

(2012) 02 BOM CK 0215

Bombay High Court

Case No: Public Interest Litigation Writ Petition No. 51 of 2010

Sanjay Dinanath Tiwari

APPELLANT

Vs

Director General of Police (Anti
Corruption) and Others

RESPONDENT

Date of Decision: Feb. 22, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 102, 176(2)
- Prevention of Corruption Act, 1988 - Section 13(1)

Citation: (2012) 4 ALLMR 402

Hon'ble Judges: Mohit S. Shah, C.J; Roshan Dalvi, J

Bench: Division Bench

Advocate: Mahesh Jethmalani, with Mr. Mihir Desai, for the Appellant; Ravi Kadam, Advocate General with Mr. D.A. Nalawade, GP for Respondent Nos.1 and 5, Mr. Janak Dwarkadas with Mr. H.V. Kode instructed by . The Law Point for Respondent Nos. 8 and 10, Mr. Mukul Rohatgi with Mr. C.G. Gavnekar with Mr. G.S. Hiranandi for Respondent No.9, Mr. Shrihari Aney with Mr. S.S. Kanetkar for Respondent Nos.13 and 14, Mr. D.J. Khambatta, A.S.G. for Respondent Nos. 4, 6 and 7 and Mr. A.A. Kumbhakoni with Mr. Ashutosh Gavnekar with Mr. R.S. Shekhawat Advocates for Respondent Nos.11 and 12, for the Respondent

Judgement

Chief Justice Roshan Dalvi, J.

The Petitioner, as a concerned and informed citizen, has filed this Petition in public interest seeking investigation into the financial affairs of Respondent Nos. 9 to 14 who are members of one family and for registration of offences under the Prevention of Corruption Act 1988, Prevention of Money Laundering Act, and Indian Penal Code. The Petitioner made a similar complaint for registering offence against Respondent Nos. 9 to 14 under the Income Tax Act which has been separately dealt with.

2. The Petitioner has contended that Respondent Nos.1 to 7 have, in collusion with Respondent Nos. 9 to 14 not carried out fair and impartial investigation into their financial affairs. The Petitioner claims that respondent No.9 has amassed a vast fortune by corrupt and illegal means and upon laundering monies received by him in the course of his public service which have not been accounted for and which require to be investigated. The Petitioner has given following particulars about respondent No.9 and his family members.

2.1. The Respondent No.9 is shown to be a "rags to riches" story. He serves as an MLA earning a salary of Rs.45000/-p.m. He hails from the State of Uttar Pradesh. He is stated to have come to Mumbai in the 1970s and to have worked as a handcart hawker of onions and potatoes and thereafter employed as a manual worker in Roche India Ltd., doing shift duties. He dabbled in politics and was appointed Organising Secretary of the Maharashtra Pradesh Congress Committee (MPCC) in 1988. He rose to be its General Secretary and was nominated as a member of the Legislative Council in 1994. He stood for Maharashtra Assembly Elections in 1999, 2004 and 2009. He was appointed Minister of State for Home, Food and Drugs during 1999 to 2004. He served as a member of the Legislative Assembly (MLA) and in 2006 was appointed as the All India Congress Committee Observer in the State of Jharkhand. He associated himself with one Madhu Koda who has been arrested and kept in judicial custody in the infamous Koda Scandal.

The academic qualifications of the Respondent No.9 are not commensurate with his status in life. He is shown to have studied only up to standard XII in his own affidavits statutorily required to be filed under the Representation of Peoples Act whilst standing for election at the Maharashtra Legislative Assembly.

2.2. Respondent No.10 is his wife who is admittedly a housewife, but who has been shown to be trading in commodities being gold and silver from about 2008 well after Respondent No.9 was entrenched in his political career and is shown to have amassed a sizable fortune in that trade. The academic qualifications of Respondent No.10 are unknown and unstated and diametrically against the finance background expected of a trade in forward trading.

2.3. The Respondent No.11 is the son of Respondent No.9 and has been educated in India and Abroad. He is stated to be a Pilot having undergone Pilot Training in the United States. He is not shown to have earned any scholarship and is presumed to have undergone the training upon the fees paid by Respondent No.9. Though some perfunctory investigation is stated to have revealed that it would cost Respondent No. 9 an equivalent of US \$ 10,000/-, such fees for the training in the US cannot be accepted. It is common knowledge that such training would cost much more than such amount.

2.4. The Respondent No.12 is the wife of Respondent No.11, and like Respondent No.10, is also a housewife without any known or shown academic qualification.

2.5. Respondent Nos. 13 and 14 who are daughter and son-in-law are shown to be the other family members in close connection with the Respondent No.9.

2.6. Consequently, Respondent Nos.10 to 14 are stated to be abettors of Respondent No.9 having amassed wealth through Respondent No.9 who alone would have acquired such wealth and shown it in the names of Respondent Nos.10 to 14.

3. The Petitioner, therefore, claims that the assets and properties of each of these Respondents be investigated to determine their source which would show a connection to Respondent No.9. It is argued on behalf of the Petitioner that all the wealth in the names of Respondent Nos.9 to 14 is acquired by Respondent No.9 alone through dubious and corrupt means and is enjoyed by Respondent Nos.10 to 14 as a largesse through the process of corruption and money laundering. The Petitioner, therefore, claims that all these persons must be brought to justice under the aforesaid legislations.

4. His illustrative career is alleged to have resulted in wealth totally disproportionate to his known sources of income running into crores of rupees. It is not for this Court to compute and calculate the total assets arithmetically. It would be material for this Court to see, however, whether the wealth of Respondent No.9 was acquired after his participation in political activities and after he started his career as a public servant and if that be so he would, therefore, squarely fall within the mischief of the aforesaid special legislation.

5. The Petitioner has prayed for constituting a Special Investigation Team (SIT) upon the premise that Respondent Nos.1 to 7 have proved wholly inadequate and insufficient, despite their respective positions, to investigate into the financial affairs of the Respondent No.9 and the aforesaid family members so as to bring before the Court the true state of affairs of the wealth in their names. In fact the Petitioner claims that Respondent Nos.1 to 7 have consistently refused to investigate thoroughly and impartially into the affairs of Respondent Nos.9 to 14.

6. The various improper and illegal acts of Respondent Nos.9 to 14 alleged by the Petitioner are separate and distinct. They would constitute violation of different laws. The Respondents have been already booked under certain income tax laws. The reliefs in this Petition, therefore, cannot be directed against these Respondents under the Income Tax Legislation. The other allegations relate to certain chartered flights taken by Respondent No.9 and dual pan cards held by him. The details of the chartered flights are not given except for the date and Sections. For want of the Airline of the chartered flights, further particulars cannot be ascertained by Respondent Nos.1 to 7. Taking chartered flights simpliciter is not an offence under any legislation. This aspect, therefore, would be evident of the expenses personally incurred by Respondent No. 9, if proved, and not an offence itself. The intent of Respondent No.9 however, may be evident from the factum of such holding.

