

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL PUBLIC INTEREST LITIGATION ST. NO.6 of 2018

Bombay Lawyers' Association

having its office at 2A, Gr.floor,
Commerce House,140, N. Master Rd,
Fort, Mumbai 400001

.. **Petitioner**

Versus

Central Bureau of Investigation

BI, 13th floor, Plot No.C-35A,
'G' Block, BKC,Near MTNL Exch,
Bandra (East), Mumbai

.. **Respondent**

WITH

CR. PUBLIC INTEREST LITIGATION ST. NO.40 of 2018

BANDHURAJ SAMBAJI LONE

.. **Petitioner**

Versus

**Central Bureau of Investigation
and anr**

.. **Respondents**

...

Mr. Dushyant Dave, Sr. Advocate with Mr.Mihir Desai, Sr. Advocate with Ahmad Abdi, Swati Chaurasia, Vishal Kasbekar, Brijesh Shukla, Nitesh S. Nevshe, Ausgre Carvalhi I/b Satyaprakash Sharma for the petitioner in Cr.PIL St.No.06 of 2018.

Mr.Yogendra A. Rajgot i/b by Rekha Shinde for the petitioner in Cr.PIL St.No. 40/2018.

Mr.Anil C.Singh, ASG with S.D. Patil, Aditya Thakkar and Geetika Gandhi for respondent no.1 (CBI)

Mr.A.B. Borkar for respondent no.2 in Cr.PIL St.No.40/18.

**CORAM: RANJIT V. MORE &
SMT. BHARATI H.DANGRE, JJ.**

RESERVED ON : 3rd OCTOBER 2018

PRONOUNCED ON: 2nd NOVEMBER 2018

JUDGMENT : (Per BHARATI H. DANGRE, J)

1 Criminal Public Interest Litigation St.No.6/2018 is filed by a body of Advocates registered under the Society Registration Act, 1860 who has approached this Court, seeking issuance of writ in the nature of mandamus to the respondent no.1 CBI to file Criminal Revision Application or any other appropriate proceedings against the order dated 30th December 2014 passed by the learned Special Judge, CBI in Sessions Case Nos. 177/2013, 178/2013, 577/2013, 312/2014, thereby discharging one of the accused from the said case.

Criminal Public Interest Litigation St. No.40/2018 is filed by a journalist activist who claims to be a public spirited person and the said PIL also seeks a relief similar to one raised in the first PIL.

We have heard both the petitions together and common arguments are advanced by the respective counsel in both the cases.

The Public Interest Litigation filed on 18th January 2018 is instituted by a group of Advocates practicing at Bombay High Court and it is stated in the petition that the primary purpose of the said petition is to retain the public trust and confidence imposed in the statutory authority i.e. Central Bureau of Investigation (CBI). The petition seeks the following reliefs :-

(a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent No.1, CBI to file criminal revision application or any other appropriate proceeding challenging the order dated 30/12/2014 (Exhibit "D") passed by Ld. Special Judge, CBI Mumbai on Exhibit-232 in Sessions Case Nos. 177/2013, 178/2013, 577/2013, 312/2014 thereby discharging Shri Amit Anilchandra Shah from the case.

(b) That this Hon'ble Court be pleased to direct the Respondent No.2 to produce the minutes of Administrative Committee of this Hon'ble Court wherein decision to transfer the Judge Shri J.T. Utpar (patently in breach of order dated 27/09/2012 passed by the Supreme Court in Transfer Application (Crl.) No.44 of 2011) was taken to ascertain whether the same was just, reasonable and proper;

The petitioner had made a move to delete prayer clause (b) of the petition and the said amendment was

permitted to be carried out by order dated 18th September 2018, thereby restricting the scope of the Public Interest Litigation only to prayer clause (a).

2 At the outset, Shri Anil Singh, the learned Addl. Solicitor General (ASG) has raised a preliminary objection about the maintainability of the present Public Interest Litigation. Shri Singh would question the locus of the petitioner Association to institute the said proceeding and he would emphasize that there is a hidden agenda in filing the said Public Interest Litigation and which is apparent on the fact of the proceedings. Shri Singh would submit that the order of discharge by the Special Court was passed on 30th December 2014, whereas, the present Public Interest Litigation is filed only in January 2018 i.e. after a lapse of three years.

Learned Addl. Solicitor General would also invite our attention to the earlier round of proceedings, which according to him, has been intentionally suppressed from this Court and do not form part of the present Public Interest Litigation. He would submit that on an earlier occasion, the

order of discharge of Shri Amit Shah came to be challenged in a Revision Application (Stamp) No.413 of 2015, which was filed by one Rubabuddin Shaikh, the brother of Sohrabuddin who is alleged to be killed in a fake encounter. The Revision Application which was filed by Rubabuddin Shaikh and also impleaded Amit Shah as respondent no.1 along with Central Bureau of Investigation as respondent no.2, came to be voluntarily withdrawn by the revision applicant on 23rd November 2015. Shri Singh had placed on record copy of the Revision Application along with the order passed on the said Revision Application on 23rd November 2015. Shri Singh has also placed on record an order passed on Criminal Application No.420 of 2015 filed by one Rajesh Kamble who sought to intervene in the Criminal Revision Application No.413 of 2015 filed by Rubabuddin Shaikh and he would submit that the learned Single Judge of this Court by order dated 21st October 2015 was pleased to reject the said application on the ground that the applicant had no *locus standi* to intervene in the Revision Application. Pursuant to the said dismissal of application, according to Shri Singh, Rajesh Kamble who sought

to intervene in the proceedings filed an independent Writ Petition which came to be registered as Writ Petition No.1413 of 2016 which was withdrawn on 18th December 2016 on the motion made by the petitioner.

