

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Decided on: 02.09.2021

1. CRR No.4225 of 2016 (O&M)

Dharam Singh and others

....Petitioners

Versus

Central Bureau of Investigation

....Respondent

2. CRR No.4064 of 2016 (O&M)

Gurbachan Singh and others

....Petitioners

Versus

Central Bureau of Investigation

....Respondent

3. CRR No.4142 of 2016 (O&M)

S.S. Sidhu and others

....Petitioners

Versus

Central Bureau of Investigation

....Respondent

4. CRR No.4556 of 2016 (O&M)

Shamsher Singh and another

....Petitioners

Versus

Central Bureau of Investigation

....Respondent

5. CRR No.4739 of 2016 (O&M)

Bhupinderjeet Singh and others

....Petitioners

Versus

Central Bureau of Investigation and others

....Respondents

6. CRR No.383 of 2017 (O&M)

Amarjit Singh

....Petitioner

Versus

Central Bureau of Investigation
....Respondent

7. CRR No.3938 of 2016 (O&M)

Kishan Singh and another
....Petitioners

Versus

Central Bureau of Investigation
....Respondent

8. CRR No.371 of 2017 (O&M)

Amarjit Singh and others
....Petitioners

Versus

Central Bureau of Investigation
....Respondent

9. CRR No.3473 of 2017 (O&M)

Narang Singh and others
....Petitioners

Versus

Central Bureau of Investigation
....Respondent

10. CRR No.3405 of 2017 (O&M)

Dilbagh Singh and others
....Petitioners

Versus

Central Bureau of Investigation
....Respondent

11. CRR No.3801 of 2018 (O&M)

Gurmeet Singh and others
....Petitioners

Versus

Central Bureau of Investigation
....Respondent

12. CRR No.3299 of 2018 (O&M)

Surinder Pal Singh
....Petitioner

Versus

Central Bureau of Investigation
....Respondent

13. CRM-M No.45503 of 2016 (O&M)

Bhupinderjeet Singh and others

....Petitioners

Versus

Central Bureau of Investigation and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. R.S. Cheema, Sr. Advocate
with Mr. A.S. Cheema, Advocate
for the petitioners (in CRR No.4225 of 2016)

Mr. Akshay Bhan, Sr. Advocate
with Mr. Sushant Kareer, Advocate
for the petitioners (in CRR No.3473 of 2017)

Mr. Pankaj Bhardwaj, Advocate
for the petitioners (in CRR Nos.4064, 4142, 4556, 4739,
3938 of 2016 and CRR Nos.3405, 383, 371 of 2017
and CRR Nos.3801 and 3299 of 2018
and CRM-M No.45503 of 2016)

Mr. Sumeet Goel, Sr. Advocate
with Mr. A.K. Ranolia, Advocate
for the respondent – CBI (in all the cases)

Mr. R.S. Bains, Sr. Advocate
with Mr. M.S. Chauhan, Advocate
for the complainant (in all the cases).

ARVIND SINGH SANGWAN J. (Oral)

CRM-30788-2017 IN CRR-3473-2017

Prayer in this application is for condoning delay of 248 days in filing the revision petition.

Heard.

In view of averments made in the application, the same is allowed and delay of 248 days in filing the revision petition stands condoned.

CRM-35006-2016 IN CRR-3299-2018

Prayer in this application is for condoning delay of 630 days in filing the revision petition.

Heard.

In view of averments made in the application, the same is allowed and delay of 630 days in filing the revision petition stands condoned.

MAIN CASES

Vide this common judgment, I intend to dispose of all the aforesaid petitions as common questions of law and facts are involved for adjudication.

Prayer in these revision petitions is for setting-aside the (similar) impugned order dated 21.10.2016, passed by the Special Judge, CBI, Patiala, vide which the application filed by the petitioners for dropping the proceedings as C.B.I. is not having territorial jurisdiction to register the case and conduct the trial was dismissed.

Brief facts of the case are that the CBI registered R.C. No.12(S)/97/SIU-XVI/JMU dated 28.02.1997 under Section 364/34 of the Indian Penal Code, 1860 (in short 'IPC') at Jammu & Kashmir, regarding the abduction and killing of one Sukhwinder Singh in Amritsar, Punjab. Similarly, other connected cases, were also registered regarding abduction and killing of innocent persons.

The operative part of the order dated 21.10.2016, passed by the Special Judge, CBI, Patiala, is reproduced as under:-

“2. Brief facts for disposal of application are that CBI registered R.C. No.12(S)/97/SIU-XVI/JMU dated 28.2.97 against the applicants under section 364/34 IPC at Jammu within the State of J&K, alleging the abduction and killing of Sukhwinder Singh in Amritsar (Punjab). The CBI prepared the charge-sheet at Jammu and filed the

same before this Court which is pending for trial before this Court. Earlier, the applicants filed a Criminal Misc. Petition before the Hon'ble Punjab and Haryana High Court and vide order dated 27.9.16 the petitioner was allowed to withdraw the said petition with liberty to raise all these points before this Court. The applicants are challenging the proceedings on the following grounds:-

i) That very initiation of the proceedings i.e. the registration of RC at Jammu within the State of J & K is illegal as the FIR should have been registered in accordance with the provisions contained in section 154 Cr.P.C. as the offence has been committed within the territorial jurisdiction of P.S.Beas, District Amritsar, within the State of Punjab and it is strange that the RC was registered by the CBI at Jammu in the State of J &K and the same is illegal, without jurisdiction and void ab-initio.

ii) That no part of the alleged offence was committed within the State of J&K, no RC could have been registered at Jammu and charge-sheet could not have been filed before this Court after investigation of the offence and all the steps taken in this case are against the scheme of the provisions of Criminal Procedure Code and Indian Penal Code is not permissible in the State of J&K.

iii) That the registration of RC and prosecution of accused for the alleged offences under IPC is illegal, ultravires and against the principles of criminal jurisprudence and the applicants/accused are being deprived of their rights and liberty without procedure established by law. Moreover, no law of land permits CBI to register FIR/RC under the section 154 Cr.P.C in any

other State and the law also does not permit the CBI to prosecute the accused persons. The cognizance taken by this court is illegal. Lastly, it is prayed that the proceedings originated from R.C. No. 12(S)/97/SIU-XVI/JMU dated 28.2.97 be dropped in the interest of justice.

