

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Saugata Bhattacharyya

AST 37 of 2019

With

I.A. No. CAN 1 of 2019 (Old No. CAN 9442 of 2019)

The State of West Bengal & Ors.

Vs.

Fulkumari Paswan & Ors.

With

AST 38 of 2019

With

I.A. No. CAN 1 of 2019 (Old No. CAN 9441 of 2019)

CAN 2 of 2019 (Old No. CAN 10591 of 2019)

CAN 3 of 2019 (Old No. CAN 10592 of 2019)

CAN 4 of 2019 (Old No. 10593 of 2019)

CAN 5 of 2019 (Old No. CAN 10845 of 2019)

For the Appellant

: Mr. Kishore Dutta, Ld. Adv. General,
Mr. Sirsanya Bandopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.,

For the Respondent no.1 in
AST 37 of 2019 and respondent
no. 2 in AST 38 of 2019

Mr. Bikash Ranjan Bhattacharya. Sr.Adv
Mr. Arunava Ghosh, Sr. Adv.,
Mr. Anant Kumar Shaw, Adv.,
Mr. M. Ganguly, Adv.,

For the Respondent no.2 in
AST 37 of 2019 and respondent
No. 1 in AST 38 of 2019

: Mr. M. Malhotra, Adv.,
Mr. Ravi Kumar Dubey, Adv.,

Hearing concluded on

: 29th July, 2021

Judgment Dated

: 13th August, 2021

Soumen Sen, J.: In view of inextricably connected issues involved in both the appeals by consent of the parties they were heard together and disposed of by this common judgement.

Both the appeals are arising out of a common judgement passed by the Learned Single Judge in relation to two writ petitions challenging the sealing of the restaurant and investigation initiated by the police station concerned on the basis of complaint alleged to have been forcefully extracted from Saluja. The Learned Single Judge on being satisfied that the investigation was not fair and impartial directed the Criminal Investigation Department (in short 'CID') to take over the investigation and allowed opening of the sealed premises.

This order is under challenge.

Ms. Saluja Motey is the focal point in this litigation. She is supported in her cause by Fulkumari Pasman her present employer.

In order to appreciate the order impugned and the respective submissions advanced by the learned counsel for the parties it is necessary to briefly narrate the facts.

Firstly, we discuss the facts of W.P.A.300 of 2019 filed by Fulkumari.

Fulkumari is the owner and runs a Restaurant cum Bar under the name and style of Golden Valley Restaurant situated at the heart of the city in Jalpaiguri. The restaurant had the requisite licence under the West Bengal (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003. The said licence was initially renewed on 1st February, 2019 by the Excise Authority and was again granted on 2nd August 2019 with a validity period until 31st March, 2020. It is alleged that under the license granted to the Restaurant the petitioner

had permission for professional entertainment and playing of music (vocal or instrumental) on the licensed premises. On July 16th, 2019 between 9:45 pm and 10:15 pm, while the restaurant was open and doing business, a group of 100 policemen barged into the restaurant and arrested 13 performers including Ms. Saluja Motey, as well as the staff of the restaurant and the customers present; about 72 persons in total. The persons who were taken to the police station, particularly the customers, were subsequently released on bail. The license was re-issued to the restaurant on 2nd August, 2019, almost 15 days after the incident of 16th July, 2019. The entry of police personnel and sealing of the premises has been questioned by the writ petitioner. The writ petitioner contended that the Excise Authorities did not ever raised any objection regarding conduct of the business of the writ petitioner and accordingly the police authorities did not have the power to enter the “Excise” premises and seal the said premises. It is alleged that at the instance of a rival business man Goutam Das, who owns and runs a Bar cum Restaurant “Hotel De La Pritam” named after his son, barely 500 meters away from Golden Restaurant, Mr. Biswas Roy Sarkar, Inspector-in-Charge, Kotwali Police Station, Jalpaiguri and Ms. Upasana Gurung, Officer-in-Charge, Women Police Station, Jalpaiguri, raided Golden Restaurant and illegally sealed the premises. Shri Das is the Government Pleader at Jalpaiguri and he misused his official position and political clout to influence the local administration and police to commit such sinister act. It is further alleged that the said police officers have coerced and forcefully compelled the female performers to lodge false complaints in which the husband of the writ petitioner was implicated. However, subsequently the

female performer, made a representation, stating that such complaint was extracted forcefully. Fulkumari complained of atrocities and illegalities committed by the said police officers having been actuated by extraneous reasons and trade rivalry.

The relevant provisions of the Bengal Excise Act, 1909 authorises only the District Magistrate or the authorities mentioned under the Act having the power to take any action in respect of cancellation or revocation of license. Moreover, the power of search and seizure under Section 102 of the Code of Criminal Procedure, 1973, must be in compliance with the requirement under sub-section (3) of S. 102 which requires the police officer to “forthwith” report the seizure to the magistrate having jurisdiction. The police searched the premises of the restaurant three times, the last being 23rd July, 2019 and in view thereof, there was no necessity to continue with the sealing of the restaurant. It is not in the interest of the workers and the staff of the restaurant. The writ petitioner accordingly prayed for de-sealing of the restaurant premises.

Saluja also filed a separate writ petition being W.P.A. 299 of 2019.

The facts in nutshell in her writ petition are that she is a professional singer and has been performing at various places including several renowned Bar -cum -Restaurants for past several years. She started as a performer singer at Hotel De L’ Pritam in November 2015 and worked till February 2017. Subsequently she came to Kolkata and worked at different Bar -cum -Restaurants till February 2019 and thereafter returned to Jalpaiguri in March 2019 and joined Golden Valley Restaurant. On 18th

June, 2019 she joined Hotel De L' Pritam for better exposure but subsequently on 30th June, 2019 she returned to Golden Valley due to various reasons and to preserve her self-respect and dignity. It is alleged that as soon as she left Hotel De L' Pritam she was threatened with dire consequences by one Goutam Das, that is, the father of the owner of the restaurant. It is alleged that Goutam Das claimed himself as Government Pleader having close connection with the police and administration and he can ruin her life and career. Since Saluja did not pay any heed to such threat Goutam used his influence to convert the threat into reality and caused a raid on 16th July, 2019 at around 9.45-10 PM with approximately 50 police officials. During such raid around 100 persons including 13 female performers and several staff of Golden Valley were arrested. During her short tenure at Hotel De L' Pritam due to her performance as singer she became a major clientele of the said hotel.

