

Writ Petition Nos.21020/2019, 21478/2019, 25591/2019,
20316/2019, 23112/ 2019, 1078/2020 & 6173 of 2020

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**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
DIVISION BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA
& HON'BLE SHRI JUSTICE SHAILENDRA SHUKLA**

Writ Petition No.21020/2019

Shirish Mishra

versus

Home Department & Others

Writ Petition No.21478/2019]

Shekhar

versus

The State of Madhya Pradesh & Others

Writ Petition No.25591/2019

Subodh

versus

The State of Madhya Pradesh & Others

Writ Petition No.20316/2019

Digvijay Singh Bhandari

versus

Town Inspector / The State of Madhya Pradesh & Others

Writ Petition No.23112/2019

Barkha Soni

versus

The State of Madhya Pradesh & Others

Writ Petition No.1078/2020

Union of India

versus

The State of Madhya Pradesh & Others
Writ Petition No.6173/2020

Dilip Maran

versus

The State of Madhya Pradesh & Others

Ms. Nidhi Bohra, learned counsel for the petitioner in W.P. No.21020/2019.

Shri R.S. Parmar, learned counsel for respondent No.3 W.P. No.21020/2019.

Shri Sudarshan Joshi, learned counsel for the intervenor W.P. No.21020/2019.

Shri Dharmendra Chelawat, learned counsel for the petitioner in W.P. No.21478/2019.

Shri Koushal Sharma, learned counsel for the petitioner in W.P. No.25591/2019.

Shri Dr. Manohar Dalal along with Shri Lokendra Joshi, learned counsel for the petitioner in W.P. No.20316/2019.

Shri Yashwardhan Tiwari along with Shri Valmik Sakargayen, learned counsel for the petitioner in W.P. No.23112/2019.

Shri Himanshu Joshi, learned Additional Solicitor General for the petitioner in W.P. No.1078/2020.

Shri Aditya Choudhary, learned counsel for the petitioner in W.P. No.6173/2020.

Shri Purushaindra Kaurav, learned Advocate General along with Shri Pushyamitra Bhargav, learned Additional Advocate General for the respondents / State in all the Writ Petitions.

ORDER

(Delivered on this 5th day of September, 2020)

Per : S.C. Sharma, J:

Regard being had to the similitude in the controversy involved in the present case, these writ petitions were analogously heard and by a common order, they being disposed of by this Court. Facts of Writ Petition No.21020/2019 are narrated hereunder.

The petitioner before this Court, who is a social worker, has filed this present petition under Article 226 of the Constitution of India by way of Public Interest Litigation in respect of a crime, which took place in the State of Madhya Pradesh allegedly relating to some sex scandal.

02. The petitioner's contention is that on 17.09.2019, one Harbhajan Singh, Superintending Engineer, Municipal Corporation, Indore filed a complaint before the police authorities alleging that he is being blackmailed and a 'Honey Trap' gang is working in the State of Madhya Pradesh which is involved in blackmailing high profiles politicians, bureaucrats, businessman etc.

03. It has further been stated that based upon the complaint of Mr. Harbhajan Singh dated 17.09.2019, Madhya Pradesh Anti Terrorist Squad and Crime Branch of the State has unearthed the 'Honey Trap' Racket and on 19.09.2019, two women were arrested. Later on total six arrests were made by the police and the police has seized large number of electronic gadgets including spy-cameras, laptops, mobile phones etc. The police has also allegedly recovered videos and audio tapes relating to conversation with leaders, bureaucrats, businessman etc.

04. The petitioner's further contention is that a Special

Investigation Team of 12 members was constituted and I.G. (C.I.D.) Shri D. Sreenivasa Verma was appointed as a Chairman of S.I.T. on 24.09.2019. Later on Shri D. Sreenivasa Verma was changed as the S.I.T. Chief and one Shri Sanjeev Shami, IPS was appointed as a chairman. The petitioner's contention is that offence in respect of crime in question not only relates to blackmailing but it relates to money laundering and offences under the Prevention of Corruption Act as well as other crimes also. It has been further stated that the influential people are involved in the matter, and therefore, the case be transferred to Central Bureau of Investigation.

