

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CRIMINAL APPLICATION NO. 7756 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS. JUSTICE GITA GOPI**

|   |                                                                                                                                               |     |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?                                                                        | yes |
| 2 | To be referred to the Reporter or not ?                                                                                                       | yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?                                                                           | —   |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | —   |

KANAIYALAL SUNDARJI DETROJA  
 Versus  
 STATE OF GUJARAT

Appearance:

MR MUKESH KUMAR SUDARSHAN(10268) for the Applicant(s)  
 No. 1  
 MS HETU M SUDARSHAN(10051) for the Applicant(s) No. 1  
 NARENDRA K AMIN(9506) for the Applicant(s) No. 1  
 NOTICE SERVED(4) for the Respondent(s) No. 2  
 MR PRANAV TRIVEDI APP for the Respondent(s) No. 1

**CORAM: HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 24/01/2022**

**CAV JUDGMENT**

1. The present petition has been filed under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973 (for short

“the Cr.P.C.”) for quashing and setting aside the FIR being I-C.R. No.7/2018 registered with ACB Police Station, Gandhinagar, for the offences punishable under sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the ‘P.C. Act’ for short) as well as sought direction to the concerned authority to declare that the only charge-sheet in connection with FIR being I-C.R. No.6/2018 registered with ACB Police Station, Gandhinagar shall lie against the petitioner, and/or direction to the concerned department to reinstate the petitioner into service.

2. It is stated that on the basis of an intelligence report against the officers of the Gujarat State Land Development Corporation, Gandhinagar (hereinafter referred to as the ‘GSLDC’ for short) of receiving commission and bribe, a raid was carried out on 12.04.2018, where the petitioner was serving as Managing Director and the raiding team recovered a black bag from the present petitioner, wherein cash of Rs.1,28,000/- and gold earrings along with bill of Rs.30,584/- were found. Petitioner states that pursuant to the said search an FIR being I-C.R. No.6/2018 came to be registered with ACB Police Station, Gandhinagar for the offences punishable under sections 8, 10 and 13(2) of the P.C. Act.

2.1 Petitioner further states that after the investigation, chargesheet came to be filed, wherein the

petitioner has been shown as accused no.2, and after registration of the said FIR, another FIR being I-C.R. No.7/2018 with same set of allegations came to be filed on 16.04.2018 with the ACB Police Station, Gandhinagar.

2.2 It is stated that petitioner had approached this Court by preferring Special Criminal Application No.3486 of 2018 for quashing of FIR being I-C.R. No.6/2018 and I-C.R. No.7/2018 and alongwith the said application, the petitioner had also preferred two regular bail applications being Cr.M.A. No.9856 of 2018 and Cr.M.A. No.9866 of 2018. The petitioner has been released on regular bail by order of this Court dated 19.06.2018 in connection to both the FIRs, while quashing petition being SCR.A. No.3486 of 2018 came to be disposed of as withdrawn and liberty to the petitioner was granted to file afresh after filing of the chargesheet. It is stated that after lapse of two years chargesheet could not be filed and hence the present successive petition.

3. Mr. Narendra K.Amin, learned advocate for the petitioner submits that, the present FIR is nothing but repetition of investigation which has already taken place in earlier FIR where chargesheet has already been filed. He submits that merely after three days of the registration of earlier FIR, on 16.04.2018 another impugned FIR came to be registered with the same police station but by another officer i.e. respondent no.2 herein. He states that law does not permit registration of another

FIR for the same offence.

3.1 Mr. Amin submits that the impugned FIR and further proceedings thereto is bad in law and the same does not disclose any cognizable offence, therefore, the same is required to be quashed and set aside. He submits that the investigation in connection with the impugned FIR has not progressed since last two years and from the conduct of the investigating agency the chances of petitioner being reinstated in service are hampered.

3.2 Mr. Amin contended that even by *prima facie* reading of the FIR no case is made out against the present petitioner, as the monthly salary of the petitioner was more than the amount recovered during the raid. He submits that during the search at the house of the petitioner nothing incriminating had been discovered or recovered which amounts to the case of disproportionate assets. He submits that any disclosure of any alleged offence does not warrant recording of series of FIR and the said issue is now no longer *res integra* as had been settled by the Hon'ble Apex Court in series of legal pronouncements that recording of subsequent FIR for the same transaction is abuse of process of law.

