REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1170 OF 2021

The State of Jammu & Kashmir and others …Appellants

Versus

Dr. Saleem Ur Rehman …Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 07.05.2018 passed by the High Court of Jammu & Kashmir at Srinagar in O.W.P. No. 1961/2015, by which the High Court in exercise of its extra-ordinary jurisdiction has quashed the criminal proceedings being FIR No. 32/2012 and has declared Rule 3.16 of the Vigilance Manual, 2008 dealing with the Preliminary Enquiry (PE) being direct conflict with the Constitution Bench Judgment of this Court in the case of *Lalita Kumari v. Government of Uttar Pradesh, reported in*

AIR 2014 SC 187 = 2014 (2) SCC 1, and consequently has declared the same *ultra vires*, the State has preferred the present appeal.

2. That an FIR being FIR No. 32/2012, Police Station, VOK was registered against the respondent herein under Section 5(1)(d) r/w 5(2) of the J&K Prevention of Corruption Act, 2006 (hereinafter referred to as the 'J&K PC Act, 2006') and Section 120B of the Ranbir Penal Code (hereinafter referred to as the 'RPC') alleging inter alia that during 2010-11, the Director Health Services, Kashmir along with the other accused persons misappropriated the huge amount of government money by way of effecting purchases of sub-standard medical kits under National Rural Health Mission (NRHM) at highly exorbitant rates and in violation of the conditions of supply orders placed by the department. It was alleged against the respondent as under:

> i) The respondent herein purchased various drug kits under NRHM Scheme from 4 CPSEs through limited tender and all the 4 CPSEs surprisingly quoted same rates. It was decided to place supply orders to the tune of 25% from each of the CPSEs.
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> ii) The quoted rates by the 4 CPSEs were far in excess when compared to rates on which purchases had been affected during previous year. The Respondent herein wilfully ignored the rates at which the same kind of drug kits were purchased by the department from private companies as per rate contract dated 28-03-2009 valid for one year approved by Rate Contract Committee No.1 of Health & Medical Education whereby the rates of drug kits were far less than as quoted by the 4 CPSEs, the comparison is as under: -

S.No.	Name of drug kit	Approved rates valid for year 2009-10 as per rate contract of Purchase Committee No.1	Rates quoted by the four CPSEs in year 2011	Differences of Rates
1.	Drug Kit-A for sub centre	Rs.3400/- per kit	Rs. 6,559- per kit	Rs. 3,159 per kit
2.	Drug Kit-B for sub centre	Rs.1855/- per kit	Rs.4,368/- per kit	Rs.2,513/- per kit
3.	Drug Kit for ASHA	Rs.931/- per kit	Rs.1878/- per kit	Rs.947/- per kit

It is pertinent to point out that the Respondent herein had full knowledge of approved rates of drug kits valid for year 2009-10, as he was then posted as Assistant Director, Family Welfare & Reproductive Child Health Care and was designated as member of Sub-Committee of Purchase Committee No.1 which approved the rates for the year 2009-10.

iii) No market survey was conducted to ascertain the genuineness of rates quoted by the firms nor any negotiations were done to ensure that Government exchequer was not put to any loss etc during the year 2010-11.

iv) No samples of drug kits were obtained to verify the quality control check over packing & Packaging of medicines and kits.

v) The Respondent herein purchased NRHM kits not from the original manufacture but from suppliers at exorbitant rates.

vi) The purchased kits and the medicines were not of required standard. Further maximum drugs/items constituting the three types of kits were actually been manufactured by private agencies and not by the CPSEs themselves or by their subsidiaries as a result of which undue benefit has accrued to the private agencies under the garb of PPP, which was never the intent of it.

vii) As per the guidelines laid down by Ministry of Health & Family Welfare Govt. of India and Ministry of Chemicals & Fertilizers Govt. of India, Purchase Preference Policy (PPP) for CPSEs was valid only in

respect of 102 drugs/medicines, whereas various components of the three mentioned drug kits were not figuring in 102 listed drugs under PPP.

viii) As per the guidelines of GOI, the rates of drugs constituting the drug kits should be as per rates fixed by National Pharma Pricing Authority with discount of up to 35%. It is pertinent to point out that the purchasing department did not seek any rate list of NPPA or rate analysis from the supplier CPSEs to ascertain whether the rates quoted are actually as certified by NPPA and further to see whether a discount up to 35% has been given on such rates.

ix) All the 4 CPSEs raised objection to the condition laid down in Clause No.02 of the Supply Orders wherein it was stated that all the drugs and items should be manufactured by the firm itself and no drug/item will be accepted manufactured by any other concern. The Respondent herein issued corrigendum thereby modifying the earlier order which conveyed that the items can be purchased from other sources also and thus the already purchased substandard items were passed by the New Board, thereby causing a loss of Rs. 1,04,99,429/- to the State exchequer.

3. The respondent-accused approached the High Court by way of O.W.P. No. 1961/2015 invoking its extra-ordinary jurisdiction to quash the aforesaid criminal proceedings, raising the following questions:

a) Whether Section 3 of the Prevention of Corruption Act is a mandatory provision and its non-adherence vitiates the investigation?

b) Whether prior sanction of a Magistrate under Section 155 Jammu & Kashmir Cr.P.C. is mandatory for investigating cognizable offences along with non-cognizable?

c) Whether under the pretext of Preliminary Verification the investigating agency can verify the veracity of a complaint before registration of FIR?

d) Whether an offence like that of Criminal Conspiracy can be committed by a juridical person like a company?

Heavy reliance was placed on the decision of this Court in the case of *State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335* as well as the decision of this Court in the case of *Lalita Kumari (supra)*.

4. By the impugned judgment and order, the High Court has quashed the entire criminal proceedings initiated against the respondent for the aforesaid offences by holding that:

(1) there is a non-compliance of the mandatory provision under Section 3 of the J&K PC Act, 2006 inasmuch as no special and separate reasoned order was passed by the authorising officer while conferring authority on a non-designated officer as per second proviso to Section 3;

(2) prior sanction of the Magistrate for the offence under Section 120B as required under Section 155 of the J&K Cr.P.C. was not obtained;

(3) there was a delay in conducting the preliminary verification and by holding the preliminary verification the authority entered into the domain of investigation which is not permissible as held by this Court in the case of *Lalita Kumari (supra)*; and

(4) the allegations made in the FIR even if accepted to be true in its entirety are legally not tenable.

