REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION

Writ Petition (Crl) No. 130 of 2020

Arnab Ranjan Goswami **....Petitioner**

Versus

Union of India & Ors. **.... Respondents**

AND

WITH

Writ Petition (Crl.) Diary No. 11189 of 2020

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

Writ Petition (Crl) No 130 of 2020

1. The petitioner is the Editor-in-Chief of an English television news channel, Republic TV. He is also the Managing Director of ARG Outlier Media Asianet News Private Limited which owns and operates a Hindi television news channel by the name of R Bharat. The petitioner anchors news shows on both channels.

2. On 16 April 2020, a broadcast took place on Republic TV. This was followed by a broadcast on R Bharat on 21 April 2020. These broadcasts led to the lodging of multiple First Information Reports[1] and criminal complaints against the petitioner. They have been lodged in the States of Maharashtra, Chhattisgarh, Rajasthan, Madhya Pradesh, Telangana and Jharkhand as well as in the Union Territories of Jammu and Kashmir. In the State of Maharashtra, an FIR was lodged at Police Station Sadar, District Nagpur City. The details of this FIR are:

> "Maharashtra
>
> FIR No. 238 of 2020, dated 22 April 2020, registered at Police Station Sadar, District Nagpur City, Maharashtra, under Sections 153, 153-A, 153-B,295-A, 298, 500, 504(2), 506, 120-B and 117 of the Indian Penal Code 1860."

[1] "FIRs"

Apart from the above FIR, as many as fourteen other FIRs and complaints have been lodged against the petitioner, of which the details are extracted below:

> "•FIR No. 245 of 2020, dated 22 April 2020, registered at Police Station Supela, District Durg, Chhattisgarh, under sections 153-A, 295-A and 505 (2) of the Indian Penal Code 1860.
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> • FIR No. 180 of 2020, dated 23 April 2020, registered at Police Station Bhilal Nagar, District Durg, Chhattisgarh, under sections 153- A, 188, 290 and 505 (1) of the Indian Penal Code 1860.
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> • FIR No. 176 of 2020, dated 22 April 2020, registered at Police Station Civil Lines, District Raipur, Chhattisgarh, under sections 153-A, 295-A and 505 (2) of the Indian Penal Code 1860.
>
> • Complaint dated 21 April 2020 by District Congress Committee – Antagrah, Kanker, Chhattisgarh.
>
> • Complaint dated 22 April 2020 by Pritam Deshmukh (adv.), Durg District Congress Committee – to SHO city PS Durg, Chhattisgarh.
>
> • Complaint dated 22 April 2020 by Suraj Singh Thakur, State Vice President, Indian Youth Congress- to Sr. Police Officer, Chirag Nagar, Ghatkopar East, Mumbai.
>
> • Complaint dated 22 April 2020 – Pankaj Prajapti (party worker of INC and ex-spokesperson NSUI) through counsel Anshuman Shrivastavas – Superintendent of Police, Crime Branch, Indore, Madhya Pradesh.
>
> • Complaint dated 22 April 2020 – Balram Jakhad (adv.) – to PS Shyam Nagar –u/s 153, 188, 505, 120B in Jaipur.
>
> • Complaint by Jaswant Gujar – to SHO Bajaj Nagar PS, Jaipur.
>
> • Complaint dated 22 April 2020 by Fundurdihari, Ambikapur, District Sarguja, Chhattisgarh – Rajesh Dubey, Chhattisgarh State Congress Committee – to SHO Gandhi Nagar, Ambikapur – u/s 153, 153A, 153B, 504, 505.
>
> • Complaint dated 22 April 2020 in Telangana by Anil Kumar Yadav, State President of Telangana Youth Congress – to

SHO Hussaini Alam – u/s 117, 120B, 153, 153A, 295A, 298, 500, 504, 505 and 506. Also 66A of the IT Act.

- Complaint dated 23 April 2020 by Anuj Mishra before Kotwali, Urai, Tulsi Nagar.

- Complaint dated 22 April 2020 by Kumar Raja, VP, Youth Congress, Jharkhand Congress Committee before Kotwali Police Station, Upper Bazar, Ranchi.

- Complaint dated 22 April 2020 by Madhya Pradesh Youth Congress."

3. The genesis of the FIRs and complaints originates in the broadcasts on Republic TV on 16 April 2020 and R Bharat on 21 April 2020 in relation to an incident which took place in Gadchinchle village of Palghar district in Maharashtra. During the course of the incident which took place on 16 April 2020, three persons including two sadhus were brutally killed by a mob, allegedly in the presence of the police and forest guard personnel. The incident was widely reported in the print and electronic media. The petition states that a video recording of the incident is available in the public domain. In his news show titled "*Poochta hai Bharat*" on 21 April 2020 on R Bharat, the petitioner claims to have raised issues in relation to the allegedly tardy investigation of the incident. The segment of the news broadcast is available for public viewing online at:

https://www.youtube.com/watch?v=C2i4MMpKu9I

4. The viewpoint which the petitioner claims to have put across during the course of the broadcast, is described in the following extract from the Writ Petition

which has been instituted by the petitioner before this Court under Article 32 of the Indian Constitution:

> "A review of the above debate would show that its thrust was to question the tardy investigation, inconsistent versions of the authorities and the administration and the State Government's silence on the Palghar incident given that the unfortunate incident happened in Maharashtra which is presently under rule of an alliance government jointly formed by Shiv Sena, the Congress and the Nationalist Congress Party. The debate highlighted the manner in which the incident was being portrayed by the authorities, including the glaring fact that the incident occurred in the presence of numerous police officials which fact was initially suppressed."

5. The petitioner claims that following the broadcast, "a well-coordinated, widespread, vindictive and malicious campaign" was launched against him by the Indian National Congress[2] and its activists. The campaign, he alleges, was carried out online through news reports and tweets indicating that members of the INC had filed multiple complaints simultaneously against the petitioner before various police stations seeking the registration of FIRs and an investigation into offences alleged to have been committed by him under Sections 153, 153A, 153B 295A, 298, 500, 504, 506 and 120B of the Indian Penal Code 1860[3]. A campaign for the arrest of the petitioner was allegedly launched on social media, using the hashtag:

#ArrestAntiIndiaArnab

6. The petitioner submitted, in the course of his pleadings, that all the complaints and FIRs have incidentally been lodged in States where the governments which

[2] "INC"
[3] "IPC"

were formed owe allegiance to the INC and that he believes that the law enforcement machinery was being set in motion with an ulterior motive. To substantiate this, the petitioner refers to an incident which allegedly took place on 23 April 2020, while he was returning by car from his studio at Worli, Mumbai accompanied by his spouse between 12:30 and 1:00 am. His car was confronted by two individuals on a motor-cycle. Confronted by the security personnel of the petitioner, the two individuals on the motor-cycle are alleged to have disclosed their identity as members of the INC. An FIR was registered at the behest of the petitioner at NM Joshi Marg Police Station in Mumbai in which the details of the alleged attack on him have been set out.

7. The petitioner denies that he has propagated views of a communal nature in the course of the news broadcasts which gave rise to the institution of numerous complaints. Asserting his fundamental right to the freedom of speech and expression under Article 19(1)(a) of the Constitution, the petitioner has moved this Court under Article 32 for the protection of those rights. The reliefs which have been sought are:

(i) Quashing all the complaints and FIRs lodged against the petitioner in multiple States and Union Territories;

(ii) A writ direction that no cognisance should be taken of any complaint or FIR on the basis of the cause of action which forms the basis of the complaints and FIRs which have led to the present writ proceedings; and

(iii) A direction to the Union Government to provide adequate safety and security to the petitioner and his family as well as to his colleagues at Republic TV and R Bharat.

