

GAHC020004312022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : W.P.(CrI.)/11/2022

SHRI. RICHARD YIMTO,IPS
INSPECTOR GENERAL OF POLICE,
(VILLAGE GAURDS WITHOUT ANY EXISTING POST), ATTACHED TO
POLICE HEADQUARTER,
NAGALAND POLICE, KOHIMA,
RES - H.NO.159, WARD NO.8, LANE - 21,
SEIRUZHA COLONY, P.O - CHUMUKEDIMA - 797103, DISTRICT -
CHUMUKEDIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND ANR
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, CIVIL SECRETARIAT, NAGALAND,
P.O - KOHIMA - 797001, NAGALAND

2:THE SUPERINTENDENT OF POLICE

O.C NARCOTIC CELL
NAGALAND POLICE
KOHIMA P.S

POLICE HEADQUARTER
KOHIM

Advocate for the Petitioner : PRAVIR CHOWDHURY, PFOSEKHO PFOTTE,VIKHONO
KISO

Advocate for the Respondent : P.P, NAGALAND,

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the Petitioner : Mr. P. Choudhury, Senior Advocate
 : Mr. D. Talukdar, Advocate.

For the Respondents : Ms. V. Suokhrie, Public Prosecutor, Nagaland

Date of Judgment : **09.09.2024**

JUDGMENT & ORDER

1. Heard Mr. P. Choudhury, learned senior counsel assisted by Mr. D. Talukdar, learned counsel for the petitioner. Also heard Ms. V. Suokhrie, learned Public Prosecutor for the State of Nagaland.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, Richard Yimto, IPS praying for issuance of Writ in the nature of Mandamus or any other Writ for directing the State authorities to register an FIR in respect of complaint dated 03.08.2018 filed by one Lichathong Lotha, UBSI, Commander, Narcotic Cell Check Point, Khuzama, Nagaland regarding recovery of illegal drugs. The petitioner has also prayed for directing the respondent No. 1 i.e., the State of Nagaland to transfer the investigation of the case arising out of complaint dated 03.08.2018 to the Central Bureau of Investigation (CBI).

3. The facts relevant for considerations of instant writ petition, in brief, are as follows:-

i. That on 03.08.2018, one Lichathong Lotha, UBSI, Commander, Narcotic Cell Check Point, Khuzama, Nagaland had lodged a written complaint before the Officer-in-Charge of Narcotic Cell, Kohima, Nagaland, *inter alia*, alleging that on 03.08.2018 at around 8:30 Hrs., one Maruti Swift vehicle (White Colour), bearing Registration No. AS-01-BJ-0245, was signaled to stop for checking at Khuzama Narcotic Cell Check Point by the on-duty Police Officials. However, the vehicle did not stop and accelerated and escaped from the check point. On suspicion, the on-duty police personnel chased the vehicle and after a brief chase, intercepted it. Thereafter, the police team conducted the search in the said vehicle. During search operation, Police recovered 11(eleven) packets of suspected brown sugar which were wrapped with brown and yellow tapes and kept inside the back side of the vehicle. On weighing the seized contraband, it was found to weigh 6.9 kg.

The occupants of the vehicle, namely, Rahul Kharel and Deepak Lama were apprehended and a seizure list was also prepared on the same day.

ii. However, on 20.10.2018, the DSP (Crime), Kohima, namely, Tulakha K. Sumi, NPS, had lodged an FIR against the above named petitioner, namely, Richard Yimto, IPS who was posted as Inspector General of Police (CID), Nagaland, Kohima at that point of time, before the Officer-in-charge of State Crime, (PHQ), Kohima, Nagaland, *inter alia*, alleging therein that based on seizure memo dated 01.09.2018, 6.9 kgs of suspected brown sugar was seized from the official residence of the petitioner at New Reserve, Phe sema, Kohima, Nagaland.

iii. The said FIR was registered as FIR No. 1/2018 under Sections 409/420 of the Indian Penal Code read with Section 13(1) (c)(d) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 22 of the NDPS Act, 1985.

iv. Thereafter on completion of the investigation, charge-sheet was laid

bearing Charge-sheet No. 3 dated 14.03.2022 against the above-named petitioner under Sections 409/420 of the Indian Penal Code read with Section 21(c) of the NDPS Act, 1985 as well as under Sections 7(a), 7(c), 13(1)(a) and 13(2) of the Prevention of Corruption Act, 1988.