3. Notice of the application was given to Learned Public Prosecutor for CBI, who filed reply wherein took preliminary objections that the application has been filed by the applicants/accused without any valid cause or reason and with the sole intention to delay the proceedings of this case. The application is not maintainable and further submitted that in compliance of order dated 15.11.95 passed by the Hon'ble Supreme Court of India in Criminal Writ Petition No. 497/1995 titled as Smt. Paramjit Kaur Vs. State of Punjab and others pertaining to "Mass cremation of unidentified dead bodies by the Punjab Police", a preliminary inquiry was registered by the CBI on 20.12.1995. During the enquiry, the present case was registered on 28.2.97 under sections 364/34 IPC. During the enquiry, Smt. Balbir Kaur wife of Didar Singh (mother of deceased Sukhwinder Singh) made a statement alleging that on 18.4.93 at about 2 PM her son Sukhwinder Singh was picked up by SI Ram Lubhaya and others of P.S.Beas, District Amritsar(Punjab) from her house. The investigation also established that another sikh youth Surmukh Singh son of Bachabn Singh was also picked up on 18.4.93 by the police party headed by Inspector Paramjit Singh, SHO, P.S. Beas from his house. Thereafter, they were killed by the police in a fake encounter. The facts and circumstances of the case constitute offence punishable under section 120B/364/302/342/343/201/218 IPC regarding abduction and killing of Sukhwinder Singh and Surmukh Singh in a

fake encounter and for preparation of false record. It is further averred that the CBI in compliance of order dated 15.11.95 passed by the Hon'ble Supreme Court of India in Criminal Writ Petition No. 497/1995 titled as Smt. Paramjit Kaur Vs. State of Punjab and others pertaining to "Mass cremation of unidentified dead bodies by the Punjab Police", initially a preliminary Enquiry PE-2(S)/1995/SIU-XV/CHG was registered by the CBI, SIU.XV/CHG on 26.12.95. On the basis of result of said preliminary enquiry, various cases were registered. To cope up with the load of investigation of these cases, the instant case was registered at CBI, SIU.XVI/JMU under the relevant sections of IPC and not of RPC. As a result of investigation, CBI,SIU.XVI/JMU was required to file report under section 173 Cr.P.C before this Court. In no way, right of the accused guaranteed under 21 of the Constitution of India has been violated and prayed for dismissal of the application.

4. I have heard the learned counsel for the applicants/accused as well as learned Public Prosecutor for CBI and perused the material brought on record.

5. The learned counsel for the applicants/accused argued that CBI has no power or authority to register FIR/RC in the State of Jammu and Kashmir, when the alleged offence took place within the jurisdiction of District Amritsar within the State of Punjab. No part of the alleged offence was committed within the State of Jammu and Kashmir. In these circumstances, the CBI has no authority to register case under Indian Penal Code against the applicants in the State of Jammu and Kashmir as the provisions of Indian Penal Code are not applicable in the State of Jammu and Kashmir. Illegal investigation was conducted by the CBI. No evidence was collected in the preliminary enquiry. False and illegal preliminary

inquiry was conducted and if the case was registered in Jammu and Kashmir, then this Court no jurisdiction to try the said offence. This court has no territorial jurisdiction to try the case in hand at all. Moreover, law does not permit the CBI to register any FIR or RC in any other State. When the Court has no jurisdiction to take cognizance of the said offence, the proceedings against the accused/applicants are liable to be dropped.

6. The Learned Public Prosecutor for CBI argued that the present application is filed with single motive to delay the trial of the case. The case is more than 15 years old. The alleged incident took place more than 23 years ago and FIR was registered on 28.2.97 and the challan was presented on 01.02.99 and the accused/applicants remained mum and when trial of the case is commenced they have filed the present application just to delay the proceedings of the case. In compliance of order of Hon'ble Supreme Court of India in Criminal Writ Petition no. 497/1995 titled as Smt. Paramjit Kaur Vs. State of Punjab and others a preliminary inquiry was registered by the CBI and thereafter the instant case was registered. To cope up with the load of investigation of these cases, the instant case was registered at CBI, SIU.XVI/JMU under the relevant provisions of IPC and not under the provisions of RPC. Since this court has jurisdiction to try all the cases pertaining to the State of Punjab as the incident took place in the State of Punjab and challan has been rightly presented in this court which has territorial jurisdiction to try the present case. There is no illegality on the part of the CBI.

7. The learned Public Prosecutor for CBI further argued that "Coordination Cell" of Chandigarh Region for investigation of cases crime against terrorists has been created as Central Unit Branch and the cases handled by

this Unit will fall under the category of “Special Crimes” and the Central Unit Branch Will have jurisdiction through out the country and will function under the supervision and control of DIG, CBI, Chandigarh. Lastly prayer for dismissal of the application is made.

8. I have considered the submissions made by the learned counsel for the applicants/accused as well as learned Public Prosecutor for CBI.

9. After considering the arguments of the learned counsel for the applicants/accused and the learned Public Prosecutor, this court is of the considered view that the present application is devoid of any merits. The Hon'ble Supreme Court of India in Criminal Writ Petition No. 497/1995 titled as Smt. Paramjit Kaur Vs. State of Punjab and others vide its order dated 11.12.96 when CBI has placed 5th and final report regarding cremation of “Lawaris” dead bodies of various districts of Punjab. The Hon'ble Apex Court directed the CBI to take action in the matter and register the case where necessary, hold investigations and proceed in accordance with law on the basis of material collected during the investigation. The learned Public Prosecutor for the CBI rightly pointed out that to cope up with the load of investigation of these cases, the instant case was registered at CBI, SIU.XVI/JMU under the relevant sections of IPC and not in RPC. Registration of case by the CBI at Jammu Branch does not cause any prejudice to the applicants/accused at all.

10. Moreover, the alleged lack of territorial jurisdiction is not irregularity which vitiates proceedings taken place unless prejudice is caused to the accused, but in the present case, accused failed to point out that prejudice has been caused to them on account of registration of FIR at Jammu. Registration of FIR by the

CBI at Jammu is only for administrative purpose, nothing else and after completion of investigation, challan has been presented before the court of Competent Jurisdiction.

11. Moreover, Central Bureau of Investigation, Government of India, Policy & Organisation Division vide its order dated 29.9.92 declared "Coordination Cell" as Branch with all India jurisdiction and that decision has been taken with a view to take up investigation etc. of the cases relating to the crime against terrorists. "Coordination Cell" was created in Chandigarh Division for investigation of said cases which was created as "Central Unit Branch" and cases handled by the Unit will fall under the category of Special Crimes and having jurisdiction throughout Country. In these circumstances, also the registration of the FIR at Jammu does not cause any prejudice to the applicants/accused. CBI is successor organisation of Delhi Special Police establishment with an enlarge chapter of function. Moreover, the applicants cannot challenge through the present application regarding the preliminary enquiry conducted by the CBI or FIR registered by the CBI under the various provisions of law.