Learned ASG has also placed reliance on a judgment delivered by learned Single Judge (Smt.Anuja Prabhudesai, J) in Criminal Application No.1248 of 2015 filed by one Harsh Mandar on 11th March 2016. According to Shri Singh, the learned Single Judge did not find favour with the said application since the applicant was not able to demonstrate that there is any invasion of his legal right so as to give him a *locus standi* to challenge the said order of discharge of Shri Amit Shah. The Court had noted that the CBI had not challenged the order and the brother who had filed the application, who could have been said to be aggrieved had also withdrawn the Revision Application. Shri Singh would submit that the order passed by the learned Single Judge was upheld by the Hon'ble Apex Court in the Special Leave to Appeal (Cri) No.5000 of 2016 on 1st August 2016.

3 In the backdrop of the aforesaid documents placed on record by Shri Singh in form of compilation of orders, it is the submission of the learned ASG that it is a settled position of law that a stranger cannot be permitted to intervene or interfere with the criminal proceedings which are instituted by the State against the accused persons and according to him, surely it cannot be done by way of Public Interest Litigation. His submission is that CBI is an independent and a statutory authority and is prosecuting the said matter after its investigation. He would submit that the respondent no.1 CBI has taken a conscious decision after going through the order of discharge and has decided not to carry the proceedings further. Shri Singh would pose a question as to whether a statutory functionary can be compelled to challenge a particular order and whether a mandamus can be issued to it at the instance of a person who is totally alien to the criminal proceedings and was not a party to the said proceedings which commence with registration of an FIR in the year 2006. Shri Singh would thus submit that the Court should not be indirectly used as an instrumentality by anyone to attain or obtain any beneficial

achievement which one could not get through normal legal process. He would submit that once the investigation is complete and the charge-sheet is filed in the competent court, then, that Court is expected to apply its judicial mind and permit the proceedings to progress till it results in finality. In such circumstances, Shri Anil Singh would raise a preliminary objection to the maintainability of the Public Interest Litigation at the instance of the petitioner and would snub it as a malafide attempt to malign the image of the CBI. Apart from the above material, he has placed reliance on the judgment of the Hon'ble Apex Court in case of group of petitions decided by the Hon'ble Apex Court, including the present petitioner Association, and has placed on record the judgment in *Tehseen Poonawalla Vs. Union of India*¹ along with transferred case (Crl) No.1 of 2018 filed by the very same Association.

4 Shri Dushyant Dave, learned Senior Counsel appearing for the petitioner took us in detail through the chronology of events set out in the petition and also through

¹ 2018(6) SCC 72

various orders/judgments passed by the Hon'ble Apex Court in the backdrop of the factual scenario of the matter and he would submit that the investigation in the incident revolving around an alleged encounter of one Sohrabuddin Shaikh and his wife Kausarbi and the further encounter of the alleged eye witness Tulsiram Prajapati have resulted into filing of a charge-sheet against various persons. Shri Dave would submit a writ petition which was instituted in the Supreme Court by one Rubabbudin Shaikh, the brother of the deceased Sohrabuddin, the Supreme Court had directed transfer of investigation of the case to the CBI authorities in the backdrop of its observations that the accusations were levelled against local police personnel in which high police officials of the State of Gujarat have been made as accused. According to Shri Dave, the Hon'ble Apex Court, in the backdrop of the relief sought in the petition, for a fair and impartial investigation had observed that the relatives of the deceased should be assured that an independent agency would look into the matter and that would lend the final outcome of the investigation credibility. It is in this backdrop, according to Shri Dave, the investigation came to be transferred

to the CBI with a direction to complete the same within six months and it was also directed to investigate all aspects of the case relating to killing of Sohrabuddin and his wife including the alleged possibility of larger conspiracy. Shri Dave would submit that pursuant to the said direction issued by the Apex Court on 23rd July 2010, the CBI filed charge-sheet and in addition to thirteen persons named in the charge-sheet of Gujarat police, another six persons came to be arraigned as accused, being part of the larger conspiracy. In the charge-sheet submitted by the CBI, one of the accused was Amit Shah, the then Home Minister of Gujarat and now the National President of BJP. Shri Dave would also invite our attention to the order of the Hon'ble Apex Court dated 27th September 2012 passed in a Criminal Appeal which came to be heard along with transfer petition (Criminal) instituted by the Central Bureau of Investigation. By the said order, the Hon'ble Apex Court transferred the Sohrabuddin case to Mumbai and permitted the CBI to make an application for transfer of Prajapati's case also to the same Court where Sohrabuddin's case is transferred. Learned Senior Counsel assiduously asserted that in order to

inspire confidence of the public at large into investigating mechanism and specifically when the police officials of the State were alleged to be involved in the crime, the Hon'ble Apex Court had transferred the investigation to CBI, an independent agency, in the interest of justice. Shri Dave would also invite our attention to the specific observation of the Hon'ble Apex Court wherein Their Lordships have expressed that there are large and various discrepancies in the report and the investigation conducted by the police authorities of the State of Gujarat and that the charge-sheet filed by the State Investigating Agency cannot be said to have run in a proper direction as it does not reveal the identity of the police personnel of Andhra Pradesh and that the Hon'ble Apex Court had highlighted the lacunae found in the said charge-sheet. The learned senior counsel would therefore submit that the police authorities of the State of Gujarat had failed to carry out a fair and impartial investigation and the offences being committed by high police officials being grave in nature, ought to have been strictly dealt with. Shri Dave would submit that in spite of the fact that the charge-sheet was already filed by the

State Agency, the Hon'ble Apex Court deemed it fit to transfer the investigation to the CBI so that it would instill confidence in the minds of victim as well as of the public at large.