She is a homemaker and mother of a four year old child.

Since April, 2019 she has been performing at Golden Valley Restaurant cum Bar along with the other members of her band on regular basis excepting for 12 days in June, 2019 upon compliance of all statutory norms and intimation to the Kotwali Police Station on monthly basis in terms of the Bengal Excise Act, 1908 and Rules framed thereunder.

It is alleged that as soon as she left Hotel De L' Pritam she was threatened with dire consequences by one Goutam Das the father of the owner of the restaurant. It is alleged that Goutam Das claimed himself as Government Pleader having close connection with the police and

administration and threatened to ruin her life and career. Since Saluja did not pay any heed to such threat Goutam used his influence to convert the threat into reality and forced a raid on 16th July, 2019 at around 9.45-10 PM of approximately 50 policemen. During such raid around 100 persons including 13 female performers and several staff of Golden Valley were arrested.

After such raid all the female performers were taken to the Women Police Station, Jalpaiguri at around 10:30-11.00 pm. At the very outset, 5 (five) female performers, including petitioner, were separated from the rest of the group and were taken to a separate room where the police officials present therein, at the instance of Ms. Upasana Gurung, Officer-in-charge, Women P.S. and Mr. Biswas Roy Sarkar, Inspector in Charge, Kotwali P.S. started coercing them to lodge a complaint against Mr. Dharam Pasman, the husband of the owner of the Golden Valley Restaurant cum Bar. The petitioner and other performers were coerced and threatened with dire consequences and were told that unless they lodge a complaint against Mr. Dharam Pasman and the other staff of the Bar-cum-Restaurant, contending that they had been forced to indulge in immoral trafficking by them, the police would not release them and they would be put behind the bars. The petitioner as well as other performers were also threatened that the entire exercise had been undertaken at the behest of the higher officials of Police and unless they succumb and do as they were asked to, the authorities will take steps prejudicial to the lives and livelihoods of their families.

Although none of the performers had the intention or reason to lodge such a false complaint, but after passing of substantial period of time and being consistently threatened and coerced by the police officials present therein, your petitioner was compelled to put her signature on a paper, where something was written in Bengali. Subsequently the petitioner has learnt that her other female colleagues were also forced to put their signature on blank paper under extreme threat and coercion of Ms. Upasana Gurung, Officer-in-Charge, Women P.S. and Mr. Biswas Roy Sarkar, Inspector in Charge, Kotwali P.S.

The petitioner was forced to sign on a piece of paper, wherein something was already written in Bengali, although the petitioner cannot read or write Bengali. Even the contents thereof were not read over and explained to her. Her signature was obtained by exercising force, under threat of arrest and coercion. The petitioner was threatened that unless she put her signature on the said document written in Bengali, she as well as her family members would be framed in false cases and she would also be arrested under the provisions of Immoral Traffic Act and further steps would be taken by the police officials to ruin her life and livelihood.

Ultimately, on 18th July, 2019, the petitioner was released from the purported safe custody of the police Authorities. Upon her release, the petitioner learnt that the entire exercise undertaken by the police authorities, commencing from 16th July, 2019 have been initiated on the basis of a purported complaint allegedly lodged by your petitioner on 16th July, 2019 wherein it has been inter alia alleged that she was forced by the

husband of the owner of the Bar-cum-Restaurant Mr. Dharam Paswan and other staff members of the Bar-cum-Restaurant to spend nights with unknown persons and to take part in flesh trade. The said written complaint was registered as Jalpaiguri Women P.S. FIR no. 81/19 dated 16th July, 2019 under Section 370/370A(2)/120B of the Indian Penal Code. The writ petitioner denied having lodged any such complaint at any point of time. Apparently, the document on which her signature was forcefully obtained has been used illegally to fabricate stories and to hatch conspiracy. The purported letter subsequently obtained alleged to have been written by her on 16th July, 2019, formed the basis of initiation of Women P.S. Case no. 81/19 dated 16th July, 2019 u/s. 370/370A(2)/120B IPC against Sri Shiltu Baine, Dharam Pasman, and others. The contents and allegations contained in such false complaint are utterly false.

The writ petitioner alleged that the police authorities have acted in connivance with the owners and associates of Hotel De L' Pritam, wherein the writ petitioner was earlier employed as a singer and her performance had attracted major clientele and large number of customers used to visit Hotel De L' Pritam, to listen to her singing. One Goutam Das, father of the owner of Hotel De L' Pritam who is the Government Pleader of Jalpaiguri as well as member of Bar Council of West Bengal, was furious when Saluja decided to leave the said hotel and threatened her with dire consequences including threat to life and livelihood of Saluja and her family.

Ms. Upasana Gurung, Officer in Charge, Women P.S. Jalpaiguri and Mr. Biswas Roy Sarkar, Inspector in Charge Kotwali P.S. Jalpaiguri, were

instrumental in coercing the petitioner to append her signature on a paper contents of which were written in Bengali, whereas she does not know and/or understand Bengali script and neither can read or write in Bengali and as such is not aware of the contents written therein. She was under extreme mental trauma and was also apprehensive to return to her residence. She was also being hounded by the police threatening to implicate her in some other false cases. The police motivatedly and to malign her had also disclosed her identity in various audiovisual media causing irretrievable damage to her reputations and stigmatized the reputation of her family.

Being aggrieved by such illegal and arbitrary acts of the police authorities, Saluja by her letter dated 20th July, 2019 made a representation/demand of justice to the Respondent nos. 2, 3 and 4 being the higher authorities/superior officers of the police authorities, inter alia, requesting them to enquire into the matter and register cases against the culprits for such illegal and criminal activities as also to ensure her protection as her life and liberty is in imminent danger. However, the said representation was never responded nor the grievance of Saluja was redressed. This inexplicable silence in effect indulged the police officials attached with the Kotwali Police Station and Women Police Station and particularly, Ms. Upasana Gurung, Officer in-Charge, Women P.S., Jalpaiguri and Mr. Biswas Roy Sarkar, Inspector in Charge, Kotwali P.S. Jalpaiguri, and their men and agents to continue with their illegal and unjustified acts and activities.

