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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL REVISION PETITION NO.538 of 2014

BETWEEN:

Iqbal Ahmed,

…Petitioner

(By Sri Hashmath Pasha, Senior Counsel, for
Smt. Budrannisa, Advocate)

AND:

C.B.I. SCB
Chennai-600001. …Respondent

(By Sri P. Prasanna Kumar, Advocate)

This Criminal Revision Petition is filed under Section 397 of Cr.P.C. praying to set aside the judgment and order of conviction and sentence and fine imposed/passed by the XVII A.C.M.M., Bangalore, vide judgment dated 27.11.2012 passed in C.C No.33940/2011 and further be pleased to set aside the Judgment passed by the XXXII Addl. City Civil and S.J. and Spl. Judge for CBI cases, Bangalore passed in Crl. A No.761/2012 vide Judgment dated 30.04.2014 and further be pleased to acquit the petitioner.

This Criminal Revision Petition having been ***heard & reserved on 18.02.2022***, coming on for

pronouncement this day, the Court pronounced the following :

ORDER

The accused, convicted and sentenced for the offences under sections 419, 420, 468 and 471 of IPC, and section 12(1)(b) of the Passports Act, 1967, is the petitioner here.

2. That on 22.1.2009, the Inspector of Sampigehalli Police Station received information that some persons were involved in creation of forged and fabricated passports for the purpose of human trafficking and that they would be approaching the employees of the IBM Company, Manyata Tech Park, Bengaluru, for preparing documents in the name of fictitious names. The Inspector secured two panchas, formed a team consisting of police constables, head constables and Assistant Sub-Inspector and went to that place around 4.00 p.m. As they kept watch, they

saw five persons alighting from a red colour Maruti Zen car. A person sitting next to the driver got down from the car and told three other persons in Hindi language to go inside the office of IBM and enquire about the persons who were in need of passports and visas. The police team entertained suspicion, surrounded the car and all those persons and subjected them to search. They could recover a passport bearing number G2999124 from a person called Syed Iqbal. That passport showed that it had been used multiple times for visiting countries viz., Malaysia, Singapore, Canada, China, America, etc. The police team also recovered some other items such as letter heads of various offices, application for issuing tourist visas, blank applications for obtaining visa etc. Seizing all the items, the inspector drew up a mahazar, arrested and brought them to Police Station. Then he gave first information report to the SHO as per Ex.P.1 and took up investigation.

During investigation, one of them gave voluntary statement disclosing the involvement of Iqbal Ahmed, i.e., the petitioner herein and then brought the inspector to the house of the petitioner. The petitioner was thus arrested and brought to Police Station at 9.00 p.m. In the presence of the panchas personal search of the petitioner was conducted. The petitioner had with him a passport bearing No.H1924155 and it was seized by drawing a mahazar as per Ex.P.2. The petitioner gave voluntary statement which led to recovery of another passport bearing No.F9608954 that he had kept in his house. In this regard a seizure panchanama was drawn as per Ex.P.6. Thereafter the investigation was handed over to CBI which filed the charge sheet against the petitioner. After trial, the XVII Additional Chief Metropolitan Magistrate: (Special Court for CBI cases): Bengaluru, convicted the petitioner for the offences aforesaid. The petitioner then preferred

an appeal to the Court of Additional City Civil and Sessions Judge and Special Judge for CBI cases, Bengaluru. By judgment dated 30.04.2014, the Sessions Court dismissed the appeal and thus the petitioner has filed this revision petition.

3. I have heard the arguments of Sri. Hashmath Pasha, learned senior counsel for the petitioner and Sri. P.Prasanna Kumar, learned counsel for the respondent. The elaborate submissions made by learned counsel will be referred to later, but Sri Hashmath Pasha mainly raised the following points for being answered :

(i) FIR was not registered soon after receiving information about commission of cognizable offences and therefore entire investigation was vitiated.

(ii) Seizure of the passport Ex.P.5 is not legally proved.

(iii) The prosecution failed to prove that the petitioner used the alleged fake passport, Ex.P5 and thus petitioner's conviction for this offence under section 12(1)(b) of the Passports Act and other IPC offences does not stand.

(iv) Mere marking of sanction order, Ex.P21, did not amount to its proof, the authority who issued sanction ought to have been examined.

