

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

(1)

CRM-M No.2802 of 2018

Navina and another

.....Petitioners

Versus

State of Haryana and others

...Respondents

And

(2)

CRM-M No.41861 of 2017

Bhawna

.....Petitioner

Versus

State of Haryana

...Respondent

Date of Decision 18.09.2018

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. R. S. Bains, Advocate for the petitioners
in CRM-M No.2802 of 2018.

Mr. P. S. Ahluwalia, Advocate for the
petitioner in CRM-M No.41861 of 2017.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Sumeet Goel, Standing Counsel for CBI
in CRM-M No.2802 of 2018.

Mr. Mansur Ali, Advocate and
Mr. H. S. Deol, Advocate for respondent No.6
in CRM-M No.2802 of 2018.

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DAYA CHAUDHARY, J.

Aforementioned two petitions bearing CRM-M Nos.41861 of 2017 and 2802 of 2018 have been heard and are being decided together having the same prayer.

Both these petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short – 'Cr.P.C.') for handing over the investigation in case FIR No.15 dated 12.01.2017 under Sections 148, 149, 302, 307, 120-B, 212, 506 of the Indian Penal Code, 1860 (for short – 'IPC') and Section 25 of the Arms Act registered at Police Station Sadar Dabwali, Distt. Sirsa, to an independent agency.

CRM-M No.41861 of 2017 has been filed by petitioner Bhawna, who is widow of deceased Satbir Punia, whereas CRM-M No.2802 of 2018 has been filed by petitioners namely Navina, who is widow of deceased Amit Saharan and Ravinder Kumar, who is brother of deceased Satbir Punia.

Said FIR was registered at the instance of complainant Ranbir Singh with the allegations that he was doing agriculture farming. One Pardeep Kumar Godara (respondent No.6 in CRM-M No.2802 of 2018) has set up a plant in the name and style of PK Fruits at Chautala-Dabwali Road for pruning and packing of kinnow fruit. On 11.01.2017, at about 08:15 p.m., the complainant along with his nephew Satbir (deceased husband of petitioner Bhawna) went to the plant for making the deal of kinnow orchard. At that time, respondent No.6 and Amit Saharan (deceased husband of petitioner Navina) were sitting in the office of respondent No.6 and were

talking to each other. The complainant and his nephew Satbir Punia (deceased) put a proposal relating to their three acres kinnow orchard and after finishing the deal, respondent No.6 went outside towards his orchard. After leaving of respondent No.6, at about 08:45 p.m., two young persons having pistols in their hands entered into the office and fired shots on Satbir and Amit, who were sitting on the chairs. The complainant saved himself by hiding under the table and did not receive any injury. The assailants fled away from the spot in a car, which was parked outside the office. Deceased Amit and Satbir received as many as 27 gun shot injuries and both of them succumbed to the injuries. After arranging the ambulance, both the deceased were brought to CHC, Dabwali, where they were declared dead. It has also been mentioned in the FIR that a number of persons gathered at the spot as well as at CHC, Dabwali. Statement of the complainant was recorded and on the basis of that statement, FIR was registered against the accused persons. Post-mortem examinations of the dead-bodies were conducted. It was reflected in the post-mortem examination reports that the deceased received multiple gun shot injuries. The factum of multiple gunshot injuries and wounds suffered by both the deceased were found to have been reflected in the report prepared by the Forensic Science Laboratory, Madhuban, Karnal (Annexure P-4).