3.3 He submits that the provisions of the Cr.P.C. clearly shows that an officer in-charge of a police station has to commence investigation as provided in section 156 or 157 of the Cr.P.C. on coming to know the cognizable

offence and on completion of investigation and evidence collected, the I.O. concerned has to form an opinion under section 169 or 170 of Cr.P.C. and forward it to the Magistrate concerned under section 173(2) of the Cr.P.C. He submits that even after filing of such a report, for any further information or material, there is no need to register a fresh FIR, as I.O. is empowered to make further investigation with permission of the Court and where during further investigation, the I.O. collects further evidence, oral or documentary, he is to forward the same with one or more further reports which is evident from sub-section (8) of section 173 of Cr.P.C.

3.4 In support of his submission, Mr. Amin relied on the judgment of **T.T. Antony Vs. State of Kerala**, reported in **(2001) 6 SCC 181**, contending that if an offence is part and parcel of the same transaction forming different facts then also on such basis, separate FIR cannot be registered. He relied on the following observations of the said judgment, which are as under:

*“The 1973 Cr.P.C. specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 Cr.P.C. and forwarding of further report or reports to the concerned Magistrate under Section 173(8) of Cr.P.C. It follows that if the gravamen of the charges in the two FIRs - the first and the second - is in substance and truth the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 Cr.P.C. will be irregular and the Court can not take*

*cognizance of the same.*

*However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Section 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.*

*The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of the Cr.P.C. as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open to the investigating agency to seek permission in Crime No.353/94 or 354/94 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law."*

3.5 Mr. Amin also relied on the judgments of (i) **Upkar Singh Vs. Ved Prakash and Ors.**, reported in **AIR 2004 SC 4320** (ii) **Babubhai and Ors. Vs. State of Gujarat**, reported in **AIR 2004 SC 4320** (iii) **Anju Chaudhary Vs. State of U.P. and Ors.**, reported in **2013 CriLJ 776** (iv) **Surender Kaushik and Others Vs. State of Uttar pradesh and Others**, rendered in Criminal Appeal No.305 of 2013 dated 14.02.2013 (v) **Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Ors.**, reported in **AIR 2013 SC 3794** (vi) **P.Sreekumar Vs. State of Kerala and Ors.**, reported in **AIR 2018 SC 1482** (vi) **Krishna Lal Chawla and ors. Vs. State of U.P. and Ors.**, reported in **AIR 2021 SC 1381** (vii) **B.V. Byre Gowda Vs. Nisar Ahmed and Ors.**, reported in **2021 (4) AKR 533**.

4. Mr. Pranav Trivedi, learned APP contended that, the submission advanced by the advocate for the petitioner are misconceived. Mr. Trivedi submitted that distinction has to be made between FIR registered under Indian Penal Code and under P.C. Act. He submitted that surprise search was conducted on the basis of the information so received by the A.C.B. Department. The allegation of corruption was against all the officers of GSLDC, Gandhinagar and the first FIR No.6 of 2018 registered on 13.04.2018 gives detail account of the events that got unfolded during the whole search and the cause of first FIR No.6 of 2018 under Sections 8, 10, ,

13(1)(d)(ii), 13(2) of the P.C. Act is the incident of unaccounted money between co-accused - K.C. Parmar and the present petitioner being Managing Director.

4.1 APP Mr. Trivedi stated that the subsequent FIR cannot be termed as second FIR, as is only against the present petitioner, as he was found to be in possession of cash and gold articles as could not satisfactorily account for it, and hence FIR under sections 13(1)(e) and 13(2) was lodged. The said instance has been made genesis for the investigation of the possession of disproportionate assets of the petitioner. He contended that in the earlier FIR the chargesheet is filed against K.C. Parmar and present petitioner. While investigation is still in progress laying down the check period in the impugned FIR.