05. The petitioner has prayed for the following relief:-

1. Call entire record and videos from the respondents for the safe custody.
2. A direction be issued for transferring the matter to the C.B.I.
3. Record of Vallabh Bhawan visitors may kindly be seized and every individual who visit Vallabh Bhawan, their entry pass should be checked individually before allowing them to enter and,
4. Any other relief which Hon'ble Court deem fit in the facts and circumstances of the case.

06. The respondents / State have filed a detailed reply in the matter and this Court has monitored the investigation which was going on in the matter. Intervention Applications have been filed and from time to time, compliance reports have been filed in respect of the investigation. This Court has even directed the State of Madhya Pradesh not to change the constitution of S.I.T. without leave of this Court. There are as many as six petitions filed in respect of crime

in question i.e. Criminal Case No.405/2019 and the State has filed a consolidated reply / written submissions apart from the progress report filed from time to time.

07. The respondents / State have stated that the first S.I.T. Chief, Shri D. Sreenivasa Verma himself has written a letter to the State Government expressing his difficulties in handling the investigation and in those circumstances, Shri Sanjeev Shami, the then A.D.G., Police A.T.S. was appointed as Chief and later on Shri Rajendra Kumar, IPS was appointed as the Chief of S.I.T. The respondents have stated that after registering the criminal case, investigation was carried out, which was monitored by this Court and a charge-sheet has been filed against seven accused persons, who have been arrested so far and the case is still being investigated under the provision of Section 173(8) of the Code of Criminal Procedure, 1973.

08. The respondents have also stated that during the course of investigation heavy cash amount was recovered from the possession of accused persons namely Arti Dayal and Shweta Vijay Jain and the information was forwarded to the Income Tax Department as well as to the Enforcement Directorate. The respondents have stated that the electronic gadgets, seized in the matter, have been forwarded to Central Forensic Science Laboratory, Hyderabad for forensic analysis and a report is awaited from CFSL, Hyderabad. The respondents have further stated that entire investigation was monitored by this Court from time to time and question of handing over the case to Central Bureau of Investigation does not arise.

09. The respondents have also filed their replies to the

Interlocutory Applications preferred in the matter by the intervenor and their contention is that they have carried out investigation in a most impartial manner and they shall be taking further steps in the matter after the CFSL report is received.

10. Learned Advocate General for the respondents / State has also informed this Court that the matter has thoroughly been probed, and thereafter, charge-sheet has been filed in the matter. A prayer has been made for dismissal of the writ petition.

11. In the other connected Public Interest Litigation i.e. ***W.P. No.21478/2019 (Shekhar v/s The State of Madhya Pradesh & Two Others)***, same prayer has been made for handing over the case to Central Bureau of Investigation and an alternative prayer has been made to constitute a committee by the High Court to conduct the investigation.

12. It has been stated that five women and a man were blackmailing certain people, large number of objectionable material has been recovered from them and as highly placed, bureaucrats, administrative officer, influential businessmen are involved in the matter, the matter be handed over to the Central Bureau of Investigation for independent, free and fair investigation and an alternative prayer has been made to constitute a multi-member committee to supervise the investigation.

13. The respondents, in reply to the petition, have stated that S.I.T. has constituted by the State Government and the S.I.T. Chief was changed initially as Shri D. Sreenivasa Verma has expressed his difficulties in handling the investigation and and the entire investigation was carried by

the S.I.T. under the S.I.T. Chief, Shri Rajendra Kumar. The respondents have denied the allegation made by the petitioner in the matter. It has also been argued by the learned Advocate General that charge-sheet has already been filed and at this juncture, the question of transferring the case to the Central Bureau of Investigation does not arise.

14. The third writ petition i.e., W.P. No.25591/2019 is again a Public Interest Litigation and the prayer made in the petition is that all matters relating to 'Honey Trap' case should be handed over to Additional Director General of Police, Shri Sanjeev Shami and Deputy Inspector General of Police, Shri Harinarayan Chari. It has been stated that one Satyendra Shukla, who is younger brother of the petitioner, was falsely implicated in the 'Honey Trap' case.

15. The respondents have filed a reply and have stated that neither any person named as Satyendra Shukla is named as an accused in the crime registered at Police Station – Palasia i.e. at Crime No.405/2019 nor any such person was ever interrogated by the S.I.T. in connection with the investigation with the case.

