* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **CM No. 6173/2015 in WRIT PETITION (CIVIL) No. 5026/2010**

Reserved on: 23rd September, 2016

% **Date of Decision:** 17th November, 2016

CHETAN SHARMA ....Petitioner

Through Mr. Anil K. Aggarwal, Md. Imteyaj & Ms. Neha Malik, Advocates.

Versus

STATE & ANOTHER ....Respondents

Through Mr. R.S. Kundu, ASC & Mr. Ankit Kumar Gulai, Advocate for the State.

Ms. Sonia Mathur, Standing Counsel for CBI, Mr. Sushil Kumar Dubey & Mr. Abhishek, Advocates alongwith Investigating Officer Sanjay Upadhaya, CBI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

This order would dispose of the aforestated application filed by Chetan Sharma @ Chetan Prakash in this writ petition, which was disposed of on 28th July, 2010 by the following order:-

> " By this writ petition, the petitioner has prayed for the following reliefs-
>
> "a. Take up the matter as a public interest litigation and see that it reaches its logical conclusion under the cognizance of the Hon'ble High Court.

b. Direct investigation into the facts as depicted by the videotapes by CBI or a Magisterial inquiry under the control of the Hon'ble Delhi High Court.

c. Direct investigation into the real people who are behind this racket.

d. Direct the vigilance branch of the Delhi Police to answer as to how all this never came to their notice despite the earlier videotapes of the petition.

e. Keep the matter pending in the Hon'ble High Court till the state/CBI files a chargesheet and reports so in the Hon'ble High Court during which period regular progress reports be given to the Hon'ble High Court.

f. pass any other order as deemed fit."

In course of hearing, learned counsel for the petitioner Mr. Manish Kumar Khanna and Mr. N. Waziri, learned standing counsel for the State fairly state that they have no objection if the order passed on 9th January, 2008 in Writ Petition (Criminal) No. 29/2008 is passed.

In view of the aforesaid, we only state that the order passed on 9th January, 2008 in Writ Petition (Criminal) No. 29/2008 shall apply on all fours to the case at hand.

The writ petition is accordingly disposed of."

2. This order refers to an earlier order dated 9th January, 2008 passed in Writ Petition (Criminal) No. 29/2008 titled Chetan Sharma v. State & Anr. We would also like to reproduce this order for the sake of clarity:-

> " We have heard the learned counsel appearing for the petitioner as also the learned counsel appearing for the respondent No. 2. There are certain allegations made in the petition with regard to police officers taking illegal bribes from blue line bus operators operating in Delhi. Six cassettes have been made available to us which allegedly contain such instances of near about 89 police

officers taking illegal bribes from Constable to SI in hierarchy. It is not possible for the High Court to monitor the day-to-day activities of the various governmental organisations including cases of their misconduct including activities and allegation of bribery against police officers. The same is a matter to be dealt with and investigated upon and enquired into by the appropriate authorities, namely, the Police Commissioner and his subordinate officers and also by the Central Vigilance Commission (CVC). Ministry of Home Affairs also has a responsibility in that regard.

Therefore, we direct the petitioner to hand over a copy of all those video tapes to the Police Commissioner, to the Chief Vigilance Commissioner and also to the Secretary, Ministry of Home Affairs, who will look into the video tapes prepared by the petitioner and thereafter get the matter enquired into and if found fit and proper and any misconduct established, necessary action should be taken.

Counsel appearing for the petitioner states that he will deposit the original six video tapes in this Court also. Let the same be kept by the Court in a sealed cover and in safe custody. As and when the said original video tapes are required by the competent authority for the purpose of investigation, the same could be obtained from the Registrar General of this Court by filing an appropriate application before him.

W.P. (CRL) 29/2008 and Crl. M.A. No. 180/2008 stand disposed of in the aforesaid terms."

3. As is apparent, Chetan Sharma is the writ petitioner, who had conducted sting operations and had statedly captured audio-video recordings of police officers and officers of the MCD taking bribes from public. The petitioner, as a public spirited person, wanted action be taken in terms of the prayer clauses quoted in the order dated 28th July, 2010.

4. On or about 23rd December, 2011, the petitioner filed CM Nos. 72/2012 and 74/2012. By the latter CM, the petitioner wanted the Central

Vigilance Commission and the Secretary, Ministry of Home Affairs to be impleaded as parties. In CM No. 72/2012, the petitioner raised his protest and had complained of inaction, and discerning and perspicuous failure of the Delhi Police to act as per law, and order dated 28th July, 2010. The petitioner had claimed that ACP Dharamveer had exulted that FIR would not be recorded in this case, though an FIR had been registered pursuant to the directions issued in Writ Petition (Criminal) No. 29/2008. The petitioner had written letters to the Commissioner of Police as well as the Central Vigilance Commission (CVC), moved RTI applications and sent letters to the Secretary (Vigilance) and the Municipal Corporation of Delhi. The petitioner projected and had alleged that pressure was being put on witnesses, namely, Suresh Singh and Suman, who signed blank papers and two other witnesses, namely, Rukma and Prabha had been forced to give false statements, which were written by their neighbour Yogesh Kumar. It was professed that this was being done at the behest of ACP Dharamveer. In the aforesaid circumstances, the petitioner avers that he was compelled to move the aforesaid applications.

5. A Division Bench of this Court, comprising the then Acting Chief Justice A.K. Sikri (as his Lordship then was) and Endlaw, J. took serious note of the aforesaid assertions and had passed two orders dated 4th January, 2012 and 1st February, 2012. These orders, for the sake of clarity, are reproduced below:-

" **04.01.2012**

<u>CM 72/2012</u>

The writ petition was disposed of vide orders dated 28th July, 2010 observing that orders passed on 9th January, 2008 in WP(Crl.) 29/2008 shall apply on all fours in this writ petition as well. As per orders dated 9th January, 2008, the petitioner was allowed to handover copies of certain video cassettes to the Police Commissioner, Chief Vigilance Officer as well as Secretary, Ministry of Home Affairs and direction was given to the aforesaid authorities to look into the video cassettes prepared by the petitioner and thereafter get the matter inquired into and if found fit and proper and any misconduct established, necessary action was also directed to be taken. The petitioner had handed over those video cassettes and certain memory cards. Original video cassettes and eight memory cards were deposited in this Court as well which are lying in sealed cover. In this application, it is submitted that Police Commissioner or Chief Vigilance Commissioner or Secretary, Ministry of Home Affairs have not been carrying out investigation with promptitude and are delaying the matter and it is not known as to what is the progress made in the investigation and whether any action is taken as predicated by this Court, or not. Therefore, prayer is made that the Chief Vigilance Commissioner, Police Commissioner and Secretary, Ministry of Home Affairs be directed to file the status report in respect of the investigation made by them. This is a reasonable and legitimate prayer made by the petitioner.