Learned Senior Counsel also relied on the judgment of the Hon'ble Apex Court in Writ Petition (Criminal) No.149 of 2012 where Amit Shah had challenged the lodging a fresh FIR on 29th April 2011 and the charge-sheet dated 4th September 2012 on the ground that it violated its fundamental rights under Articles 14, 20 and 21 of the Constitution. Shri Dave would submit that though the Hon'ble Court observed that filing of second FIR and fresh charge-sheet is violative of his fundamental rights, it also observed that the Investigating Officers who are the kingpins in criminal justice systems are bestowed with a dual duty i.e. to investigate the matter exhaustively and collect reliable evidence to establish the same.

5 Shri Dave would place reliance on the judgment of the Hon'ble Apex court in case of *Vineet Narain and others Vs. Union of India*² and his submission is that it is well within the

² 1998 (1) SCC 226

powers of this Court to issue a mandamus directing the agencies to perform their duty and keep the matter pending, requiring the agencies to report the progress of the investigation, so that monitoring by the Court would ensure proper continuance of the investigation. Relying on the said judgment, his submission is that none stands above the law and that the holders of public office who are entrusted with certain powers should exercise the said powers in public interest, and if there is any failure to discharge their duty, a writ of mandamus be issued to such authorities so as to enforce the rule of law and to guard against erosion of the rule of law.

He also placed reliance on the judgment in case of *Manohar Lal Sharma Vs. Principal Secretary*,³ to make a submission that the monitoring of the investigation/inquiries by the Court is intended to ensure that proper progress takes place without directing or channeling the mode or manner of investigation and it should be ensured that public confidence in the impartial inquiry/investigation should be retained.

³ (2014) 2 SCC 532

6 He would place reliance on the judgment of the Hon'ble Apex Court in case of *Mehsana District Central Cooperative Bank Ltd & ors Vs. State of Gujarat*⁴ to submit that it is always open to the High Court to pass an appropriate order where there is alleged violation of a statutory duty and failure to perform the statutory obligation. He would also place reliance in the case of *State of Maharashtra Vs Farook Mohammed Kasim Mapkar*⁵, where the Hon'ble Apex Court had entertained the petition filed in the backdrop of the demolition of Babri Masjid on 6th December 1992 and directions came to be issued to entrust the investigation to the CBI. He also submits that the highest court in the country has held that if a person is aggrieved by inaction on the part of the police or not getting proper response, he is entitled to approach the Court. Lastly, the learned senior counsel also placed heavy reliance on the judgment of the Hon'ble Apex Court in case of *Shahid Balwa vs. Union of India*⁶, wherein the Apex Court has held that the Constitutional Courts are under an obligation to

4 2004 (2) SCC 463

5 2010 8 SCC 582

6 2014 2 SCC 687

see that the larger public interest and the interest of the nation is preserved and protected specifically when persons involved in the crime wield political power and influence, the possibility of putting pressure on the Investigating Agency which is no more independent in our country is much more.

7 In the light of the aforesaid judgments, Shri Dave invited our attention to the impugned order of discharge passed by the Special Judge, and he would submit that he is not assailing the merits of the said order but is aggrieved by the action of the responsible agency like the CBI in acting in an arbitrary manner, inasmuch as it has challenged the discharge order in case of some police officers who were accused in the said crime, on selective basis and according to him, this smacks of arbitrariness. Learned senior counsel Shri Dave would submit that he is not embarking on the merits of the discharge order but his specific submission is that in order to have a fair and transparent legal system in existence in the country, it would be appropriate for the independent agency like CBI in whom the faith has been reposed by the Hon'ble Apex Court

itself to act in a fair and transparent manner and the CBI by not challenging the discharge of the accused persons is guilty of not discharging its role as a prosecuting agency and taking the proceedings to a logical end. He would allege that the respondent no.1 is guilty of constitutional breach of trust and he would submit that in the backdrop of various orders passed by the Apex Court, it does not lie in the mouth of the CBI not to assail the said order of discharge and he would submit that in the present PIL, the focus is on the manner in which the prosecuting agency has acted and taken a conscious decision not to file the proceedings.

8 We have carefully considered the preliminary objection raised by the Additional Solicitor General and also the submission of the learned senior counsel advanced on behalf of the petitioner association.