(v) While examining the petitioner under section 313 Cr.P.C., he was not questioned regarding sanction, therefore this part of the evidence is required to be eschewed, and thus the petitioner would be entitled to be acquitted.

(vi) The officer who lodged FIR himself conducted major part of the investigation and therefore whole investigation was vitiated.

(vii) As the entire investigation was done without following the procedure established under law, the conviction of the petitioner offends Article 21 of the Constitution of India.

Point No. (i)

4. On this point, it was the argument of Sri Hashmath Pasha by referring to the judgment of the Supreme Court in ***Lalita Kumari vs Government of Uttar Pradesh and Others [(2014) 2 SCC 1],*** that PW1 received definite information about a crime being committed when he was in police station, therefore he should have registered FIR before going to spot. The information can be said to be definite because PW1 secured two panchas for taking them to spot. Evidence of PW1 clearly shows that Syed Iqbal and four others were subjected to personal search, that they were also arrested and FIR was

registered thereafter in the police station. In this view, even though the petitioner was arrested subsequently, entire action taken against him was vitiated. Sri P.Prasanna Kumar countered this argument by submitting that the information that PW1 received was not a definite information; the police informant gave the information to PW1 and in that view it was not necessary that PW1 should have registered FIR. He further submitted that before the petitioner was arrested, FIR had been registered and in this view the petitioner cannot complain of non-registration of FIR.

5. The facts held to be proved disclose that PW1 received information from his informant and then he, along with his team went near the office of IBM company at Manyata Tech Park, that he and his team apprehended five persons, subjected them to search, seized certain items, and brought

them to police station. Thereafter FIR as per Ex.P1 was registered.

6. The judgment of the Supreme Court in ***Lalita Kumari*** must be properly understood. The clear ratio laid down is that whenever information discloses commission of a cognizable offence, registration of FIR is mandatory. The sentence in section 154(1) Cr.P.C commences thus, "Every information relating to commission of a cognizable offence ……." That means, by the time information is given to a police officer, offence should have been committed. It is in this context that ***Lalita Kumari*** obligates a police officer to register FIR first before taking up investigation. Registration of FIR is a mandatory requirement to rule out possibility of embellishments, improvements and exaggeration of events in course of time. A similar question arose before me in the case of ***Tasleem N.P. vs State of***

Karnataka [2020 SCC Online KAR 1533], and it was held that,

> *"10. Examined whether the ratio in **Lalita Kumari (supra)** is applicable in a situation where a police officer only receives a credible or secret information about an offence which is about to be committed. I may with great respect observe that the primary duty of police is to prevent an offence from happening; immediately after receiving the information, a police officer has to proceed to spot for averting the crime, and taking such other measures as the situation demands. In **Lalita Kumari (supra)**, the focus is on the duty of Station House Officer once he receives information about commission of offence, that means the information should disclose a crime being already committed. And in such a situation, if the crime is cognizable, the Station House Officer is bound to register FIR without wasting time. But the secret information does not disclose a crime being committed, it only alerts the police about a crime which is about to occur. The police officer who receives such information has to proceed to spot for*

preventing the crime or to take such other measures that the situation demands. Thereafter if he prepares a report, it may be treated as FIR for further course of action. Sometimes, offences do take place in the presence of the police officer. In such a situation, his first duty is to arrest the accused and collect the evidence, and not registration of FIR".

7. The argument of Sri Hashmath Pasha was that definite information was given to PW1. Evidence does not disclose a definite and unambiguous information being given to PW1. What he has stated is that on 22.1.2009 at 3.00 PM, he received information that some persons were running a racket of forged and fabricated passports for the purpose of human trafficking. True, in Ex.P1 it is written that PW1 received definite information, and this sentence in Ex.P1 and also that securing of panchas are the reasons for Sri Hashmath Pasha to argue like that. But this line of argument cannot be considered,

because PW1 did not receive any information that an offence had already been committed before he proceeded to take action based on informant's message. Mere securing of panchas before going to spot does not lead to an inference that information was definite. In a decision of the Constitution Bench of the Supreme Court in the case of ***Mukesh Singh vs State (Narcotic Branch of Delhi) [(2020) 10 SCC 120]*** it is held,

> *"3.9. A cryptic message on telephone etc. which under the NDPS Act is similar to the information provided by a secret informer etc. cannot therefore constitute an FIR. <u>It is only after recoveries are effected and/or arrests made, information regarding commission of a cognizable offence crystallises.</u> After such handing over, the role of a Section 42 officer comes to an end, except he has to make a report of his action to his superior officer within 48 hours under*

Section 57 of the NDPS Act. For all practical purposes, the time when Section 42 officer hands over the person arrested or the goods seized, is the first-time information is received by the "investigating officer" and that is the time of commencement of investigation. Heavy reliance is placed upon the decisions of this Court in the cases of H.N. Rishbud v. State of Delhi AIR 1955 SC 196 and Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1."

