

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 03.02.2009
Date of decision : 25.02.2009

+ W.P.(Crl.)71/2007

YOGESH GUPTA Petitioner
Through: Kunwar C.M. Khan, adv.

Versus

THE SECRETARY (HOME)
NCT OF DELHI & ORS. Respondents
Through: Ms. Mukta Gupta, APP with Insp.
Raj Kumar

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MOOL CHAND GARG, J.

1. This petition raises a substantial question of law as to whether:-
 - i) The police can refuse to register an FIR on a complaint made by the complainant disclosing a cognizable offence under Section 154 Cr.P.C.
 - ii) What remedies are available with the complainant on refusal to register an FIR.
 - iii) What are the remedies available to the complainant who is aggrieved by the acquittal of the accused persons on the basis of a trial, which proceeds on an FIR which was registered against persons other than Sh. Anil Gupta.
 - iv) Is it necessary to direct registration of a second FIR in the facts of this case despite availability of a remedy under Section 200 of the Code of Criminal Procedure (Cr.P.C.).

2. Briefly stating the facts giving rise to the filing of present petition are:-

- i) In an unfortunate incident held on 13.02.2004 at 09:30 pm., One Surender Gupta was assaulted and grievous injuries were caused on his person and because of the same he succumbed to the injuries.
- ii) In respect of the aforesaid incident an FIR bearing No.113/2007 was registered under Section 302 IPC on a complaint filed by respondent No.1, Sh. Brij Mohan Gupta.
- iii) The said FIR was investigated and Brij Mohan Gupta & ors were arrested and were sent for trial before a Sessions Court after committal of the case by the Metropolitan Magistrate concerned.
- iv) The trial resulted in acquittal of the accused persons who were sent for trial vide judgment dated 16.12.2005, on account of the witnesses turning hostile including Sh. Anil Gupta who was the author of FIR No.113/2007
- v) After the judgment of acquittal, the petitioner and his family members claims to have examined the case file of the trial Court and found that the photographs taken by the crime team on 14.02.2004 depicts that in fact the incident of murder of Sh. Surender Gupta took place in the house of Sh. Anil Gupta and on further inquiries they also came to know that Sh. Anil Gupta is the main culprit. On that basis, the petitioner as well as the sisters of the deceased filed a complaint with the police and other authorities on 17.04.2006 and 10.04.2006 alleging that, in fact, it was respondent No.1, Sh. Anil Gupta who was the real culprit and, therefore, a 2nd FIR be registered against him for murder of Sh. Surender Gupta under Section 302 IPC and

to take further proceedings accordingly. However, no FIR has been registered though the complainants have been investigated by the officers of Delhi Police seven times but they have not found a case for registration of a second FIR, except by one of them.

- v) The petitioner also filed an application before the learned MM under Section 190(1)(b) of Cr.P.C. for registration of a case against Sh. Anil Gupta. However, the said application was dismissed by the learned MM on 11.01.2007 without recording any evidence, as no evidence has been led.

3. In these circumstances, the petitioner has now filed the present writ petition seeking direction against respondent No.2 to register an FIR against Sh. Anil Gupta. In support of his case the petitioner has relied upon the following judgments:

1. Ramesh Kumari Vs. State (Delhi) and Ors. **(2006) 2 SCC 677.**
2. Lallan Chaudhary and Ors. Vs. State of Bihar and Anr. **(2006) 4 Crimes 164**
3. Kari Chaudhary Vs. Mst. Sita Devi & Ors. **(2002) 1 JCC 151**
4. Nirmal Singh Kahlon Vs. State of Punjab & Ors. **(2008) IX SLT 578**
5. Priya Gupta Vs. State (Delhi) **(2007) 2 JCC 1330**
6. Sonu & Ors. Vs. Govt. of NCT **144 (2007) DLT 628.**

4. The writ petition has been contested by the State. It is submitted by them that no such direction can be issued in this matter for the reasons, that no second FIR can be registered in respect of the murder of Late Sh. Surender Gupta since an FIR had already been registered in respect of his murder vide FIR No.113/2007 which was investigated and a charge sheet was also filed against the offenders after completing the investigation. The accused persons so booked were sent for trial before the competent Court but it resulted into their

acquittal on account of the witnesses turning hostile. No protest has been raised against the said Judgment by the petitioner at bar for four months.

