to explain as to why action in accordance with law be not taken against him.

4. It is further submitted that aforesaid show cause notice does not qualify the requirements of show cause notice because no show cause notice against the proposed action was given to the petitioner. Therefore, the services of petitioner should not have been terminated on the basis of show cause notices, which were containing imputations only.

5. To buttress his contention, counsel for petitioner has relied upon the judgment passed by the Supreme Court in the case of **Gorkha Security Services Vs. Government (NCT of Delhi) and others**, reported in **(2014) 9 SCC 105**, judgment passed by Division Bench of this Court in the case of **Rajesh Kumar Rathore Vs. High Court of M.P. and another** on 23.11.2021 passed in W.P.No.18657/2018 (Principal Seat) and in the case

of **Malkhan Singh Malviya Vs. State of M.P.** decided on 08.03.2018 in W.A.No.1166/2017 (Gwalior Bench).

6. It is further submitted that the order of termination was primarily passed on the basis of an enquiry report submitted by Executive Engineer. Not only the enquiry was conducted behind the back of petitioner but even the copy of enquiry report was not given. It is also submitted that the copy of enquiry report has also not been annexed along with return.

7. Per contra, the petition is vehemently opposed by counsel for State. It is submitted that due opportunity of hearing was given to the petitioner. The petitioner was a contractual employee and, therefore, a detailed enquiry was not required and sufficient opportunity of hearing was given to the petitioner.

8. To buttress his contention, counsel for respondents has relied upon the orders passed by a Division Bench of this Court in the case of **Prakash Kumar Shrivastava Vs. State of M.P. and others**, decided on 3rd January, 2023 in Writ Petition No.10862/2016 and **Dharmendra Singh Thakur Vs. State of M.P.** decided on 25th November, 2022 in W.P.No.27161/2022 (Gwalior Bench) and **Vikram Sharma and Others Vs. State of M.P.and others** decided on 22.08.2023 in W.P.No.18692/2022 (Principal Seat).

9. Heard the learned counsel for parties.

10. The undisputed fact is that show cause notice was issued to the petitioner, which was containing imputations. By notice dated 02.09.2021, the petitioner was also called upon to show cause as to why action be not taken against him as per law.

11. The moot question for consideration is as to whether such a show cause notice can be said to be a valid show

cause notice thereby authorizing the respondents to pass an order of termination also or not?

12. Show cause notice dated 02.09.2021 (Annexure P-7) reads as under :-

''कार्यालय, कार्यपालन यंत्री ग्रामीण यांत्रिकी सेवा संभाग–टीकमगढ़ (म.प्र.)

पत्र क्र. 1175/तक./ग्रायासे/2021 टीकमगढ़,दिनांक 2.9.21

–:नोटिसः–

प्रति,

श्री धर्मेन्द्र तिवारी, उपयंत्री
जनपद पंचायत जतारा
जिला–टीकमगढ़ (म.प्र.)

विषयः–ग्राम पंचायतों में निर्माण कर्यों की जॉच में निर्माण पर किए गए व्यय एवं निर्माण के आंकलन में अंतर पाये जाने बावत्।

संदर्भः–दिशा बैठक दिनांक 23.12.2020 एवं बैठक दिनांक 03.03.2021 में दिए गए निर्देशानुसार।

————

संदर्भित दिशा की बैठक दिनांक 23.12.2020 के परिपालन में कार्यपालन यंत्री ग्रामीण यांत्रिकी सेवा संभाग टीकमगढ़ द्वारा गठित समिति के द्वारा की गई जॉच अनुसार ग्राम पंचायत विंदारी में रेण्डमली 06 निर्माण कर्यों की जॉच की गई थी, जिनमें मनरेगा पोर्टल अनुसार स्वीकृत राशि 69.24 लाख रूपये के विरूद्ध 41.32 लाख रूपये व्यय किया गया, पाया गया। जबकि समिति द्वारा मौंके पर किये गये कार्य का आंकलन 9.84 लाख रूपये पाया गया, आंकलन अनुसार 31.48 लाख रूपये का अधिक व्यय संबंधित निर्माण कार्यों पर पाया गया।

अतः उक्त निर्माण कार्यों पर बगैर कार्य किये 31.48 लाख रूपये का अधिक व्यय किया गया हैं, इससे सिद्ध होता है, कि आपके द्वारा निर्माण कार्यों में लापरवाही व अनियमितता की गई है। अतः क्यों न आपके विरूद्ध नियमानुसार कार्यवाही प्रस्तावित की जावे। इसके संबंध में आप अपना स्पष्टीकरण अद्योहस्ताक्षरकर्ता को तीन दिवस के अंदर प्रस्तुत करें, जिससे मुख्य कार्यपालन अधिकारी जिला पंचायत टीकमगढ़ को कार्यवाही हेतु प्रस्तुत किया जा सके।

निर्माण कार्यों का विवरण संक्षेपिका अनुसार संलग्न है।

संलग्नः–उपरोक्तानुसार।

कार्यपालन यंत्री
ग्रामीण यांत्रिकी सेवा
संभाग टीकमगढ़''

13. The Supreme Court in the case of **Gorkha Security Services Vs. Government (NCT of Delhi) and others**, reported in **(2014) 9 SCC 105** has held as under :-

> "**21.** The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.
>
> **22.** The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural

> justice, a show-cause notice should meet the following two requirements viz:
>
> (*i*) The material/grounds to be stated which according to the department necessitates an action;
>
> (*ii*) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.
>
> We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

14. Thus, it is clear that a show cause notice must contain imputations as well as proposed action against the employee so that the employee may point out that proposed action is not warranted in the given case, even if the defaults/ breeches of complaints are not satisfactory explained. However, if it can be deciphered from the show cause notice that the aforesaid requirement was sufficiently pointed out, then the said show cause notice can be said to be sufficient to meet out the requirements.