After registration of the FIR, the matter was investigated by the investigating agency. During course of investigation, one Krishan Lal Ex. Sarpanch of village Chautala got recorded his extra judicial confession stating that three persons namely Mukh Ram alias Kalu, Mahender alias

Gangajal and Sukhwinder alias Minda came to him and suffered an extra judicial confession, wherein the mode and manner adopted in commission of offence was stated. In view of the extra judicial confession, accused Mahender alias Gangajal, Mukh Ram alias Kalu and Sukhwinder alias Minda were arrested and interrogated by the investigating agency. They also suffered disclosure statements admitting their involvement in the crime along with others. As per statement of said Krishan Lal Ex. Sarpanch as well as disclosure statements suffered by above named three accused, the cousin of accused Mahender alias Gangajal namely Chhotu Bhat was lodged in District Jail, Sirsa. On 06.01.2017 when Mahender alias Gangajal had gone to meet his cousin Chhotu Bhat, he also met one Sukhdeep son of Satnam. It was further stated that said Chhotu Bhat was apprehending threat to his life as four months ago, during his date of hearing at Dabwali Court, an attempt was made to kill him. Said attack was stated to be made by one Lawrence Bishnoi at the behest of deceased Amit Saharan and Ravinder Bishnoi, brother of deceased Satbir. It was also disclosed that five shooters namely Kamaljit alias Vicky, Jaspreet alias Jumpy Don, Nishan, Sukhpreet alias Buda and Harsimrandeep alias Sema stayed at the house of Chhotu Bhat. It was found during investigation that besides said five shooters, Kalu Nai, Vinod, Virender alias Bablu, Sukhwinder and Shakuntla wife of Chhotu Ram, Ramesh son of Bahadur Ram had also played active role in the commission of offence. Amit and Satbir were done to death but Lawrence Bishnoi could not be done to death as he was having protection.

As per story of the prosecution, Mahender alias Gangajal came

out from jail on 09.01.2017 and on the very next day *i.e.* 10.01.2017, he went to Kothi of Chhotu Bhat, where five shooters were already found staying with huge arms and ammunition along with one Honda City car. He met with the shooters and other conspirators. A *reky* was done regarding movement of Amit and Ravinder Bishnoi. On 11.01.2017, an information was given to the shooters that Amit and Ravinder were present in the office of respondent No.6 and they were attacked. It was found in the investigation that Amit and Satbir Punia were killed, whereas actual target was his brother Ravinder Bishnoi. During investigation, said accused namely Mahender alias Gangajal, Mukh Ram alias Kalu and Sukhwinder alias Minda were interrogated and recovery of arms and ammunition were also made from them. Thereafter, custody of accused Sukhdeep was obtained through production warrant, who also suffered a disclosure statement on the same lines affirming his role in the conspiracy to eliminate Amit and Satbir. The challan was submitted by the investigating agency against five persons namely Mahender alias Gangajal, Mukh Ram alias Kalu, Sukhwinder alias Minda, Sukhdeep alias Deep and Ravinder alias Vicky. Proclamation proceedings were initiated against other accused stating that after their arrest, supplementary challan would be presented against them. The supplementary challan was presented in terms of further investigation conducted by the SIT on 06.07.2017. Thereafter, charges were framed and statements of three official prosecution witnesses were also recorded. Both the above mentioned petitions have been filed by the family members of the deceased before this Court, wherein notice of motion was issued with a

direction to the trial Court to adjourn the proceedings beyond the next date of hearing fixed before this Court.

Mr. R. S. Bains, learned counsel appearing for the petitioners in CRM-M No.2802 of 2018 submits that the place of occurrence is the room/office where two persons were killed due to firing of shots and one person *i.e.* complainant did not receive even a single injury, which is not worth believing. The office of respondent No.6 was at a distance of approximately 10 meters where more than 100 workers were working but no statement of any of the workers was recorded. Learned counsel also submits that the CCTV cameras of the office were found to be defunct one day prior to the date of incident, whereas the same were working till 10.01.2017. Mr. Bains further argues that there was dispute of money as loan was taken by deceased Amit and there were frequent cash withdrawals from his account. Some money transactions were there between deceased Amit alias Ganna and respondent No.6 but that aspect has also not been taken into consideration in the investigation. The investigating agency has reached to the conclusion with a totally new built up story that Ravinder Punia brother of deceased Satbir Punia and Amit were target of the attackers but Ravinder Punia was not present at the place of occurrence. Even the mobile call records of the persons sitting in the office as well as Ravinder Punia and also of respondent No.6 have not been taken into consideration. Even no efforts were made by the investigating agency to record statement of respondent No.6, whereas the place where the occurrence took place belongs to respondent No.6. Neither he was added as a witness of the

