

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.720 OF 2014

Abhimanyu s/o Ravan Ingale,
Age-43 years, Occu:Agri.,
R/o-Kangara,
Tq. & Dist-Osmanabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Home Department, Mantralaya,
Mumbai-32,
- 2) The Commissioner of Police,
Aurangabad Division,
Aurangabad,
- 3) Inspector General,
Aurangabad Division,
Aurangabad,
- 4) Inspector General,
Nanded Division,
Nanded,
- 5) The Superintendent of Police,
Osmanabad, Dist-Osmanabad,
- 6) The Police Inspector,
Police Station, Bembli,
Tq. & Dist-Osmanabad,
- 7) The Collector, Osmanabad,
Dist-Osmanabad,

- 8) Central Bureau of Investigation,
Through the Joint Director, Zone-1,
C.B.I. Tanna House, Nathalal Parekh
Marg, Colaba, Mumbai-39.

...RESPONDENTS

...

Shri R.S. Deshmukh Advocate h/f. Shri V.V.
Ingale Advocate for Petitioner.
Shri S.G. Karlekar, A.P.P. for Respondent
Nos. 1 to 7.

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WITH

**CRIMINAL APPLICATION NO.4891 OF 2014
IN
CRIMINAL WRIT PETITION NO.720 OF 2014**

Shri Sachin Ashok Patil,
Age-34 years, Occu:Service,
Presently posted and residing at "Thane",
Dist-Thane, Maharashtra.

...APPLICANT

VERSUS

- 1) Mr. Abhimanyu s/o Ravan Ingale,
Age-43 years, Occu:Agriculturalist,
Resident of-Kangara,
Tq. & Dist-Osmanabad,
- 2) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32 (Mah.),
- 3) The Commissioner of Police,
Aurangabad Division,
Aurangabad (Mah.),

- 4) The Inspector General of Police,
Aurangabad Division,
Aurangabad (Mah.),
- 5) The Inspector General of Police,
Nanded Division,
Nanded (Mah.),
- 6) The Superintendent of Police,
Osmanabad, Dist-Osmanabad (Mah.),
- 7) The Police Inspector,
Police Station, Bembli,
Osmanabad (Mah.),
- 8) The Collector, Osmanabad,
Dist-Osmanabad (Mah.),
- 9) Central Bureau of Investigation,
Through its Joint Director, Zone-1,
C.B.I., Tanna House, Nathalal Parekh
Marg, Colaba, Mumbai-39 (Mah.).

...RESPONDENTS

...

Shri Shirish Gupte, Senior Counsel with
Shri A.D. Ostwal Advocate for Applicant.
Shri R.S. Deshmukh Advocate h/f. Shri V.V.
Ingale Advocate for Respondent No.1.
Shri S.G. Karlekar, A.P.P. for Respondent
Nos. 2 to 8.

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**CORAM: S.S. SHINDE AND
A.I.S. CHEEMA, JJ.**

DATE OF RESERVING JUDGMENT : 11TH DECEMBER, 2014.

DATE OF PRONOUNCING JUDGMENT: 15TH JANUARY, 2015.

JUDGMENT [PER A.I.S. CHEEMA, J.] :

1. This Writ Petition has been filed by the Petitioner, resident of village Kangara, Tq. & Dist-Osmanabad for writ of mandamus or any other order of like nature to Respondent No.6 - Police Inspector, Police Station, Bembli to register F.I.R. on the information given by the Petitioner on 21st June, 2014. Prayer is that the investigation should be conducted by C.B.I. in the F.I.R. to be registered relating to incident dated 26th May, 2014. Further prayer is that the Respondents should pay compensation to the Petitioner and other villagers of Kangara for illegal arrest, unlawful confinement and detention by Respondent No.5 - Superintendent of Police, Osmanabad and Respondent No.6 - Police Inspector, Police Station, Bembli.

