

Crl. Misc. No. M-38570 of 2018 (O&M) (1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Crl. Misc. No. M-38570 of 2018 (O&M)

Gurinder Singh DhillonPetitioner

Versus

Central Bureau of Investigation, ChandigarhRespondents
and others

2. Crl. Misc. No. M-37001 of 2018 (O&M)

Ayush BhallaPetitioner

Versus

Central Bureau of Investigation, ChandigarhRespondents
and others

3. Crl. Misc. No. M-39482 of 2018 (O&M)

Satdev JindalPetitioner

Versus

Central Bureau of Investigation, ChandigarhRespondents
and others

DATE OF DECISION: 8.1.2019

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Arun Bhardwaj, Senior Advocate with
Ms. G.K. Mann, Advocate and
Mr. J.S. Bedi, Sr. Advocate with
Barrister Rubal Garg, Advocate
for the petitioner in Crl. Misc. No. M-38570 of 2018.

Mr. R.S. Cheema, Senior Advocate with
Mr. S.S. Narula, Advocate,
Mr. Gurinder Singh, Advocate and
Mr. Aayush Gupta, Advocate
for the petitioners in Crl. Misc. Nos. M-37001 and 39482 of
2018.

Mr. Sumeet Goel, Standing counsel for CBI.

Mr. Atul Nanda, A.G., Punjab with
Mr. P.S. Bajwa, Addl. A.G., Punjab.

Mr. V.K. Jindal, Sr. Advocate with
Ms. Janya Sirohi, Advocate
for complainant-respondent No.4 in
Crl. Misc. No. M-38570 of 2018.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of three Crl. Misc. Nos. M-38570,37001 and 39482 of 2018 as identical question of law is involved in all the three cases. However, for the sake of convenience, the facts have been extracted from Crl. Misc. No. M-38570 of 2018.

The present petition has been filed by petitioner-Gurinder Singh Dhillon under Section 482 Cr.P.C. for constituting a Special Investigating Team (SIT) of the CBI to conduct an independent inquiry to probe the nexus between complainant-Shiv Kumar Sharma and accused-Ashok Goyal to falsely implicate him in the case. A further prayer has also been made to give a prior/advance notice of seven days to him in case the investigating agency requires/seeks his arrest in case FIR No. RCCHG2018A0017 dated 14.8.2018 registered under Section 7-A of the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as 'the Act, 2018') at Police Station CBI, ACB, CHG, Chandigarh.

Briefly, the facts of the case as made out in the present petition are that the petitioner is presently posted as Inspector General of Police, Human Rights, Punjab, Chandigarh. Earlier he was posted as Inspector General of Police, Ferozepur Range, Ferozepur. A notice under Section 160

Cr.P.C. was served upon him by Deputy Superintendent of Police, CBI (respondent No.2) to join investigation as a witness in aforesaid FIR dated 14.8.2018 directly, whereas, the same was required to be served upon him through his superior controlling officer. Said notice was accepted by the petitioner and sought time to join investigation within a period of four to five days preferably on 4.9.2018 just to bring this fact to the notice of DGP, Punjab and for seeking approval for the same. Thereafter, he filed the present petition, which came up for hearing on 4.9.2018, wherein, it was stated that in pursuance of notice issued under Section 160 Cr.P.C., he was ready to join investigation as required but apprehended that chances were there of his arrest during joining of investigation. However, an undertaking was given that the petitioner was ready to appear and cooperate with the investigation but atleast an opportunity be given before taking any action against him and not to arrest all of a sudden during period of joining investigation. While issuing notice of motion a direction was also issued by this Court to respondent-CBI not to adopt any coercive method during investigation.