(emphasis supplied)

8. Therefore, it is not necessary to register FIR whenever a police officer receives information over the phone or in some other way about an offence which is likely to take place. Rather it is the duty of the police officer to take immediate measures to prevent the crime from happening, or if committed in his presence, to take action according to section 41 of Cr.P.C, FIR may be registered later on.

9. The facts on hand further disclose that only after registration of FIR, action against the petitioner was initiated. Therefore, the argument of Sri Hashmath Pasha, on this point, cannot be accepted.

Point No. (ii)

10. Ex.P5 was the passport that the petitioner obtained by giving false information that his name was Shaik Hussain. Both the courts have held that the petitioner obtained it by giving false information. This finding cannot be interfered with, but Sri Hashmath Pasha raised a legal issue that seizure of Ex.P5 was not in accordance with law. To make it more clear, his argument was that Ex.P5 came to be recovered based on confession statement said to have been given by the petitioner. Mere marking a portion in the confession statement leading to discovery is not sufficient, and unless recovery based on disclosure

is legally proved, inculpatory inferences against an accused cannot be drawn. He submitted that when an independent witness to seizure panchanama for recovery of Ex.P5 turned hostile, evidence of PW1 alone was not sufficient. He also argued that PW1 did not speak the very same words that are marked as Ex.P4, a portion of confession statement.

11. Sri P.Prasanna Kumar argued that seizure of Ex.P5 has been legally proved. Ex.P4 shows disclosure statement of the petitioner who himself led PW1 to his house and produced Ex.P5. Though PW8 turned hostile, he gave a clear admission in the cross-examination that he had deposed falsely to help the accused, and this admission would establish that he was very much present when Ex.P5 was seized.

12. The argument of both the counsel about the evidence of PW8, if considered and discussed,

would go to the realm of appreciation of evidence which is not usually permitted in revisional jurisdiction. Therefore even if evidence of PW8 is ignored, there remains evidence of PW1. The argument of Sri Hashmath Pasha on the evidence given by PW1 regarding seizure Ex.P5 touches the aspect of appreciation of evidence. Therefore, it is enough just to opine here that there is no rule as such that testimony of investigating officer should not be believed without corroboration from independent witness. It is not necessary that an investigating officer should repeat verbatim the portion of confessional statement leading to discovery of a fact which is within the knowledge of the accused. If the testimony of investigating officer is trust worthy, it can be acted upon, and this principle is well settled. Hence, the argument of Sri Hashmath Pasha on this point also fails.

Point No. (iii)

13. On this point, Sri Hashmath Pasha argued that the offences under sections 419, 420, 468 and 471 do not constitute at all as the essential ingredients of these offences are not present in the charge sheet and that the prosecution failed to prove that Ex.P5 was used by the accused. He argued that proof provided by the prosecution is not beyond reasonable doubt. According to him, there is no evidence to show that the petitioner used the passport Ex.P5, that there is no evidence that he forged the passport and that probability in defence evidence is not considered at all.

14. Sri. P. Prasanna Kumar argued that both the trial court as also the appellate court have held that offences against the petitioner have been proved beyond reasonable doubt. The concept of proof beyond reasonable doubt cannot be

stretched too long that providing proof should not become an impossibility. In this regard, he referred to the judgment of the Supreme Court in the case of ***Bhagwan Jagannath Markad and Others vs State of Maharashtra [(2016) 10 SCC 537].*** He further argued that Ex.P5 contains immigration seals of various countries, and these seals indicate that the petitioner visited many countries using Ex.P5. If he did not use it, he alone should have given explanation as to how Ex.P5 came to be stamped by the immigration department of several foreign countries. He argued that section 106 of the Evidence Act is applicable in a situation like this. Therefore burden was more on the petitioner than the prosecution.