4.2 Placing reliance on the judgment of **Charansingh Vs. State of Maharashtra and Ors.**, reported in **(2021) 5 SCC 469**, learned APP submitted that, Anti-Corruption Bureau has to follow the procedure and verify the documents regarding the property, assets and the likes to complete the investigation. Mr. Trivedi, learned APP, submitted that the affidavit filed by the investigating agency, A.C.B., on record of the matter gives details of offences registered towards the search, the details of grant allocated to GSLDC Department by the Government being misused, the fact that the work has not been done as per the allocation of the grant and the

abuse of the office, the details of other offences registered against officers / employees of GSLDC in South Gujarat, offences of disproportionate assets registered against the officers / employees of GSLDC and the fact of report of L.V.A. (Layered Voice Analysis) of accused K.C. Parmar and the present petitioner – Kanaiyalal Sundarji Detroja conducted at Forensic Science Laboratory, Gandhinagar.

5. FIR being I-C.R. No.6/2018 was registered on 13.04.2018 with ACB Police Station, Gandhinagar, under sections 8, 10 and 13(2) of the P.C. Act, subsequently on 16.04.2018 section 13(1)(d)(ii) was reported to be added. FIR alleges *interalia* that on the day of the visit, on 12.04.2018, during the course of search operation and in presence of two panchas under videography, the chamber of suspected K.C. Parmar was searched and from the left side drawer of his table in his chamber, panchas had removed one bag, wherein they found Indian currency notes of Rs.200, Rs.500 and Rs.50 denomination in huge quantity. The team through the employee of the State Bank of India with the Money Counting Machine got those money calculated, which came to Rs.40,52,500/-.

5.1 It was inquired from the accused as to how the money came to him, which was found in his chamber drawer. Shri K.C. Parmar stated that those monies were not received for him. On further clarification he stated

that after his retirement, he was to remain there under contract basis and since the head of the Administrative Department is M.D., under his instructions, he accepted the money that were coming from different quarters as was not directly accepted by the M.D. Those monies were to be paid through him. Initially he disagreed to accept but since M.D. was his head and has to work under his control, he used to accept money on his behalf, the monies so received from the concerned authority / parties, he used to send it to the present petitioner - Kanaiyalal Sundarji Detroja.

5.2 It was stated by the co-accused K.C. Parmar that in exchange, on being pleased, the petitioner would voluntarily give him money as his hand expense, which co-accused K.C. Parmar would accept, and, it was further clarified by him that since the last two years, he was accepting the money in that way and was handing it over to the present applicant, which was accepted by the applicant. This unaccounted money, as was found during the search in chamber of Shri K.C. Parmar, which, as alleged, was accepted under the instruction of the present applicant and as the same was *prima facie* found to be as illegal gratification and as offence was under connivance of both of them, being public servant, the offence was registered under sections 8, 10, 13(1)(d)(ii) and 13(2) of the P.C. Act against the present petitioner as M.D. of GSLDC, Gandhinagar and co-accused - K.C. Parmar as Joint Director.

5.3 On these *prima facie* facts, FIR No.6 of 2018 was registered. The said FIR No.6 of 2018, dated 13.04.2018 counts the whole sequence of the events that had taken place on the day when the search was made on 12.04.2018 at the office of GSLDC, Gandhinagar under the instructions of the Head Office of A.C.B. Police Station, Gandhinagar. The allegation was that there was continuous complaint of receiving commission of large amount through the agents or officer/employee for the last many years for sanctioning the grant of the government schemes, thus for verification of the reliable information, under the instructions of the head office keeping along with them Assistant Director N.R. Solanki, under his direction and supervision, with two public servants as panchas, the search operation was conducted in Section-10/A Wing, where the office of Gujarat State Land Development Corporation, Gandhinagar is situated.

5.4 It is alleged that during this search operation in A-Wing, Rs.1,28,000/- uncounted amount, one gold pendant, earrings worth Rs.30,584/- along with bill was found from the present petitioner. Further unaccounted amount of Rs.40,52,500/- was found from co-accused K.C. Parmar – Joint Director, Rs.9,00,000/- from M.K. Desai – Assistant Director, Rs.5,00,000/- was found from S.M. Vaghela – Field Officer, Rs.70,000/- was found from S.V. Shah – Company Secretary; thus in total amount of Rs.56,50,500/- were seized during the search operation in

presence of panchas, and when all the above referred were asked to clarify about it, clarification was not found reasonable, it was observed that these unaccounted cash money of Rs.56,50,500/- was not noted in the Register and as it was suspected that it was illegal gratification, the money was seized under section 102 Cr.P.C. by way of panchnama. Initially Janvajog (Entry of Preliminary Information) No.1 of 2018 of A.C.B. Police Station, Gandhinagar was registered. The videographed statement of all the referred officers/employees of the Gujarat State Land Development Corporation, Gandhinagar, during the course of search, was recorded in presence of Assistant Director – Shri R.N. Solanki.