Criminal Law is distinctive for its unique potential consequences and failure to abide by the rules. Criminal Law envisages State as a Prosecutor and criminal prosecution is the institution and conduct of legal proceedings against an offender

who is charged with violation of any law. The process generally begins with a formal criminal charge being levelled against the person, on trial, either being free or on bail or incarcerated and results in conviction or acquittal. The journey is from suspect to accused and accused to convict. It is a trite law that criminal offences have been treated as offences against the State and it is the State alone who is competent to investigate and prosecute the offender since the crime is committed against the Society at large. The Code of Criminal Procedure has set out a mechanism for investigation of such crimes and for the said purpose, the hierarchy of criminal courts is created which are competent to exercise its jurisdiction in the manner conferred on it under Chapter II of the Code of Criminal Procedure. The Code also sets out the power of these Courts by which the offences are triable. The powers of the investigating machinery, including the power to arrest, compel appearance is also set out in the Code of Criminal Procedure itself. On conclusion of the trial and on pronouncement of the judgment by the Court of competent jurisdiction, there is a provision of appeals and no appeal lie from any judgment or

order of a criminal court except as provided by the Code or by any other law for the time being in force. A proviso has been inserted in the said section, thereby recognizing a right of a victim to prefer an Appeal against any order passed by the Court acquitting the accused or convicting him for a lesser sentence. The said amendment was inserted by Act No.V of 2009 with effect from 31st December 2009 along with the inclusion of the term 'victim' by virtue of Section 2(wa). Access to mechanism of justice and redress through prescribed procedure includes Right to Appeal. The Appeal which is a statutory remedy is permitted to be exhausted by the State and in case of an acquittal, the manner in which the Appeal is to be filed is determined by Section 378 of the Code. Apart from this, under Section 397 of the Code, the High Court or Sessions Court is competent to exercise its power of revision for the purpose of satisfying as to the correctness, legality or propriety of any finding, sentence or an order of an inferior Court.

9 Perusal of the entire scheme of the Code of Criminal Procedure would make it absolutely obvious that the manner in

which any act or omission punishable by any law for the time being in force is to be investigated and prosecuted, is set out by the said Code. Since the crime is considered as against the Society, it is the State alone which is competent to investigate and prosecute the said crime by following the procedure set out in the Code of Criminal Procedure. In cases where the said machinery does not seek an action on a complaint of victim, there is a remedy prescribed under Section 156(3) of the Code of Criminal Procedure by which the investigation can be sought. The prosecution of the accused is through the Public Prosecutor or an Addl. Public Prosecutor who is specially appointed for conducting any prosecution, appeal or other proceedings on behalf of the Central Government or State Government, as the case may be. By virtue of Section 301 of the Code of Criminal Procedure, it is only the Public Prosecutor who may appear and plead the case and perusal of Section 301(2) of the Code would reveal that if a private person/complainant intends to intervene in the proceedings, he has a limited right only to assist the prosecutor who is in-charge of the case and who is conducting the prosecution and that too, with the permission of the Court.

The Code of Criminal Procedure therefore, do not permit any interference at the instance of a stranger who is neither a complainant/informant or a victim.

10 The law on the said point is well settled and can very well be culled out from the authoritative pronouncements of the Hon'ble Apex Court and we would make a brief reference to the same.

In case of *Simranjit Singh Mann Vs. Union of India*⁷, the petitioner claiming to be a leader of recognized political party and as such, having interest in future of convicts approached, the Hon'ble Apex Court challenging the conviction and sentence imposed on two of the convicts, in case of the murder of General Vaidya. The Hon'ble Apex Court held the petition to be not maintainable and observed that neither under the provisions of the Code of Criminal Procedure nor under any other statute, a third party stranger is permitted to question the correctness of the conviction and sentence imposed by the

7 1992 4 SCC 653

Court after a regular trial. The Apex Court observed thus in paragraph no.7.

“In the present case no fundamental right of the petitioner before us is violated; if at all the case sought to be made out is that the fundamental rights of the two convicts have been violated. The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted any and every person could challenge convictions recorded day in and day out by courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision. If the aggrieved party invokes the jurisdiction of this Court under Article 32 of the Constitution, that may stand on a different footing as in the case of A.R. Antulay Vs. R.S.Nayak and anr. However, we should not be understood to say that in all such cases the aggrieved party has a remedy under Article 32 of the Constitution. Unless an aggrieved party is under some disability recognized by law, it would be unsafe and hazardous to allow any third party to question the decision against him. Take for example a case where a person accused under Section 302, I.P.C. is convicted for a lesser offence under Section 324, I.P.C. The accused is quite satisfied with the decision but a third party questions it under Article 32 and succeeds. The conviction is set aside and a fresh trial commenced ends up in the conviction of the accused under Section 302, IPC. The person to suffer for the unilateral act of the third party would be the accused! Many such situations can be pointed out to emphasize the hazard involved if such third party's unsolicited action is entertained. Cases which have ended in conviction by the apex court after a full gamut of litigation are not comparable with preventive detention cases where a friend or next of kin is permitted to seek a writ of Habeas Corpus. We are, therefore, satisfied that neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a

regular trial. On first principles we find it difficult to accept Mr. Sodhi's contention that such a public interest litigation commenced by a leader of a recognized political party who has a genuine interest in the future of the convicts should be entertained”.