15. I find force in the argument of Sri. P. Prasanna Kumar. Ex.P3 is the genuine passport of the petitioner and Ex.P5 is the fake passport. The

petitioner has tried to offer some explanation for coming into existence of Ex.P5 which the courts below have held to be not acceptable. It is not as though the trial court has not discussed the evidence regarding the use of Ex.P5; there is a discussion on it. Defence evidence is also considered. Ex.P5 contains visa stampings and they indicate that the petitioner visited many foreign countries. If the petitioner did not use Ex.P5, he alone should explain as to how it could be stamped by immigration authorities of different countries. Rightly section 106 of the Evidence Act can be employed in a situation like this. Since there is no explanation, inference under Section 114 of Evidence Act can be drawn that the petitioner might have used Ex.P5 for visiting different countries. In the case of ***Prithipal Singh and Others vs State of Punjab and Another [(2012) 1 SCC 10],*** it is held as below :

"Burden of proof under Section 106:

53. In State of W.B. v. Mir Mohammad Omar this Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are

particularly within the knowledge of the accused."

16. The offence under Section 12(1)(b) of the Passports Act gets constituted if a person obtains a passport or travel document by giving false information or suppresses a material information for obtaining a passport or travel document or without lawful authority alters or attempts to alter the entries in a passport or travel document. The evidence available on record which the courts below have held to have been proved and which cannot be disturbed in revisional jurisdiction show false information being provided by the petitioner for obtaining passport as per Ex.P5. In fact what is found is that the petitioner obtained his genuine passport, Ex.P3 after he obtained Ex.P5. In this view, there is evidence for holding that the offence under section 12(1)(b) of the Passports Act was committed.

17. If the case is further examined whether the courts below are justified in convicting and sentencing the petitioner for the offences under sections 419, 420, 468, 471 of IPC, it may be stated that based on the evidence placed by the prosecution, it has been rightly held that all these offences are constituted. Shaikh Hussain is not the real name of the petitioner and that he applied for passport as per Ex.P5 in the name of Shaikh Hussain affixing his photograph. It is a case of personation. Intention to cheat is also forthcoming. Cheating finds its meaning in section 415 and its essential ingredient is causing inducement dishonestly or fraudulently for delivery of any property to any person. Therefore sections 419 and 420 are constituted. The passport as per Ex.P5 was obtained by providing or making false information. Petitioner has used Ex.P5 for visiting many countries and in this view offences under sections 468 and 471 are also constituted.

18. In regard to proving the case beyond reasonable doubt, it may be stated that every doubt pointed out by an accused cannot be said to be reasonable. As the word 'reasonable' indicates, the doubt pointed out must strike the prosecution case at its root. Any amount of explanation for removing the doubt must appear to be insufficient and the doubt must still remain. Therefore the Supreme Court has observed in the case of ***Bhagwan Jagannath Markad and Others (supra)*** as below :

> *" 18. It is accepted principle of criminal jurisprudence that the burden of proof is always on the prosecution and the accused is presumed to be innocent unless proved guilty. The prosecution has to prove its case beyond reasonable doubt and the accused is entitled to the benefit of the reasonable doubt. The reasonable doubt is one which occurs to a prudent and reasonable man. Section 3 of the Evidence Act refers to two*

conditions – (i) when a person feels absolutely certain of a fact – "believe it to exist" and (ii) when he is not absolutely certain and thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. The doubt which the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to "separate the chaff from the grain". The degree of proof need not reach certainty but must carry a high degree of probability."

(emphasis supplied)

19. In the case of ***Suresh Chandra Jana vs State of Bengal and Others [(2017) 16 SCC 466]*** it is held :

"16. It may be mentioned that it is not every doubt but only a reasonable doubt of which benefit can be given to the accused. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The

experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is - whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt, i.e. the doubt which rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism. The administration of justice has to protect the society and it cannot ignore the victim altogether who has died and cannot cry before it. If the benefits of all kinds of doubts raised on behalf of the accused are accepted, it will result in deflecting the course of justice. The cherished principles of golden thread of proof of reasonable doubt which runs through web of our law should not be

stretched morbidly to embrace every hunch, hesitancy and degree of doubt."