Subsequently, Saluja came to learn that on 22nd July, 2019 the police authorities took away the hard disc of the CCTV footage from the Golden Valley Restaurant-cum-Bar.

Saluja contended that it is a clear case of police atrocity and a common person is being subjected to unnecessary and inhuman torture caused by the police authorities due to some obvious illegal gain and/or interest. It is contended that in terms of provisions of Police Regulation of Bengal after receiving the complaint the respondent nos. 2, 3 and 4 ought to have forwarded the same to the Learned District Magistrate for taking appropriate proceedings.

She reiterated that she did not lodge any complaint against anyone, rather her signature was obtained by the police officials under threat and coercion on a paper wherein something was written in Bengali. She had no clue as to what was written in the said paper as she does not understand Bengali. Rather on the date of incident i.e. 16th July, 2019 the petitioner entered the Golden Valley Restaurant cum Bar at around 7.30 p.m. and did not left the premises till she was taken away by the police authorities.

The actions of the police authorities in obtaining her signature on a paper written in Bengali without intimating her the contents thereof and thereby using her name to frame some other persons is illegal and intolerable and such act is unbecoming of the police authorities.

A bare perusal of the copy of purported FIR lodged by the petitioner on 16th July, 2019 would show that it was lodged at 20.15 hours, whereas the

raid was conducted at the restaurant at around 22.15 hours, which means that in spite of having lodged a complaint with the police authorities the petitioner went to the restaurant to be subjected to the same alleged physical and mental harassment, which is absurd.

Mr. Arunava Ghosh, learned Senior Advocate ably assisted by Mr. Anant Kumar Ghosh, Advocate has submitted that the action of the police authorities are unpardonable and smacks illegality and vindictiveness. The learned Senior Counsel has referred to various provisions of CrPC and submitted that the procedure has been given a quiet burial. The CCTV footage has been sabotaged. The writ petitioners have been subjected to intimidation and coercions by the police authorities at the instance of Goutam Das and his son Pritam who wield enormous power in the locality. Mr. Ghosh submits that the order is innocuous as it had directed fair and free investigation by CID.

Per contra, the learned Advocate General submits that the power to investigate does not depend upon lodging of FIR as the police on the basis of information received that a cognizable offence has taken place and has reason to suspect the commission of offence can investigate under Chapter 12 following the procedure prescribed therein. The Hon'ble Single Judge reprimanded the investigating agency merely on the pretext that the CCTV footage of 16th July, 2019 of Kotwali Police Station was not available. Once the investigation process is set in motion, the provisions of the Code of Criminal Procedure are sufficient to take care of all the exigencies. No

sufficient cause was shown in the said Writ Petition for invoking the Writ jurisdiction of this Court.

The CrPC is an exhaustive Code providing a complete mechanism to investigate into and try cases. It has provisions at each stage to correct errors, failures of justice and abuse of process under the supervision and superintendence of the High Court. The Court can direct further investigation into the matter. The CrPC, thus, provides for a corrective mechanism at each stage vis. (i) investigation; (ii) trial; (iii) appeal and (iv) revision. The learned Advocate General has relied upon **Popular Muthiash vs. State** reported in **(2006) 7 SCC 296 (paragraph 21)** to argue that since the CrPC is an exhaustive code interference of this stage of investigation is not desirable and should be avoided. The said paragraph is reproduced below:

“21. *The Code of Criminal Procedure provides is an exhaustive Code providing a complete machinery to investigate and try cases, appeals against the judgments. It has provisions at each stage to correct errors, failures of justice and abuse of process under the supervision and superintendence of the High Court as would be evident from the following:*

(i) The Court has the power to direct investigation in cognizable cases under [Section 156\(3\)](#) read with [Section 190](#) of the Code of Criminal Procedure.

(ii) A Magistrate can postpone the issue of process and inquire into the case himself under [Section 202](#) (1) [of the Code](#) of Criminal Procedure.

(iii) When a charge sheet is filed, the court can refuse to accept the same and proceed to take cognizance of the offence on the basis of the materials on record. The Court can direct further investigation into the matter

(iv) The Magistrate may treat a protest petition as a complaint and proceed to deal therewith in terms of Chapter XV of the Code of Criminal Procedure.

(v) Once the case is committed, the Sessions Judge may refer the matter to the High Court.

(vi) In the event, without taking any further evidence, it is found that while passing the order of commitment, the Magistrate has committed an error in not referring the case of an accused or left out an accused after evidences are adduced, the court may proceed against a person who was not an accused provided it appears from the evidences that he should be tried with the accused.

(vii) The revisional court during pendency of the trial may exercise its revisional jurisdiction under [Section 397](#) in which case, it may direct further inquiry in terms of [Section 398](#) of the Code of Criminal Procedure.

(viii) The revisional powers of the High Court and the Sessions Court are pointed out in [the Code](#) separately; from a perusal whereof it would appear that the High Court exercises larger power.

(ix) In the event of any conviction by a court of Sessions, an appeal there against would lie to the High Court. The appellate court exercises the power laid down under [Section 386](#) of the Code of Criminal Procedure in which event it may also take further direct evidences in terms of [Section 391](#) thereof.

(x) The High Court has inherent power under [Section 482](#) of the Code of Criminal Procedure to correct errors of the courts below and pass such orders as may be necessary to do justice to the parties and/ or to prevent the abuse of process of court.” (emphasis supplied)

Moreover, the impugned judgment and order proceeds on the basis that the police are using their connection with powerful/influential people for taking action against the writ petitioner herein as well as the husband of the petitioner in W.P.A. No. 300 of 2019. In light of the fact that the “powerful people” were not made party to the present proceeding, the allegations made against non-parties to the litigation should not have been taken note of by the Hon’ble Single Judge. In this regard reliance was placed upon **S.S.& Co. vs Orissa Mining Corpn. Ltd.; (2008) 5 SCC 772** (paragraphs 30 to 33).