11 In *Karamjeet Singh Vs. Union of India*,⁸ the Hon'ble Apex Court turned down the petition filed by the petitioner claiming to be the next friend of the convicts who were under legal disability due to their intense obsession that the person who was responsible for desecrating the Harmandir Sahib cannot be allowed to survive, and claiming that this gave him a right to appear as a next friend with the following observations :

Admittedly, it is not the case of the petitioner that the two convicts are minors or insane persons but argued the learned Counsel that since they were suffering from an acute obsession such obsession amounts to a legal disability which permits the next friend to initiate proceedings under Article 32 of the Constitution. We do not think that such a contention is tenable. The disability must be one which the law recognizes. A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Cr.P.C or any other law which would permit initiation of proceedings by a third party, be he a friend. It must be remembered that the repercussions

8 AIR 1993 SC 284

of permitting such a third party to challenge the findings of the Court can be serious, e.g. in the instant case itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction. It is, therefore, hazardous to allow a third party to initiate proceedings under Article 32 challenging the order passed by the Designated Court and confirmed by this Court on the mere ground that the convicts had acted under such an obsession. Such a submission, urged the learned Additional Solicitor General, is fraught with grave consequences and would, we agree, shake the very foundation of the rule of law on which a civilised society is based if the aggrieved person is allowed to take the law in his own hands and later plead disability on the ground that his action emanated from an acute obsession that his victim had by his action forfeited the right to live and deserved to be punished with death. Such a submission cannot be countenanced.

12 In case of **Rajeev Ranjan Singh 'Lalan' Vs. Union of India & ors**⁹ the Hon'ble Apex Court declined to entertain the Public Interest Litigation filed against the respondent alleging that they had amassed wealth disproportionate to their known sources of income while holding the post of Chief Minister of State of Bihar by noting that both the petitioners who had approached the Court, were in not in any way connected with the case and they were not *defacto*

9 (2006) 6 SCC 613

complainants. In this backdrop, the Apex Court held that it is for the prosecution to prove its case and the respondent nos.4 and 5 to deny the allegations and it is a criminal litigation exclusively between respondent nos.4 & 5 and the State. After referring to its earlier judgment in case of **Janata Dal Vs. S. S. Chawdhary** (1992) 4 SCC 305, the Hon'ble Apex Court, speaking by majority, observed thus :

“In the instant case, the petitioners have approached this case by filing this public interest litigation under Article 32 of the Constitution at the time when the recording of the prosecution evidence was almost over and the trial of the case reached a final stage. If at all, the petitioners had any grievance regarding the removal of the public prosecutor, they should have submitted their grievance before the Special Judge or before the High Court. It is already noticed that the petitioners had no direct connection with this case. They were absolutely strangers as regards the criminal cases against respondent nos. 4 and 5 which was pending before the Special Judge. This unnecessary interference in the criminal case may cause, sometimes, damage to the prosecution case and at times may cause serious prejudice to the accused also. In any view of the matter, this sort of interference in the criminal prosecution would only deny a fair trial to the accused”.

13 The learned Senior counsel makes a precise submission that he has no quarrel about the authoritative

pronouncements of the higher courts permitting limited interference in the criminal process at the instance of a stranger and he is conscious of the well settled position. The submission of the learned senior counsel is that the present petition is filed as a PIL and is conceptually distinct from an individual, attempting to intervene and display his interest in the prosecution of an accused at the hands of the State. His precise submission is that earlier round of litigation was by individuals and the learned Single Judge of this Court in case of Harsh Mandar had ousted him on the ground of his individual locus since he was not an aggrieved party, but it is the submission of Shri Dave that present petition is by a Group of Advocates and it is filed as a Public Interest Litigation.

The question before us is, therefore, whether a Public Interest Litigation can be entertained in the backdrop of the facts of the case. The concept of *locus standi* no doubt stands diluted in case of a Public Interest Litigation and the Court may not strictly ask the litigant to demonstrate infringement of his legal right. By this time, it has now become settled that a person acting bonafide and having sufficient

interest in the proceedings will alone have a *locus standi* and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions but not for personal gain or private profit or political motive or any oblique consideration. True, it is that such a person who approached the Courts should not only come with clean hands but with clean and transparent public motive and not to settle any personal scores. The constitutional Courts would not allow its process to be abused, and in fact, on numerous occasions, the Courts have been required to lift the veil of a Public Interest Litigation and was required to expose those who have attempted to use the forum of PIL for some improper or oblique motive. In any contingency, it is settled position that such Public Interest Litigation is to be entertained only for advancing the interest of those who are not able to voice their grievances or who suffer from some disability.

14 The observation of the Hon'ble Apex Court in case of *Ashok Kumar Pandey vs. State of West Bengal*¹⁰ are very relevant

10 (2004) 3 SCC 349

and needs a reproduction :

It was noted that Article 32 which finds a place in Part III of the Constitution entitled "fundamental rights" provides that right to move this Court for the enforcement of the rights conferred in that part is guaranteed. It empowers this Court to issue directions or orders or writs for the enforcement of any of the fundamental rights. The petitioner did not seek to enforce any of his fundamental rights nor did he complain that any of his fundamental right was violated. He sought to enforce the fundamental rights of others, namely, the two condemned convicts who themselves did not complain of their violation. Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognizes as sufficient to permit another person, e.g. next friend, to move the court on his behalf.

Unless an aggrieved party is under some disability recognized by law, it would be unsafe and hazardous to allow any third party be a member of the Bar to question the decision against third parties.

Neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence.