(emphasis supplied)

20. Therefore, the argument that the prosecution has failed to prove its case beyond reasonable doubt cannot be accepted.

Point No. (iv)

21. The argument of Sri Hashmath Pasha was that the prosecution failed to prove that it obtained sanction as required under section 15 of the Passports Act for prosecuting the accused. Though the prosecution produced sanction order as per Ex.P21, its mere production does not amount to proof. The competent authority who issued the sanction order should have been examined. Since he was not examined, the petitioner lost an opportunity of questioning him whether or not he had applied his mind before passing sanction order. In this view, entire prosecution is vitiated.

In support of his argument, he placed reliance on the judgment of the Supreme Court in the case of ***Narbada Devi Gupta vs Birendra Kumar Jaiswal and Another [AIR 2004 SC 175].*** Sri P.Prasanna Kumar countered this argument by arguing that the defence did not dispute the sanction order when PW10 was cross-examined; and no question was put to him disputing genuineness of Ex.P21. The validity of sanction because of non-examination of the authority who granted it, was not questioned before the trial court and also the appellate court. Moreover, Ex.P21 was issued by the competent authority and its issuance cannot be doubted at all. He submitted that for the first time, the point regarding sanction could not be raised.

22. I do not think that the argument put forward by Sri Hashmath Pasha can be accepted. It is true that section 15 contemplates obtaining of sanction before

initiating prosecution against a person; it is a question of law. But whether it was issued by the competent authority or whether there was application of mind by the competent authority before passing sanction order, is a question of fact. In this view, once sanction order was produced and marked; and if its validity was not questioned before the trial court and also the appellate court, it cannot be questioned in the revision.

23. Mere marking is not a proof is a general principle of appreciation of evidence. According to Section 62 of the Evidence Act, primary evidence means document itself. If a document is produced, and if its execution is disputed, then the principle "mere marking of a document does not amount to proof" is applicable. The person who executed a document or its attestors must be examined. In the case of ***Narbada Devi (supra)*** the admissibility of three rent receipts arose for consideration. The defendant contended that he was a tenant and in support of his claim, he produced the rent receipts which were disputed

and in this context, it was held that mere production and marking of a document could not be held to be due proof of its contents. To give one more illustration, in a suit for specific performance based on agreement of sale, proof of agreement of sale arises if very execution of the agreement is disputed. If execution is not disputed, its production and marking is sufficient. So far as sanction order is concerned, it is not a document like rent receipt or agreement of sale or lease deed. It is issued by a competent authority as a statutory requirement and it is an order. In this view, sanction order stands on a different footing when compared to other documents as aforementioned. If the very issuance of sanction order is disputed, or if the stand of the accused is that the competent authority has not applied his mind before passing sanction order, then it may be said that the competent authority issuing the sanction is to be examined, else it is not necessary. In this case sanction order as per Ex.P21 was produced by PW10, the investigating officer who took over investigation from

PW1. If the entire cross-examination of PW10 is seen, there is no suggestion that the competent authority did not issue it. Ex.P21 is not disputed at all. It appears that even the genuineness of Ex.P21 was not taken as a ground of argument before the trial court or the appellate court. In this view, a question pertaining to factual aspect cannot be raised for the first time in the revision court. Moreover, with regard to issuance of sanction order, the presumption according to section 114(e) of the Indian Evidence Act can be drawn. In this context, I find it useful to refer to the judgment of the Andhra Pradesh High Court in the case of ***M.Srinivasulu Reddy vs State Inspector of Police, Anti Corruption Bureau [1993 Crl.LJ 558]*** where it is held that,

> *"When the Government accords sanction, Section 114(e) of the Evidence Act raises a presumption that the official acts have been regularly performed. The burden is heavier on the accused to rebut that statutory presumption. Once that is done then it is the duty of the prosecution to produce necessary*

record to establish that after application of mind and consideration thereof to the subject and grant or refusing to grant sanction was made by the appropriate authority."

Therefore, this argument of Hashmath Pasha is thus not acceptable.

