

Form No. J(1).
Item No.6

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.R. No. 551 of 2022

SOUMENDU ADHIKARI
VERSUS
ABU SOHEL & ANR.

Appearance:-

Mr. Sudipto Moitra
Mr. Sourav Chatterjee
Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee

....For the Petitioner

Mr. Soumen Kumar Dutta
Mr. S. Bhattacharjee

....For the Opposite Party No.1

Mr. Saswata Gopal Mukherjee, Ld. P.P.
Mr. Rudradipta Nandi
Mr. Pinak Kumar Mitra

....For the State

Judgment on : **15.03.2023**

TIRTHANKAR GHOSH, J.:-

The present revisional application has been preferred challenging the order dated 17.02.2022 passed by the learned A.C.J.M., Contai in M.P. Case No.60 of 2022 wherein the learned Magistrate was pleased to allow the prayer of the opposite party no.1 under Section 156(3) of the Code of Criminal Procedure.

The present case commenced on a letter of complaint addressed by the opposite party no.1 namely, Abu Sohel (hereinafter referred to as “the complainant”) to the Inspector-in-Charge, Contai Police Station. The contents of the said letter dated 01.02.2022 which was received on the same date by Contai Police Station are set out as follows:-

“This is to inform you that the undersigned is a law enduring peace loving citizen of India and he is an practicing Advocate of Supreme Court of India as well as Calcutta High Court by profession and the permanent resident of the address mentioned herein below.

*This is to inform you after having information’s collected from the reliable source and after having perused the relevant information’s in connection with the above mentioned subject it is found that while executing the job as mentioned herein above the said **Mr. Soumendu Adhikari while he was the president of Contai P. K. College** did not bother to take care any prescribed law and had been able to misappropriate the funds by the way as follows:-*

- a) No procedural process of tender was floated in respect of any of the job executed as mentioned hereinabove and the said act is against the prescribed rules.***
- b) No Sanction plan is there in respect of any of the buildings.***
- c) No legal process was followed to execute the entire jobs mentioned herein above.***

It is respectfully submitted that by utilizing the name and influence of Sri Suvendu Adhikari and being the younger brother of the said person he had been able to execute the entire job according to his whims and nobody could raise any kind of

objection as there was huge life threat. It is very much apparent that he had chosen those contractors only who were blue eyed boys of him and will act according to his sweet will and for such it attracts criminal conspiracy as well as principles of Prevention of corruption Act.

*Under such circumstances you are hereby requested to enquire into the complaint hereby lodged before you and further requested to take appropriate legal steps under The Indian Penal Code, 1860, **THE PREVENTION OF CORRUPTION ACT, 1988, THE PREVENTION OF MONEY-LAUNDERING ACT, 2002** forthwith.”*

The complainant thereafter being aggrieved by the inaction/non-action of the police authorities for not-registering F.I.R. preferred a Public Interest Litigation being, W.P.A.(P) 57 of 2022 which was affirmed on or about 7th February, 2022 and was considered by a Court presided over by the Hon’ble Chief Justice on 15.02.2022. The Division Bench refused to consider the said application as a Public Interest Litigation holding that the grievance to be of personal nature. By the said order dated 15.02.2022 the Hon’ble Division Bench was pleased to rely upon the judgment of the Hon’ble Supreme Court in **Sakiri Vasu Vs. State of U.P. & Ors.** reported in **2008(2) SCC 409** and directed the petitioner to take recourse for proper remedy under the provisions of the Code of Criminal Procedure. Details of the order dated 15.02.2022 passed in W.P.A.(P) 57 of 2022 would be referred to in the later part of this order.

The complainant thereafter on 17.02.2022 approached the learned Additional Chief Judicial Magistrate, Contai invoking its jurisdiction under

Section 156(3) of the Code of Criminal Procedure. The contents of the application under Section 156(3) of the Code of Criminal Procedure are set out as follows:-

- “1. That your complainant is a peace loving, law enduring citizen of India and he has been residing at the address mentioned in the cause title to this complaint and he is an Advocate, successfully practicing at Hon’ble High Court at Calcutta as well as in Supreme Court of India and he is having locus-standi to prefer an application under 156(3) of the Code of Criminal Procedure of India seeking certain relief and or relieves as prayed here under.*
- 2. That your complainant states that the state authorities duly disbursed huge amount for the betterment and upliftment of a college runs under the name and style of Contai Prabhat Kumar College and the same is governed by an approved Governing Body as well as the said college is affiliated by the Vidyasagar University.*
- 3. The state authorities for the betterment of the concerned college directly issued and/or disbursed the fund in the account of the concerned Contai Prabhat Kumar College for construction of –*
 - a) Four storied girl’s hostel building of Contai P.K. College,*
 - b) Four Storied P.G. building of Contai P.K. College,*
 - c) Administrative building of Contai P.K. College (at Plot No.14 of Mouza – Dhandighi, J.L. No. 311, Khatian No. – 74, P.O. + P.S. – Contai),*
 - d) Third floor & Fourth Floor over existing Second Floor of (G=4) storied Administrative building of Contai P.K. College (at Plot No.15 of Mouza – Dhandighi, J.L. No. 311, Khatian No. – 14, P.O. + P.S. – Contai),*

e) Library, Reading Room & Class Room of Prabhat Kumar College (at Plot No.14 of Mouza – Dhandighi, J.L. No. 311, Khatian No. – 74, P.O. + P.S. – Contai),

f) Teachers Family Quarters of Prabhat Kumar College (at Plot No.154 of Mouza – Karkuli, J.L. No. 464, Khatian No. – 321, P.O. + P.S. – Contai).