4.1 Holding above, the High Court has quashed the preliminary verification No. 34/2011, FIR No. 32/2012, Police Station, Vigilance Organisation Kashmir and the resultant investigation of the FIR. The High Court has also quashed the Entrustment Order dated 16.11.2012 passed by the Senior Superintendent of Police, VOK, Srinagar authorising the investigating officer to investigate the case/offences. The High Court has also declared Rule 3.16 of the Vigilance Manual, 2008 dealing with Preliminary Enquiry (PE) as *ultra vires* on the ground that the same is in direct conflict with the decision of this Court in the case of *Lalita Kumari (supra)*.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the State of Jammu & Kashmir has preferred the present appeal.

6. Shri R. Venkataramani, Learned Senior Advocate has appeared on behalf of the appellants and Shri R. Basant, Learned Senior Advocate has appeared on behalf of the respondent.

6.1 Shri R. Venkataramani, Learned Senior Advocate appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing the entire criminal proceedings including the FIR and even the Entrustment Order dated 16.11.2012.

6.2 It is submitted that the High Court formulated the four questions, which are reproduced hereinabove. It is submitted that so far as question no. 1, whether Section 3 of the Prevention of Corruption Act is a mandatory provision and its non-adherence vitiates the investigation is concerned, it is submitted that the conclusions drawn by the High Court are in disregard of the relevant provisions of the J&K PC Act, 2006 and the J&K Cr.P.C.

6.3 It is submitted that the reliance placed on the decision of this Court in the case of *Bhajan Lal (supra)* is absolutely misconceived. It is submitted that in *Bhajan Lal's case*, Sections 3 & 5A of the Prevention of Corruption Act, 1947 (hereinafter referred to as the '1947 Act'), prior to the amendment of the Act in 1988, fell for consideration. It is submitted that Section 3 of the J&K PC Act, 2006 under which the prosecution in question was initiated does not correspond either to Section 3 or Section 5A of the 1947 Act. It is submitted that J&K PC Act, 2006 does not contain a provision corresponding to Section 5A of the 1947 Act.

6.4 It is submitted that the High Court has not properly appreciated the fact that the reasoning adopted in *Bhajan Lal's case* on requirement of giving reasons for an authorisation under Section 5A of the 1947 Act, had arisen in the context of the special provisions of Section 5A. It is submitted that the Court has treated the requirement of giving reasons

by a Magistrate in the context of giving permission to a non-designated officer to conduct investigation, and the administrative function of delegation of function of investigation by a superior police officer to a subordinate police officer, as comparable. It is submitted that in view of the fact that Section 3 of the J&K PC Act, 2006 with its own special scheme of delegation enacted in the second proviso to Section 3, reliance on *Bhajan Lal's case* which was with reference to Section 5A of the 1947 Act is absolutely misconceived.

6.5 It is further submitted that as such the decision of this Court in the case of *Bhajan Lal (supra)* has been subsequently explained by this Court in the case of *State of M.P. v. Ram Singh (2000) 5 SCC 88.* It is submitted that in the case of *Ram Singh (supra)*, the order of the Superintendent of Police authorising the Inspector to investigate the offence under the Prevention of Corruption Act, 1988 indicating the name of the accused, number of the FIR, the nature of the offence and the power of the Superintendent of Police permitting him to authorise a junior officer to investigate, the same is held to be a valid authorisation. It is submitted that in the aforesaid decision, this Court has distinguished the decision of this Court in the case of *Bhajan Lal (supra)*. It is submitted that therefore the subsequent decision of this Court in the

case of *Ram Singh (supra)* will squarely apply to the facts of the case in hand.

6.6 It is submitted that authorisation in the present case by the Senior Superintendent of Police, Vigilance Organisation is clearly covered by and falls within the scope of the second proviso to Section 3. It is submitted that the High Court has not adverted to the distinct features of the second proviso to Section 3. It is submitted that the second proviso does not demand the requirement of giving reasons for conferring authority on a non-designated officer to conduct investigation.

6.7 It is further submitted that unlike discharge of functions, judicial or quasi-judicial in nature, an administrative authority is not obliged to give reasons in the discharge of all its functions. It is submitted that the second proviso to Section 3 has been enacted for administrative convenience and for expeditious investigation. It is submitted that in the very nature of such functions, it can be presumed that the reasons need not be given for authorising an officer of vigilance organisation to conduct investigation. In support of above, reliance is placed on the decisions of this Court in the cases of *S.N. Mukherjee* v. *Union of India, (1990) 4 SCC 594; Union of India v. E.G. Nambudiri, (1991) 3 SCC 38 and Oryx Fisheries Pvt. Ltd. v. Union of India, (2010) 13 SCC 427*.

6.8 It is submitted that therefore the requirement of giving reasons for the authorisation referred to in the second proviso to Section 3 is misconceived. Firstly, the proviso itself does not contemplate the giving of reasons for the authorisation of power to investigate and secondly, the power to authorise being purely administrative based on expediency and public policy, no reasons need to be given. It is submitted that the matter of delegation of the power to investigate upon a non-designated officer, does not involve rights of any party. There is no *lis* in the matter. The actions taken under the second proviso are not subject to any appeal, or revision. It is submitted that only where rights of parties are involved; the nature of the function in question is quasi-judicial, or is in the hierarchy of appellate or revisional power, reasons may be required to be given and not otherwise. Reliance is placed on the decisions of this Court in the cases of *Special Land Acquisition Officer, Bombay v. Godrej & Boyce, (1988) 1 SCC 50 and Indian National Congress v. Institute of Social Welfare, (2002) 5 SCC 685*.

6.9 Now so far as question no.2, whether prior sanction of a Magistrate under Section 155 of the J&K Criminal Procedure Code is mandatory for investigating cognizable offences along with non-cognizable offences is concerned, it is submitted that the High Court has compared Section 155 of the J&K Cr.P.C. and Section 155 of the Cr.P.C.,

1973. It is submitted that a particular reference has been made to sub-section (4) of Section 155 of the Cr.P.C., 1973. It is submitted that the High Court by holding that the J&K Cr.P.C. does not have in Section 155 a provision comparable to sub-section (4) of Section 155 of the Cr.P.C., 1973, has reached the conclusion that in the absence of a valid sanction by the Magistrate as provided under Section 155 of the J&K Cr.P.C., the investigation is illegal.