4. Mr. P. Choudhury, learned senior counsel for the petitioner has submitted that the petitioner has been falsely implicated in the instant case at the instance of some senior and junior police officers, who are closely involved with the drugs kingpins.

5. It is also submitted by the learned senior counsel that though on 03.08.2018 itself a *suo moto* FIR was lodged by Lichathong Lotha, UBSI, however, the Officer-in-charge of Narcotic Cell Police Station, Kohima, namely, Nirola Sophie, did not register the FIR on 03.08.2018.

6. The learned senior counsel has also submitted that the petitioner came to know about the incident, which occurred on 03.08.2018, for the first time, only on 18.08.2018, when Smt. Nirola Sophie, the then SSP, who was also the Officer-in-charge of Narcotic Cell Police Station, Kohima informed the petitioner about the incident and requested him to save her for her lapses.

7. It is also submitted by the learned senior counsel for the petitioner that the Officer-in-charge of Narcotic Cell Police Station, Kohima also informed the petitioner that the Malkhana of the Police Station was not safe to keep the seized material and as no proper guards were available, therefore, she requested the petitioner to keep the seized packets in his official residence to which the petitioner agreed and kept the seized brown sugar in his official residence for security purpose.

8. It is further submitted by the learned senior counsel that on 01.09.2018, a police team led by Sri Renchamo P. Kikon, IPS, Additional DGP (L/O) came to the official residence of the petitioner at about 7.00 PM and they re-seized the consignment of 11 packets of contraband from his residence.

9. The learned senior counsel for the petitioner has submitted that the police team again prepared a second seizure memo on 01.09.2019. The learned senior counsel for the petitioner has submitted that thereafter on 20.10.2018 again a second FIR was lodged which was registered as FIR No. 1/2018 dated 20.10.2018.

10. The learned senior counsel for the petitioner has submitted that thereafter on 25th October, 2018, the petitioner was also put under suspension

contemplating disciplinary proceeding against him. Though, the learned senior counsel also made submissions regarding the pending departmental proceedings against the petitioner, however, as same is not the subject matter of the present writ petition, this Court is refraining itself from discussing the questions pertaining to pending departmental proceeding against the petitioner. More so, as the said departmental proceeding has been challenged by the petitioner by filing a separate writ petition.

11. The learned senior counsel for the petitioner has submitted that as the aforesaid contraband was seized initially, on 03.08.2018 and same was illegally kept in the possession of Officer-in-charge of the Narcotic Cell Police Station, Kohima from 03.08.2018 to 18.08.2018 and thereafter from 01.09.2018 to 05.11.2018. It is further submitted that on 05.11.2018, the engaged counsel for the petitioner pointed out the fact to the learned Special Judge, NDPS, Kohima, regarding non-deposit of seized contraband and thereafter, the Investigating Officer was directed by the learned Special Judge, NDPS, Kohima to deposit the suspected brown sugar before the learned CJM, Kohima. The learned senior counsel for the petitioner has submitted that during this period, the contraband was kept in the Malkhana of the Police Station and the keys of the said

Malkhana were kept by the ADGP (L/O), Nagaland thereby raising the suspicion that as the contraband was kept illegally in the custody of the police instead of custody of the Court during this period, the same might be replaced.

