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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 14th July, 2020

+ **W.P. (CRL.) 55/2020 & CrI. M.A. Nos.1537/200 & 3137/2020**

DEEPALI AGGARWAL

..... Petitioner

Through: Mr. Tanmaya Mehta, with Mr.
Atul Agarwal, Mr. Hemant
Kumar, and Mr. Divyansh Rathi,
Advocates.

versus

STATE OF GNCT

.... Respondent

Through: Ms. Kamna Vohra, ASC
(Criminal).

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The petitioner is the widow of late Sachin Aggarwal, who is stated to have been found dead in his car on 26.12.2019 with a bullet injury to his right temporal region. The deceased was, at the time, accompanied by one Prasoon Dixit, who was driving the car while the deceased was in the front left seat. Prasoon Dixit is stated to have been a close associate of the deceased for few months prior to the incident.

2. The other factual details of the incident are not relevant for purposes of the present petition, except to say that after making inquiries from the family of the deceased, on 26.12.2019 the police registered FIR No. 458/2019 under section 25/27/54/59 of the Arms Act at PS: Vivek Vihar against unknown persons. It is stated in the petition that the family had informed the police that they suspected foul play. Thereafter on 27.12.2019, post-mortem was conducted on the body ; and the deceased was cremated. On 30.12.2019, the petitioner is stated to have lodged a complaint against Prasoon Dixit and his associates alleging offences under sections 302/120B of the Indian Penal Code, 1860 (IPC).

3. The petitioner has filed the present petition under Article 226 of the Constitution, being aggrieved by alleged culpable negligence on the part of the police to investigate the matter. The petitioner has made the following prayers:

“a. Transfer the investigation in FIR No. 458 of 2019, lodged at P.S. Vivek Vihar to the Crime Branch or the DIU, or alternatively direct constitution of a Special Investigation Team (SIT) to investigate the present matter;

b. During the pendency of the present petition, direct the SHO to ensure proper compliance of SO No.448 of 2018 of the Delhi Police and collect all CCTV footage throughout the time period since the deceased and the others left their residence on 25.12.2019, in compliance with this Hon’ble

Court's order in Pooja Khetan Vs. GNCTD WP(Crl.) No.1006 of 2015;

c. During the pendency of the present petition direct the SHO PS Vivek Vihar to seize and send for forensic examination Call Detail records of all individuals who were in contact with the deceased on 25.12.2019 and 26.12.2019, including Sh. Prasoon Dixit, Sh. Vikesh Rajput, Ms. Neha Verma, Sh. Yash Gupta, Sh. Nitin Chaudhary, Sh. Kamal Pandit and Ms. Anshu;

d. During the pendency of the present petition direct the SHO PS Vivek Vihar to seize and send for forensic examination the mobile phone of all individuals who were accompanying the deceased on 25.12.2019 as well as 26.12.2019, including Sh. Prasoon Dixit, Sh. Vikesh Rajput, Ms. Neha Verma, Sh. Yash Gupta, Sh. Nitin Chaudhary, Sh. Kamal Pandit and Ms. Anshu and retrieve all data from the devices;

e. Direct the SHO PS Vivek Vihar and other concerned agencies to maintain securely the said retrieved data till the necessary agencies are handed over the data for proper examination;

f. Direct concerned agencies to share with the Petitioner a copy of the inquest papers, so that she is in a position to pursue the matter before this Hon'ble Court, or any other court;

g. Monitor the investigation in FIR No. 458 of 2019, lodged at P.S. Vivek Vihar;

h. Direct the SHO PS Vivek Vihar to add Section 302 IPC and 120B r/w 320 IPC to FIR No. 458 of 2019, lodged at P.S. Vivek Vihar...”

4. No notice was issued in this petition; but at the pre-notice stage, the petitioner filed synopsis of arguments and a case-law compilation; while the State filed four status reports ; and parties were heard at considerable length over several dates of hearings.

Petitioner’s Submissions :

5. Mr. Tanmaya Mehta, learned counsel appearing for the petitioner has placed the following points:

- A. That although the petitioner learned about her husband’s death from Prasoon Dixit, who had informed her that the deceased had shot himself while he was sitting next to the deceased in the car, the petitioner and her family members have always suspected foul play and had made specific allegations against Prasoon Dixit, to the effect that he, in conspiracy with other associates, had murdered the petitioner’s husband. In this regard a formal complaint dated 30.12.2019 was also made to the SHO PS: Vivek Vihar, New Delhi;
- B. That despite the specific complaint made by the petitioner and the family, the police have arbitrarily assumed it to be a case of suicide and have investigated the case with this ‘coloured

perspective from the very inception' and have registered an FIR only under section 25/27/54/59 of Arms Act 1959;

C. That the complainant in the FIR and the Investigating Officer (I.O.) assigned to the case are one and the same person, which in itself makes the investigation fundamentally flawed;