5. It has also been submitted that the complaint filed by the petitioner and the sisters of the deceased were also investigated but nothing has been found in those complaints warranting registration of a second FIR against Sh. Anil Gupta as prayed for by the petitioner. It has been submitted that the procedure which has been prescribed under Cr.P.C. provides for an alternative remedy in favour of the petitioner by filing a complaint under section 200 Cr.P.C. and if he is able to pursue further, his grievance by leading sufficient evidence. The Magistrate then can either direct further investigation under Section 156(3)Cr.P.C. and a direction to register an FIR or may proceed with the complaint by recording the evidence of the complainant as may be led by the petitioner and thereafter take cognizance of the offence against the culprit and then issue a process against him under Section 203 Cr.P.C. It is submitted that this course is open to the petitioner in view of the judgment of the Apex Court judgments delivered in Sakiri Vasu Vs. State of UP & Ors. 2008 (2) SCC 409 and Aleque Padamsee and Ors. Vs. Union of India & Ors. (2007) 6 SCC 171.

6. It is submitted that in view of the judgments of the Apex Court wherein all the judgments cited by the petitioner have been discussed no direction can be given in this case for issuance of an FIR against Sh. Anil Gupta as prayed for by the petitioner and therefore the writ petition is liable to be dismissed.

7. It may be observed that in the case of Aleque Padamsee (Supra) it has been held:

5. Section 156 deals with "Police officer's power to investigate cognizable cases" and the same reads as follows:

(1) Any officer in charge of a police station may, without

the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above- mentioned.

6 "4. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused.

These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Reg) through its President v. Union of India and Ors. It was specifically observed that a writ petition in such cases is not to be entertained.

These aspects have been highlighted in Gangadhar Janardan Mhatre v. State of Maharashtra, Minu Kumari and Anr. v. State of Bihar and Ors. and Hari Singh v. State of U.P. It was specifically observed in a writ petition in such cases is not to be entertained. The above position was again highlighted in Gangadhar Janardan Mhatre Vs. State of Maharashtra, Minu Kumari Vs. State of Bihar and Hari Singh Vs. State of UP.

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences's case (supra) and re-iterated in Gangadhar's case (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra), Minu Kumari's case (supra) and Ramesh Kumari's case (supra), we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu

Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was reiterated in Lallan Chaudhary and Ors. v. State of Bihar. The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24.2.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions.

8. The writ petitions are finally disposed of with the following directions:

(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

8. It is also the submission of the respondents that in the present case if the petitioners was not satisfied with the result of the trial in respect of the FIR registered in respect of the murder of Late Sh. Surender Gupta, he could have filed a protest petition against the judgment of the acquittal and could have filed an application under Section 173(8) of Cr.P.C. for further investigation but instead of doing so, the petitioner had been approaching the respondent for carrying out a further investigation which though has been made on account of the incidences but nothing has been found which may call for registration of a second FIR against Sh. Anil Gupta in respect of the murder of Sh. Surender Gupta.

9. It is submitted that the judgments cited by the petitioner delivered in the case of Ramesh Kumari Vs. State of Delhi 2006 (2) SCC 677 and Lallan Chaudhary and Ors. Vs. State of Bihar and Anr. 2006 (4) Crimes 164 have no application to the facts of the present case. It is

submitted that it is well settled law that the FIR is registered on the allegations of commission of cognizable offence irrespective of who the offender is. In the present case FIR had already been registered for commission of the cognizable offence of murder of Surender Gupta and after investigation a full fledged trial had taken place thereon.

10. It is stated that only four months after the acquittal of the accused the petitioner filed his complaint for registration of FIR. It is further submitted that an enquiry was conducted to find out whether there was any lapse on the part of police officers so that appropriate action could be taken. On detailed enquiries conducted first by the South District, then by the DCP/Vigilance of the Police Headquarters and then by the DCP/Legal Cell, it was found out that there was no lapse in the investigation conducted in respect of FIR No. 113/2000 was on the right line.

11. It is submitted that the decision of the Supreme Court in the case of Kari Chaudhary Vs. Mst. Sita Devi and Ors. 2002 (1) JCC 151 also has no relevance as in that case after the registration of first FIR, investigation was carried out and it was found out that the first respondent who was complainant and other family members were culprits, hence, another FIR was registered against the first respondent and her family therein. Here neither during earlier investigation, nor during subsequent enquiry it has been found Anil Gupta author of FIR No. 113/2000 was guilty of committing murder of Shri Surender Gupta.