It is submitted that the interference of the Court or external agency should be avoided as no external agency can dictate the course of investigation in a criminal case. It is within the exclusive jurisdiction of the police. The court shall also not supervise investigation unless there are exceptional situation to monitor an investigation. It is submitted that the investigation of offences is one of the important duties police has to perform with a view to unearth the truth and to bring the offender to book. It is well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases and in the contingencies where the Court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility and in this regard reliance is placed on ***Bimal Gurung v. Union of India; (2018) 15 SCC 480 (Paragraph 29)***, which reads as follows:

“29. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In K.V. Rajendran vs. Superintendent of Police, CBCID South Zone, Of Police, (2013) 12 SCC 480, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation prima facie is found to be tainted/biased.”

The learned Advocate General has relied upon a recent decision of the Hon’ble Division Bench of this Court in ***Director General of Police v Gopal***

Kumar Agarwal; 2020 SCCOnline Cal 755 (MAT 318 of 2019 and MAT 353 of 2019) paragraph 70 for the said principle which reads:

“70. The essence of the case of the writ petitioner is that the State Police authorities are biased in favour of the accused person and there is malice on their part against the writ petitioner/de-facto complainant. No particulars or plausible reason for the State Police to be biased in favour of the accused person has been indicated in the writ petition. A bald assertion of bias is not sufficient. It is a serious allegation and must be supported by tangible evidence. The mere allegation that defective investigation is indicative of such bias begs the question. Defective investigation, may be due to error of judgment and infirmities or loopholes in the process of investigation, per se would not unfailingly indicate any unholy entente between the investigating agency and the accused person. As many as five Investigating Officers were involved in the present case. It is highly unlikely that all five were biased against the writ petitioner and in favour of the accused person. The writ petitioner has not attributed bias to any particular Investigating Officer by identifying him. An omnibus statement that the entire State Police administration is biased in favour of the accused person and against the writ petitioner is too far a cry and not acceptable.”

In order to cover the widespread investigation that was needed in the instant matter an investigative Team was constituted by a proposal dated 17th August, 2019 consisting of PSI-s from Kotwali PS, Rajganj PS, Women PS, Jalpaiguri, OC Women PS, Jalpaiguri and LSI of Women PS, Jalpaiguri. However, such constitution of Team was not placed before the Hon’ble Single Judge, but was brought to the notice of the Hon’ble Division Bench during admission of appeal and stay of the operation of impugned judgment and order, partially.

In view of the fact that the Deputy Superintendent of Police, Jalpaiguri has constituted a special investigating team (SIT) consisting of six officers from three police stations, the order directing investigation by the CID may be set aside.

It is submitted that the formation of SIT by an order dated 17th August, 2019 was inadvertently not brought to the attention of the learned Single Judge before the judgment was pronounced. The SIT has concluded the investigation and has prepared charge-sheet which however could not be filed in view of the order of the learned Single Judge directing investigation by CID. It is submitted that the CrPC provides adequate checks and balances on the power exercised by the police officer and the accused or the offender is not remediless in the event it is found that there are defects and lapses in the investigation. The learned Advocate General submits that after the filing of the Charge sheet the accused can always challenge the said charge sheet and can even demonstrate at the trial that there are glaring defects and discrepancies in the charge sheet. It is preposterous at this stage to suggest that the accused would not face a fair trial. The learned Advocate General submits that the North Bengal has porous borders and human trafficking is a serious problem. The main culprit namely, Dharam Paswan is the king pin of the prostitution racket carried on in the Golden Valley Restaurant under the garb of professional entertainment, however, he got a statutory bail after 90 days of his arrest since the charge sheet could not be filed in view of the pendency of the appeal. However, steps have been taken for his re-arrest before the appropriate forum.

In the light of the submissions made on behalf of the parties the issue which is primordial should a victim would be asked to wait in spite of serious apprehension of a fair and honest investigation being established

and denied remedy in this extraordinary jurisdiction simply because the writ petitioners could raise objections at the appropriate stage of the trial.

In deciding the said issue we may refer to few provisions of CrPC on which the learned Counsel for the parties had made submissions.

Chapter 12 of the CrPC 1973 deals with information to the police and their powers to investigate. The principal object of the First Information Report from the point of view of the informant is to set the criminal law in motion and from the point of view the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The FIR is never treated as a substantive piece of evidence. The reasonableness or credibility of the information is not a condition precedent for the registration of the case under Section 154 of the CrPC

The Officer-in-Charge of a police station in exercise of his power under Section 156 of the CrPC can investigate any cognizable case without the order of the Magistrate on the basis of information received or otherwise. The procedure for investigation to be followed by a police officer is stated in Section 157. The police officer if, from information received or otherwise, has reason to suspect a commission of offence which he is empowered under Section 156 to investigate, shall forthwith send a report to a Magistrate to take cognizance of such offence upon a police report and shall proceed to the spot, to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender provided. The officer-in-charge of the police station if feels that the

person against whom the commission of offence is alleged is not serious in nature he need not proceed in person or depute a subordinate officer to make an investigation on the spot and if it appears to the officer in charge there is no sufficient ground for entering on an investigation he would not investigate the case. In each of the aforesaid cases the officer in charge would be required to state in his report his reasons for not fully complying with proviso to Section 157(1). The police officer making an investigation can examine orally any person supposed to be acquainted with the facts and circumstances of the case, however, such statements if reduced to writing shall not be signed by the person making it nor shall any such statement or any record thereof, whether in a police diary, or otherwise or any part of such record used for any purpose save as provided in the Code.

The Magistrate under Section 164 of the CrPC can record any confessional statement made to him in the course of investigation under Chapter 12 or at any time afterwards before the commencement of the enquiry or trial.