12. As per CBI Crime Manual, the Zone, Regions, Branches and Units of CBI have been divided on functional as well as territorial basis. While some of the Branches/Units are of specialized nature with all-India jurisdiction, others cover a particular area. Some of the territorial Branches of CBI have one or more than one Unit functioning under them. The Central Branches/Units having all-India jurisdiction are entrusted with important cases, which often have interstate or international ramifications. These Branches/Units may also be entrusted cases, which are not considered proper to be entrusted to the territorial Branches. As per Section 177 of

I.P.C which is reproduced as under: “Ordinarily place of inquiry and trial-Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed”.

13. The offence committed within the territorial jurisdiction of Punjab State i.e. at Village Kiralgrah, P.S.Lopoke, Tehsil Tran Taran District Amritsar and the CBI Court at Patiala has jurisdiction all over Punjab State. Registration of FIR demonstrates the Administrative character of CBI. It is the case of the applicants that the charge-sheet was not filed in the court of Competent Law. The CBI Courts at Patiala had territorial jurisdiction all over Punjab State. In the present case, FIR was registered by the CBI on the indulgence of Hon'ble Apex Court in Criminal Writ Petition 497/1995 titled as Smt. Paramjit Kaur Vs. State of Punjab and others. Moreover, the applicants have also failed to convince/point out the Court to what prejudice caused to them on account of registration of case at Jammu. The CBI is central agency having jurisdiction all over India and there is no bar on the Jammu Unit to register case and investigate the same and present the final report under section 173 Cr.P.C before the Court of Competent Jurisdiction.

14. The FIR registered in this case by the CBI on the indulgence of Hon'ble Apex Court of India who was monitoring the inquiry conducted by the CBI in a Writ petition 497/1995 titled Smt. Paramjit Kaur Vs. State of Punjab pertaining to the mass cremation of unidentified/lawaries dead bodies by the Punjab Police. Mere registration of case by the Jammu Unit under the provisions of Indian Penal Code cannot be said lacking of jurisdiction of the Jammu Unit. The applicants have failed to show that any prejudice has been caused to them on account of registration of FIR at Jammu by the CBI. The

CBI whose Central Unit Branch having territorial jurisdiction all over India to register case. As already discussed, the offences committed within the territorial jurisdiction of Punjab State, the CBI has rightly filed challans before the Special Court of CBI, Punjab at Patiala and as such the application filed by the applicants/accused under consideration is devoid of merits and has been filed just to delay the case in hand. In the instant case the incident alleged to have taken place on 18.4.93 and the FIR was registered on 28.2.97 and the challan has been presented on 01.02.99, 23 years have passed when the incident took place. Moreover, 17 years elapsed when the challan was presented in the Court. In the light of my above detailed discussion, the court is of the considered view that the application under consideration is devoid of any merits filed just to delay the case and as such the same stands dismissed.”

Learned senior counsel appearing for the petitioners (in CRR No.4225 of 2016), at the very outset, has argued that on the basis of the direction given by the Hon'ble Supreme Court in '**Criminal Original Jurisdiction, Writ Petition (Criminal) No.497 of 1995**', C.B.I. has registered a preliminary enquiry.

Learned senior counsel for the petitioners has referred to the operative part of the order dated 15.11.1995, passed by the Hon'ble Supreme Court, which reads as under:-

“The second issue highlighted in this petition is equally important. This Court cannot close its eyes to the contents of the Press Note dated January 16, 1995 stated to be investigated by Khalra and Dhillon. In case it is found that the facts stated in the Press Note are correct-event-partially-it would be a gory-tale of Human Rights

violations. It is horrifying to visualize that dead-bodies of large number of persons-allegedly thousands-could be cremated by the police unceremoniously with a label 'unidentified'. Our faith in democracy and rule of law assures us that nothing type of the type can ever happen in this country but the allegations in the Press-Note – horrendous as they are need through investigation. We, therefore, direct the Director, Central Bureau of Investigation to appoint a high powered team to investigate into the facts contained in the Press Note dated January 16, 1995. We direct all the concerned authorities of the State of Punjab including the Director General of Police, Punjab to render all assistance to the CBI in the investigation. All the authorities of the Punjab Government shall render all help and assistance to the CBI team as and when asked by any member of the said team. We give liberty to the CBI to seek any further directions from this Court from time to time as may be necessary during the investigation.

The CBI shall complete the investigation regarding kidnapping of Khalra within three months of the receipt of this order. So far as the second investigation is concerned, we do not fix any time limit but direct the CBI to file interim report regarding the investigation in this Court after every three months.”

Learned senior counsel for the petitioners has further submitted that vide order dated 11.12.1996, the Hon'ble Supreme Court on the basis of the 5th and final report dated 09.12.1996, submitted by the CBI, observed as under:-

“We, therefore, direct the CBI to take further action into the matter and register the cases, where necessary, hold investigations and proceed in accordance with law on

the basis of the material collected during investigation.

We, however, give liberty to the CBI to seek further directions, if necessary, from this Court in time with the suggestion made by Mr. Sharma or for any other purpose. The CBI shall, after every three months, place a status report regarding the investigation in this Court.”

Learned senior counsel for the petitioners has argued that the CBI has registered R.C. No.12(S)/97/SIU-XVI/JMU dated 28.02.1997 under Section 364/34 IPC at Jammu & Kashmir, as Special Investigating Unit-XVI at Jammu was assigned the investigation of all the cases, however, the Unit had no jurisdiction either to register an FIR or conduct an investigation. It is argued on behalf of the petitioners that it has been wrongly recorded by the trial Court that in no way right guaranteed of the accused under Article 21 of the Constitution of India infringed. It is also submitted that the trial Court has wrongly observed that since the challan was presented on 01.02.1999 and the present application has been filed at a highly belated stage, the same is liable to be dismissed.

Learned senior counsel for the petitioners has further submitted that the findings recorded by the trial Judge in Para 11 of the impugned order that the CBI vide its order dated 29.09.1992, has declared Jammu Branch as a Co-ordination Cell having All India jurisdiction and a decision is taken with a view to take up investigation regarding the cases relating to crime against terrorists.

