
(2017) 02 KAR CK 0026

KARNATAKA HIGH COURT

Case No: Criminal Petition No. 8034 of 2013, C/w 7948 of 2013

Kogundi Dyamanna

APPELLANT

Vs

Manikanta Sarkar

RESPONDENT

Date of Decision: Feb. 13, 2017

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, Section 154, Section 156(3), Section 156(3), Section 482
- Prevention of Corruption Act, 1988 - Section 13(1)(e), Section 13(1)(e), Section 8, Section 8, Section 9, Section 9

Citation: (2017) 2 AirKarR 806

Hon'ble Judges: John Michael Cunha, J.

Bench: Single Bench

Advocate: Sri. C.H. Jadhav, Senior Advocate A/w Sri. S.G. Rajendra Reddy, Advocate, for the Petitioner; Sri P.Y. Hadimani & Sri Sridhar. N. Hegde, Advocates, for the Respondent No. 1; Sri. Venkatesh S. Arabatti, Advocate, for the Respondent No. 2

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

John Michael Cunha, J.—These petitions are filed under Section 482, Cr.P.C. seeking to quash the order 2.12.2013 in PCR No.91/2013 passed by the Prl. District & Sessions Judge, Davanagere and to quash the complaint dated 2.12.2013 and consequent FIR in Cr. No. 107/2013 dated 10.12.2013 of Lokayukta police, Davanagere.

2. The respondent No. 1 a businessman and a social worker and President of Davanagere District Sriramasena Ghataka set the criminal law in motion by presenting a private complaint before the District & Sessions Judge, Davanagere under Section 200, Cr.P.C. In the complaint, he alleged that accused No.1 (Kogundi Dyamanna) being the friend of accused No.9 (M. N. Karibasavanagouda) and also in the capacity of D.C.C.

Bank Vice President along with accused No.9 has purchased many properties illegally and out of black money, and accused No.9 by misusing his office has got money through illegal means and purchased many properties in the name of his mother, wife and his relatives. A2 is the mother of A5 and A9. A3 is the father-in-law of A5. A4 is the wife of A5 and daughter of A3. A5 has been working as Food Inspector. A9 is the brother of A5. A6 and A7 are sons of A3. A8 is the wife of A9.

3. It is further alleged in the complaint that accused No.9 purchased the following properties situated in Devagondanahalli village, Hadagali Taluk, in the name of his mother Accused No. 2 :-

Sl.No.	R.Sy. No.	Extent
1.	40/B	2 Acres 24 guntas
2.	137/B	11 Acres
3.	42/B	2 Acres
4.	42/B	3 Acres 89 cents
5.	28	3 Acres 4 guntas
6.	270	3 Acres 75 cents

Further, accused Nos. 1 and 9 have purchased following properties situated in Harapanahalli village, Kasaba hobli, Harapanahalli taluk, in the name of Accused Nos. 4 to 7 :-

Sl. No.	R.Sy. No.	Extent
1.	37	7 Acres 21 cents

Accused Nos. 1 and 9 have also purchased site bearing No.364-365 measuring 80 ft. x 50 ft. situated at Harapanahalli Ward No.1 in the name of accused No.4 and accused

No.3 has built a house in site bearing No.365. The other sites purchased by the accused are :

Purchaser	Site	Place	In the name of
A.1 & R.9	60 ft. x 40 ft.	Rajarajeshwarinagara, Bengaluru.	A1 & A9
A.1 & R.9	50 ft. x 30 ft.	Visweswaranagar, Bengaluru.	A1 & A9
A.9	23 Acres	Hadagali village	Self
A.9	65 ft. x 45 ft		Husband of R.8
A.9	20 Acres	Nagenahalli village, Hospet Taluk	A.8
A9	House No. 16 (60 x40)	Basaveshwara Layout Ward No.2 Hospet	A.8
A9	Bungalow	Chitradurga	A.1

4. Further it is alleged in the complaint that in the first week of November 2013, Accused Nos. 1, 5 and 9 came near the shop of the complainant and abused him in a vulgar language and also issued threat to his life. Based on these allegations, the complainant sought action against the petitioners herein for the alleged offences punishable under sections 8 and 9 of the Prevention of Corruption Act, 1988 and under Sections 34, 143, 504, 506 and Section 198 of Indian Penal Code and to confiscate the properties illegally acquired by Accused Nos. 1 to 9. Accused No.1 in the above proceedings is the petitioner in Crl.P. No.8034/2013 and Accused Nos. 2 to 9 are the petitioners in Crl.P. No.7948/2013.