We issue notice to the aforesaid respondents with directions to file the status report on the next date of hearing.

List again on 1st February, 2012.

x x x x x

“**01.02.2012**

Status reports have been filed by the CVC and Delhi Police. CVC has in its status report simply expressed its helplessness in going ahead with the matter on the ground that it is not receiving any cooperation. As far as status report of Delhi Police is concerned, it again depicts a dismal state of affairs inasmuch as hardly any progress is disclosed to have been made in the investigation. The Petitioner herein had given certain DVDs of sting operation and as per these DVDs, 54 persons were recorded as taking bribe. By the order dated 28.7.2010, the Petitioner was directed to deposit the DVDs in the High Court and copies of the DVDs were handed over to the police authorities to carry out their investigation. Almost one and half years have passed but there is no progress in the investigation. As per the status report filed by the Delhi Police, the matter is still under examination. How a case of this nature could have consumed almost one and half years and still enquiry not completed may be anybody's guess. We further find from the status report that there is an attempt to persecute the Petitioner and some of the witnesses. Lest this Court gets impression that all this is done by the investigating team to shield their own officers, the investigating officer should show more diligence and make serious and earnest efforts in completing the enquiry. The status report also reveals that 33 persons out of 54 aforesaid are identified as police officers and in respect of 23 it is also established from the video recording that they were taking bribe. Still till date, no action is initiated against them either departmentally or criminal action.

Seven officers from MCD and some officers from the SDM office are also identified in these DVDs. The enquiry vis-à-vis these persons is also yet to be completed. We are, thus, left with no option but to monitor the progress of investigation. The investigating officer shall appear on the next date along with complete records.

List again on 15th February, 2012 in the category of 'directions'.

The status report stating further progress in the investigation shall be filed on the next date of hearing.

CM No. 72/2012

Since status reports have already been filed, no further orders are required to be passed in this application. CM stands disposed of.

CM No.1408/2012

> Amended memo of parties is taken on record and order dated 4.1.2012 is modified to that extent. CM stands disposed of.
>
> **<u>CM No.1409/2012</u>**
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> Exemption allowed subject to just exceptions. CM stands disposed of."

6. The next order dated 15th February, 2012 recorded that the status report had been filed by the Delhi Police indicating the steps taken by them after passing of the order dated 1st February, 2012. Departmental proceedings against 28 police officials had been approved by the Commissioner of Police and summaries of allegations/charge sheets were being prepared by the ACP/EO/Vigilance. Further, FIR No. 33/2012 had been registered under Sections 7 and 13 of the Prevention of Corruption Act, 1988 and the matter was pending investigation. The Court adversely commented upon the stand of the Delhi Police that the petitioner was not providing the original records and data sources of the sting operations to the Investigating Officer. The Court observed that the original media (DVDs) had been filed in the court and the investigating officer could move an application for obtaining the same. Counsel for the CVC had adversely commented on the conduct of the Delhi Police as in spite of request letters, they had not received the requisite information. The Court had directed that CVC should be furnished material and details, if it had not already been done. We shall refer to the question of original media subsequently.

7. On or about 15th April, 2013, the petitioner filed CM No. 4719/2013 praying and seeking transfer of the investigation to the Central Bureau of Investigation ("CBI" for short). Notice on this application was issued vide

the order dated 17th April, 2013. Notice was issued to the CBI after they were impleaded as a party on 22nd May, 2013.

8. By the order dated 16th September, 2013, another Division Bench of this Court disposed of CM No. 4719/2013 after recording that vide the order dated 24th July, 2013 in Writ Petition (Criminal) No. 971/2013, the CBI was to conduct investigation of the petitioner's grievances and complaints against the Delhi Police Officers in the said case. The CBI had already started their investigation and had partly recorded Chetan Sharma's statement. In response to the Court's question as to why Chetan Sharma could not make a statement to the CBI regarding the sting operations which were the subject matter of Writ Petition (Criminal) No. 29/2008 and the present writ petition, the petitioner had expressed apprehension that unless there was a Court direction, the Investigating Officer would not record the petitioner's statement. This was contradicted by the counsel appearing for the CBI stating that the petitioner's apprehension was totally misconceived for no investigating officer could stop any complainant from making a particular statement and/or record a statement only to a particular effect or extent. The operative portion of the said order disposing of CM No. 4719/2013 dated 16th September, 2013, lest there be any confusion, is as under:-

> "......Responding to the said apprehension expressed by the learned counsel for the petitioner Mr. P.K. Sharma, learned counsel for the CBI submitted that the petitioner's apprehension is totally misconceived inasmuch as no investigating officer can stop any complainant from making any particular statement and it can also be not said by the investigating officer that he would confine recording of the statement of a complainant to a particular extent. It is further submitted that even though Delhi Police is already

looking into the complaints which were the subject matter of the above referred two writ petitions but still if during the recording of further statement of the petitioner-complainant whatever he would state shall be recorded by the investigating officer as he is duty bound to do that. However, it is also stated that, whether or not any case is found to be made out against any of the police officials, it would be totally the prerogative of the investigating officer to arrive at any conclusion.

Learned counsel for the petitioner now submits that in view of the aforesaid submissions having been made on behalf of the CBI he would be making his further statement before the investigating officer concerned and thereafter in case petitioner still feels the requirement of passing of a formal order for transfer of investigation in the present matter also he would take fresh appropriate steps and liberty may be reserved to him to approach this Court again by filing a fresh application for the same relief which was claimed in the present application.

In view of the aforesaid, this application stands disposed of with the observation that in case after petitioner's statement is recorded by the investigating officer from CBI already seized of the matter and the petitioner still feels dissatisfied that his purpose of bringing the guilty police officials to book will not be achieved simply by recording of his statement by CBI officials he would be at liberty to approach the Court again in the present matter itself as he had approached earlier."

9. The aforesaid portion would indicate that the Division Bench was conscious and aware that the Delhi Police was already looking into the petitioner's complaints, subject matter of the present application. The petitioner was to make a further statement before the investigating officer of the CBI. The court observed that the Investigating Officer of the CBI, after recording the petitioner's statement would act as per law and arrive at his own conclusion as to whether or not any offence was made out. The application was disposed of recording and giving liberty to the petitioner to

file a fresh application to have the investigation transferred to the CBI. The petitioner thereafter appeared before the Investigating Officer of the CBI in RC No. 19(A)/2013 (which is a different case) on 19th November, 2013 and gave a signed letter and unsigned statement stating that this was in compliance of the order dated 16th September, 2013. Copies of orders passed in several writ petitions as well as a copy of FIR No. 114/2008 registered pursuant to the order dated 9th January, 2008 in Writ Petition (Criminal) No. 29/2008 and FIR No. 33/2012 registered pursuant to the order dated 28th July, 2010 in Writ Petition (C) No. 5026/2010 which, it was averred, were under investigation by the Crime Branch of the Delhi Police, were submitted.

