

A.F.R.

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Court No. - 45

Case: CRIMINAL MISC. WRIT PETITION No. - 14212 of 2023

Petitioner: Abhay Gupta

Respondent: State Of U.P. And 4 Others

Counsel for Petitioner: Sanjay Vikram Singh

Counsel for Respondent: G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Sanjay Vikram Singh, learned counsel for the petitioner and learned AGA for the State.
2. This petition stems from the impugned FIR bearing Case Crime No. 0079 of 2022, under Sections 498A, 304B and 120B IPC read with Section 3/4 of D.P. Act, 1961 registered at P.S. Kurawali, District Mainpuri. Following the completion of the investigation, the police filed a charge sheet against the petitioner and aggrieved by the filing of the charge sheet, the petitioner-husband preferred the instant petition for fair investigation under Article 226 of the Constitution of India, seeking a direction for a fair investigation in the impugned FIR. For clarity, the relief sought before this Court is delineated as follows:

“(i) Issue, a writ, order or direction in the nature of Mandamus directing the respondent no. 3 to conduct further investigation in Case Crime No. 79 of 2022, under Sections 498A, 304B IPC and Section ¾ D.P. Act, P.S. Kurawali, District Mainpuri.”

3. The petitioner, Abhay Gupta, entered into a matrimonial alliance with Harshita Gupta on 1.12.2020 in accordance with Hindu rites and rituals, and during the marriage, the complainant's

family spent approximately Rs.20 lakhs, and dowry items were also presented to the petitioner's family within their means. Subsequently, the petitioner and his family subjected Harshita Gupta (deceased-wife) to both mental and physical cruelty. No child was born out of the said wedlock, although the wife was five months pregnant at the time of the death; however, the insufficient dowry made the in-laws unsatisfied, and following this, the complainant's sister was murdered by the in-law's family, in which Satish Chandra (father-in-law); Shri Abhay Kumar and Gaurav Gupta (brothers-in-law -Jeth), Ajay Gupta (brother-in-law- Devar); Smt Stuti Nidhi- wife of Gaurav Gupta (sister-in-law-Jethani); Manju wife of Satish Chandra (mother-in-law); and sister-in-law (Nanad) and brother-in-law (Nandoi) are arrayed as accused/suspect in the FIR.

4. Following the registration of the impugned FIR, the police conducted an investigation and, on its conclusion, filed a charge sheet under Section 498-A, 304-B IPC read with Section 3/4 D.P. Act, 1961 against the petitioner and exonerated all accused persons/suspects named in the FIR. The doctor opined the cause of death was *asphyxia due to ante mortem hanging*.

5. That the petitioner- husband aggrieved by the filing of the charge sheet against him, has preferred the instant petition for fair investigation on the following grounds:

5.1 No dowry demand was made, nor was any harassment meted out to the deceased by the petitioner.

5.2 The postmortem report of the deceased is silent about the fact of pregnancy alleged in the FIR, making the entire prosecution story false and frivolous.

5.3 The FIR was registered against the petitioner with *malafide* intention and oblique purpose.

5.4 Soon before the unfortunate incident, the petitioner immediately informed the parents of the deceased wife and also made the call to the Women Power Line 1090; the Investigating Officer has not looked into the material given by the petitioner, which could have facilitated a fair investigation, enabling the Investigating Officer to reach just and logical conclusion.

5.5 The complainant- brother of the deceased had an affair with one Mamta, and subsequently, the relationship got spoiled with her. The said Mamta started posting certain inappropriate comments against the deceased on social media by creating a fake account, and that is why, to save her honour, the deceased committed suicide. The letter dated 19.10.2022 annexed with the petition finds reference to the online complaint dated 31.3.2022 bearing Complaint No.2022/IC/072020 with regard to the deceased-wife's brother's girlfriend, who had posted certain inappropriate posts before her death, i.e., on 23.3.2022.

5.6 The police have not followed Rule 107 of the U.P. Police Regulations, 1861 in true spirit, which mandates fair investigation by the police, and to extract the truth out of the allegations that surfaced in the complaint.

6. *Per contra*, learned A.G.A. supports the prosecution case and asserts that the allegations are serious in nature, the deceased has died under mysterious circumstances at the petitioner's residence within seven years of her marriage, and during the investigation, certain inculpatory evidence has been collected by the Investigating Officer with regard to demand of dowry and cruelty upon the deceased against the petitioner. He next submits that the petition is not maintainable at the behest of the accused, and in criminal law,

the accused has no right to seek further investigation after filing the charge sheet on the basis of certain documents which are not sufficient for the purpose of making the entire prosecution case false and motivated.