5. This complaint was filed on 2.12.2013 and on the same day, the learned District & Sessions Judge, Special Court, Davanagere referred the complaint for investigation under Section 156(3), Cr.P.C. to the Superintendent of Police, Lokayukta, Davanagere. Pursuant to the said order, the Lokayukta police, Davanagere District registered a case in Cr. No.107/2013 on 10.12.2013 under Sections 8 and 9 of the P.C. Act and Sections 34, 143, 504, 506, 198 Indian Penal Code. Aggrieved by the action of the respondents, the petitioners have filed these petitions seeking to quash the registration of the FIR and the consequent investigation.

6. I have heard the learned counsel for the petitioners and the learned Advocate appearing for the complainant/respondent No.1 as well as the learned Special Public Prosecutor appearing for respondent No.2- Karnataka Lokayukta.

7. It is argued by the learned Senior Counsel for the petitioners that the initiation of the criminal proceedings are fraught with mala fides and ulterior motives. The complainant is a busybody and a habitual complainant who is in the habit of making false and reckless allegations against public servants and those who come in the way of the working of the complainant. The learned counsel submitted that he has gathered information that in the year 2013 itself, respondent No.1/complainant had filed 92 private complaints against public servants and other political rivals and under the circumstances, the learned Special Judge should not have mechanically acted on the private complaint lodged by respondent No.1 without applying the judicial mind to the allegations made in the complaint. The learned counsel further submitted that the allegations made in the complaint on the face of it do not attract the offences under sections 8 and 9 of the P.C. Act. But, without looking into the allegations made in the private complaint and without arriving at the prima-facie satisfaction as to whether all these allegations satisfy the ingredients of Sections 8 and 9 of the P.C. Act, the learned Special Judge has mechanically referred the complaint for investigation to the Superintendent of Police, Lokayukta. In support of this contention, the learned counsel referred to the decision rendered by the Hon"ble Supreme Court of India in the case of **Priyanka Srivastava and another v. State of Uttar Pradesh and others reported in (2015) 6 SCC 287 : (AIR 2013 SC 1758)** and submitted that the Hon"ble Apex Court has clearly laid down in the above decision that the remedy available under Section 156(3), Cr.P.C. is not of routine nature and the exercise of power thereof requires application of judicial mind. Therefore on this sole

ground, the impugned proceedings are required to be quashed.

8. Further, the learned Senior counsel submitted that the complainant did not produce any documents to justify his allegations in the complaint. The documents produced along with the complainant do not even remotely relate to the subject matter of the complaint. The un-controverted allegations made in the complaint do not disclose the commission of any offence. That apart, petitioner Nos. 4 and 8 in CrI.P. No.7948/2013 are the Public Servants. Petitioner No.4 (accused No.5) is a Food Inspector working in Badami Bagalkot District and petitioner No.8 (accused No.9) is a Police Inspector working in Hescom Vigilance, Gadag. To prosecute a public servant, a valid prior sanction is required. The complaint was not accompanied by any valid sanction and therefore the Special Court should not have entertained the complaint.

9. In this context, the learned counsel submitted that on the same set of allegations made in the complaint, the lokayukta police have already conducted three enquiries and filed reports dated 29.1.2009, 13.3.2009, 12.7.2013 giving a clean chit to the petitioner No.8 (Accused No.9). Under the said circumstances, a direction for investigation on the same set of facts and allegations is unwarranted and has impinged on the legal rights of the petitioners. The learned counsel further submitted that the petitioners in their individual capacity have filed the Annual returns and paid the professional tax to the concerned authorities regularly and whatever purchase made by them were purchased with the consent and prior permission from the competent authority and have not indulged in any illegal transactions and under the said circumstances, solely on the baseless and reckless allegations made in the complaint, criminal proceedings ought not to have been allowed against the petitioners. Hence, the learned counsel has sought for quashing of the proceedings.