Learned senior counsel for the petitioners has referred to the Office Order dated 29.09.1992, which reads as under:-

“SUBJECT: Declaration of Coordination Cell as a

Branch with All India Jurisdiction.

With a view to take up investigation, etc. of cases relating to crimes against terrorists, a Coordination Cell of Chandigarh Region for investigation of such cases has been created as a Central Unit Branch. The cases handled by this Unit will fall under the category of Special Crimes. This Central Unit Branch will have jurisdiction throughout the country and will function under the supervision and control of DIG/CBI/Chandigarh.”

It is further argued that the Special Judge has wrongly interpreted the jurisdiction of the Co-ordination Cell.

Learned senior counsel for the petitioners has also referred to the Central Bureau of Investigation, Crime Manual, 2005, to submit that under Chapter 1.23 Zones, Regions, Branches/Units of CBI are defined and it is provided that while cases are entrusted to Central Branches/Units by Director, CBI or with his approval of specific proposal received from Joint Director/DIG, the territorial Branches/Units take up investigations/enquiries in their respective areas of jurisdiction under the order of the competent authority as prescribed from time to time. It is further submitted that under Chapter 1.24, Special Unites are constituted to provide support to the regular Branches/Units in field. With reference to Chapter 7 regarding functioning and investigation of Branches/Units, it is submitted that Chapter 7.1 clearly provides that the major filed work of CBI is done by its Branches/Units, which are headed by Senior Superintendent of Police/Superintendent of Police. These Branches/Units are located all over India with their respective territorial jurisdiction. A reference is also made to Chapter 10.2 wherein it is provided that while registering

an FIR, the legal requirement of Section 154 of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.'), should be fully complied with and Chapter 10.30 provides that the provisions of the Criminal Procedure Code, shall be fully complied with by the Branches/Units at all stages in the registration and investigation of R.C. and the communication under Section 173(2) Cr.P.C., be sent to the complainant informing him whether the case has been charge-sheeted in the Court or not, after completion of investigation.

Learned senior counsel for the petitioners has, then, referred to General Instructions regarding investigations/enquiries contained in Chapter 14.2, which provides that the power of investigation as granted by the Delhi Special Police Establishment Act, 1946, do not has any different powers other than those laid down in the Criminal Procedure Code, 1973.

Under the heading stage of investigation, Chapter 14.5 provides that during investigation, the spot should be inspected. It is further submitted that under Chapter 14.14, inspection of scene of crime is essential part of the investigation in crimes like murder and Clause (e) provides that inspection of the scene of crime is relevant to derive information to disprove or support a witness's testimony. It is also submitted that under Chapter 14.15, the Investigating Officer should prepare a plan of scene of offence in cases like murder.

In reference to the CBI Manual, learned senior counsel for the petitioners has submitted that regarding all the cases registered/investigated by CBI Branch SIU-XVI at Jammu no site plan was prepared. It is submitted that invariably the CBI has failed to

follow its own Manual which par takes the character of Cr.P.C. A reference is made to the judgment of the Hon'ble Supreme Court in **“H.N. Rishbud vs State of Delhi”**, 1995 SCC 196, to submit that Cr.P.C. is followed by CBI.

In this regard, learned senior counsel for the petitioners has referred to the judgment **“Vineet Narain vs Union of India”**, 1998(1) SCC 226, wherein the following observations have been made:-

“12. The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.”

Reference is also made to a judgment **“Mayawati vs Union of India”**, 2012(8) SCC 106, to submit that Section 6 of Delhi Police Establishment Act, prohibits CBI from exercising its power and jurisdiction without the consent of the State Government or the order of the Court.

Learned senior for the petitioners has then, referred to the order dated 26.11.1994, regarding creating of Special Crime Divisions. As per this circular, Special Crime Zone-I (consists of 04 zones and SIU-XVI are re-designated from the old T.C. and Co-ordination Cell, Jammu), will have its location at Jammu and the location of the DIG/Incharge will be at Chandigarh and the jurisdiction is referred to State of Jammu and Kashmir.

It is submitted that a note in this circular provides that SIU-XVI will deal with the investigation of special crimes, terrorists crimes and border wing offences in the territorial jurisdiction as indicated above. In respect of co-ordination function relating to terrorists crimes, their jurisdiction will be throughout India.

Learned senior counsel for the petitioners has further argued that the observation of the trial Court that SIU-XVI in respect of co-ordination function has jurisdiction throughout India is patently wrong as it has registered the R.C. case with regard to investigation of the case for which the territorial jurisdiction is only of State of Jammu & Kashmir as it is not the case of the CBI that the impugned R.C. case is registered in respect of a co-ordination function.

Learned senior counsel for the petitioner has then, referred to provisions of Section 154 and 156 Cr.P.C., to submit that the same clearly defines regarding the jurisdiction of the Police Station which can register an FIR and conduct the investigation.

Learned senior counsel for the petitioner has also referred to the provisions of Section 460 of Chapter XXXV regarding irregular proceedings to submit that it is provided under Section 462 Cr.P.C., that where proceedings are taken in a wrong place, the finding, sentence or order of any Criminal Court will not be set-aside merely on the ground that the enquiry, trial or other proceedings in the course of which it was arrived at or passed/took place in a wrong sessions division, district, sub- division or other local area, unless it appears that such error has in fact, a failure of justice. It is further submitted that as per aforesaid provisions of Cr.P.C., the entire proceedings/investigation conducted by

SIU-XVI at Jammu, is without jurisdiction and since it has adversely prejudiced the right of the petitioner, it amounts to failure of justice to the petitioner and, therefore, the impugned order is liable to be set-aside.

It is next argued that it has been held in a case “*Brij Kishore Singh and others vs Smt. Nutan Singh and another*”, 1995 **Criminal Law Journal** 1486, that the jurisdiction is a Dignity which a man has a power to do justice in cause of complaint made before him. It is further held that a complaint should ordinarily indicate that the offence complained was committed within the territorial jurisdiction of the Court in which the complaint is filed. It is also held that the provisions of Section 464 Cr.P.C., are curative in nature but the fact that the curative provisions may be available, should not be an excuse to overlook the material irregularity pertaining to jurisdiction when it is brought to the notice of the Court before commencement of the trial. It is further argued that since the application has been moved before the commencement of the trial i.e. framing of the charge as during the period, when the case was under investigation, the petitioner had no right to know what investigation was carried out by the CBI and it is only after filing of the report under Section 173 Cr.P.C., the petitioner came to know that there is inherent issue of territorial jurisdiction which cannot be cured.