16. Learned Advocate General has argued before this Court that the petitioner cannot pray for a relief for appointment of Investigating Officer of his choice, especially when he has got no connection with the criminal case, by filing a Public Interest Litigation Litigation writ petition.

17. The other connected matter i.e., W.P. No.20316/2019 is again a Public Interest Litigation and a prayer has been made for handing over the case to Central

Bureau of Investigation.

18. Shri Dalal, learned counsel for the petitioner has also filed written arguments and heavy reliance has been placed upon a judgment delivered in the case of *Mahesh Garg v/s The State of Madhya Pradesh (M.Cr.C. No.1728/2010)* decided by the Division Bench of this Court, in which, this Court, by passing an order on 18.10.2012, has handed over the investigation to Central Bureau of Investigation. It was a case in respect of certain irregularity committed in the matter of construction of a commercial building at Plot No.11, M.G. Road, Indore and his contention is that keeping in view the aforesaid judgment, the matter deserves to be handed over to the Central Bureau Investigation.

19. The respondents / State have filed a reply and it has been stated that the investigation has been carried out by the State Investigating Agency and an officer of the rank of Additional Director General of Police was the S.I.T. Chief. It has also been stated that after conducting an investigation, keeping in view the directions issued by this Court from time to time, charge-sheet has been filed and a progress report in a sealed cover furnishing all minute details has been submitted to this Court. The respondent have also placed reliance upon several judgments delivered from time to time on the issue of referring the matter to the Central Bureau Investigation. Learned Additional Advocate General has prayed for dismissal of the writ petition.

20. Thus in short, three writ petitions have been filed for transferring the investigation to Central Bureau of Investigation in respect of two criminal case, one registered

at Bhopal and the other registered at Indore praying similar relief by way of Public Interest Litigation.

21. W.P. No.1078/2020 has been filed by Union of India (Income Department) and this Court by an order dated 02.03.2020 has directed the S.I.T. to furnish all details / documents to Union of India.

22. The respondents have filed a reply and they have categorically stated that all the information relevant for the purposes of proceeding under the Income Tax Act, 1961 has already been shared with Union of India and the information, which has got no bearing and impact with the provisions of the Income Tax Act, 1961, has not been shared.

23. The respondents have further stated that on account of interim order dated 16.03.2020, permission has been granted to the officer of the Income Tax Department to scan the entire documents / material and they shall be co-operating with the Income Tax Department and shall be furnishing details to the Income Tax Department as and when desired.

24. W.P. No.23112/2019 is a petition by one of the accused persons stating that on 18.08.2019, she was arrested after the sunset, and therefore, procedure prescribed under the Code of Criminal Procedure, 1973 for arresting a lady and producing her before the Magistrate has been violated. Various other grounds have also been raised in the present writ petition and the respondents, in the reply, have categorically stated that the petitioner was arrested on 19.09.2019 at about 7:30 am from her resident at Aaradhana Nagar, Bhopal vide arrest memo in Case No.405/2019

Police Station – Palasia and she was produced before the Magistrate before 24 hours.

25. The respondents / State have furnished all minute details in respect of her arrest and have stated that the charge-sheet has already been filed in the matter against the petitioner and other accused persons. It has been stated that the petitioner has filed an application also before the Judicial Magistrate, First Class under Section 91 of the Code of Criminal Procedure, 1973 and the same was dismissed on 01.11.2019. A prayer has been made for dismissal of the writ petition.

26. This Court has heard learned counsel for the parties at length and with the consent of the parties, Interlocutory applications are also disposed of as the matter is being decided finally at the motion hearing stage itself.

27. The facts of the case reveal that on the basis of written complaint dated 17.10.2019 lodged by Shri Harbhajan Singh, resident of Indore, Criminal Case No.405/2019, for offences punishable under Sections 419, 420, 384, 506 and 120-B of the Indian Penal Code, was initially registered at Police Station – Palasia, Indore against two accused persons namely Arti Dayal and Seema Soni @ Monica Yadav. It was alleged in the complaint that the accused persons, by practicing fraud on the complainant, prepared a video and made some extortion calls over mobile phone. Initial investigation of the case was conducted by Police Station – Palasia, Indore and two accused persons namely Artil Dayal and Seema Soni @ Monica Yadav were arrested on 18.09.2019 i.e., the date on which both of them visited the complainant, Shri Harbhajan Singh to collect

first installment of the extortion amount.