After hearing the parties and on perusal of documents, it appears that during the posting of the petitioner as IGP, Ferozepur Range, Ferozepur, the Director General of Police, Punjab marked an inquiry to the petitioner to look into the allegations against complainant-Ex. SSP-Sh. Shiv Kumar Sharma (respondent No.4) and Surjit Grewal etc. relating to registration of a case bearing FIR No. 1/12 dated 11.1.2012 at Police Station Vigilance Bureau, Ferozepur against one Mohan Singh, Patwari and his arrest at the instance of Shiv Kumar Sharma. An inquiry was conducted by Sh. Kahan Singh Pannu, IAS, Principal Secretary to C.M., Punjab. On the

basis of inquiry report dated 30.4.2012 conducted by Sh. Kahan Singh Pannu, FIR No. 184 dated 23.8.2012 under Sections 167,211,355 and 506 IPC was registered at Police Station, Sadar Ferozepur against various police officials including Shiv Kumar Sharma-SSP Vigilance Bureau, Surjit Singh Grewal-Joint Director Vigilance Bureau, Punjab, Surinder Pal Singh Virk-SSP Vigilance Bureau, Jaspal Singh-SP Vigilance Bureau and one Banarsi Dass. In the inquiry, it was found that Shiv Kumar Sharma, Jaspal Singh, Ishwar Singh and S.P. Singh were jointly liable for implicating Mohan Singh Patwari in a false case and legal action was recommended to be taken against them. Thereafter, Mohan Singh, Patwari made a complaint against the aforesaid police officers, on which an inquiry was conducted and report was submitted to the petitioner on 4.7.2018, wherein, it was mentioned that Shiv Kumar Sharma, Surjit Grewal (Both ex-SSPs) and other police officials were found to be involved in harassing Mohan Singh. It was also found that Mohan Singh, Patwari was falsely implicated in a corruption case i.e. FIR No. 1/12, Vigilance Bureau, Ferozepur and said officers were also responsible for disappearance of FSL report from judicial file of FIR No. 184/12. Further investigation as well as action against the investigating officer i.e. the then S.P.(D), Ferozepur was recommended. On perusal of aforesaid report, SSP, Ferozepur was directed to constitute a Special Investigating Team of Amarjit Singh, SP/H, Ferozepur, Sh. Bhupinder Singh Bhullar, DSP/Investigation, Ferozepur, Inspector Gurvinder Singh, SHO, Police station City, Ferozepur under his supervision. The petitioner also recommended departmental action against the then SP/D, Ferozepur, the investigating officer of case FIR No. 184/12 to DGP, Punjab for exonerating the accused and for not bringing on record the relevant material

evidence and for not examining the important witnesses and also ignoring the relevant statements of witnesses.

During course of investigation, Sections 193,295-A,377,511 IPC were added and DDR No. 43 dated 9.7.2018 was recorded at Police Station Sadar, Ferozepur and it was forwarded to the concerned Magistrate. In pursuance of investigation conducted by SIT, a raid was conducted at the residence of Shiv Kumar Sharma, Ex-SSP (respondent No.4) and a large number of documents relating to benami properties were recovered, which were taken into possession. It was found that the properties of respondent No.4 were disproportionate to the known sources of the income and photocopies of the property documents alongwith recommendation of Vigilance Inquiry were sent to Chief Director Vigilance Bureau, Punjab.

Learned Senior counsel for the petitioner contends that the petitioner is likely to be involved in a false case by calling him as a witness and subsequently by making him as an accused by alleging certain allegations for demand of bribe. He further contends that documents pertaining to property of complainant-Shiv Kumar Sharma were taken into possession vide recovery memo dated 13.7.2018 and the same were dispatched to the office of Chief Director Vigilance on 6.8.2018, which were duly received in the office on 6/7.8.2018 by entering into diary of CDV on 7.8.2018. The petitioner has been alleged to demand bribe on 2.8.2018 just to dilute the case against the complainant in case FIR No. 184 dated 23.8.2012 registered under Sections 167,211,355,506,193,377, 511,295-A, 120-B,201 and 195 IPC but in case such demand of illegal gratification was made on 2.8.2018, then there was no necessity for the petitioner to dispatch the documents of the property to the Chief Director