7. The learned counsel for the petitioner has relied upon the judgment of the Supreme Court passed in *the Babubhai*¹ case. Besides other judgments discussed herein in support of his contentions, the concept of fair investigation and fair trial are concomitant to the preservation of the fundamental rights of the accused under Article 21 of the Constitution of India.

8. The criminal justice administration system in India places human rights and dignity for human life on a much higher pedestal. In our jurisprudence, an accused is presumed to be innocent till proven guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play a balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence, and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.²

9. It is not only the responsibility of the investigating agency but also that of the courts to ensure that the investigation is fair and does not in any way hamper the freedom of an individual except in accordance with the law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in a tainted and unfair manner. The investigation should not *prima facie* be indicative of a biased mind, and every effort should be made to bring the guilty to the law as

¹ *Babubhai v. State of Gujarat and others*, 2010 (12) SCC 254

² *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1

nobody stands above the law and de hors his position and influence in society².

10. He further relied on *K. Chandrasekhar v. State of Kerala & Ors.*³; *Ramachandran v. R. Udhayakumar & Ors.*⁴; *Nirmal Singh Kahlon (supra)*; *Mithabhai Pashabhai Patel & Ors. v. State of Gujarat*⁵; and *Kishan Lal v. Dharmendra Bafna*⁶ wherein it has been emphasised that where the Court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the Court may direct a further investigation under Section 173(8) Cr.P.C., even transferring the investigation to an independent agency, rather than directing a re-investigation. Direction of a re-investigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.

11. The above-referred judgments of the Supreme Court make it clear that the scheme of investigation, particularly Section 173(8) Cr.P.C., provides for further investigation and not for re-investigation. Therefore, if the Court, comes to the conclusion that the investigation has been done in a manner with the object of helping a party, the Court may direct for further investigation and ordinarily not for re-investigation.

12. In the *Babubhai (supra)* case, the Supreme Court has observed that if it is evident that in exceptional circumstances and the Court considers it necessary, it may direct for fresh investigation. For lucidity, the relevant portion of the judgment is extracted herein below:

“45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the

² *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1

³ (1998) 5 SCC 223

⁴ (2008) 5 SCC 413

⁵ (2009) 6 SCC 332

⁶ (2009) 7 SCC 685

Constitution of India. Therefore, the investigation must be fair, transparent and judicious, as it is the minimum requirement of the rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the Court would ultimately result in failure of justice, the Court must interfere. In such a situation, it may be in the interest of justice that an independent agency chosen by the High Court makes a fresh investigation."

13. The duty of the Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real, unvarnished truth.⁷

14. The investigation thereafter would commence, and the Investigating Officer to go step by step. The Supreme Court contemplates the following steps to be carried out by the Investigating Officer in ***H. N. Rishbud and Inder Singh v. The State Of Delhi***⁸. The contextual paragraph is extracted herein below:

"If, upon the completion of the investigation, it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a chargesheet under Section 173."

15. Whereas, learned A.G.A. has relied upon the ***State of Bihar etc. v. P.P. Sharma, IAS and another***⁹, a significant judgment passed

⁷ *Jamuna Chaudhary & Ors. v. State of Bihar*, AIR 1974 SC 774

⁸ 1954 SCC Online SC 34

⁹ 1992 Supp (1) SCC 222

by the Supreme Court of India, in which it has been held that the High Court treating the affidavit filed and document produced before it by the petitioner-accused as evidence by quashing the proceedings has committed grave error in putting an end to the prosecution acted as such after going into the merits in a pre-trial consideration of affidavit and documents which, unless proved to be true and reliable cannot form the basis of any decision regarding commission of the offence. The salient paragraph is reproduced herein under:

“Malafides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith if it is done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or, contrary to the statute's requirements or the basis of the circumstances contemplated by law, or improperly exercise discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

An investigating officer who is not sensitive to the constitutional mandates, may be prone to trample upon the personal liberty of a person when mala fides actuate him. But as stated, the accused, at the earliest, should bring to the notice of the Court of the personal bias and his reasonable belief that an objective investigation into the crime would not be had at the hands of the investigator by pleading and proving as of fact with necessary material facts. If he stands by till the chargesheet is filed, it must be assumed that he has waived his objection. After seeing the adverse report, he cannot turn down to plead the alleged mala fides. (Equally laying the information before the Station House Officer of the commission of cognizable crime merely sets the machinery of the investigation in motion to act in accordance with the procedure established by law.) The finding of the High Court, therefore, that the F.I.R. chargesheet violates the constitutional mandate under Article 21 is without substance.”