2. According to the Petitioner, Women's Self Help Group had made grievances against illegal

sale of liquor in the village Kangara. Police Patil of the village also, on 24th May 2014, informed the Police Station that some villagers are involved in illegal sale of liquor in the village and there is social imbalance and likelihood of breach of peace and harmony. On 26th May 2014, Women of the Self Help Group had gone to the Police Station, Bembli. Police asked them to seize the liquor and collect evidence. The ladies caught hold of one Shesherao Limbaji Rathod involved in selling of illegal liquor with a box of country liquor bottles and Plastic Can containing liquor. The Police were called to the village. Three Police Officials, (1) Head Constable Shridhar Pawar, (2) Police Constable Bhosle and (3) driver Police Constable Shinde from the Police Station, Bembli reached the spot on 26th May 2014 at about 8.30 p.m. These Police Officials, instead of taking action against Shesherao Rathod, threw the liquor from plastic can by kick and asked Shesherao Rathod to run

away. Sheshrao ran away with the country liquor bottles. Because of this, ladies of the village Kangara questioned the conduct of the Police. In the process, Mangalsutra of one lady, namely Mahadevi Gangadhar Malge was snatched. The ladies were assaulted with fists and kicks. Due to illegal conduct of the Police, there was exchange of words between the villagers and Police Personnel. Shri R.A. Bansode, A.P.I. attached to the Police Station Bembli, received information about the unrest in the village and came to the village. He also faced anger of the villagers. Instead of taking action against the said Police, A.P.I. Bansode informed the Superintendent of Police, Osmanabad - Sachin Patil. The Superintendent of Police came along with Deputy Superintendent of Police Smt. Vaishali Kadukar to the village at about 11.00 - 11.30 p.m. along with 150 to 200 Police personnels of Anti- riot squad. Without making inquiries, the Superintendent of Police directed that the villagers should be

arrested. The Police became uncontrollable and broke open doors of the houses and started assaulting villagers. Villagers were beaten and 46 men and 8 women were arrested and taken to the Police Station. They were detained till 10.00 p.m. of 27th May, 2014 without being given medical aid. At about 10.00 p.m. on 27th May 2014, Police sent 7 villagers to the hospital. One Satish Gurav sustained fracture to his left leg.

. There was public cry and media gave wide publicity to the incident and Home Ministry appointed Inspector General of Police, Nanded to inquire and submit report. Inspector General of Police, Nanded submitted report and only departmental action came to be taken against the three Police personnels and A.P.I. Bansode and they were suspended. Crime was not registered against the Police or the Superintendent of Police and the Deputy Superintendent of Police. The Petitioner tried to file report at the Police

Station but the same was not received. Petitioner sent report dated 21st June, 2014 to P.S.I. Police Station Bembli, but offence was not registered. Hence the present Petition.

3. The other version of the alleged incidents is the version of the Police. Record shows that Police Station, Bembli, on 27th May 2014 registered Crime No.43 of 2014 under various sections of Indian Penal Code and Prevention of Damage to Public Property Act. The complainant was Head Constable Shridhar Pawar who had gone for the raid at the village on 26th May 2014. The offence was registered at 5.00 a.m. As per the version of the Police Head Constable, on 26th May 2014 he was told by Police Inspector Bansode that Police Patil of village Kangara had informed on phone that Shesherao Limbaji Rathod was selling illegal liquor at the village and so raid should be carried out. The complainant, along with Police Constable Bhosle and driver Police Constable

Shinde and two Panchas, in Jeep No.MH-25 C-6420 proceeded to the village after taking station diary entry at 21.20 hours. The raid was carried out at the house of Shesherao but he had already run away. From the house, under Panchnama, articles were seized and with Police staff, this Police Head Constable came near Hanuman Temple Square. Sheshrao who had run away, along with his wife Shobha Rathod, one Meenakshi Rathod and sister Chaya Chavan and other 2-3 persons came there and forcibly tried to spill the liquor seized, to destroy the evidence. Some people gathered and started saying as to how Police will file case and other people gathered started saying as to how the liquor was allowed to be spilled. So saying, the people started rushing against the persons of Police and the Police were obstructed. The Police were beaten and injured. One Datta Hariba Landge, Dnyaneshwar Ingale, Uttareshwar Ingale, Shadar Dalave, Rahul Dharav, Laxman Gujaré and other 100-125 peoples started pelting stones