D. That the evidence discovered in the matter confirms the petitioner's suspicion that her husband's death was not suicide since the bullet wound could not have been self-inflicted; and that there is ample reason to believe that Prason Dixit had wielded the weapon, *inter alia* for the following reasons:

- (i) post-mortem report dated 27.12.2019 records that there was no tattooing, singeing or burning at the entry point of the bullet wound, suggesting that the bullet was fired from a distance and not by the deceased himself;
- (ii) the post-mortem report further records that the direction of movement of the bullet was downward from entry point, which again suggests that it was not a self-inflicted injury;
- (iii) expert opinion obtained subsequently on the post-mortem report, as reflected in status report dated 11.02.2020 filed by Deputy Commissioner of Police (DCP) also suggests the possibility of homicide;

- (iv) FSL report dated 31.01.2020 found traces of gunpowder on Prasoon Dixit's right hand, which is only possible if he had used the weapon;
- (v) the petitioner has made available to the police the location of various CCTV cameras around the area and along the route, which the vehicle took before reaching the residence of the deceased, which suggests the possibility of a third individual being present in the rear seat of the vehicle;
- (vi) the state of the body suggests that the deceased was dead prior to reaching his residence, contrary to the version given by Prasoon Dixit;
- (vii) Prasoon Dixit who was 'last seen' with the deceased has changed his stand as to the place where the firing took place and the location of the weapon, which raises serious questions on the veracity of his statements and consequently on his role in the death.

E. That however, the police have blatantly ignored the aforesaid information and inputs; and have continued with a 'sham investigation' only to confirm their viewpoint that it was suicide and not homicide;

F. That after persistent follow-up by the petitioner, the police have only added section 306 IPC, namely abetment of suicide in the FIR, as reflected in status report dated 13.03.2020, without however naming any accused;

G. That since the deceased was ‘last seen’ with Prasoon Dixit, the said person cannot be exonerated at the threshold ; but the police have taken no concrete action against him ;

H. That the police have failed to conduct investigation on essential aspects, which are evident in the case, including :

- (i) The police had failed to collect CCTV footage of cameras installed along the route of the car, until directions were issued in this matter *vidé* order dated 23.01.2020, by which time however, as apprehended by the petitioner, most of the CCTV footage was lost/not found as stated in status report dated 11.02.2020 filed by the DCP;
- (ii) The police have ignored what has been repeatedly urged by the petitioner and the family; and have falsely recorded in status report dated 11.02.2020 filed by the DCP that no one from the family of the deceased raised any doubt against anybody, although specific allegations were made by the petitioner and the family against Prasoon Dixit and his associates from the very beginning;
- (iii) The police claim that the petitioner said that ‘blood was oozing repeatedly from the deceased’s head when she first saw him in the car’, which statement the petitioner has never made;
- (iv) The police have back-dated seizure memos in respect of the petitioner’s mobile phone and the DVR taken

from the petitioner's residence on the second floor of house No. C-165, Surajmal Vihar, New Delhi.

6. In view of the foregoing allegations, it is Mr. Mehta's contention, that the police have investigated the matter only to support the narrative of suicide while ignoring glaring evidence that clearly suggests homicide. Accordingly, it is the submission that the petitioner has lost all faith in the investigating agency, which is not conducting a fair, honest or complete investigation ; and therefore it is urged that the investigation be transferred to the Crime Branch of the Delhi Police or to any other appropriate agency.

7. In support of his case, Mr. Mehta has relied upon the following judicial precedents:-

- a) ***Mithilesh Kumar vs. State of Rajasthan***¹ : to argue that the sensibility of the victims of the crime or their next of kin is not wholly irrelevant in situations where there is reasonable apprehension that justice might become victim of a shabby investigation;
- b) ***Kashmeri Devi vs. Delhi Administration and Anr.***² : to point-out that in this case the court had transferred the investigation to an independent authority when it was *prima facie* clear that the police had acted in a partisan manner to shield the real culprits;

¹ (2015) 9 SCC 795 (paras 12, 16 & 22)

² (1988) Supp SCC 482 (para 6)

- c) ***Babubhai vs. State of Gujarat***³ : to say that not only fair trial but fair investigation is also part of rights guaranteed under the Constitution;
- d) ***Sheela Ramesh vs. Union of India***⁴, later affirmed by Supreme Court in (1998) 9 SCC 346 : to urge that there is no absolute bar on the powers of the court to interfere in pending investigation;
- e) ***State of West Bengal vs. Sampat Lal***⁵ : to point-out that in this case the court held that the investigating agency must disabuse its mind of the tentative conclusion that death was suicide;
- f) ***Court on its own Motion vs. State (Delhi Administration) & Ors***⁶. : to point-out that when the local police did not register the case immediately on receipt of the complaint, the court held that the local police did not carry out investigation in a fair manner and with due haste;
- g) ***Patel Lilabhai Ambalal vs. Patel Kanubhai Mafatlal & Ors.***⁷ : to argue that, where the circumstances pointed-out by the complainant were sufficient to justify investigation into the suspicion of murder (in that case), registration of an FIR under section 302 IPC was necessary; and