Learned senior counsel for the petitioners has also relied upon the judgment “*State of West Bengal vs Committee for Protection for Democratic Rights, West Bengal and others*”, 2010(3) SCC 571, to

submit that it has been held that Article 21 of the Constitution of India in its broad prospective seek to protect the persons of their lives and personal liberty except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of right of an accused but also the right of a victim. However, it is further observed that with the consent of State, CBI can take up investigation in relation to crime which otherwise within the jurisdiction of the State police and the Court can also exercise its constitutional power of judicial review and direct CBI to take up investigation within the jurisdiction of the State.

Learned senior counsel for the petitioners has also submitted that it is held by the Hon'ble Supreme Court in “***Jamuna Chaudhary and others vs State of Bihar***”, 1974 (3) SCC 774, that the duty of the Investigating Officer 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. It is, thus, argued that the CBI Manual based on statutory provisions of Cr.P.C. provides essential guidelines for CBI functioning and it is imperative that CBI adheres scrupulously to the provisions in the Manual.

Learned senior counsel for the petitioners has, thus, summed up his arguments on the following points:-

(i) The place where the case was registered i.e. under the jurisdiction of Special Investigating Unit-XVI, Jammu, was having territorial jurisdiction to the State of Jammu & Kashmir only, as per the own circular of CBI and the trial Court has wrongly observed that it being a

co-ordinating unit relating to terrorists crime, the jurisdiction will be throughout India as in respect of co-ordinating function, the investigation is not carried out by the State wing, which is providing co-ordination whereas in the instant case, the case was registered by SIU-XVI having exclusive jurisdiction of Jammu & Kashmir and, therefore, the entire investigation conducted by SIU-XVI is against the CBI Manual as well as the provisions of Cr.P.C.

(ii) Even no proper procedure has been followed as per the CBI Manual as referred too above is without preparing the site plan and visiting the site i.e. without ascertaining the actual place where the crime was committed, it cannot be said that as per the judgment of the Hon'ble Supreme Court in H.N. Rishbud's case (supra), the proceedings at the spot were conducted to ascertain the facts and circumstances of the case and to form an opinion as to whether the material collected, there is a case to place the accused before the Court for facing the trial as there is clear violation of the procedure laid down in Chapter 14.14 and Chapter 14.15 as neither the scene of crime was inspected nor the plan of scene of crime was prepared and this will prejudice the right of the accused during the trial.

(iii) The delay in registration of the FIR and filing the application for dis-continuing the proceedings

on account of lack of territorial jurisdiction, cannot be attributed to the petitioners and rather they should be granted the benefit of doubt for their involvement in the case after such a long time.

Mr. Akshay Bhan, learned senior counsel appearing for the petitioners (in CRR No.3473 of 2017) has argued that the CBI has not followed the direction of the Hon'ble Supreme Court in Smt. Paramjit Kaur's case wherein it has been specifically observed as under ***“We, therefore, direct the CBI to take further action into the matter and register the cases, where necessary, hold investigation and proceed in accordance with law on the basis of the material collected during investigation.”*** It is argued that the Hon'ble Supreme Court did not direct the CBI to register cases beyond the territorial jurisdiction in violation of the statutory clause of the Act and to discard the statutory safeguards provided in Cr.P.C., while conducting the investigation, it is argued that the Hon'ble Supreme Court has given liberty to the CBI to initially register preliminary enquiry and to act in accordance with law, which means that CBI should follow the provisions of Cr.P.C., I.P.C. as well as the CBI Manual, which has a statutory backing. It is argued that under Section 2 of the Delhi Special Police Establishment Act, 1946, the constitution and powers of the Special Police Establishment is provided and Section 2(1) provides that the Central Government may constitute a special police force for investigation. For a reference, Sections 2 and 3 of the Delhi Special Police Establishment Act, 1946, are reproduced below:-

“2. Constitution and powers of special police

establishment. - (1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation [in any [Union Territory]] of offences notified under section 3.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout [any [Union territory]] in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of 6[that Union territory] have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in [any [Union territory]] any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

3. Offences to be investigated by special police establishment. - The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.”

It is argued that the powers vest with the Central Government and any Notification as issued by the Director conferring the jurisdiction to SIU-XVI Unit Jammu, jurisdiction upon the offences allegedly committed in the State of Punjab is illegal. It is also submitted

that it is for the Central Government which can by Notification in the Official Gazette specify the offences or clauses of offences which are to be investigated by the Delhi Special Police Establishment Act and in the absence of any such Notification by the Central Government, the Director CBI is not competent to confer any jurisdiction on Jammu Branch.

Mr. Pankaj Bhardwaj, learned counsel representing some of the petitioners (in CRR Nos.4064, 4142, 4556, 4739, 3938 of 2016 and CRR Nos.3405, 383, 371 of 2017 and CRR Nos.3801 and 3299 of 2018 and CRM-M No.45503 of 2016) has filed written submissions in all the cases and argued that the CBI has violated the statutory provisions of Cr.P.C. and I.P.C. as admittedly, the investigation was carried out at Jammu by summoning the whole record and despite the fact that all the incidents are relating to the State of Punjab, therefore, the investigation has been conducted in disregard to the provisions of Cr.P.C. and I.P.C. It is further argued that the CBI inherently lacks jurisdiction under the Delhi Special Police Establishment Act, to operate in Jammu & Kashmir as the Jammu Unit had no territorial jurisdiction beyond the state of Jammu & Kashmir as per CBI Manual. It is argued that as per CBI Manual relating to the jurisdiction, different Units have been assigned territorial jurisdiction. It is submitted that the Units located at Delhi, Mumbai, Calcutta and Chennai as of India jurisdiction whereas regional units like one located at Chandigarh or Jammu have regional jurisdiction. It is further argued that the CBI should have carried out the investigation within the State of Punjab i.e.

within the local jurisdiction as mandated by Section 171/175 Cr.P.C.