6.10. It is submitted that the aforesaid issue is squarely covered in favour of the State in view of the decision of this Court in the case of *Pravin Chandra Mody v. State of Andhra Pradesh, 1965 (1) SCR 269 (para 6)*.

6.11 Learned Senior Advocate appearing on behalf of the State has also taken us to the legislative history behind Section 155(4) and the 37th Report of the Law Commission regarding investigation of a cognizable offence in the company of a non-cognizable offence, particularly the requirement of obtaining an authorisation from the Magistrate. It is submitted that pursuant to the 41st Report of the Law Commission, sub-section (4) was inserted in Section 155 Cr.P.C. It is submitted that as observed in the 37th Report, the law has already been laid down by this Court in the case of *Pravin Chandra Mody (supra)* and what was required to be done was only to enact a provision on the lines of *Pravin*

Chandra Mody (supra). It is submitted that decision of this Court in the case of *Pravin Chandra Mody (supra)* has been considered subsequently by this Court in the cases of *State of Punjab v. Brij Lal Palta (1969) 1 SCR 853; Satya Narain Musadi v. State of Bihar, (1980) 3 SCC 152; Madan Lal v. State of Punjab, (1967) 3 SCR 439; and Bhanwar Singh v. State of Rajasthan, (1968) 2 SCR 528*.

6.12 It is submitted that the issue as to whether an investigation in respect of offences under the Prevention of Corruption Act, when coupled with the offence of conspiracy should always be subject to a prior sanction by the Magistrate, has to be seen from the perspective that merely because the offence of conspiracy may be involved, investigation into the substantive offences which are cognizable should await a sanction from the Magistrate, as that would lead to considerable delay and uncertainty in the threshold investigation steps. It does not matter that the offence of conspiracy under Section 120B is also treated as a substantive offence.

6.13 It is submitted that if the view taken by the High Court is correct law, it will be in the case of investigation under every special statute where the offences are cognizable, a link with 120B of conspiracy offence will derail all such investigations and lead to delay.

6.14 Now so far as question no.3, namely, whether under the pretext of preliminary verification, the investigating agency can verify the veracity of a complaint before registration of FIR and the observations and the findings recorded by the High Court that Rule 3.16 of J&K Vigilance Manual, 2008 is in direct conflict with the judgment of this Court in the case of *Lalita Kumari (supra)* is concerned, it is submitted that the view taken by the High Court is absolutely misconceived. It is submitted that *Lalita Kumari (supra)* takes note of special procedure to be followed in the cases of special statutes. Sections 4 & 5 of the Code of Criminal Procedure, 1973 have also been noticed by the High Court. Having regard to the wide spectrum of statutory offences to be investigated under ever increasing special statutes, it would be unwise to thwart the investigation and the prosecution on the touchstone of irregularities, if any, in the conduct of preliminary investigations and registrations of FIR. It is submitted that Rule 3.16 of the Vigilance Manual, 2008 is a well-drawn scheme fitting in squarely with the provisions of Sections 4 & 5 of the Cr.P.C., 1973.

6.15 It is further submitted that in the very nature of the investigation of such offences as the instant case which may involve not only collection of documentary evidence but other preliminary statements to be obtained for the purpose of investigation, in order to rule out the absence

of commission of any offence, time will necessarily be consumed. It may also become inevitable that materials so collected become part of the investigation as well, which may be of considerable guidance in the course of investigation. It is submitted that *Lalita Kumari (supra)* does not confer any right on the accused to seek a declaration of illegality in cases of irregularity in the conduct of preliminary enquiry. It is submitted that no accused who is otherwise prima facie guilty of commission of offence can walk free from prosecution and punishment if they are otherwise due. It is submitted that ultimately the test to be applied will be, whether there is a failure or miscarriage of justice. It is submitted that instead of applying the above-said principles, the High Court has unduly intervened and has erred in quashing the prosecution.

6.16 Now so far as the conclusions drawn under question no.4 are contrary to the record of the case. It is submitted that besides the Directors of Private Limited Company, respondent no.1 and other officials have been arrayed as the accused. It was not necessary that any person in the State NRHM machinery should have been suspected and treated as co-conspirators. It is submitted that according to the investigation, the conduct of respondent no.1 and other officials accused in the course of the Tender Process for purchase of the material in question, alone became suspect events. It is submitted that therefore

the High Court has committed a grave error in quashing the prosecution, holding question no.4 against the State.

6.17 Making the above submissions and relying upon the aforesaid decision, it is prayed to allow the present appeal.

7. The present appeal is vehemently opposed by Shri R. Basant, learned Senior Advocate appearing on behalf of the respondent. It is submitted that in the facts and circumstances of the case and on true interpretation of Section 3 of J&K PC Act, 2006 and in the absence of prior sanction of the Magistrate under Section 155 of the J&K Cr.P.C., the High Court has rightly quashed the criminal proceedings initiated against the respondent.

7.1 It is submitted that the High Court has rightly observed that under the pretext of the Preliminary Enquiry (PE), the investigating agency cannot go in detail and verify the veracity of the complaint before registration of an FIR. It is submitted that therefore the High Court has rightly declared Rule 3.16 of the Vigilance Manual, 2008 dealing with Preliminary Enquiry as *ultra vires.*

7.2 It is submitted that the investigation under the J&K PC Act, 2006 is controlled by Section 3 of the Act and as such carries a *non-obstante clause* which precludes the procedure under Cr.P.C. It is submitted that amended section makes all the offences under the PC Act cognizable. It

is submitted that Section 3 contains two provisos, which in fact create an embargo on the mode of investigation. As per the first proviso, inter alia, no police officer below the rank of DSP shall investigate any offence under the Act without the order of the Magistrate. The second proviso creates an exception to the condition provided in the first proviso and as per the second proviso, an officer of the Vigilance Organisation of and above the rank of Sub-Inspector of Police may investigate such offences but if specially authorised in writing by an officer of the Vigilance Organisation not below the rank of Assistant Superintendent of Police. It is submitted that in the instant case the investigation of the FIR under challenge was entrusted to Inspector Nisar Hussain. This officer being a non-designated officer for the purpose of Section 3, therefore, must be specially authorised by an officer of the Vigilance Organisation not below the rank of ASP in terms of the second proviso by way of a separate and reasoned order. It is submitted that the authority conferred upon such officer of the Vigilance Organisation being a statutory one, can neither be arbitrary nor unreasonable. Therefore, the authorising officer while conferring authority upon a non-designated investigating officer which in the instant case is an inspector has to grant the same by a special and a separate reasoned order. Section 3 is a mandatory provision and the statutory obligations created under it must be adhered to and any deviation from the same would render the entire investigation void.