incident nor any complaint was made by him. The complainant of the case is not related to the family of the deceased and it was wrongly mentioned that he was related to deceased Satbir. Out of total five shooters, who were alleged to have been engaged by Chhotu Bhat to kill the deceased, three have been killed in an encounter but remaining two are still absconding and their whereabouts are not known till date. At the end, Mr. Bains submits that the investigation conducted by the investigating agency is unfair being biased and the same be handed over to an independent agency like CBI.

Mr. P. S. Ahluwalia, learned counsel for petitioner Bhawna has not only reiterated the arguments raised by Mr. Bains but submits that the family members of the deceased being not satisfied with investigation conducted by the investigating agency, approached higher authorities for proper and fair investigation as the investigation was conducted without taking into consideration the stand of the family members. Mr. Ahluwalia further submits that a number of workers were working in the farm house of respondent No.6 but the statement of not even a single person has been recorded. It also appears to be suspicious that in a small room, 27 shots were fired, two persons died at the spot and the third person did not receive even a single injury. Mr. Ahluwalia further submits that murder has been committed with pre-planning and hatching conspiracy. The owner of the farm house never complained the matter to the police even when he was present nearby the place of occurrence. One thing is clear from the facts that the conspiracy has been hatched and both the persons have been killed with

pre-planning as the CCTV cameras which were earlier working were not in operation on the day of occurrence. The factum of close relation between Chhotu Bhat and Pradeep Kumar Godara is clear from the fact that when witnesses were going to testify against respondent No.6, said Chhotu Bhat attacked the witnesses which has resulted into his conviction vide judgment dated 03.01.2013 in case FIR No.25 dated 17.03.2011 for commission of offence under Section 307 IPC and Section 25 Arms Act. Learned counsel also submits that a close nexus and bondage is there between said Chhotu Bhat and respondent No.6. They both are having political patronage. Learned counsel further submits that the local police and even crime branch/SIT have not taken into consideration the financial transactions between the parties. He also submits that there are a number of withdrawals from the account of deceased Amit and his sisters in the year 2015 when the plant of respondent No.6 was being set up, which reflects their close relation. In support of his arguments, learned counsel has also relied upon judgments of Hon'ble the Apex Court in cases ***E. Sivakumar Vs. Union of India and others 2018(3) R.C.R. (Criminal) 111, Gudalure M. J. Cherian and others Vs. Union of India & Ors. 1992(1) SCC 397, Punjab & Haryana High Court Bar Association, Chandigarh Vs. State of Punjab & Ors. 1994(1) R.C.R. (Criminal) 205, Rubabbuddin Sheikh Vs. State of Gujarat & Ors. 2010 (1) R.C.R. (Criminal) 738 and Sudipta Lenka Vs. State of Odisha & Ors. 2014(2) R.C.R. (Criminal) 346.***

Learned State counsel submits that a fair and impartial investigation has been conducted, which has reached to its logical end. Six

accused have already been arrested. Charge-sheet has been filed against six accused namely Mahender alias Gangajal, Mukh Ram alias Kalu, Sukhwinder alias Minda, Sukhdeep alias Deep, Chhotu Bhat and Ravinder alias Vicky. The case was transferred to the State Crime Branch on 13.04.2017 for further investigation and a Special Investigation Team headed by Deputy Superintendent of Police of State Crime Branch, Haryana, Panchkula under the direct supervision of Inspector General of Police, State Crime Branch, Haryana was constituted to conduct free, fair and impartial investigation. Learned State counsel further submits that accused persons namely Shakuntla, Virender alias Bablu, Vinod, Rohtash, Harsimrandeep Singh alias Sema, Sukhpreet alias Budha were declared proclaimed offender and remaining three accused namely Jaspreet alias Jimmy Don, Kanwaljit Singh alias Banty Dhillon and Nishan Singh alias Sunny died in an encounter in joint operation of State police of Punjab and Sirsa Police and FIR No.158 dated 13.06.2017 under Sections 186, 212, 216-A, 307, 332 and 353 IPC and Section 25 of Arms Act was also registered at Police Station Sadar Dabwali. Learned State counsel further submits that after filing of challan and framing of charges, the case is fixed for recording statements of prosecution witnesses. At the end, learned State counsel submits that it cannot be said in any manner that the investigation is not fair and impartial. There is no justification to hand-over the investigation to an independent agency like CBI, keeping in view the stage of proceedings.