6. FIR No.6/2018 was registered by Dipakkumar Vishnudayal Prasad before the A.C.B. Police Station, Gandhinagar, while FIR No.7 of 2018 was registered by Krishnaba Rajendrasinh Dabhi before the A.C.B. Police Station, Gandhinagar.

6.1 In FIR No.7 of 2018, referring to the search operation dated 12.04.2018, the said officer has noted that for verification, the search operation was conducted by the raiding party in the 'A-Wing' as a surprise check. FIR No.7/2018 came to be registered under sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, for the unaccounted cash amount of Rs.1,28,000/-, one gold pendant, earrings worth Rs.30,584/- along with a bill found from the present petitioner. The present petitioner

stated before the raiding team, that the gold pendant and earring was a gift for his wife for the anniversary and he had taken loan of Rs.1,50,000/- from his friend Bhavin Shah to purchase gold pendant and the earrings. Since the bill was found in the name of some other person, for verification in presence of panchas, under videography, Assistant Director, Smt. Roopalben Solanki called Bhavin Shah, through the phone of the petitioner keeping the mobile on speaker mode. It is noted in the FIR that the said fact was found to be false and since the petitioner - accused could not give a satisfactory reply for the amount of Rs.1,28,000/- and the gold ornaments worth Rs.30,584/-, it was therefore observed that it was not found from the lawful source, on that premise the complaint under sections 13(1)(e) and 13(2) of the P.C. Act was registered.

7. Challenge to the subsequent FIR is given on the ground that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offence. It was urged by Advocate Mr. Amin that all subsequent information will be covered by section 162 Cr.P.C.

8. Before analysing the factual aspect with the law laid down from T.T. Anthony (supra) and the development in the case laws, it would be fruitful to consider certain

observations made in the judgments referred by learned advocate Mr. Amin.

(i) The Hon'ble Supreme Court in case of T.T. Antony Vs. State of Kerala (supra) observed that the first information in regard to the commission of a cognizable offence satisfies the requirements of the section; there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence. Further it was observed that, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in-charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.

(ii) In Upkar Singh Vs. Ved Prakash and Ors. (supra), the Hon'ble Supreme Court observed that, it is clear that Court in the case of T.T. Antony v. State of Kerala and Ors. has not excluded the registration of a complaint in the nature of a counter case from the purview of the Code; Court only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case,

was prohibited under the Code because an investigation in that regard would have already being started and further complaint against the same accused would amount to an improvement on the facts mentioned in the original complaint hence would be prohibited under Section 162 of the Code.

(iii) The Hon'ble Supreme Court in Babubhai and Ors. Vs. State of Gujarat (supra), after surveying the earlier decisions, expressed the view that the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction, if the answer is affirmative, the second FIR is liable to be quashed; however, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible.

(iv) In Anju Chaudhary Vs. State of U.P. and Ors. (supra) relied on by Advocate Mr. Amin, wherein the Hon'ble Supreme Court on the permissibility of two FIRs held that, there cannot be two FIRs, registered for the same offence. However, where the incident is separate, offences are similar or different, or even where the subsequent crime is of such magnitude that it does not

fall within the ambit and scope of the FIR recorded first, then a second FIR can be registered.

(v) The Hon'ble Supreme Court in case of P.Sreekumar Vs. State of Kerala and Ors. (supra), observed that, there was no prohibition in law to file second FIR and once it was filed, such FIR was capable of being taken note of and tried on merits in accordance with law.