12. The learned senior counsel for the petitioner has submitted that in the instant case initially the charge-sheet was laid on 23.11.2021 by the Superintendent of Police (Crime) and Officer-in-charge, State Crime Police Station before the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland. Thereafter, the said charge-sheet was again taken back by the Investigating Officer without any order of the Court in that regard and it was again submitted before the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland, on 16th March, 2022 and the date in the charge-sheet was mentioned as 14.03.2022 without mentioning therein anything about the filing of the charge-sheet on 23.11.2021.

13. The learned senior counsel for the petitioner has submitted that by replacing the original charge-sheet with the second charge-sheet, the prosecution side has flouted the provisions of Sections 173 of the Code of Criminal Procedure, 1973 and on that count itself the second charge-sheet is liable to be quashed. In

support of his submission learned senior counsel has cited the following rulings:-

- a) **"Ram Lal Narang Etc. Etc Vs.State Of Delhi (Admn.)** reported in **"(1979) 2 SCC 322"**
- b) **T.T. Antony Vs. State of Kerala and others** reported in **"(2001) 6 SCC 181"**,
- c) **Jeevan Singh Vs. State of Rajasthan** reported in **"2004 Crl.L.J. 3469 (Raj.)"**
- d) **Kishan Lal Vs. Dharmendra Bafna & Anr** reported in **"(2009) 7 SCC 685"**
- e) **Lalita Kumari Vs.Govt. of U.P.& Ors** reported in **"(2014) 2 SCC 1"**

14. The learned senior counsel for the petitioner has submitted that the second charge-sheet has been filed by the prosecution side mainly on the basis of statement of PW-1, Shri Tulaka K. Sumi, PW-2-Nirola Sophie, PW-3-Keviekhrie Angami, PW-4-Lichanthung Lotha and PW-5-Imtikumba, wherein they have made statement to the effect that on 06.08.2018 one packet of seized contraband was handed over to the petitioner by the in-charge of Narcotic Cell Police Station and, thereafter, on 17.08.2018 the remaining ten packets of suspected brown sugar which was kept in Malkhana was handed over to the petitioner, however, none of the aforesaid witnesses has stated anything about making GD entry to that effect on 06.08.2018 while delivering the contraband to the

petitioner, hence, the statement made by the said witnesses are not reliable.

15. The learned senior counsel for the petitioner has submitted that by not registering the first FIR on 03.08.2018, the Officer-in-charge of Narcotic Cell Police Station had flouted the provisions of law as well as guideline of the Apex Court in this regard.

16. The learned senior counsel for the petitioner has also submitted that the plea taken in the second charge-sheet that the petitioner prevented the Officer-in-charge of Narcotic Cell Police Station not to register the FIR is not believable as under All India Services (Conduct Rules), 1968, no oral instructions may be given by the petitioner and in that regard the Officer-in-charge of Narcotic Cell Police Station did not obtain any confirmation of the alleged oral direction in writing. The learned senior counsel for the petitioner has submitted that the allegation of giving oral instructions by the petitioner for not registering the FIR is a false and concocted allegation.

17. The learned senior counsel for the petitioner has submitted that though while forwarding the sample of the contraband to the Central Forensic Laboratory, Kolkata, four specific questions were raised seeking expert opinion on those questions. However, all the questions were not replied by the CFSL, Kolkata

therefore, the learned senior counsel for the petitioner submits that on the basis of such incomplete FSL report, no charge-sheet under Section 21(c) of the NDPS Act, 1985 could have been submitted against the petitioner.

18. The learned senior counsel for the petitioner has also submitted that the call data records of the mobile phone of the petitioner would show that the petitioner was not in Kohima on 06.08.2018 and 17.08.2018, which belies the accusation made against the petitioner by PW-2 and PW-5 that the contraband was delivered to the petitioner on the said dates.

19. The learned senior counsel for the petitioner has submitted that the Investigating Officer could not find any evidence against the petitioner regarding preventing the Officer-in-charge of Narcotic Cell Police Station from registering the FIR on the basis of written complaint which was lodged on 03.08.2018. There is also no evidence which show that the prosecution witness No. 2 and 3 listed in the charge-sheet, were prevented from making GD entry with regard to the incident which happened on 03.08.2018. He also submits that there is no evidence on record to show that the petitioner had instructed to release, on bail, the two accused persons from whose possessions the contraband was seized on 03.08.2018.