15. If the show cause notice sent to the petitioner is considered, then except the word "as to why no action in accordance with law be proposed against you" nothing was mentioned with regard to the proposed action.

16. Furthermore, it was mentioned by Executive Engineer in the show cause notice dated 02.09.2021 that the petitioner was called upon to submit his explanation within a period of 3 days so that the same can be forwarded to CEO, Jila Panchayat, Tikamgar for further action.

17. Thus, it is clear that show cause notice dated 02.09.2021 was not issued by the disciplinary/competent authority but by the Executive Engineer, who was not competent to take a final decision with regard to termination of services of petitioner and accordingly the matter was forwarded to CEO, Jila Panchayat, Tikamgarh.

18. Furthermore, the petitioner has also filed a copy of show cause notice dated 31.03.2022 sent by CEO, Jila Panchayat, Tikamgarh for service of the same on all the Executive Engineers and Sub-Engineers to file their reply. In this show cause notice, there was no mention with regard to the proposed action.

19. From the plain reading of show cause notices dated 02.09.2021 and 31.03.2022 it cannot be deciphered that the proposed action of termination of contract was either expressly mentioned or it was impliedly expressed.

20. Under these circumstances, this Court is of the considered opinion that the show cause notices, which were issued to the petitioner, were not in conformity with the law laid down by the Supreme Court in the case of **Gorkha Security Services (supra)**.

21. The next question for consideration is as to whether the contractual employee has an indefeasible right to continue in service or not?

22. It is true that the contractual employee has no indefeasible right to continue but where a stigmatic order is passed or where the services of employee are being terminated on the basis of serious allegations, then the principle of natural justice is required to be followed in its strict sense.

23. The Division Bench of this Court in the case of **Rajesh Kumar Rathore (supra)** has held as under :-

> "7……However, when the termination is founded on acts of commission or omission, which amounts to misconduct. Such an order casts stigma on the conduct, character and work of the employee and hence, the principle of natural justice, opportunity of hearing and inquiry is requirement of law."

24. Similarly, this Court in the case of **Dharmendra Singh Thakur (supra)** has held as under :-

> "7. Clause 4 of the order of appointment specifically provides that the services of a contractual employee can be terminated even without any notice if his work and behavior is found to be unsatisfactory. Whether the service of an employee is satisfactory or not is as per the assessment of the employer. The impugned order is in-consonance with clause 4 of the appointment order. As per clause 1.14.1 of circular dated 5.6.2018 issued by GAD, a detailed enquiry is required in case of serious charges only."

25. A Division Bench of this Court in the case of **Prakash Kumar Shrivastava (supra)** has held as under:-

> "10. From perusal of the aforesaid, it is apparent that the detailed enquiry is to be done in those cases where there are serious allegations. The termination order reflects that there are allegations against unauthorized absent of the petitioner. The charges do not appear to be serious in nature.

> Therefore, the benefit of the circular cannot be extended to the petitioner. It cannot be said that the order is punitive in nature as virtually no such allegations are leveled against the petitioner. Only his unauthorized absence was taken into consideration while passing the impugned order. Even otherwise the impugned order also reflects that some enquiry was conducted against the petitioner and he was found guilty in the enquiry."

26. Thus, where the allegations are serious and a stigmatic order is to be passed, then the principles of natural justice are to be followed in their strict sense and the opportunity of hearing should have been given to the petitioner along with copy of enquiry report submitted by Executive Engineer. Since that has not been done, therefore, on the said ground also the order of termination of service of petitioner cannot be upheld.

27. It is submitted by counsel for petitioner that by virtue of interim order dated 06.05.2022 passed by this Court, petitioner is still in service.

28. Accordingly, it is directed that the respondents shall issue a show cause notice containing the imputations as well as proposed action against the petitioner. A copy of enquiry report submitted by Executive Engineer shall also be supplied to petitioner. The petitioner shall positively file his reply to the show cause notice within a period of 15 days from the date of receipt of copy of the same. The respondents are free to consider and decide the matter in accordance with law as well as the nature of allegations found proved, if any.

29. Let the entire exercise be completed within a period of 2 months from today. The show cause notice shall be served by sending a personal messenger to the

petitioner and in case if petitioner refuses to receive the same, then he shall be deemed to be served and no further opportunity will be extended to the petitioner.

30. Needless to mention that this Court has not considered the merits/demerits of the allegations made against the petitioner and decision shall be taken strictly in accordance with the material available on record including the reply submitted by petitioner.

31. With aforesaid observation, the petition is finally **disposed of."**

16. The question with regard to termination is answered accordingly in terms and conditions of order passed in the case of **Dharmendra Kumar Tiwari (supra).**

17. With aforesaid observations, petition is finally **disposed of.**

18. Interim order dated **10.05.2022** is hereby **vacated**.

(G.S. AHLUWALIA)
JUDGE

TG/Shanu