Vigilance to initiate the appropriate proceedings against Shiv Kumar Sharma relating to disproportionate assets. Learned Senior counsel also contends that the documents were taken into custody against proper recovery memo and question of being returning the same to the complainant did not arise. As per allegations, the complainant had paid an amount of Rs. 5 lacs to Ashok Goyal on 9.8.2018 to get a clean chit from the SIT constituted by the petitioner, whereas, the respondent-CBI has not considered the fact that vide DDR No. 30 dated 11.8.2018, offences under Sections 204,420,465,471 IPC were added against the complainant at the instance of petitioner, wherein, the punishment is graver than the sections already added. In case the amount was demanded on 2.8.2018 and part payment was also received by alleged conduit on 9.8.2018 then there was no necessity for the petitioner to add the offences on 11.8.2018. It is also the argument of learned senior counsel that there was no reason for the complainant to approach the petitioner or SIT when property documents were already sent and received by the office of CDV against proper acknowledgment. The petitioner had also informed orally to the higher authorities that complainant-Shiv Kumar Sharma was approaching him to offer the bribe and to influence the investigation carried out by SIT. Learned senior counsel also contends that whatsapp messages were alleged to be sent on 14.8.2018, wherein, demand of money was there at the instance of accused-Ashok Goyal, while he was in custody of CBI. Said Ashok Goyal was arrested in the evening of 14.8.2018 and while in custody he was directed to make call to the petitioner and the messages were one sided. Learned senior counsel also submits that foul play on the part of CBI is also clear from the fact that Ashok Goyal was in illegal detention till

16.8.2018 and prepared his arrest memo. Thereafter, an application for remand of Ashok Goyal was moved on 17.8.2018. The order passed by Special Judge, CBI Chandigarh clarifies the factual position as the Public Prosecutor himself submitted that they had arrested Ashok Goyal on 14.8.2018. The order by Special Judge, CBI was passed on 17.8.2018 while seeking police custody of accused-Ashok Goyal for five days. Learned senior counsel submits that messages by Ashok Goyal were shown to have been sent to the petitioner just to create an evidence and to implicate the petitioner in the case falsely. There was no response from the side of the petitioner. At the end learned senior counsel submits that State of Punjab has also admitted in its status report dated 7.10.2018 that as per communication of the office of Chief Director Vigilance, Punjab, the factum of petitioner communicating to the Chief Director Vigilance the attempt to influence him was found to be correct. Learned senior counsel has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Ritesh Sinha Vs. State of Uttar Pradesh and another** 2013 (1) RCR (Criminal) 629, **State of West Bengal and others Vs. The Committee for Protection of Democratic Rights West Bengal and others** 2010 (2) RCC (Criminal) 141, **Mohan Lal Vs. State of Punjab** 2018 AIR (SC) 3853, **Nirmal Singh Kahlon Vs. State of Punjab and others** 2009 (1) RCR (Criminal) 3, **Bahubhai Vs. State of Gujarat and others** 2010 (4) RCR (Criminal) 311, **Mithilesh Kumar Singh Vs. State of Rajasthan** 2015 (1) RCR (Criminal) 437, **Dashrath Singh Chauhan Vs. Central Bureau of Investigation** in Crl. Appeal No. 1276 of 2010 decided on 9.10.2018, **Jamuna Chaudhary and others Vs. State of Bihar** 1974 (3) SCC 774 and **K. Chandrasekhar Vs. State of Kerala** 1998 (2) RCR (Criminal) 719, in support of his

contentions.