29. The statement of complainant, Shri Harbhajan Singh was recorded under Section 161 of the Code of Criminal Procedure, 1973 by the Investigating Officer of Police Station – Palasia, Indore on 18.09.2019 itself. The complainant corroborated the contents of the written complaint lodged by him on 17.09.2019.

30. The accused persons came down to Indore in Hyundai Creta Car bearing No.MP 16 / CB / 4441 driven by their associate Om Prakash Kori, who was also arrested on 18.09.2019. Certain material was seized from the accused persons, the vehicle in question was also seized and the accused persons, on interrogation, revealed the names of other ladies also, who were allegedly involved in such activities. On 19.09.2019, Ms. Shweta Vijay Jain, Shweta Swapnil Jain and Barkha Bhatnagar Soni were also arrested. There was a seizure of laptops, mobile phones and other articles also. Cash was also recovered from various premises and subsequent to recovery of fake / forged Adhar Card, offence was also registered under Sections 467, 468, 471, 385 of the Indian Penal Code r/w sections 67 and 67-A of the Information Technology Act, 2000.

31. Keeping in view the gadgets recovered from the accused, on 23.09.2019, the senior officers of the Department were informed about the case by the Senior Superintendent of Police, Indore and a Special Investigating Team was constituted headed by Shri D. Sreenivasaa Verma, the then Inspector General of Police (C.I.D.). Shri D. Sreenivas Verma expressed difficulties in heading the S.I.T. and on 24.09.2019, Shri Sanjeev Shami, the then

Additional Director General of Police, A.T.S. was made the Head of the Special Investigating Team with eight members for conducting the investigation in respect of Crime No.405/2019 registered at Police Station – Palasia. On 24.09.2019, another criminal case was registered at Bhopal at the behest of Shri Heeralal Yadav, who is the father of accused Monica Yadav, for offences punishable under Sections 370, 370-A and 120-B of the Indian Penal Code. On the basis report lodged by Shri Heeralal Yadav, a crime was registered at Crime No.02/2019 at Police Station – C.I.D., Bhopal for the offences punishable under Sections 370, 370-A and 120-B of the Indian Penal Code on 25.09.2019.

32. A detailed progress report has been submitted in a sealed cover and the same reveals that statements of large number of witnesses were recorded by the police in both the cases, gadgets were seized in the matter and Shri Rajendra Kumar, Additional Director General of Police was appointed as Head of the S.I.T. All minute details in respect of the investigation have also been furnished in the progress report.

33. During the pendency of the writ petitions, it was alleged that there is possibility of tampering of the evidence on account of alleged involvement of influential persons and in those circumstances, this Court has directed the S.I.T. to forward the entire seized material to Central Forensic Science Laboratory, Hyderabad, The clone copies of the electronic evidence was retained by the S.I.T. constituted in the matter and based upon the investigation carried out, charge-sheet has been filed in both the cases

i.e., Crime No.405/2019 registered at Police Station – Palasia and Crime No.02/2019 registered at Police Station – C.I.D., Bhopal.

34. The progress report includes all minute details in respect of evidence collected by the S.I.T. and as the trial is going on in both the cases, this Court is of the considered opinion that the details in respect of the progress report, in case they reproduced in the judgment, will effect the trial, which is going on, and therefore, the minute details in respect of the progress report are not being reproduced.

35. In nutshell, the entire investigation was carried out during the pendency of the present writ petitions and charge-sheets have been filed in both the cases and it has been stated that after receiving the report in respect of electronic gadgets and the material which has been sent to CFSL, Hyderabad, as investigation under Section 173(8) of the Code of Criminal Procedure, 1973 is still in progress, the respondents shall be taking appropriate steps in accordance with law keeping in view the statutory provisions as contained under the Code of Criminal Procedure, 1973.

36. The issue before this Court is whether in light of the progress report, which has been submitted to this Court, the investigation of the case deserves to be handed over to the Central Bureau of Investigation or not ?

37. The Hon'ble Supreme Court in the case of *Sujatha Ravi Kiran v/s The State of Kerela & Others reported in (2010) 3 SCC 571* has held as under:-

“9. It is well settled that the extraordinary power of the constitutional courts in directing C.B.I. to conduct investigation in a case must be exercised rarely in exceptional circumstances,

especially, when there is lack of confidence in the investigating agency or in the national interest and for doing complete justice in the matter.