(vi) In case of Krishna Lal Chawla and ors. Vs. State of U.P. and Ors. (supra), the Hon'ble Supreme Court laid down that, Upkar Singh clarified that Apex Court's previous decision in T.T. Anthony will not bar the filing of a second complaint with respect to the same incident, if such second complaint is filed as a counter-complaint by the other party; and laid down ratio that, trial Judge has a duty under the constitution and the Code of Criminal Procedure, to identify and dispose of frivolous litigation at an early stage by exercising, substantially and to the fullest extent, the powers conferred on him.

(vii) The Hon'ble Supreme Court in case of B.V. Byre Gowda Vs. Nisar Ahmed and Ors. (supra), observed that a counter complaint is always permissible on the same incident as there can be complaints and two FIRs, if it is a case of complaint and counter complaint or a case of consequential complaint, but those were not the fact of

the case therein and therefore observed that without a shadow of doubt it would hit by 'doctrine of sameness'.

9. The crucial fact in the present matter is the search operation in the GSLDC, Gandhinagar. The surprise checking was on the basis of reliable information received about large scale corruption by the officers/authorities of GSLDC, Gandhinagar. The affidavit of the P.I., A.C.B. Police Station, states of information of the hefty commission received through their middlemen or officers/employees for sanctioning the grants in government schemes. On that date of 12.04.2018, the team found unaccounted cash monies from five of the officers. Such search was also made in other offices almost throughout Gujarat; sixty cases were filed under abuse of the office and corruption and thirteen cases were for offences of disproportionate assets against the officers/employees of GSLDC, across the State.

10. In light of these facts, the investigation is expected to be made in a proper and objective manner. The investigation is required to be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. The Court is also to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law.

10.1 The present petitioner was found to have committed offence along with co-accused K.C. Parmar, for

that FIR No.6 of 2018 was registered under sections 8, 10, 13(1)(d)(ii) and 13(2) of the P.C. Act, while FIR No.7 of 2018 is against the petitioner as public servant, could not satisfactorily account of pecuniary resources or property disproportionate to his known sources of income. Another affidavit under seal cover was provided to the Court by the A.C.B. officer to apprise the progress of investigation in disproportionate assets case.

10.2 The fundamental difference between offence under section 8, 10 with 13(d)(ii) and 13(e) of the P.C. Act, marks in the form to establish the offence under section 8 to prove that the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone; for himself or for some other person; any gratification whatever; as a motive or reward for inducing by corrupt or illegal means, any public servant to do or to forbear to do any official act, or to show favour or render any service to any of the persons specified in the section. The receipt of gratification will complete the offence. Well, whether section 8 or section 7 of P.C. Act would be applicable to public servant is a matter of fact to be decided by the prosecution.

10.3 Section 10 of the P.C. Act provides punishment for abetment by public servant of offences defined in section 8 or 9. Section 13(1)(d)(ii) of P.C. Act, is about the public servant said to have committed the offence of criminal misconduct by abusing his position, obtains for

himself or for any other person any valuable thing or pecuniary advantage, which becomes punishable under section 13(2) of the P.C. Act.

10.4 Section 13(1)(e) with the explanation as along with penal provision under 13(2) of P.C. Act reads thus:

*'Section 13(1)- A public servant is said to commit the offence of criminal misconduct,-*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) ...*

*(e) "if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.*

*Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."*

*13(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine."*

11. FIR No.6 of 2018 notes that the present petitioner was asked to clarify about the cash amount Rs.1,28,000/- and one gold pendant, earring worth

Rs.30,584/-; the bill was in the name of some other person. The petitioner stated that he had taken loan from the person, which when verified, was found to be false. The petitioner could not satisfactorily account the possession of cash and the gold articles, that has been made the basis for the inquiry and investigation for possession of disproportionate assets against the petitioner, and thus that incident of 12.04.2018, is made the genesis for the registration of FIR No.7 of 2018.

12. The ingredients that must be proved to substantiate the charge under section 13(1)(e) are: (1) the prosecution must prove that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which are found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, (4) it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. Once the above ingredients are satisfactorily proved, the offence of criminal misconduct under section 13(1)(e) is complete, unless the accused is able to account for such resources or property and it is only thereafter the burden shifts to the accused to prove his innocence.