7.3 It is submitted that in the present case, there is no reasoned authorisation order for conferring special power of investigation upon the inspector. It is submitted that such order cannot be a mechanical one and thus has to reveal the reasons for deviating to an exceptional course of investigation. It is submitted that absence of the reasons from the order, if any, would also render the order as nullity. It is submitted that therefore as a corollary, the investigation is also rendered void and therefore the investigation in the instant case being unauthorised has been rightly quashed by the High Court. In support of the above, heavy reliance is placed on the decision of this Court in the case of *Bhajan Lal (supra) (paras 102 and 114 to 129).*

7.4 It is further submitted, relying upon *Taylor v. Taylor, (1875) 1 Ch.D, 426, 431,* where the law prescribes that a certain act must be performed in a certain way, such act has to be performed in the specified manner and not in any other manner. Reliance is also placed on the decisions of the Indian Courts, (1) *Nazir Ahmad v. The King Emperor, AIR 1936 PC 253; and (2) State of Uttar Pradesh v. Singhara Singh, (1964) 4 SCR 485*.

7.5 It is submitted that Section 3 as a whole is required to be considered, considering the nature of the offence to be investigated under the PC Act. It is submitted that *non-obstante clause* with which

Section 3 opens, the superior officer prescribed in the hierarchy who alone can investigate the offences under the PC Act as also the language of Section 3 and its provisos. It is submitted that the legislature appears to have consciously noted that the allegations can be raised against persons in very high positions, like the respondent herein who was a Director of Health Services in the State and hence only Deputy Superintendent of Police can conduct an investigation unless specifically authorised by the Magistrate or competent police officials.

7.6 It is further submitted that it is true and cannot be disputed that a senior Superintendent of Police can authorise an inspector of police under Section 3, but such authorisation must be valid, legal, proper and reasoned. It is submitted that in the present case in the absence of any reasons while granting authorisation, there has been no proper authorisation.

7.7 It is submitted that the second proviso to Section 3 insists on “special authorisation in writing” and therefore such authorisation must give reasons and mere general and non-specific authorisation without giving reasons will not be due compliance with the mandate of second proviso to Section 3.

7.8 It is submitted by Shri R. Basant, learned Senior Advocate appearing on behalf of the respondent that, as such, the aforesaid

issue/question is squarely covered by the decision of this Court in the case of *Bhajan Lal (supra)*, wherein this Court interpreted second proviso to Section 5A of the 1947 Act.

7.9 Now so far as declaring Rule 3.16 of the Vigilance Manual, 2008 dealing with the Preliminary Enquiry (PE) as *ultra vires*, it is submitted that in the present case, the investigating agency before the registration of an FIR had registered a Preliminary Verification (PE), during which the investigating agency examined the allegations in the FIR on merits and examined (1) various communications of NRHM; (2) communications of Directorate of Health Services, Srinagar as well as Jammu; (3) guidelines issued by Ministry of Health and Family Welfare, Government of India; (4) rates on which Drugs Kits were purchased during the year 2009-2010; (5) the corrigendum issued by Director, Health Services, Kashmir; and (6) the supplies were allegedly made by private agencies from Indore and not by CPSEs.

7.10 It is submitted that in the FIR itself in para 8, it is stated that on the basis of in-depth verification, the allegations against the respondent are prima facie established. It is submitted that the scope of preliminary verification is not to examine the veracity of the allegations contained in the complaint, but only to see whether a cognizable offence is made out or not. It is submitted that the provisions of Cr.P.C. cannot be amplified

to such an extent which can enable the investigating agency to carry out an in-depth analysis of a complaint while examining documents and formulating opinions.

7.11 It is submitted that there is no provision under the entire Cr.P.C. granting authority upon the investigating agency to investigate an offence prior to the registration of an FIR. Investigation commences with the registration of the FIR and not otherwise under Preliminary Verification. It is submitted that in the case of *Lalita Kumari (supra)*, this Court has held that Preliminary Verification cannot be used to verify the veracity of a complaint and that a Preliminary Verification cannot exceed more than 7 days. This duration of 7 days would in any case take a prospective effect because it does not interpret a provision of law but lays down law. Therefore, registering the FIR on the basis of the information gathered during the illegal investigation launched under the pretext of Preliminary Verification has to be quashed. It is submitted therefore that the impugned FIR being an outcome of illegality is liable to be quashed and the same has been rightly quashed by the High Court.

7.12 It is further submitted that in the instant case the investigating agency has verified the veracity of the information at great length for over a year, as is evident from the contents of the FIR. It is submitted that the veracity of a complaint or information can only be verified during

investigation, i.e., after the registration of the FIR. It is submitted that the procedure enshrined under Section 154 Cr.P.C. is a mandatory one and the investigating agency is under an obligation to register an FIR on receipt of information revealing cognizable offence. An exception to this general principle of criminal law is recognised by this Court in the case of *Lalita Kumari (supra)*, whereby a preliminary verification is permissible prior to the registration of FIR, with respect to cases related to corruption, matrimonial disputes, economic offences etc. However, the scope of the preliminary verification cannot be enlarged to an extent whereby the veracity of a complaint or information can be verified. It is submitted that the procedural safeguard contained in Section 154 is a mandatory one and any violation thereof is not a mere irregularity but an illegality which renders the registration of the subsequent FIR illegal.