³ (2010) 12 SCC 254 (para 43 & 45)

⁴ (1996) SCC OnLine Bom 418 (paras 24, 25 & 31)

⁵ (1985) 1 SCC 317 (paras 28, 30, 31)

⁶ (1993) 50 DLT 344 (para 11)

⁷ 1988 SCC OnLine Guj 14 (paras 15, 17 & 18)

- h) ***Lala Ram @ Jitendra vs. State of Rajasthan***⁸ : to say that a suicidal firearm wound is usually a contact wound situated on the side of the temple; and that the firearm is usually fired at close range; and that the skin around the entry wound shows blackening, scorching and tattooing;
- i) ***Ujjagar Singh vs. State of Punjab***⁹ to submit that the direction of a suicidal wounds is upwards and not downward, as in the present case; and
- j) ***Lalita Kumari vs. Govt. of Uttar Pradesh & Ors.***¹⁰ to say that the general rule which must be strictly followed is that the registration of an FIR is mandatory under section 154 CrPC if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such situation.

8. Apart from the above, counsel for the petitioner has also cited the ***International Journal of Legal Medicine*** and ***Modi's Textbook on Medical Jurisprudence and Toxicology*** to support his submission that as per these celebrated texts, the bullet wound in the present case was clearly homicidal and not suicidal.

⁸ 2007 SCC OnLine Raj 727 (paras 18, 19)

⁹ (2017) 13 SCC 90 (para 21)

¹⁰ (2014) 2 SCC 1; (paras 120.1, 120.5 & 120.6)

Respondent's Submissions :

9. Opposing the pleas taken in the petition, Ms. Kamna Vohra, learned Additional Standing Counsel (Criminal) for the State has contended as follows:

- A. That the petitioner has already filed an application under section 156(3) of the Code of Criminal Procedure 1973 (Cr.P.C.) in the court of Chief Metropolitan Magistrate (CMM), Karkardooma Courts, Delhi, seeking reliefs which are substantially the same as those sought in the present petition, which application is pending consideration. Accordingly, the present petition is not maintainable;
- B. That as seen from status reports dated 20.01.2020, 11.02.2020, 13.03.2020 and 13.06.2020, the police are conducting investigation in a fair and professional manner, with an open mind with no pre-conceived notion or narrative of suicide. This is clear *inter alia* from the following:
 - (i) Upon receiving information from Max Hospital, Patparganj, Delhi S.I. Vivek Lamba was immediately entrusted with the matter and proceeded to the hospital where he collected the MLC of the deceased, whereafter the body was shifted for post-mortem;

- (ii) The car as well as the firearm was also seized and got inspected by FSL experts on the same day and exhibits were lifted therefrom;
- (iii) The FSL team took hand-swab of the deceased as also of Prasoon Dixit;
- (iv) Statements of the petitioner and Prasoon Dixit were recorded immediately after the incident. In his statement Prasoon Dixit disclosed that the deceased had shot himself in the car; while the petitioner neither made any complaint before the doctors who conducted the MLC nor before the I.O. during initial questioning as to any suspicion of homicide. For this reason, initially a case was registered only under sections 25/27/54/59 of Arms Act;
- (v) Subsequently, at least 19 premises were identified for collection of CCTV footage and accordingly notices under section 91 Cr.P.C. were issued to their owners. In status report dated 11.02.2020, the State has listed the premises from which CCTV footage were requisitioned. From these, the CCTV footage taken from the camera installed at a nearby house bearing No. C-151 Surajmal Vihar was found very relevant;

- (vi) Efforts are on to get photographs from the CCTV footage/recordings through experts of FSL, Rohini, Delhi;
- (vii) The MLC endorses that soot was present on the entry wound, which indicates that fire was opened from very close range;
- (viii) The mobile phone of the deceased, of Prasoon Dixit as well as of the petitioner, have been seized and have been sent for examination by FSL, Rohini to get details of the messages, which would be analysed once received;
- (ix) The Gun Shot Residue (GSR) report has also been received from FSL, as per which the element Lead (Pb) has been detected on the swab taken from Prasoon Dixit's right hand, lower side; and the elements Lead (Pb) and Antimony (Sb) have been detected on the swab taken from the right hand, lower side and from the right upper side of the deceased; and subsequent opinion in this regard has been sought from the ballistics expert at FSL, Rohini to obtain details;

- (x) Permission has been obtained from the concerned court to put Prasoon Dixit through a lie-detector test and the requisite letter has been sent to FSL, Rohini to conduct the test on a priority basis;
- (xi) The accountant of the deceased's shop has stated during interrogation that the deceased was under huge debt of about Rs. 6.72 crores; and to get details, notices have been sent to the concerned banks and financial institutions; and most loan amounts have been verified, while some are in the process of being verified;
- (xii) A request seeking details of the .32-bore revolver used in the case was sent to the licensing unit of the Delhi Police, from where it was learned that no licence was issued in respect of this revolver. Information on this has now been sought from the Muradnagar Ordinance Factory, U.P., which response is awaited.