Mr. Sumeet Goel, learned counsel for CBI has raised a preliminary objection about the maintainability of this petition that the petitioner has no right to claim transfer of the investigation. The petitioner has been called as witness and no prejudice has been caused to him. Learned counsel further submits that after registration of the FIR, a trap was laid at Ludhiana and accused-Ashok Goyal was caught red handed by the CBI in the presence of independent witnesses while demanding and accepting bribe on behalf of the petitioner. Learned counsel further contends that notices under Section 160 Cr.P.C. were issued to the petitioner directly and through SSP, Ferozepur and W/DGP, Punjab on 18.8.2018, 19.8.2018 and 21.8.2018 but he avoided the process of law deliberately. Thereafter again notice was served upon the petitioner on 28.8.2018 and he showed his willingness to join investigation on 4.9.2018 but he did not join the investigation. Learned counsel also contends that the petitioner has mentioned wrong facts in the petition, whereas, the inquiry relating to disproportionate assets was already closed by Vigilance Bureau, Punjab as the allegations being not sustainable during inquiry and finally order dated 10.8.2016 was conveyed by Chief Director Vigilance Bureau, Punjab to Secretary, Punjab Government, Vigilance Depttment, Chandigarh. The petitioner being senior officer of the Punjab Police was well aware about the facts but still in order to harass the complainant, instructed SSP, Ferozepur to forward the property documents of the complainant to Chief Director Vigilance Bureau, Punjab. Learned counsel has also brought to the notice of this Court that when CBI officials visited IGP office on 16.8.2018, the property documents of the complainant were found in the almirah of his office. Mr. Goel further submits that

accused-Ashok Goyal was caught red handed in presence of independent witnesses while demanding and accepting bribe money, which was recovered from his possession. This factum of demanding bribe of Rs. 10 lacs on the direction of the petitioner has been admitted by accused-Ashok Goyal in presence of independent witnesses. He also disclosed that he had accepted Rs. 5 lacs from the complainant on 9.8.2018 at Chandigarh and made whatsapp call to the petitioner. Learned counsel also submits that there is sufficient evidence on record in the form of conversation and CCTV footage that accused-Ashok Goyal had demanded and accepted bribe of Rs. 5 lacs as part payment from the complainant on 9.8.2018 in the Hotel at Sector 35, Chandigarh on behalf of the petitioner and made a phone call from his mobile informing the petitioner with regard to acceptance of whole of the amount of bribe. After verification report dated 14.8.2018, the case was registered under Section 7-A of the Act, 2018. Learned counsel also submits that after disclosure statement made by Ashok Goyal, the presence of Ayush Bhalla and Satdev Jindal was secured at Hotel Mahal, Ferozepur Road, Ludhiana where the post trap proceedings were conducted by the CBI team just to verify the role of aforesaid both the persons. As Ayush Bhalla and Satdev Jindal were well acquainted with the facts of the case, they were also served notices under Section 160 Cr.P.C. to join investigation. Learned counsel also submits that in pursuance to the investigation of the case, CBI team met the petitioner at his residence adjoining to his office and got the documents produced from the wooden cabinet placed in his office room. The documents so produced and mobile phone of the petitioner used in exchanging whatsapp messages with accused-Ashok Goyal were taken into possession vide production cum seizure memo dated 17.8.2018 duly signed

by all persons including independent witnesses. Learned counsel also submits that due procedure of law was followed while taking over the documents. Learned counsel also submits that a baseless story has been concocted by the petitioner just to evade investigation, whereas, he appears to be involved in the case. He was called to join the investigation but his intention was never to join investigation. By relying upon latest judgment of Hon'ble the Apex Court in the case of **Romila Thapar and others Vs. Union of India and others** (Writ Petition (Criminal) No. 260 of 2018 decided on 28.9.2019), learned counsel for CBI submits that there are no allegations against the investigating officer and no personal malice is there against the petitioner. The Court is to look into the documents collected during investigation to satisfy its conscious and to see as to whether arrest of concerned accused is justified or not. In case the petitioner is having apprehension of any sort, he could have moved an application for anticipatory bail but no such application/petition has been filed. Learned counsel further submits that as per provisions of Section 41 Cr.P.C., the police may arrest any person against whom even a reasonable suspicion is there to show that he has committed a cognizable offence. Mr. Goel also submits that the accused has no right to challenge the manner and method of the investigation conducted by the investigating agency. The accused has no right of being heard by claiming the same as a matter of right. At the end, learned counsel for CBI submits that it is a consistent view of Hon'ble the Apex Court as well as of this Court that the accused cannot ask for transfer of investigation to some other investigating agency or to do the investigation in a particular manner. In the present case, neither any allegations are there against the investigating officer nor any malafide and