7.13 It is submitted that in the case of *Priyanka Srivastava v. State of Uttar Pradesh, (2015) 6 SCC 287*, FIR was registered on an application filed under Section 156(3) Cr.P.C. The learned Magistrate directed registration of the FIR. However, this Court has held the requirements of Section 154 to be mandatory and in absence of which an application under Section 156(3) would not lie. It is submitted that non-adherence of Section 154 rendered the application under Section 156(3) and the order passed by the learned Magistrate invalid. It is submitted that the FIR

which was registered pursuant to the order of the learned Magistrate under Section 156(3) was also quashed for non-adherence to Section 154. It is submitted that therefore adherence to a mandatory procedure under Section 154 cannot be said to be a mere irregularity but an illegality which renders all the subsequent actions illegal. It is submitted that in the present case, the investigation has been carried out without registration of the FIR under the guise of Preliminary Verification and giving a go-bye to the mandatory procedure required to be followed under Section 154 Cr.P.C.

7.14 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeal.

8. We have heard the learned senior counsel for the respective parties at length.

At the outset, it is required to be noted that by the impugned judgment and order and in exercise of its extra-ordinary jurisdiction, the High Court has quashed the entire criminal proceedings and the FIR against the respondent for the offences punishable under Sections 5(1) (d) r/w 5(2) of the J&K PC Act, 2006 and Section 120B of the RPC. The High Court has also declared Rule 3.16 of the Vigilance Manual, 2008 dealing with the Preliminary Enquiry (PE) as *ultra vires*. While quashing the criminal proceedings, the High Court has also quashed the

Entrustment Order dated 16.11.2012 passed by the Senior Superintendent of Police, VOK, Srinagar authorising the Inspector to investigate the offences, which authorisation was in exercise of powers under the second proviso to Section 3. The High Court framed the following questions:

a) Whether Section 3 of the Prevention of Corruption Act is a mandatory provision and its non-adherence vitiates the investigation?

b) Whether prior sanction of a Magistrate under Section 155 Jammu & Kashmir Cr.P.C. is mandatory for investigating cognizable offences along with non-cognizable?

c) Whether under the pretext of Preliminary Verification the investigating agency can verify the veracity of a complaint before registration of FIR?

d) Whether an offence like that of Criminal Conspiracy can be committed by a juridical person like a company?

8.1 Relying upon the decision of this Court in the case of *Bhajan Lal (supra)*, the High Court has observed and held that the authorisation by the Senior Superintendent of Police, VOK, Srinagar authorising the inspector Nisar Hussain to investigate the FIR for the offences under Sections 5(1)(d) r/w 5(2) of the J&K PC Act, 2006, which as such was in exercise of powers under the second proviso to Section 3 is void and illegal as no reasons are assigned/given and the same is a non-

reasoned authorisation. It is required to be noted that in the case of *Bhajan Lal (supra)*, this Court had an occasion to consider Section 5A of the 1947 Act and in the present case Section 3 of J&K PC Act, 2006 is required to be considered. Section 5A which fell for consideration before this Court in the case of *Bhajan Lal (supra)* reads as under:

> 5-A. *Investigation into cases under this Act.* — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), no police officer below the rank, —
> (*a*) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
> (*b*) in the presidency towns of Calcutta and Madras, of an Assistant Commissioner of Police;
> (*c*) in the presidency town of Bombay, of a Superintendent of Police; and
> (*d*) elsewhere, of a Deputy Superintendent of Police,
>
> shall investigate any offence punishable under Section 161, Section 165 or Section 165-A of the Penal Code, 1860 or under Section 5 of this Act without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:
>
> Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:
> Provided further that an offence referred to in clause (*e*) of sub-section (1) of Section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

8.2 The authority under which the investigating officer was authorised to investigate the offences under Section 5A of the Act which fell for consideration before this Court reads as follows:

> "Haryana Government,
> Home Department,
> ORDER
> No. 4816-3H-75/22965 July 26, 1975

> Conferred by the first proviso to sub-section (1) of Section 5-A of the Prevention of Corruption Act, 1947, the Governor of Haryana hereby authorises all the Inspectors of Police under the administrative control of the Inspector General of Police, Haryana to investigate offences under Section 5 of the said Act.
>
> S.D. Bhandari
> Secretary to Government, Haryana
> Home Department"

8.3 Section 3 of J&K PC Act, 2006, which is relevant for our purpose, reads as follows:

> **"3. Offences to be cognizable and non-bailable –** Notwithstanding anything to the contrary in the Code of Criminal Procedure all offences punishable under this Act shall be cognizable and non-bailable:
>
> Provided that no Police Officer below the rank of the Deputy Superintendent of Police shall investigate any such offence without the order of a Magistrate of the First Class or make any arrest therefor without a warrant:
>
> Provided further that if an officer of the Vigilance Organization of and above the rank of a Sub-Inspector of Police is specially authorised in writing by an officer of the Vigilance Organization not below the rank of an Assistant Superintendent of Police to investigate such offence, such officer may investigate the offence so specified in the order of authorization. But such officer shall not be competent to arrest any person during such investigation unless a Police Officer not below the rank of a Deputy Superintendent of Police authorizes such arrest under Section 56 of the Code of Criminal Procedure, Samvat 1989."

8.4 The authorization in the present case authorising the inspector Nisar Hussain to investigate the FIR for the offences under Sections 5(1)(d) r/w 5(2) of the J&K PC Act, 2006 and 120B of the RPC, which as such was in exercise of powers under the second proviso to Section 3 reads as follows:

> "Investigation of Case FIR No. 32/2012 u/s 5(1)(d) r/w 5(2) J&K PC Act Svt. 2006 and Section 120-B RPC P/S Vigilance Organization, Srinagar is hereby entrusted to Insp. Nisar Hussain No. 4136/NGO. He is authorized

> u/s 3 PC Act, Svt. 2006 r/w Section 56 of Cr.P.C. to arrest the accused person(s) whenever and wherever necessary.
>
> He will conduct investigation of the case under the supervision of Superintendent of Police (BKB)."