10. It is accordingly submitted by Ms. Vohra that the investigating agency is conducting a thorough investigation in the matter; that all requisite steps have been taken and will continue to be taken; and accordingly there is no substance in the allegation that the investigating

agency has been negligent in any manner or that the investigation deserves to be transferred to some other agency.

11. Furthermore, Ms. Vohra has drawn attention of the court to a copy of application dated 18.01.2020 filed by the petitioner under section 156(3) Cr.P.C. before the CMM's court, the prayers in which read as under:

“a. Direct the SHO PS Vivek Vihar to add sections 302 IPC r/w 120B IPC in FIR No. 458 of 2019;

b. Direct the SHO PS Vivek Vihar to collect, seize, maintain securely and send for necessary forensic examination CDRs and mobile phones of Sh. Prasoon Dixit, Sh. Vikesh Rajput, Ms. Neha Verma, Sh. Yash Gupta, Sh. Nitin Chaudhary, Sh. Kamal Pandit and Ms. Anshu;

c. Direct the SHO PS Vivek Vihar to collect, seize, maintain securely and send for necessary forensic examination CCTV recordings qua cameras installed at premises mentioned in para 7 of the 'Grounds' of this application, in compliance with SO No. 448 of 2018 and Hon'ble Delhi High Court's judgment in Pooja Khetan Vs. GNCTD WP (Crl.) No. 1006 of 2015;

d. Direct the SHO PS Vivek Vihar to supply to the Applicant a copy of the inquest papers;

e. Monitor the investigation in FIR No. 458 of 2019, lodged at P.S. Vivek Vihar..”

12. It is pointed-out that the application under section 156(3) Cr.P.C. is a very detailed one, which recites substantially all the averments and allegations contained in the present petition, with reference also being made to judicial precedents in support of the applicant's stand. As recorded above, the said application under section 156(3) is still pending consideration before the CMM's court. Ms. Vohra accordingly contends that in view of the pendency of the section 156(3) application, with substantially the same prayers, the present petition is not maintainable.

13. In response to the State's submission that the present petition is not maintainable in view of the petitioner's application under section 156(3) Cr.P.C., counsel for the petitioner states that the prayer for transfer of investigation to another agency could not have been made, and has not been made, in that application, since the Magistrate is not competent to transfer investigation to any other agency. It is therefore argued that the main prayer in the present petition is different. It is the counsel's contention that since the scope of the present petition is different from that of the application under section 156(3) Cr.P.C., the pendency of the said application is no bar to the present petition. Counsel also states that the petitioner is willing to withdraw the section 156(3) application, since till date no effective order has been passed in that application.

14. Counsel for the petitioner has further urged that more than 180 days have passed since the date of the incident and yet investigation is

not complete, which in itself shows the casual manner in which the so-called investigation is being carried-on.

Discussion & Conclusions :

15. Considering the sensitive and serious nature of the allegations in the present petition, namely the grievance of a wife that her husband has been murdered by some business associates and that the murder is being passed-off as suicide, with the police trying to support a pre-conceived narrative while ignoring available evidence to the contrary, this court has given its thoughtful consideration to the present matter. This court is also acutely conscious of the fact that the petitioner finds herself in a very unfortunate situation, which is severely distressing to say the least. The petitioner is therefore clearly in a heightened emotive state when she looks at any aspect of this case.

16. Be that as it may, the following aspects appear from the record when viewed in the cold light of day :

- a. Contrary to what the petitioner alleges, the investigating agency has collected the evidence that is ordinarily garnered in a case such as this;
- b. The allegation that the investigating agency has not collected CCTV footage nor examined the weapon of offence nor the body nor the residue from the hands of the suspect, are belied by what is recorded in the various status reports filed in the matter;

- c. MLC and post-mortem were conducted; the vehicle and the firearm have been examined; and samples were sent to the FSL for opinion ;
- d. Although more than 180 days have passed, investigation is not yet complete, which though regrettable at one level, also shows that the investigating agency has not been in any haste to 'close' the matter;
- e. Some FSL reports and expert opinions are awaited. The investigative process is thus still going-on;
- f. Significantly, the petitioner has herself moved an application under section 156(3) Cr.P.C. asking for the investigation to be conducted and monitored by the CMM, alongwith other reliefs. While this could have been a short ground for refusing to entertain the present writ petition, this court considered it appropriate to delve somewhat deeper into the matter only to satisfy its judicial conscience that investigation is being done with requisite seriousness and not in a cavalier fashion.

17. However, a very important aspect of the matter which has been raised by the petitioner is the fact that, as evidenced from the record, the complainant in the matter is the same as the Investigating Officer, namely S.I. Vikas Lamba. This aspect has been considered by the

Supreme Court in some judgments, a reference to which is extremely relevant at this point.