10. After nearly about eighteen months, on or about 17th March, 2015, the petitioner moved CM No. 6173/2015 seeking compliance of the order dated 16th September, 2013. Directions were sought to be issued to the CBI and the Delhi Police to investigate and file charge sheets, etc. and directions were sought to enable the Central Vigilance Commission to monitor and supervise the investigation. Notice on this application was issued vide the order dated 10th April, 2015 with a direction to the CBI and the Delhi Police to file status reports. Several status reports have thereafter been filed by the Delhi Police and also by the CBI. The CBI has enclosed copy of several statements of the petitioner dated 4th November, 2013, 7 th November, 2013, 9th November, 2013 and 8 th November, 2014. The CBI also enclosed a copy of the order dated 1st July, 2015 passed in Writ Petition (Criminial) No. 29/2008 and CRL.M.A. No. 6435/2015. The order records that Mr. Anil Kumar Aggarwal, Advocate appearing for Chetan Sharma had sought permission to withdraw the petition. Permission was granted and the

petition was dismissed as withdrawn. Therefore, in the present matter, we are only concerned with Writ Petition (Civil) No. 5026/2010 and the resultant FIR No. 33/2012 registered by the Crime Branch, Delhi Police. Pertinently, FIR No. 114/2008 was registered at Police Station-Janak Puri, New Delhi and thereafter was transferred to Crime Branch, Delhi Police. The CBI has averred that on the basis of other/ different video recordings, FIR Nos. RC 48(A)/2004, RC 8(A)/2014, RC 7(A)/2014, and RC 19(A)/2013 have been registered. Further, charge sheets have already been filed in FIR No. 303/2007, Police Station-Dabri and FIR No. 702/2007, Police Station-Nangloi. These two cases are pending trial before the District/Sessions court at Rohini and Dwarka District Courts, respectively.

11. In the light of the aforesaid discussion we are concerned with, and our order is confined to the "investigation" in FIR No. 33/2012 registered by the Crime Branch, Delhi Police arising out of the present writ petition, i.e., Writ Petition (Civil) No. 5026/2010.

12. In order to decide the various issues and contentions before us, we shall like to discuss the contentions raised under sub-headings, for clarity and better understanding, even when there is the possibility of some overlapping.

(A) <u>Whether CBI has sole and exclusive jurisdiction to register and conduct investigation in cases under the Prevention of Corruption Act, 1988 to the exclusion of the Delhi Police</u>

13. This contention was raised during the course of hearing on 26th July, 2016 and 6th September, 2016, when it was asserted by Mr. Anil Kumar Aggarwal, Advocate that all cases under the Prevention of Corruption Act,

1988 have to be investigated exclusively by the CBI, and not by the Delhi Police. Reliance was placed on Sections 2(1), 2(2), 3 and 6A of the Delhi Special Police Establishment Act, 1946 read with Section 8(1) of the Central Vigilance Commission Act, 2003 and Section 17 of the Prevention of Corruption Act, 1988. It was submitted that Delhi being a Union Territory, the CBI in terms of the said Sections, is the sole investigating agency which is mandated by law to conduct investigation in cases under the Prevention of Corruption Act and the Delhi Police lacks the power and authority to carry out any such investigation. Written submissions have been filed by the petitioner in support of his contention. The respondents-Delhi Police and the CBI have contested the said submission. They have submitted that both the CBI and the Delhi Police have concurrent authority and power to conduct investigation under the Prevention of Corruption Act, 1988.

14. We need not enter into extensive debate with reference to the provisions of the Delhi Special Police Establishment Act, 1946 and whether it confers sole and exclusive jurisdiction to the CBI to conduct an investigation in cases relating to the Prevention of Corruption Act, for the issue was settled by the Supreme Court in ***AC Sharma versus Delhi Administration***, (1973) 1 SCC 726, wherein it was observed as under:-

> "**13.** Turning to the DSPE Act, it extends to the whole of India. For the constitution and powers of the establishment, we have to turn to Section 2 of this Act which reads:
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> > "2. *Constitution and powers of Special Police Establishment.*—(1) Notwithstanding anything in the Police Act, 1861, the Central Government may constitute a Special Police Force to be called the Delhi Special Police

> Establishment for the investigation in any Union territory of offences notified under Section 3.
>
> (2) Subject to any orders which the Central Government may make in this behalf, members of the said Police Establishment shall have throughout any Union territory in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which Police Officers of that Union territory have in connection with the investigation of offences committed therein.
>
> (3) Any member of the said Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union territory any of the powers of the officer-in-charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station."

Section 3 which empowers the Central Government to specify the offences to be investigated by the DSPE. has already been set out. The notification dated November *6,* 1956, referred to earlier specifies numerous offences under various enactments including a large number of ordinary offences under IPC clauses (*a*) to (*j*) of this notification take within their fold offences under a number of statutes specified therein. Clause (*k*) extends the sweep of this notification by including in its scope attempts, abatements and conspiracies in relation to or in connection with offences mentioned in clauses (*a*) to (*h*) and also any other offence committed in the course of those transactions arising out of the same facts. It may also be stated that after 1956 in a number of further notifications the list of the offences specified under Section 3 has increased manifold. We consider it unnecessary to refer to them in detail. According to Section 4 the superintendence of DSPE vests in the Central Government and Section 5 empowers the Central Government to extend to any area in a State not being a Union Territory the powers and jurisdiction of members of this establishment for the investigation of any offences or classes of offences specified under Section 3. Subject to the orders of the Central Government the members of such Establishment exercising such extended powers and jurisdiction are to be deemed to be members of the Police force of that area for the purpose of powers, functions, privileges and liabilities. But the power and jurisdiction of a member of DSPE in such State is to be exercised only with the consent of the Government of the State concerned. The scheme of this Act does not either expressly or by necessary implication divest the regular police authorities of their jurisdiction, powers and competence to investigate into offences under any other competent law. As a general rule, it would require clear and express language to effectively exclude as a matter of law the power of investigation of all the offences mentioned in this notification from the jurisdiction and competence of the regular police authorities conferred on them by CrPC and other laws and to vest this power exclusively in the DSPE. The DSPE Act seems to be only permissive or empowering, intended merely to enable the DSPE also to investigate into the offences specified as contemplated by Section 3 without imparting any other law empowering the regular police authorities to investigate offences."