10. The learned counsel further pointed out that in the complaint other than the offences under P.C. Act, the offences under the Indian Penal Code viz., 34, 143, 504, 506, 198 Indian Penal Code are generally alleged and the respondent No.2 Lokayukta registered a case for the said offences which is again beyond the jurisdiction of the Lokayukta police. In support of this contention, learned Senior counsel placed reliance on the case of **Anil Kumar v. M. K. Aiyappa reported in (2013) 10 SCC 705** and further submitted that the initiation of criminal proceedings against the petitioners are actuated by malice and are intended to harass and malign the petitioners and therefore the entire proceedings are required to be quashed in exercise of the powers under section 482 of Cr.P.C.

11. Learned counsel appearing for the first respondent/complainant would submit that subsequent to the registration of the FIR, the Lokayuktha police have conducted searches at various places which has brought to light large number of properties and assets acquired by the petitioners and therefore, at this juncture, it cannot be said that the allegations made in the private complaint are either false or actuated with malice. It is the submission of the learned counsel that in the fact situation of the present case, discretion under Section 482, Cr.P.C. cannot be exercised as that would encourage the petitioners

especially the public servants to misuse their public offices for accumulating illegal wealth in their names and their friends and relatives.

12. Learned counsel for the second respondent has referred to the following decisions viz., :-

1. **M. Krishna v. State of Karnataka, AIR 1999 SC 1765;**

2. **Rishipal Singh v. State of U.P. and another, AIR 2014 SC 2567**

and the decision rendered by the High Court of Ernakulam in the case of **Maneesh. E v. State of Kerala and others in CrI.MC. No.7331/2015** and would submit that the exercise of jurisdiction by the learned Magistrate in referring the complaint is in accordance with law. The allegations made in the complaint prima-facie disclose commission of the offences under the various provisions referred therein and therefore there is no justification whatsoever to seek quashment of the said proceedings.

13. It is submission of the learned counsel for respondent No.2 that while exercising power under section 482, Cr.P.C., the Courts have to only look at the uncontroverted allegation whether it prima-facie discloses the offence or not, and it should not delve into the disputed questions of fact and therefore there is no reason whatsoever for quashment of the proceedings.

14. I have bestowed my careful thought to the submissions made by the respective parties and have carefully scrutinized the allegations found in the private complaint as well as the action taken by the learned Special Judge.

15. At the out-set, it is to be noted that the private complaint was filed on 2.12.2013. On the same day, the learned Special Judge referred the complaint for investigation to the Superintendent of Police. It is a cryptic order which reads as under:-

"Complainant has presented the complaint on 02.12.2013. Perused the complaint. Register the complaint as P.C.R. The complaint is referred for investigation under Section 156(3) Cr.P.C. to Superintendent of Police, Lokayuktha, Davanagere.

Await report by 29.3.2014

Sd/-2/12/2013

Judge, Special Court

Davanagere

16. The above order on the face of it discloses that in a routine and casual manner, the Special Court has referred the complaint for investigation under section 156(3), Cr.P.C. In this context, it is appropriate to refer to the law enunciated by the Hon"ble Supreme Court

of India with regard to the exercise of powers under Section 156(3), Cr.P.C. The Hon"ble Supreme Court had an occasion to consider this aspect in the case of **Priyanka Srivastava and another v. State of Uttar Pradesh and others reported in (2015) 6 SCC 287**, wherein the Hon"ble Supreme Court after referring to the various case laws on the subject has held that the remedy available under section 156(3), Cr.P.C. is not of routine nature. It is held that exercise of power thereunder requires application of judicial mind. Magistrate exercising said power must remain vigilant with regard to nature of allegations made in application and not to issue directions without proper application of mind. It is also observed that the power under section 156(3), Cr.P.C. cannot be invoked by a litigant at his own whim to harass others. It can be invoked only by a principled and really aggrieved citizen approaching the court with clean hands. Further, it is held that the order under Section 156(3), Cr.P.C. may be passed where it would be conducive to justice. In the said decision, the Hon"ble Supreme Court has held that filing of affidavit would curb the practise of preferring applications under Section 156(3), Cr.P.C. in routine and casual manner without any responsibility merely to harass certain persons.