18. In *Mohan Lal vs. State of Punjab*¹¹ the Supreme Court has stressed on the legal significance of fairness of the investigation ; and in that context has said this about investigation being carried-out by a person who is also the complainant in a criminal case :

“17. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.”

“18. The discussion in the present case may not be understood as confined to the requirements of a fair investigation under the NDPS Act only carrying a reverse burden of proof. Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] related to a prosecution under Section 165-A IPC. Nonetheless, it observed that if the informant were to be made the investigating officer, it was bound to reflect on the credibility of the prosecution case. Megha Singh [Megha Singh v. State of Haryana, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] concerned a prosecution under the Terrorist and Disruptive Activities (Prevention) Act, 1985. It was held that the

¹¹ (2018) 17 SCC 627

Head Constable being the complainant himself could not have proceeded with the investigation and it was a practice, to say the least, which should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation. Rajangam [State of T.N. v. Rajangam, (2010) 15 SCC 369 : (2012) 4 SCC (Cri) 714] was a prosecution under the NDPS Act, an objection was taken that PW 6 who apprehended the accused could not have investigated the case. Upholding the objection, relying on Megha Singh [Megha Singh v. State of Haryana, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] the accused was acquitted.

* * * * *

“30. In view of the conflicting opinions expressed by different two-Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

(emphasis supplied)

19. It appears that certain unintended consequences may have resulted by application of the law laid down in *Mohan Lal* (supra), in that many accused may have sought acquittal solely on the basis that the complainant and the investigating officer were the same, without the investigating agencies having known this precept of law. This led the

Supreme Court to review the position in *Mohan Lal* (supra) in a limited way in *Varinder Kumar Vs. State of Himachal Pradesh*¹² where the Supreme Court has opined as under:

“12. Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society —be it the law-abiding citizen or the potential offender. ‘Human rights’ are not only of the accused but, extent apart, also of the victim, the symbolic member of the society as the potential victim and the society as a whole.

* * * * *

“14. The principle of fair trial now informs and energises many areas of the law. It is a constant, ongoing, evolutionary process continually adapting itself to changing circumstances, and endeavouring to meet the exigencies of the situation - peculiar at times - and related to the nature of crime, persons involved, directly or operating from behind, and so many other powerful factors which may come in the way of administration of criminal justice, wherefore the endeavour of the higher courts, while interpreting the law, is to strike the right balance.

“15. Societal interest therefore mandates that the law laid down in Mohan Lal (supra) cannot be allowed to become a spring board by an accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous. Criminal jurisprudence mandates balancing the rights of the accused and the prosecution. If the facts in Mohan Lal (supra) were telling with regard to the prosecution, the facts in the present case are equally telling with regard to the accused. There is a history of previous convictions of the appellant also. We cannot be oblivious of the fact that while the law stood nebulous, charge

¹² (2020) 3 SCC 321

sheets have been submitted, trials in progress or concluded, and appeals pending all of which will necessarily be impacted.

* * * * *

*“18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in Mohan Lal (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals **prior to** the law laid down in **Mohan Lal (supra)** shall continue to be governed by the individual facts of the case.”*

(emphasis supplied)

20. Now, the *Mohan Lal* decision is dated 16.08.2018 whereas the FIR in the present is dated 26.12.2019. The present case would therefore be governed strictly by the law laid down in *Mohan Lal* (supra) regardless of the facts of this case; that is to say, the complainant and investigating officer in the present case cannot be the same, since that would be a fatal error in the investigation.

21. While considering the matter, it transpired that the foregoing aspect of the case had not been sufficiently addressed by the parties. Accordingly, the matter was placed for clarification whereupon the State has placed on record a General Diary entry bearing No. 8A dated 26.12.2019 as also an order dated 17.02.2020 issued by the DCP, Shahdara District, which have bearing on this issue.

22. Ms. Vohra has submitted that, as is seen from GD entry No. 8A, information of the deceased having been carried to hospital with a gun-shot wound, was received from one Dr. Rinki Ahuja at Max Hospital, Patparganj by Assistant Sub-Inspector Shashi Bala on telephone. This information was recorded by way of the GD entry, whereupon Sub-Inspector Vivek Lamba was deputed along with Constable Yogesh to proceed to the hospital and take necessary steps.

23. Ms. Vohra points-out that by order dated 17.02.2020 issued by the DCP East, Shahdara District, investigation of the matter was transferred from S.I. Vivek Lamba to Inspector Dharmender of PS : Vivek Vihar for further investigation 'with immediate effect' ; with a further direction that the progress of the investigation be informed to the DCP regularly.