The apprehension of getting fair and impartial enquiry or trial was required to be reasonable and not imaginary based upon conjecture and surmise. In the instant case there is a serious allegation that arrest had been manipulated, actuated, orchestrated and motivated as a result of business rivalry between the Golden Valley Restaurant and another restaurant in the vicinity namely, Hotel Dela Pritam which is a Bar-cum-Restaurant owned and named after the son of Mr. Goutam Das who is holding the post of Government pleader of the Jalpaiguri District. The

allegations are that the police are acting at the behest of influential persons including Mr. Das and the action complained of is a direct result of Ms. Saluja Motey leaving Hotel Dela Pritam to perform in Golden Valley Restaurant. Moreover, it appears that the police acted on the basis of the FIR and not suo motu and not at any time before 16th July, 2009 when the FIR was lodged. The second FIR has been disputed by Ms. Saluja Motey on the ground that she was compelled to sign on a blank piece of paper before the respondent no.8 and 9 namely, inspector in charge of Kotwali Police Station and officer in charge, women police station, Jalpaiguri at the Kotwali Police Station on 26th July, 2019. It has been claimed on behalf of Ms. Motey that she could not have made the FIR on her own since she is not conversant either in Bengali the language in which the FIR was written or in English the language in which, complaint was made on 29th July, 2019 to the police authorities against the atrocities committed by the respondent no.8 and 9. The documents on record from the National Informatics Centre (NIC) stating that no CCTV footage found to have been preserved at the Kotwali Police Station recording events which took place on 26th July, 2019 when the purported FIR was lodged by Saluja Motey has not been denied. There is also no document on record showing the basis of the police action in Golden Restaurant on and from 16th July, 2019, the only reason which can be attributed to such an action are thus stated in the order dated 4th September, 2019 passed by the CJM, Jalpaiguri that the premises were used for activities prohibited under the Immoral Trafficking Prevention Act and the stand of the police that incriminating articles were

recovered from the said restaurant soon after the restaurant was sealed on 26th July, 2019.

In **D.K. Basu v State of West Bengal** reported at **2015 (8) SCC 744** the requirement to have CCTV cameras installed in police stations and prisons have been highlighted in paragraph 32, 33 and 38.6. The observations made in paragraphs are:

“32. As regards installation of CCTV cameras in police stations and prisons, with a view to checking human rights abuse, it is heartening to note that all the States have in their affidavits supported the recommendation for installation of CCTV cameras in police stations and prisons. In some of the States, steps appear to have already been initiated in that direction. In the State of Bihar, CCTV cameras in all prisons and in 44 police stations in the State have already been installed. So also the State of Tamil Nadu plans to equip all police stations with CCTV cameras. The State of Haryana has stated that CCTV cameras should be installed in all police stations, especially, at the entrance and in the lockups. The Union Territories of Andaman & Nicobar and Puducherry have also installed CCTV cameras in most of the police stations. Some other States also appear to be taking steps to do so. Some of the States have, however, remained silent and non-committal on the issue.

33. We do not for the present consider it necessary to issue a direction for installation of CCTV cameras in all police stations. We are of the opinion that the matter cannot be left to be considered by the State Governments concerned, having regard to the fact that several other State Governments have already taken action in that direction which we consider is commendable. All that we need say is that the State Governments may consider taking an appropriate decision in this regard, and appropriate action wherever it is considered feasible to install CCTV cameras in police stations. Some of these police stations may be located in sensitive areas prone to human rights violation. The States would, therefore, do well in identifying such police stations in the first instance and providing the necessary safeguard against such violation by installing CCTV cameras in the same. The process can be completed in a phased manner depending upon the nature and the extent of violation and the experience of the past.

38.6. The State Governments shall also consider installation of CCTV cameras in police stations in a phased manner depending upon the incidents of human rights violations reported in such stations.”

In a recent review of the use of videography in the crime scene during investigation, the Hon'ble Supreme Court in ***Paramvir Singh Saini v Baljit Singh & Ors.*** reported in **2021(1) SCC 184** reiterated the need for installation of CCTV Cameras in police station to ensure credible recording of evidence and safe guarding human rights inside police stations. The D.K. Basu (*supra*) guidelines in the instant case is sadly followed more in breach than in obedience.

While the investigation should not be thwarted this is a proper case for the CID to investigate the matter as directed by the learned Single Judge since it appears that one of the IOs appointed by the Deputy Superintendent of Police, is respondent no.9 in the writ petition filed by Phool Kumari Paswan and against whom serious allegations have been made by Saluja Motey and Phul Kumari. Moreover, we feel that the circumstances justify appointment of a superior officer which has not been done by the Deputy Superintendent of Police, Jalpaiguri. The investigating officers engaged are all from Jalpaiguri. The apprehension expressed by the writ petitioners in their respective writ applications that the local police authorities can be influenced by Goutam Das cannot also be disregarded and countenanced.

A fair trial to an accused is a constitutional guarantee under Article 21 of the Constitution. If the investigation itself is unfair to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in a criminal offence must be free from objectionable features or infirmities which may legitimately lead to the grievance on the part of the

accused. 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 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 merely fanciful, that the investigation was not fair. The state felt the necessity to appoint SIT during pendency of the writ petition which speaks loud of appropriate and justified noises being made by the writ petitioners for an investigation by independent agencies. One would have expected formation of an investigating team comprising of officers other than Jalpaiguri. It appears that the SIT was formed on 17th August 2019 and the judgement was delivered on 11th September 2019. Unfortunately it comprises of police officers of the concerned District and of the investigating officers, namely respondent no.9, is from the concerned police station against whom serious charges has been made by both the writ petitioners. This was known to the Deputy Superintendent of Police, Jalpaiguri at the time of formation of SIT. The involvement of the said police officer in the investigation can raise serious doubts with regard to his fairness and impartiality and genuine apprehension that he is likely to influence the investigation. It also raises serious doubts about the conduct of Deputy Superintendent of Police, Jalpaiguri. The composition of the SIT taken along with the other glaring breach of procedure established by law and infringement of constitutional right of a free and fair investigation and having regard to the fact that the investigation so far conducted is prima facie tainted and/or biased and raises serious doubts about credibility of the investigating officer it is

necessary in order to instil confidence in the public mind and to ensure a fair, honest and complete investigation to set aside the SIT constituted on 17th August, 2019. The said formation is an eye wash as honesty in the formation would require appointment of a superior officer and other members of the SIT from adjoining districts.

The State Police Chief can appoint any superior officer who in his opinion would be competent and fit to investigate a particular case keeping in view the circumstances thereof. In the light of the facts of the given case that would be determinative of the appointment to be made, the State Police chief, in exercise of power under Section 36 of the CrPC can appoint a superior officer beyond the limits of local jurisdiction. (***State of Kerala vs. P.B. Sourabhan & Ors.*** reported at **(2016) 4 SCC 102**). This power was not exercised.