17. It is also pertinent to note that in the above case, the Hon"ble Supreme Court has referred to the decision in the case of **Anil Kumar v. M. K. Aiyappa (2013) 10 SCC 705** and has reiterated that the application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient.

18. In the instant case, the order referring the complaint to the Superintendent of Police, Lokayukta under section 156(3) does not reflect that the learned Magistrate has applied his mind to the allegations made in the complaint or that the Magistrate has looked into any of the documents produced along with the complaint. This is evident from the fact that the complaint is filed against public servants as well as non-public servants. The material allegations made therein pertain to the acquisition of large number of properties and all throughout the complaint, except stating that accused No.1 being the friend of accused No.9 has purchased many properties illegally and out of black money by misusing his office and that accused Nos. 1 and 9 purchased these lands in the names of accused Nos. 2 to 8, not even a single document either by way of sale deed or RTC extracts were produced along with the complaint to show that any of these properties referred in the complaint stood in the name of any of the petitioners.

19. Added to that, in the private complaint, it was specifically stated that accused Nos. 1 to 9 have committed offences punishable under sections 8 and 9 of the P.C. Act and also offences punishable under sections 34, 143, 504 and 506 Indian Penal Code. There is not even a remote allegation in the entire complaint attracting the ingredients of Sections 8 and 9 of the P.C. Act. On the other hand, as already stated above, all the allegations pertain to the acquisition of various properties alleged to have been acquired illegally out of black money. This allegations even if found true, would fall within the definition of Section 13(1) (e) of the P.C. Act and not under Sections 8 and 9 of the P.C. Act. No-doubt, it is true that the complainant is not required to quote the provision of law and

quoting a wrong provision of law will not render the complaint defective, but in the present case, the complaint reveals that the complainant had taken the assistance of his Advocate and has specifically stated that the notice of the proceedings to be issued to his Advocate Sri. D. Y. Hadimani which clearly indicates that the complainant had the benefit of legal advice and therefore, it can be deduced that quoting a wrong provision of law was a deliberate attempt to mislead and misdirect the court. The Special Court has blindly accepted this complaint and without even satisfying itself as to whether the complaint disclosed any such offence under sections 8 and 9 of the P.C. Act has referred the complaint to Lokayukta Police which glaringly manifests non-application of mind.

20. Secondly, in the complaint it is alleged that in the first week of November, 2013, accused Nos. 1, 5 and 9 came near the cloth shop of the complainant and abused and issued threats to the complainant. These allegations pertain only to accused Nos. 1, 5 and 9, and these offences do not fall within the provisions of P.C. Act and could not have been investigated by respondent No.2. But, surprisingly, respondent No.2 has registered the F.I.R. even for those offences against all accused Nos. 1 to 9 under Sections 34, 143, 504 and 506 Indian Penal Code.

21. Be that as it may, even while registering the FIR, the respondent No.2 has not bothered either to verify the contents of the complaint or to satisfy himself about the commission of the offences alleged in the complaint. The FIR has been registered under sections 8 and 9 of P.C. Act and sections 143, 504, 506 r/w. section 34 and section 198 of Indian Penal Code. But the allegations made in the complaint do not make out any offence under the said provisions. On the other hand, the allegations made in the complaint relate to the allegation of amassing of illegal wealth and acquisition of immovable properties in the names of petitioners which falls within the purview of section 13(1)(e) of the P.C. Act. Unfortunately, FIR is not registered under section 13(1)(e) of the P.C. Act.

22. Learned counsel for respondent No.1 submits that during the course of investigation, searches have been conducted at the office and residential premises of the petitioners and incriminating evidence has been collected by the second respondent in proof of the allegations made in the complaint. Curiously, the copies of the investigation papers such as seizure mahazars, search warrants etc. are produced by Respondent No.1 and not by Respondent No.2. These documents appear to be the certified copies issued by the Court. Indisputably, the matter is under investigation. The learned Special Judge therefore could not have issued the certified copies of the case diary papers to a third party during the pendency of the investigation. That apart, as per Section 13(1)(e) of the P.C. Act, mere possession of any pecuniary resources or property by itself is not an offence, but it is the failure to satisfactorily account for such possession constitutes the offence. That being the legal position, the material collected during the investigation including the copies of the so-called searches made by the Investigating Officer should not have been issued by the Court until an opportunity was given to accused No.9 to satisfactorily account for the said acquisitions. Therefore, even if the certified copies of

the investigation papers are produced by the respondent No.1, in view of the provisions of section 13(1)(e), these documents cannot be held out against the petitioners at this stage to contend that the investigation has brought to light large number of unexplained assets in the name of accused No.9 and other petitioners as contended by the learned counsel for respondent No.1.