Point No. (v)

24. It was the argument of Sri Hashmath Pasha that while examining the petitioner under section 313 Cr.P.C, the evidence given by PW10 with regard to obtaining of sanction order as per Ex.P21 was not put to him for his explanation and therefore this part of the evidence is to be eschewed. If the evidence is thus eschewed, Ex.P21 goes out of picture and thereby the petitioner will become entitled to acquittal for want of sanction. Sri Prasanna Kumar submitted that if for any reason the petitioner was not questioned on evidence given by PW10 with regard

to sanction order as per Ex.P21, the accused cannot be acquitted. He further submitted that omission to put a question to accused under section 313 Cr.P.C does not vitiate the entire trial. He also submitted that this question was not raised in the trial court or the appellate court and for the first time it is being raised in the revision. If that question was so material, even now the petitioner or his counsel can be questioned. In this regard, he has gathered support from two judgments of the Supreme Court namely ***State [Delhi Administration] vs Dharampal [(2001) 10 SCC 372], State of U.P. vs Raghuvir and Another [(2018) 13 SCC 732]***, and a judgment of a Division Bench of this court in the case of ***Anand @ Anand Thorat and Another vs CBI Police [ILR 2018 KAR 487].***

25. This ground is also not available to the petitioner. It may be stated that if the law

obligates the prosecution agency to obtain sanction, it is a statutory requirement. The reason for obtaining sanction is to avoid frivolous prosecution and that is the reason why the authority competent to grant sanction should apply his mind to the evidence collected by the investigator to decide whether sanction can be granted or not. Sanction order is produced before the court to prove that statutory requirement is met with. The sanction order is not incriminating evidence against the accused. Section 313 Cr.P.C contemplates putting such kind of questions to accused in regard to circumstances as appear against him in the evidence. That means evidence staring at the accused should be brought to his notice to enable him to give explanation. Assuming that there is valid sanction and that the competent authority is also examined before the court, it cannot be said that based on such evidence, the accused can be convicted. All that

the competent authority through his order of granting sanction states is that he is convinced about existence of materials for prosecuting the accused, but it is not inculpatory material against the accused.

26. What happens if the accused is not questioned with regard to a particular circumstance at the stage of section 313 Cr.P.C, is exhaustively examined by the Supreme Court. In the case of ***Dharampal (supra)*** it is held,

> *"13. Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material, has occurred that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused*

has as regards the circumstances established against the accused but not put to him".

27. In the case of ***Raghuvir (supra)*** it is held,

"11. Moreover, for relying upon the opinion of the ballistic expert, the High Court observed that no question was put to the accused under Section 313 Cr.P.C about ballistic expert report (Ex. A14). The object of Section 313 Cr.P.C. is to put a circumstance against the accused so that he may meet out the prosecution case and explain the circumstances brought out by the prosecution to implicate him in the commission of the offence. If any circumstance had not been put to the accused in his statement, the same shall be excluded from consideration. Of course, this is subject to a rider whether omission to put the question under Section 313 Cr.P.C. has caused miscarriage of justice or prejudice to the accused. As pointed out earlier, in the case in hand, recovery of gun from the accused Prem Yadav and the ballistic expert's opinion (Ex. A14) is only a

corroborative piece of evidence strengthening the prosecution case as established by the oral testimony of eye witnesses PW-1 and PW-2. Even assuming that the question regarding the ballistic expert's evidence has not been put to the accused under Section 313 Cr.P.C., in the facts and circumstances of the case in hand, it must be held that it has caused no prejudice to the accused. In our considered view, the High Court was not right in brushing aside this formidable circumstance against accused Prem Yadav."

28. The Division Bench of this court in the case of ***Anand @ Anand Thorat (supra)*** has referred to the judgment of the Surpeme Court in the case of Narsing vs State of Haryana [(2015) 1 SCC 496] where it is held as below :

"30.1. Whenever a plea of non-compliance with Section 313 Cr.P.C is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for

deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer".

29. Thus it is clear now that omission to put a question to accused under section 313 Cr.P.C, unless it is demonstrated that it has resulted in miscarriage of justice or the interest of the accused is prejudiced substantially, cannot be considered to be a good ground for upsetting the judgment of conviction. If the omitted question is so material, the appellate court can put the question to the accused or his counsel and seek explanation. This being the position of law, I do not think that Sri Hashmath Pasha has raised a valid ground.