Mr. Mansur Ali, Advocate, learned counsel for respondent

No.6 submits that the present petitions have been filed with *mala fide* intention due to political rivalry. The incident occurred on 11.01.2017 and FIR was lodged on the same night on 12.01.2017 at the instance of complainant Ranbir Singh who is uncle of deceased Satbir. He is an eye witness of the incident. One of the petitioner namely Ravinder, who is brother of deceased Satbir had also made a statement under Section 161 Cr.P.C. to the Investigating Officer on the basis of which offence under Section 120-B IPC was added. Thereafter, again statement of Ravinder was recorded on 29.03.2017 and first charge-sheet was prepared on 03.04.2017. During investigation, no allegation of any kind was made out against answering respondent-respondent No.6. Learned counsel also submits that respondent No.6 has been cited as a witness and he has also joined the investigation. He has also produced CD containing the recording from mobile camera. Respondent No.6 along with other villagers met the Chief Minister, Haryana complaining against the inaction of the police party and for not arresting the main accused. By considering the representation made by family members, the SIT headed by D.S.P. Crime was constituted by the State Government. The main accused namely Chhotu Bhat surrendered in the case. After conclusion of investigation, the challan as well as supplementary challan were filed and thereafter charges were framed against the accused persons. Learned counsel for respondent No.6 further submits that every efforts have been made by certain persons, having vested interest, to falsely implicate respondent No.6, whereas why a person would like to choose the place of occurrence which belongs to him. Learned

counsel for respondent No.6 further submits that three shooters (accused) who were well known shooters involved in the commission of offence were arrested but subsequently they were killed in an encounter. The weapons recovered from them were sent to the Forensic Science Laboratory for examination with the case property recovered from the place of occurrence and from the body of victim. He also submits that said three shooters were having close association with family of Chand Singh Brar as they have threatened one Rajbir Singh and he moved an application to Superintendent of Police, Sirsa. The association of three shooters with son of Chand Singh Brar is apparent from the photographs Annexure R-6/2. Said shooters were hired by accused Chhotu Bhat through Sukhdeep alias Sukha as they were together in jail. The question of involvement of respondent No.6 in any conspiracy for committing murder cannot be there in any manner. There is no motive alleged for involvement of respondent No.6 due to political reasons. Learned counsel also submits that the money transactions between deceased Amit and respondent No.6 was of selling of kinnow fruits. The money transactions between the parties has been reflected in income tax return even after death of Amit. Learned counsel for respondent No.6 further submits that CCTV footage did not disclose any human intervention towards the DVR for being put off and it was verified during investigation. Learned counsel for respondent No.6 also submits that respondent No.6 has cooperated with investigation and he is still ready to cooperate in the investigation. At the end, learned counsel for respondent No.6 submits that re-investigation or further investigation of the case can only be ordered

when there has been complete failure of justice or non-performance of role by the investigating and prosecuting agency expected from them but it is not a case like this. In support of his arguments, he has placed reliance upon judgment of Hon'ble the Apex Court in case ***Sasi Thomas Vs. State & Ors. 2007 (1) R.C.R. (Criminal) 695.***

Mr. Sumeet Goel, learned counsel for the Central Bureau of Investigation submits that in pursuance of order passed by this Court, a scrutiny report on behalf of CBI was submitted before this Court. He also submits that the CBI is already overburdened with a number of cases of investigation.