8. While entertaining the Writ Petition on 24 April 2020, this Court heard submissions by Senior Counsel: on behalf of the petitioner by Mr Mukul Rohatgi and Mr Siddhartha Bhatnagar; on behalf of the State of Maharashtra by Mr Kapil Sibal; on behalf of the State of Chhattisgarh by Mr Vivek Tankha; and on behalf of the State of Rajasthan by Dr Abhishek Manu Singhvi. Having heard the rival submissions, this Court noted in its interim order that the order which it intended to pass should strike a balance between the following governing principles:

(i) The need to ensure that the criminal process does not assume the character of a vexatious exercise by the institution of multifarious complaints founded on the same cause in multiple States;

(ii) The need for the law to protect journalistic freedom within the ambit of Article 19(1)(a) of the Constitution;

(iii) The requirement that recourse be taken to the remedies available to every citizen in accordance with the Code of Criminal Procedure 1973;

(iv) Ensuring that in order to enable the citizen to pursue legal remedies, a protection of personal liberty against coercive steps be granted for a limited duration in the meantime;

(v) The investigation of an FIR should be allowed to take place in accordance with law without this Court deploying its jurisdiction under Article 32 to obstruct the due process of law; and

(vi) Assuaging the apprehension of the petitioner of a threat to his safety and the safety of his business establishment.

9. Learned Senior Counsel appearing on behalf of the petitioner apprised this Court, on instructions, that the petitioner had no objection to the transfer of FIR 238 of 2020 which was lodged at Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai for the purpose of investigation. Mr Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra similarly had no objection to this course of action. This is recorded specifically in the order passed by this Court on 24 April 2020 in the following terms:

> "9 The Court was apprised by Mr Mukul Rohatgi, learned senior counsel, on seeking instructions, that the petitioner would have no objection if the FIR which has been lodged at Nagpur is transferred for the purpose of investigation to the N M Joshi Marg Police Station, Mumbai, where the petitioner has lodged an FIR on 23 April 2020. The FIR by the petitioner is in relation to an incident which took place at midnight, during the course of which, he and his spouse were obstructed by two persons and an alleged to have been subjected to an assault, while returning home from the studio.
>
> 10 Mr Sibal has indicated that there should be no objection to the transfer of the FIR which has been lodged at Nagpur to Mumbai."

Consequently, this Court, by its interim order:

(i) Transferred FIR 238 of 2020 lodged at Police Station Sadar, District Nagpur City to the NM Joshi Marg Police Station in Mumbai with a clarification that the petitioner shall cooperate in the investigation;

(ii) Stayed further proceedings arising out of the complaints and FIRs other than the one which had been instituted at Police Station Sadar, District Nagpur City and stood transferred;

(iii) Allowed the investigation to proceed in FIR 238 of 2020 which was transferred from Police Station Sadar, District Nagpur City to the NM Joshi Marg Police Station in Mumbai;

(iv) Protected the petitioner against coercive steps arising out of and in relation to the above FIR, in relation to the telecast dated 21 April 2020;

(v) Granted liberty to the petitioner to move an application for anticipatory bail before the Bombay High Court under Section 438 of the Code of Criminal Procedure 1973[4] and to pursue such other remedies as are available in law. It was clarified that any such application shall be considered on its own merits by the competent court;

(vi) Stayed further proceedings in respect of any other FIR, or as the case may be, criminal complaints which have been filed or which may thereafter be filed with respect to the same incident; and

[4] "CrPC"

(vii) Directed the Commissioner of Police[5], Mumbai to consider the request of the petitioner for being provided with security at his residence and at the business establishment.

10. Following the interim order of this Court, several interim applications were filed in the course of the proceedings. The details of each of the IAs are necessary to facilitate our eventual analysis of the case:

IA No 48585 of 2020: filed by the petitioner

11. The petitioner submits that:

(i) The Mumbai police is not conducting a fair and impartial investigation in relation to FIR 238 of 2020[6] which has been transferred from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai for investigation;

(ii) The manner in which the investigation has been conducted by the Mumbai police leads to the "inescapable conclusion" that the authorities "harbor grave malice and *mala fide* intention" against the petitioner;

(iii) The investigation is politically motivated and has been conducted with "a pre-determined and pre-meditated objective" to arm-twist, harass and humiliate the petitioner and his family and to diminish his right to free speech and expression under Article 19(1)(a) of the Constitution;

[5] "CP"
[6] Renumbered as FIR 164 of 2020 at NM Joshi Marg Police Station in Mumbai.

(iv) Since the petitioner's news channel is questioning the complicity of the Maharashtra police in the Palghar incident and the police fall under the administration and control of the State government (ruled by an alliance government of the INC), there is a clear conflict of interest in the investigation by the Mumbai police; and

(v) It is necessary that the investigation is stayed to prevent any miscarriage of justice. These apprehensions are sought to be established on the basis of the following averments:

(a) On 25 April 2020, the petitioner was served with a notice under Section 41(a) of the Code of Criminal Procedure 1973[7] summoning him to the police station on 26 April 2020;

(b) On 26 April 2020, the petitioner expressed his willingness to appear before the Investigating Officer[8] through Video Conferencing[9];

(c) Rejecting the above request, the IO called upon the petitioner by a summons dated 26 April 2020 to be physically present at NM Joshi Marg Police Station in Mumbai on 27 April 2020;

(d) On 27 April 2020, the petitioner was questioned without a break for nearly twelve hours during which he was not allowed to keep possession of his mobile phone or to wear his personal fitness band;

(e) During the course of the investigation, the petitioner was informed by the Mumbai police that the complainant Dr Nitin Kashinath Raut, who

[7] "CrPC"
[8] "IO"
[9] "VC"

is a Cabinet Minister in the Maharashtra government and a working President of the INC, had filed a supplementary statement indicating when he had been provided with a clip of the broadcast;

(f) A substantial bulk of the questions during the investigation was in relation to a small segment comprising fifteen seconds out of a total broadcast of fifty-two minutes;

(g) During the course of the investigation, the petitioner was asked by the IO whether he had defamed or maligned the President of the INC in the course of the broadcast on 21 April 2020;

(h) FIR 164 of 2020 is not based on a complaint by the President of the INC and hence, it is inconceivable as to how the IO could have questioned the petitioner on an alleged act of defamation which he, in any event, denies;

(i) Tweets made on the social media by members of the INC during and around the time of the investigation indicate that the Mumbai police was relying on real time information during the course of the interrogation by "their political masters";

(j) Questions posed to the petitioner during the course of the investigation have no nexus to FIR 164 of 2020. The questions which were posed included the following:

> "(i) Corporate structure of the Petitioner's company, ARG Outlier Media Asianet Private Limited ("ARG") including its board of directors. ARG owns and operates Republic TV and R. Bharat.

(ii) Process of obtaining broadcasting licenses by the news channels of the Petitioner.
(iii) Location of archives of Petitioner's news channels; whether the Hindi channel of the Petitioner, R. Bharat is based outside or inside Maharashtra.
(iv) Does the Petitioner's news channel send recordings of news reports to the Central Government (this question was asked multiple times.)
(v) Process of selecting panelists for debates aired on Petitioner's news channels. Are the panelists paid remuneration by the Petitioner's news channel for this purpose.
(vi) Does the Petitioner own the house in which he is currently staying or pays rent."