Therefore, what was considered by this Court in the case of *Bhajan Lal (supra)* was Section 5A of the 1947 Act and the authorization referred to hereinabove. The wordings used in Section 3 of the J&K PC Act, 2006 are altogether distinct and different and that of Section 5A of the Prevention of Corruption Act, 1988 which fell for consideration before this Court in the case of *Bhajan Lal (supra)*. The observations and the decision of this Court in the case of *Bhajan Lal (supra)* has been considered and explained by this Court in the case of *Ram Singh (supra)* in paragraphs 13 to 15 as under:

> 13. The investigation conducted and the consequent proceedings are stated to have been quashed on similar grounds in *Bhajan Lal case* [1992 Supp (1) SCC 335. The facts of that case were one Dharam Pal presented a complaint against Ch. Bhajan Lal, the former Chief Minister of Haryana making certain serious allegations against him which prima facie showed commission of offence punishable under the Act. The complaint was presented in the Chief Minister's Secretariat on 12-1-1987 when the said Shri Bhajan Lal had ceased to be the Chief Minister. An endorsement was made by the Officer on Special Duty in the Chief Minister's Secretariat to the effect: "CM has seen. For appropriate action" and was marked to the Director General of Police who in turn made endorsement on the same day which read: "Please look into this; take necessary action and report" and marked it to the Superintendent of Police, Hissar. The complaint along with the above endorsement of the OSD and the DGP was put up before the SP on 21-11-1987 on which date the SP made his endorsement reading "Please register a case and investigate". The Station House Officer of the police station registered a case on the basis of the allegations in the complaint under Sections 161 and 165 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947. After forwarding the copy of the first information report to the Magistrate and other officers concerned, the SHO took up the investigation and proceeded to the spot accompanied by his staff. At this stage Shri Bhajan

Lal filed Writ Petition No. 9172 of 1987 under Articles 226 and 227 of the Constitution of India seeking quashing of the first information report and issuance of directions restraining the police from further proceeding with the investigation. The High Court held that allegations made in the complaint do not constitute a cognizable offence for commencing a lawful investigation and granted relief as prayed for by the petitioner therein. Aggrieved by the aforesaid judgment the State of Haryana preferred an appeal in this Court which was disposed of as under:

> "We set aside the judgment of the High Court quashing the first information report as not being legally and factually sustainable in law for the reasons aforementioned; but, however, we quash the commencement as well as the entire investigation, if any, so far done for the reasons given by us in the instant judgment on the ground that the third appellant (SHO) is not clothed with valid legal authority to take up the investigation and proceed with the same within the meaning of Section 5-A(1) of the Prevention of Corruption Act, as indicated in this judgment. Further we set aside the order of the High Court awarding costs with a direction that the said costs are payable to the first respondent (Ch. Bhajan Lal) by the second respondent (Dharam Pal).

In the result, the appeal is disposed of accordingly but at the same time giving liberty to the State Government to direct an investigation afresh, if it so desires, through a competent police officer empowered with the valid legal authority in strict compliance with Section 5-A(1) of the Act as indicated *supra*. No orders as to costs."

In the facts and circumstances of that case this Court posed a question to itself in the following terms:

"Now what remains for consideration is whether there is any valid order of the SP permitting the third appellant to investigate the offence falling under clause (*e*) of sub-section (1) of Section 5. As we have already mentioned in the earlier part of this judgment, the SP (the second appellant) has given the one-word direction on 21-11-1987 'investigate'. The question is whether the one-word direction 'investigate' would amount to an 'order' within the meaning of second proviso of Section 5-A (1)."

The Court found on facts that as there was absolutely no reason given by the SP in directing the SHO to investigate, the order of the SP was directly in violation of the dictum of law. The SHO was, therefore, found not clothed with the requisite legal authority within the meaning of the second proviso to Section 5-A (1) of the 1947 Act to investigate the offences under clause (*e*) of Section 5(1) of the Act. This Court held that (*1*) as the salutary legal requirement of disclosing reason for according the permission is not complied with, (*2*) as the prosecution is not satisfactorily explaining the circumstances which impelled the SP to pass the order directing the SHO to investigate the case, (*3*) as the said direction manifestly seems to have been granted mechanically and in a very casual

manner, regardless of the principles of law enunciated by this Court, and (*4*) as the SHO had got neither any order from the Magistrate to investigate the offences under Sections 161 and 165 IPC nor any order from the SP for investigation of the offences under Section 5(1)(*e*) of the Prevention of Corruption Act in the manner known to law, the order of direction reading only "investigate" suffered from legal infirmity. The Court found that despite quashing the direction of the SP and the investigation thereupon it would not, in any manner, deter the State of Haryana from pursuing the matter and directing the investigation afresh in pursuance of the FIR, if the State so desired.

14. It may be noticed at this stage that a three-Judge Bench of this Court in *H.N. Rishbud* v. *State of Delhi* [AIR 1955 SC 196] had held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. Referring to the provisions of Sections 190, 193, 195 to 199 and 537 of the Code of Criminal Procedure (1898) in the context of an offence under the Prevention of Corruption Act, 1947, the Court held:

"A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 CrPC as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190 CrPC is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 to 199.

These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (*a*), (*b*) and (*c*) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (*a*) or (*b*) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 CrPC which is in the following terms is attracted:

'Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice.'

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a

miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well settled as appears from the cases in — '*Parbhu* v. *Emperor* [AIR 1944 PC 73] and — '*Lumbhardar Zutshi* v. *R.* [AIR 1950 PC 26] "

It further held:

"In our opinion, therefore, when such a breach is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined."

In *Bhajan Lal case* [1992 Supp (1) SCC 335] this Court had found on facts that the SP had passed the order mechanically and in a very casual manner regardless of the settled principles of law. The provisions of Section 17 of the Act had not been complied with. As earlier noticed the SP while authorising the SHO to investigate had made only an endorsement to the effect "Please register the case and investigate". The SP was shown to be not aware either of the allegations or the nature of the offences and the pressure of the workload requiring investigation by an Inspector. There is no denial of the fact that in cases against the respondents in these appeals, even in the absence of the authority of the SP the investigating officer was in law authorised to investigate the offence falling under Section 13 of the Act with the exception of one as is described under sub-section (1)(*e*) of the Act. After registration of the FIR the Superintendent of Police in the instant appeals is shown to be aware and conscious of the allegations made against the respondents, the FIR registered against them and pending investigations. The order passed by the SP in the case of Ram Singh on 12-12-1994 with respect to a crime registered in 1992 was to the effect:

"In exercise of powers conferred by the provisions on me, under Section 17 of the Prevention of Corruption Act, 1988, I, P.K. Runwal, Superintendent of Police, Special Police Establishment, Division I, Lokayukta Karyalaya, Gwalior Division, Gwalior (M.P.), authorised Shri D.S. Rana, Inspector (SPE), Lak-Gwl (M.P.) to investigate Crime No. 103 of 1992 under Sections 13(1)(*e*), 23(2) of the Prevention of Corruption Act, 1988 against Shri Ram Singh, DO, Excise, Batul (M.P.)."