Similarly holding dual pan cards is an offence under the Income Tax Act and has been taken care of by those authorities. These are not the aspects which would require the Court to order any separate criminal investigation.

7. The case of disproportionate assets and money laundering is wholly different from the aforesaid aspects. The Petitioner has essentially set out two types of properties owned by Respondent No.9 and by Respondent Nos.10 to 14 as the stooges of Respondent No.9 so as to make them abettors. The movable properties of these Respondents is stated to be in bank and forward trading accounts and the immovable properties are stated to be as by way of investments in flats, shops, agricultural lands etc..

Several of these properties are stated not to have been disclosed by Respondent No.9 in his income tax returns which were filed in 2003-2004 and 2009-2010. The other income tax returns are stated not to have been filed and the reason for filing the aforesaid two returns is obvious; Respondent No.9 was statutorily required to file the returns when he stood for elections to the Maharashtra Legislative Assembly.

8. The Petitioner has given details of several bank accounts of these Respondents with Samta Co-operative Bank Ltd., Santacruz (E). Paragraph 10 of the petition shows the account numbers as well as the name of account holder. Some of these accounts are annexed to the Petition. Several large debit and credit entries are seen upon a quick glance at these accounts. All of the entries in these accounts naturally could not be brought on record by the Petitioner. Upon the information received it is for the investigating authorities to investigate into these accounts. The mode of investigation is simple. Since the bank as well as its branch is mentioned by the Petitioner the investigating authorities would at least be expected to write to the Manager of the branch to show the account statements under the Banker's Book Evidence Act., That has not been done. That can be essentially and usefully directed.

9. Commodity forward trading account in gold and silver held in the name of Respondent No.10 is shown for transactions entered into in 2008 and 2009. The earlier and later transactions could have been similarly investigated and ascertained by the investigating agency, but which exercise has not been entered upon. That too can be directed to be done.

10. The Petitioner has set out several immovable properties in the petition standing in the names of Respondent Nos.9 to 14 which are stated to be beneficially owned and taken in the names of Respondent Nos.10 to 14. It is the Petitioner's claim that the properties mentioned below are owned by Respondent Nos. 9 to 14.

Sr.No.	Description of property	Date of purchaser	Name of purchaser	Exhibit Nos.
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1.	Duplex flat No.13 with terrace on the 6th & 7th floors of Jupiter Building at Veer Ganekar Road, TPS-V, Vile Parle (E) Mumbai-400057admea suring 1355 sq. ft. of built up area of the flat and 550 sq. ft. built up area of the terrace.	15/02/2006	Respondent No.11	J
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2.	Shop No.15 in Sanistair at Plot No. 399, Panvel Town Planning Scheme No.1 admeasuring 1100 sq. ft. of commercial built up area. 250 acres of land at Wadapeth, Ratnagiri.	03/09/2004	Respondent No.11	K
3.		Not known	Respondent Nos. 13 & 14 daughter and son-in-law Respondent No.10	L
4.	Commercial complex at Jaunpur, UP admeasuring 8000 sq. ft.	29/01/2008		M
5.	Tarang Bungalow admeasuring 433.01 sq. mtrs. at Carter Road, Bandra (W), Mumbai at CTS No.1110/11.	08/06/2006	Respondent No.11	N

6.	A triplex flat at Mount Mary Road, Band Stand, Bandra (W), Mumbai.	13/08/2007	Respondent No.11	O
7.	Office premises at HDIL building BandraKurla Complex, Bandra (E), Mumbai admeasuring 22500 sq. ft.	-	Respondent No.11	
8.	Office premises at Wadhwa Building, Trade Link, BandraKurla Complex Bandra (E), Mumbai admeasuring 12000 sq. ft.	-	Respondent No.11	

9.	Shops at HDIL building LBS Marg, Bhandup (W)	-	Respondent No.11	
10.	Land at plot no.63 Santacruz Town Planning Scheme No.4 at CTS No.445, G-ward, BandraDanda Mumbai admeasuring 959 sq. yds. Flat No.401 Kingston B. Powai, Mumbai from Chief Minister's quota admeasuring 700 sq. ft. Flat No.1006 Kingston B. Powai Mumbai		Respondent No.11	
11.		06/08/1999	Respondent No.9	P
12.		12/10/1995 09/12/1999	Respondent No.13 & 14	P1

13.	Flat No.401 Affaire, Turner Road, Bandra (W), Mumbai admeasuring 2000 sq. ft. carpet area.	06/11/2007	Respondent No.13	Q
14.	Shop Nos.38 & 39 in Galarina Shopping Centre, Ground floor, Hiranandai Garden, Powai Mumbai admeasuring 930 sq. ft. These are licenced upon the licence fee of Rs.1,12,536 p.m.	10/12/2004	Respondent No.13	R1 & R2

15.	Flat No.202 Abrosia, Hiranandai Gardens, Kurla, Mumbai-76	16/12/2009	Respondent No.14	T
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11. All these properties, save and except 2 flats in a building in Powai have been purchased after 2004.

The Petitioner has given the comparative market values of these properties. Whatever be the valuation, it can at once be seen that a large extent of real estate is purchased by Respondent No.9 and his family members only after Respondent No.9 was embedded as a politician.

12. The Respondent Nos.1 to 7 would have to investigate from which funds these properties were purchased. This information can be obtained in investigation upon an inquiry with the Respondents themselves and/or from the Secretary of the Society, the shop and the commercial complex and the Government authorities with regard to the agricultural lands. It need not detain us to conclude that such investigation is commonplace and need not even be specifically directed by the Court, but would have to be undertaken by Respondent Nos. 1 to 7 themselves as public officers.

13. It can be seen that the investment in immovable property is the most preferred mode of investment of Respondent No.9 and his family members. The aforesaid documentary evidence would show the date of purchase from which it would be feasible to find the true value of the properties. We choose not to heed the valuation put in the aforesaid documents as we would not be persuaded that such valuation would necessarily be correct. Judicial notice would be required to be taken of the fact that specially in such cases true valuation would not be reflected in documents of the parties. It was for the Respondent Nos.1 to 7 to ascertain and investigate the true valuation of these properties. The valuation in the ready-reckoner or the Times Valuation would be a good guide to begin with. Further investigation of properties in the same area would reveal more accurate valuation. For several of these properties documentary evidence is submitted by the Petitioner himself. For a few others the description given by the Petitioner would assist Respondent Nos.1 to 7 in ascertaining whether or not the information supplied by the Petitioner is correct or accurate and to ascertain the true valuation.