Based on the above backgrounds, we do not think this a fit case which can be entertained and that too, under Article 32 of the Constitution and is accordingly dismissed, but without costs.

15 The Hon'ble Apex Court in case of ***Janata Dal Vs.***

H.S. Chawdhary and ors¹¹, had an occasion to deal with such a contingency. The Hon'ble Apex Court refused to entertain a

11 AIR 1993 SC 892

Public Interest Litigation in relation to BOFORS GUN DEAL case and it refused to entertain the grievance made by an Advocate seeking a relief that No Rogatory letter be issued on the request of CBI so as to maintain the dignity, prestige and fair name of the country against the named persons unless the concerned persons are noticed and heard on the subject. It is pertinent to note that the CBI had registered an FIR against 14 accused on the allegation that they entered into a criminal conspiracy, obtained illegal gratification in the form of money from BOFORS, a Swedish Company through the agent firm/company/persons as a motive or reward for such public servants who dishonestly use their official position to cause pecuniary advantage to themselves, BOFORS etc. In the backdrop of the said facts, the Hon'ble Apex Court refused to entertain the grievance since none of the appellants were in any way connected with the criminal proceeding initiated on the strength of the FIR and none of the three accused were impleaded as the respondent. The Court observed thus :

“It is most relevant to note that none of the appellants before this Court save the Union of India and CBI is connected in any way with the present criminal

proceeding initiated on the strength of the first information report which is now sought to be quashed by Mr H.S. Chowdhary. Although in the FIR, the names of three accused are specifically mentioned none of them has been impleaded as a respondent to these proceedings by any one of the appellants. Even Mr. Martin Arbo, former President of M/s. A.B. Bofore, who was impleaded as a proforma respondent in Criminal Appeal No. 310 of 1991 has been given up by the Solicitor General. Therefore, under these circumstances, one should not lose sight of the significant fact that in case this Court pronounced its final opinion or conclusions on the issues other than the general issues raised by the appellants as public interest litigants, without hearing the really affected person/persons, such opinion or conclusions may, in future, in case the investigation culminates in filing a final report become detrimental and prejudicial to the indicated accused persons who would be totally deprived of challenging such opinion or conclusions of this apex court, even if they happen to come in possession of some valuable material to canvass the correctness of such opinion or conclusions and consequently their vested legal right to defend their case in their own way would be completely nullified by the verdict now sought to be obtained by these public interest litigants. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigation”.

16 In case of **Pannchi vs. State of U.P.**¹², their Lordships of the Apex Court refused to entertain the grievance made by the National Commission for women to intervene

12 (1998) 7 SCC 177

before the Apex Court on behalf of a child suckling mother who was facing execution of capital sentence and it observed thus :

“We heard Shri RK Jain, learned Senior Advocate who appeared for the appellant and Shri RB Malhotra, learned Senior Advocate for the State of UP. Smt Indira Jaising, Senior Advocate prayed for allowing National Commission for Women to intervene presumably to bolster up the cause that Ramshree must be saved from gallows. We could not permit the move for intervention in this appeal of the obvious reason that under the Code of Criminal procedure National Commission of Women or any other organisation cannot have locus standi in this murder case”.

17 The judgment of the Hon'ble Apex Court in case of ***Gulzar Ahmed Azmi Vs. Union of India***¹³ also needs a mention. The Writ Petition was filed under Article 32 ostensibly in public interest and a writ of mandamus was sought for constitution of a committee to make further investigation of all bomb blasts cases which have taken place in 2002. Direction was also sought for release of certain detenues alleged to have been indulged in the bomb blasts. In this backdrop, the observations of the Hon'ble Apex Court read as follows :

¹³ (2012) 10 SCC 731

“9. Since criminal cases registered in connection with various incidents are either pending trial before the competent jurisdictional courts or being investigated by the jurisdictional police, it is premature to say whether any and if so which of the accused is innocent or has been falsely implicated. If anyone is falsely roped in any offence either under the provisions of the Indian Penal Code or under any other special enactments, by way of criminal proceeding, it is needless to state that there are enough safeguards provided under the various laws and under the criminal law jurisprudence, to protect the interest of any such person claiming himself to be innocent and demonstrate before the concerned For a that he has been falsely implicated in any offence. Therefore, it will be for the concerned individual against whom any criminal proceeding is lodged to work out his remedy. For instance, if in any particular criminal case, one wishes to seek for further investigation under Section 173 (8) of the Cr.P.C. the same can always be effected even after the filing of the final report. Such a power existing with the Investigating Officer, having been statutorily provided, it will be a futile exercise if such a statutory exercise is to be entrusted with a supernumerary body created under the head of a retired Judge of the Supreme Court along with other team of officers and experts. When the time tested Criminal Procedure Code and other statutory provisions are working in the field providing for such well laid down procedure to be followed in the matter of regulating such criminal proceedings, the granting of the petitioners’ prayer would amount to creating a parallel body without any statutory sanction and to function only under some directions of this Court which would be lacking in very many procedural details and will ultimately result in utter chaos and confusion in dealing with the criminal proceedings which have

already been lodged and progressing before various criminal courts.