The above facts can legitimately create an apprehension in the mind of the petitioners qua fair and impartial investigation.

Article 21 of the Constitution guarantees fair trial. A fair trial is impossible if there is no fair investigation. In order to be a fair investigation, the investigation must be conducted thoroughly, without bias or prejudice, without any malafide and ulterior motive and every fact, emerging and surfacing during the course of investigation and, eventually, on the trial, must be faithfully recorded contemporaneously by the Investigating Officer at the time of investigation. A manipulated investigation or an investigation, which is actuated by extraneous consideration and motivated, cannot lead to a fair trial. It is, therefore, necessary that the Courts should be vigilant,

for it is as much the duty of the court commencing from the level of the Judicial Magistrates to ensure that an investigation conducted is proper and fair as it is the duty of the Investigating Officer to ensure that an investigation conducted is proper and fair. A fair investigation would mean a complete investigation and must embrace all aspects of an accusation, be it in favour of the accused or against him. Article 21 casts an obligation on the state to ensure a fair trial for which the state must ensure fair investigation.

The Hon'ble Supreme Court in ***Narmada Bai v State Of Gujarat & Ors.***, reported in **2011 (5) SCC 79** has reiterated that investigation must be impartial and fair.

A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof.

The expression "fair and proper investigation" in criminal jurisprudence has a twin purpose:

Firstly, the investigation must be unbiased, honest, just and in accordance with law;

Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these two conditions of fair investigations are satisfied, there will be least interference by the court with the investigation, much less quash the same. Fair investigation is opposed to an unfair, tainted investigation or cases of

false implication. In ***Samaj Parivartana Samudaya & Ors. v State of Karnataka & Ors.***, reported in **2012 (7) SCC 407**; in same vein, it has been reiterated that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and to ensure that the guilty is punished and that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested and influential persons are not able to misdirect, or hijack the investigation, so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law.

The Court seized with the matter cannot reduce itself to be resigned and helpless spectator, on the face of a faulty investigation or when it appears that initiation of investigation and its completion by the investigating agency may not lead to a fair trial, in view of the attendant facts. A fair, impartial, effective and efficient investigation is what expected from an investigating agency. In ***Babubhai v State of Gujarat & Ors.***, reported in **(2010) 12 SCC 254**, the Hon'ble Supreme Court has held that the right to fair investigation is a fundamental right of an accused under Article 21 of the Constitution of India in the following words:

“32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also 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 dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such

evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).

44. *The charge sheets filed by the investigating agency in both the cases are against the same set of accused. A charge sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge sheet. Such investigation would ultimately prove to be precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjunctures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and accused got injured.*

45. *Not only the 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. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. 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.*" (emphasis supplied)

The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite 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 that of the Courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of bias mind and every effort should be made to bring the guilty to law as nobody stands

above law de hors his position and influence in the society. In Kashmeri Dev v. Delhi Administration and Anrs. [JT 1988 (2) SC 293] it has been held that the record of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime. The Courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of criminal investigation and jurisprudence. Contra veritatem lex nunquam a liquid permittit: implies a duty on the Court to accept and accord its approval only to a report which is result of faithful and fruitful investigation. The Court is not to accept the report which is contra legem but to conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is two- fold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution before the Court and the guilty is punished in accordance with law." (emphasis supplied) (See. **Sidharta Vashisht @ Manu Sharma vs. State (NCT of Delhi); AIR 2010 SC 2352; 2010 (6) SCC 1)**

The role of the investigating officer to bring out the real unvarnished truth for the courts to reach a right conclusion. The duty of the Investigating Officers is not merely to bolster up a prosecution

case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. The sole object of every trial is to conduct a fair trial in search of a ultimate truth viz whether the accused is an actual perpetrator of the crime or is an innocent person. To find out the ultimate truth in a criminal case, the court is not dependent merely on the evidence placed on record by the police. The effect of any criminal proceedings cannot always be left entirely in the hands of the parties as ultimately, it is the duty of the court to leave no stone unturned to bring out the truth for doing complete justice between the parties and to protect the interest of the society as well. (See. **Jamuna Chaudhary and Ors. vs. State of Bihar; AIR 1974 SC 1822**) and **Pawan @ Diggi v. State; Manu/DE/0255/2014 decided on 24th January, 2014 (Delhi)**

In dealing with the concept of fair trial in relation to any criminal proceedings, the Apex Court in **Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors.** reported in **2006 (3) SCC 374** held as under:-

“The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: The Judge was biased.’ (Per Lord Denning, M.R. in Metropolitan Properties Co. Ltd. v. Lannon, All ER p. 310 A.) The perception may be wrong about the Judge’s bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar’s wife should be above suspicion (Per Bowen, L.J. in Leeson v. General Council of Medical Education.). It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be

seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see Jennison v. Baker). Increasingly, people are believing as observed by Salmon quoted by Diogenes Laertius in Lives of the Philosophers, Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away Jonathan Swift, in his Essay on the Faculties of the Mind said in similar lines: Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences." (emphasis supplied)

In **Mohan Lal vs. State of Punjab** reported at **(2018) 17 SCC 627**, the right to fair trial has been reiterated and in paragraph 17 it has observed:-

"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."

Although in the context of a prayer for investigation by CBI the Hon'ble Supreme Court in **Pooja Pal vs. Union of India and Ors.** reported at **AIR 2016 SC 1345** has reiterated the need for a fair, honest and impartial investigation. The issue before the Hon'ble Supreme Court was

the necessity or otherwise of further investigation or re-investigation by the CBI in view of overall conspectus of facts and the state of law. In Pooja Pal (supra) admittedly faced with such situation the Hon'ble Supreme Court passed a landmark judgment. Justice Roy delivering the judgment on behalf of the Bench in His Lordship's inimitable style has highlighted the court's duties to ensure a free and fair investigation in the following words in paragraphs 72, 74, 76 and 77 are stated below:-

"72. The precedential ordainment against absolute prohibition for assignment of investigation to any impartial agency like the CBI, submission of the charge-sheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victim(s) and the public in general in the justice administering mechanism, is thus unquestionably absolute and hallowed by time. Such a measure however can by no means be a matter of course or routine but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike.