23. It is also not known as to how the searches could have been conducted in the absence of registration of the case for the alleged commission of the offence under section 13(1)(e) of the P.C. Act. In this context, it may be relevant to refer to the law laid down by the Constitution Bench of the Hon"ble Supreme Court of India in **Lalita Kumari v. State of U.P. reported in (2014) 2 SCC 1**, wherein the Constitution Bench has answered the following two questions :

"(i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognisable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

Answering the above questions, the Constitution Bench in paras 49, 115, 120.6 and 120.7 has held as under:-

"49. Consequently, the condition that is sine quo non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognisable offence. If any information disclosing a cognisable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognisable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

115. Although, we in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognisable 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. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint."

After laying down so, the larger Bench proceeded to state:

" 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."

24. From the above decision, it is clear that when the allegation relate to the commission of offence under section 13(1)(e) of the P.C. Act, it was incumbent on the Special Court to insist for a preliminary enquiry and it was equally incumbent upon respondent No.2 to ensure that there were prima facie material for registration of the case under section 13(1)(e) of the P.C. Act and to proceed with the investigation thereon. Requirement of conducting a preliminary enquiry has been insisted upon not only as a requirement under the provisions of the Act, but by the various precedents laid down by the Hon"ble Supreme Court of India which are again reiterated in the case of **State of Haryana & others v. Bhajan Lal & others reported in 1992 Supp (1) SCC 335**, wherein the Hon"ble Supreme Court has clearly held that before a public servant is publicly charged with acts of dishonesty and corruption and FIR is lodged against him, there should be some suitable preliminary enquiry into the allegations by a responsible officer. In paragraph 76 of the said judgment, it is held as under:-

" It has been repeatedly pointed out that mere possession of any pecuniary resources or property is by itself not an offence, but it is the failure to satisfactorily account for such possession of pecuniary resources or property that makes the possession objectionable and constitutes the offence within the ambit of Section 5(1)(e) of the Act. Therefore, a police officer with whom an investigation of an offence under Section 5(1)(e) of the Act is entrusted should not proceed with a preconceived idea of guilt of that person indicted with such offence and subject him to any harassment and victimization, because in case the allegations of illegal accumulation of wealth are found during the course of investigation as baseless, the harm done not only to that person but also to the office he held will be

incalculable and inestimable."

25. In the instant case, the safeguards which are required to be followed before a public servant is publicly charged with dishonesty, which amounts to serious misdemeanor, are thrown to winds in utter disregard of the legal position enunciated in the above decision as well as in the case of **P. Sirajuddin v. State of Madras (AIR 1971 SC 520)**. Having regard to certain unimpeachable documents produced by the petitioner along with the petition, in my view, in the fact situation of the present case, preliminary inquiry into the allegation made in the complaint was not only indispensable, but the failure on the part of the respondent No.2 to conduct preliminary enquiry so as to find out whether there was prima facie evidence of guilt of the accused No.9, before taking recourse to register the case, has resulted in failure of justice leading to incalculable harm to the petitioners especially petitioner No.8 (accused No.9).