12. It is also submitted that the reliance of the petitioner on the decision in the case of Nirmal Singh Kahlon Vs. State of Punjab & Ors. 2008 IX SLT 578 is also misplaced. No additional material has been shown by the petitioner except the photographs and reliance placed

upon the statement of one witness, namely, Shri Krishna who has been examined by Inspector Mahavir Singh who gave a one-sided report of enquiry making out a case against Shri Anil Gupta. As the facts of the case are entirely different in that case in the light of the facts which came on record where it was seen that the senior officers of the Police and the Ministers etc. were trying to save the real culprits, directions were given for the registration of the second FIR. However, in the present case, nothing has been brought to the notice of the authorities by the petitioner as to how Shri Anil Gupta is responsible for committing murder of late Shri Surender Gupta. The enquiry report given by Inspector Mahavir Singh on which the petitioner is placing reliance is one-sided and is based upon the statement given by one Shri Krishna who gave a different statement when he was examined earlier under Section 161 Cr.P.C during the course of investigation of the first FIR as also before the trial and, therefore, no circumstance has been brought to the notice of the authorities which may justify registration of a second FIR. It is also submitted that the photographs referred to by the petitioner in support of his complaint were also available on records of the first case. As stated above in respect of the findings returned by the Trial Court in respect of the said FIR the petitioner has not filed any protest petition.

13. To appreciate the controversy, it would be appropriate to take note of his complaint filed before the Deputy Commissioner of Police as well as the complaint filed by the sisters of the deceased in support of their contention that Sh. Anil Gupta is, the real culprit and is guilty of murder of Shri Surender Gupta. Having scrutinized the complaint of Sh. Yogesh Gupta, I do not find that any material has been placed by

him on record, which may throw any light as to how Sh. Anil Gupta is the real culprit. In fact the complaint filed by him goes to show that there is some business rivalry between the petitioner and Sh. Anil Gupta.

14. Regarding the complaint filed by the sisters of the deceased, it may be observed that they are not a party to the present proceedings. However from the copies filed, one thing which comes out is that the petitioner and the family of Sh. Anil Gupta hails from the same village and they also had some dispute with each other inasmuch as it has been stated by Smt. Renu Gupta that,

“One Anil Gupta son of Late Sh. Sahukar Gupta, presently residing at TA-83/5, Tughlakabad, New Delhi-110019 also hails from our native place and has been a front door neighbor there. At that relevant point of time at the native place, as we are equipped with the remote information, our parents, somewhere, were a matter of jealousy to the family of said Sh. Anil Gupta and others as; we were carrying on an influence in the society through our business.

I do not know the exact time and date but Anil Gupta and his brothers had long back shifted to Delhi for the sake of their livelihood, but, kept on having undue interference in the affairs of the village, through their anti-social connections.

As we had sustained irreparable loss through those crimes committed upon us at our native place, we were leading a very insecure life there. The threats of the continuing vandalism and kidnapping of my brothers were also overwhelming always. Our mother in such a piquant situation, shifted us to the place of our maternal uncle at Jaipur and at other relations. But, the agony to fight with the fractured life was not over as we have been able to discern it now, the above named Anil Gupta, asked and persuaded my mother and brothers to shift to Delhi, as it has been comparatively safer and better for the avenues for the livelihood. It was a fraudulent move.

Primarily, our elder brother Shri Manoj Gupta @ Bhola came to Delhi to save himself as he had been the prima target at the native place. Later on, my mother late Smt. Rajbeti and my younger brothers and sister Sh. Yogesh, Surendra and Poonam followed. My maternal uncle from Jaipur, where I had passed my adolescence, got me married at Garhi, Lajpat Nagar, New Delhi in the year Dec.,1992. My younger sister Poonam in the year 1998 was married at Agra, presently she also having shifted at Delhi. Now, we had been able to fathom the intentional move by Anil Gupta, to uproot all of us from our native place and that's why, after finding all of us away from our native place, he and his brothers had remained negligent and elusive in nature. So many times we all had been subjected to victimization and humiliation. It had been very painful to all of us.

15. Other allegations made in the complaint are,

“It would be most apposite to mention here itself that the criminal jealousy of Anil Gutpa and his brothers extended even to Brij Nandan Gupta and others, who verily speaking, had brought them to such a position that they could earn their livelihood with prestige and peace.