Learned counsel for the petitioners has referred to the judgment “**Prem Kumar and others vs State of Kerala**”, 2008 (17) SCC 264, wherein the Hon'ble Supreme Court in Para 11 and 16, has observed as under:-

11. The word, 'ordinarily' occurring in Section 177, Cr.P.C. must be given its natural meaning. The provisions contained in Section 178 and other provisions would be attracted when Section 177 cannot be given effect to. These provisions in the Code governing the field emanate from the doctrine that all crimes are local. Investigation into a crime, the witnesses who are required to be examined for the purpose of proving the commission thereof and other relevant factors which are required to be taken for consideration thereof lead to the aforementioned inference. For the purpose of finding out in regard to the place, where the enquiry or trial should be conducted, would be that the offence has taken place wholly or partly in the jurisdiction of one police station or wholly or partly in the jurisdiction of another police station and, thus, would depend upon the fact situation obtaining in each case.

16. So far as the jurisdiction of Kadakkavoor Police Station vis-à-vis the provisions of Section 177, Cr.P.C. is concerned, we may notice that in the case of Y. Abraham Ajith & Ors. v. Inspector of Police, Chennai & Anr. (2004) 8 SCC 100 this Court in a case arising under Sections 498A and 406 as well as Section 4 of the Dowry Prohibition Act, 1961 held as under :

"9. "All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is

"ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the code. As observed by the Court in Purushottamdas Dalmia v. State of W.B. AIR 1961 SC 1589 : (1962) 2 SCR 101, L.N. Mukherjee v. State of Madras AIR 1961 SC 1601 : (1962) 2 SCR 116, Banwarilal Jhunjunwala v. Union of India AIR 1963 SC 1620 : 1963 Supp.(2) SCR 338 and Mohan Baitha v. State of Bihar (2001) 4 SCC 350 exception implied by the word "ordinarily" need not be provided by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same court. No such exception is applicable to the case at hand."

The question, therefore, which is required to be posed was as to whether any part of the cause of action arose within the jurisdiction of the Court concerned."

It is, thus, submitted that the Jammu Unit had acted beyond its jurisdiction. Learned counsel for the petitioners has next argued that serious prejudice is caused to the right of the petitioners/accused as CBI has not followed the procedure specified under the CBI Manual. It is further argued that Section 462 Cr.P.C. provide that any error pertaining to wrong invocation of territorial jurisdiction would not vitiate the trial unless it causes failure of justice. Learned counsel has also submitted that the Hon'ble Supreme Court in **"Darbara Singh vs State of Punjab"**, 2012(10) SCC 476, has held as under:-

"21. "Failure of justice" is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth. There would be "failure of justice"; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind

and also safeguarded, but they should not be over emphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under Indian Criminal Jurisprudence. "Prejudice", is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court."

Similar view has been taken by the Hon'ble Supreme Court in ***"Rafiq Ahmad @ Rafi vs State of U.P."*, 2011(8) SCC 300.**

Learned counsel for the petitioners has also submitted that by registering and investigating the cases at Jammu, the CBI has caused grave prejudice to the right of defence of the accused as Sections 154 and 156 of Cr.P.C. provide that while conducting an investigation, an accused should get a fair investigation and his right should not be prejudiced. It is also argued that from the time of registration of a case under Section 154 Cr.P.C., during investigation and on completing of investigation while submitting a report under Section 173 Cr.P.C., the investigating agency is mandated to visit the spot, recreate crime scene, associate eye-witnesses, carry out inquest proceedings, collect the investigation to find out the truth, look into the surrounding circumstances and then submit a final report.

Learned counsel for the petitioners has further submitted that in all the cases, no such procedure was followed by CBI as only the record was requisitioned at Jammu and thereafter, some of the witnesses were called at Jammu to record their statements. It is next argued that lack of fair investigation has caused serious prejudice to the petitioners/accused as CBI has even violated its own manual under Chapter 9.1, 9.2, 9.3 regarding conducting of a preliminary enquiry and preparing a preliminary enquiry registration report under Chapter 9.7. Learned counsel for the petitioners has also argued that under Chapter 10 dealing with regular cases, it is provided that while registering the FIR, the legal requirement of Section 164 Cr.P.C. should be fully complied with. Learned counsel has, thus, submitted that the provisions of Chapter 10.1, 10.2 and 10.3 are also not followed. It is further submitted that under Chapter 10.30, it is specifically provided that provisions of Cr.P.C. shall be fully complied with by all the Branches of States in registration of R.C.'s and even this procedure has not been followed. It is further argued that Chapter 14.2 further provide that the power of investigation as granted by the Delhi Special Police Establishment Act, do not vest any different powers other than those laid down in Cr.P.C., 1973. It is further provided that the provisions of Sections 156 and 157 Cr.P.C., will apply.

Learned counsel for the petitioners has further argued that one of the essential character of investigation is inspection of the scene of crime under Chapter 14.14 and preparation of a plan of the scene of crime under Chapter 14.15 and the same has also not been followed in

the instant case. It is further submitted that no technical assistance was taken under Chapter 14.17.

Learned counsel for the petitioners has, thus, submitted that once the CBI has not followed even its own manual and has violated the provisions of Cr.P.C., the only evidence which is collected is the oral statement of the victims or their relatives and therefore, a serious prejudice is caused to the petitioners.

Learned counsel for the petitioners has next referred to the judgment of the Hon'ble Supreme Court in **“*Arnab Manoranjan Goswami vs State of Maharashtra*”, 2021(2) SCC 427**, wherein it has been observed as under:-

“Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC—or prevent abuse of the process of any Court or otherwise to secure the ends of justice. Decisions of this court require the High (2005) 8 SCC 21 (2010) 14 SCC 496 (2012) 1 SCC 40 Criminal Appeal No. 1605 of 2019 decided on 22 October 2019 PART J Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is

protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one – and a significant - end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post- Independence, the recognition by Parliament³⁷ of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being Section 482 of the Cr.P.C. 1973 PART J made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation

of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

Learned counsel for the petitioners has further relied upon the judgment **“*Vinubhai Haribhai Malaviya vs State of Gujarat*”, 2019 (17) SCC 1**, wherein it has been held as under:-

“18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the CrPC that must needs inform the interpretation of all the provisions of the CrPC,

so as to ensure that Article 21 is followed both in letter and in spirit.”

Learned counsel for the petitioners has, thus, argued that (i) there is no conferment of jurisdiction by the Central Government in terms of Sections 2 and 3 of the Delhi Special Police Establishment Act; (ii) the CBI has violated its own Manual regarding conducting the preliminary investigation and while converting the same to the regular case (P.E. to R.C.), (iii) the basic provisions of Cr.P.C. are not adhere to while conducting the investigation, (iv) CBI has not conducted the fair investigation by not visiting the scene of crime, preparing the site plan and by not doing any scientific investigation, thus, serious prejudice is caused to the petitioners.