14. Respondent Nos.1 to 7 are stated to have undertaken a preliminary inquiry with Respondent Nos.9 to 14 themselves. Though the Petitioner contended that such inquiry was not necessitated, and is not even legally warranted, we may accept that

since this is a matter of investigation of the extent of wealth and its proportion to the income of the Respondent No.9, the preliminary inquiry with Respondent Nos.9 to 14 may not be wholly out of place provided however that it would result in calculation of a near approximate figure of the wealth amassed by Respondent No.9 in his name or in the names of his family members and its proportion to his known and disclosed income. Despite the inquiry however Respondent Nos.1 to 7 are seen to have drawn a blank.

15. Consequent upon the details furnished by the Petitioner in the petition and the earlier orders passed by this Court upon seeing a prima facie case made for investigation of the charge of criminal misconduct of Respondent No.9 for having wealth/assets disproportionate to his known sources of income, the Director General Anti-corruption Bureau, Maharashtra State has made his initial report on 30 March 2011. The findings in the report are strikingly similar to the particulars furnished by the Petitioner in the Petition showing that the Petitioner has indeed undertaken some research and made statements with some degree of responsibility as to make them acceptable by the Court as well as the investigating agency. The family background of the members of the family shown in the report has been set out as in the Petition itself. The business background also essentially tallies with what the Petitioner has stated. The "rags to riches story" is made out, upon that premise. The income, assets and expenditure of Respondent No.9 and his family members being Respondents 10 to 14 are computed and reported for the Court's consideration. The figures mentioned in the report are rounded off to the close approximate figures in lakhs.

16. The Respondent No.9 and all his family members have been asked to furnish expenses and clarifications regarding their bank transactions and given opportunity to satisfactorily explain the reasons of their income as contemplated by Section 13(1)(e) of the Prevention of Corruption Act 1988. Thereafter a further report came to be made by the Director General accepting the "explanation" of Respondents 9 to 14 on 6 July 2011.

17. We are astounded to be informed that starting from scratch in 1970s and at least until 1998 when Respondent No.9, the head of the family of the other Respondents, had absolutely no income and nothing is shown by him to have been acquired by him, and he is shown to have earned as MLA a salary of Rs.45000/-p.m, he has amassed the aforesaid more than dozen immovable properties, residential and commercial, several in Mumbai and few outside only after 2004, the disproportion of his acquisitions to his income is shown to be 11.69%. Such calculation would beat our arithmetic as much as our conscience.

18. It would be interesting to analyse the revealing report in respect of each of the Respondents. Whereas the salaries of Respondent No.9 is shown to be Rs.24 lakhs., the air travel expenses are 14 lakhs and vehicle allowances is Rs.15 lakhs. This might account for the various chartered flights alleged by the Petitioner, albeit without

further particulars. Though no inquiry is made and no documentary evidence is produced, Rs.12 lakhs are shown to be received from a partnership firm as goodwill. Rent received upon the licence of a flat is shown to be Rs.15 lakhs without any documentary evidence. The same applies to the sale of a car to the tune of Rs.8 lakhs. Rs.5 lakhs are stated to be received by him from his own son (who is himself shown to be having wealth grossly disproportionate to his own known source of income, which shall be dealt with presently). Aside from this income, one flat of 32 lakhs, various saving accounts to the extent of the credit balance of 11 lakhs, agricultural land without particulars and gold jewellery valued as per the declaration of Respondent No.9 himself are shown.

19. His expenditures are shown by corresponding entries with regard to the same car, the same flat as also the flights and the vehicle expenses. As against Rs.5 lakhs having been received from his son, Rs.8 lakhs are shown to be given to his son. Further Rs.6 lakhs and Rs.1 lakhs are shown to be given to other family members. Respondent No.9, who rose from nothing, amassed enough to have gold jewellery, residential flat, bank accounts, car and income from his partnership as well as residential premises.

20. It is esoteric how expenses of flights are taken to be legitimate deductible expenditure. If the flights are taken for official duties, the expenses would be reimbursed by the Government. If not, they are the indulgence of Respondent No.9 much as his expenses on vacations would be; they would not constitute deductible expenditure. The receipt of goodwill from any partnership firm could not be accepted until the partnership is shown to have been formed, and assessed to tax and Respondent No.9 having carried on business with some business acumen to deserve having created goodwill. This is shown despite the absence of any such evidence, which the investigation of Director-General himself has failed to seek or reveal. The rents received from a flat could be accepted, but only upon the production of documentary evidence of such receipts including the credits in Bank accounts and the consequent payment of tax on such legitimate income. The sale price of a car could be affirmed only upon its purchase being revealed. The receipt by his son and payment to him are mere counter entries and demonstrate only an attempt to create cross-entries, the common feature and attribute of money laundering, if seen to be without good cause or purpose. This need be seen alongside the payments made by his son to other family members which shall be considered presently. There are wondrous bank entries which are not explained in the report with sufficient documentary evidence. It is questionable why Respondent No.9 would give several lakhs to his son and take several lakhs from him and how he would purchase and sell the same car showing profit and/or loss, the documentary evidence relating to the purchase and sale being absent. The acquisition of the flat, cash, agricultural land or gold jewellery are, therefore, testimony to support the Petitioner's contention of ill-gotten wealth. The explanation of Respondent No.9 which has been accepted without question is

wholly unacceptable. A reading of only this portion of the report makes out a cognizable offence. It requires to be registered, investigated, prosecuted and tried.

Respondent No.10 = Wife of Respondent No.9

21. The wife of Respondent No.9, Respondent No.10, is stated not to have any source of income. She is shown to have agricultural land at Wada. When it was purchased is not shown. No revenue records are produced. She is shown to have received Rs.75 lakhs in forward dealings in commodities like gold and silver. The first transaction is shown to be not before 2007. The initial transaction is material to see. How and why she went for in forward trading then had to be investigated. Nothing is done. Only presumably upon what she stated as her explanation, a specified figure reflected from her bank account is shown as her income. It is not known how much she had invested initially into this enterprising trade and from where she derived those funds. Her assets inter alia show Rs.1.17 crores invested in these means. The entire amount is prima facie wholly suspect. She is shown to have five immovable properties at her native place. No documentary evidence is produced to show since when she owns those lands or how she acquired them - by purchase, inheritance or by gift. She is shown to have paid stamp duty and registration fees of Rs.3 lakhs. The documentary evidence is not produced. She is shown to own three times the worth of the gold that Respondent No.9 owns. How and when she acquired it is not shown. Her bank accounts show zero balance. Construction expenditure is shown on another plot of land also at her native place. That is not substantiated. What construction has been put up is not investigated. She is also shown to have given and taken amounts to and from various relatives as also other parties. Rs.39 lakhs are given to her son Respondent No.11. Further Rs.27 lakhs are given to 3 other persons who appear to be family members. No particulars of identification of these persons are demanded or shown.