20. The learned senior counsel for the petitioner submits that the only charge against the petitioner is regarding keeping the contraband illegally in his residence which is also not substantiated by evidence collected during the investigation. The learned senior counsel for the petitioner has also submitted that though the charge-sheet was also laid under Sections 409/420 of the Indian Penal Code, however, no ingredients of said offences are present in the instant case against the petitioner.

21. The learned senior counsel for the petitioner has also submitted that though the charge-sheet was also lodged under Sections 7(a) and (c) of the Prevention of Corruption Act, 1988, however, he submits that the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland, does not have the jurisdiction to try the offence under the Prevention of Corruption Act, as in the State of Nagaland, the Tribunal for Disciplinary Proceeding (TDP) at Kohima is having the jurisdiction to try the offences under the Prevention of Corruption Act, 1988.

22. The learned senior counsel for the petitioner has submitted that the seized contraband was handed over to the petitioner for keeping it in safe custody as no security was there in the Malkhana, hence, under the facts and circumstances of the case, the petitioner

may not be regarded as having conscious possession of contraband and, therefore, it is submitted that no offence under Section 21 of the NDPS Act, 1985 has been committed by the petitioner.

23. The learned senior counsel for the petitioner has submitted that the State respondents have violated the provisions of Section 154 and Section 173 of the Code of Criminal Procedure, 1973 and have also violated relevant provisions of Nagaland Police Manual. The learned senior counsel for the petitioner has also submitted that the petitioner has been implicated in the instant case by conspiracy of some senior police officials of Nagaland Police. He also submits that the key of the Malkhana of special Narcotic Cell Police Station, Kohima was in custody of the ADGP (L/O) instead of the Officer-in-charge of the said police station which clearly speaks volume regarding involvement of police officials in drug peddling business and same could be unearthed only by an independent investigation carried out by the Central Bureau of Investigation and not by the Investigation Agency of the State.

24. Learned senior counsel for the petitioner has submitted that in the departmental proceeding pending against the petitioner, the drug peddlers from whose custody the seized contraband was initially

recovered have been made witnesses for the department against the petitioner which itself shows that the high police officials are involved in attempt to malign the reputation of the petitioner. He also submits that though the Officer-in-charge of Narcotic Cell Police Station was at fault by not registering the complaint which was lodged on 03.08.2018, however, he has not been charge-sheeted deliberately by the State Police as there was a biased investigation by the Investigating Officer.

25. Learned senior counsel for the petitioner has submitted that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can issue directions to CBI for to investigate a case where it is necessary to inspire confidence amongst the public regarding the impartiality and fairness of investigation in criminal justice system. In support of his submission, learned senior counsel for the petitioner has cited a ruling of the Apex Court in the case of "***State of West Bengal and Anr. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.***" reported in "***(2010) 3 SCC 571***".

26. The learned senior counsel for the petitioner has also cited a ruling of this Court in the case of "***Sukumar Talukdar Vs. Union of India and Ors.***" reported in "***2016 3 GLT 798***".

27. On the other hand, Ms. V. Suokhrie, learned Public Prosecutor, Nagaland has vehemently opposed the prayer of the petitioner and has submitted that the petitioner, who was, at the relevant point of time, posted as the Inspector General of Police (CID) and was senior to the Officer-in-charge of Narcotic Cell Police Station, has abused his official position to pressurize his junior officers to compel the Officer-in-charge of Narcotic Cell Police Station not to register a regular FIR on the basis of *suomoto* complaint lodged by the UBSI, Lichathong Lotha on 03.08.2018. She has also submitted that the petitioner also pressurized his junior officers to not to disclose the seizure and arrest of two accused persons from whose possession the contraband was seized on 03.08.2018 to any superior officers.