(k) The complainant, Dr Nitin Kashinath Raut was interviewed on 29 April 2020 by a reporter of Republic TV in regard to the contradictions between the statement in the FIR and his subsequent supplementary statement as to the place where he had watched the video clip. In response to the query posed to him in the interview, the complainant stated:

"There is no need to be confused over this point, whatever I have mentioned in my statement, it is true. After watching at home, I also got a clip, which was sent to me from my party office. When I say that I watched it earlier, it's the truth, and later I watched a clip, which is mentioned in the complaint that I filed in the police station. If you have read Article 19(1) of the Constitution, where freedom of expression and thought is mentioned but nowhere does it allow crossing the limits or making extreme comments. There are restrictions mentioned and Mr Arnab has violated them. I have a lot of respect of Mr Arnab, he's a senior journalist, and he has handled the media well till now but what happened lately. I don't know. During his speech, he forgot that he's a citizen of this country and a citizen has to abide by the Constitution. I have always supported freedom of expression for journalists but the question is, these comments

> involve a clear attempt to incite a riot. Arnab was questioned for along during because he's facing a charge of criminal conspiracy, involving IPC 153, IPC 153(a) and others. You raise the point of him being questioned for 12 to 12.5 hours, I want to ask you that this country's former home minister and former finance minister P Chidambaram was made to sit for so many hours, why did that happen? You people never raise questions on the reason behind that interrogation. I have heard that clip and Arnab tried to stoke communal sentiments in that speech. No one gave him that right, not even the Constitution."

(l) On 30 April 2020, the IO issued two notices to the Chief Financial Officer[10] of Republic TV under Sections 91 and 160 of the CrPC requesting for documents. Pursuant to the notice, the CFO appeared before the Mumbai police with publicly available documents and copies of broadcast licenses. He was interrogated for about 6.5 hours *inter alia* in regard to the following aspects:

> "
> (i) Role of the Petitioner's wife, Mrs Samyabrata Ray Goswami in the news channels and the corporate structure of company.
> (ii) Details of the investors in the Petitioner's company, ARG Outlier Media News Private Limited and whether the Petitioner ran the news channel as a proxy owner for an on behalf of someone else.
> (iii) Surprisingly, Mr Sundaram was also asked whether there was "someone" instructing the Petitioner to pose questions concerning Mrs Sonia Gandhi and concerning her alleged defamation.
> (iv) As with the Petitioner, Mr Sundaram was also asked if the Petitioner's news channel has any arrangement of sending video recording of news reports to the Central Government.

[10] "CFO"

> (v) Details on how the Petitioner's channel selects panelists for news shows and whether any remuneration is paid to them."

(m) It has been allegedly learned that an asymptomatic officer attached to the NM Joshi Marg Police Station in Mumbai where the CFO was being interrogated had tested positive for Covid-19 a day earlier with the result that all officers at the police station were now being tested. The CFO had been subjected to grave and unnecessary danger; and

(n) While on the one hand, the police had been investigating FIR 164 of 2020, the FIR lodged by the petitioner following the attack on him[11] is not being investigated satisfactorily. Two persons alleged to have been involved in the attack on the petitioner were enlarged on bail on 27 April 2020 by the Magistrate's Court at Bhoiwada, Mumbai.

12. On the basis of the above averments, the petitioner seeks the following reliefs by his IA:

(i) A stay of the investigation and all incidental steps by the Mumbai police in connection with FIR 238 of 2020 transferred to the NM Joshi Marg Police Station in Mumbai (renumbered as FIR 164 of 2020) in pursuance of the order of this Court dated 24 April 2020;

[11] FIR 148 of 2020

(ii) In the alternative, for a transfer of the investigation to the Central Bureau of Investigation[12] with a direction to the CBI to submit reports to this Court from time to time;

(iii) A transfer of the investigation of FIR 148 of 2020 lodged by the petitioner to the CBI or to an independent investigating agency;

(iv) Permission to the petitioner to join in the investigation by video conferencing; and

(v) Providing security to the petitioner and his family at his residence and for the business establishment.

IA 48588 of 2020[13]: **filed by the Government of Maharashtra**

13. The IA is supported by an affidavit of Abhinash Kumar, Deputy Commissioner of Police, Zone-3, Mumbai, who is supervising the investigation into Cr. No. 164 of 2020 at the NM Joshi Marg Police Station in Mumbai. The Mumbai police has sought to highlight the conduct of the petitioner in obstructing the due course of investigation. The reliefs which have been sought in the IA are as follows:

> "a. Issue appropriate directions as this Hon'ble Court may deem fit so as to insulate the investigation agency from any pressure, threat or coercion from the Petitioner and to enable the Investigating Agency to carry out its lawful obligations in a fair and transparent manner;
>
> b. Restrain the Petitioner from abusing the interim protection granted to the Petitioner vide the order dated 24th April 2020;"

[12] "CBI"
[13] Filed by the State of Maharashtra

14. The basis of the IA appears from the following averments:

(i) On 27 April 2020, the petitioner attended the NM Joshi Marg Police Station in Mumbai at 9 am accompanied by an entourage of his reporters and camerapersons and gave several speeches which were allegedly telecast live;

(ii) After the petitioner had been interrogated for 4 hours, a tweet was posted on Republic Bharat stating in Hindi that upon coming out of the police station, the petitioner had claimed that 'truth will prevail';

(iii) Two other tweets posted on Republic Bharat in regard to the conduct of the investigation have sought to create an impression that:

(a) The police is biased;

(b) The FIR lodged by the petitioner is not being investigated; and

(c) The petitioner has been unnecessarily questioned over several hours;

(iv) On 28 April 2020, the petitioner hosted a debate on Republic Bharat in the course of a programme titled "*Puchta hai Bharat*" where he made allegations against the Commissioner of Police[14], Mumbai of his complicity in a scam involving India Bulls. The petitioner threatened to reveal these details;

(v) The statements against the CP are intended to hinder the course of the investigation and the allegations have surfaced only after the investigation against the petitioner commenced on 26 April 2020;

[14] "CP"

(vi) The allegation of the petitioner that the police were not investigating his FIR is belied by the circumstance that an FIR was registered under Sections 341 and 504 read with Section 34 of the IPC;

(vii) The two accused in the FIR filed by the petitioner were arrested and eventually released on bail on 27 April 2020 by the Metropolitan Magistrate at the 13th Court at Dadar Mumbai; and

(viii) The Deputy Commissioner of Police[15], Mumbai has submitted that Palghar lies beyond the territorial jurisdiction of the Mumbai police and hence the accusations made by the petitioner are false. It has been submitted that the petitioner has misused his freedom under Article 19(1)(a) of the Constitution by casting unfounded allegations on the CP and hence, directions of this Court are necessary to insulate the investigating agency so as to the enable it carry on its function in a smooth and transparent manner.

IA 48532 of 2020: filed by the petitioner

15. The IA is by the petitioner to produce on the record an affidavit of Shri S Sundaram, the CFO of Republic Media Network. The affidavit of the CFO attempts to support the case of the petitioner that:

(i) A prolonged interrogation is being carried out for a seemingly vindictive and malicious purpose;

[15] "DCP"

(ii) The CFO has been interrogated on the structure of the holding company, shareholding pattern and investors: matters which are extraneous to the investigation of the FIR;

(iii) Questions have been posed during the course of the interrogation about the equity cash transactions, the names of the remaining stakeholders, investment by the key investor and the role of the petitioner's spouse; and

(iv) The CFO was interrogated on the editorial process of the channel, the editorial teams involved and the process whereby a programme is put together. The IO also inquired about how participants are chosen.