11. Considering the facts and circumstances of the case in hand, in the light of the above principles, we are of the view that the case in hand does not entail a direction for transferring the investigation from the state police/special team of State Police Officers to C.B.I. The facts and circumstances in which the offence is alleged to have been committed can be better investigated into by the state police. However, having regard to the nature of allegations levelled by the petitioner, we deem it appropriate to direct the State of Kerala to constitute a special team of police officers headed by an officer not below the rank of Deputy Inspector General of Police to investigate the matter.”

38. The Hon'ble Supreme Court in the case of *State of West Bengal v/s Committee for Protection of Democratic Rights* reported in (2010) 3 SCC 571 has held as under:-

“Before parting with the case, we deem it necessary to emphasise that 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. In so far as the question of issuing a direction to the 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 extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil 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 the 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.”

In light of the aforesaid judgments, a matter can be transferred to C.B.I. only in exceptional situations.

39. In the case of *Mithilesh Kumar Singh & Others v/s The State of Rajasthan & Others reported in (2015) 9 SCC 795*, the Hon'ble Supreme Court has held that while referring the matter to the Central Bureau of Investigation, the Court has to keep in mind certain relevant issues i.e. (a) sensitivity of victims or their next kin (b) sensitivity of issues like loss of human life (c) shabby and partisan investigation etc., or when investigation by the State police does not inspire confidence and the discovery of truth is the ultimate purpose which can be done in the best manner by an independent agency.

40. In light of the aforesaid judgments delivered by the Hon'ble Supreme Court, there is no manner of doubt that this Court is having jurisdiction to transfer the matter to the Central Bureau of Investigation, however, in the present case, this Court itself has monitored the investigation and charge-sheets have been filed. The S.I.T. has also investigated into the allegations made by the accused persons / statements made by the accused persons in order to find out whether any favour has been done by any Government Agency of the Department on the basis of the so called sex scandal. The S.I.T. has not received any material on the basis of which it can be held that the accused persons were helped by the Department of the Government in granting them contract or any other kind of favour.

41. It is true that some of the accused persons have

informed the Investigating Agency about their intimacy with certain persons, however, as informed by the Head of the S.I.T., there is no criminality involved in the matter. This Court has also gone through the entire material / evidence collected by the S.I.T. in camera proceedings and is of the considered opinion that a fair and proper investigation has been carried out in the matter.

42. During the pendency of the writ petitions, a hard disc was also submitted to this Court and the same has also been forwarded to the CFSL, Hyderabad and again after receiving a report from CFSL, Hyderabad, as investigation under Section 173(8) of the Code of Criminal Procedure, 1973 is still in progress, the S.I.T. shall be taking appropriate steps in the matter. The present case is certainly not a case, which requires investigation by Central Bureau of Investigation in light of the judgments referred above.

43. In the case of *T.C. Thangarai v/s V. Enagammal & Others reported in (2011) 12 SCC 328*, the Hon'ble Supreme Court in paragraph – 9 and 10 has held as under:-

“9. The decision of the two-Judge Bench of this Court in *Ramesh Kumari v. State (NCT of Delhi)* will have to be now read in the light of the principles laid down by the Constitution Bench of this Court in *State of W.B. v. Committee for Protection of Democratic Rights*. The Constitution Bench has considered at length the power of the High Court to direct investigation by CBI into a cognizable offence alleged to have been committed within the territorial jurisdiction of a State and while taking the view that the High Court has wide powers under Article 226 of the Constitution cautioned that the courts must bear in mind certain self-imposed limitations.

10. Para 70 of the opinion of the Constitution Bench in *State of W.B. v. Committee for Protection of Democratic Rights* is extracted hereinbelow: (SCC p. 602)

“70. Before parting with the case,

we deem it necessary to emphasise that 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 instil 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)

It will be clear from the opinion of the Constitution Bench quoted above that the power of the High Court under Article 226 of the Constitution to direct investigation by CBI is to be exercised only sparingly, cautiously and in exceptional situations and an order directing CBI (sic to conduct investigation) is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police.”