12.1 The prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of

income. Thereafter, the public servant has to account for such excess. Offence becomes complete on the failure of the public servant to account or explain such excess. This concept can be well explained by referring to the judgment of **State of Madhya Pradesh Vs. Awadh Kishore Gupta & Ors.**, reported in **2004 CRI. L.J. 598**. Paras 5, 6 and 7 are reproduced hereinbelow:

*"5. Section 13 deals with various situations when a public servant can be said to have committed criminal misconduct. Clause (e) of sub-section (1) of the Section is pressed into service against the accused. The same is applicable when the public servant or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account pecuniary resources or property disproportionate to his known sources of income. Clause (e) of sub-section (1) of Section 13 corresponds to clause (e) of sub-section (1) of Section 5 of the Prevention of Corruption Act, 1947 (referred to as 'Old Act'). But there has been drastical amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into "source of income" of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended*

that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the 'Evidence Act').

6. The phrase "known sources of income" in Section 1(1)(e) {old Section 5(1)(e)} has clearly the emphasis on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though "income" is receipt in the hand of its recipient, every receipt would not partake into the character of income. Qua the public servant, whatever return he gets of his service, will be the primary item of his income. Other incomes which can conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime, or immoral secretions by persons prima facie would not be receipt from the "known sources of income" of a public servant.

7. The legislature has advisedly used the

*expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance.*

12.2 The offence noted in the FIR No.6 of 2018 became complete on receipt of gratification, wherein chargesheet has been filed against two persons which includes the present petitioner, while the offence noted in FIR No.7 of 2018 against the petitioner, was registered to set the criminal action in motion. The fact of unaccounted money was verified on the spot by calling the named friend through phone.

12.3 In Charansing Vs. State of Maharashtra and Ors. (supra) relied upon by learned APP, it has been held in para 9.1 as under:

*"9.1 - 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.”*

12.4 Referring to the case of **Superintendent of Police, C.B.I. Vs. Tapan Kumar Singh**, reported in **(2003) 6 SCC 175**, the Hon'ble Supreme Court in **Charansing Vs. State of Maharashtra and Ors.** (supra) observed in para 9.2 as under:

*“9.2 Even as held by this Court in the case of Superintendent of Police, CBI v. Tapan Kumar Singh, 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 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 the case of P. Sirajuddin (supra) and considering the observations by this Court in the case of Lalita Kumari (supra) before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-corruption & 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."*

13. Janvajog Entry (Preliminary Information Entry) No.1 of 2018 was first noted at A.C.B. Police Station, which thereafter has led into registration of both the FIRs and as noted above many more FIRs have been registered. At the stage of registering the FIR, the police officer is not required to be satisfied or convinced that a cognizable offence has been committed. If the information discloses commission of a cognizable offence, it will set in the investigative machinery in motion to collect all necessary evidence, thereafter to take action in accordance with law.

14. 'Test of Sameness' and 'Consequence Test' is at present the guiding factor to decide the maintainability of the FIR which is proposed to be second FIR or successive FIR in respect of the same incident or crime. 'Test of Sameness' as formulated in T.T. Antony was explained in Babubhai Vs. State of Gujarat case, and 'Consequence Test' as found to be relied upon in C.Muniappan was made applicable in Amit Shah case.

A. In case of **Babubhai Vs. State of Gujarat**, reported in **(2010) 12 SCC 254**, it has been observed in Para-21 as under:

*"21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted."*

B. In the case of **Amitbhai Anilchandra Shah Vs. Central Bureau Of Investigation And Anr.**, reported in **(2013) 6 SCC 348**, 'consequence test', as

laid down in **C. Muniappan & Ors. Vs. State of Tamil Nadu**, reported in **(2010) 9 SCC 567** was approved, where it was explained that if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR, then offences covered by both the FIRs are the same and accordingly, the second FIR will be impermissible in law, so as to explain, that the offences covered in both the FIRs shall have to be treated as a part of the first FIR. It was observed that, to determine whether different offences ought to be treated as part of the same transaction, the “consequence test” laid down in C.Muniappan, (2010) 9 SCC 567, may be taken aid of. The said test prescribes that if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs, shall have to be treated as a part of the first FIR. Furthermore, merely because two separate complaints had been lodged does not mean that they could not be clubbed together and one charge-sheet could not be filed.