28. It is also submitted that the petitioner had also directed to bring the seized consignment straight to his office chamber at PHQ, Kohima from the place of seizure. He also directed to release the seized vehicle after taking Zimmanama. It is also submitted that the petitioner also directed his junior officers to release the arrested accused persons on furnishing PR bond.

29. The learned Public Prosecutor, Nagaland has also submitted that the petitioner has also sent a message

to the Officer-in-charge of Narcotic Cell Police Station in her Mobile No. 9436262528, wherein he wrote "*that price of 1 kg brown sugar in international market as on today is Rs.2.5 Crore where we are making the Magistrate rich*". And after sending the said message, he had directed the Officer-in-charge of Narcotic Cell Police Station that from then onward if there is any detection, the petitioner should be informed also over WhatsApp message from the spot of detection.

30. The learned Public Prosecutor, Nagaland has also submitted that as the time of the handing over the seized contraband to the petitioner, the General Diary Entry were made on 06.08.2018 and 17.08.2018. Learned Public Prosecutor, Kohima, Nagaland has also submitted that as the petitioner was a senior officer, the Officer-in-charge of the Narcotic Cell Police Station was compelled to comply with his directions and, therefore, the contraband was handed over to the petitioner when he demanded the same.

31. The learned Public Prosecutor has also submitted that the submissions made by the learned counsel for the petitioner that there was no security in the Malkhana and, hence, the petitioner had kept the seized contraband in his residence is not true as there were 24 hours static guards on duty in addition to

night Chowkidar at PHQ.

32. The learned Public Prosecutor has also submitted that in a spite of being a senior police officer, the petitioner kept commercial quantity of contraband i.e., 6.9 kg of brown sugar in his residence in violation of all the norms and, therefore, there is a clear case of illegal possession of commercial quantity of heroin by the petitioner.

33. The learned Additional Public Prosecutor, Nagaland has also submitted that the petitioner having been a superior police officer committed the alleged offence with *mala fide* intention and has now filed this frivolous petition in his desperate attempt to thwart the ends of justice and, therefore, the petition filed by the petitioner is liable to be dismissed with exemplary cost. She also submits that if there is any irregularity committed by the State respondents, during investigation, it would not vitiate the entire criminal proceeding and same cannot be basis for quashing of the pending criminal proceeding against the petitioner when there are sufficient and cogent incriminating materials against him on record.

34. The learned Additional Public Prosecutor fairly submits that though initially the charge-sheet was forwarded to the learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, through Public

Prosecutor by letter dated 23.11.2021, however, same was never placed before the Trial Court on that occasion neither the Trial Court took cognizance of any offence on that occasion. It is submitted by the learned Public Prosecutor, Nagaland that as in the first occasion Public Prosecutor found deficiency in the charge-sheet and, accordingly, suggested some rectification by a concise memo dated 25.12.2021, therefore, the charge-sheet was returned back to the Investigating Officer on that occasion. Thereafter, after rectification, the charge-sheet was again submitted before the learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, on 16th March 2022. She also submits that as the charge-sheet was lodged before the Court for the first time after it was submitted on 16th March, 2022, therefore, it may not be regarded as second charge-sheet as submitted by learned senior counsel for the petitioner and same may not be a ground for quashing the entire criminal proceeding pending against the petitioner. In support of her submissions, learned Public Prosecutor, Nagaland has cited the following rulings:-

- a) **"Ram Singh Vs. Central Bureau of Narcotics"** reported in **"(2011) 11 SCC 347"**
- b) **"State of Gujarat vs Kishanbhai"** reported in **"(2014) 5 SCC 108"**
- c) **"Ramesh Rajagopal vs Devi Polymers Pvt. Ltd"** reported in **"(2016) 6 SCC 310"**

d) **"*Arnab Ranjan Goswami vs Union Of India* reported in **"(2020) 14 SCC 12"****

e) **"*K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Ors.,*" reported in **"(2013) 12 SCC 480."****