In light of the aforesaid judgment, it is crystal clear that the power of the High Court under Article 226 of the Constitution of India to direct investigation by the Central

Bureau of Investigation has to be exercised only sparingly, cautiously in exceptional situation and an order directing the Central Bureau of Investigation to conduct investigation is not to be passed as a matter of routine or merely because the parties have levelled some allegations against the local police.

44. The Hon'ble Supreme Court in the case of ***Sakiri Vasu v/s The State of U.P. & Others reported in (2008) 2 SCC 409*** has dealt with the transfer of case Central Bureau of Investigation. Paragraph – 33 of the aforesaid judgment reads as under:-

“33. [In Secretary, Minor Irrigation & Rural Engineering Services U.P. and others vs. Sahngoo Ram Arya and another](#) 2002 (5) SCC 521 (vide para 6) , this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation.”

In light of the aforesaid judgment, this Court is of the considered opinion that a C.B.I. inquiry cannot be ordered as a matter of routine or merely because the parties have made some allegation.

45. The Hon'ble Supreme Court in the case of ***K.V. Rajendran v/s Superintendent of Police, CBCID South Zone, Chennai & Others reported in (2013) 12 SCC 480*** has again dealt with issue of transfer of case from the State Investigating Agency to some other independent agency like Central Bureau of Investigation. Paragraphs – 13 and 14 of the aforesaid judgment read as under:-

“13. [In Rubabbuddin Sheikh v. State of Gujarat &](#)

Ors., (2010) 2 SCC 200, this Court dealt with a case where the accusation had been against high officials of the police department of the State of Gujarat in respect of killing of persons in a fake encounter and the Gujarat police after the conclusion of the investigation, submitted a charge sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a chargesheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

14. In State of West Bengal v. Committee for Protection of Democratic Rights, AIR 2010 SC 1476, a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation 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.”

In the present case, a fair and impartial investigation has been carried out by the Madhya Pradesh Police. This Court has seen the entire material while holding the proceedings in camera and did not find any reason for transferring the investigation to Central Bureau of Investigation on any count.

46. The Hon'ble Supreme Court again in the case of ***Rhea Chakraborty v/s The State of Bihar & Others*** [*Transfer Petition (Cri.) No.225/2020*] decided on

19.08.2020 in paragraphs – 34, 40 and 41 has held as under:- *[MANU/SC/0597/2020]*

“34. As noted earlier, the FIR at Patna was subsequently transferred to the CBI with consent of the Bihar government during pendency of this Transfer Petition. However, in future, if commission of cognizable offence under section 175(2) CrPC is determined, the possibility of parallel investigation by the Mumbai Police cannot be ruled out. Section 6 of the DSPE Act, 1946 read with Section 5 prescribe the requirement of consent from the State government, before entrustment of investigation to the CBI. As the CBI has already registered a case and commenced investigation at the instance of the Bihar government, uncertainty and confusion must be avoided in the event of Mumbai Police also deciding to simultaneously investigate the cognizable offence, based on their finding in the inquiry proceeding. Therefore, it would be appropriate to decide at this stage itself as to who should conduct the investigation on all the attending circumstances relating to the death of the actor Sushant Singh Rajput. This issue becomes relevant only if another FIR is registered on the same issue, at Mumbai. A decision by this Court on the point would confer legitimacy to the investigation.”

40. The actor Sushant Singh Rajput was a talented actor in the Mumbai film world and died well before his full potential could be realised. His family, friends and admirers are keenly waiting the outcome of the investigation so that all the speculations floating around can be put to rest. Therefore a fair, competent and impartial investigation is the need of the hour. The expected outcome then would be, a measure of justice for the Complainant, who lost his only son. For the petitioner too, it will be the desired justice as she herself called for a CBI investigation. The dissemination of the real facts through unbiased investigation would certainly result in justice for the innocents, who might be the target of vilification campaign. Equally importantly, when integrity and credibility of the investigation is discernible, the trust, faith and confidence of the common man in the judicial process will resonate. When truth meets sunshine, justice will not prevail on the living alone but after Life’s fitful fever, now the departed will also sleep well. Satyameva Jayate.