11. It will be for the concerned individuals who face such criminal proceedings to work out their remedy in the manner known to law. Even if such individuals are not in a position to seek for any appropriate legal assistance on their own, having regard to the set up of Legal Service Authority and its effective functioning, in the nook and corner of the country, there should be no dearth of legal assistance for those affected persons to seek for such legal aid free of cost. Therefore, when there is no dearth for seeking legal assistance free of cost, on that score as well it cannot be held that the concerned individuals will be left with no remedy. In fact, it is now well known that on mere asking of the concerned presiding officer, those involved in such criminal proceedings are being offered free legal aid of high calibre in order to ensure that no innocent person is being punished for want of proper legal assistance.

12. Having regard to the above factors, we do not find any scope to entertain this writ petition and leave it open for the concerned parties against whom any criminal proceeding is lodged to work out their remedies in the appropriate manner before the appropriate forum in accordance with law. The writ petition fails and the same is dismissed.

18 The substratum of the judgments of the Hon'ble Apex Court which we have reproduced above leads to a clear proposition that a third party who is a total stranger to the prosecution and even if it is a petition by way of Public Interest

Litigation lack *locus standi* to challenge the conviction and sentence awarded to the accused in light of the scheme as contained in the Code of Criminal Procedure. The Hon'ble Apex Court has also refused to entertain the petition on behalf of a stranger in the backdrop of the consequences of permitting such a third party to challenge the findings of the Court since it would result into an uncertainty and it is only the person who is suffering from any disability or who is insane, can be permitted to move the Court on his behalf and there are sufficient provisions contained in the Code of Criminal Procedure itself.

19 In the backdrop of the aforesaid legal position, we proceed to examine the chronology of events and would test the maintainability of the present Public Interest Litigation. We have noted the earlier round of litigation which emanated certain directions from the Hon'ble Apex Court in the criminal appeals filed by the Central Bureau of Investigation. We have carefully gone through the said judgment and we are conscious of the concern expressed by the Hon'ble Apex Court when it *prima facie* recorded that since the police officials of the State

were involved in the crime, it would be in the interest of justice that the investigation is transferred to an independent agency like the CBI, resultantly and inspite of filing the charge-sheet, a direction came to be issued to hand over the investigation of the said crime to the CBI. We are also conscious of the observations made by the Hon'ble Apex Court and the expectation with which the investigation was transferred to the CBI in relation to the killings of Sohrabuddin and his wife Kausarbi including the alleged possibility of larger conspiracy. The Apex Court directed the CBI authorities to submit a report before it, so that necessary orders could be passed on the said report.

The contention of the learned Senior counsel Shri Dave that the Supreme Court had reposed utmost faith in the Central Bureau of Investigation is not in dispute, but from the observations of the Hon'ble Apex Court, we can conclude that the Apex Court was concerned with ensuring proper and honest performance of duty by the Investigating Agency and it never dealt with the merit of the accusation in the investigation. The Apex Court had entrusted the investigation to an independent

agency namely the CBI, which continued with the investigation and filed charge-sheet in the competent Court, which was competent to deal with the offence and the offender. On the charge-sheet being filed, Shri Amit Shah filed an application for discharge before the Special Judge and on consideration of the merits of the matter, the application came to be allowed. We are, in any way, not called upon to deal with the said order on merits, but the only allegation levelled in the Public Interest Litigation before us is that the CBI ought to have assailed the said order by filing a revision or appropriate proceedings, specifically in the backdrop of the observations made by the Hon'ble Apex Court. We are afraid that the said contention of the learned senior counsel is not acceptable since it is settled position of law that once charge-sheet is filed in a Court of competent jurisdiction, then the higher courts are refrained from monitoring the said proceedings.

20 We have also noted that being aggrieved by the discharge of the accused Amit Shah, the brother of deceased Sohrabuddin i.e. Rubabuddin Shaikh had invoked the

jurisdiction of this Court by filing a Revision Application. The said Revision Application was withdrawn by him on 23rd November 2015 by personally filing an affidavit before the Court and this Court in his presence, permitted withdrawal of the said application in view of his specific statement that he was resident of Madhya Pradesh and he is suffering from cancer and has also incurred some physical disability, and therefore, he was not desirous of continuing the said proceeding. The withdrawal of the said proceeding came to be opposed by filing one Criminal Application No.420 of 2015 by one Shri Rajesh Kamble. The locus of Shri Kamble was tested by this Court and this Court, on consideration of the application for intervention, noted that he was neither a victim nor an aggrieved person and he cannot be regarded as having suffered any prejudice. The learned Single Judge of this Court construed the meaning of the expression 'prejudice' as to mean hardship, injury, damage or detriment to one's legal right and since the applicant had failed to demonstrate that his legal rights are impaired or any harm, injury is caused or is likely to cause, it was held that he had no legal right to intervene the proceedings. This Court also noted

that the State had not challenged the order of discharge and the application challenging the discharge was filed by Rubbabudin the brother of the deceased. The said Rajesh Kamble also instituted a writ petition in this Court which came to be withdrawn on 18th November 2016.