and the unlawful assembly damaged the Government Jeep. Glasses, doors, tyres of the vehicle were damaged to the extent of Rs.60,000/- to Rs.70,000/-. The key of the vehicle was taken away by these persons. This complainant Shridhar Pawar and Constable Shinde were assaulted by one Datta Landge, Laxman Gujare and other 2-3 persons by sticks, chain, stone and were grievously injured. Complainant Shridhar Pawar had bleeding injury on his head. Police Constable Shinde informed about the incident which was going on, on wireless to the Police Station as well as control room. Because of this higher Police officials came to the spot but the mob kept throwing stones in which Head Constable Rokade was injured to the head. The F.I.R. as above was given by complainant while being admitted in the hospital.

4. The above are the two versions of the opposite sides. The Petitioner regarding the incident dated 26th May 2014 claims to have sent

information dated 21st June 2014 (Exhibit E) to the Police Sub Inspector, Police Station, Bembli, Dist-Osmanabad, claiming that on 26th May 2014 he was at his home and had gone to sleep, when at about 1.00 a.m. There were bangs on the door and he thought that there were thieves and so without opening the door, he and his wife kept hiding in the bed room. However, the Police were there and they broke open the door and entering in the house, the Police personnel took out the Petitioner from his house. Outside there was Superintendent of Police Sachin Patil, who, without asking anything, gave 2-3 blows of stick on the leg of the Petitioner. The Deputy Superintendent of Police Smt. Vaishali Kadukar also gave him kick blow. The other Police officials gave stick blows on the whole body of the Petitioner i.e. below the hip. He was given 40-50 blows by sticks and put in a van along with 30-40 people and taken to Police Station. He was detained till 10.00 p.m. of 27th May 2014.

. According to the Petitioner, the above should have been registered as his F.I.R. The Petitioner is trying to support the above information dated 21st June 2014 with medical certificate dated 28th May 2014 mentioning that he had swelling over left dorsal and contusion over right and left buttock 10 X 10 c.m.s. There was contusion on left leg post aspect of 8 X 2 c.m.s.

5. Respondent No.1 through Secretary, Home Department, Vineet Agrawal filed affidavit dated 18th July 2014 stating that the Government has taken complaint against the Police officials seriously and will bring the inquiry and investigation to its logical conclusion. The affidavit says that on 28th May 2014 one A.P.I. and three constables have been placed under suspension. The documents attached show that A.P.I. Bansode and the Head Constable Pawar, Police Constable Bhosle and Police Constable

Shinde had been suspended. The affidavit mentions that Special Inspector General vide letter dated 31st May 2014 has transferred the investigation of the case to the C.I.D. Crime.

. Subsequently, the Secretary, Home Department has filed another affidavit dated 10th September 2014 in view of the rejoinder filed by the Petitioner, clarifying that it was true that suspension of A.P.I. Bansode was revoked on 5th July 2014 by the Superintendent of Police, Osmanabad which fact was not informed to this deponent. He explained that this happened as information had not reached him while filing earlier affidavit. He further mentioned in the affidavit that the Inspector General of Police, Nanded had completed the inquiry and submitted report and the comments of the Director General of Police had been called.

6. The Inspector General of Police, Nanded -

Respondent No.4 filed affidavit claiming that the Petition was exaggerated and had imaginary grounds. He claims that he had visited the village on 28th May 2014 and made inquiries. The affidavit refers to the grievances made by the villagers including grievance that the Deputy Superintendent of Police Smt. Vaishali Kadukar and Superintendent of Police, when they had come at the spot, they had beaten the innocent villagers. This Inspector General of Police has mentioned in the affidavit that he has looked into the allegations and conducted preliminary inquiry. He found the A.P.I. Bansode and the three Police officials who had gone for raid, to be prima facie guilty and has sent report to the Director General of Police recommending stern action against these Police officials and that they had been suspended. He has already submitted report dated 30th July 2014 and that no further inquiry was necessary and that the Writ Petition was liable to be dismissed.