Heard arguments of learned counsel for the parties including learned State counsel and have also perused all the documents available on the file including FIR, challan, supplementary challan, charge-sheet and the other documents annexed by all the parties.

Facts relating to lodging of FIR at the instance of complainant Ranbir Singh, filing of challan and thereafter, supplementary challan and framing of charges are not disputed. It is also not disputed that the occurrence has taken place in the farm house of respondent No.6 and at the time of occurrence he was not present. It has also not been disputed that two persons have allegedly been murdered in the room where the complainant was also present and he did not receive any injury. It has also not been disputed by learned counsel of any of the parties that a number of persons were working in the agriculture farm at the time of occurrence.

The grievance of the petitioners in both the petitions, who are

family members of the deceased Amit and Satbir, is that the investigation conducted is not fair and impartial as neither the complainant relate to the family of any of the deceased nor statements of the family members were recorded under Section 161 Cr.P.C. prior to lodging of the FIR.

Petitioners are also aggrieved with the investigation of the case as the evidence collected by the investigating agency is not worthy believable as none of the persons working there has been made as witness in a case where 27 shots were fired and the person who was sitting in the same office/room cannot remain uninjured. It has also been asserted that the CCTV cameras which were installed in the premises were in operation prior to date of occurrence but on the date of occurrence the same were defunct. Respondent No.6 had made statement before media that he was the target of the attackers but still neither he become complainant in the present case nor any other complaint was moved by him to the police regarding his protection. It has also not been investigated as to where the remaining two shooters hidden themselves as no efforts have been made to enquire their whereabouts. Even no efforts have been made by the investigating agency to verify the telephonic calls between the parties to arrive at the right conclusion including the mobile calls of the deceased. The complainant is telling himself to be the uncle of deceased Satbir but this relationship has been denied by the family members, who are the petitioners.

On perusal of report submitted by the investigating agency, it has come in the statement of complainant that on 11.01.2017 he along with his nephew Satbir went to plant of respondent No.6 for making deal of their

kinnow orchard. When they reached there, Pardeep Godara and Amit Saharan were already sitting in the office and were talking to each other. Thereafter, he and his nephew put a proposal relating to three acres kinnow orchard. After finishing the deal, Pardeep Godara went outside towards his orchard. Ranbir Singh, Amit Saharan alias Ganna and Satbir were in the office. At about 08:45 p.m., two young persons having pistol in their hands entered into the office and made open gunshot fires on Satbir and Amit who were sitting on the chairs. Due to fear, the complainant hid himself below the table and, therefore, he did not receive any injury. It has also been stated that both the shooters were having blackish complexion and were wearing jackets. They ran away from the spot in a car parked outside after the firing. Both the deceased were shifted to CHC, Dabwali, where the doctor declared them dead. The Board of doctors at CHC, Dabwali referred the dead bodies for postmortem examination. The wearing clothes, bullets, coin, teeth etc. were handed over by the doctors to the police. During investigation by the local police, the spot was inspected as pointed out by complainant Ranbir Singh and all relevant items available at the time of occurrence were taken into possession. Statements of witnesses were recorded under Section 161 Cr.P.C. On the basis of evidence available on record, Section 34 IPC was deleted and Sections 148, 149, 307 and 120-B IPC were added. During course of investigation, production warrant of Vicky alias Ravinder was got issued as he was in judicial custody in a case of Arms Act in State of Rajasthan. In his disclosure statement he stated that Ravinder Punia brother of deceased Satbir and Amit were nursing grudge towards his *gurubhai*

(gangster) Chhotu Bhat and were supporting Lawrence Punia who was rival of Chhotu Bhat. Vicky had given them threat to see in future and Section 506 IPC was also added. During investigation, a car bearing registration No.HR-25D-1033 parked nearby was mechanically examined on 18.01.2017 and one bullet was found in the car. It was taken into police possession. The DVR of CCTV camera and power adapter installed at the premises/plant of respondent No.6 were seized by the police.