Mr. Sumeet Goel, learned Senior Advocate, Special Public Prosecutor for CBI, has rebutted the arguments on all counts. It is submitted that under Punjab Disturbed Area Act, 1983, certain powers were given to the Police Officer under Section 4 to fire upon a person contravening certain orders for maintenance of public order after giving due warning under Section 4 of the Act. It is further submitted that Section 6 provides protection to the person acting under Sections 4 and 5 against prosecution or any legal proceedings.

Learned senior counsel appearing for CBI has referred to the judgment ***“Balbir Singh vs State of Punjab through CBI”, 2001 (4) RCR (Criminal) 308***, to submit that where the prosecution of a similarly situated accused police official was held on the allegation that they have killed 04 persons in a fake encounter, it was held that it cannot be said that the accused police official did not act in discharge of

official duty. Similar is the view taken by this Court in ***“Atma Singh Bhullar and others vs State of Punjab and another”***, 2012(2) RCR (Criminal) 929. It is further submitted that the Hon'ble Supreme Court in case of ***“Devinder Singh and others vs State of Punjab through CBI”***, 2016(2) RCR (Criminal) 876, in Para 38, has observed as under:-

“38. In the instant cases, the allegation as per the prosecution case it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct there is no requirement of any sanction. However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. The trial court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law. The

trial to proceed on the aforesaid basis. Accordingly, we dispose of the appeals/writ petition in the light of the aforesaid directions.”

Learned senior counsel for the CBI, has further referred to a bunch of cases, which were decided on 20.12.2017, with a lead case titled as **“Arjan Singh vs CBI and others”** in CRR No.3854 of 2016. It is submitted that those cases were filed by the present set of petitioners and the main point involved was whether before launching the prosecution of the petitioners, sanction under Section 6 of the Act was required as they were acting in discharge of their official duty. It is further argued that all these petitions were dismissed with the following observations:-

“93. In view of my above discussion, I find no legal or factual infirmity in impugned orders declining applications of their discharge filed by petitioner(s). However, learned trial Court has observed that at this stage, there is nothing on file to suggest that act of accused was in the discharge of their official duties or provisions of Section 6 of the Act of 1983 are attracted. As per directions of Hon'ble Apex Court in the case of Devinder Singh (supra), the trial Court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to notice of the Court that there was reasonable nexus of the incident with discharge of official duty, the Court shall re-examine the question of sanction and take decision in accordance with law. The above directions nowhere means that the trial Court has to wait till the final decision of the trial. In the event of any

such evidence/material coming to its notice even at prior stage, the same can be looked into to re-examine the question of sanction. The observation of trial Court in impugned order(s) that it will look into the question of sanction at the final stage stands modified in the above terms. Revision petitions have no merits, as such, dismissed with above observations. However, applications if any, filed by petitioners under Section 6 of the Act of 1983 or Section 197 Cr.P.C. can be kept pending by trial Court by passing a brief order if it is of the opinion that the evidence on file do not suggest nexus of the incident with the discharge of official duties of petitioners or calling for sanction as per provisions of Section 6 of the Act of 1983 and decide the same at appropriate stage.

94. Before parting it will be relevant to take a note of the fact that after filing of charge-sheet in these cases a long period has elapsed and the prosecution evidence is yet to start. It is neither in the interest of prosecution nor petitioners that sword of prosecution keep on hanging over their heads for such a long period. The trial Court is directed to proceed further in the matter expeditiously and frame a schedule for recording evidence of prosecution at the earliest and then to allow petitioners to lead defence evidence, if required, in support of their plea.”

It is submitted that the SLP filed by the petitioners against the order dated 20.12.2017 were dismissed by the Hon'ble Supreme Court on 26.03.2018.

It is also argued that the plea taken in the present case regarding the jurisdiction were very much available to the petitioners even at that stage, however, the same were not taken and the petitioners are filing multiple petitions. Learned senior counsel for CBI has further

placed on record the office order vide which the Director, CBI has extended jurisdiction of SIU-XVI Branch General, to register criminal cases arising out of P.E. 02(S)95/CHG 32 cases under the orders of the Hon'ble Supreme Court. It is further submitted that in pursuance to the internal noting of the CBI, a Notification was issued by the Central Bureau of Investigation Policy Decision Division on 28.11.2017 that the investigation of criminal cases is to be registered under the order dated 11.12.1996 by the Hon'ble Supreme Court of India, the jurisdiction of SIU-XVI Branch Jammu was extended. Later on, in pursuance to this Policy Decision, an office order dated 07.02.1997, which is placed on record as Mark -A and the same reads as follows:-

“In partial modification of Policy Division No.21/50/94-PD Dt. 26.12.1994, the jurisdiction of SIU.XVI Branch, Jammu, is also extended to the criminal cases to be registered under the Order Dt. 11.12.1996, of the Hon'ble Supreme Court of India, arising out of PE 2(S)/95 CHG.

This order will come into effect immediately.

This issues with the approval of DCBI.

*Sd/-
(M.L. Sharma)
Jt. Director (P)/CBI
New Delhi.”*

Learned senior counsel for the CBI has, thus, argued that the jurisdiction of the Jammu Branch was extended with regard to all the cases which were registered in compliance of the order of the Hon'ble Supreme Court, arising out of P.E.2(S)95/CHG.

Learned senior counsel for the CBI has further referred to

Section 4 of the Delhi Special Police Establishment Act, 1946, to submit that such power of administration vest with the Director which is exercisable by the Inspector General of Police in respect of police force in a State. It is, thus, argued that the Notification conferring the jurisdiction upon Jammu Branch was well within the powers of the Director.

Mr. R.S. Bains, learned senior counsel appearing for the complainant has argued that the petitioners are habitual of filing repeated petitions, some of which were already dismissed by this Court. It is submitted that apart from the judgment of this Court passed in *Arjan Singh's case (supra)* where the primary question raised by the petitioners was that their prosecution in the absence of sanction under Section 6 is bad, which were not accepted by this Court as well as the Hon'ble Supreme Court, some of the petitioners Kishan Singh and others had even filed CRM-M No.32964 of 2016, raising the point of territorial jurisdiction, however, the same was dismissed by this Court observing that the delay of 19 years in challenging the FIR is fatal to the petitioners who have never challenged the proceedings on the ground regarding the territorial jurisdiction of the investigation conducted by the CBI. The said petition was dismissed as withdrawn on 19.09.2016 with a direction to the trial Court to follow the judgment of the Hon'ble Supreme Court in letter and spirit.