41. In such backdrop, to ensure public confidence in the investigation and to do complete justice in the matter, this Court considers it appropriate to invoke the powers conferred by Article 142 of the Constitution. As a Court exercising lawful jurisdiction for the assigned roster, no impediment is seen for exercise of plenary power in the present matter. Therefore while according approval for the ongoing CBI investigation, if any other case is registered on the death of the actor Sushant Singh Rajput and the surrounding circumstances of his unnatural death, the CBI is directed to investigate the new case as well. It is ordered accordingly.”

In the aforesaid case, a First Information Report was lodged in the State of Bihar and in the State of Maharashtra also and the State of Bihar has handed over the investigation to Central Bureau of Investigation. The Hon'ble Supreme Court, keeping in view the peculiar facts and circumstances of the case, as a request was already made by the State of Bihar to the C.B.I. to investigate the case and C.B.I. has already registered a case and commenced its investigation, has directed the C.B.I. to investigate the matter and to investigate any other case registered on the death of the actor Sushant Singh Rajput.

47. In the present case, no request of any kind was made by the State of Madhya Pradesh to the Central Bureau of Investigation. The State of Madhya Pradesh has carried out the investigation in a fair and impartial manner keeping in view the provisions as contained under the Code of Criminal Procedure, 1973, and therefore, no case is made out for issuance of an appropriate writ, order or direction, directing the Central Bureau of Investigation to investigate the matter.

48. The Hon'ble Supreme Court in the case of *Arnab Ranjan Goswami v/s Union of India & Others in Writ*

Petition No.130/2020 decided on 19.05.2020 has dealt with the issue of investigation by the Central Bureau of Investigation. Paragraphs – 36, 37, 38 and 43 of the aforesaid judgment reads as under:- [*MANU/SC/0448/2020*]

“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 (2010) 3 SCC 571 (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 (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 Gujarat³⁰, Sanjiv Rajendra Bhatt v Union

of India³¹, E Sivakumar v Union of India³² and Divine Retreat Centre v State of Kerala³³. 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 (2011) 5 SCC 79 (2016) 1 SCC 1 (2018) 7 SCC 365 (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.”

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.”

In the aforesaid case, the Hon'ble Supreme Court has once again held that the principle of law that emerges from the precedents is that the power to transfer an investigation must be used sparingly and only in exceptional circumstances.

49. This Court has carefully gone through the entire cases referred by learned counsel for the parties, heard learned counsel for the parties at length and no material was brought before this Court on the basis of which it could have been held that the investigation has not been done properly by the State of Madhya Pradesh. In light of the aforesaid, this Court does not find any reason to transfer the investigation to the Central Bureau of Investigation.

50. The present case is certainly not a case which warrants investigation by the Central Bureau of Investigation. The S.I.T., constituted in the matter, has carried out investigation under the supervision of this Court by submitting progress report from time to time and as already stated earlier, this Court has recorded its satisfaction in respect of the investigation carried out by the S.I.T., and

therefore, the prayer of the petitioner for transferring the investigation to the Central Bureau of Investigation does not arise.

51. The progress report submitted to this Court along with entire material, which was considered by this Court while holding proceeding in camera, has already been returned back to S.I.T. Chief and only one sealed cover, which has been retained for dictating the judgment, has been handed over back to Shri Awdhesh Kumar Goswami, IPS who is Officer Incharge of the case. The S.I.T., as investigation is going on under Section 178(8) of the Code of Criminal Procedure, 1973, shall be free to take appropriate steps in accordance with law the moment a report is received from CFSL, Hyderabad and shall also submit progress report to the Principal Registrar of this Court in respect of further action taken in the matter. The respondents / State is also directed to take all steps as provided under the Code of Criminal Procedure, 1973 for ensuring arrest of other accused persons who are absconding and shall also submit a progress report in respect of the steps taken to arrest the remaining persons who are accused in the criminal cases and shall make all possible endeavor to conclude the investigation under Section 178(8) of the Code of Criminal Procedure, 1973 as expeditiously as possible.

With the aforesaid, the present Writ Petition stands disposed of.

The order passed by this Court in the present case shall govern the connected writ petitions also, and therefore, the connected writ petition also stands disposed of.

Let a copy of this order be kept in the connected petitions also.

Certified copy, as per rules.

(S.C. SHARMA)
J U D G E

(SHAIENDRA SHUKLA)
J U D G E

Ravi