the petition is liable to be dismissed on this ground only. Mr. Goel has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Central Bureau of Investigation and another Vs. Rajesh Gandhi and another** 1996 (11) SCC 253, **Union of India and another Vs. W.N. Chadha** 1993 AIR (SC) 1082, **State of Telangana Vs. Habib Abdullah Jeelani and others** 2017 (1) RCR (Criminal) 537, **E. Sivakumar Vs. Union of India and others** 2018 (3) RCR (Criminal) 111, **Narender G. Goel Vs. State of Maharashtra** (Crl. Appeal No. 1058 of 2009 with No. 1059 of 2009 decided on 8.5.2009), **State represented by the CBI Vs. Anil Sharma** 1997 (4) RCR (Criminal) 268, of this Court in the cases of **Sadhvi Deva Thakur Vs. State of Haryana** (Crl. Misc. No. M-16922 of 2017 (O&M) decided on 26.2.2018), **Bal Krishan Fauzdar Vs. State of Haryana** 2018 (1) RCR (Criminal) 789, **Sajni Bala and another Vs. CBI ACB, Sector 30-A, Chandigarh** (Crl. Misc. No. M-20741 of 2018 decided on 16.5.2018) and of Delhi High Court in the case of **Mahender Yadav Vs. Central Bureau of Investigation** 2016 (10) AD (Delhi) 397, in support of his contentions.

Mr. V.K. Jindal, learned senior counsel appearing for respondent No.4-S.K. Sharma has opposed the submissions made by learned counsel for the petitioner and submits that on the basis of representation made by Mohan Singh, Patwari, re-investigation of the case was initiated in the supervision of the petitioner while he was posted as IGP, Ferozepur without taking prior permission from the trial Court. The re-investigation of the case was initiated, whereas, there is a specific bar as no reinvestigation can be done after the presentation of the challan. Even in case of further investigation, the prior permission of the trial Court was required to be

sought by moving proper application under Section 173 (8) Cr.P.C., which clearly shows that the petitioner was carrying out the investigation with malafide intention just to extract money from the retired police officer. On 13.7.2018, the house of the complainant was raided at his back so as to arrest him but he was not found present there. No independent witness was present at the time of search. The documents of the property were taken into possession without giving memo of recovery to the family members, who were present at that time. Learned senior counsel also submits that the documents recovered were not remotely connected with the investigation of the case. Thereafter, respondent No.4 approached this Court by way of filing CrI. Misc. No. M-30268 of 2018, wherein, his arrest was stayed by this Court, which is still pending. Learned senior counsel also contends that mala fide intention of the petitioner is also clear from the fact that security provided to respondent No.4 was withdrawn at his instance. The petitioner had to approach this Court by way of filing CrI. Misc. No. M-31252 of 2018 for providing security before this Court, wherein, vide order dated 25.7.2018, respondent No.2 therein was directed to take a conscious decision for providing protection to the life and liberty of the complainant in pursuance to the representation/letter dated 20.7.2018. Learned Senior counsel also submits that a specific representation was moved by respondent No.4 on 30.7.2018 for transfer of investigation from the present petitioner as a specific demand of bribe was there on his part. The amount of bribe was demanded by Ashok Goyal in presence of Ashok Thapar. The conversation was also recorded in the mobile, which was handed over to the CBI during investigation of the case. Accused-Ashok Goyal demanded Rs. 22 lacs at the instance of petitioner and Rs. 5 lacs was accepted in a hotel at

Chandigarh. The coversation is also reflected in the CCTV cameras. Learned Senior counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **State of West Bengal and others Vs. Sampat Lal and others** 1985 (1) RCR (Criminal) 202, **State of Punjab Vs. Davinder Pal Singh Bhullar and other** 2012 (1) RCR (Criminal) 126, **M.C. Abraham and another Vs. State of Maharashtra and others** 2003 (1) RCR (Criminal) 452, **Popular Muthiah Vs. State represented by Inspector of Police** 2006 (3) RCR (Criminal) 527 and **D. Venkatasubramaniam and others Vs. M.K. Mohan Krishnamachari and another** 2009 (4) RCR (Criminal) 318, in support of his contentions.