Thereafter, a criminal application was filed by one Harsh Mandar vide Criminal Application No.1248 of 2015. By the said application, Shri Harsh Mandar sought quashing and setting aside of the order of discharge dated 30th December 2014 discharging the respondent no.1 Amit Shah one of the accused in Sessions case No.177/13, 178/13, 577/13 and 312/14. This Court considered the said application in light of the withdrawal of the Revision Application by Rubabuddin on 23rd November 2015 and also referred to the intervention application filed in the said proceedings. The applicant who set out a case before the learned Single Judge that the crime in which the accused was discharged was a gross case of custodial murder which has caused violence, trauma, fear and loss not only to the interested parties but to the entire law abiding

society, and stated that there was sufficient *prima facie* material to proceed against the discharged accused Amit Shah but the CBI has failed to challenge the discharge order. The learned Single Judge of this Court (Smt.Anuja Prabhudesai, J) by a judgment delivered on 11th March 2016, on consideration of the legal position in detail, did not find merit in the contention of the applicant and arrived at a conclusion that the applicant was in no manner connected with the proceeding before the learned Sessions Court of Greater Bombay as his legal rights were not impaired. The Court concluded that the applicant who claimed to be socially responsible citizen who had filed the application for preventing abuse of process of Court, in fact, lacked locus specifically when the said application was filed after the aggrieved person was permitted to withdraw the said application. The judgment delivered by the learned Single Judge in Criminal Application No.1248 of 2015 was upheld by the Hon'ble Apex Court on 1st August 2016.

21 Shri Dave has also attempted to canvass that in light of the observations of the Hon'ble Apex Court in the earlier

round of litigation when the investigation of the killing of Sohrabuddin and his wife as well as Prajapati came to be entrusted to the Central Bureau of Investigation and when the trial was subsequently transferred to Mumbai, the Hon'ble Apex Court expected to monitor the same. We do not find the said submission sustainable in the backdrop of the observations of the Hon'ble Apex Court in *Vineet Narain vs. Union of India* (supra), The Hon'ble Apex Court while dealing with the writ petitions filed under Article 32 of the Constitution of India in relation to the *hawala* case where the investigation was directed to be conducted by the CBI, the Hon'ble Apex Court has observed thus :

“In case of persons against whom a prima facie case is made out and charge-sheet is filed in the competent court, it is that court which will then deal with that case on merits in accordance with law. Further, this view was re-iterated in case of Union of India Vs. Sushil Kumar Modi, 1998 (8) SCC 661, wherein the Apex Court observed thus :

“The monitoring process in the High Court in respect of the particular matter had come to an end with the filing of the charge-sheet in the Special court and that the matter relating to the execution of the warrant issued by the Special Court against Shri Lalu Prasad Yadav was a matter only within the competence of the Special court so that there was no occasion for the High Court to be involved in any manner with the execution of the warrant” .

The Hon'ble Apex Court in the present case, while dealing with the petition filed by Narmada Bai, mother of deceased Prajapati in case of *Narmada Bai vs. State of Gujarat and ors, 2011 (5) SCC 79*, while dealing with the submission of report by CBI and subsequent monitoring had observed to the following effect:

Submission of Report by the CBI to this Court and subsequent monitoring.

66 The other question relates to submission of a report by the CBI to this Court and further monitoring in the case. Though in Rubabbudin Sheikh's case (*supra*), this Court directed the CBI that after investigation submits a report to this Court and thereafter, further necessary orders will be passed in accordance with the said report, in view of the principles laid down in series of decisions by this Court, we are not persuaded to accept the course relating to submission of report to this court and monitoring thereafter.

In Vineet Narain (supra), this Court held as under:
(SCC p.201 para 5)

"In case of persons against whom a prima facie case is made out and a charge-sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law."

In Sushil Kumar Modi this Court observed that
(SCC p.662 para 5)

5..... The monitoring process in the High Court in respect of the particular matter had come to an end with the filing of the charge-sheet in the Special Court and the matter relating to execution of the warrant issued by the Special Court against Shri Laloo Prasad Yadav was a matter only within the competence of the Special Court so that there was no occasion for the High Court to be involved in any manner with the execution of the warrant.

By relying on decision in Vineet Narain's case (supra), this Court reiterated that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other investigating agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code.

Hence, it is not purport of the direction to supervise at each stage.

22 The relief sought in the Public Interest Litigation is to issue a writ in the nature of mandamus directing the respondent no.1 CBI to file Criminal Revision Application or any other proceedings and challenge the order of discharge dated 30th December 2014 passed by the learned Judge, CBI on

Exhibit 232. The authorities relied by the learned senior counsel Shri Dave are not of any succour to the petitioner inasmuch as we do not find any failure of duty on the part of the CBI. The CBI has stated before us in emphatic terms that after going through the merits of the order of discharge, it has taken a conscious decision not to carry it further. In such circumstances, we are of the clear opinion that the mandamus cannot be issued to the agency which is an independent prosecuting agency. We are also not inclined to entertain the said litigation at the instance of the present petitioner in view of the legal embargo which we have already discussed in the above paragraphs. There is no statutory mandate imposed on the prosecuting agency either in the Code of Criminal Procedure nor do we find such a mandate in the Delhi Police Establishment Act which would permit us to interfere with the discretion of the prosecuting agency to challenge a particular order.

For the aforesaid reasons, we are not inclined to exercise our writ jurisdiction either at the instance of an association of the practicing Advocates or at the instance of a

public spirited individual who according to us, has no locus to institute the proceedings in form of Public Interest and that too after a lapse of three years after the discharge order is passed by a Court of competent institution. The Criminal Public Interest Litigations are dismissed.

No order as to costs.

(SMT.BHARATI H. DANGRE, J)

(RANJIT V. MORE, J)