35. Learned Public Prosecutor, Nagaland has submitted that the petitioner himself is the main accused in the case and the allegation against him is that it is he who had prevented the registration of FIR on 03.08.2018 and all these facts were revealed during investigation which ensued after registration of FIR on 20.10.2018. Hence, the petitioner who is himself the main accused cannot ask for changing the investigation agency or to do the investigation in a particular manner and this proposition of law has been settled by several rulings of the Apex Court. She has also submitted that the Supreme Court of India has time and again has observed that the power of transferring the investigation to the Central Bureau of Investigation must be exercised only in rare and exceptional cases where Court finds it necessary in order to do justice between the parties and instill confidence in the public mind. However, in the instant case, she submits that the police has unearthed all the facts in the investigation conducted by it and the instant writ petition has been filed by the petitioner with a *mala fide* intention to derail the criminal proceeding pending against him. Hence, she has

vehemently opposed the prayer of the petitioner and has submitted that the writ petition may be dismissed with cost.

36. I have considered the submissions made by the learned counsel for both the sides and have perused the materials on records carefully, including the case record of Special Case No. 36/2018, which is available before the Court.

37. I have also gone through the rulings cited by the learned counsel for both the sides in support of their respective submissions.

38. In the case of "**K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai and Ors.,**" reported in "**(2013) 12 SCC 480.**" the Apex Court has observed as follows:-

"13. The issue involved herein, is no more res integra. 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 exceptional cases where the court finds it

necessary in order to do justice between the parties and to instil 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. Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide Gudalure M.J. Cherian v. Union of India [(1992) 1 SCC 397] , R.S. Sodhi v. State of U.P. [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248 : AIR 1994 SC 38] , Punjab and Haryana High Court Bar Assn. v. State of Punjab [(1994) 1 SCC 616 : 1994 SCC (Cri) 455 : AIR 1994 SC 1023] , Vineet

Narain v. Union of India [(1996) 2 SCC 199 : 1996 SCC (Cri) 264] , Union of India v. Sushil Kumar Modi [(1996) 6 SCC 500 : AIR 1997 SC 314] , Disha v. State of Gujarat [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628 : AIR 2011 SC 3168] , Rajender Singh Pathania v. State (NCT of Delhi) [(2011) 13 SCC 329 : (2012) 1 SCC (Cri) 873] and State of Punjab v. Davinder Pal Singh Bhullar [(2011) 14 SCC 770 : (2012) 4 SCC (Civ) 1034 : AIR 2012 SC 364].)"

39. In the case of **"Arnab Ranjan Goswami Vs. Union Of India"** reported in **"(2020) 14 SCC 12"**, the Supreme Court of India has observed as follows:-

"43. *This principle has been reiterated in K.V. Rajendran v. CBCID [K.V. Rajendran v. CBCID, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] . Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held : (SCC p. 485, para 13)*

"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 exceptional cases where the court finds it necessary in

order to do justice between the parties and to instil 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."

44. *Elaborating on this principle, this Court observed: (K.V. Rajendran case [K.V. Rajendran v. CBCID, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] , SCC p. 487, para 17)*

"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 instil 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 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 [State of W.B. v. Committee

for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

45. *In Romila Thapar v. Union of India [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , A.M. Khanwilkar, J. speaking for a three-Judge Bench of this Court (one of us, Dr D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in Narmada Bai v. State of Gujarat [Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , Sanjiv Rajendra Bhatt v. Union of India [Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , E. Sivakumar v. Union of India [E. Sivakumar v. Union of India, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] and Divine Retreat Centre v. State of Kerala [Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] . This Court observed : (Romila Thapar case [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , SCC p. 776, para 30)*

"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."

40. In light of above observations of the Apex Court, let us examine whether the reliefs prayed for by the petitioner in the instant writ petition may be granted or not.