IA 48586 of 2020: filed by the petitioner

16. The petitioner moved this IA seeking an amendment to the petition filed under Article 32. The petitioner seeks the addition of the following reliefs:

(i) A declaration that Section 499 of the IPC is violative of Article 19(1)(a) of the Constitution and is hence unconstitutional;

(ii) A declaration that FIR 164 of 2020[16] and the consequent investigation initiated by the State of Maharashtra are illegal and violative of the fundamental rights guaranteed to the petitioner under Articles 19 and 21 of the Constitution;

(iii) A writ of prohibition restraining the State of Maharashtra from registering any FIR against the petitioner in relation to the broadcast on R Bharat on 21 April 2020 in relation to the Palghar incident; and

[16] Formerly FIR 238 of 2020

(iv) A writ of prohibition restraining the State of Maharashtra from continuing any investigation initiative pursuant to FIR 164 of 2020.

Among the documents which have been annexed to the IA for amendment are copies of:

(a) FIR 238 of 2020 registered on 22 April 2020 at Police Station Sadar, District Nagpur city which now stands transferred;

(b) Copies of the complaints lodged in relation to the broadcast on 21 April 2020 by R Bharat at diverse police stations across the country;

(c) The tweets posted from the tweeter accounts of members of the INC party;

(d) The transcript of the interview with the complaint of FIR 164 of 2020; and

(e) The notices issued to the CFO on 30 April 2020 by the Senior Police Inspector, NM Joshi Marg Police Station in Mumbai.

IA 48515 of 2020 and IA 48519 of 2020:

17. These IAs have been filed by the petitioner and cover the same reliefs which have been sought in IAs 48585 of 2020 and 48586 of 2020.

Writ Petition (Crl.) Diary No 11189 of 2020

18. The Writ Petition has been instituted under Article 32 of the Constitution following the interim order dated 24 April 2020 passed by this Court in the earlier petition. The subsequent petition has been occasioned by the registration of an

FIR[17] against the petitioner on 2 May 2020 at the Pydhonie Police Station, Mumbai[18]. The FIR which has been lodged by the third respondent, claiming to be the Secretary of an organization called Raza Educational Welfare Society. The FIR states that on 29 April 2020, the petitioner made certain statements in the course of a programme which was broadcast on R Bharat insinuating (with reference to a place of worship) that the "people belonging to the Muslim religion are responsible for the spread of Covid-19". According to the FIR:

> "The statements made by Arnab Goswami on 29/04/2020 on republic Bharat TV Channel in connection with the incident of the public gathered in the area of Bandra railway station on 14/04/2020 clearly show that despite Jama Masjid, Bandra being a holy place of worship and despite having no connection with the incident of the gathering of migrant workers at Bandra railway station, Arnab Goswami gave it a communal colour and blamed the Muslim community of being responsible for the spread of Corona. By making statements such as the aforesaid repeatedly on the show, he has severely hurt the sentiments of the Muslim community. He has tried to create communal tensions, incite riots and deliberately hurt the sentiments of the Muslim community by insulting their place of worship. By directly connecting the gathering of migrant workers at the Bandra railway station on 14/04/2020 with Jama Masjid, Arnab Goswami disrupted communal harmony. His statements further implied that the Muslim community is violent and does not respect the law. Arnab Goswami as the owner and anchor of the said TV show has made these statements with an intention of create a strain / communal disharmony between the Hindu and Muslim communities."

19. Having adverted to the telecast which took place on 29 April 2020, the FIR makes a reference to 14 April 2020 as the date on which the petitioner as the

[17] FIR 137 of 2020

"anchor and owner" of R Bharat has attempted to connect a place of religious worship with the gathering of migrant workers at Bandra railway station. The FIR has been registered under Sections 153, 153A, 295A, 500, 505(2), 511, 505 (1)(c) and 120B of the IPC. Challenging the FIR, the petitioner seeks to invoke the jurisdiction of this Court for an order quashing the FIR and for a *writ* directing that no cognisance should be taken on any complaint or FIR on the same cause of action hereafter.

20. Leading the arguments on behalf of the petitioner, Mr Harish Salve, learned Senior Counsel submitted that the petition which has been instituted before this Court under Article 32 raises "wider issues" implicating the freedom of speech and expression of a journalist to air views which fall within the protective ambit of Article 19(1)(a). Mr Salve submitted that the petitioner is justified in invoking this jurisdiction since it is necessary for this Court to lay down safeguards which protect the democratic interest in fearless and independent journalism. The submissions which Mr Salve urges can be formulated for analysis thus:

(i) Both the FIRs which have been lodged against the petitioner are intended to stifle the free expression of views by an independent journalist which is protected within the ambit of Article 19(1)(a) of the Constitution;

(ii) The investigation by the Mumbai police is *mala fide;*

(iii) The fact that the lodging of the FIR and the commencement of investigation is *mala fide* is evident from the following circumstances:

a. All the FIRs, or as the case may be, the complaints are replicas with little variation of language or content and with respect to the same cause of action;
b. The complainants have all chosen states where the government has been formed of or with the support of the INC;
c. The enquiries which were made by the police during the course of interrogating the petitioner and the CFO bear no nexus with the contents of the FIR and it is evident that the petitioner is being targeted for expressing views critical of the President of the INC;
d. The involvement of the INC in targeting the petitioner is evident from the fact that during the course of the investigation, tweets by activists and members of the party appeared on social media bearing on the course of the interrogation;
e. The complainant of the FIR, who is a Cabinet Minister in the State Government of Maharashtra, has gone on record in the course of an interview to target the petitioner for airing his views;
f. The investigation by the Mumbai police is directed against an alleged act of defamation committed against the President of the INC. The police are trying to implicate the petitioner in the offence of defamation despite the settled position of law that absent a complaint by the person who is allegedly defamed, no FIR can be lodged; and
g. The petitioner has, in the course of his programmes on R Bharat and Republic TV, implicated the Maharashtra police and the State

Government for their failure to investigate the Palghar incident. He has leveled serious allegations against the CP, Mumbai. Hence, there is an evident conflict of interest in the investigation being conducted by the Mumbai police and the petitioner apprehends that a fair and impartial process will be denied to him were the investigation to continue; and

(iv) In the circumstances which have been set out above, it is appropriate to protect the constitutional rights of the petitioner by directing that the investigation be stayed or that, in the alternative, it be handed over to the CBI.

21. Mr Tushar Mehta, learned Solicitor General has urged that this is a peculiar situation where the Mumbai police, as the investigating agency, has sought the protection of this Court in order to conduct a fair and impartial investigation, complaining that the petitioner is impeding the process. The Solicitor General submitted that in this backdrop, it would be appropriate if the Court were to decide that an impartial agency conduct the investigation. Mr Mehta urged that should this Court be inclined to hand over the investigation to the CBI, the agency will conduct the investigation. The Solicitor General urged that:

(i) The conduct of the state police in the present case is ‘disturbing’;

(ii) The police, as an investigating agency, has sought insulation from the accused; and

(iii) Investigation by an agency which allays any apprehension of victimisation would be the appropriate course of action.