16. Learned A.G.A. has also relied upon *Priti Singh v. State of U.P. and others*, passed by the co-ordinate Bench of this Court in *Writ Petition No.11652 of 2023*, wherein the co-ordinate Bench of this Court has held that the accused has no right to seek a fair

investigation only on the ground that initially he was informant, and subsequently has been arrayed as accused in the impugned FIR.

17. If information is lodged at the police station and an offence is registered, the *malafide* of the informant would be of secondary importance if the investigation produces unimpeachable evidence disclosing the offence¹⁰.

18. It would be judiciously apt to refer to two judgments passed by the 3-judge Bench of the Supreme Court, *i) Mohan Lal v. State of Punjab*¹¹, and *ii) Vishnubhai Haribhai Malviya and others v. State of Gujarat and others*¹², they may shed light to reach a logical conclusion in the facts-circumstances of the case.

19. After relying upon the cases of *Babubhai v. State of Gujarat (supra)*, *State of Bihar v. P.P. Sharma (supra)*, and *Noor Aga v. State of Punjab*¹³, the Supreme Court in *Mohan Lal's case (supra)* has held that in a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during the investigation but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations himself and is asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and, contrary to normal human conduct, that he would at the end of the investigation, submit a closure report to conclude false implication with all its attendant consequences for the complainant

¹⁰ *State of Bihar and Anr v. J.A.C. Saldanha and Ors*, (1980) 1 SCC 554

¹¹ (2018) 17 SCC 627

¹² (2019) 17 SCC 1

¹³ (2008) 16 SCC 417

himself. The result of the investigation would, therefore be a foregone conclusion.

20. Further, after referring to *Bhaskar Ramappa Madar v. State of Karnataka*¹⁴; *Hardip Singh v. State of Punjab*¹⁵; *B. State v. Jayapaul*¹⁶; *State of Punjab v. Baldev Singh*¹⁷; *Surender v. State of Haryana*¹⁸, the Supreme Court in *Mohan Lal's case (supra)* has culled out the underlined proposition:

"30. In view of the conflicting opinions expressed by different two-judge Benches of this Court, the importance of a fair investigation from the point of view of an accused is a guaranteed constitutional right under Article 21 of the Constitution of India; it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in-laws carrying a reverse burden of proof."

21. In *Vishnubhai Haribhai Malviya case (supra)*, the Supreme Court has considered whether, after the police file a charge-sheet, the Magistrate has the power to order further investigation, and if so, up to what stage of the proceedings. In *Vishnubhai Haribhai Malviya case (supra)*, pursuant to registration of the FIR, the investigation was conducted by the police, which resulted in a charge sheet being submitted before the Judicial Magistrate, and the Judicial Magistrate, after taking cognizance, issued a summons to the accused persons. Pursuant to the summons the accused appeared before the Magistrate and filed an application under

¹⁴ (2009) 11 SCC 690

¹⁵ (2008) 8 SCC 557

¹⁶ (2004) 5 SCC 223

¹⁷ (1999) 6 SCC 172

¹⁸ Passed in Criminal Appeal No.S-318-SB of 2004, decided on 11.12.2014 (P&H)

section 173(8) of the Code of Criminal Procedure, 1973 for further investigation, and another application for discharge. The Magistrate dismissed the applications that were filed for further investigation, stating that the facts sought place by the applications were in the nature of defence and that would be taken in the trial, and likewise, a discharge application was also rejected.