41. Though, it appears that investigation in this case was initiated on receipt of FIR dated 20.10.2018, however, during investigation many facts came to the light. During the course of investigation, it was revealed from the materials collected that the seized contraband was initially recovered, on 03.08.2018, from a vehicle bearing Registration No. AS-01-BJ-0245, from the possession of two persons namely, Rahul Kharel and Deepak Lama. It also appears from the investigation that the Investigating Officer found that both the accused persons, namely, Rahul Kharel and Deepak Lama were arrested on 03.08.2018 and arrest memo were prepared. However, the evidence collected during investigation also revealed that the Officer-in-charge of Narcotic Cell Police Station, Kohima was prevented from registering the FIR by the petitioner, namely, Richard Yimto. The facts and circumstances under which the FIR could not be registered on 03.08.2018 constitutes the main allegation in the instant case and during the investigation it was found that only due to the pressure by the petitioner, his junior officers did not register the FIR.

42. Though, the learned senior counsel for the petitioner has submitted that the aforesaid accusation made against the petitioner in the charge-sheet is not true, however, on perusal of the charge-sheet it appears that at least four witnesses have stated on oath that the petitioner asked for producing the contraband before him and not to discuss the matter with any of the senior Police Officer. It also appears that there are evidence on record collected during investigation to the effect that it was the petitioner who directed to release the apprehended accused persons on furnishing of PR bonds.

43. There are also, *prima facie*, materials in the case diary to suggest that the petitioner directed his subordinate to produce the seized contraband in his office chamber and also directed to hand over to him the seized contraband and thereafter, same was kept in his official residence. It also appears from the case diary that the seized contraband was recovered from his residence and thereafter the same was seized on 01.09.2018 from his official residence.

44. In the case of "***T.T. Antony Vs. State of Kerala and others***" reported in "***(2001) 6 SCC 181***", the Supreme Court of India has observed that the registration of an information as second FIR in regard to the same incident and making a fresh investigation when already

an FIR has been registered, is not permissible under the scheme of the provisions of Code of Criminal Procedure, however, in the instant case, the complaint filed on 03.08.2018 by the Commander, Narcotic Cell Check Point, Khuzama, namely, Shri Lichathong Lotha was not registered, therefore, the FIR which was registered on 20.08.2018 cannot be regarded as the second FIR.

45. In the instant case, one of the main allegations in the charge-sheet against the petitioner is that he had prevented the Officer-in-charge of Narcotic Cell Police Station from registering the complaint filed by Shri Lichathong Lotha on 03.08.2018 and when during the investigation which ensued after registration of formal FIR, all these facts were revealed, the necessity of again registering the complaint, which was filed on 03.08.2018, does not arise.

46. There are clear incriminating materials against the petitioner in the case diary. Under such circumstances, the petitioner may not be allowed to derail the course of justice and take advantage of his own wrong as the evidence collected during the course of investigation suggests that, it was he who had prevented the registration of FIR on 03.08.2018.

47. From the materials on record, it appears that the FIR in this case was registered for the first time on

20.08.2018 i.e., the FIR which was lodged by the DSP(Crime), Kohima and during the investigation which was initiated on the basis of the said FIR, many facts came to the light, including the fact that recovery and seizure of the contraband was done initially on 03.08.2018 from the possession of two persons, namely, Rahul Kharel and Deepak Lama. The mere fact that the contraband was initially recovered from the possession of two above named persons would, in itself, not absolve the petitioner, at least at this stage, from the accusation made against him that he had prevented the registration of the FIR on 03.08.2018 and also kept the recovered contraband illegally in his official residence.

48. In the instant case, there are sufficient incriminating materials against the petitioner which was collected during the investigation. Further, presently the Special Case No. 36/2018 is pending before the Trial Court at the stage of consideration of charges and the charges are yet to be framed. Moreover, as there are sufficient incriminating materials at the stage implicating the petitioner, hence, this Court would not embark upon the question of the reliability or genuineness of the evidence collected by the Investigating Officer during investigation.