22. Since she has neither clarified nor is shown to be other than a housewife, even if she has agricultural lands in her name at her native place since the inception, she has not explained how she could have invested any amount in forward trading. The factum of the forward trading is a material fact to show prima facie her ill-gotten wealth. It is of little use for an investigating officer to merely state to Court those facts. What he was required to do was to investigate how a large amount of Rs. 1.17 crores came to be invested by her in the first place. This would be followed by how she received Rs.75 lakhs during the course of the period from her trading activities. What is intriguing is if amassed so much wealth legitimately, how come her savings bank accounts shows a balance of Rs.00.00 ? The date of the stamp duty and registration fees are not shown and hence the date of purchase is specifically concealed by the Investigating Officer. Consequently, it is seen that properties worth at least Rs.12 lakhs of rupees have also been purchased by her at her native place during and after the period of her husband's public service. Her's is a gross case to be charged and tried as an abetter of Respondent No.9 since the figures of

her income as well as assets as also the made-up expenses show at least prima facie case of ill-gotten wealth.

Respondent No.11 = Son of Respondent No.9

23. The son of Respondent No.9, who is Respondent No.11 in the petition, was an employee of Jet Airways earning a lakh of rupees a month. He is shown to be a pilot having been trained in the US upon an expense of a few lakhs of rupees, which lends itself to rejection. Be that as it may, upon his training and the consequent employment, his salary is the only known, shown and acceptable source of income. Upon that modest earning he is shown to have taken the loan of Rs.60 lakhs from Standard Chartered Bank for purchase of one flat. It is not known what was the security given to the bank, what was the income shown to the bank and how upon an income of Rs.1 lakh a month Rs.60 lakhs came to be loaned to him. Similar transaction, albeit of a much larger amount is shown for another bungalow for which ICICI Bank upon its mortgage is shown to have released another loan of Rs.8 Crores. A further loan of Rs. 21 lakhs is taken for purchase of a BMW car which is shown to be sold for Rs. 22 lakhs. We wonder when the loan was taken and repaid. A second BMW car is shown to be purchased upon another loan of Rs.43 lakhs from the same bank. Rs.5 crores are shown to be taken for investment in a triplex flat. Several diverse vast amounts aggregating to Rs.15 Crores are shown to be simplicitor received from various companies and private parties. The purpose of such receipts is not explained. The evidence of the loans and receipts taken is not shown. Further Rs.15 Crores and Rs.2 Crores are shown to be further loans taken from two other firms aside from these Rs.7.5 crores taken from three other individuals and firms. Rs. 1 Crore is received from the sale of a flat. The purchase of said flat itself is not shown. After the receipts aggregating to Rs.38 Crores from private firms and individuals, aside from the bank loans for purchase of cars as well as flat, the report has shown the Respondent No.11 having returned amounts to several parties most of whom are his family members. The report of the Income Tax Department speaks eloquently of such dubious transactions remarking that there are huge unsecured loans from builders and developers beyond business rationale aside from advance of huge interest free loans and gifts taken from as well as given to his friends and associates.

24. It is not known why a pilot of Jet Airways had anything to do with so many individuals and private firms for extensive loans taken without any apparent reason. It is not shown where these loan amounts are invested and when the loans were repaid. The flat at Oceanic Park for which the loan of Rs.60 lakhs is shown to have been taken from Standard Chartered Bank is shown to be sold for Rs.50 lakhs. The flat is shown as an asset valued at Rs.63 lakhs. It is apparently sold. When the sale was completed is not known. When the loan was repaid is not shown. His assets show the bungalow valued at Rs. 3 crores though loan of Rs.8 Crores was taken for purchase from ICICI Bank. Similarly though loan of Rs.5 Crores is taken for purchase

of the triplex flat, the advance paid for that flat is shown to be Rs.4.5 Crores. Yet another immovable property being two flats are shown as his assets worth Rs.62 Lakhs. The total immovable properties of the Jet Airways Pilot is, therefore, Rs.9 Crores. We wonder whether he paid even the society charges of these properties from his salary income. There are cross entries showing amounts of one partnership firm of Today Venture as well as amount invested therein. Rs.15 Crores are received and Rs.7 Crores are invested for no apparent reason. Another one crore is invested in other firms. The two BMW cars purchased and sold are shown as assets though they are purchased upon loans from the Bank and one of them is shown to be sold. The movable items in his bungalow itself shown to be worth Rs.1 Crore. With such dealings his bank accounts show credit balance of not more than a few thousand rupees with one bank account having the distinction of the credit balance of Rs.00.00. Respondent No.11, unlike his mother, Respondent No.10, trades in loans and advances of outlandish amounts with various parties, none of whom are questioned, interviewed, interrogated or investigated upon.

25. The expenses of Respondent No.11 show contra-entries with regard to the same aspect reflected in his income and assets. His household expenses are a staggering Rs.28 lacs; they having risen from Rs.1 lac between 2002-2005 to Rs.27 lacs between 2006-2010. For the last five years his aggregate annual household expenses are Rs.3 lacs each year. Each of the amounts taken as loan whether from bank or private individuals is shown to be repaid partly to the banks and fully with interest to the private individuals. Standard Chartered Bank is paid Rs.40 lacs as against the loan of Rs.60 lacs. ICICI Bank is paid Rs.3 crores as against the loan of Rs.9 crores. Conversely Rakesh Wadhwa and HDIL Company and Wadhwa Construction Company are repaid Rs.11 crores and Rs.92 lacs respectively which was about the same amount as the loan taken. DHFL is repaid Rs.55 lacs against the loan of Rs.50 lacs. Whereas Rs.26 lacs and Rs.39 lacs are taken from Jitendra and Devendra Singh, Rs.56 lacs and Rs.83 lacs are repaid to them. These are rather obvious family members of Respondent No.11 who have not been identified or interrogated.

26. In income of Respondent No.11, amounts "returned from" are shown from three parties including his wife, Respondent No.12. The expression is esoteric. Only the amount taken from parties can be shown as income. The amount can be "taken from" or "returned to". Nevertheless Rs.95 lacs are shown as income "returned from" one Lalani and Rs.95 lacs also shown as expenditure "given to" one Lalani. Similarly Rs.5 crores as shown his income as well as expenses in respect of one Orbit Venture. The income from his wife, Respondent No.12 is Rs.14 lacs as amount received from her (though shown as "returned from" her). Rs.1.4 crores is shown to be given to her. We wonder whether that was the pocket expense paid by a husband who earns Rs.1 lac a month to his wife who earns nothing.