Similar orders have been passed in the other two cases as well. The reasons for entrustment of investigation to the Inspector can be discerned from the order itself. The appellant State is, therefore, justified in submitting that the facts of *Bhajan Lal case* [1992 Supp (1) SCC 335] were distinguishable as in the instant case the Superintendent of Police appears to have applied his mind and passed the order authorising the investigation by an Inspector under the peculiar circumstances of the

> case. The reasons for entrustment of investigation were obvious. The High Court should not have liberally construed the provisions of the Act in favour of the accused resulting in closure of the trial of the serious charges made against the respondents in relation to commission of offences punishable under an Act legislated to curb the illegal and corrupt practices of the public officers. It is brought to our notice that under similar circumstances the High Court had quashed the investigation and consequent proceedings in a case registered against Shri Ram Babu Gupta against which Criminal Appeal No. 1754 of 1986 was filed in this Court which was allowed on 27-9-1986 by setting aside the order of the High Court with a direction to the trial court to proceed with the case in accordance with law and in the light of the observations made therein.
>
> **15.** We are not satisfied with the finding of the High Court that merely because the order of the Superintendent of Police was in typed pro forma, that showed the non-application of mind or could be held to have been passed in a mechanical and casual manner. As noticed earlier the order clearly indicates the name of the accused, the number of the FIR, the nature of the offence and power of the Superintendent of Police permitting him to authorise a junior officer to investigate. The time between the registration of the FIR and authorisation in terms of the second proviso to Section 17 shows further the application of mind and the circumstances which weighed with the Superintendent of Police to direct authorisation to order the investigation."

8.5 Thereafter, having noticed that the order authorising the investigating officer in exercise of powers under Section 17 of the Prevention of Corruption Act, 1988 indicating the name of the accused, the number of the FIR, the nature of the offence and power of the Superintendent of Police permitting him to authorise a junior officer to investigate, the time between the registration of the FIR and the authorisation in terms of second proviso to Section 17, this Court has held such authorisation to be valid.

8.6 In the present case also, it cannot be said that there was any non-application of mind on the part of the Senior Superintendent of Police

authorising the inspector Nisar Hussain to enquire into the FIR for the offences under Sections 5(1)(d) r/w 5(2) of the J&K PC Act, 2006 and 120-B of the Ranbir Penal Code. It is required to be noted that Inspector Nisar Hussain who was authorised to investigate the FIR for the aforesaid offences was also authorised to arrest the accused persons whenever and wherever necessary. It is also required to be noted that in the said authorisation it has been specifically mentioned that he will conduct the investigation of the case under the supervision of the Superintendent of Police (BKB). Therefore, all precautions are taken by the Senior Superintendent of Police authorising the Inspector Nisar Hussain to investigate the FIR for the offences under the J&K PC Act, 2006.

Even otherwise, it is required to be noted that on a plain reading of the second proviso to Section 3, only two requirements are required to be satisfied, namely, (i) authorisation in writing by an officer of the Vigilance Organisation not below the rank of Assistant Superintendent of Police to an officer of not below the rank of Sub-Inspector of Police to investigate such offences; and (ii) such officer authorised may investigate the offences so specified in the order of authorisation. Therefore, as such, there is no requirement of giving either special reasons or there is no requirement to mention reasons. What is required to be considered

is whether there is an application of mind with respect to offences and the relevant provisions with respect to authorisation. Considering the authorisation reproduced hereinabove, it cannot be said that such authorisation authorising Inspector Nisar Hussain to investigate the FIR for the offences under Sections 5(1)(d) r/w 5(2) of the J&K PC Act, 2006 and 120B of the RPC can be said to be vitiated and/or can be said to be void which warrants quashing of the entire criminal proceedings including the FIR. Therefore, as such, the High Court has committed a grave error in quashing the entire criminal proceedings holding that authorisation in favour of Inspector Nisar Hussain was bad in law, relying upon the observations made by this Court in the case of *Bhajan Lal (supra)*, which has been subsequently explained by this court in the case of *Ram Singh (supra)*. We are of the opinion that in the facts and circumstances of the case and considering the authorisation read with the second proviso to Section 3, authorisation cannot be said to be illegal and/or invalid.

9. Now so far as the finding recorded by the High Court for non-compliance of Section 155 of J&K Cr.P.C. is concerned, it is to be noted that the High Court has observed that for an investigating agency to investigate the group of offences which include the non-cognizable one, it must obtain a sanction from the concerned Magistrate before launching the investigation and in the present case no such sanction from the

concerned Magistrate has been obtained is concerned, it is to be noted that the substantive offences against the respondent herein were under J&K PC Act, 2006 and as per Section 3 of the Act, all offences under the Act are cognizable and non-bailable. As such, the aforesaid issue is squarely covered against the respondent in view of the decision of this Court in the case of *Pravin Chandra Mody(supra)*. In paragraph 6, it is observed and held as under:

> **"6.** Section 156(2) provides that where a police officer enquires into an offence under Section 156(1) his action cannot be called into question on the ground that he was not empowered to investigate the offence. The enquiry was an integrated one, being based on the same set of facts. Even if the offence under the Essential Commodities Act may not be cognizable — though it is not alleged by the appellant that it is non-cognizable — the police officer would be competent to include it in the charge-sheet under Section 173 with respect to a cognizable offence. In *Ram Krishna Dalmia* v. *State* [AIR (1958) Pb. 172], Falshaw, J (as he then was) observed that the provisions of Section 155(1) of the Criminal Procedure Code, must be regarded as applicable to those cases where the information given to the police is solely about a non-cognizable offence. Where the information discloses a cognizable as well as a non-cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence. We entirely agree. Both the offences if cognizable could be investigated together under Chapter XIV of the Code and also if one of them was a non-cognizable offence."