24. It is Ms. Vohra's submission therefore, that the objection as to the complainant and the I.O. being the same has no factual basis, inasmuch as the first informant in the matter was Dr. Rinki Ahuja of Max Hospital, whereupon a GD entry was recorded by ASI Shashi Bala; and only thereafter was S.I. Vivek Lamba deputed to visit the hospital along with Constable Yogesh. It is therefore not correct to say, the State contends, that the I.O. in the matter is the same as the complainant. Moreover, Ms. Vohra points-out that in any case, by order dated 17.02.2020 issued by the DCP, Shahdara District, as from that date, the investigation of the matter has not been in the hands of S.I. Vivek Lamba

but in the hands of Inspector Dharmender. In this view of the matter, Ms. Vohra contends that the present investigation does not fall foul of the law as laid down by the Supreme Court in *Mohan Lal* (supra) and the allegation to the contrary made by the petitioner is baseless.

25. Mr. Tanmaya Mehta responds to the aforesaid, relying upon an additional note dated 03.07.2020 filed in the matter, to stress that in this case the FIR was recorded by S.I. Vivek Lamba, who also continued to be the I.O. from the date of registration of the FIR *i.e.* 26.12.2019 till 17.02.2020; and in those crucial 1 ½ months, the entire investigation was vitiated on the touchstone of the law laid-down by the Supreme Court in *Mohan Lal* (supra) and *Varinder Kumar* (supra), as also followed by a Co-ordinate Bench of this court in *Gurtej Singh Batth vs. State*¹³. Counsel submits that once investigation was tainted during the critical initial period, such taint could not have been cured by a subsequent transfer of the investigation to some other police officer. He further draws attention to the following paragraph of *Babubhai* (supra) where the Supreme Court has observed as follows :

“45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner.

¹³ 2018 (254) DLT 551

Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.”

thereby urging this court to entrust the investigation to an independent agency in the interests of justice, with a direction to make a fresh investigation.

26. Mr. Mehta has also laboured hard on the point that despite the petitioner having made a complaint dated 30.12.2019 in writing, stating as follows :

“Sir, the FIR no. 0458/2019 PS Vivek Vihar dt. 26.10.2019 with regard to the said incident came to my knowledge yesterday and I am shocked to find out that the FIR has only been registered u/s 25/27/54/59 of Arms Act, 1959 and no FIR has been registered against any persons for killing my husband. To the best of my knowledge no arrest in this regard has been made by the police.

I have two sons aged about 9 and 6 years and no surviving earning member in the family. My father in law is bed ridden since long. I request you to immediately register an FIR against the said persons and their unknown associates u/s 302/120B IPC r/w other relevant provision of law. The manner in which these persons have planned and killed my husband I feel threatened about the safety and well being of my children and my family therefore I, with folded hands, request you to immediately arrest these persons and provide protection and security to me and my family.”

(emphasis supplied)

and yet, the police did not register and investigate the case as disclosing commission of an offence under section 302 IPC. Mr. Mehta draws attention to the judgment in *Lalita Kumari* (supra) in which the

Supreme Court has mandated that where information is received of commission of a cognizable offence, an FIR must be registered and that there is no requirement of preliminary inquiry in such case. Mr. Mehta has referred to following paras of *Lalita Kumari* (supra):

“120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.”

* * * * *

“120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.”

* * * * *

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

27. Ms. Vohra responds by saying that the petitioner cannot dictate as to which offences are to be included in a first information report, which is in the discretion of the investigating agency, depending upon what

offence appears to be disclosed at the point in time when the FIR is registered. She contends however that investigation is still going-on ; that the report of the ballistic experts is awaited ; a polygraph test of suspect Prasoon Dixit is scheduled at the FSL Laboratory on 06.07.2020 and 08.07.2020 ; that at the time the police reached the hospital both the petitioner and Prasoon Dixit were available at the hospital but there was neither any information nor suspicion that an offence under section 302 IPC had been committed at that stage. Ms. Vohra however categorically states that *if* during the course of investigation, it appears that an offence under section 302 IPC has been committed, the State would not be averse to including the said offence in the charge-sheet to be filed.

28. Now, the importance of a fair investigation has been emphasised by the Supreme Court in ***Dinubhai Boghabhai Solanki v. State of Gujarat***¹⁴ in the following words :

“48. Undoubtedly, the essence of criminal justice system is to reach the truth. The underlying principle is that whilst the guilty must not escape punishment, no innocent person shall be punished unless the guilt of the suspect/accused is established in accordance with law. All suspects/accused are presumed to be innocent till their guilt is proved beyond reasonable doubt in a trial conducted according to the procedure prescribed under law. Fair, unbiased and transparent investigation is a sine quo non for protecting the accused. Being dissatisfied with the manner in which the investigation was being conducted, the father of the victim filed the petition seeking an impartial investigation.”