15. The said judgment also dealt with the effect of enactment of the Prevention of Corruption Act, 1947 and deletion of offences relating to corruption under the Indian Penal Code and the effect of Section 5A of the Delhi Special Police Establishment Act and holds as under:-

"**14.** Turning now to the Prevention of Corruption Act (2 of 1947), we find that this Act was enacted in March 1947, several months after the enactment of the DSPE Act for the more effective prevention of bribery and corruption. By virtue of Section 3 of the Act an offence under Section 165-A IPC was made a cognizable offence for the purposes of CrPC notwithstanding anything to the contrary contained in that Code. Section 4 provides for presumptions in certain cases. Section 5 defines criminal misconduct and also provides for punishment for such offences. It further provides for punishment for habitual commission of offences under Sections 162, 163 and 165 IPC and also renders punishable attempts to commit some offences. Section 5 is expressly stated to operate in addition to and not in derogation of other laws. Section 5-A which is of importance may here be set out:

> "5-A. *Investigation into cases under this Act.*—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1896, no police officer below the rank—
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> (*a*) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
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> (*b*) in the Presidency Towns of Calcutta and Madras, of an Assistant Commissioner of Police;
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> (*c*) in the Presidency Town of Bombay, of a Superintendent of Police; and
>
> (*d*) elsewhere, of a Deputy Superintendent of Police,

shall investigate any offence punishable under Section 161, Section 165, or Section 165-A of the Indian Penal Code or under Section 5 of this Act without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant;

Provided further that an offence referred to in clause (*e*) of sub-section (1) of Section 5, shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

(2) If, from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under sub-section (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may

inspect any bankers' books insofar as they relate to the accounts of the person suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this sub-section:

Provided that no power under this sub-section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this sub-section, the expressions 'Bank' and 'bankers' books' shall have the meanings assigned to them in the Bankers' Book Evidence Act, 1891."

Sub-section (1) of this section, while regulating the competence of the officers both of DSPE. and of the regular police force to investigate offences to the extent considered necessary, over-rides the provisions of CrPC. It expressly prohibits police officers, including those of the DSPE, below certain ranks, from investigating into offences, under Sections 161, 165 and 165-A IPC and under Section 5 of Prevention of Corruption Act, without orders of Magistrates specified therein and from effecting arrests for those offences without a warrant. The plain meaning of this sub-section appears to be that Inspectors of Police of DSPE. in all places, Assistant Commissioners of Police in the Presidency Towns of Calcutta and Madras, Superintendents of Police in the Presidency town of Bombay, and Deputy Superintendents of Police in all places, other than Presidency Towns of Calcutta, Madras and Bombay, are authorised to investigate into the offences mentioned therein. The word "elsewhere" in clause (b) [*sic.* (d)] does not indicate, as was contended by Mr Anthony, that a Deputy Superintendent of Police is debarred from investigating offences mentioned in this clause even when so ordered by a Magistrate of the First Class in the areas in which DSP is also empowered to function. The word "elsewhere" in clause (*d*) appears to us to refer only to the three Presidency Towns mentioned in clauses (*b*) and (*c*). This sub-section, therefore, does not confer sole power on DSPE to investigate into the offences mentioned therein to the complete exclusion of the regular police force. It is merely concerned with the object of making provision for safeguarding against arbitrary use of power of investigation by officers below certain ranks, so that public servants concerned are saved from frivolous harassment at the hands of disgruntled persons. In this connection it is also noteworthy that apart from the restriction contained in Section 5-A(1) the applicability of the provisions of CrPC to the proceedings in relation to the aforesaid offences is, subject to certain modifications contained in Section 7-A, expressly recognised. The schemes of the two enactments, namely, DSPE Act, 1946 and the Prevention of Corruption Act, 1947, suggest that they are intended to serve as supplementary provisions of law designed to function harmoniously in aid of each other and of the existing regular police investigating agency for effectively achieving the object of successful investigation into the serious offences mentioned in Section 5-A without unreasonably exposing the public servant concerned to frivolous and vexatious proceedings. Mr Nariman also drew our attention to DO No. 21/8/63-GD dated October 5, 1963, addressed by the Central Bureau of Investigation, Ministry of Home Affairs, Government of India to the Inspector General of Police inviting their attention to the Government of India Resolution No. 4/31/61-T, dated April 1, 1963, establishing the Central Bureau of Investigation consisting of six Divisions to assist the State Police Forces. The authority of Central Bureau is stated therein to have been derived from the DSPE Act. In this letter para 6, reads:

> "6. In this connection it may also be mentioned that, on account of inadequacy of staff, it is not possible for the SPE Division to take up every one of the cases which might fall under the categories mentioned in the Annexure to the Government of India Resolution and which might be considered suitable for investigation by the SPE Division. A certain discretion has, therefore, to be exercised in taking up cases for investigation. In some instances it may not be possible for it to take up even those cases which are committed by Central Government servants i.e. petty cases of theft, misappropriation, cheating. Such cases could be

> dealt with easily and more expeditiously by the local police which has concurrent jurisdiction over these cases also."

> In para 7, it is stated that for successful investigation of cases it is most essential that a quick decision is taken about the Agency which has to investigate them: One of the Agencies mentioned therein is SPE Division of the CBI. In Para-8, it is stated that in respect of cases involving Public Servants or Public Concerns there is an administrative arrangement and understanding between the S.P.E. and the State Police about the manner in which they are to be dealt with so as to avoid difficulties and delays. This para then refers to the existing procedure and practice which, it is suggested, should continue to be valid in future. No doubt, this letter contains only administrative instructions but it clearly shows the construction placed during all these years by the administrative officers concerned with administering this law on the provisions of the SPE Act and the Prevention of Corruption Act. If the view stated in this letter is not clearly against the language and scheme of these Acts then it is entitled to due consideration and has some persuasive value. The contention raised by Mr Anthony that Delhi not being a State but only a Union Territory, the directions contained in DO No. 21/8/63-GD, are inapplicable and that in Delhi it is only the DSPE which has exclusive authority to investigate into the offences mentioned in Section 5-A is not easy to accept. Reference to the State Police Force in that DO in our view includes the police force of the Union Territory of Delhi."

The aforesaid quotations are expository for the Supreme Court in categorical and affirmative terms has held that the Delhi Special Police Establishment Act does not expressly or by necessary implication take away the authority and power of the regular police authorities to investigate into offences. Such stipulation would require express words and stipulation. The Delhi Special Police Establishment Act, 1947 is only permissive and empowering. In other words, the law confers concurrent powers to the regular police authority to investigate such offences. By the expression concurrent power, we do not mean that both the authorities should investigate either together or independently, but is with reference to their "concurrent jurisdiction" and not "mutually exclusive jurisdiction".