22. Mr Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra has, while opposing the petitions, urged that:

(i) Both the petitions are an attempt to seek directions from this Court to monitor the course of the investigation which is impermissible in view of the settled legal position;

(ii) The pleadings in the petitions as well as the submissions urged during the hearing indicate that the petitioner is objecting to the questions which were posed to him during the course of the investigation;

(iii) The petitioner, as the person against whom the first FIR has been lodged, has absolutely no *locus* to question the line of investigation or nature of the interrogation;

(iv) The rights of the petitioner under Article 19(1)(a) are subject to the limitation stipulated in Article 19(2). The FIRs and the video clips from the programmes posted by the petitioner (clips of which were played by Mr Kapil Sibal, learned Senior Counsel over video conferencing during the course of the hearing) indicate that the offences in question are made out;

(v) Contrary to the allegations which have been leveled by the petitioner against the Maharashtra police, it is the petitioner who has made a conscious effort to stifle the investigation by an unrestrained use of social media, which is evident from the tweets emanating from the channel during and after the interrogation;

(vi) The petitioner can have absolutely no grievance with the course of the investigation when he was summoned for interrogation only on one day between the date of the registration of the FIR and the present time;

(vii) Mumbai police has no territorial jurisdiction or connection with the investigation which has been conducted into the Palghar incident;

(viii) The conduct of the petitioner would indicate that he has made baseless allegations against the CP, Mumbai for the first time after his interrogation took place on 27 April 2020. The attempt by the petitioner is clearly to use his position as a media journalist to create an environment of ill-feeling towards the investigating agency;

(ix) As regards the second FIR, no investigation has commenced and hence recourse to the jurisdiction of this Court under Article 32 is premature;

(x) Despite the liberty which was granted to the petitioner by this Court in its order dated 24 April 2020, the petitioner has neither moved the Bombay High Court for quashing the FIRs under Section 482 of the CrPC or for the grant of anticipatory bail; and

(xi) In the above circumstances, the petitions filed by the petitioner under Article 32 of the Constitution ought not to be entertained.

23. Dr Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the investigating agency of the Maharashtra police adduced seven precepts as the foundation of his submission that the petitions ought not to be entertained. Dr Singhvi urged:

(i) The facts of the present case clearly demonstrate that in the garb of an arc of protection, the accused is attempting to browbeat the police;

(ii) The petitions under Article 32 constitute an attempt of 'leap frogging' the normal procedure available under the CrPC;

(iii) Any interference in the course of an investigation is impermissible;

(iv) What the petitioner seeks to attempt by the process which has been adopted is to convert the jurisdiction under Article 32 into one under Section 482 of the CrPC;

(v) Though the petitioner is entitled to the fundamental rights under Article 19(1)(a), their exercise is subject to the limitations stipulated in Article 19(2). The content of the FIRs and the video clips would demonstrate that the restrictions under Article 19(2) are attracted;

(vi) Applying the *sub judice* doctrine, the petitioner is not entitled to seek the intervention of this Court in the course of an investigation; and

(vii) The transfer of an ongoing investigation to the CBI has been held to be an extraordinary power which must be sparingly exercised in exceptional circumstances. The accused, it is well-settled, can have no *locus* in regard to the choice of the investigating agency.

24. Elaborating these submissions, Dr Singhvi submitted that:

(i) Despite the protection that was granted by this Court for three weeks, the petitioner has not moved the competent court for anticipatory bail or for quashing the FIRs;

(ii) No complainant was impleaded when the first petition was filed;

(iii) In respect of the FIR at the Pydhonie Police Station, no investigation has even commenced;

(iv) The transfer of the investigation of the first FIR from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai was at the request of and with the consent of the petitioner; and

(v) The conduct of the petitioner indicates that it is he who is stifling the investigation.

25. Dr Singhvi submitted that an interrogation does not infringe personal liberty. On the basis of the above submissions, it has been urged that no case has been made out for the transfer of the investigation to the CBI. He urged that the second Writ Petition must, in any event, be dismissed.

26. At this stage, it is necessary to note that the attention of Mr Kapil Sibal and Dr Singhvi, learned Senior Counsel was specifically drawn to the fact that the FIRs which were filed in various states by persons professing allegiance to the INC appear, *prima facie*, to be reproductions of the same language and content. Responding to this, Mr Sibal fairly stated that in the exercise of the jurisdiction under Article 32, this Court may well quash all the other FIRs and allow the investigation into the FIR which has been transferred to the NM Joshi Marg Police Station in Mumbai to proceed in accordance with law. Mr Sibal has also urged that there cannot be any dispute in regard to the legal position that a complaint in regard to the offence of defamation can only be at the behest of the person who is aggrieved.

Consequently, the FIR which has been presently under investigation at the NM Joshi Marg Police Station in Mumbai would not cover any offence under Section 499 of the IPC.

27. Mr K V Vishwanathan, learned Senior Counsel appearing on behalf of the complainant in the second FIR submitted that:

(i) The FIR which was lodged on 2 May 2020 pertains to a broadcast which took place on 29 April 2020;

(ii) The maintainability of the Writ Petitions under Article 32 is questioned; and

(iii) The statements made by the petitioner in the course of the programmes which were broadcast clearly implicate offences under Sections 153A, 295A and cognate provisions of the IPC.

Analysis

28. The fundamental basis on which the jurisdiction of this Court has been invoked under Article 32 is the filing of multiple FIRs and complaints in various States arising from the same cause of action. The cause of action was founded on a programme which was telecast on R Bharat on 21 April 2020. FIRs and criminal complaints were lodged against the petitioner in the States of Maharashtra, Rajasthan, Madhya Pradesh, Telangana and Jharkhand besides the Union Territories of Jammu and Kashmir. The law concerning multiple criminal proceedings on the same cause of action has been analyzed in a judgment of this

Court in **TT Antony** v **State of Kerala**[19] ("**TT Antony**"). Speaking for a two judge Bench, Justice Syed Shah Mohammed Quadri interpreted the provisions of Section 154 and cognate provisions of the CrPC including Section 173 and observed:

> "20…under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus, there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC."

The Court held that "there can be no second FIR" where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognisable offences. This is due to the fact that the investigation covers within its ambit not just the alleged cognisable offence, but also any other connected offences that may be found to have been committed. This Court held that once an FIR postulated by the provisions of Section 154 has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the CrPC. The court observed:

[19] (2001) 6 SCC 181

> "18…All other information made orally or in writing *after* the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC."

This Court adverted to the need to strike a just balance between the fundamental rights of citizens under Articles 19 and 21 and the expansive power of the police to investigate a cognisable offence. Adverting to precedent, this Court held:

> "27…the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. **It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case.** In our view a case of fresh investigation based on the second or successive FIRs, **not being a counter-case**, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, **may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution**."
>
> (Emphasis supplied)

The Court held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognisable

offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either under Section 482 of the CrPC or Articles 226/227 of the Constitution.

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

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

30. In **Saldanha**, this Court had held that the power conferred upon the Magistrate under Section 156(3) does not affect the power of the investigating officer to further investigate the case even after submission of the report under Section 173(8). In **Upkar Singh**, this Court noted that the decision in **Ram Lal Narang** is "in the same line" as the judgments in **Kari Choudhary** and **Saldanha** and held that the decision in **TT Antony** does not preclude the filing of a second complaint in regard

[20] (2004) 13 SCC 292
[21] (1979) 2 SCC 322
[22] (2002) 1 SCC 714
[23] (1980) 1 SCC 554

to the same incident as a counter complaint nor is this course of action prohibited by the CrPC. In that context, this Court held:

> "23. Be that as it may, if the law laid down by this Court in *T.T. Antony case* [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimate right to bring the real accused to book. This cannot be the purport of the Code."