27. Aside from these are rather enormous amounts shown as expenses, stamp duty, registration, furniture, electricity, water charges, telephone expenses etc. in and for

the various residential premises owned by Respondent No.11.

28. Aside from the above, the LIC premium itself is shown to be Rs.7 lacs. The extent of the LIC policies is not shown. Rs.15 lacs are shown to be reception expenses presumably for a single function held at Mahalaxmi Racecourse, the reason for which is not shown. Further investment in other companies are shown to be an expenditure of Rs.42 lacs and Rs.1.25 crores. From what source these investments came to be made is not explained. Though four separate and distinct residential premises are shown as his assets, the expenses are shown for the purchase of yet another residential premises of Rs.1.15 crores together with an advance amount paid of Rs.95 lacs. The amount shown as these expenses is in fact another asset of Respondent No.11 which instead is shown as his expenses. Rs.5.5 crores are shown to be returned to one Dynamic Reality House whereas no such amount is shown as income received therefrom by Respondent No.11.

29. Respondent No.11, who is a pilot with Jet Airways, is shown to have incurred an expense of Rs.14 lacs towards air travel. One wonders for what apparent reason could there be any expense for such travels other than travels in the course of his employment which Respondent No.11 would have to undertake on a regular basis. The expenses are not only inflated and wholly unexplained but entirely misleading and shown at the wrong place to make the arithmetical calculations which would be entirely erroneous.

30. The known source of income of Respondent No.11 is wholly inadequate to support his expenses or to justify his investments. The income of Respondent No.11 from various sources being banks and private parties, only the names of whom are given without any further investigation are clearly a pointer meriting rejection of the names for the amount shown against them. Those amounts would, therefore, have to be prima facie presumed to emanate from the income and the dealings of Respondent No.9 alone who as a public servant and who would be able to generate such funds albeit only by illegal means and which Respondent No.11 as a pilot would be wholly unable to generate, prima facie showing him to be abettor in the criminal prosecution against Respondent No.9.

Respondent No.12 = Daughter-in-law of Respondent No.9

31. Respondent No.12, the wife of Respondent No.11, is shown to have received Rs.1.4 crores from Respondent No.11. After having received Rs.1.4 crores from her husband, she is shown to have "given" Rs.1 crore to her brother one Suryasonal Singh and returned to Respondent No.11 Rs.14 lacs. (She is stated to have kept with herself Rs. 26 lacs out of the gift from her husband). Such dissection of funds under various heads, for no explicable reason, upon amalgamation of the amounts, would only result in the imputation that they were the receipts by Respondent No.9 alone.

32. Respondent No.12 is also shown to have another BMW car aside from the two cars of the same make purchased by Respondent No. 11 from loans taken from

banks. One of those is sold, though both of them are shown as his assets. Respondent No.11, a mere pilot and Respondent No.12, a mere housewife, have shown the most preferred make of car by the family having separate BMWs for the husband and the wife acquired out of nowhere.

33. The tardy accounts of the assets and income of Respondent No.12 and her expenditure showing only two amounts given to her brother and her husband would prima facie show her also as the abettor of Respondent No.9.

Respondent No.13 = Daughter of Respondent No.9

34. Respondent No.13, who is a daughter of Respondent No.9, is shown to have received rent from one Galerina Shopping Centre in Hiranandani Garden, Powai, Mumbai of Rs.30 lacs from one flat in Ambrosia Building from Rs.95 lacs forming a part of her income. However how she came to acquire these assets, from which the income is derived, is not shown. She has received loans from banks as well as private parties in largely the same style as her other relatives. Rs.43 lacs is received as loan for the flat in Ambrosia Building. A Honda City car has been sold out by her for Rs.2 lacs. Her income as per her income tax return is shown to be Rs.5 lacs (though it is not known in which assessment year). The loans taken by her from various individuals to the extent of Rs.25 lacs do not correspond with that income.

35. Aside from the aforesaid two immovable properties from which she receives rent, another flat is shown in her name though the amount is stated to be paid by Respondent No.11. That payment is not shown as his expense; the asset is shown to be of Respondent No.13. Her bank account shows a credit balance of Rs.13 lacs with two other accounts showing a credit balance of Rs.00.00. She also has a trading account of the company from which Respondent No.10 carries on forward trading having a balance of Rs.72/-. The fact that she has a trading account would show the source of forward trading made available to her or entries to be shown in that account whenever situation permits much as the more vast entries of Respondent No.10. Though a shop is not shown to be her asset, Rs.11 lacs are shown to be invested as Green Vally Investments Pvt. Ltd.

36. Aside from her household expenses of Rs.10 lacs (which is aside from the household expenses of her husband of Rs.2 lacs) are expenses for repayment of loans, expenses for the car, maintenance of the flats and Rs.12 lacs invested in forward trading in the commodities account (though the account itself shows only a credit balance of Rs. 72/-).

37. Since investments in as many as five immovable properties and forward trading account is shown for an individual who is otherwise a housewife, her income prima facie cannot be taken to be satisfactorily explained requiring her also to be an abettor of Respondent No.9.

Respondent No.14 = Son-in-law of Respondent No.9

38. Respondent No.14, who is the son-in-law of Respondent No. 9 and the husband of Respondent No.13, is shown to have received Rs.92 lacs from Respondent No.11 (son of Respondent No.9) and Rs.1 lac from Respondent No.9 as a gift. He is shown to have paid back Rs.93 lacs to Respondent No.11. Receipt of Rs.92 lacs with repayment of Rs.93 lacs for no other apparent reason is only an endeavour to make entries showing expenses. He is shown to have also received Rs.40 lacs upon a sale of a flat in Kingstone Society in Powai. The flat itself is not shown as his asset; how it was acquired is not shown. The purchase cost of the flat however is shown as expenses of Rs.4 lacs. The flat of Rs.4 lacs is shown to be sold for Rs.40 lacs and hence the dates of acquisition and sale became material but which are not shown. He has shown to have invested Rs.40 lacs for booking a flat with GC Constructions Company of Lucknow. The bonafides of acquisition of that property can be determined only upon seeing the bonafides of the sale of the flat in Kingstone Society. He has given Rs.8 lacs to his wife Respondent No.13 who is shown to have received an income of that amount from him. He is shown to be having furniture worth Rs.7 lacs in the flat shown as the asset of his wife, Respondent No.13, of Rs.5 lacs !Another flat shown to be a flat allotted to Respondent No.14 from the Chief Minister's quota in 2000 and sold in 2006 at 10 times of the value of the purchase price.

39. Respondent No.14, who was brought up by his grand-father who was a Rationing Officer, was himself a Junior Engineer in Reliance Company at Lucknow and it is not explained how he acquired the aforesaid property or how he had the funds to give loan of Rs.8 lacs to his wife, Respondent No.13. Hence though to the much lesser extent, the income of Respondent No.14 is also disproportionate to his known salaried income and the acquisition of the immovable properties left unexplained making him also a prima facie abettor of Respondent No.9.