22. Separate criminal revisions were filed before the Sessions Court, Surat. Both these revision applications were decided by the learned Additional Sessions Judge, Surat, by a common order, and found that a case is made out for further investigation. In compliance with the session's court order, the investigation was handed over to the police. The matter reached before the High Court, and the High Court found that the interim investigation reports virtually acquitted the accused persons; therefore, the High Court set aside the judgment of the Additional Sessions Judge, Surat and remanded the same for fresh consideration to the sessions court. The sessions judge rejected the application filed under section 156(3) Cr.P.C. on merits, and there is how, the matter reached before the Supreme Court. In the foregoing facts, relying upon catena of judgments, the Supreme Court has held that:

“42. There is no good reason in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon the process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri Vasu v. State of U.P.¹⁹; Samaj Parivartan Samudaya v. State of Karnataka²⁰; Vinay Tyagi v. Irshad Ali²¹; and Hardeep Singh v. State of Punjab²²; Hardeep Singh v. State of Punjab²³, having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are

¹⁹ (2008) 2 SCC 409

²⁰ (2012) 7 SCC 407

²¹ (2013) 5 SCC 762

²² (2014) 3 SCC 92

²³ (2014) 3 SCC 92

framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate, who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light that would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi v. State of Gujarat*²⁴. Therefore, to the extent that the judgments in *Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel*²⁵; *Athul Rao v. State of Karnataka*²⁶; and *Bikash Ranjan Rout v. State (NCT of Delhi)*²⁷ have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Admn.)*²⁸ and *Reeta Nag v. State of W.B.*²⁹ also stand overruled.

44. *Union of India v. W.N. Chadha*³⁰, is a judgment that states that the accused has no right to participate in the investigation till the process is issued to him, provided there is strict compliance with the requirements of fair investigation. Likewise, the judgments in *Nagawwa v. V.S. Konjalgi*³¹, *Prabha Mathur v. Pramod Aggarwal*³², *Narender G. Goel v. State of Maharashtra*³³, and *Dinubhai Boghabhai Solanki v. State of Gujarat*³⁴, which state that

²⁴ (2004) 5 SCC 347

²⁵ (2017) 4 SCC 177

²⁶ (2018) 14 SCC 298

²⁷ (2019) 5 SCC 542

²⁸ (1997) 1 SCC 361

²⁹ (2009) 9 SCC 129

³⁰ 1993 Supp (4) SCC 260

³¹ (1976) 3 SCC 736

³² (2008) 9 SCC 469

³³ (2009) 6 SCC 65

³⁴ (2014) 4 SCC 626

the accused has no right to be heard at the stage of investigation, has very little to do with the precise question before us. All these judgments are, therefore, distinguishable. Further, Babubhai v. State of Gujarat (supra) is a judgment that distinguishes between further investigation and re-investigation and holds that a superior court may, in order to prevent miscarriage of criminal justice if it considers necessary, direct investigation de-novo, whereas a Magistrate's power is limited to ordering further investigation. Since the present case is not concerned with re-investigation, this judgment also cannot take us much further. Likewise, Romila Thapar v. Union of India³⁵, held that an accused cannot ask to change an investigating agency or to require that an investigation be done in a particular manner, including asking for a court-monitored investigation. This judgment also is far removed from the question that we have decided in the facts of this case.”

23. In *Varinder Kumar v. State of Himachal Pradesh*, a 3-judge Bench of the Supreme Court has considered and distinguished *Mohan Lal's case (supra)* and held that where the informant is acting as an investigating officer, the prospects of a fair investigation by the accused shall be governed by their individual facts and held that; the individual rights of the accused are undoubtedly important. But equally important is the societal interest in bringing the offender to book and for the system to send the right message to all in the society- be it the law-abiding citizen or the potential offender. "*Human rights*" are not only of the accused but, extent apart, also of the victim, the symbolic member of society as the potential victim and society as a whole³⁶.

24. Law has to cater to a wide variety of situations as appear in society. The law being dynamic, the certainty of the legislation appears rigid at times whenever a circumstance (set of facts) appears which is not catered for explicitly. Expediency then dictates that the higher judiciary, while interpreting the law, considers such exception(s) as is called for without disturbing the pith and substance and the original intention of the legislature. This is required primarily for the reason to help strike a balance between

³⁵ (2018) 10 SCC 753

³⁶ Para 12 of *Varinder Kumar v. State of Himachal Pradesh*, (2020) 3 SCC 321

competing forces-justice being the end and also because the process of fresh legislation could take a long time, which would mean failure of justice and, with it, erosion of public confidence and trust in the justice delivery system³⁷.

25. The principle of fair trial now informs and energises many areas of the law. It is a constant, ongoing, evolutionary process continually adapting itself to changing circumstances and endeavouring to meet the exigencies of the situation- peculiar at times- and related to the nature of the crime, persons involved, directly or operating from behind, and so many other powerful factors which may come in the way of administration of criminal justice, wherefore the endeavour of the higher courts while interpreting the law, is to strike the right balance³⁸.