These principles were reiterated by a two judge Bench of this Court in **Babubhai** v **State of Gujarat**[24]. Dr Justice B S Chauhan observed:

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

[24] (2010) 12 SCC 254

This Court held that the relevant enquiry is whether two or more FIRs relate to the same incident or relate to incidents which form part of the same transactions. If the Court were to conclude in the affirmative, the subsequent FIRs are liable to be quashed. However, where the subsequent FIR relates to different incidents or crimes or is in the form of a counter-claim, investigation may proceed.

[See also in this context **Chirra Shivraj** v **State of Andhra Pradesh**[25] and **Chirag M Pathak** v **Dollyben Kantilal Patel**[26]].

31. In the present case, all the FIRs or complaints which have been lodged in diverse jurisdictions arise out of one and the same incident - the broadcast by the petitioner on 21 April 2020 on R Bharat. The broadcast is the foundation of the allegation that offences have been committed under the provisions of Sections 153, 153A, 153B, 295A, 298, 500, 504 and 506 of the IPC. During the course of the hearing, this Court has had the occasion, with the assistance of the learned Senior Counsel, to peruse the several complaints that were filed in relation to the incident dated 21 April 2020. They are worded in identical terms and leave no manner of doubt that an identity of cause of action underlies the allegations leveled against the petitioner on the basis of the programme which was broadcast on 21 April 2020. Moreover, the language, content and sequencing of paragraphs and their numbering is identical. It was in this backdrop that Mr Kapil Sibal, learned Senior Counsel fairly submitted (in our view correctly) that this Court may proceed to quash all the other

[25] (2010) 14 SCC 444
[26] (2018) 1 SCC 330

FIRs and complaints lodged in diverse jurisdictions in the States, leaving open, however, the investigation in respect of the FIR 238 of 2020 dated 22 April 2020 transferred from the Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai.

32. Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position. Yuval Noah Harari has put it

succinctly in his recent book titled “21 Lessons for the 21st Century”: “Questions you cannot answer are usually far better for you than answers you cannot question.”

33. A litany of our decisions – to refer to them individually would be a parade of the familiar – has firmly established that any reasonable restriction on fundamental rights must comport with the proportionality standard, of which one component is that the measure adopted must be the least restrictive measure to effectively achieve the legitimate state aim. Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate state aim in prosecuting crime. The manner in which the petitioner has been subjected to numerous FIRs in several States, besides the Union Territories of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that the intervention of this Court is necessary to protect the rights of the petitioner as a citizen and as a journalist to fair treatment (guaranteed by Article 14) and the liberty to conduct an independent portrayal of views. In such a situation to require the petitioner to approach the respective High Courts having jurisdiction for quashing would result into a multiplicity of proceedings and unnecessary harassment to the petitioner, who is a journalist.

34. The issue concerning the registration of numerous FIRs and complaints covering different states is however, as we will explain, distinct from the investigation which arises from FIR 164 of 2020 at NM Joshi Marg Police Station in Mumbai. The

petitioner, in the exercise of his right under Article 19(1)(a), is not immune from an investigation into the FIR which has been transferred from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai. This balance has to be drawn between the exercise of a fundamental right under Article 19(1)(a) and the investigation for an offence under the CrPC. All other FIRs in respect of the same incident constitute a clear abuse of process and must be quashed.

35. The petitioner has sought, for reasons outlined earlier, the transfer of the investigation to CBI. Before we elucidate the law on the subject, we must emphasize at the outset that the transfer of FIR 238 of 2020 from the Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai was with the consent of the petitioner and **on his request**. The reason why the investigation of the FIR was transferred to the NM Joshi Police Station in Mumbai was because that was the police station at which an earlier FIR had been lodged by the petitioner in respect of the incident when he and his spouse were allegedly obstructed by two political activists on their way home at midnight on 23 April 2020. Having accepted the transfer of the investigation from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai, the petitioner now seeks to question that very investigation by the Mumbai police.

36. The transfer of an investigation to the CBI is not a matter of routine. The precedents of this Court emphasise that this is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances”. Speaking for a Constitution Bench in

State of West Bengal v **Committee for Protection of Democratic Rights, West Bengal**[27] ("**CPDR, West Bengal**"), Justice DK Jain observed:

> "70…despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again **it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.** Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."
>
> (Emphasis supplied)

This principle has been reiterated in **K V Rajendran** v **Superintendent of Police, CBCID South Zone, Chennai**[28]. Dr Justice B S Chauhan, speaking for a three judge Bench of this Court held:

> "13…This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and

[27] (2010) 3 SCC 571
[28] (2013) 12 SCC 480

> exceptional cases where the court finds it necessary in order to do justice between the parties and to instill confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies."

Elaborating on this principle, this Court observed:

> "17…the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

The Court reiterated that an investigation may be transferred to the CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies." This observation must be read with the observations by the Constitution Bench in **CPDR, West Bengal** that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

37. In **Romila Thapar** v **Union of India**[29], Justice AM Khanwilkar speaking for a three judge Bench of this Court (one of us, Dr Justice DY Chandrachud, dissenting) noted the dictum in a line of precedents laying down the principle that the accused

[29] (2018) 10 SCC 753

"does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in **Narmada Bai** v **State of Gujarat**[30], **Sanjiv Rajendra Bhatt** v **Union of India**[31], **E Sivakumar** v **Union of India**[32] and **Divine Retreat Centre** v **State of Kerala**[33]. This Court observed:

> "30…the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation."

38. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to the CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power. It is necessary to address the grounds on which the petitioner seeks a transfer of the investigation. The grounds urged for transfer are:

(i) The length of the interrogation which took place on 27 April 2020;

(ii) The nature of the inquiries which were addressed to the Petitioner and the CFO and the questions addressed during interrogation;

(iii) The allegations leveled by the petitioner against the failure of the State government to adequately probe the incident at Palghar involving an

[30] (2011) 5 SCC 79
[31] (2016) 1 SCC 1
[32] (2018) 7 SCC 365
[33] (2008) 3 SCC 542

alleged lynching of two persons in the presence of police and forest department personnel;

(iv) Allegations which have been made by the petitioner on 28 April 2020 in regard to CP, Mumbai; and

(v) Tweets on the social media by activists of the INC and the interview by the complainant to a representative of R Bharat.

39. As we have observed earlier, the petitioner requested for and consented to the transfer of the investigation of the FIR from the Police Station Sadar, District Nagpur City to the NM Joshi Marg Police Station in Mumbai. He did so because an earlier FIR lodged by him at that police station was under investigation. The petitioner now seeks to preempt an investigation by the Mumbai police. The basis on which the petitioner seeks to achieve this is untenable. An accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency. The line of interrogation either of the petitioner or of the CFO cannot be controlled or dictated by the persons under investigation/interrogation. In **P Chidambaram** v **Directorate of Enforcement**[34], Justice R Banumathi speaking for a two judge Bench of this Court held that:

> "66…there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. **It must be left to the discretion of the investigating agency to decide the course of investigation**. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal

[34] (2019) 9 SCC 24

> course of investigation. **It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.**"
>
> (Emphasis supplied)

This Court held that so long as the investigation does not violate any provision of law, the investigation agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in **State of Bihar** v **P P Sharma**[35] and **Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA)** v **Arun Kumar Bajoria**[36] in which it was held that the investigating agency is entitled to decide "the venue, the timings and the questions and the manner of putting such questions" during the course of the investigation.