Point No. (vi)

30. On this point Sri Hashmath Pasha argued that PW1 lodged FIR after completing panchanama and he himself undertook investigation. Though the investigation was handed over to CBI at a later stage, major part of the

investigation was completed by PW1 and that the CBI did nothing but filing charge sheet. That means entire investigation was conducted by PW1 who was also a informant, in this view investigation was vitiated. The counter argument of Prasanna Kumar was that there was no bar that the officer who lodged FIR could not undertake investigation. The bar applies when there is personal interest on the part of the investigating officer being the informant or complainant. The accused must demonstrate bias in investigation or otherwise it cannot be said to be bad. He has placed reliance on the judgment of the Supreme Court in the case of ***Mukesh Singh vs State (Narcotic Branch of Delhi), [(2020) 10 SCC 120].***

31. Many a time it so happens, especially in cases where raid is conducted on receipt of a secret or credible information from the police informants, the police officer has to go to spot for averting the offence being committed or to apprehend the persons involved in commission of offence and to seize the objects or things. With the

seizure of materials connected with crime, almost entire investigation comes to an end and what may remain is to obtain report from the laboratory or experts. If after seizure, FIR is registered and the very same police officer sends the seized materials to laboratory for chemical examination or to the opinion of experts, is it possible to say that investigation is vitiated.

32. Nextly, to say that the informant police officer cannot undertake investigation, it is necessary that the personal interest possessed by the investigator or bias in him towards the accused, should be demonstrated. If the investigation is free of bias and prejudice, there is nothing wrong in the same officer continuing the investigation after lodging FIR. To illustrate, supposing a theft takes place in the house of the police officer and he makes a report of the same for registration of FIR and if he undertakes investigation of his own case, then the question of personal interest arises. In that event investigation is vitiated as he cannot investigate his own

case. In ***Mukesh Singh (supra)***, the Supreme Court has made the point very clear thus :

> *"12.2. Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record. Therefore, as rightly observed by this Court in the case of Bhaskar Ramappa Madar (supra), the matter has to be decided on a case to case basis without any universal generalisation".*

33. Sri Hashmath Pasha has not been able to demonstrate as to how the interest of the petitioner

suffered and was prejudiced on account of investigation undertaken by PW1 being the informant. Therefore this ground of argument cannot be accepted.

Point No. (vii)

34. The argument of Sri Hashmath Pasha was that right from the beginning, that is, from the stage of registration of FIR till conclusion of investigation, the investigator did not follow the procedure established under law and thus Article 21 of the Constitution was offended resulting in impairment of personal liberty of the petitioner. His elaborate argument was that the investigation was undertaken without registration of FIR, that the petitioner was subjected to prosecution without valid sanction and that unnecessarily charge sheet was filed for the offence under section 12(1)(b) of the Passports Act without there being proof for using of the fake passport as per Ex.P5. On the other hand, Sri Prasanna Kumar argued that Article 21 of the Constitution cannot be applied here for there is no infringement of

personal liberty of the petitioner as the entire investigation was undertaken in accordance with the procedure.

35. There is no need to give elaborate reasons on this point in view of discussion on points No. (i) to (vi). Article 21 applies when personal liberty of a person is deprived without following the procedure. There is a great lot of difference in no procedure being followed and infraction in the procedure. While following the procedure, if a mistake occurs or if there is infraction, it cannot be said that personal liberty is affected unless the person complaining of violation of Article 21 demonstrates as to how his liberty is affected substantially or his interest is prejudiced affecting liberty. Moreover investigation involves various stages; though investigation procedure is prescribed, degree of comprehension of facts, circumstances and situations during investigation varies from person to person involved in investigation; so many empirical aspects will emerge during investigation, and

therefore investigation cannot be fit into an Euclidean formula. It is quite natural that an accused, ably assisted by a seasoned lawyer, may try to find fault in the procedure followed, but the courts must be very circumspect when such issues are raised. In this case procedure has been followed and even there is no infraction in it. Hence, this point of argument also fails.

36. The alternative argument of Sri Hashmath Pasha was that in case this court would come to conclusion that the petition is not to be allowed, the petitioner may be given the benefit under the provisions of Probation of Offenders Act taking into consideration the age of the petitioner. The trial court has examined why Probation of Offenders Act cannot be applied. I find that reason tenable. Therefore this benefit cannot be given. In the result, this petition fails and it is dismissed.

Sd/-
JUDGE

ckl