26. Societal interest, therefore, mandates that the law laid down in *Mohan Lal's case (supra)* cannot be allowed to become a springboard by an accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous. Criminal jurisprudence mandates balancing the rights of the accused and the prosecution. If the facts in *Mohan Lal's case (supra)* were telling with regard to the prosecution, the facts in the present case are equally telling with regard to the accused. There is a history of previous convictions of the appellant also. We cannot be oblivious to the fact that while the law stood nebulous, charge sheets have been submitted, trials in progress or concluded, and appeals pending, all of which will necessarily be impacted³⁹.

27. The criminal justice delivery system cannot be allowed to veer exclusively to the benefit of the offender, making it a

³⁷ *Para 13 of Varinder Kumar v. State of Himachal Pradesh, (2020) 3 SCC 321*

³⁸ *Para 14 of Varinder Kumar v. State of Himachal Pradesh, (2020) 3 SCC 321*

³⁹ *Para 15 of Varinder Kumar v. State of Himachal Pradesh, (2020) 3 SCC 321*

directional exercise. A proper administration of the criminal justice delivery system, therefore, requires balancing the rights of the accused and the prosecution so that the law laid down in *Mohan Lal's case (supra)* is not allowed to become a springboard for acquittal in prosecutions prior to the same, irrespective of all other considerations. We, therefore, hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal's case (supra)* shall continue to be governed by the individual facts of the case⁴⁰.

28. Turning back to the issue before us, the record annexed with the petition suggests that the complainant married her sister to the petitioner on 1.12.2020, and on 23.3.2022, her sister Harshita Gupta was found dead at the petitioner's residence under some mysterious circumstances. On perusal of the postmortem report, it is observed that the deceased had the following external injuries:

“1. Ligature mark size 22 x 2 cm around the neck with a gap of 13 cm back of neck ligature mark lies 06 cm below the right ear, 05 cm below the chin, 03 cm angle of the left mandible. On the cut section, the skin is parchment-like and glistening.

2. Contusion 5 x 5 cm mid of right leg and size 4 x 2 obliquely on back of right thigh.”

29. The doctor has opined the cause of death was ***asphyxia due to ante-mortem hanging***. There are also allegations of demand for dowry and cruelty upon the deceased by the husband and his family members.

30. Undoubtedly, the Constitutional Courts have the power to give direction for fair investigation in the interest of justice where it finds a miscarriage of justice would be caused if the investigation conducted by the police is belied upon. But, the said power is not unregulated power and cannot be used in a routine manner. The said power shall be used sparingly and cautiously in exceptional circumstances to secure the end of justice. In *Babubhai (supra)*

⁴⁰ Para 18 of *Varinder Kumar v. State of Himachal Pradesh*, (2020) 3 SCC 321

case, two incidents had occurred pursuant to the happening of the incident, two FIRs were registered, and both the incidents had occurred at the same place in close proximity of time. Therefore, there are two parts of the same transaction. Needless to say, two FIRs were registered by the police arising out of the same incident on the *tehrir* of respective parties, who were part of the fight.

31. The investigating agency filed the charge sheets against the respective parties, against the same set of accused in both cases. A charge sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such a vitiated investigation cannot give rise to a valid charge sheet. Such investigation would ultimately prove to be a precursor of a miscarriage of criminal justice. In such a case, the Court would simply try to decipher the truth only on the basis of guesses or conjunctures, as the whole truth would not come before it. It will be difficult for the Court to determine how the incident took place wherein three persons died and so many persons, including the complainant and accused, got injured.

32. The petitioner's sole contention for seeking a fair investigation is rooted in the letter dated 19.10.2022, annexed to the petition, which refers to an online complaint dated 31.3.2022 bearing Complaint No. 2022/IC/072020. The complaint pertains to the deceased wife's brother's girlfriend, Mamta, who allegedly posted inappropriate content on social media before the deceased's death on 23.3.2022. The petitioner posits that Mamta, due to a soured relationship with the deceased's brother, sought revenge by tarnishing the deceased's character on social media, leading to the tragic outcome of suicide. This argument serves as the petitioner's defence. While the rights of the accused are undeniably significant, so are the rights of the victim. The law must address a diverse range

of societal situations, allowing for exceptions without compromising the essence and original intent of the legislature, as acknowledged in the *Vishnubhai Haribhai case (supra)*. The principle of a fair trial is a continuous and evolving process that adapts to changing circumstances. Higher courts strive to strike a balance between the accused's rights and societal interests, preventing the accused from unduly delaying the trial by filing frivolous petitions under writ jurisdiction.