ACB Findings

40. The report of the ACB inter alia shows that large cheques and cash amounts were deposited in the account of one Jitendra Singh and one Devendra Singh related to Respondent No.9 and Ankita Singh, Respondent No.12 (daughter-in-law of Respondent No.9) and then transferred to Respondent No.11(son of Respondent No.9). The report also shows the explanation of Respondents was not "entirely satisfactory/convincing".

41. The report also shows that the rent income of Rs.12 lacs of Respondent No.11 (son of Respondent No.9) has not been substantiated by documentary evidence and BMW car has been sold in cash yet continues to stand in the name of Defendant No.11 who repaid the bank loan also. The purchase and sale of the second car was also in cash and which also continues to stand in his name and in his actual possession. The conclusion in the ACB's report about the car transaction runs thus :

The transaction regarding sale of the two cars thus appears to have been claimed for falsely projecting cash in hand by Narendramohan Singh.

42. The report further shows the engagement and wedding functions of Respondent No.11 (son of Respondent No.9) for which expenses of Rs.14,29,647/-and 15,43,745/-respectively were incurred from the HDIL Group bank account yet the same figure of Rs.15,43,745/-is shown as the expenses of Respondent No.11 himself. The report further shows two cars gifted to Respondent No.9 by one Hotelier Amit Digvijay Singh which are sold by Respondent No.9. Though the cars are not shown as his assets, the expenses for the cars including its purchase price, registration fees and insurance are shown as the expenditure of Respondent No.9. The report further shows, as has been seen by this Court also, that the loans and advances are shown to be needlessly taken from certain parties and rotated at later time to show repayment. However vast loans and advances taken specially by Respondent No.11 are shown to be without interest and the payment to other family members are also shown to be without claiming interest apparently for no reason. Rs.27 crores are yet to be repaid as computed in the report. The conclusion with regard to Respondent No.11 in the ACB's report is :

The sheer magnitude of the various loans/advances obtained by Shri.Narendrmohan Singh gives reason for suspicion regarding the bonafides of the transaction.

43. With regard to Respondent No.10, the wife of Respondent No.9, 44 cheques of Rs.25,000/-each from different unknown persons amounting to Rs.11 lacs are shown to have been deposited in her bank account and later transferred to Respondent No.11. Similar such transactions are reflected in the bank account of Respondent No.13. The report shows the conclusion with regard to Respondent Nos.10 & 13 thus :

no satisfactory explanation regarding these transactions is forthcoming.

44. After the collection and collation of the aforesaid aggregate amounts unabashedly shown as loans to and from various parties exchanging hands within the family and various movable and immovable properties acquired and sold and after arriving at the aforesaid conclusion, as reproduced hereinabove, the ACB has asked for and accepted the explanation of Respondent Nos.9 to 14. The most material of these explanations is the receipt of Rs.27 lacs explained as "birthday gifts from 101 persons". Whether the donors had indicated those gifts in their income tax returns for the concerned year is not shown. In the preceding and succeeding years Respondent No.9 is not shown to have received such gifts. The amounts are stated to be received in cheques. The bank account statements are stated to have been "washed away during the deluge of July, 2005". The statements can be obtained from the bank by way of certified copies of the account under the Bankers' Book Evidence Act, but the ACB Officer has shown his incapacity to investigate in that

direction. However with regard to these transactions, the final report shows the observation :

Nevertheless, since all the transactions were through bank cheques, and since a large chunk of the total amount was transferred to Narendramohan's loan account, it was considered as expenditure of Kripashankar Singh and Maltidevi and the amount claimed to have been received as birthday gifts has been considered as income.

45. Similarly the sale proceeds of the cars received by Respondent No.9 as gifts from the aforesaid Amit Digvijaysingh have been treated as income. The amount of Rs.11.58 lacs deposited in cash in the bank account of Respondent Nos.9 & 10 has been not considered as an asset upon the premise that it was reflected twice which aspect though contended by Respondent Nos.9 & 10 is not substantiated. The loan amount of Rs.37 lacs taken by Respondent No.11 shown to have been repaid is shown as income and expenditure respectively. Rs.5 lacs claimed to be the expenses for the maintenance of a car has not been substantiated and the amount is treated as expenditure of Respondent No. 9.

46. After treating various amounts as expenditure because of or despite the explanation of the Respondents which were accepted or rejected respectively, the final conclusion is an excess asset to the extent of Rs. 11.69% over the income of Respondent Nos.9 to 14. We may mention that by no arithmetical calculation can any reasonable or prudent investigator or calculator come to the conclusion that is reflected in the official report of ACB. We outright reject this erroneous calculation of the percentage of disproportion of the assets of Respondent Nos.9 to 14. We also reject the various entries showing expenses without documentary evidence.

47. It is argued on behalf of ACB that the preliminary inquiry with Respondent Nos.9 to 14 was mandatorily required. [See. [P. Sirajuddin, etc. Vs. State of Madras, etc.](#), Though the explanation required to be given by a public servant is essentially at the close of the trial in a criminal prosecution, we may accept the course adopted by the ACB, but find it impossible to accept the acceptance of the ACB and the explanation of the Respondents either upon seeing the items of assets, income and expenditure ourselves or even upon the ACB's own observation in the initial progress report prior to acceptance of the explanation. In any case, if the explanation of Respondent Nos.9 to 14 was deemed essential, we fail to understand why the bank accounts of those Respondents were not frozen as held in the case of [State of Maharashtra Vs. Tapas D. Neogy](#), and why the immovable properties of those Respondents were not attached as required in such cases and as specifically mandated in the Criminal Law Amendment Act, 1944 prior to or at the time of the inquiry to protect the assets being inquired into pending a satisfactory, reasonable explanation which was required to be obtained and accordingly sought.

48. It is contended on behalf of the Petitioner that the registration of the criminal case is the most natural sequel to the extent of the assets of Respondent No.9 and his family members shown by the Petitioner. In fact the exercise undertaken by the Petitioner through RTI authorities and otherwise to bring to light the assets show a rather accurate enumeration of these assets. There are very few of them which have been left with inadequate description so as to be filtered out of the dragnet in which Respondent No.9 and the other Respondents would find themselves. It is, therefore, contended that it is for this Court in its extraordinary jurisdiction to itself ascertain and conclude whether an FIR can be lodged and the prosecution be taken to its legitimate conclusion.