(emphasis supplied)

¹⁴ (2014) 4 SCC 626

29. The aspect of a fair investigation must also be appreciated in a wider context. It is one of the fundamental principles of our jurisprudence that justice must not only be done, but must be seen to be done. This follows from an observation made by Lord Hewart, CJ in the famous case of *The King vs. Sussex Justices, ex parte McCarthy*¹⁵ which arose from a collision between two motor vehicles and the allegation was that the motor vehicle was being driven by the defendant in a manner dangerous to the public. When, after conclusion of the evidence, the justices retired to consider their decision, their acting/deputy clerk, who was a member of the solicitors firm representing the defendant, retired with them. The justices convicted the applicant and imposed a fine of GBP 10/- and costs. However when the matter came up before the King's Bench, the justices stated on affidavit that they had come to the conclusion without consulting the acting/deputy clerk, who had abstained from referring to the case. However, the King's Bench held that it was improper for the deputy/acting clerk to have been present when the justices were considering their decision. Lord Hewart, CJ observed :

*“ But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that **justice should not only be done, but should manifestly and undoubtedly be seen to be done**. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or*

¹⁵ (1924) 1 KB 256

offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of Justice.”

(emphasis supplied)

30. Since a fair investigation is a *sine-qua-non* for a fair trial, this court would apply Lord Hewart’s precept, which has long been followed by our own courts since forever, even to investigation. This court would say that equally, *investigation should not only be fair, but should manifestly be seen to be fair*.

31. But in this case, it must be said that this court has no basis to doubt that the Investigating Officer is, on point of fact, acting in a fair and objective manner. As noticed above, the test is not just about the investigation being fair, but of the investigation manifestly being seen to be fair. In the opinion of this court, the investigation in the present case passes muster on that test.

32. On transfer of investigation from one agency to another, the Supreme Court has also held that the power to direct transfer of investigation to say, the CBI, must be exercised sparingly. In *State of W.B. v. Committee for Protection of Democratic Rights*¹⁶ the Supreme Court observes thus :

¹⁶ (2010) 3 SCC 571

*“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that **such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police.** This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”*

(emphasis supplied)

33. In a very recent decision rendered by the Supreme Court in ***Arnab Ranjan Goswami vs. Union of India & Ors.***¹⁷, the Supreme Court has again reiterated, summarised and elucidated the position on transfer of investigation in the following paragraphs:

*“36. The transfer of an investigation to the CBI is not a matter of routine. The precedents of this Court emphasise that this is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances”. Speaking for a Constitution Bench in *State of West Bengal v. Committee for Protection of**

¹⁷ 2020 SCC OnLine SC 462

*Democratic Rights, West Bengal*²⁷ (“CPDR, West Bengal”), Justice DK Jain observed:

“70

* * * * *

*This principle has been reiterated in K V Rajendran v. Superintendent of Police, CBCID South Zone, Chennai*²⁸. Dr Justice B S Chauhan, speaking for a three judge Bench of this Court held:

“13...This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instill confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.”

Elaborating on this principle, this Court observed:

“17...the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is prima facie found to be tainted/biased.”

The Court reiterated that an investigation may be transferred to the CBI only in “rare and exceptional cases”. One factor that courts may consider is that such transfer is “imperative” to retain “public confidence in the impartial working of the State agencies.” This observation must be read with the observations by the Constitution Bench in CPDR, West Bengal that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.”

* * * * *

“42. The petitioner has then sought to rely upon the allegations which he has leveled against the CP, Mumbai. The petitioner was interrogated on 27 April 2020. The allegations which he leveled against the CP, Mumbai were in the course of a television programme on 28 April 2020 (“Poochta hai Bharat”) relayed on R Bharat at 1900 hrs. As we have noted earlier, this Court has, in CPDR, West Bengal held that no transfer of investigation can be ordered “merely because a party has levelled some allegations against the local police.” Accordingly, we do not find that leveling such allegations would by and itself constitute a sufficient ground for the transfer of the investigation.”

** * * * **

*“44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an **accused person** about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances” comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.”*

(emphasis supplied)

34. It is to be noticed that in the present case it is not an accused person but the wife of the deceased who is asking for transfer of

investigation. Be that as it may, the principles laid down by the Supreme Court as to the rare and exceptional use of the power of the High Court under Article 226 to transfer investigation, would apply *a fortiori* to the present case.

35. It is also settled law that a litigant must exhaust alternate remedies before invoking the constitutional powers of the High Court under Article 226 by filing a writ petition. In ***Sakiri Vasu v. State of U.P.***¹⁸, :

“17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.”

“18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

* * * * *

¹⁸ (2008) 2 SCC 409

“25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).”

“26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

* * * * *

“28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”

(emphasis supplied)

36. Sakiri Vasu (supra) was followed in ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage***¹⁹:

¹⁹ (2016) 6 SCC 277

“2. This Court has held in Sakiri Vasu v. State of U.P. [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] , that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.”