33. In essence, *Mohan Lal's case (supra)*, as discussed herein above, the appellant assailed his conviction under section 18 of the NDPS Act, 1985, sentencing him to rigorous imprisonment for ten years with a fine of default stipulated therein. The issue of determination before the Supreme Court was whether a criminal prosecution would be in consonance with the principles of natural justice, fair play and fair investigation if the informant and the investigating officer were to be the same person. Specially in cases of the NDPS Act, carrying a reverse burden of proof. Therefore, *Mohan Lal's* judgment was considered and differentiated in *Varinder Kumar's* case because no straight jacket formula could be culled out in case of further investigation at the behest of the accused. It needs to be decided on a case-to-case basis, as in the case of dowry death, the burden is on the accused to prove innocence, unlike in NDPS cases. Thus, the facts of *Mohan Lal's case (supra)* and *Vishnubhai Haribhai Malviya's case (supra)* are distinct and different from the instant case. Therefore, the ratio culled out in both these cases would have no consequences in the facts- circumstances of the instant case. As rightly said in *Varinder Kumar's case (supra)*, the criminal justice delivery system cannot be allowed to be exclusive to the benefit of the offender, making it a unidirectional exercise. Thus, it cannot be allowed to become a

springboard for the acquittal of accused persons in offences like dowry death.

34. Despite fair investigation and fair trial being integral to constitutional rights guaranteed under Articles 20 & 21 of the Constitution of India, criminal jurisprudence rests on the presumption of the accused's innocence until proven guilty. Those aggrieved by biased and flawed police investigations may seek permissible legal recourse at various stages enshrined in the Code of Criminal Procedure.

35. The writ jurisdiction in criminal cases plays a pivotal role in upholding the rule of law, safeguarding individual liberties, and ensuring the equitable and just conduct of legal proceedings. It acts as a constitutional check on administrative and lower court actions, providing a remedy when fundamental rights are violated or when there is a miscarriage of justice within the criminal justice system. Essentially, this jurisdiction serves as a constitutional safeguard, ensuring individuals are protected from any infringement of their fundamental rights and affirming that justice is not only achieved but also transparent and evident, at the same time, the writ jurisdiction ought to be exercised judiciously and circumspectly, with a primary focus on serving the end of justice rather than causing harm to the legally prescribed procedural framework.

36. Unless an exceptional case is made out with compelling evidence of gross misuse of power, particularly when such misuse is evident on the face of the investigation, the Court should ideally intervene in the investigative process, a domain statutorily entrusted to law enforcement and the executive branch of government. In essence, in instances of a demonstrated malicious exercise of power by a police officer, the Court shall intervene in the change of

investigation or fresh invention, as the facts of the case may demand.

37. If the legal proceedings are aborted at this stage at the behest of the accused, in the given facts-circumstances, in which a young lady has died under mysterious circumstances at in-laws' house within seven years of her marriage, and where there are allegations of dowry demand and cruelty, the petition cannot be allowed merely on the basis averments contended by the petitioner-husband that the brother of his deceased-wife had an affair with a lady who had no connection of whatsoever nature with the in-laws family, Additionally, considering the letter dated 19.10.2022 (*Annexure-17 to the writ petition*) and certain social media posts (*Annexure-12 to the writ petition*) amounts to conduct of a mini-trial within the purview of writ jurisdiction, which is impermissible in law. The letter dated 19.11.2022, at its zenith, could serve as the petitioner's defence. However, its evidentiary merits and pertinence will undergo scrutiny during the trial in accordance with the Evidence Act, 1872.

38. In the foregoing discussions, the petition is devoid of merit and hence ***dismissed***.

39. The observations made herein are expressly confined to the disposition of this case and hold no relevance or impact on the ongoing proceedings within the trial court under the jurisdiction of the District & Sessions Judge, Mainpuri.

Order Date: 13.12.2023

Anil K. Sharma

(Vinod Diwakar, J.) (Vivek Kumar Birla, J.)