49. The requirement of the statutory provisions relating to the offence of being in possession of disproportionate assets is to satisfactorily account for it. Any account or explanation to explain away entries which stare one in the face is not contemplated u/s 13(1)(e) of the Prevention of Corruption Act. Consequently all the entries which merely show names of firms and individuals or even banks without the supporting documentary evidence must be rejected as not satisfactorily explained. The entire such income is to be taken into account to see the extent of disproportion. Besides the explanation to the section requires the income received only from a lawful source and which is intimated in accordance with the provisions of any law, essentially the Law of Taxation, to be allowed as satisfactorily explained. Income received and paid from and to individuals and concerns, public and private, of large amounts in various transactions is far from a lawful source. Besides the Respondents have been stated not to have filed income tax returns in various years, interestingly, except the years in which Respondent No.9 stood for election and hence the receipts were not accounted for or intimated to the taxation authority. [See. [J. Prem and Another Vs. State,](#)]

50. Once the "explanation" of the Respondents is seen to be unacceptable, the submission of the Petitioner that the extent of disproportion is "a highly undervalued figure arising out of a completely malafide exercise of power" must be accepted.

51. It is contended on behalf of the ACB that the disproportion is required to be condoned and hence is condoned. It has been shown by the Petitioner that less than 10% disproportion was accepted by the Supreme Court in the case of [Krishnanand Vs. The State of Madhya Pradesh,](#) which extended to a few lakhs of rupees in that case and which was seen to be so at the end of the trial; that was not a case of refusing to try the public officer. Besides in the further case of [B.C. Chaturvedi Vs. Union of India and others,](#) the maximum relaxation allowed by the Supreme Court was to the extent of 10% which could not be further extended leaving the ACB no discretion not to prosecute.

52. The Petitioner claims that in view of the various cross transactions shown by and between the accounts of the Respondents who are admittedly family members and

in their dealings admittedly shown to be taking and giving of loans without security and interest, the abetment of the offence by the relatives of Respondent No.9, being Respondent Nos.10 to 14 is made out and they also require to be arraigned as co-accused as held in the case of [P. Nallammal Etc. Vs. State Rep. by Inspector of Police, .](#)

53.It is contended on behalf of Respondent No.9 that once the ACB comes to the conclusion that the evidence was not enough for registration of the offence, the Court cannot go into the merits or demerits of the claim of the Petitioner in a Public Interest Litigation. [See. Madhuresh Vs. Central Bureau of Investigation 78 (1999) DLT 361 (DB)].

It is contended that such opinion has to be formed only by the Investigating Authority and not the Court. [See. [Abhinandan Jha and Others Vs. Dinesh Mishra, and Union of India & Ors. Vs. Sushil Kumar Modi & Ors. 1997 \(1\) SCALE.](#)

It is contended that the Court giving any direction to investigate the case or to submit a charge-sheet would exceed its authority by unwarranted interference in accordance with its views to overwrite the decision of the Investigating Authority which is not permitted in law. [See. [D. Venkatasubramaniam and Others Vs. M.K. Mohan Krishnamachari and Another, \].](#)

54. Reliance is placed on the case of [M.C. Mehta Vs. Union of India \(UOI\) and Others,](#) that the Court should not take upon itself the task of the determination of the guilt of the individual involved in a criminal proceeding or form its opinion one way or the other. In that case CBI was directed to place the evidence/material collected by the Investigating Team along with report of the S.P. u/s 176(2) of the Code of Criminal Procedure before the Special Judge to decide in accordance with law.

We have nevertheless to come to the conclusion to do just that upon an objective analysis, albeit prima facie, of the material placed before us.

We propose to do just that.

The observation in the case of M. C. Mehta (Supra) "we do not think that we should go beyond the same" relied upon by Respondent No.9 indeed takes us through the stage of directing the launching of the criminal prosecution upon the material evidence. Of course we would exercise caution as in the case of Divine Retreat Centre Vs. State of Kerala & Ors. 2008 (3) SCALE if we found no prima facie disclosure of the commission of any cognizable offence.

This case is quite the contrary. We can easily prima facie conclude that there is a cognizable offence disclosed. However we do not propose to go through the elaborate report of the ACB and to consider collating the entries of the income and the assets of each of Respondent Nos.9 to 14 alongside the expenses shown against their names which could be concluded only upon observing these entries rather minutely. This exercise would certainly have to be undertaken; not by us, but upon

the overall view of extensive assets of Respondent Nos. 9 to 14, by the investigating agency under the Prevention of Corruption Act, and Prevention of Money Laundering Act, 2002.

55. It has been argued on behalf of Respondents that the Petitioner could well have filed a private complaint in the Court of learned Magistrate having jurisdiction if a cognizable offence is made out by the Petitioner in support of which we are shown Judgments in the case of [All India Institute of Medical Sciences Employees' Union \(Regd.\) through its President Vs. Union of India \(UOI\) and Others](#), and [Aleque Padamsee and Others Vs. Union of India \(UOI\) and Others](#), . It is also submitted that the Petitioner should have himself filed a private complaint which could have been ordered to be investigated by the Magistrate, but that this Court may not intervene as observed in the case of Sheonandan Paswan Vs. State of Bihar & Ors. (1997) 1 SCC 288. Of course, we may have held back our hands and directed the Petitioner to lodge merely a private complaint if prima facie case calling for investigation by a specialized agency was not made out. [See. [Sakiri Vasu Vs. State of U.P. and Others](#),]

A private complaint could certainly be filed if further specialized investigation would not be required as in the cases cited above. However, the facts shown by the complainant would require to be sufficient to merit not only the lodging of the FIR but to show the ultimate charge made out against the accused. Hence in a case like this only the investigating agency would be equipped to obtain documentary evidence to support the facts shown by the Petitioner from the various authorities and/or the accused themselves upon interrogation or upon the accused themselves showing the evidence in support of their case for interpreting the evidence upon the admitted execution of the documents. Further the investigating officer would be able to obtain the sanction required to prosecute Respondent Nos.9 to 14. Consequently even in a private complaint the Magistrate would have to order investigation upon the complainant, such as of the Petitioner herein, making out a prima facie case showing a cognizable offence disclosed, as has been done by the Petitioner herein. Such a case is, therefore, not right or appropriate for a mere private complaint to be filed and hence the argument in that behalf placing reliance upon the Judgments upon diametrically different facts would not justify the Respondents' contention of the Court not exercising its extraordinary jurisdiction in a Public Interest Litigation.

56. Our attention has been drawn to the case of [Kunga Nima Lepcha and Others Vs. State of Sikkim and Others](#), showing the cases in which the High Court can play a corrective role in case of allegations of corruption against a public officer. It is held that that would be where there is apathy, partiality, obstruction in investigation process, destruction of evidence or undue pressure from powerful interests when a specific violation of fundamental rights is shown. This is a case of an amalgam of the aforesaid pre-requisites in its egregious reach by Respondent No.9 who still appears to wield considerable influence over those in charge of investigation. We are

constrained to observe that the conclusion of the ACB, despite its own observation earlier, has been wrought by latent intimidation as would be expected from persons in the position of Respondent Nos.9 & 11 upon a mere police officer. We would, therefore, be abandoning our duties if we did not play a corrective role to at least bring Respondent Nos.9 to 14 to justice as envisaged in our criminal justice system.