During investigation, Krishan Lal Ex. Sarpanch got his extra judicial confession recorded before the police to the effect that three persons namely Mukh Ram alias Kalu, Mahender alias Gangajal and Sukhwinder alias Minda came to his house and told him that when Mahender alias Gangajal was lodged in Sirsa Jail in a case under Arms Act, Chhotu Bhat and his associate Sukhdeep met him and told that they were apprehending danger to their lives. The brother of deceased Satbir namely Ravinder Punia and Amit alias Ganna made an attempt to kill them through Lawrence Bishnoi and his associates but they were escaped. They may make other attempt to kill them. It was also revealed by Krishan Lal that Mukh Ram alias Kalu, Mahender alias Gangajal and Sukhwinder alias Minda also told that Amit alias Ganna and Ravinder Punia were financially assisting Lawrence Bishnoi. The five shooters had stayed at the residence of Chhotu Bhat. Krishan Lal further disclosed that accused persons also told him that Amit alias Ganna used to go to farm house of P. K. Godara and apprehending that he could be murdered by carrying out *reky*. The *reky* of Amit alias Ganna was carried out by Sukhwinder, Virender and Vinod on

11.01.2017 on motorcycle and car and informed to the shooters. It has also come in his statement that five shooters sent by Chhotu Bhat came in their Honda City car and after committing murder of Amit and Satbir, they ran away in the Honda City car.

On the basis of aforesaid facts, it is apparent that whole case was made out on the basis of extra judicial confession of Ex. Sarpanch Krishan Lal. The accused persons were arrested. Recovery of weapons and other articles were also effected from the accused persons. As per the post-mortem and FSL reports, the death of both the deceased occurred due to multiple fire arm injuries. There is no evidence on record to corroborate the extra judicial confession of the accused persons made before witness Ex. Sarpanch Krishan Lal. The confession made by accused persons before the police has no relevancy, except the recovery made by the police. The report of FSL with regard to the weapon used in commission of offence and the empty cartridges is still awaited. The PMR and FSL report of the scene of crime has established that the death of both the victim has occurred due to multiple gunshot injuries received by them. Just to test the veracity of statement of Ex. Sarpanch Krishan Lal and other accused, no efforts were made to conduct their lie detection test. Respondent No.6, who was present with both the deceased and left the place of occurrence just prior to the incident, was not interrogated properly. As per case of the complainant, the assailants came in a Honda City car but said car was not taken into possession.

The basic purpose of an investigation is to bring out the truth

by conducting fair and proper investigation in accordance with law and to ensure that guilty be punished. The purpose of fair investigation is that it must be unbiased, honest and just to bring the actual picture before the Court of competent jurisdiction. The power of the Court to direct further investigation or re-investigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution but it has to be exercised with due care and caution. It has been held in various judgment of this Court as well as of Apex Court that the Court in order to prevent the miscarriage of criminal justice, and if it is considered necessary, may direct for *de novo* investigation where the exceptional circumstances are there.

In case ***Kashmeri Devi vs. Delhi Administration & Anr. 1988***

(2) RCR (Criminal) 44, the Hon'ble Apex Court has held that in a case where the police has not acted fairly and has shield the real culprits, it would be in the interest of justice to hand over the investigation to CBI or an independent agency for proper investigation of the case. In this case, Hon'ble the Apex Court has further held that order of investigation by CBI can be passed even after filing of charge-sheet. Same view was taken by Hon'ble the Apex Court in case ***Punjab & Haryana High Court Bar Association's*** case (supra). Moreover, Section 482 Cr.P.C. states that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The provisions of the Code do not

limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

Similarly, Hon'ble the Apex Court in the case of ***Nirmal Singh Kahlon Vs. State of Punjab and others 2009 (1) RCR (Criminal) 3*** has held that the spirit of fair investigation and fair trial are concomitant to supervise the fundamental right of the accused under Article 21 of the Constitution of India. It is to be seen while ordering for further investigation as to whether the investigation has been conducted fairly and in an impartial manner. In case, the investigating agency is not fair and impartial then investigating agency cannot be permitted to continue as has been held in the case of ***Babubhai V. State of Gujarat and others 2010 (4) RCR (Criminal) 311***. Hon'ble the Apex Court in the case of ***Ram Lal Narang Vs. State (Delhi Administration) AIR 1979 SC 1791*** has held that further investigation is not altogether ruled out merely because the cognizance of the case has been taken by the Court. Defective investigation coming to the light during the course of trial may be cured by further investigation in case the circumstances permit. It has further been held in said judgment that it is duty of the investigating agency to investigate and submit a report to the