C. The Hon’ble Supreme Court in case of **Arnab Ranjan Goswami Vs. Union of India And Ors.**, reported in Writ Petition (Crl.) No.130 of 2020, while referring the case of T.T. Antony Vs. State of Kerala (supra) has observed that, T.T. Antony had come up for

consideration in Upkar Singh Vs. Ved Prakash, thus observed the context in para-29 as under:

*“29- The decision in TT Antony came up for consideration before a three judge Bench in Upkar Singh v Ved Prakash<sup>20</sup> (“Upkar Singh”). Justice N Santosh Hegde, speaking for this Court adverted to the earlier decisions of this Court in Ram Lal Narang v State (Delhi Administration)<sup>21</sup> (“Ram Lal Narang”), Kari Choudhary v Mst. Sita Devi<sup>22</sup> (“Kari Choudhary”) and State of Bihar v JAC Saldanha<sup>23</sup> (“Saldanha”). The Court noted that in Kari Choudhary, this Court held that:*

*“11...Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency.”*

15. ‘Test of Sameness’ is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction, if so, then second FIR is not maintainable. But when the version in second FIR is different and they are in respect of the two different incidents / crimes, the second FIR is permissible. So, when the version of second FIR is different, and when in respect of same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted. In the present matter, the accused

in FIR No.6 of 2018, Mr. K.C. Parmar, was asked about the money found from the drawer of his table in his chamber, which was Rs.40,52,500/-, he put up a claim that he was collecting the money on behalf of the present petitioner, so on that version of co-accused, the first FIR was registered. The second FIR is touching the unaccounted money and gold article found in the possession of present petitioner. It was not the say of the petitioner that it was the money given to him by co-accused, K.C. Parmar, or that from the money so given to him, he had purchased the gold pendant and earring. The statement of the accused was videographed, further everything was noted in presence of two panchas. The incident of co-accused, K.C. Parmar, obtaining pecuniary advantage on behalf of petitioner, has brought the petitioner under the vigor of sections 8, 10, 13(1)(d)(ii) read with section 13(2) of the P.C. Act.

15.1 While for the case under sections 13(1)(e) read with section 13(2) of the P.C. Act, for investigation of disproportionate assets, if anything could have been found that K.C. Parmar on behalf of the petitioner was in possession of pecuniary resources or property, then that could have added K.C. Parmar in the FIR No.7 of 2018 as co-accused.

15.2 The simple distinction between sections 8, 13(1)(d)(ii) and section 13(1)(e) would be the act of

obtaining pecuniary advantage, the offence becomes complete as soon as the gratification is obtained. While in offence under section 13(1)(e), the emphasis is on 'satisfactorily accounting' of pecuniary resources or property disproportionate to the known sources of income of the prosecution. Further, as provided under section 17 of the P.C. Act, the offence referred in clause (e) of sub-section (1) of section 13, shall not be investigated, without the order of a Police Officer not below the rank of a Superintendent of Police.

15.3 'Test of Sameness' and 'Test of Consequence' can be examined on the anvil of determination, whether the later complaint can be clubbed together with the earlier complaint and one chargesheet could be filed. Here to the facts of both the FIRs, the FIR No.7 of 2018 is not the consequences of the offence alleged in the first FIR No.6 of 2018. Thus, making applicable the 'consequence test', the FIR No.7 of 2018 cannot be clubbed together with FIR No.6 of 2018, where the offence got complete on co-accused having obtained the pecuniary advantage for and on behalf of present accused. The investigation in FIR No.6 of 2018, gets complete on recording of the statement of the witnesses to prove the offence, by filing the chargesheet, while investigation in FIR No.7 of 2018 would begin asking the accused to provide details of his property, assets, bank statements, income-tax returns, as per the standard

procedure adopted by the A.C.B. for the check period. The FIR No.7 of 2018 cannot be clubbed together with FIR No.6 of 2018, to file one chargesheet against both the accused, wherein one is the present petitioner.

16. In light of the above discussions, it is concluded that the FIR No.7 of 2018 is maintainable in law. In the result, the petition does not sustain, hence, rejected. Rule is discharged.

Pankaj

**(GITA GOPI, J.)**