74. The judicially propounded propositions on the aspects of essentiality and justifiability for assignment of further investigation or reinvestigation to an independent investigating agency like the CBI, whether or not the probe into a criminal offence by the local/state police is pending or completed, irrespective of as well, the pendency of the resultant trial have concretized over the years, applicability whereof however is contingent on the factual setting involved and the desideratum for vigilant, sensitised and evenhanded justice to the parties.

76. A "speedy trial", albeit the essence of the fundamental right to life entrenched in the Article 21 of the Constitution of India has a companion in concept in "fair trial", both being in alienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the state police notwithstanding, has to be essentially invoked if

the statutory agency already in-charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

77. As every social order is governed by the rule of law, the justice dispensing system cannot afford any compromise in the discharge of its sanctified role of administering justice on the basis of the real facts and in accordance with law. This is indispensable, in order to retain and stabilize the faith and confidence of the public in general in the justice delivery institutions as envisioned by the Constitution.”

Since trial is based on the charges framed by the investigating agency on the basis of materials collected during investigation it is imperative that to ensure a fair trial there must be a fair and impartial investigation. A fair investigation is the foundation and backbone of a fair trial. **Mithilesh Kumar Singh v State of Rajasthan** reported in **2015 (9) SCC 795** has underlined the importance of fairness in investigation in paragraph 12 in the following words:

“12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for

universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent." (emphasis supplied)

In **Sasi Thomas v State & Ors** reported in **2006 (12) SCC 421** it is stated that proper and fair investigation on the part of the investigating officer is the backbone of rule of law.

The issue whether a police officer is duty bound to register FIR upon receiving any information relating to commission of cognizable offence under Section 154 of the Cr.P.C., 1973 and whether a police officer has power to conduct an enquiry in order to test veracity of such opinion before registering FIR was considered by a larger Bench of the Hon'ble Supreme Court in **Lalita Kumari v Govt. of U.P & others** reported in **2014(2) SCC 1**. The Hon'ble Supreme Court disposed of the reference in the following words:-

“31. As such, a significant change that took place by way of the 1898 Code was with respect to the placement of [Section 154](#), i.e., the provision imposing requirement of recording the first information regarding commission of a cognizable offence in the special book prior to [Section 156](#), i.e., the provision empowering the police officer to investigate a cognizable offence. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. In the interest of expediency of investigation since there was no safeguard of obtaining permission from the Magistrate to commence an investigation, the said procedure of recording first information in their books along with the signature/seal of the informant, would act as an “extremely valuable safeguard” against the excessive, mala fide and illegal exercise of investigative powers by the police.

40. The use of the word “shall” in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.

48. The First Information Report is in fact the “information” that is received first in point of time, which is either given in writing or is reduced to writing. It is not the “substance” of it, which is to be entered in the diary prescribed by the State Government.

64. The non qualification of the word “information” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code is for the reason that the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information.....

73. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence.....

76. Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the “procedure established by law” and, thus, is in conformity with Article 21 of the Constitution. Accordingly,

the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law.

83. The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.

88) The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory.

98) While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory.....

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.”

The observation of Justice Moushumi Bhattacharya in the Judgment

Saluja Motey vs. State of West Bengal & Ors. reported in **(2020) 1 CAL**

LT 56 (HC) this regard is also pertinent. It says:

“13. This Court cannot also ignore the apprehension of the petitioner that she is pitted against influential persons and that the police (respondent Nos.8 and 9) may not be in a position to act in an independent manner. Whatever may be the truth or falsity of such allegation, it is the duty of a writ court to ensure that continue inaction of the police authorities or any apprehension of injustice complained of by the petitioner is suitably addressed.

14. The orders of the learned Court below record that the investigation is at a “nascent stage”. The interrogation of Dharma Pasman is also said to be continuing as on date. No useful purpose will therefore be served if the ongoing investigation is interfered with at this stage. However, for complete justice and the apprehension expressed that the petitioner may not get

adequate protection under the laws, this Court deems it fit to direct that the interrogation of Mr. Dharam Pasman to be completed within a reasonable period of time but not later than four weeks from date.”

On such consideration it is naive to suggest that the writ petitioner must take recourse to alternative remedies or raise loopholes in the investigation at the appropriate stage of the trial. Moreover, it appears that the SIT was formed on 17th August, 2019 and the judgement was delivered on 11th September, 2019. The formation of SIT was never brought to the notice of the Learned Single Judge and thereby it raises a serious doubt about the claim made by the Government that SIT was formed on 17th August, 2021. If all was well with the investigation then what was the necessity to form a SIT on the basis of a proposal dated 17th August, 2019. Was it merely an eye wash as the composition of SIT raises more questions as it consists of officers against whom questions have been raised? It is an attempt to give an imprimatur to the investigation carried out by the police officers against whom serious allegations have been made by the writ petitioners.

It was on conspectus of all such factors that investigation by CID is desirable.

Was it an attempt to circumvent the order of the learned Single Judge is an issue raised by the writ petitioners.

The sealing of the premises was equally bad and arbitrary.

U/S. 18 of the Immoral Traffic (Prevention) Act, eviction of offenders from the premises or attachment of premises for improper use can be made if the premise in question is a brothel. U/S. 18 of the Immoral Traffic