40. In **Director, Central Bureau of Investigation** v **Niyamavedi represented by its Member K Nandini, Advocate**[37], Justice Sujata V Manohar, speaking for a three judge Bench of this Court held that the High Court should have:

> "4…refrained from making any comments on the manner in which investigation was being conducted by the CBI, looking to the fact that the investigation was far from complete."

[35] 1992 Supp. (1) SCC 222
[36] (1998) 1 SCC 52
[37] (1995) 3 SCC 601

This Court observed that:

> "4…Any observations which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences."

This Court adopted the position that courts must refrain from passing comments on an ongoing investigation to extend to the investigating agencies the requisite liberty and protection in conducting a fair, transparent and just investigation.

41. The contention of the petitioner that the length of the investigation or the nature of the questions addressed to him and the CFO during the interrogation must weigh in transferring the investigation cannot be accepted. The investigating agency is entitled to determine the nature of the questions and the period of questioning. The Petitioner was summoned for investigation on one day. Furthermore, the allegation of the Petitioner that there is a conflict of interest arising out of the criticism by him of the alleged failure of the State government to adequately probe the incident at Palghar is not valid. The investigation of the Palghar incident is beyond the territorial jurisdiction of the Mumbai police.

42. The petitioner has then sought to rely upon the allegations which he has leveled against the CP, Mumbai. The petitioner was interrogated on 27 April 2020. The allegations which he leveled against the CP, Mumbai were in the course of a television programme on 28 April 2020 ("Poochta hai Bharat") relayed on R Bharat

at 1900 hrs. As we have noted earlier, this Court has, in **CPDR, West Bengal** held that no transfer of investigation can be ordered "merely because a party has levelled some allegations against the local police." Accordingly, we do not find that leveling such allegations would by and itself constitute a sufficient ground for the transfer of the investigation.

43. The interview given by the complainant to a representative of R Bharat does not furnish a valid basis in law for an inference that the investigation is tainted or as warranting a transfer of investigation to the CBI. The Government of Maharashtra has moved an application before this Court (affirmed by the DCP, Zone-3) seeking appropriate directions to insulate the investigating agency "from any pressure, threat or coercion from the petitioner" and to enable it to discharge its lawful duties in a fair and transparent manner. Based on the views tweeted by R Bharat on social media, it is the Maharashtra police which is now claiming a restraining order against the petitioner. We are unable to accede to the submission of the Solicitor General that the contents of the IA filed by the State would make it necessary to transfer the investigation to the CBI. The investigating agency has placed on the record what it believes is an attempt by the petitioner to discredit the investigation by taking recourse to the social media and by utilizing the news channels which he operates. Social media has become an overarching presence in society. To accept the tweets by the petitioner and the interview by the complainant as a justification to displace a lawfully constituted investigation agency of its jurisdiction and duty to investigate

would have far-reaching consequences for the federal structure. We are disinclined to do so.

44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the

nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.

45. A final aspect requires elaboration. Section 199 of the CrPC stipulates prosecution for defamation. Sub-section (1) of Section 199 stipulates that no court shall take cognisance of an offence punishable under Chapter XXI of the Penal Code, 1860 except upon a complaint made by some person aggrieved by the offence. However, where such a person is under the age of eighteen years, or suffers from a mental illness or from sickness or infirmity rendering the person unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf. Sub-section (2) states that when any offence is alleged against a person who is the President of India, Vice-President of India, Governor of a State, Administrator of a Union Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of their conduct in the discharge of public functions, a Court of Session may take cognisance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor. Sub-section (3) states that every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed. Sub-section (4) mandates that no complaint under sub-section (2)

shall be made by the Public Prosecutor except with the previous sanction of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government or any other public servant employed in connection with the affairs of the State and of the Central Government, in any other case. Sub-section (5) bars the Court of Sessions from taking cognisance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed. Sub-section (6) states that nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognisance of the offence upon such complaint.[38]

46. Interpreting this provision, a two judge Bench of this Court in **Subramanian Swamy** v **Union of India, Ministry of Law**[39] ("**Subramanian Swamy**") held that neither can an FIR be filed nor can a direction be issued under Section 156 (3) of the CrPC and it is only a **complaint** which can be instituted by a **person aggrieved**. This Court held:

> "207. Another aspect required to be addressed pertains to issue of summons. Section 199 CrPC envisages filing of a complaint in court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) CrPC. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in *Rajindra Nath Mahato* v. *T. Ganguly* [*Rajindra Nath Mahato* v. *T. Ganguly*, (1972) 1 SCC

[38] Subramanian Swamy v Union of India, Ministry of Law: (2016) 7 SCC 221 at paragraph 197
[39] (2016) 7 SCC 221

> 450 : 1972 SCC (Cri) 206] , is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank* v. *Surendra Prasad Sinha* [*Punjab National Bank* v. *Surendra Prasad Sinha*, 1993 Supp (1) SCC 499 : 1993 SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. In *Pepsi Foods Ltd.* v. *Special Judicial Magistrate* [*Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , a two-Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course."

47. In view of the clear legal position, Mr Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra has fairly stated that the FIR which is under investigation at the NM Joshi Marg Police Station in Mumbai does not and cannot cover any alleged act of criminal defamation. We will clarify this in our final directions.

48. Before we conclude, it is necessary to advert to the interim order of this Court dated 24 April 2020. By the interim order, the petitioner has been granted liberty to

move the competent court in order to espouse the remedies available under the CrPC. Hence, we clarify that this court has not in the present judgment expressed any opinion on the FIR which is under investigation at the NM Joshi Marg Police Station in Mumbai.

49. We hold that it would be inappropriate for the court to exercise its jurisdiction under Article 32 of the Constitution for the purpose of quashing FIR 164 of 2020 under investigation at the NM Joshi Marg Police Station in Mumbai. In adopting this view, we are guided by the fact that the checks and balances to ensure the protection of the petitioner's liberty are governed by the CrPC. Despite the liberty being granted to the petitioner on 24 April 2020, it is an admitted position that the petitioner did not pursue available remedies in the law, but sought instead to invoke the jurisdiction of this Court. Whether the allegations contained in the FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of this Court under Article 32, to quash the FIR. The petitioner must be relegated to the pursuit of the remedies available under the CrPC, which we hereby do. The petitioner has an equally efficacious remedy available before the High Court. We should not be construed as holding that a petition under Article 32 is not maintainable. But when the High Court has the power under Section 482, there is no reason to by-pass the procedure under the CrPC, we see no exceptional grounds or reasons to entertain this petition under Article 32. There is a clear distinction between the maintainability of a petition and whether it should be entertained. In a situation like this, and for the reasons stated hereinabove, this Court would not like

to entertain the petition under Article 32 for the relief of quashing the FIR being investigated at the NM Joshi Police Station in Mumbai which can be considered by the High Court. Therefore, we are of the opinion that the petitioner must be relegated to avail of the remedies which are available under the CrPC before the competent court including the High Court.

50. By the order of this Court dated 24 April 2020, the petitioner was protected against coercive steps for a period of three weeks. The period which was due to expire on 14 May 2020 was extended, when judgment was reserved on 11 May 2020, pending the decision of this Court. We are inclined to extend that protection for a further period of three weeks, particularly having regard to the outbreak of Covid-19, so as to leave adequate time to the petitioner to pursue his remedies before the competent forum.