57. A host of Judgments show to us the law laid down which is clear but which would not be applicable to this case. The fact that the PIL cannot be used for private vendetta [See. [Neetu Vs. State of Punjab and Others](#),] or the caution that is required to be exercised by the High Court in its writ jurisdiction [See. [State of Uttaranchal Vs. Balwant Singh Chauhal and Others](#),] or that the costs are granted in the frivolous PIL [See. [Ashok Kumar Pandey Vs. The State of West Bengal and Others](#),] or that no character of any individual should be allowed to be besmirched [See. [Dr. B. Singh Vs. Union of India \(UOI\) and Others](#),] or that in a given case a prosecution can be withdrawn by an order of the Supreme Court [See. [Sheonandan Paswan Vs. State of Bihar and Others](#),] or that the complaint must be made initially to the police and later to the Magistrate [See. Panchabhai Popatbhai Butani & Ors. Vs. The State of Maharashtra & Ors. W.P. Nos.270, 1445 of 2009 decided on 10.12.2009 of Bombay High Court] hardly apply in this case.

58. This is a case where the Petitioner has sought to bring Respondent Nos.9 to 14 to justice. The Petition has evinced a prima facie case against them. The Investigating Agency has not found that case to be frivolous; nay, the Investigating Agency has found almost entirely the assets shown by the Petitioner to be the correct assets in the names of the Respondents. There is, therefore, no vendatta shown. The only endeavor is to show that the Rule of Law prevails. The Petitioner has not sought to besmirch the character of any of Respondents No. 9 to 14. He has only shown the truth of their acquisitions. A private complaint would not obtain results because a far reaching investigation is required. Vast amount of documentary evidence is to be collected not only from the Respondents, but if the Respondents failed, neglected or refused to show the evidence with regard to the acquisitions of their own movable and immovable properties or their own transactions explained by them, from other sources such as banks, co-operative societies etc. Under the facts of this case the right mode of obtaining the justice when the investigating agency has so utterly failed, is through the writ Court in a Public Interest Litigation.

59. The Petitioners' petition would therefore itself have to be treated as FIR. The investigation which has thus far transpired may be adopted. Further investigation only with regard to the calculation of the extent of disproportion of wealth of Respondent No.9 as the public officer and Respondents 10 to 14 as abettors, obtaining the statutorily required sanction for prosecution of Respondent No.9, seizure of movable and immovable properties of Respondent Nos.9 to 14 and attachment or otherwise of the immovable properties of Respondent Nos.9 to 14

under the Criminal Law Amendment Act, 1944 and Section 102 of the Cr.P.C. as articulated in the case of Essar Logistics Ltd. Vs. Vinodkumar Ramchandran Valluvar and State of Maharashtra in Cr. W. P. No. 1520 of 2009 filed in this Court r/w the case of Sudhir Vasant Karnataki Vs. State of Maharashtra in Cr. W. P. 3198 of 2009 of this Court would have to be made. We may mention that the sanction would be required from the Speaker of the Maharashtra Legislative Assembly as shown in the case of [P.V. Narsimha Rao Vs. State \(CBI/SPE\)](#). The sanctioning authority shall have to sanction or refuse to sanction prosecution upon cogent reasons stated by him/her for his/her conclusion within the time limit of four months as stipulated in the judgment dated 31st January 2012 of the Hon'ble Supreme Court in the case of Subramanian Swamy Vs. Manmohan Singh showing the reasonable time during which the sanction must be granted or refused as sanction required to be given, like consent, cannot be unreasonably withheld and must be contained in a reasoned order, either of grant or refusal thereof.

ORDER

60. Upon considering the facts of this case and upon the law cited before us we deem it appropriate to pass the following orders/directions:

(a) Certified photostat copy of the memorandum of this Petition shall be treated as the FIR of the Petitioner lodged before the Commissioner of Police, Mumbai.

(b) The initial report of the ACB dated 30th March, 2011 which shows the income, assets and expenditure of Respondent Nos.9 to 14 shall be taken as a complete investigation with regard to the enumeration of the assets of these Respondents. The conclusion of the ACB about the disproportion in its report dated 7th July, 2011 is wholly rejected.

(c) We hereby appoint Mr. Arup Patnaik, Commissioner of Police, Mumbai to continue with the investigation based upon the FIR of the Petitioner contained in this Petition and the report of the ACB dated 30th March, 2011 with regard to the enumerated assets of Respondent Nos.9 to 14.

(d) The Officer shall collect the documentary evidence with regard to the movable and immovable properties shown against the names of Respondent Nos.9 to 14 being flats, shops, agricultural lands, bungalow, office/commercial premises, motor cars, bank accounts, forward trading account etc. from the Respondents themselves and failing which from the relevant housing societies, banks, RTO etc.

(e) The Officer shall independently calculate and arrive at his conclusion about the disproportion from the aforesaid FIR and the ACB's report dated 30th March, 2011 disregarding the ACB finding referred to in para 44 and 45 above and the conclusion in the ACB Report dated 7th July 2011.

(f) The officer shall obtain the statutory sanction for prosecution of Respondent No. 9 with reasons of the Sanctioning authority as shown in para 59 above.

(g) The officer shall seize and attach the movable and immovable properties of Respondent Nos.9 to 14 as per law shown in para 59 above.

(h) The aforesaid officer shall thereafter report to us.

(i) We refrain from passing any express direction for seizure of bank accounts of the Respondents as per the law having seen the futility of such exercise in view of the fact that most of bank accounts have already been completely washed out by several of these Respondents as alleged by the Petitioner.

(j) We may mention that we have given these directions only with regard to the offence of criminal misconduct of Respondent No. 9 and the abetment by Respondent Nos.10 to 14 under the Prevention of Corruption Act and we pass no direction or any order with regard to any other allegations or complaints of the Petitioner for which the Petitioner may adopt proceedings in accordance with law.

(k) Put up the Petition before this Bench on board on 19 April 2012 for compliance report of the officer.

61. At this stage, the learned counsel for respondent Nos.9 and 10 prays that operation of this order be stayed for some time in order to avail of further recourse in accordance with law.

62. Since we have asked the Commissioner of Police, Mumbai to continue with the investigation based upon the averments made in the petition and the ACB report of 30 March 2011 and before taking any further action, the officer will submit the report before this Court which is to be done by 19 April 2012, we do not accede to the request for the stay of this order.