Mr. Atul Nanda, learned Advocate General, Punjab submits that the petitioner acted in his official capacity while sending the recommendation to Chief Director Vigilance Bureau, Punjab and proceeded against the complainant. There was no malafide in any manner. The petitioner was regularly updating about the progress in the investigation of case FIR No. 184/12 registered at Police Station Sadar Ferozpur to the competent authority. The action on the part of the petitioner was within his jurisdiction and provisions of Section 17 of the Act 2018 are attracted. In view of said provisions of Section 17-A of the Act 2018, it was mandatory to have prior sanction before proceeding further as the petitioner was discharging his duties as a public servant but no such approval was sought before taking any action against him. Learned Advocate General further contends that it is a case of over reaching by the CBI authorities and has exceeded its jurisdiction without following the mandatory provisions. The action taken by the petitioner in his official capacity was in the knowledge of the State authorities. Learned Advocate General also contends that

Section 17-A was added in the Act by way of amendment, which is applicable in case the official is arrested on the spot while accepting bribe but the present one is not a case where any bribe was accepted or he was found to be accepting bribe or was arrested by the CBI authorities. As per proviso to Section 8 of the PC Act also, the matter was not reported to the police within a period of seven days from the alleged acceptance of amount of demand. Learned Advocate General has also relied upon the judgments of Hon'ble the Apex Court in the cases of **S.M.D. Kiran Pasha Vs. Govt. of Andhra Pradesh and others** (1990) 1 SCC 328, **Manohar Lal Sharma Vs. Principal Secretary and others** (2014) 2 SCC 532, **S.N. Sharma Vs. Bipen Kumar Tiwari and others** 1970 (1) SCC 653 and **Raninder Singh and another Vs. State of Punjab and others** 2008 (2) ILR (P&H), in support of his contentions.

Heard the arguments advanced by learned counsel for the parties and have also carefully gone through the documents available on the file including the petition, replies, status report filed from time to time and written submissions.

The prayer in the present petition is for issuance of direction to constitute a Special Investigating Team (SIT) of the CBI or to conduct the investigation by some other senior officer to probe the nexus between complainant-Shiv Kumar Sharma and accused-Ashok Goyal as the petitioner has falsely been implicated on the basis of false allegations made by complainant-Shiv Kumar Sharma. A further prayer has also been made to give advance notice of seven days to the petitioner in case the investigating agency wants his arrest in case FIR No. RCCHG2018A0017 dated 14.8.2018 registered under Section 7-A of the Act, 2018 at Police

Station CBI, ACB, CHG, Chandigarh.

As per grievance of the petitioner, he is being called as a witness but efforts are being made by the CBI to make him as an accused after collecting some false evidence against him. The intention of the CBI is not fair as neither any sanction has been sought nor any evidence has been collected to show involvement of the petitioner. It is also the grievance of the petitioner that neither any demand was made by him nor any bribe was accepted. Certain persons have been made as witnesses to connect the petitioner with the commission of offence. The matter was already referred to SIT by the petitioner and there was no occasion for him to demand bribe. Even more serious offences were added. The whatsapp messages were created by the investigating agency while accused-Ashok Goyal was in custody and there was no response from his side. It was one sided story concocted at the instance of investigating agency. It is also the case of the petitioner that no ingredients for attracting provisions of the Act, 2018 are there as neither the demand nor any acceptance of bribe was there. The petitioner is also aggrieved by the action of the investigating agency as prior sanction was required to prosecute a public servant but no such sanction was sought and the investigating agency has exceeded its jurisdiction. The incident has been shown to be in the jurisdiction of Chandigarh, whereas, neither the amount was recovered nor paid to the petitioner at Chandigarh.