Though, the criminal act of Anil Gupta and his team, had been stanching the society, as per their status but, we could never comprehend that, their escalatory criminal activities could be so devastating. Unfortunately, our distant caution to our late brother Surendra Gupta, could not yield any result, as the brother of Anil Gupta, namely, Raj Kumar Gupta @ Reetu kept him in his company and he could not assess the sensitivity of this criminal companionship that any day, as conspired, calculated and as per the criminal move, he could be put to the alter for the sake of the criminal boost of the business of said Anil Gupta.”

16. I may also take note of the other allegation made by Renu Gupta in her complaint dated 07.04.2006 raising certain issues which it is alleged points out involvement of Anil Gupta in the murder of Surender Gupta the deceased. Some of them are reproduced here under:

(a) What is the real place of incident of murder?

Note: The circumstances and the scene of crime through available evidence, carried us inside the house of Anil Gupta i.e. House No. 83/5, Tughlakabad Extension, New Delhi.

(b) Why the dead body was dragged out of the house and placed in the ‘gali’?

Note: Neither of us nor any other public person allowed by Anil Gupta and his associates to see the victim and did not let him, immediately to be taken to the hospital, inclusive of themselves.

(c) Why at all none of the persons inclusive of us were allowed to go inside the house, where this incident took place? And why at all the rear gate of the house was used and before the police could collect, material evidence the whole house/spot was washed with water?

Note: It, had been simply to avoid the suspicions go to the side of Anil Gupta and also as the incident had taken place inside the house.

(d) Where are those unnumbered vehicles (Two wheeler and Car), and $\frac{3}{4}$, armed persons, inside the house as is known so lately but known publicly?

Note: Bullet marks outside and inside the wall and roof of the house and injuries to so many persons proves the presence of more of the arm and the people.

(e) Why at all, the deceased Surendra Gupta, his brother Manoj and Yogesh, were summoned by Anil Gupta and his team on telephone, prior to the incident as narrated especially when, my these three brothers, do not have any such gusto to face and they are absolutely peace loving?

Note: Unfortunately, the deceased fell trap having come so early otherwise, my these brothers are not so closed to Anil Gupta and his associates and they are also not inimical to Brij Nandan Gupta and his relatives. Most probable, factor of calling my brothers, at such alleged incident, marks the extreme innocence of these persons and also that they could

be goaded easily. The additional concerning fact is that, that Brij Nandan Gupta is our distant relation and all of them have been standing in our thick and fast.

(f) Who is the personh, who informed the police “Meera Bhai Mar Diya” as none of my alive brothers had communicated so to the police?

Note: Appreciably, and as it would be unearthed that this master mind Anil Gupta and his Associates wanted to paste this twisted fact also, upon us, if the fraudulent move against Brij Nandan Gupta and others had killed our brother as per the testimony of my two remaining brothers.

(g) In the event, deceased Surendra Gupta, was none of the relations of Anil Gupta, except criminal thought process, what else was in him, that he with all constancy and vigil, opposed the judicial moves by Brij Nandan and others and also went ahead so much that, he brought-forth a fabricated document i.e. a manufactured report form P.S.: Kandhla, Distt.: Muzaffar Nagar, U.P. to see the permanency of the imprisonment of these persons.

Note: Very falsely and it is strange enough that, why at all this move was named in the name of my deceased mother Rajbeti and mentioning their own address, whereas she had got her own house to live in any verily speaking, she did never complain against Brij Nandan and others. This fact in issue, is being used by these hardened criminals for their own safety from the clutches of the court in a perjury matter.

(h) If at all, Anil Gupta and his team, were, very care conscious of the deceased and other related to him, why the mother of the deceased, namely late Rajbeti, within their full knowledge, died out of neglect in her treatment by these persons, when she was battling with the unbearable shock of the loss of Surendra Gupta and these accused persons were, qua, blaming her remaining sons and daughters?

Another question, tangential to it goes further, that whether, my mother late Rajbeti, did not die in suspicious circumstances, as per the creation of these accused persons only, apparently some undue reason of being a beneficiary of the same, must have been there, that is why, the dead body of my mother was hastily disposed of, making my brothers, remaining shocked and awestricken, as had happened in the elimination of my deceased brother also?