“3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

“4. In view of the settled position in Sakiri Vasu case [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] , the impugned judgment [Hemant Yashwant Dhage v. S.T. Mohite, 2009 SCC OnLine Bom 2251] of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the

investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”
(emphasis supplied)

37. It would also be in context to say here, that not only is the investigation in the present case on-going at this time, even if the investigation were closed, and the police were, in their discretion, to omit to include any other offence in the final report or charge-sheet to be filed under section 173 Cr.P.C., it would yet be available to the court subsequently to add-to or amend the offences or charge, based upon the evidence and material on-record and on the basis of depositions made before it. Reference in this regard may be made to section 216 of the Cr.P.C. which recites as follows:

“216. Court may alter charge.—(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

38. The scope of section 216 Cr.P.C. has been explained by the Supreme Court not long ago in **Anant Prakash Sinha @ Anant Sinha vs. State of Haryana & Anr.**²⁰ where the Supreme Court says this:

“8. The controversy as raised rests on two aspects. The first aspect that has emanated for consideration is whether without evidence being adduced another charge could be added. In this context, we may usefully refer to Section 216 CrPC which reads as follows:

** * * * **

“13. Proceeding further, it has been ruled thus: (Karimullah Osan Khan case [CBI v. Karimullah Osan Khan, (2014) 11 SCC 538 : (2014) 3 SCC (Cri) 437] , SCC p. 546, paras 17-18)

“17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions “at any time” and before the “judgment is pronounced” would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused”.

²⁰ (2016) 6 SCC 105

“18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. (See Harihar Chakravarty v. State of W.B. [Harihar Chakravarty v. State of W.B., AIR 1954 SC 266 : 1954 Cri LJ 724]) Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in Section 216 CrPC and other related provisions.”

* * * * *

“18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.”

(emphasis supplied)

39. Since investigation in the present case is still ongoing and some crucial evidence is yet to be collected or analysed i.e. including the ballistics report and the polygraph report in respect of Mr. Prasoon Dixit;

and the final report under section 173 Cr.P.C. has not been drawn-up, it is also pre-mature to comment on what offences the I.O. may decide to include in the charge-sheet. Suffice it to say that this court is unable to discern any major aspect of evidence that the investigating agency has omitted to collect or address adequately, for the court to conclude that investigation has not been conducted in a fair and proper manner. As observed above, if on the basis of the evidence laid before the trial court or on the basis of evidence subsequently led and depositions made, the trial court is of the opinion that some other offence is also disclosed, it would be well within its powers to alter or amend or add-to the charges against the accused persons, of course in accordance with the law and procedural requirements therefor.

40. Upon a conspectus of the facts and circumstances of the present case and the law on the point, this court is of the opinion that :

- a. *firstly*, while it is true that the person who penned the FIR was also the *initial* Investigating Officer in the matter, however, as discussed above, the initial Investigating Officer does not appear to have missed any particular or significant aspect in the course of conducting investigation and appears to have followed the normal and usual protocol in that behalf;
- b. *secondly*, as from 17.02.2020, the investigation was shifted to the hands of a different Investigating Officer, who then carried

it forward; and that therefore, as of date, the Investigating Officer of the matter is not the same as the complainant;

- c. *thirdly*, the present Investigating Officer has evidence available before him to take the investigation forward in whatever manner he deems appropriate and there does not appear to be any reason to suspect that any evidence has been lost by reason of the initial investigation conducted by S.I. Vivek Lamba;
- d. *fourthly*, the investigation is not yet closed, charge-sheet has not been drawn-up nor sent for scrutiny to the prosecution branch ; and therefore, the Investigating Officer has the opportunity to steer the investigation as he thinks fit, to collect further evidence if he suspects the commission of any other offence; and he is not constrained by the offences mentioned so far in the FIR;
- e. *fifthly*, there is no reason to believe that the Investigating Officer would act in a tendentious manner to support the hypothesis of suicide, whether overtly or subliminally ; and therefore there is no substantial basis to believe that the investigation is vitiated on that count;
- f. *sixthly*, the petitioner has already availed the alternate remedy available to her by filing a section 156(3) Cr.P.C. application, which is still pending before the CMM's court; and the prayers in the present petition are substantially overlapping with the

prayers made in the pending section 156(3) Cr.P.C. application and are therefore already under consideration of a competent court;

- g. *lastly*, the prayer for transfer of investigation is premised on the allegation that there is something seriously amiss in the investigation being carried-on by the local police, which allegation this court thinks is misconceived.

41. As a sequitur to the above, this court is unable to persuade itself to accept the petitioner's prayer that the case deserves to be transferred either to Crime Branch or to the District Investigation Unit (DIU) or be referred to a Special Investigation Team to be constituted for the matter.

42. Accordingly, while the prayer for transfer of investigation is rejected, insofar as the other prayers in the petition are concerned, those are left to be decided in the pending application under section 156(3) Cr.P.C.

43. In this view of the matter, this court finds no reason to entertain the present petition any further. However, to allay any apprehensions on the petitioner's part, it is directed that at the administrative level, the investigation in the matter be supervised by the DCP (Crime) of the Delhi Police, instead of the DCP of the concerned police district, who may guide the investigation to its logical conclusion.

44. The petition is disposed of with the above observations. Nothing in this judgment be taken as a reflection on the merits of the evidence collected or the investigation conducted or the case otherwise.

45. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

JULY 14, 2020

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