Learned senior counsel for the complainant has also submitted that filing of the previous petitions have not been disclosed. It is also submitted that the petitioners have even filed a bunch of civil

writ petition for redressal of the same grievance, however, those petitions were dismissed as withdrawn and thereafter, the application was filed before the trial Court and again some civil writ petitions are filed which are pending before this Court.

After hearing the counsel for the parties, the following undisputed facts emerges:-

(a) The Hon'ble Supreme Court in Criminal Original Jurisdiction, Writ Petition (Criminal) No.497 of 1995, vide order dated 15.11.1995 has directed the Director, CBI to appoint a high power team to investigate into the fact regarding the gross human right violations and cremation of large number of dead bodies by the police with a label unidentified. The State of Punjab was directed to assist CBI in the investigation. Liberty was granted to CBI to seek any further direction from the Court from time to time as may be necessary during the investigation with a further direction to file interim report before the Hon'ble Supreme Court after every 03 months.

(b) In the subsequent order dated 11.12.1996, the CBI was directed to further take action in the matter and register cases where necessary, hold investigation and proceed in accordance with law on the basis of material collected during investigation with further liberty to CBI to seek any further directions.

(c) In compliance thereof, the CBI registered

preliminary enquiry arising out of PE 02(S)95/CHG and 32 cases were registered and the investigation was assigned to SIU-XVI Branch, Jammu.

The Director, CBI on 07.02.1997 issued a policy decision that the jurisdiction of SIU-XVI Branch, Jammu is extended to the criminal cases to be registered under the order dated 11.12.1996 passed by the Hon'ble Supreme Court of India arising out of PE 02(S)95/CHG.

(d) The SIU-XVI Branch, Jammu later on, converted the P.E.s into R.C.s and conducted the investigation at Jammu. As per the case of the petitioners, the witnesses were called at Jammu where their statements were recorded and the record available from the Punjab Police was also taken in possession by the CBI.

(e) In the absence of any reply/counter-affidavit by the CBI, though, not clear yet it is also not disputed that certain provisions of the CBI Manual as well as the provisions of Sections 154 to 156 of Cr.P.C., were not properly followed i.e. under Chapters 14.14 and 14.15, neither the scene of crime was inspected by the CBI nor the site plan of the crime was prepared and it was not ascertained what is the actual scene of crime.

(f) There is nothing on record to suggest that any scientific investigation was conducted to find out that the material collected by the CBI will disprove or

support a witness testimony under Clause (e) of Chapter 14.14.

(g) Under Sections 2 and 3 of the Delhi Special Police Establishment Act, 1946, the powers vest with the Central Government and not with the Director and therefore, it has not come on record whether the notice conferring jurisdiction of SIU-XVI Unit, Jammu by the Director, CBI is with prior approval of the Central Government. However, it is clear that the Hon'ble Supreme Court has clearly directed CBI to undertake the investigation and the Director General of Police of Punjab and other functionaries were directed to assist CBI. It has also not come on record whether CBI has sought any further clarification from the Hon'ble Supreme Court that SIU-XVI Unit of Jammu, will have jurisdiction to investigate the cases, however, the Hon'ble Supreme Court has directed CBI to first to appoint a high power team to investigate the facts and subsequently, specific directions are given to the CBI to take further action and register the cases where necessary, hold investigation and proceed, in accordance with law on the basis of material collected during investigation.

(h) The Director, CBI has conferred the jurisdiction to SIU-XVI Branch, Jammu to conduct the investigation in all the cases, as per the direction of the

Hon'ble Supreme Court.

(i) However, the direction of the Hon'le Supreme Court that after registration of the case, where necessary, CBI should hold investigation and “proceed in accordance with law”, appears to be not properly followed as the procedure of investigation under the Cr.P.C. and CBI Manual, as noticed above, is not properly adhere to.

(j) As per the judgment of the Hon'ble Supreme Court in Vineet Narain's case (supra), the CBI Manual based on Cr.P.C. provides essential guidelines for CBI functioning and therefore, in the absence of adhering to the provisions of Cr.P.C. and the CBI Manual, to some extent has prejudiced the right of the petitioners who are facing trial.

(k) From the time when the FIR's were registered and till the report under Section 173(2) Cr.P.C. were submitted before the trial Court, the petitioners cannot be said to have acquired any special knowledge about the investigation, conducted by CBI, as they came to know about the same only on the basis of the charge-sheet filed in the Court and therefore, well within their right of fair investigation and trial, the petitioners had a right to move an application before the trial Court, in this regard.

(l) A perusal of the impugned order passed by

the trial Court would reveal that the primary argument of all the petitioners is that the initiation of proceeding i.e. registration of R.C. at Jammu is without jurisdiction as no part of the alleged offence is committed in the State of Jammu & Kashmir.

After hearing the learned senior counsel for the parties, I find that the trial Court has rightly decided that the issue of jurisdiction which vest with SIU-XVI Branch, Jammu, to conduct the investigation and it cannot be said to be without jurisdiction as it was directed by the Hon'ble Supreme Court that the Director, CBI will first appoint high power team to investigate the facts and then, in terms of the further direction to take up investigation, registered the cases where necessary, hold investigation and proceed in accordance with law on the basis of the material collected during investigation, the subsequent letter issued by the Director, CBI on 09.02.1997 (with reference to the order of the Hon'ble Supreme Court), conferring jurisdiction to SIU-XVI Branch, Jammu, cannot be said to be illegal, in any manner though, under Sections 2 and 3, such powers are given to the Central Government, however, in the instant case, once a direction has been issued by the Hon'ble Supreme Court to the Director, CBI, such power vested with him and therefore, the policy decision dated 07.02.1997, conferring jurisdiction of SIU-XVI Branch, Jammu, in view of the direction of the Hon'ble Supreme Court, cannot be said to be illegal in any manner and therefore, I find no merit in these petitions and the same are accordingly, dismissed.

However, with regard to the objections raised by learned senior counsels for the petitioners regarding the manner in which the investigation is conducted and the shortcomings highlighted, it was always open for the petitioners to seek clarification before the Hon'ble Supreme Court as liberty was granted to CBI as well or in the alternative now can move an application under Section 173(8) Cr.P.C., before the trial Court for further investigation, if so advised.

(ARVIND SINGH SANGWAN)
JUDGE

02.09.2021

yakub

Whether speaking/reasoned	Yes/No
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Whether reportable:	Yes/No
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