Magistrate and it is also open to the police to carry out further investigation.

Moreover, the further investigation is also necessary for principles of natural justice, which requires that accused be given an opportunity of hearing inasmuch as there was a judicial determination in their favour. Privy Council in the case of ***King Emperor vs Khwaja Nazir Ahmad, Vol. LXXI Indian Appeals, 203*** has held as under:-

“Just as it is essential that every one accused of a crime should have fresh access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as as been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus.”

A Full Bench of the Delhi High Court in the case of ***Rajneesh Kumar Singhal Vs. State (National Capital Territory of Delhi), 2001 (2)***

RCR (Criminal) 123 (FB) has held that all procedural laws are meant to do stifle the same. In a given situation where a Magistrate finds that the matter requires further investigation.

Same view has been taken by Hon'ble the Apex Court in the case of **Vinay Tyagi Vs. Irshad Ali @ Deepak and others 2013 (2) RCR (Criminal) 197**.

Certain guidelines to ensure fair investigation were issued by this Court in case **Criminal Misc. No.M-27833 of 2013 titled as Vikram Singh vs State of Punjab**, decided on 03.12.2013, which are as under :-

- (i) The investigating Agency should take all the material in the shape of oral and documentary evidence, may be questionnaire and reply thereto or otherwise, so as to ensure that justice be done to the victim or alleged accused.
- (ii) In case, still the victim or alleged accused is aggrieved by the investigation, he/she may approach the trial Court before the framing of charge which should issue direction for further investigation.
- (iii) If the Investigating Agency has left any person for any unlawful act done by him or at the behest of accused, he should be made as an accused on the application of victim or alleged accused, before framing of charge.

In view of the facts and law position as discussed above, I am of the considered view and unhesitatingly inclined to entrust the CBI with the task of undertaking of *de novo* investigation of the incident of murder of two persons namely Amit and Satbir. It is also made clear that this direction for entrustment of the investigation to CBI has been made by considering

the exceptional features of the case as overwhelmingly demonstrated facts and circumstances have come which require that the investigation to be conducted by CBI.

Accordingly, keeping in view the facts and circumstances of the case and the law position as discussed above, the present petitions are allowed and the investigation of the case is transferred to the Central Bureau of Investigation. The Director, CBI is directed to depute a suitable officer to conduct the investigation of the case, who shall take up the investigation of the present case and complete the same within a period of 10 weeks from the date of taking over the investigation, by considering all aspects from different angles as discussed above. If, for any sufficient reason, the CBI authorities are unable to conclude the investigation within the period as mentioned above, they are at liberty to seek extension of time. However, the expeditious disposal of the case is required in view of the nature of offence and allegations as made out in the petitions as well as in the order.

The trial Court at Sirsa is also directed to send the complete relevant record of the case to the Court of Special Judge, CBI (Haryana) at Panchkula.

The Senior Superintendent of Police, Sirsa and the Station House Officer, Police Station Sadar Dabwali, Distt. Sirsa are directed to assist the CBI in conducting the investigation. The State of Haryana through its Chief Secretary and the Home Secretary is further directed to provide all assistance to the CBI in this respect.

Registry of this Court is also directed to supply the copy of the order passed by this Court along with complete copy of paper-book including the reply filed by the parties to learned counsel for CBI for further handing over the same to the CBI.

CBI is directed to file its report before the Court on 12.12.2018.

18.09.2018
sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No