26. Here itself I may refer to the documents produced by the petitioners. One of them is the copy of the anonymous complaint received in the Lokayuktha Office making allegation against accused No.9 that he had amassed huge properties running to crores of rupees by misusing his official position during his tenure as Police Inspector in the Lokayuktha Office. This anonymous complaint is dated 29.1.2009. In the said complaint, there were specific allegation that accused No.9 had acquired large properties in the name of his mother and other relatives. Reference was also made to 16 survey numbers as well as various other sites, most of which find place in the private complaint lodged by the respondent No.1 in this case. The Dy. Superintendent of Police, Shivamogga who conducted enquiry into the said allegation has submitted a detailed report dated 29.1.2009 to the effect that on a careful verification of the RTCs., of the said 16 survey numbers and the encumbrances relating to the said properties, the properties mentioned in the anonymous complaint were not owned either by accused No.9 or any one of his family members or relatives. In this report, the Enquiring Officer namely the Dy. Superintendent of Police has unequivocally stated that the allegations made against accused No.9 in Agni newspaper are also patently false.

27. Thereafter, another written complaint appears to have been made against accused No.9 by one Vijaya.R. Even this complaint was duly enquired by the Dy. Superintendent of Police, Bylahongala who has submitted a report dated 12.7.2013 to the effect that all the allegations made against accused No.9 alleging acquisition of properties in excess of his known sources of income are false. This report dated 12.7.2013 clearly discloses that the very same properties which are the subject matter of the present PCR were the subject matter of the said enquiry and even in this report, it is mentioned that the properties standing in the name of the mother of accused No.1 were the ancestral properties inherited by her and other properties standing in the name of one Kavitha have come to her share by the decree of the Civil Court in O.S. No.178/2008 and the site standing in her name at Harappanahalli was purchased by her father for a sale consideration of Rs.1,63,000/-.

28. Thus the material produced by the petitioner prima facie discloses that much earlier to the registration of the FIR at the instance of respondent No.1, enquiries were conducted against accused No.9 on the very same allegations and the employer of accused No.9 had held that accused No.9 has not committed any criminal misconduct within the meaning of section 13 of the P.C. Act.

29. The question as to whether the material relied upon by the petitioners in support of their contentions could be relied on in a proceedings under section 482 of Cr.P.C., has been answered by the Hon"ble Supreme Court of India in **Rajiv Thapar & others v. Madan Lal Kapoor reported in (2013) 3 SCC 330** para 29 of the said judgment, the Hon"ble Supreme Court has held as under :-

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482, Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482, Cr.P.C., at the stages referred to herein above, would have far-reaching consequences inasmuch as it would negate the prosecution- s/complainant- s case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482, Cr.P.C. the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/ complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482, Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

(underlining supplied)

30. Though the respondent has contended in his objection statement that accused No.9 being the Police Inspector as he was earlier working with the Lokayuktha Office, by putting influence, he has escaped from the allegations, I do not think that on the said contentions, the enquiry reports produced by the petitioner could be discarded. These

enquiry reports refer to the process of enquiry conducted by the Enquiring Officers wherein the Enquiring Officers have specifically stated that in the course of the enquiry, they have verified the RTCs, revenue records, respective sale-deeds, encumbrances and also statement of witnesses. The enquiry report contain a discussion on each item of properties whereas in the instant case, the private complaint has been lodged making omnibus allegation without even referring to the registered deeds or the revenue records of any of the properties. Under the said circumstances, the direction issued by the learned Special Judge under section 156(3) of Cr.P.C., as well as the consequent registration of the FIR and the investigation thereon are wholly illegal and cannot be sustained. The learned Magistrate has failed to apply his mind to the various allegations contained in the FIR before directing investigation under section 156(3) of Cr.P.C. The second respondent has also failed to note that the complaint did not make out any offence under sections 8 and 9 of the P.C. Act. The second respondent had no jurisdiction to register the case for the offences under sections 34, 143, 504, 506 and 198 of Indian Penal Code. The second respondent has failed to conduct any preliminary enquiry into the allegations of alleged acquisition of properties before invoking section 13(1)(e) of the P.C. Act. The entire criminal proceedings initiated by the respondents are contrary to the provisions of the P.C. Act as well as the well settled principles laid down in the decisions referred above. Under the said circumstances, continuation of the above proceedings would not only impinge on the legal rights of the petitioners driving them to unnecessary harassment, it would also amount to abuse of the process of the court. For all these reasons, I am of the view that the impugned proceedings cannot be allowed to continue.

31. Accordingly, the criminal petitions are allowed. The complaint dated 2.12.2013 and the consequent registration of the FIR in Cr. No.107/2013 and the further investigation thereon are quashed.