49. As regards the submission of learned senior

counsel for the petitioner that though, the contraband was initially recovered from the possession of two persons, namely, Rahul Kharel and Deepak Lama, however, they are not named as accused in the charge-sheet, which has been impugned in this case, it appears from perusal of the case record that the *suo moto* FIR filed by the Lichathong Lotha, UBSI, on 03.08.2018, has been forwarded along with the charge-sheet as D-5. The seizure memo dated 03.08.2018 has been forwarded along with the charge-sheet as D-6. Similarly, the arrest memo of Rahul Kharel and Deepak Lama has also been forwarded along with the charge-sheet as D-7. There are also other incriminating evidence collected against Rahul Kharel and Deepak Lama by the Investigating Officer, during the investigation. Hence, it appears that during the investigation apart from collecting sufficient materials against the present petitioner, the Investigating Officer also collected materials against the said Rahul Kharel and Deepak Lama from whose possession contraband was initially recovered on 03.08.2018.

50. The Supreme Court of India in the case of "**Nahar Singh vs The State Of Uttar Pradesh**" reported in "**(2022) 5 SCC 295**" has observed as follows:-

"29. In *Raghubans Dubey [Raghubans*

Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] , SWIL Ltd. [SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670 : 2001 SCC (Cri) 1205] and Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , the power or jurisdiction of the court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be

exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in Column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report.”

51. Thus, from the above, it appears that if there are sufficient materials against Rahul Kharel and Deepak Lama in the charge-sheet, they cannot be absolved from being prosecuted merely because they are not named in the charge-sheet as accused person by the Investigating Officer. Under such circumstances, the learned Sessions Judge-cum-Special Judge, Kohima would be well within his powers to take cognizance against both Rahul Kharel and Deepak Lama on the basis of incriminating materials against both of them in the charge-sheet.

52. Thus, merely because of the fact that the charge-sheet submitted by the Investigating Officer

does not indicate the name of the aforesaid persons as accused in the charge-sheet, in itself, may not be a good ground for quashing the charge-sheet on the prayer of a co-accused (petitioner) against whom there are sufficient materials in the charge-sheet.

53. Thus, merely because of the fact that charge-sheet submitted by the Investigating Officer does not indicate the name of aforesaid person as accused in the charge-sheet, in itself, may not be a good ground for transferring the investigation to the CBI that too on the prayer of the accused petitioner.

54. We have seen from rulings cited herein before that it is no longer *res integra* that the accused does not have any say in the matter of appointment of investigating agency, he cannot ask for changing the investigating agency or to do investigation in a particular manner.

55. In the instant case, the investigation which was initiated after registration of FIR lodged on 20.08.2018 has revealed many facts which are sufficient to initiate criminal proceedings against the petitioner as well as against two persons who were not named in the charge-sheet, namely Rahul Kharel and Deepak Lama and, therefore, this Court is of considered opinion that under the facts and circumstances of this case, no necessity of any direction for registering complaint

dated 03.08.2018 is justified in the present case and the question of transferring the investigation to the CBI when the Special Case No. 36/2018 is pending before the Trial Court at the stage of consideration of charges, does not arise.

56. In view of above, the prayer of the petitioner is hereby rejected and this writ petition is dismissed. However, for reasons discussed in the foregoing paragraphs, the learned Sessions Judge-cum-Special Judge, Kohima would be well within his powers to take cognizance also against both Rahul Kharel and Deepak Lama on the basis of incriminating materials against both of them in the charge-sheet.

57. The Registry of the Principal Seat of this Court is directed to send the record of this case along with the records of the Special Case No. 36/2018 along with the connected files and a copy of this judgment to the Registry of the Kohima Bench of this Court for transmitting the same to the Court of learned Sessions Judge-cum-Special Judge, NDPS, Kohima immediately.

Sd/-
JUDGE

Comparing Assistant