(i) What would have been the motive of Anil Gupta, except carrying all of us away from the real import of the incidents, that he and his associates, have spread an instigation amongst us, against our brothers that all of them had been elusive and uncaring that is why, both, my brother Surendra Gupta and my mother Rajbeti, died so ignobly, so why we do not prefer respective litigations of the partitions of our ‘H.U.F.’ properties?

Note: Anil Gupta is in continuation of wrecking vengeance, taking it from the native place of this city.

(j) Why on 14.02.2004, after the postmortem of the body of late Surendra Gupta, except getting it identified through Manoj @ Bhola (our elder brother) formally, Anil Gupta and his team, behaved in such a weird manner, that they did not let

any body in the family to have the last look of the deceased and to witness the respective injuries on the body?; And why also, despite our assertions, they did not let us carry the dead body to our respective place to do the last rites and at least cremate him with a proper mourning?;

And what was the real reason of such a hurry that especially the ladies, were even not allowed to go near the dead body?

Note : Every precaution was taken by them, so that no person, anxious to know the cause of the brutal death, be able to poke his reasons amongst themselves. Anil Gupta has been such a master mind and having calculated move, that even his brothers and associates, at the time of this crowd, kept on signaling them, not to utter even a single word in the affairs, without him, so that 'the secret', dies secretly, which is likely to surface through my submissions.

What can be more shameless demonstration of a successful operation by a criminal, was exhibited by Anil Gupta and his team, as during a 2/3 kms. long journey for the cremation ground, none of them, for a pretence sake even, give shoulder to the corpse and they in a merry mood, followed the procession in their cars and immediately the dead body was put on pyre, they rushed back to their residence and enjoyed the eatables as the worry was over.

We, the mourning members of the procession, as per the ritual, came back to the place of Anil Gupta from where the dead body was lifted for the procession, it was rather an insult to all of us that even without being asked for a glass of water and the words of sympathy, we were asked to get back to our places and take our meals (Kadhi and Chawal) there.

(k) What was the real reason that whenever Anil Gupta was asked about the development of the case/proceedings in the matter of this murder, he behaved rudely with us saying that we all were aliens in it and he did never disclose about the date of hearings even and surprised all of us, through this result in the matter?

Note: Immediately, we found our hunches, getting proved. We gathered and collected our relations also and after he being summoned and pressurized by all of us, to disclose the hidden agenda, the reason for ourselves being side tracked and having avoided the required urgent treatment upon Surendra Gupta, to save his life and not letting us to take medical care of him, he burst out by saying, "if Surendra Gupta, would not have died, how could I have tightened the noose upon Brij Nandan Gupta". He further roared, by saying, "to be lord of Kerosene Oil Depots and Fair Price Shops, one must possess the grey matters".

When, our maternal uncle, and others reacted upon his inhuman and reprehensible conduct, he misbehaved with all of us and verily speaking, words fail to describe.

Now, it has really gone into our senses and we refresh it his bragging that you mean creatures would remain worthless ever, and he would shine as the king in the said business.

It gets resolved here itself that why Anil Gupta and his team, had attempted upon the life of Brij Nandan Gupta @ Vijay. It carried a biforked ramification. The one had been that by

elimination of Brij Nandan Gupta @ Vijay only, he would be succeeding in grabbing the business etc. The second had been that after the assassination of this person, he would be involving, my remaining alive brothers, in his murder as per his modus operandi, so that the puzzle is over and gain is permanent. Providence, helped, otherwise, my rest of the brothers, would have been the accused in this offence and Shaitan would have been having the last laugh.

17. A reading of the aforesaid allegations prima facie does not make out a case for registration of the second FIR. However, the issues raised can be substantiated by the petitioner before the learned MM after the MM dismissed their petition under Section 156(3) Cr.P.C. by leading their evidence in view of the procedure laid down under chapter XV of the Cr.P.C. However, no request has been made by the petitioner permitting him to lead the evidence before the Metropolitan Magistrate concerned for the reasons best known to the petitioner. The aforesaid option is still available to him.

18. Now coming to the judgments relied upon by the petitioner, I find that in view of the law laid down in Nirmal Singh Kahlon Vs. State of Punjab & Ors. (2008) IX SLT 578 there is no bar for registration of a second FIR in respect of an offence where in the first FIR certain important facts have not been brought to the light of the prosecution. In this regard reference can be made to the following paragraphs of the aforesaid judgment:

27. In terms of Section 3 of the Police Act, 1861, the State has the ultimate say in the matter of superintendence of investigation. Section 36 of the Code must be read harmoniously with the said provision. Therefore, when Section 36 of the Code uses the words 'in rank', it should be given a purposive construction. Although a plain reading of the aforementioned provision appears to be containing three ingredients, namely, (i) the investigation must be carried out by an Officer in charge; (ii) which may be supervised by an Officer superior in rank; and (iii) in respect of a local area to which they are appointed, but in the context of the power of the State vis-à-vis the provisions of Act, the same, in our opinion, deserves a wider application.