7. There is yet another affidavit of Suresh Khade, Deputy Secretary, Home Department, stating that Additional Director General of Police, C.I.D. has been directed to include in the inquiry all the complaints relating to incident in which offence bearing Crime No.43 of 2014 has been registered. It is mentioned that Government of Maharashtra has issued letter dated 2nd December 2014, in which it has been clarified that inquiry in Crime No.43 of 2014 shall also include the allegations against the then Superintendent of Police, Osmanabad.

. Thus, (although as per Police Station Bembli "Samajpatra" dated 1st July 2014 (infra) the complaint is filed) according to this deponent, ambit of inquiry being made by C.I.D., includes the complaint made against the Superintendent of Police. The information dated 21st June 2014 claimed by the Petitioner is covered, as it is a grievance against the Superintendent of Police,

Osmanabad relating to the incident dated 26th May 2014.

8. The then Superintendent of Police - Sachin Patil has filed Criminal Application No.4891 of 2014 for intervention. In the course of hearing of this Writ Petition, on 15th September 2014, Mr. S.C. Gupte, Senior Counsel for the intervenor has mentioned that he will file affidavit in continuation of the Application for intervention along with the documents relating to the subject matter involved in the Petition. The statement was taken on record. Subsequently the Superintendent of Police has filed affidavit dated 6th October, 2014.

9. The affidavit of the then Superintendent of Police in substance shows :-

(A) Reference has been made to the case law in order to claim that his intervention Application should be allowed and that he has

a right to be heard. Referring to the incident, this deponent has claimed (from Para 18) that at the relevant time in village Kangara there was law and order situation and anti-social elements had taken law in their hands and the situation was deteriorating. The control room was informed about the same and this reflects in the station diary. According to him, initially he had directed the Deputy Superintendent of Police to proceed to village which can be seen from Exhibit R-1, the relevant station diary entry, to control law and order situation. Deponent received wireless message that the law and order situation was deteriorating and two constables were held captive by the violent mob and stones were being pelted at police vehicles and the mob was armed with deadly weapons. Three constables had received serious injuries and there was threat and danger to their life. Deponent refers to the photographs filed at Exhibit R-2 in support of claim that the police constables had been seriously injured physically.

(B) Deponent has made reference to Section 129 of Cr.P.C. relating to unlawful assemblies and provision that police officer not below the rank of sub inspector may command any unlawful assembly likely to cause disturbance of public peace to disperse and if on being so commanded, the assembly does not disperse, the police may proceed to disperse the assembly by force and if necessary arrest and confine persons who form part of the said assembly or they may be punished according to law. Relying on this Section and referring to Section 130 and 131 of Cr.P.C., it is claimed that under Section 132(2)(a) the police officer acting under Section 129 of Cr.P.C. is protected when he has acted in good faith and no such officer

shall be deemed to have committed an offence. Reliance is placed on Section 149 to claim that police has power to prevent cognizable offence and Section 151 of Cr.P.C. also permits arrest of person to prevent cognizable offence. According to deponent, the writ Petitioner was served with notice under Section 149 of Cr.P.C. (Exhibit R-3). According to him, the Petitioner has not approached the Court with clean hands. The complaint dated 21st June 2014 received by police station on 25th June 2014 / 26th June 2014 claims that the Petitioner was not aware as to what happened in the village on 26th May 2014 but the Petitioner has claimed personal knowledge about incidents as can be seen from Paragraphs 4 to 10 of the Petition. Petitioner has not disclosed source of knowledge and information regarding the incidents dated 26th May 2014. The Petitioner has claimed knowledge about the incident as from his own knowledge and belief and still claimed that he was not aware about the incident till 1.00 a.m. of 27th May 2014, which is not correct.