(Prevention) Act, it is only a Magistrate who may direct eviction or take any action permitted under the section upon satisfaction arrived at pursuant to a show cause notice issued to the owner of the premises. U/S. 102 of the Code of Criminal Procedure, the police officer is under an obligation to report the seizure to the Magistrate having jurisdiction. In ***Jagdish Chandra & Ors. v State & Ors.***; **Volume 40 (1990) DLT 233** wherein the petitioner had challenged the seizure action of the police on the ground that the word “seizure” appearing in Section 102 of the Code would imply actual taking of possession and, therefore,, would not include immovable property. This contention was not answered and left open as the Delhi High Court came to the conclusion that the seizure order under Sec. 102 of the Code was not in accordance with the Statutory requirement as the property should be discovered under circumstances which create a suspicion of the commission of an offence, that is, the police officer should come across certain property in circumstances which create in his mind a reasonable suspicion that an offence has been committed. Sec. 102, it was held, would not be attracted where the property has not been traced or discovered which leads to a suspicion of an offence having been committed. Discovery of property should precede the detection of crime. This ratio was subsequently followed in ***P.K. Parmar & Ors v. Union of India & Anr.*** reported in **1992 Cri LJ 2499 (Del)** where the Delhi High Court has reiterated that unless discovery of the property leads to the suspicion of an offence having been committed, Sec. 102 cannot be invoked for seizing such property. In ***Ms. Swaran Sabharwal v. Commissioner of Police*** reported in **1988 Cri LJ 241 (Del)(DB)** , it was held that Section 102 requires that the seized

property by itself should lead to the suspicion that some offence has been committed. In other words, the discovery of the offence should be a sequel to the discovery of that property and not the other way around. That is not the case in the present scenario. The seizure of the property did not in any way lead to the discovery of the offence. The sealing of the premise took place due to an alleged FIR whose authenticity is not verified and which might as well have been obtained after coercion, bullying and inflicting mental trauma since there is no evidence suggesting otherwise. There is no document on record to show that the police recorded the reasons for their satisfaction for coming to the conclusion that the restaurant is required to be sealed for indefinite time.

Even after all this Sec 102 cannot be applied in this case various High Courts and most recently the Supreme Court in 2019 holding the opinion after careful and extensive deliberations in ***Nevada Properties Private Limited v. State of Maharashtra & Anr.***, reported at **AIR 2019 SC 4554** where Sanjiv Khanna, J. on behalf of the Bench held that Sub Section (1) of Section 102 of the Code of Criminal Procedure, 1973 does not include immovable property and consequently, a police officer investigating a criminal case cannot take custody of and seize any immovable property which may be found under circumstances which create suspicion of the commission of any offence, and that the phrase “any property” in Sec 102 of the Code would cover only “movable property” and not immovable property.

Attention should be paid to the fact that the petitioners may have been pitted against extremely influential people and while the Restaurant sealed

and ordinary people might be losing their livelihood, there should be a fair investigation into the matter. In the present case, the seal on the property should be broken since the police after investigation have not found anything in the premises after multiple raids. The sealing of the Restaurant even after renewal of its license by the Excise Board is causing unnecessary financial losses to the owners and a loss of livelihood for the staff of the Restaurant.

Since we are unhappy with the composition of the SIT during course of hearing the state had suggested that composition of the SIT could be reconstituted. We also observed at a much earlier stage of the hearing of the appeal that the State Government may reconstitute SIT and place it before us at the earliest for our consideration. However, the state took inordinate delay in furnishing the names of reconstituted SIT and only on 5th August, 2021 after the hearing was concluded on 29th July, 2021 and judgment was reserved the composition of the new special investigation team consisting of one Deputy Superintendent of Police DEB, Jalpaiguri and four sub-Inspectors belong to four different police stations namely Raigang, Mainaguri, Dhupguri and Jalpaiguri respectively was furnished. However, having regard to the nature of the complaints, the composition of the earlier and reconstituted SIT we felt that to instill the confidence in the mind of the complainants, victims and the public at large, the investigation by CID as directed by the learned Single Judge needs to be affirmed and upheld.

The reliance on ***Samaj Parivartana Samudaya & Ors.*** (*supra*) does not help the administration as in the instant matter the allegations are primarily against the police officers whose conduct raises serious doubt

about fair investigation. The possibility of the said persons likely to influence the investigation cannot be ruled out. The apprehension of likelihood of the investigation to be influenced by reason of the facts stated in the petition and materials disclosed cannot be completely ignores. Moreover, Government decided to form SIT on 17th August, 2019 after the writ petitioners have challenged the actions of the police authorities. The apprehensions expressed are also prima facie found to have substance and requires investigation. Similarly Popular **Muthiash** (supra) and **Bimal Gurung** (supra) are not authorities for the proposition that if the court in exercise of its power under Article 226 of the Constitution of India found that there are serious apprehensions about a free, fair and honest investigation the constitutional Courts would not decline to exercise its extraordinary power under Article 226 of the Constitution of India. Free, fair, impartial and honest investigation are sine quo non to a criminal trial and Article 21 of the Constitution of India ordain the authorities to follow the said cardinal principles. Constitution is supreme and overrides all statutes. All statutes owe their existence to the constitution. Statute may go as it is temporary but constitution is perennial. The constitutional courts as guardians of the fundamental and legal rights of its citizens are duty bound to extend their arms to reach where injustice and infringement of such rights whenever and wherever they occurred and found. The Constitutional Courts cannot be a mute spectator to an arbitrary and illegal actions of authorities just because statute provides for a remedy. The law should not be seen to sit by limply and the Court cannot be a lame duck and wait when bolt is impending and the situation is grave.

On such considerations we do not find any reason to interfere with the order directing CID to investigate. The Additional Director General of Criminal Investigation Department shall assume charge of the investigation as directed by the learned Single Judge and conclude such investigation within 3 months from the date of communication of this order and to take appropriate steps in accordance with law. In view thereof, the direction upon the CJM to try and complete investigation is set aside. However, the CJM shall record statements of the victim u/s. 164 of CrPC if not recorded earlier within 2 weeks from the date of communication of this order. The learned Registrar General is directed to communicate this order to Additional Director General (CID) and CJM, Jalpaiguri. All other directions including de-sealing/opening of Golden Valley Restaurant is also upheld.

The appeals are disposed of accordingly.

However, there shall be no order as to costs.

All the connected applications being I.A. No. CAN 1 of 2019 (Old No. CAN 9441 of 2019), CAN 2 of 2019 (Old No. CAN 10591 of 2019), CAN 3 of 2019 (Old No. CAN 10592 of 2019), CAN 4 of 2019 (Old No. 10593 of 2019), CAN 5 of 2019 (Old No. CAN 10845 of 2019) are disposed of in terms of this order.

I agree

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)

Later

After delivery of judgment Mr. Bandopadhyay learned Advocate on behalf of the appellants has prayed for stay of operation of the judgment and order. The same is considered and refused.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)