An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and

order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation.

28. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter.

29. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a central agency which has acquired specialization in such cases.

In that backdrop, it is necessary to examine the rival contentions raised before us.

30. Lodging of a First Information Report by CBI is governed by a manual. It may hold a preliminary inquiry; it has been given the said power in Chapter VI of the CBI Manual. A prima facie case may be held to have been established only on completion of a preliminary enquiry.

Whether the First Information Report lodged by the Vigilance Department of the State and the one lodged by the CBI related to the same cause of action is the question?

31. We would proceed on the basis that on the self same cause of action, two First Information Reports would not be maintainable. A bare perusal of the First Information Report dated 14.6.2002 lodged at the instance of the Vigilance Officer shows that the same was general in nature. One of the several allegations contained therein referred to was that irregularities have been committed in the matter of recruitment of Panchayat Secretaries. No detail, however, was furnished. All the persons involved were not named. What types of irregularities have been committed were not stated.

32. The High Court while entertaining the writ petition formed a prima facie opinion as regards the systematic commission of fraud. While dismissing the writ petition filed by the selected candidates, it initiated a suo motu public interest litigation. It was entitled to do so. The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is adversarial. In a public interest litigation, the court need not strictly follow the ordinary procedure. It may not only appoint committees but also issue directions upon the State from time to time.

19. This judgment of the Apex Court also took note of the powers available with the police under Section 173(8) of the Cr.P.C. which permits further investigation even after a chargesheet is filed the other paragraph reads as :

60. An order of further investigation in terms of Section [173\(8\)](#) of the Code by the State in exercise of its jurisdiction under Section [36](#) thereof stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction under Section [173\(8\)](#) of the Code and at the instance of the State having regard to Section [36](#) thereof read with Section [3](#) of the Police Act, 1861 should be considered in different contexts. Section [173\(8\)](#) of the Code

is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in Sakiri Vasu v. State of Uttar Pradesh and Ors. (2008) 2 SCC 409, correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate.

20. Insofar as the other judgments cited by the petitioners are concerned the judgment i.e. of Ramesh Kumari Vs. State (NCT of Delhi) 2006 2 SCC 677 it only says that it is the statutory duty of the police to register an FIR under Section 154 of the Cr.P.C. wherein credible information is received for the conviction of a non-cognizable offence. There can be no dispute with this proposition. However, in this case an FIR about the murder of Sh. Surender Gupta was registered by the police which had been investigated and accused persons were sent for trial. It is true that while registering an FIR it is not necessary to be satisfied about the information being absolutely correct. However, if the information is credible and reasonable the FIR must be registered. Relevant observations in this regard are reproduced in this regard.

3. Mr. Vikas Singh, learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found no genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.

4. That the Police Officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of State of Haryana and Ors. v. Bhajan Lal and Ors. 1992 Supp (1) SCC 335. This Court after examining the whole gamut and intricacies of the

mandatory nature of Section [154](#) of the Code has arrived at the finding in paras 31 & 32 of the judgment as under:

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section [154\(1\)](#) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section [156](#) of the Code to investigate, subject to the proviso to Section [157](#). (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections [156](#) and [157](#) of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section [154](#) of the Code.

32. Be it noted that in Section [154\(1\)](#) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section [41\(1\)\(a\) or \(g\)](#) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section [154\(1\)](#) unlike in Section [41\(1\)\(a\)](#) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section [154](#) with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections [154](#), [155](#), [157](#) and [189\(c\)](#) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information, report is that there must be an information and that information must disclose a cognizable offence.