51. As we have noted earlier, multiple FIRs and complaints have been filed against the petitioner in several states and in the Union Territories of Jammu and Kashmir. By the interim order of this Court dated 24 April 2020, further steps in regard to all the complaints and FIRs, save and except for the investigation of the FIR lodged at Police Station Sadar, District Nagpur City were stayed. The FIR at Police Station Sadar, District Nagpur City has been transferred to NM Joshi Marg Police Station in Mumbai. We find merit in the submission of Mr Kapil Sibal, learned Senior Counsel that fairness in the administration of criminal justice would warrant the exercise of the jurisdiction under Article 32 to quash all other FIRs (save and

except for the one under investigation in Mumbai). However, we do so only having regard to the principles which have been laid down by this Court in **TT Antony.** The filing of multiple FIRs arising out of the same telecast of the show hosted by the petitioner is an abuse of the process and impermissible. We clarify that the quashing of those FIRs would not amount to the expression of any opinion by this Court on the merits of the FIR which is being investigated by the NM Joshi Marg Police Station in Mumbai.

52. We find no reason to entertain the subsequent Writ Petition[40] which has been filed by the petitioner in respect of the FIR lodged at Pydhonie Police Station (FIR 137 of 2020 dated 2 May 2020). The basis on which the jurisdiction of this Court was invoked in the first Writ Petition – the filing of multiple FIRs in various states – is absent in the subsequent Writ Petition (Crl.) Diary No 11189 of 2020. The petitioner would be at liberty to pursue his remedies under the law in respect of the FIR. Any recourse to such a remedy shall be considered on its own merits by the competent court.

[40] Writ Petition (Crl.) Diary No 11189 of 2020

Directions

1 Writ Petition (Crl.) No 130 of 2020

53. Amendments as proposed are allowed. The amendments shall be carried out within one week.

(i) The prayer for transfer of the investigation to the CBI is rejected;

(ii) The interim order of this Court dated 24 April 2020 by which FIR 238 of 2020 dated 22 April 2020 was transferred from the Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai is confirmed. The FIR which has now been numbered as 164 of 2020 shall be investigated by the NM Joshi Marg Police Station in Mumbai;

(iii) We decline to entertain the prayer for quashing FIR 164 of 2020 (earlier FIR 238 of 2020) under Article 32 of the Constitution. The petitioner would be at liberty to pursue such remedies as are available in law under the CrPC before the competent forum. Any such application shall be considered on its own merits by the competent court;

(iv) In view of the law laid down by this Court in **Subramanian Swamy**, we clarify that the above FIR does not cover the offence of criminal defamation under Section 499 of the IPC which offence will not form the subject matter of the investigation. Hence, it is not necessary to address the prayer for dealing with the constitutional challenge to the validity of the said provision in these proceedings;

(v) The following FIRs/complaints are quashed, following the decision of this Court in **TT Antony** (explained subsequently) that successive FIRs/complaints founded on the same cause of action are not maintainable:

> "•FIR No. 245 of 2020, dated 22 April 2020, registered at Police Station Supela, District Durg, Chhattisgarh, under sections 153-A, 295-A and 505 (2) of the Indian Penal Code 1860.
>
> • FIR No. 180 of 2020, dated 23 April 2020, registered at Police Station Bhilal Nagar, District Durg, Chhattisgarh, under sections 153- A, 188, 290 and 505 (1) of the Indian Penal Code 1860.
>
> • FIR No. 176 of 2020, dated 22 April 2020, registered at Police Station Civil Lines, District Raipur, Chhattisgarh, under sections 153-A, 295-A and 505 (2) of the Indian Penal Code 1860.
>
> • Complaint dated 21 April 2020 by District Congress Committee – Antagrah, Kanker, Chhattisgarh.
>
> • Complaint dated 22 April 2020 by Pritam Deshmukh (adv.), Durg District Congress Committee – to SHO city PS Durg, Chhattisgarh.
>
> • Complaint dated 22 April 2020 by Suraj Singh Thakur, State Vice President, Indian Youth Congress- to Sr. Police Officer, Chirag Nagar, Ghatkopar East, Mumbai.
>
> • Complaint dated 22 April 2020 – Pankaj Prajapti (party worker of INC and ex-spokesperson NSUI) through counsel Anshuman Shrivastavas – Superintendent of Police, Crime Branch, Indore, Madhya Pradesh.
>
> • Complaint dated 22 April 2020 – Balram Jakhad (adv.) – to PS Shyam Nagar –u/s 153, 188, 505, 120B in Jaipur.
>
> • Complaint by Jaswant Gujar – to SHO Bajaj Nagar PS, Jaipur.

> • Complaint dated 22 April 2020 by Fundurdihari, Ambikapur, District Sarguja, Chhattisgarh – Rajesh Dubey, Chhattisgarh State Congress Committee – to SHO Gandhi Nagar, Ambikapur – u/s 153, 153A, 153B, 504, 505.
>
> • Complaint dated 22 April 2020 in Telangana by Anil Kumar Yadav, State President of Telangana Youth Congress – to SHO Hussaini Alam – u/s 117, 120B, 153, 153A, 295A, 298, 500, 504, 505 and 506. Also 66A of the IT Act.
>
> • Complaint dated 23 April 2020 by Anuj Mishra before Kotwali, Urai, Tulsi Nagar.
>
> • Complaint dated 22 April 2020 by Kumar Raja, VP, Youth Congress, Jharkhand Congress Committee before Kotwali Police Station, Upper Bazar, Ranchi.
>
> • Complaint dated 22 April 2020 by Madhya Pradesh Youth Congress."

(vi) The quashing of the FIRs and complaints listed out in (v) above shall not amount to any expression of opinion by this Court on the merits of the FIR which is under investigation by the NM Joshi Marg Police Station in Mumbai;

(vii) No other FIR or, as the case may be, complaint shall be initiated or pursued in any other forum in respect of the same cause of action emanating from the broadcast on 21 April 2020 by the petitioner on R Bharat. Any other FIRs or complaints in respect of the same cause of action emanating from the broadcast on 21 April 2020, other than the FIRs or complaints referred to in (v) above are also held to be not maintainable; and

(viii) Liberty to the complainants to move this Court for directions if it becomes necessary to do so.

2 Writ Petition (Crl) Diary No 11189 of 2020

54. The Writ Petition is dismissed with liberty to the petitioner to pursue such remedies as are available in accordance with law.

3 (i) The protection granted to the petitioner on 24 April 2020 in Writ Petition (Crl) Diary No 11006 of 2020[41] against coercive steps is extended for a period of three weeks from the date of this judgment to enable the petitioner to pursue the remedies available in law;

(ii) The CP, Mumbai shall consider the request of the petitioner for the provision of security at the residence of the petitioner and at the business establishment in Mumbai, in accordance with law. Based on the threat perception, police protection may be provided if it is considered appropriate and for the period during which the threat perception continues; and

(iii) Nothing contained in the present judgment shall be construed as an expression of opinion on the merits of the allegations contained in the FIRs.

55. Writ Petition (Crl) No 130 of 2020 shall stand disposed of. Writ Petition (Crl.) Diary No 11189 of 2020 shall stand dismissed with the liberty which has been granted in the above segment. IA 48588 of 2020 filed by the state government is

[41] WP (Crl) No. 130 of 2020

dismissed, leaving it open to the investigating agency to urge its submissions before the competent court. All other interim applications are disposed of in view of the above directions.

56. Pending application(s), if any, shall stand disposed of.

…….....J.
[Dr Dhananjaya Y Chandrachud]

…….....J.
[M R Shah]

New Delhi;
May 19, 2020.