On the other hand, Mr. Sumeet Goel, learned counsel for CBI has raised a preliminary objection that the petitioner has no right/locus standi to file a petition for change of investigating officer in the absence of any specific allegation or bias against him. It is also the stand of the CBI

that the petitioner has been called as a witness and not as an accused. However, he submits that the petitioner can be made accused in case some evidence is there against him. In case the petitioner is having any apprehension of any sort, he is at liberty to move an application for anticipatory bail or to avail any other appropriate remedy available under law.

Similarly, Mr. Atul Nanda, learned Advocate General, Punjab has also stated that no prior sanction to prosecute the petitioner was taken. The petitioner was regularly conveying the progress of the investigation of case FIR No. 184/12. The action taken by the petitioner was within his jurisdiction and provisions of Section 17 of the Act, 2018 are attracted. Learned Advocate General further contends that it is a case of over reaching by the CBI authorities in exceeding its jurisdiction without following the mandatory provisions. The action was not taken in personal capacity by the petitioner rather it was well within the knowledge of the State authorities.

Undisputedly, the investigation conducted in a criminal offence must be free and fair and not with any ulterior motive. It is the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must be above suspicion. The accused is presumed to be innocent till he is proved guilty. The alleged accused is entitled for fair and impartial investigation. The prosecution is expected to play balanced role not only during investigation but during trial also. It is also the observation of Hon'ble the Apex Court in a number of

judgments that investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. It should be in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

It is not only the responsibility of the investigating agency but as well as of the Courts to ensure that the investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. The investigation should not prima facie be fair but impartial and just to draw a balance between citizen's right under Articles 19 and 21 of the Constitution of India. In some of the important judgments of Hon'ble the Apex Court, it has been emphasised that where the Court comes to the conclusion that there was a serious irregularity in the investigation, the Court may direct further investigation under Section 173 (8) of the Cr.P.C., even transferring the investigation to an independent agency, rather than directing re-investigation by an independent agency. However direction of re-investigation is forbidden in law and the same can be under very rare circumstances by recording reasons.

Hon'ble the Apex Court in the case of **Manu Sharma Vs. State (NCT of Delhi)** 2010 (2) RCR (Criminal) 692 has held that criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. Even the accused is also entitled to true investigation and fair trial. The fundamental canons of criminal jurisprudence should be in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

The observation made by Hon'ble the Apex Court in **S.M.D. Kiran Pasha's case (supra)** in para 14 is relevant in the present case and

the same is reproduced as under:-

“.....The question is at what stage the right can be enforced? Does a citizen has to wait till the right is infringed? Is there no way of enforcement of the right before it is actually infringed? Can the obligation or compulsion on the part of the State to observe the right be made effective only after the right is violated or in other words can there be enforcement of a right to life and personal liberty before it is actually infringed? What remedy will be left to a person when his right to life is violated? When a right is yet to be violated, but is threatened with violation can the citizen move the court for protection of the right? The protection of the right is to be distinguished from its restoration or remedy after violation. When right to personal liberty is guaranteed and the rest of the society, including the State, is compelled or obligated not to violate that right, and if someone has threatened to violate it or its violation is imminent, and the person whose right is so threatened or its violation so imminent resorts to [Article 226](#) of the Constitution, could not the court protect observance of his right by restraining those who threatened to violate it until the court examines the legality of the action? Resort to [Article 226](#) after the right to personal liberty is already violated is different from the pre-violation protection. Post-violation resort to [Article 226](#) is for remedy against violation and for restoration of the right, while pre-violation protection is by compelling observance of the obligation or compulsion under law not to

infringe the right by all those who are so obligated or compelled. To surrender and apply for a writ of habeas corpus is a post-violation remedy for restoration of the right which is not the same as restraining potential violators in case of threatened violation of the right. The question may arise what precisely may amount to threat or imminence of violation. Law surely cannot take action for internal thoughts but can act only after overt acts. If overt acts towards violation have already been done and the same has come to the knowledge of the person threatened with that violation and he approaches the court under [Art. 226](#) giving sufficient particulars of proximate actions as would imminently lead to violation of right, should not the court call upon those alleged to have taken those steps to appear and show cause why they should not be restrained from violating that right? Instead of doing so would it be the proper course to be adopted to tell the petitioner that the court cannot take any action towards preventive justice until his right is actually violated whereafter alone he could file petition for a writ of habeas corpus?The difference of the two situations have different legal significance. If a threatened invasion of a right is removed by restraining the potential violator from taking any steps towards violation, the rights remain protected and the compulsion against its violation is enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right.”