21. In the case of Lallan Chaudhary the same view expressed in Ramesh Kumari's Case was reiterated. The relevant observations are

reproduced hereunder:

8. Section [154](#) of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section [154](#) is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

9. In the case of **Ramesh Kumari v. State (NCT of Delhi) and Ors.** (2006) 2 SCC 677 this Court has held that the provision of Section [154](#) is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

10. The mandate of Section [154](#) of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section [154](#) of the Code.

22. In the case of Kari Chaudhary Vs. Sita Devi (supra), some of the observations made by the Apex Court were as follows:

10. The result of the said factual development is this. The complainant Sita Devi in FIR No. 135 is allowed to persist with her complaint despite the conclusion reached by the police that the said complaint was false. But that course adopted by the court cannot disable the police to continue to investigate into the offence of murder of Sugnia Devi and to reach the final conclusion regarding the real culprit of her murder. The police completed their investigation only when the charge-sheet was finally laid on 31.3.2000 against the first respondent Sita Devi and others. The said case has to be legally adjudicated for which a trial by the sessions court is indispensable.

11. Learned counsel adopted an alternative contention that once the proceeding initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR 208. 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. Even that apart, the report submitted by the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court reading the new discovery made by the police during investigation the persons not named in FIR No. 135 are the real culprits. The quash the said proceeding merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.

12. Even otherwise the investigating agency is not precluded

from further investigation in respect of an offence in spite of forwarding a report under Sub-section (2) of Section [173](#) on a previous occasion. This is clear from Section [173\(8\)](#) of the Code.

13. Thus, from any standpoint the impugned order cannot be sustained. We, therefore, allow this appeal and set aside the impugned order.

23. I have also gone through the order passed by the concerned MM dismissing the application filed by the petitioner, seeking a direction to the police for registering an FIR against Sh. Anil Gupta. In this regard only observations which I can make are that the said order per se is not sustainable because the order proceeds only on the basis of registration of an FIR earlier by the police in which other accused persons were implicated and sentenced to face a trial in relation to the murder of Sh. Surender Gupta but the magistrate has not dealt with the allegations made by the petitioner in his application under Section 156(3) Cr.P.C. It was the responsibility of the Magistrate concerned to have passed a speaking order as to whether the allegations made by the petitioners does not make out a case and if so for what reasons. If the Magistrate was not satisfied with the circumstances explained then the Magistrate could have called upon the petitioner to have lead evidence by treating the application under Section 156(3) as a complaint under Section 200 of the Cr.P.C. However, neither of the options has been exercised by the Magistrate.

Taking into consideration all the aforesaid facts, I hold that

- (i) In an appropriate case if the Police is satisfied that any allegation made by the complainant in an aggrieved party a case is made out for the registration of second FIR, the second FIR can be registered provided there is sufficient material which may point out the complicity or involvement of the accused against him or if the complaint

is so filed.

- (ii) In case despite availability of sufficient material the Police refuses to take cognizance thereof and it has not registered a second FIR the Metropolitan Magistrate concerned can take cognizance of the complaint under Section 200 of the Cr.P.C. and can record evidence as has been led by the complainant for the purpose of substantiating his allegations. In that case if the Magistrate comes to a conclusion that the case requires further investigation then the Magistrate instead of proceeding further under Section 200 Cr.P.C. may also call for an investigation of the matter through the local Police or any other agency and even if a report is filed by the Police making out no case against the accused as pointed out in the complaint, then to proceed under Section 200 Cr.P.C. and for recording the evidence of the complainant and all his witnesses. Thereafter the Magistrate can issue a process under Section 203 Cr.P.C if sufficient evidence is laid which makes out a case against the accused so named in the complaint.
- (iii) As far as the earlier judgment delivered in this case by the Learned ASJ acquitting the accused persons who were sent for trial vide FIR No. 113/2004 the petitioner was entitled to file a protest petition by way of a revision against the order of acquittal and in this connection he could have also filed a petition under Section 183 Cr.P.C. requesting the Magistrate to direct the authorities to make further

investigation of the matter, if such an application would have been filed the Magistrate/ Sessions Judge would have been competent to pass appropriate orders which has not been done.

24. In the present case the Police having not found any case for registering a second FIR against Anil Gupta in accordance with the allegation made by the petitioner against the said person no directions can be issued in the aforesaid writ petition to the Police authorities to register an FIR as prayed for by the petitioner. The petitioner is however entitled to exercise all his rights either by filing a complaint under Section 200 Cr.P.C. or by filing a protest petition or even an appeal against acquittal can do so if he is not satisfied with the report of the Police authorities qua his complaint.

25. With these observations, the writ petition is disposed of.

MOOL CHAND GARG,J

FEBRUARY 25, 2009
anb