16. Faced with the aforesaid situation, learned counsel for the petitioner had submitted that the aforesaid ratio would not be good law in view of the enactment of the Central Vigilance Commission Act, 2003. Our attention was drawn to Section 8 of the said Act, which defines the functions and powers of the said Commission. For the sake of convenience, we would reproduce the said Section in entirety:-

> "FUNCTIONS AND POWERS OF THE CENTRAL VIGILANCE COMMISSION
>
> 8. (1) The functions and powers of the Commission shall be to—
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> (a) exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;
>
> (b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946:
>
> Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

(d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 and an offence with which a public servant specified in subsection (2) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or the public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;

(g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;

(2) The persons referred to in clause (d) of sub-section (1) are as follows:—

(a) members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1)."

17. It is difficult to accept the said contention for we find that clauses (c)and (d) of sub-section (1) of Section 8 do not make specific reference to the Delhi Special Police Establishment Act. Clauses (f), (g) and (h) to Section 8(1), also, make no such reference. Similarly, sub-section 8(2) also does not refer to the Delhi Special Police Establishment. Clause (d) to Section 8(1) states that, the CVC has the power to cause any inquiry or investigation against offences mentioned in sub-section (2).

18. If the argument of the petitioner is to be accepted, then the Central Vigilance Commission Act, 2003 would curtail the power of the CBI or the regular police authorities from conducting an investigation under the

Prevention of Corruption Act, 1988 except in cases where the CVC would exercise supervisory authority to perform the functions stipulated under Section 8. The Central Vigilance Commission Act, 2003 is an independent Act and we do not think the said Act on its own has the effect of curtailing, restricting or annulling the power and authority of the regular police authorities. This is not the legislative mandate when Section 8 is read naturally and/or contextually. We also do not find any such stipulation in the Prevention of Corruption Act, 1988 though our attention was drawn to Section 17 of the said Act, which reads as under:-

> "**17. Persons authorised to investigate**
>
> Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank,- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police; (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police; (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant: Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant: Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

The aforesaid Section stipulates that no police officer below the ranks specified in clauses (a), (b) and (c) could conduct an investigation into offences punishable under the Prevention of Corruption Act, 1988 without an order of a Metropolitan Magistrate or Magistrate First Class or make an arrest without a warrant. In other words, officers of the rank of Inspector in the Delhi Special Police Establishment, Assistant Commissioner of Police in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and other metropolitan cities notified under Section 8(1) of the Code of Criminal Procedure, 1973, and elsewhere, Deputy Superintendents of Police or police officers of equivalent rank, can conduct investigations into offences under the Prevention of Corruption Act without an order of the Metropolitan Magistrate or Magistrate First Class. Section 17 does not confer sole power to the CBI to investigate into offences mentioned therein to the exclusion of the regular police force. The mandate of the section is different. The contention is therefore rejected.

(B) <u>Should the CBI be directed to investigate FIR No. 33/2012 already being investigated by the Crime Branch, Delhi Police.</u>

19. We have expressly referred to the order sheets and observations made by the Court in different orders. The Delhi Police, as directed, submitted their status report regarding the investigation into FIR No. 33/2012 by the Crime Branch, Delhi Police under sealed cover. Several facets and aspects stated by the status report make us both sceptical and disillusioned, if not frustrated and exasperated. Certainly there was, at the first instance, considerable delay in registration of the FIR. This was in spite of the order dated 28th July, 2010, which had directed registration of the FIR. This

delayed the investigation by about two years. Reason for this dereliction provokes adverse inference, especially when the mandate of the order dated 28th July, 2010 was clear and an FIR was registered pursuant to an identical order in W.P. (Cri.) No. 29/2008. The orders dated 4th January, 2012 and 1st February, 2012 reproduced in paragraph 5 (supra) are expressive and compelling.

20. The petitioner has drawn our attention to two orders passed by the Principal Bench of the Central Administrative Tribunal. In the order dated 24th January, 2011, the original application filed by eleven applicants was dismissed rejecting the contention that the video CDs had been tampered with or tailored. In another OA No. 4097/2011 decided on 3rd December, 2012, a different view was taken with regard to the authenticity and the evidentiary value of the electronic evidence, CDs, etc. We would not like to comment on the said orders for this is not the subject matter before us. These are issues, which the Delhi Police would have to deal with and take action, as may be mandated and required by law. The adverse order in the case of three police men cannot be the subject matter of the writ petition or the applications and we do not express any view or comment. The question of electronic evidence has been dealt with separately below.

21. In the status report filed before us, it is pointed out that on examining the four DVDs the matter was referred to the Vigilance Branch for inquiry on 25th October, 2010. The vigilance inquiry concluded that a prima facie case was made out under the Prevention of Corruption Act against 21 police personnel. It is also stated that separate cases; FIR No. 26/2010 has been registered under the provisions of Sections 3 and 13 of the Prevention of

Corruption Act, 1988 against the staff of SDM, Najafgarh and FIR No. 13/2010 has been registered against MCD staff. During the course of the investigation, the petitioner had submitted the memory cards and the recording device used to record the sting operations, were sent to FSL, Rohini on 28th March, 2012 and the report dated 5th June, 2013 had been obtained. We are not quoting the status reports in entirety, to avoid prolixity, but would like to reproduce the version of the police, regarding several public witnesses. The relevant portion reads:-

Sr. No.	Name & Address	Status of statement	Status	Identified or not	Remarks
2.	Smt. Rukma Devi w/o Prabhu r/o A-109, Sarai Pipal Thala, New Delhi	Not given	Not traceable	No	Complainant prepared the video recording of 22 police person taking money from her during November 2008 to January 2009 at her house. She was called seven times through notice by Vigilance Branch, she said that she had not given any affidavit. Notice u/s 160 Cr.P.C. issued on 22.11.2013 by ACP/ARC to join the investigation on 30.11.2013 –Notice served but she did not join investigation. Notice u/s 160 Cr.P.C. issued on 06.09.2013 by ACP/ARC to join the investigation on 11.09.2013 but she did not join the investigation.
3.	Sh. Prabhu s/o Mangal r/o Jhuggi No. 109, Sarai	Not given	Not traceable	no	Chetan prepared the video recording of 22 police personnel taking money from him during

	Peepal Thala, Adarsh Nagar, Delhi				November 2008 to January 2009 at his house. Notice u/s 160 Cr.P.C. issued on 06.09.2013 by ACP/ARC to join the investigation on 11.09.2012. Notice u/s 160 Cr.P.C. issued on 09.05.2016 to join the investigation on 14.05.2016. Again Notice u/s 160 Cr.P.C. issued on 24.05.2016 to join the investigation on 30.05.2016 but she did not join the investigation.
4.	Smt. Suman Sansi w/o Surender Singh r/o H.No. A-1, Block01, Lion Enclave, Vikas Nagar, Uttam Nagar, New Delhi	She denied to give statement and refused her statement filed with the writ petition in High Court.	Not Traceable (called 09 times but denied to give statement)	no	Chetan prepared the video recording of police personnel taking money from her during September 2008 to January 2009 at her house. She was called nine times through notices by Vigilance Branch, but only one time joined the enquiry and she denied with her statement and said that she had not given any affidavit. --Notice u/s 160 Cr.P.C. issued on 06.09.2013 by ACP/ARC , to join investigation for 29.11.2013. Notice u/s 160 Cr.P.C. issued on 06.09.2013 by ACP/ARC to join the investigation on 11.09.2013 but she did not join the investigation.
5.	Surender Singh s/o Kanchan Singh r/o H.	Not given	Presently not traceable (previousl	no	Notice u/s 160 Cr.PC. issued on 09.05.2016 to join the investigation on 14.05.2016 but notice

	No. A-1, Block-1, Lion Enclave, Vikas Nagar, Uttam Nagar, New Delhi		y called 09 times but denied to give his statement)		could not be served as Surender Singh had sold his house one and half years back and went to somewhere & presently not traceable. On 16.05.2016 a notice u/s 160/91 Cr.P.C. issued to complainant Chetan Sharma to provide the latest address of Surender Singh but he had not provided it.
6.	Gladwin Dass s/o Arthur Dass r/o A-352, Madhu Vihar, Uttam Nagar, New Delhi	Not given	Not traceable	no	Chetan prepared the video recording of police personnel namely HC Veerpal, PS Ambedkar Nagar taking money from Gladwin at his house on 11 December 2008. He was called one time through notice by Vigilance branch but his address not traceable. Notice u/s 160 Cr.P.C. issued on 06.09.2013 by ACP/ARC to join hte investigation on 11.09.2013. Notice u/s 160 Cr.P.C. issued on 09.05.2016 to join the investigation on 14.05.2016 but could not be served. On 16.05.2016 a notice u/s 160/91 Cr.P/C. issued to complainant Chetan Sharma to provide the latest addres of Dashrath on 19.05.2016 but he has not provided it.
7.	Paramjeet Singh @ Sonu s/o Sh. Sukhwinder	Not given	Traceable (but not joining the investigati	no	He accompanied the complainant Chetan to preapre the video recording of police

	Singh r/o F-50, Peepal Wala road, Mohan Garden, Uttam Nagar, New Delhi		on)		personnel taking money on 06.01.2008 at bus route No. 982 at traffic point. Note- He was called four times through notices by vigilance branch but did not join the enquiry. Notice u/s 160 Cr.P.C. issued on 09.05.2016 to join the investigation on 14.05.2016. But he did not join the investigation.
8.	Ramesh s/o Sh. Jagdish r/o D-839, Shiv Vihar, JJ Colony, Uttam Nagar, New Delhi Mob. 9582249001 & 8743960657	Given	Traceable (initially was not traceable and stated that he doesn't know Chetan and in no way associated in any sting	no	Notice u/s 160 Cr.P.C. issued on 22.11.2013 by ACP/ARC to join the investigation for 29.11.2013 but notice could not be served due to incomplete address. (Not associated with Chetan as per his version)
9.	Sukhdev s/o Raja Ram r/o A-34, Anandpur Dham Colony	Given	Traceable (joined investigation)	no	Complainant alongwith Sukhdev and his sister prepared the video recording of police personnel namely SI Joginder Singh taking money from him on 01.04.2010. During investigation it was found that Joginder was not a police officer. Notice u/s 160 Cr.P.C. issued on 06.09.2013 by ACP/ARC to join the investigation on 11.09.2013 Notice u/s 160 Cr.P.C. issued on 22.03.2012 by ACP/ISC to join the

					investigation on 23.03.2012. During investigation it was found that Joginder was not a Police Officer.
10.	Dhanraj s/o Ramphal r/o H. No. 110, Aggarwal Colony, Najafgarh, Delhi	Not given	Sting of HC Pratap of PS Bindapur taking money from him on 30th April, 2010	no	Complainant prepared the video recording of police personnel namely HC Pratap of PS Bindapur taking money from him on 30.04.2010 Note: He was called six times through notices by Vigilance Branch, he was not traceable as he left his house. Notice u/s 160 Cr.P.C. issued on 22.11.2013 by ACP/ARC to join the investigation on 29.11.2013 (Notice could not served) Notice u/s 160 Cr.P.C. issued on 09.05.2016 to join the investigation on 14.05.2016. But he did not join the investigation.
11.	Vinay Kumar s/o Ram Niwas r/o Vishwas Nagar Park, Uttam Nagar, New Delhi	Not Given (will give statement to CBI only)	Traceable (Sting of HC Raj Singh of PS Dabri taking money from him on 7th May, 2010	no	Chetan prepared the video recording of police personnel namely HC Raj Singh of PS Dabri taking money from Vinay on 07.05.2010 Notice u/s 160 Cr.P.C. issued on 22.11.2013 by ACP/ARC to join the investigation on 29.11.2013. Notice u/s 160 Cr.P.C. issued on 09.05.2016 to join the investigation on 14.05.2016 but the notice could not be served as the address in the notice was incomplete.

12.	Champa Devi w/o Jai Ram r/o C-167 Sari Peepal Thala	Given	Traceable (she gave her statement in favour of W/HC Anita)	Yes	Stated that she lived in above mentioned address and earlier she was called by Malviya Nagar, Crime Branch officials and they had shown a CD and asked her if she recognize any police official who was taking bribe. On this she refused to recognise police officials who were in CD. She also stated now she do not want to see any CD and she is not interested to join any investigation.
13.	Smt. Nazma @ Reshma w/o Lt. Illyash r/o Jhuggi No. D-159, Sarai Peepal Thyala, Delhi	Given	Traceable (she gave her statement in favour of W/HC Anita)	Yes	Stated that she lived in above mentioned address since 30 years and her husband died in 2003. Earlier she was called by police officials of Malviya Nagar, Crime Branch and they asked her regarding bribe taken by police officials. They also shown her a CD in which police official taking bribe and asked her to recognize police officials. She stated that she did not recognize any police official shown in CD and see refused that any police official took bribe in front of her. She also stated now she does not want to see any CD and not interested to join the investigation.
14.	Smt. Tullo Devi w/o Hari Das r/o H. No. 146, Vill Mandola,	Given	Traceable (she gave her statement in favour	Yes	Stated that she live in above mentioned address since her birth and working in Mandi. She was earlier called by

	Delhi		of W/HC Anita)		Malviya Nagar, Crime Branch officials in their office and aksed her about any bribe taken by police officials. She also stated that one lady police officer namely Anita helped her in some occasions and she never saw any police official taking bribe including Anita madam. She does not want to see any CD and not interested to join the further investigation.

It is disturbing to note that most of the public witnesses are not traceable, or when traceable have refused to give statements. These include Rukma, Prabhu, Dhanraj, Suman Sansi, Surender Singh and Gladwin Das, who were untraceable or are now untraceable. One Vinay Kumar was ready to give a statement, but only to the CBI and not to the Delhi police. There are some witnesses, it is averred, who have given statements in favour of the police officers.

Failure to locate or trace the public witnesses is a matter of concern. Delay and holdover in the registration of the FIR for about 2 years and subsequent investigation could be the reason and cause. Other possible causes for the failure to locate and trace witnesses could be that the names and other details provided are false, or that the investigating agency is choosing to hinder and protect. We are not expressing any opinion on this aspect, suffice to say that failure to locate and trace witnesses reflects on the efficacy and vigour of the investigation. The investigation, it appears has faulted.

22. The status report on the question of the interrogation and examination of the persons named or stated to be involved, states as under:-

> "Further the date for the taking/analysis of voice samples of the alleged 21 police persons were fixed as 8, 9, 14, 16 and 19 of the month of September 2016 in FSL Rohini."

This indicates that the first steps have now been initiated for taking/analysis of voice samples of the 21 police officers statedly involved. This was after the present applications were taken up for hearing and directions to file status reports were issued. The reason why the voice samples and analysis were kept in abeyance and ignored for more than five years is not eluded to or explained.

23. With regard to further action, it is stated that the transcript of the conversation of the video CDs has been received recently and the voice of the suspects alleged needs to be compared on the voice spectographer by the Forensic Science Laboratory. It is indicated that opinion of the Forensic Science Laboratory, Rohini would be required to ascertain and confirm whether there is any over-recording in order to delete some portions. Further, the transcripts of 14 CDs out of a total of 25 CDs have been prepared and obtained. Transcripts of 11 CDs are still to be prepared.

24. We have referred to the said facts not as an authority overseeing the investigation, but to examine the contention of the petitioner; whether the investigation has been intolerably inept and sluggish and should, at this stage, be transferred to the CBI.

25. The other contention raised by the Delhi Police relates to the certificate under Section 65B of the Evidence Act, 1872. After the order dated 28th July, 2010 was passed, the petitioner had moved CM Nos. 11330-31/2010 and had deposited sixteen original video cassettes and eight original memory cards to be kept in safe custody in the High Court. These were sealed in the presence of the counsel for the petitioner and retained in the High Court. This fact has been mentioned in the orders dated 4th January, 2012 and 1st February, 2012 and also in the order dated 15th February, 2012. However, the petitioner had moved application CM No. 3044/2012 and the memory cards of the video tapes were released to him vide order dated 7th March, 2012, with a direction that a copy of the same would be retained for the records. The petitioner has produced before us a seizure memo dated 26th March, 2012 as per which eight memory cards and sixteen video cassettes were seized in the FIR No. 33/2012. This was done in the presence of the petitioner and his advocate. Upon seizure, the container in which the sixteen video cassettes and eight memory cards were kept, were sealed with the seal of the Delhi High Court. The container with the said exhibits were re-sealed with the seal of the Delhi High Court, which were then handed over to the Deputy Registrar of this Court in consonance with the order dated 7th March, 2012. In the status report filed before this Court on 3rd July, 2015, it is accepted by the Delhi Police that on 27th March, 2012 the petitioner had produced one digital video camera recorder (handycam) and one digital video recorder. These were sent to FSL, Rohini alongwith the memory cards on 28th March, 2012 and an expert report dated 30th May, 2013 was received. The report states as under:-

"3. During the course of further investigation the Expert report has been received vide No. FSL/2012/P-2078/PHY-79/12 dated 30/5/13. The report states that the video recordings in video cassettes marked "Exhibit –VC-1" to "Exhibit-VC-16" were having in-camera video shots except video clips with indication of over recording. There is no indication of any form of alteration in the identified in-camera video shots (except those shots having indication of over-recording) on the basis of frame-by-frame examination using Video Analyst System. On examination of video images in video files, namely, "V0504002.avi" in memory card marked "Exhibit-MC-1", "V0510002.avi", "V0630002.avi", "V0701001.avi", "V0510002.avi", in memory card marked "Exhibit-MC-2", V0609002.avi", "V0609001.avi", "V0712002.avi" in memory card marked "Exhibit-MC-3", V1204002.avi", in memory card marked "Exhibit-MC-4", V0603001.avi" in memory card marked "Exhibit-MC-5", V0101002.avi", "V0101003.avi", "V0101004.avi", V0101006.avi", in memory card marked "Exhibit-MC-6", V0101001.avi, in memory card marked "Exhibit-MC-7", V0112002.avi", "V0112003.avi" in memory card marked "Exhibit-MC-8", using Video Analyst System following were observed: 1) Video recording in memory cards "Exhibit-MC-1" to "Exhibit-MC-8", contain one identified video shot in each video file. 2) The video recordings are in digital video format and there is no indication of alternation in the identified video shot on the basis of frame examination using Video Analyst System. In some of the video recording the video recorded in the video cassette is copy of master copy. There was second generation deterioration in image quality. ".....on examination of handycam marked "Exhibit-2", it was found in working order. Hence, no opinion could be formed regarding query as to whether the recording material HI 8 video cassettes marked "Exhibit-VC-1" to "Exhibit-VC-16" was recorded by the recording device marked "Exhibit-2". On examination of digital video recorder marked "Exhibit-3", the recorder has a slot for the SD card which can accommodate the SD card similar to SD cards marked "Exhibit-MC-1" to "Exhibit-MC-8"........."

26. The status report states that the eight memory cards were specifically deposited in the FSL, Rohini, Delhi on 26th July, 2013 to retrieve deleted files. A report dated 29th November, 2013 was received stating that some video files had been retrieved.

27. As recorded above in the status report filed under sealed cover, the respondent Delhi Police had indicated that transcripts of conversations have been recently received and the voices of the suspects need to be compared on voice spectrograph. Re-opinion was being sought from the FSL, Rohini. A certificate under Section 65B of the Evidence Act was being sought from the person, who had prepared the CDs from the memory cards. We have merely reproduced what is stated in the status report without commenting as it may not be appropriate and proper for us to make any observation, as it can be construed as formation of opinion on any aspect. This is equally true of our reference to the different court orders relating to the recorded media. We would refrain from making any opinion or comment.

28. The CBI in their stand and stance has stated that the investigation is virtually complete and at the tail end, and at this stage it may not be appropriate for them to take over the investigation from the Delhi Police. They obviously they are not aware and in knowledge of the contents of the status report.