10. In the present case, the offence under the Prevention of Corruption Act is a substantive offence and the investigation in respect of the offence under the PC Act, when considered and coupled with the offence of conspiracy, there is no requirement of prior sanction of the Magistrate. Merely because the offence of the conspiracy may be involved,

investigation into the substantive offence, i.e., in the present case, offence under the PC Act which is cognizable is not required to await a sanction from the Magistrate, as that would lead to a considerable delay and affect the investigation and it will derail the investigation. Therefore, the High Court has erred in quashing the criminal proceedings on the ground that as the offence under Section 120B which is a non-cognizable, prior sanction as required under Section 155 of J&K Cr.P.C. is not obtained. The view taken by the High Court is just contrary to the law laid down by this Court in the case of *Pravin Chandra Mody (supra)*, which has been subsequently relied upon by this Court in the cases of Brij *Lal Palta (supra); Satya Narain Musadi (supra); Madan Lal (supra); and Bhanwar Singh (supra).*

11. The impugned judgment and order passed by the High Court insofar as holding Rule 3.16 of the Vigilance Manual, 2008 as *ultra vires* is concerned, it is required to be noted that even Rule 3.16 can be said to be in consonance with the observations and the law laid down by this Court in the case of *Lalita Kumari (supra)*. Rule 3.16 reads as under:

> "Clause 3.16 – Preliminary Enquiry (PE)
>
> When a complaint or information discloses adequate material indicating misconduct on the part of public servant which needs a detailed verification prior to registration of a case u/s 154 Cr.P.C., a Preliminary Enquiry (PE) can be ordered. A PE should normally be completed in a period of six months. The PE will be registered on a given proforma (Annexure K). Sometimes courts also order an enquiry by the State Vigilance Organisation. Such preliminary enquiries should also be

> registered after approval of the Commissioner of Vigilance. A PE may be converted into FIR, with the prior concurrence of central office, as soon as sufficient material becomes available to show that, prima facie, commission of a cognizable offence under Prevention of Corruption Act is made out. When the material available indicates ingredients of misconduct alone and not criminal misconduct, a self-contained note should be sent to the appropriate disciplinary authority for departmental action."

12. On a close reading of Rule/Clause 3.16, it can be seen that even the same can be said to be in the interest of the accused and/or a person against whom the allegations are made and to safeguard the accused against frivolous complaints. As per Clause 3.16 only after the Preliminary Enquiry is conducted and there is a prima facie case found, an FIR is required to be registered. Considering the nature of offences, a detailed enquiry is required and therefore it is observed in Clause 3.16 that a PE should be completed normally within a period of six months. It is the case on behalf of the respondent and even as observed and held by the High Court in the impugned judgment and order as per the law laid down by this Court in the case of *Lalita Kumari (supra)*, a detailed investigation into the allegations on merits is not required by holding Preliminary Enquiry and that such enquiry is to be completed within a period of 7 days is concerned, it is to be noted that in the case of *Lalita Kumari (supra)*, it is not held that if the Preliminary Enquiry is not completed within a period of 7 days, the entire criminal proceedings would be void and the same are to be quashed.

13. So far as the submission on behalf of the respondent that in the present case by conducting a Preliminary Enquiry, detailed investigation has been made and only thereafter the FIR is registered and that at the time of Preliminary Enquiry, investigation is not permissible since the FIR is lodged is concerned, the aforesaid submission seems to be attractive but has no substance. While holding a Preliminary Enquiry under Clause 3.16, whatever is conducted will be in the form of enquiry into the allegations to consider whether any prima facie case is made out or not which requires further investigation after registering the FIR or not. While considering the prima facie case for the purpose of registering the FIR, some enquiry/investigation is bound to be there, however, the same shall be only for the purpose of finding out a prima facie case for the purpose of registration of the FIR only. Whatever enquiry is conducted at the stage of Preliminary Enquiry, by no stretch of imagination, will be considered as investigation under the code of criminal procedure which can only be after registration of the FIR. Even otherwise, merely because while holding a Preliminary Enquiry a detailed enquiry is made into the allegations made against the respondent which, as observed hereinabove, can be said to be only for the purpose of finding out a prima facie case for the purpose of registration of the FIR and merely because some more time is taken in conducting the Preliminary Enquiry before registering the FIR, the entire criminal proceedings cannot be

quashed. There shall not be any prejudice caused to the accused at the stage of holding Preliminary Enquiry which as observed hereinabove shall only be for the purpose of satisfying whether any prima facie case is made out with respect to the allegations made in the complaint which requires further investigation after registering the FIR or not. Therefore, the High Court has materially erred in holding and declaring Clause 3.16 as *ultra vires*.

14. Now so far as the 4th ground/question on which the High Court has quashed the criminal proceedings, namely, the respondent cannot be held vicariously liable in the absence of main conspirators – Private Limited Companies and/or their in-charge persons is concerned, it is to be noted that the allegations against the respondent are in respect of his individual capacity. Besides the Directors of the Private Limited Companies, respondent no.1 and other officials have been arrayed as an accused. Therefore, there is no question of any vicarious liability and the observations made by the High Court that in absence of main conspirators – Private Limited Companies and/or their in-charge persons, respondent no.1 cannot be held liable is unsustainable and cannot be accepted. The High Court has erred in quashing the entire criminal proceedings on the aforesaid ground.

15. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court quashing the entire criminal proceedings for the offences under Sections 5(1)(d) r/w 5(2) of the J&K PC Act, 2006 and 120B of the Ranbir Penal Code arising out of FIR No. 32/2012 and quashing and setting aside the Entrustment Order dated 16.11.2012 passed by the Senior Superintendent of Police, VOK, Srinagar authorising the Inspector Nisar Hussain to investigate the FIR for the offences under Sections 5(1)(d) r/w 5(2) of the J&K PC Act, 2006 and 120B of the Ranbir Penal Code and holding and declaring Rule/Clause 3.16 of the Vigilance Manual, 2008 dealing with Preliminary Enquiry (PE) as *ultra vires* is unsustainable and deserves to be quashed and set aside and is hereby quashed and set aside. FIR/criminal proceedings against the respondent being FIR No., 32/2012 for the offences under Sections 5(1)(d) r/w 5(2) of the J&K PC Act, 2006 and 120B of the Ranbir Penal Code is to be investigated and proceeded further by the authorised officer expeditiously.

16. The present appeal is allowed accordingly.

……J.
[M.R. Shah]

New Delhi;
October 29, 2021.

……..J.
[A.S. Bopanna]