(C) The deponent in para-wise reply, has claimed that there was information received from Mahila Bachat Gat and Police Patil at Kangara with Bembli Police Station with reference to sale of illicit liquor on 26th May 2014 and A.P.I. Bansode had sent raiding party to do the needful. According to him, the information was received at 9.15 p.m. and the station diary entry shows that the raiding party went at 9.20 p.m. The raiding party consisted of police head constable Shridhar Pawar, police constable Bhosle and driver police constable Shinde and two Panchas. They had gone by police Jeep No. MH-25 C-6420. According to deponent, the raiding party seized illicit liquor from the house of

Sheshrao who had run away. When the raiding party was returning and reached Hanuman Square, Sheshrao with his family members reached there and poured the seized liquor on ground from the hands of police. At that time women of Mahila Bachat Gat asked police as to how they helped Sheshrao and his family members to pour liquor on the ground and started assaulting police persons. Deponent claims that police never helped Sheshrao to run away from spot. Rather, the raid had been carried out against him. According to deponent, mob of villagers got angry and they pelted stones and ransacked police jeep and also beat the police party. The police party was not allowed to leave the village and steering of the jeep was locked and keys removed by people. When women of Kangara village were questioning the police, one Mahadevi Gangadhar Malge was there in the crowd. Her Mangalsutra was snatched by the persons who were with Sheshrao and in this regard F.I.R. at CR. No.48 of 2014 was filed. According to deponent, the Petitioner has not approached the Court with clean hands.

(D) Deponent claims that A.P.I. Bansode received information from police constable Shinde on wireless regarding assault on police. A.P.I. Bansode immediately went to the village and was informed that people were assaulting the police and two police officials, A.S.I. Katkar and Surwase were missing and some police personnels had been grievously and seriously injured. Police Head Constable Rokde sustained serious head injury and was assaulted with stick, bamboo and stones on his legs. A.P.I. Bansode found the situation to be critical and informed control room. Consequently Deputy Superintendent of Police Smt. Vaishali Kadukar with police staff

of about 25 personnel, went to help Bansode. With the help of staff available, it was announced to the people of unlawful assembly to disburse peacefully but the mob kept on taking law in their hands. The police tried to search for the missing police persons and to control the mob. Deputy Superintendent of Police Smt. Vaishali Kadukar informed deponent that more force was required. Deponent sent Police Inspector Gundile of local crime branch with staff and later on the deponent himself went with police officials. Deponent reached at about 12.00 a.m. in the night. People were asked to leave the spot. Mob was asked to disburse. Police continued with the search of police personnels. Deponent acted as per rule of law to save damage to life and property. There was spontaneous pelting of stones and the people were causing law and order problem and obstruction. 46 male and 5 female were taken into custody. In the extensive search, the missing police staff was found. Their clothes had been torn and they were in shock. In the incident one Satish Hanumantrao Gurav who was injured, was sent for medical treatment on 27th May 2014. From the persons caught, three were found involved in commission of offence and they were remanded while others were released under Section 149(1) of Cr.P.C. Petitioner might have received injuries in the scuffle with the villagers or while running away at the time of incident.

(E) The affidavit refers to case law to claim that as alternative efficacious remedy under Section 156(3) and Section 202 of Cr.P.C. is available, remedy under Article 226 of the Constitution of India should not be resorted to.

(F) Regarding the complaint dated 21st June 2014 sought to be converted into F.I.R. by the Petitioner, the deponent claims that procedure as laid down in the matter of **Lalita Kumari vs. State of U.P., reported in 2014 Criminal Law Journal, Page 470** has been followed. A.P.I. Kokane made entry of the said application and Police Head Constable R.N. Mulani conducted the preliminary inquiry. The Petitioner was called time and again to give statement but he did not. The Petitioner was issued letter /Samajpatra dated 1st July 2014 informing that regarding the incident dated 26th May 2014 and 27th May 2014 F.I.R. at Cr. No.43 of 2014 has been registered and that the crime is being investigated by CID. In the Samajpatra, the Petitioner has been informed that Home Minister has directed police not to interfere with the investigation and thus the incident is being investigated by CID and so the letter given by the Petitioner has been filed.

10. The Petitioner has filed affidavit in reply to the affidavit of the then Superintendent of Police denying the claims made by the then Superintendent of Police. It is claimed that the Petitioner and other 45 villagers have given statement to the Inspector General of Police, Nanded. The affidavit claims that in the peculiar facts and circumstances as mentioned, investigation through CBI is necessary. Petitioner

had claimed copies of report and statement given by villagers from Inspector General of Police but did not receive the same. Learned counsel for the Petitioner argued that by letter dated 2nd December 2014 Petitioner has been informed that the inquiry is going on and hence the copies cannot be supplied.

11. Learned counsel for the Petitioner relied on the case of **State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others, reported in 2010(3) S.C.C. 571** to argue that in similar situation the Hon'ble Supreme Court had found that the High Courts are authorized under Article 226 of the Constitution of India to issue directions for investigation by CBI.

. In the cited ruling, eleven persons had died and even after more than three months there was no serious attempt to get the victims

identified. It was noticed that the police administration was under the influence of ruling party which was trying to hide the incident to save its own image. As such it was held that the investigation could be handed over to CBI.

12. Learned counsel for the Petitioner then relied on the case of **State of Maharashtra vs. Farook Mohammad Kasim Mapkar and others, reported in 2010(8) S.C.C. Page 582**. This matter related to communal riots which took place after Babri Masjid demolition. The case related to incident dated 10th January 1993 at Mumbai. There was rioting and arson near Hari Masjid, Sewree, Mumbai and when the mob turned violent, police had resorted to firing and police recorded F.I.R. at Cr. No.17 of 1993 in which Respondent No.1 (as was before the Hon'ble Supreme Court) was named. The Respondent No.1 subsequently on 5th August 2006 filed complaint against Respondent No.2 and other police officers which was recorded as Toorant

Application. Respondent No.1 wanted the police to register F.I.R. and when this was not done he filed Criminal Writ Petition No.1437 of 2007 in which the impugned order directing CBI Inquiry was passed. When the matter came up before Hon'ble Supreme Court, inter-alia the Supreme Court observed as under:

"14.....Further, in the case on hand, the Respondent No.1 has asserted at many places which were supported by the Commissions report, more particularly, the information that the State Police did not examine the injured witnesses who were available at the spot and suffered a lot. In view of the demolition of Babri Masjid on 06.12.1992, and riots in various places all over India including Mumbai on 10.01.1993, specific assertion by the Respondent No.1 who is an affected person coupled with the findings of Srikrishna Commission accepted by the State, we are of the view that it is an extraordinary case, and we hold that the Respondent No.1 herein is fully justified in approaching the High Court seeking extraordinary jurisdiction for directions for entrusting the investigation to independent and special agency like CBI. Accordingly, we reject the said contention also."

13. Learned counsel for Petitioner then

relied on the case of **Rohtash Kumar vs. State of Haryana, reported in (2013) 14 Supreme Court Cases 290**, which related to matters where there is death in police encounter. In Para 13, the Hon'ble Supreme Court had observed that whenever complaint is made against police making out a case of culpable homicide, the F.I.R. must be registered. It was observed that Section 154 of the Code mandates that whenever complaint discloses cognizable offence, F.I.R. must be registered.

. Learned counsel for the Petitioner further relied on the case of **Sandeep Rammilan Shukla and others vs. State of Maharashtra and others, reported in 2008(2) Bom.C.R.(Cri.) Page 799**, where Full Bench of this Court, with reference to Section 154 of Cr.P.C. culled out the following principles as correct exposition of law:

"(a) The expression "shall" appearing in Section 154 of the Code of Criminal Procedure is mandatory. The section places an 'absolute

duty' on the part of the 'officer in charge of a Police Station' to record information and place substance thereof in the prescribed book, where the information supplied or brought to his notice shows commission of a cognizable offence.

(b) As the law does not specifically prohibit conducting of a limited preliminary inquiry, pre-registration of FIR in exceptional and rare cases by the officer in charge of a Police Station, he may penultimately thus enter upon a preliminary inquiry in relation to information supplied of commission of a cognizable offence but only and only upon making due entry in the Daily Diary/Station Diary/Roznamachar instantaneously with reasons as well as the need for adopting such a course of action. Such inquiry should be completed expeditiously and in any case not later than two days. Thereafter, the FIR should be recorded in the prescribed register and/or the officer should take any other recourse permissible to him strictly in accordance with the provisions of the Code of Criminal Procedure under which he is empowered to investigate. Such cases can be illustrated by giving an example i.e. when the information received in regard to commission of a cognizable offence would patently cause absurd results or report of happening of events, authenticity of which ex facie is extremely doubtful.

(c) The law inescapably requires the Police Officer to register the information (FIR) received by him in relation to commission of a cognizable offence. Under the Scheme of the Code, no choice is vested in the Police Officer between recording or not recording the information received. The concerned officer

would aptly take recourse to Clause (a) as a normal rule while could adopt the course of action as stated in Clause (b) above as an exceptional and rare case."

14. It has been vehemently argued by the learned counsel for the Petitioner that looking to the provisions as found in the Code of Criminal Procedure and the above case law, when the complainant sent complaint dated 21st June 2014, the Police Station had no other option but to register the same as F.I.R. As per Para 19 of the Petition, the complaint Exhibit E was sent to the Police Station as well as other authorities. As per the learned counsel, this Exhibit E should have been registered as F.I.R. and action should have been taken against the Deputy Superintendent of Police as well as then Superintendent of Police and other police officials.

15. Against this, Mr. Shirish Gupte, learned senior counsel pressing for allowing the Intervention Application, referred to the

affidavit filed by the then Superintendent of Police in the Writ Petition, submitted that he was relying on the grounds raised in the affidavit. Learned senior counsel referred to the following Rulings to submit that when there is available alternative efficacious remedy in Code of Criminal Procedure, Writ Petition to High Court could not be filed. The Rulings relied on, are as under:

- (I) **Sakiri Vasu vs. State of Uttar Pradesh, (2008) 2 S.C.C. 409,**
- (II) **Aleque Padamsee vs. Union of India, (2007) 6 S.C.C. 171,**
- (III) **Hari Singh vs. State of U.P., (2006) 5 S.C.C. 733,**
- (IV) **Minu Kumari vs. State of Bihar, (2006) 4 S.C.C. 359,**
- (V) **Gangadhar Janardhan Mhatre vs. State of Maharashtra, (2004) 7 S.C.C. 768,**
- (VI) **Panchabhai Potbhai Butani vs. State of Maharashtra, 2010(1) Mah. L.J. 421,**
- (VII) **Lalita Kumari vs. Government of Uttar Pradesh and others, (2014) 2 S.C.C. 1,**
- (VIII) **Smt Vijaya Vasant Nikam vs. The State of Maharashtra, 2012 All M.R.(Cri.) 3885.**

16. We have heard learned counsel for both sides and have gone through the material placed on record and the claims and counter claims made by

both sides. The Petition itself prompts that in the village concerned, there was unrest between the villagers. Para 5 of the Petition itself shows that Police Patil had informed the Police Station about villagers involved in illegal sale of liquor. It is mentioned that due to illegal sale of liquor, there was social imbalance and likelihood of breach of peace and harmony. Para 9 of the Petition with reference to the raid carried out, shows the ladies of the village going ahead to question the Police personnel and exchange of words between villagers and Police personnel. Para 10 of the Petition shows that even when A.P.I. went to the village, he allegedly "faced anger of villagers". For the acts of the raiding party, the record shows that departmental action has been initiated. The overall reading of the material available shows that during the course of the incident, on spot there were members of Mahila Bachat Gat on one side and (as the F.I.R. registered by Police shows) there were Sheshrao

Rathod and others who triggered incident by opposing the seizure of liquor. It appears that there was a law and order problem in which higher police officers had to intervene. The matter has been handed over to CID and the local police has been asked not to interfere.

17. The Judgment relied on in the matter of **State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others (cited supra)**, and Judgment in the matter of **State of Maharashtra vs. Farook Mohammad Kasim Mapkar and others**, (cited supra) relied on by the learned counsel for the Petitioner shows grave facts. The observations of the Hon'ble Supreme Court extracted in the matter of **State of Maharashtra vs. Farook Mohammad Kasim Mapkar and others**, (supra) show that it was extra-ordinary case and the Respondent No.1 therein was justified in seeking CBI Inquiry. In the present matter, looking to the above observations and having

considered the claims and counter claims, we do not find that there are any extra-ordinary facts. Against the complaint filed by Petitioner, the stand of the then Superintendent of Police relying on Section 129 read with 132 of Cr.P.C. also needs to be kept in view.

18. It is settled law that Section 154 of Cr.P.C. mandates that when a complaint discloses cognizable offence, the F.I.R. must be registered. The Judgment in the matter of **Sandeep Rammilan Shukla and others vs. State of Maharashtra and others (supra)** relied on by the learned counsel for the Petitioner, which has been referred above, will now have to be read keeping in view observations of the Hon'ble Supreme Court in the matter of **Lalita Kumari vs. Government of U.P. and others, reported in 2014 Cri. L.J. Page 470.** Dealing with Section 154 of Cr.P.C., the Hon'ble Supreme Court gave following directions:

"Conclusion/Directions:

111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases

preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

19. Learned counsel for the then Superintendent of Police has submitted that the

police station concerned has taken necessary steps keeping in view the guidelines. We have also observed in Para 7 (supra) while dealing with the affidavit of Deputy Secretary, Home, that the inquiry of CID is expected to look into the complaint dated 21st June 2014 asserted by the Petitioner.

20. In the present matter, looking to the rival claims of facts as well as law, it would be appropriate to reproduce observations of the Hon'ble Supreme Court in the matter of **Sakiri Vasu vs. State of Uttar Pradesh** (supra). It was observed in Para 24 to 28 as under:

"24. In view of the above mentioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. "Even though these powers

have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 Petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper

investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

21. We do not find that in the present matter there are any extra ordinary circumstances which require handing over the matter to CBI. When information relating to the commission of a cognizable offence is given to Officer in charge of Police Station, he is duty bound to register offence. If he fails Cr.P.C. provides remedies. There are enough provisions available to the

Petitioner as can be seen from the above observations of the Hon'ble Supreme Court to resort to if he has any grievances. When the matter is handed over to CID and if the Petitioner does not trust the Police, there is no reason why he cannot file a private complaint under Chapter XV of the Cr.P.C. which has an elaborate procedure for examining on oath not merely the complainant but also witnesses and the substance of which examination is required to be reduced in writing and also signed by the complainant as well as the witnesses. If the complainant has the witnesses, he can very well resort to Chapter XV of Cr.P.C. to bring on record whatever material he wants and on needful being done, process would be issued if there are sufficient grounds for proceeding further.

. Our observations in this Judgment on the two rival versions are based on prima facie examination of the material and shall not

influence the investigation by CID or Courts below, in case Petitioner resorts to other remedies under provisions of Cr.P.C.

22. For reasons mentioned above, we decline to invoke powers under Article 226 of the Constitution of India and decline to give directions to CBI. The Petitioner has ample remedies available under the Code of Criminal Procedure as discussed in foregoing paragraphs and thus relief sought vide Prayer Clause (C) of the Petition is also declined. The Writ Petition stands rejected.

23. As the Writ Petition is disposed of, the Criminal Application No.4891 of 2014 would not survive and the same is disposed of, accordingly.

[A.I.S. CHEEMA, J.]

[S.S. SHINDE, J.]