It is also not disputed that in criminal justice system, the

investigation of an offence is the domain of the police. The power to investigate into the cognizable offence by the police officer is ordinarily not interfered. However, as the power has to be exercised consistent with the statutory provisions and for legitimate purpose, the Courts ordinarily do not interfere in the matters of investigation by the police, particularly when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide but under the exceptional circumstances and when the Court finds that the police officer has exercised his investigatory powers in breach of statutory provisions putting the personal liberty of the person by illegal and improper use of the power or there is abuse of the investigatory powers and process by police officer or the investigating agency, the Court may interfere to protect the personal rights of the persons.

In the Constitutional Bench in **State of West Bengal's case (supra)** the question that arose was whether the High Court could direct the CBI 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. Apart from the constitutional issue relating to separation of powers, the other issue related to the statutory bar on investigation, without the consent of the State Government imposed by Section 6 of the Special Police Act, was considered. The Constitutional Bench also discussed the issue of separation of powers and later dealt with statutory bar in the context of judicial review. The Constitutional Bench held (in para 68 (vii) of the judgment) that the power of judicial review exercisable by a constitutional court cannot be restricted by a statutory provision. It was held as follows:-

“68. (vii) **When the Special Police Act** itself provides that

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

By considering the arguments advanced by learned counsel for the parties and on perusal of documents available on the file, the link evidence appears to be missing as there is no connectivity of the facts to attract the provisions of the Act, 2018. The twin requirement of demand and acceptance of bribe amount is missing as in the present case, the amount of bribe has not been accepted by the petitioner and the same has been alleged to be given to said alleged conduit. Alleged bribe amount has been shown to be paid in two parts and the message in this regard was also sent on whatsapp by the alleged conduit to the petitioner. It has also come in the arguments raised by learned senior counsel for the petitioner that said

conduit was in custody of CBI and message was sent on whatsapp of the petitioner on asking of the CBI. Meaning thereby, requirement of demand and acceptance of bribe amount is not fulfilled. Only the presumption is there that the amount was kept in brief case. Said alleged amount has not been shown to have been accepted by any person. The conversation between the alleged conduit and the petitioner through whatsapp message has been shown to be in connivance with the petitioner. All these things are required to be carefully inquired/scrutinized after taking into consideration the facts and circumstances of the case as pointed out by learned counsel for the parties.

Accordingly, after considering the submissions made by learned counsel for the parties, facts as mentioned above and the law position explained above, the present petition deserve to be allowed. The matter be got investigated further by Special Investigating Team (SIT) headed by a senior officer in the rank of Superintendent of Police.

Accordingly, Director, CBI is directed to constitute a SIT for the said purpose. The SIT is also directed to conclude the investigation within a period of four months. The Registry of this Court is also directed to hand over the complete record of the case including the petition filed by the petitioner, replies filed by all the parties including status report from time to time to the office of Director, CBI, Chandigarh for further handing over the same to the SIT.

It is also directed that in case any incriminating evidence is collected against the petitioner and the investigating agency comes to a conclusion that he is involved in any manner, he be given an advance notice of seven days. However, the petitioner is also directed to appear before the

SIT as and when required as a witness or otherwise. It is also directed that in case the investigating agency comes to the conclusion after thorough investigation that the petitioner is involved in commission of any offence, an appropriate sanction from the State Government be sought before proceeding further .

However, any observation made here-in-above shall not be constructed as an expression of opinion on merits of the case.

8.1.2019
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes