

**CWP-1457-2017**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP-1457-2017 (O&M).  
Decided on: February 9, 2017.**

**Raghubir Singh**

**.. Petitioner(s)**

**VERSUS**

**Central Bureau of Investigation and another**

**.. Respondent(s)**

**\* \* \***

**CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI**

**\* \* \***

**PRESENT Mr.Pardeep Kumar Rapria, Advocate,  
for the petitioner.**

**M.M.S. BEDI, J. (ORAL)**

The petitioner has sought issuance of a writ in the nature of mandamus to the Central Bureau of Investigation and Enforcement Directorate, respondent nos.1 and 2, respectively to comply with the judgment of Hon'ble the Supreme Court of India, under Article 141 of the Constitution of India, rendered in **Lalita Kumari Vs. State of U.P. & ors., (Constitution Bench), 2013 (4) RCR (Cri), 979**, by taking action on the information provided by the petitioner through letter dated 17.11.2016 Annexure P3, by registering the FIR against K.K. Jalan, IAS, Secretary, Ministry of Small and Medium Enterprises under the provisions of Prevention of Corruption of Act and Prevention of Money Laundering Act. He has further sought a direction that respondent nos.1 and 2 should

confiscate the proceeds of the crime of corruption and award compensation to the petitioner for providing information about the offences of corruption and money laundering.

A perusal of the petition indicates that the petitioner claims that he is an RTI Activist, Whistle Blower and informer of various law enforcement agencies and he claims credit of having exposed recently a scam of more than rupees ten thousand crores in which the Enforcement Directorate has registered a case and High Court has granted him police protection. The petitioner became aware through Internet and other sources about the commission of serious offences of corruption against the aforesaid officer. The petitioner claims that he has got a statutory duty as per Section 39 Cr.P.C. read with Articles 14, 19, 21 and 51 of the Constitution of India, and the obligations envisaged in the U.N. Convention against Corruption (UNCAC) 2003, and thus provided information about the commission of cognizable offences to the respondents and requested them to register the case under the relevant provisions of the Prevention of Corruption Act. A copy of said letter has been appended with the petition as Annexure P3. The petitioner, in para 3 of his petition claims that the petition has the trappings of Public Interest Litigation (PIL) and all the citizens are victims of corruption and money laundering.

I have carefully gone through para 2 of the petition but it does not indicate the source of the contents of the information and the name of the officer against whom such information has been collected by him.

When questioned about the locus standi of the petitioner,

the petitioner claims that as per Section 39 Cr.P.C. he is required to give information of the offences against Mr.K.K.Jalan, IAS, Secretary, Ministry of Small and Medium Enterprises, who has not been intentionally impleaded as a party in the writ petition.

The petitioner has placed strong reliance on Annexure P1, Central Bureau of Investigation (Crime) Manual – 2005 (for short 'CBI Manual'). A perusal of the said manual indicates that this has been formulated by the Central Bureau of Investigation (CBI), after consultation with the experienced and wisest persons involved in working of the Criminal Justice System to compile a new set of “*Standard Operating Procedures*” for the CBI, taking into consideration the judgment in Vineet Narain of the Supreme Court in 1997, the Information Technology Act, 2000, the Central Vigilance Commission Act, 2003, the Security and Exchange Board of India Act, 1994 and a host of other laws. This CBI Manual appears to have been framed to add new dimensions to the working of the Organisation. The procedure of preliminary enquiries and regular cases and maintenance of various crime registers have been elaborated in the CBI Manual. As per para 10.30 of the said Manual provisions of Cr.P.C. would be complied with by the Branches at all stages in the registration and investigation of RCs. A communication under Section 173 (2) (ii) Cr.P.C. shall be sent to the complainant informing him whether the case has been chargesheeted in the Court or not after completion of the investigation.

I have also considered the provisions of Section 39 of the Code of Criminal Procedure which reads as follow: -

***“39.Public to give information of certain offences.-***

*(1) Every person, aware of the commission of , or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code,(45 of 1860) namely:-*

*(i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);*

*(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquility specified in Chapter VIII of the said Code);*

*(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);*

*(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);*

*(v) sections 302, 303 and 304 (that is to say, offences affecting life);*

*(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);*

*(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);*

*(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);*

*(ix) sections 431 to 439, both inclusive (that is to say, offences of mischief against property);*

*(x) sections 449 and 450 (that is to say, offence of house-trespass);*

*(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and*

*(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes), shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.*

*(2) For the purposes of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India."*

The judgment of **Lalita Kumari** (supra) has also been considered wherein the reference which was considered by the Constitutional Bench reads as follow: -

*"Whether a police officer is bound to register First Information Report (FIR) upon receiving any information regarding the commission of a cognizable*

*offence under Section 154 of the Code of Criminal Procedure, 1973, (in short 'the Code') or the police officer has power to conduct a 'preliminary enquiry' in order to test the veracity of such information before registering the same?"*

The reference was answered by the Constitution Bench by concluding as follows: -

*“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.*

*112) With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits.”*

As per ratio of **Lalita Kumari** (supra) category of few cases have been separated wherein a 'preliminary enquiry' is permitted before registration of FIR when a complaint is received under Section 154 of the Code.

The provisions of Section 154 of the Code read as follow: -

*“154. Information in cognizable cases.*

*(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*

*(2) A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the*

*informant.*

*(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”*

A perusal of the petition filed by the petitioner clearly indicates that the petitioner till date has not filed any complaint under Section 154 (1) of the Code by giving information to any police officer. A complainant is required to approach the Superintendent of Police under Section 154 (2) of the Code.

As per **Lalita Kumari** (supra) before registration of First Information Report (FIR), a 'preliminary enquiry' is permitted to be undertaken. A perusal of the provisions of Section 39 of the Code, indicate that the offences in which the petitioner seeks action do not fall under the ambit of Section 39 of the Code, as such, the reliance of the petitioner on the said section is misplaced.

As per the averments in the petition, the petitioner claims that the present petition is in the nature of PIL for the benefit of all

the citizens who are the victims of corruption.

I have considered the prayer of the petitioner for referring the matter to the CBI which is a creation of Section 2 of the Delhi Special Police Establishment Act, 1946, which gives extended powers and jurisdiction to the special police established under the said Act. Section 6 of the said Act provides that nothing contained in Section 5 of the Act shall be deemed to enable any member of the Delhi Special Police Establishment to exercise the powers and jurisdiction in any area in a State, not being a Union Territory or railway, area, without the consent of the Government of that State.

As per Section 6A of the Act, inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988, cannot be conducted without the previous approval of the Central Government when the allegations relate to the officers of the Central government.

So far as authority of this Court to issue a direction to the Central Bureau of Investigation to investigate a matter is concerned, a reference can be made to the parameters laid down in **State of West Bengal and others Vs. Committee for the Protection of Democratic Rights, West Bengal and others, 2010 (3) SCC 571**, wherein it was laid down that CBI should not be directed to investigate in a matter merely because a party has levelled allegations against an officer. It has further been held in the said judgment that until and unless, there is, prima facie, sufficient material available, it will not be appropriate to issue directions to the CBI to

investigate a particular case.

In *State of West Bengal and others (supra)*, the legal issue which was raised before the Constitutional Bench was whether in exercise of its jurisdiction under Article 226 of the Constitution of India, the High Court can direct the CBI established under the Delhi Special Police Establishment Act, 1946, to investigate a cognizable offence which is alleged to have taken place within the territorial jurisdiction of a State without the consent of the State Government.

In above case, the State of West Bengal relied upon entry 80 of list 1 of the Seventh Schedule to the Constitution of India; Entry 2 of the list II of the said Schedule as also Sections 5 and 6 of the Delhi Special Police Act, 1946, and contended that there was a complete restriction on Parliament's legislative power in enacting any law permitting the police of one State to investigate the offence committed in another State, without the consent of that State. The point raised before Hon'ble the Apex Court was that a Special Police Act, enacted in exercise of powers conferred under the Government of India Act, 1935, Entry 39 of List 1, (Federal Legislative List) of the Seventh Schedule (now occupied by entry 80 of List 1 of the Seventh Schedule of the Constitution of India replicates the prohibition of police of one State investigating an offence in another State without the consent of that State. It was urged that as per Entry 2 of list II, which confers exclusive jurisdiction on the State Legislature in regard to police, the exclusive jurisdiction of the State Legislature cannot be encroached upon, without the consent of the concerned State being obtained.

Considering the relevant provisions of the Constitution of India, the Constitution Bench held that the High Court in the exercise of its jurisdiction under Article 226 of the Constitution of India, can issue a direction to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State and it will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of powers and shall be valid in law being protective of the civil liberties of the citizens. Hon'ble the Supreme Court of India 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 by Articles 21 of the Constitution of India, in particular, zealously and vigilantly.

It is important to note that the Constitution Bench had held as follows:-

*“46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations*

*against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.*

*Similarly in, Secretary, Minor Irrigation & Rural Engineering Services, U.P. & Ors. Vs. Sahngoo Ram Arya & Anr, 2002 (3) RCR (Crl.) 413, it was held that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law-abiding citizen. A decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations.*

It appears that the petitioner has merely levelled allegations of corruption on the basis of the information collected by him without there being any material to substantiate the allegations. No

document has been placed on record indicating, prima facie, that the circumstances warrant a direction to the CBI to register a case and hold inquiry or investigation merely because the petitioner claims himself to be a whistle blower and has been granted interim order of protection. The same is not, ipso facto, sufficient enough to issue a direction to the CBI to investigate a particular case especially when the petitioner claims that the petition has got the trappings of Public Interest Litigation (PIL) seeking an action against officer who has not even been impleaded as a party.

In **Ripun Bora Vs. State (through CBI) bearing No.WP (Crl.) 882/2009, decided on 7<sup>th</sup> December, 2011**, the Delhi High Court had made an observation indicating that the provisions of the CBI Manual are mandatory, as such, the chargesheet and the proceedings emanating therefrom against the petitioner were quashed. Against the judgment in **Ripun Bora** (supra) the State went to Hon'ble the Apex Court in SLP (Crl.) 15481 of 2012, which was dismissed vide order dated 9.8.2012, by observing as follows: -

*“Dismissed.*

*However, question of law relating to CBI Manual is kept open.”*

After going through the said manual, I find that the CBI Manual is a collection of parameters collected and compiled by the C.B.I. for guiding the inquiry and investigation in criminal cases in the interest of fairness in the light of various judgments of the High Courts and the

mandate of Chapter XII of Cr.P.C. and are directory. Further, in SLP against **Ripun Bora** (supra), the questions of law raised was kept open, as such, the observation in **Ripun Bora** (supra) is an obiter not creating a binding precedent.

Taking into consideration the totality of the circumstances, i.e. petitioner having not approached any authority as per the provisions of Section 154 (1) and Section 154 (2) Cr.P.C; no specific material having been made available indicative of the culpability of the person named in the petition; non-applicability of Section 39 Cr.P.C. in the present case; misplaced reliance on the provisions of the CBI Manual and the ratio of **Lalita Kumari** (supra); and the nature of the provisions in the Manual being directory and of non-statutory effect and being the guidelines for investigation and finding that there is no extra ordinary exceptional circumstances or material available on the record i.e. not disclosing prima facie case calling for investigation by the CBI, the petition is thus dismissed.

**(M.M.S. BEDI)**  
**JUDGE**

**February 9, 2017.**

**rka**

Whether speaking / reasoned  
Whether reportable:

Yes / No  
Yes / No