29. Having examined the relevant facts, we think it is necessary and imperative to transfer the investigation in FIR No. 33/2012 to the CBI. Unfortunately, the investigation as noticed above has struggled, has become bedraggled, and has not proceeded meticulously and punctiliously, as was required and necessary, when stated incidents of corruption and bribes were

captured live on recording media. The persons allegedly involved are not one or two but numerous police officers, who are meant to check crime and enforce the law. Apparently, the primary investigation has revealed the commission of offences by a number of officers taking bribes. It is difficult to appreciate and understand why it has taken more than six years after the order dated 28th July, 2010 to complete investigation and file the charge sheet. As per the status report, several important witnesses have become untraceable. It is only after the application was taken up and short dates were fixed, that the laxity and inertia broke, and steps were taken, by issuing notice to 21 police officers for recording voice samples.

30. The petitioner has been categorical that the attempt is to cover up and cede the evidence, which when produced is debatable and shaky, to ensure that charges would fall and could never be proved.

31. We must, and have, expressed our extreme displeasure and disapproval at the delay and the manner in which the investigation has been conducted, as stated and revealed by the status report. In these circumstances, we would be failing and acting contrary to law in case we do not transfer the investigation to the CBI. We would have refrained ourselves from issuing the said direction for the reason that the transfer might cause and result in further delay, albeit find ourselves confronted with the situation where filing of the chargesheet (or the closure report) would possibly take another two years, if not more. The "delay" aspect raised by the respondents, therefore, does not in the present case impel us to not take the recourse as aforestated.

32. The question whether the High Courts, in exercise of the powers conferred under Article 226 and 227 of the Constitution, can refer a matter to the CBI for investigation was examined and authoritatively answered by the Constitution Bench of the Supreme Court in the ***State of West Bengal versus Committee for Protection of Democratic Rights***, (2010) 3 SCC 571. The said decision had summed up the ratio in the following words:-

> "*68*. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:
>
> (*i*) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.
>
> (*ii*) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. *The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers*. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.
>
> (*iii*) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. *Moreover, in a federal constitution, the distribution*

of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of 'the principles of separation of powers, the rule of law, the principle of constitutionality and the reach of judicial review'.

(*iv*) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. *In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure*.

(*v*) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the judiciary under Articles 32 and 226 of the Constitution.

(*vi*) If in terms of Schedule VII List II Entry 2 on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State *concerned, there is no reason as to why, in an exceptional* situation, the Court would be precluded *from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers*. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(*vii*) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the *State Police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory* provision acting as a restriction on the powers of the courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred to is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a *cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power* and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly."

(emphasis supplied)"

The Supreme Court has cautioned against transfer of investigation to the CBI in routine and observed that the High Court must punctiliously abstain from reference only because a party has levelled some allegation/s against the local police as this would overburden the eminent investigating agency. This extraordinary power vested in the High Court must be exercised sparingly and in exceptional situations, with utmost circumspection. Such direction would be necessary to provide credibility and instil confidence in the investigation. This would depend on the facts and circumstances, and on whether the issues relate to public accountability, vigilance and prevention of corruption. Even in such cases, direction is issued in order to do complete justice and enforce fundamental rights in abnormal and abhorrent situations, to ensure complete objectivity and fairness.

33. These aspects were highlighted in ***Subrata Chattoraj versus Union of India and Others,*** (2014) 8 SCC 768 to hold that CBI investigation can be directed where it is necessary to discover the truth and meet the ends of justice. Equally relevant would be the observations in the majority decision of the Supreme Court in ***Mithilesh Kumar Singh versus State of Rajasthan and Others***, (2015) 9 SCC 795, which was a case involving fairness of the investigation in a case of the death of a young college student under suspicious circumstances, and the allegations were that there was a sordid episode of ragging, which the college authorities had failed to prevent in spite of information. Certain deficiencies and contradictions in the finding of the investigation agencies were highlighted by the aggrieved party. In the given circumstances, the Supreme Court felt that the matter should be investigated in a dispassionate manner by the CBI to discover the truth. This decision accentuates the importance of a fair and proper investigation, that cannot be under-estimated in an adversarial system, for an ineffective, unfair, obscure, inexpedient, and delayed investigation negates and is the antithesis of the basic rule of law affirmed by Articles 20 and 21 of the Constitution. An investigation must be transparent and free from objectionable features or infirmities, which may legitimately lead to a grievance either on the part of the complainant or the accused. Impartial

conduct must dispel any suspicion of ineffectiveness, bias or taint. It was emphasised that there are no cast iron parameters, as all such situations when a matter can be referred to CBI for investigation cannot possibly be penned down. Recently, the Supreme Court in ***Dharam Pal versus State of Haryana and Others***, (2016) 4 SCC 160 impressed on the majesty of rule of law and the significance of transparent, effective, and expedient investigation to ensure fair trial.

34. In ***State of Maharashtra and Others versus Brijlal Sadasukh Modani***, (2016) 4 SCC 417 the Supreme Court referred to the effect of corruption in a civilized society and its disastrous consequences. Failure to check and leave corruption uncontrolled was compared with allowing fire to spread in the jungle and is a crime against the general public. Reference on the issue of corruption can also be made to the Constitution Bench decision in the case of ***Manoj Narula versus Union of India***, (2014) 9 SCC 1.

35. There is another aspect, which is of concern, and bothers us. The status report filed indicates that video cassettes and memory cards were sent to the Forensic Science Laboratory, Rohini on 28th March, 2012 and the report was made available after more than one year, i.e. on 30th May, 2013. During the course of hearing before us, the CBI had filed a letter dated 21st September, 2016 stating that they had received a request letter from the Delhi Police dated 11th December, 2015 for expert opinion on electronic evidence/exhibits in FIR No. 114/2008. The letter dated 21st September, 2016 further states that there are other cases which have to be taken up by the Forensic Science Laboratory on priority basis and keeping in view the high volume of contents, it would require some more time. Forensic

laboratories and their reports are crucial, and at times are the most significant and compelling evidence in criminal matters. The impact and ramification of forensic reports relating to electronic evidence is increasing as electronic devices for recording of video and audio files are now easily available, and such features are also to be found in even the simplest of mobile phones. The need to upgrade infrastructural facilities and have more experts, equipment and forensic laboratories in such circumstances need not be emphasised and is accepted. These are aspects, which must be immediately taken notice of and appropriate remedial action should be taken by the Government of NCT of Delhi, the Commissioner of Police, the CBI, and the Government of India, Ministry of Home Affairs.

36. In view of the aforesaid discussion, we would allow the present application with the direction that the investigation of the case stands transferred to the CBI. The investigating officer / authorized officer will collect the files from the investigating officer of the Delhi Police within two weeks from the date a copy of this order is received in the office of the CBI. The application is accordingly, disposed of. No order as to costs.

सत्यमेव जयते

(SANJIV KHANNA)
JUDGE

(SUNITA GUPTA)
JUDGE

NOVEMBER 17th, 2016 VKR/ssn