4. Admittedly for the purpose of the construction of buildings proper building sanctioned plan are required from the competent authority but after getting an information from the concerned municipal office within which the concerned college is situated, no plan for the purpose of construction of the building has been sanctioned under the AEGIS of the said accused as he was the chairman of the concerned municipality as well as the president of the governing body of the concerned college.

5. It is further revealed from the available records and also after having obtained the informations it has been found that while prior to issuance of work order to the approved enlisted contractors no proper auction has been conducted, although all buildings as mentioned above have already been completed without having fulfillment of proper formalities as prescribed in the West Bengal Financial Rules and/or the prevailing Rules as on date, thereby it can be assumed and/or presumed that a huge amount of money has been siphoned under the aegis of the then Governing Body of the concerned college.

6. Your complainant states that a huge amount of money was allotted for the betterment of colleges thereby betterment and upliftment of the educational institution as well as for the enrichment of the students but the same was misappropriated, misused, by the said accused and his men and agents who were within the Governing Body of the concerned college. This is nothing but a gross illegalities.

7. That the complainant submits that this complaint is being filed to point out the gross violation, illegality, irregularity done by the

then Governing Body with the initiation of the then President of the Governing Body.

8. *Your complainant after having received the informations from the reliable source he specifically on his personal capacity duly lodged a complaint before the concerned Inspector-in-Charge indicating grievances and the same was received by the concerned Police Station by putting their respective seal and signature on 01.02.2022 but till date no effective steps has been taken till date.*

Photocopy of the complaint dated 01.02.2022 is annexed herewith and marked as Annexure "P-1".

9. *Your complainant respectively states that the concerned Inspector-in-Charge even after having received the authentic information and necessary documents the Inspector-in-Charge has been showing his reluctance to take effective steps and/or to initiate proper investigation and/or interrogation to the persons who were involved in the said siphoning of public fund only because he belongs to a highly politically influenced family.*

10. *That your complainant states that several times the complainant had paid visit to the Contai police station to meet the concerned officer of the said police station but every time the said complaint was kept under the promise that effective steps are being taken but he shrinking his hands as only he is having political influence.*

11. *That your complainant states that having no other alternative the complainant had been compelled to file a writ petition in the nature of Public Interest Litigation being W.P.A. (P) No. 57 of 2022 in which the Hon'ble Court have been pleased to grant the liberty to the complainant herein to proceed and/or avail such other appropriate remedies as are available in law.*

Photocopy of the order dated 15.02.2022 is annexed here with and marked as letter "P-2".

12. *That your complainant further states that at the time of hearing of the Writ Petition being W.P.A. (P) No. 57 of 2022 the Ld. Advocate for the State of West Bengal submitted a report of Inspector-in-Charge of Contai Police Station before the Hon'ble High Court, Calcutta which is also served upon the Ld. Advocate of the Complainant.*

Photocopy of the report dated 14.02.2022 duly signed by the Inspector-in-Charge of Contai Police Station is annexed here with and marked as letter "P-3".

13. *That your complainant states that the accused persons herein being the responsible person having huge political influence had taken undue advantage of his position and has dishonestly misappropriated the money and or fund and had converted the same to his own use. That the accused persons had therefore succeeded in designing their criminal acts with mala fide intention purposefully intentionally and mischievously.*

14. *Your complainant states that despite taking all necessary endeavors, no steps had been taken by the police authorities against the accused persons herein due to which I have been compelled to prefer the present application."*

The documents which were enclosed along with the application under Section 156(3) of the Code of Criminal Procedure included the letter of complaint dated 01.02.2022 addressed to the Inspector-in-Charge, Contai Police Station; a downloaded copy of mail which was sent on 3rd February, 2022 to senior police officers including S.P. Purba Medinipur; the order dated 15.02.2022 passed in W.P.A.(P) 57 of 2022; a report which was submitted by the Inspector-in-Charge, Contai Police Station before the Hon'ble High Court at Calcutta in W.P.A.(P) 57 of 2022 and an affidavit. In course of the present proceedings the petitioner filed two Supplementary Affidavits on 1st April,

2022 and 25th August, 2022. An affidavit in opposition was filed on behalf of the complainant/opposite party no.1 in respect of the Supplementary Affidavit filed at the instance of the petitioner. State was directed to submit reports through the District Magistrate, Purba Medinipur and such report was sent by the District Magistrate, Purba Medinipur after constituting an Enquiry Committee. Before dealing with the submissions advanced by the learned advocates appearing for the respective parties, it would be proper to set out the order dated 17.02.2022 passed by the Learned A.C.J.M., Contai in M.P. Case No.60 of 2022.

“Order No. 01. Dated 17.02.22:

*One **Abu Sohel** files a petition of complaint against **Soumendu Adhikari** with a prayer for sending the petition of complaint to I/C, Contai P.S. for causing investigation after treating the petition of complaint as an F.I.R.*

Heard Ld. Advocate for the complainant.

Perused the material on record.

Considering the facts and circumstances of this case as well as the available documents on record, I think there is sufficient ground for invoking the provision of Section 156(3) Cr.P.C. to unearth the truth. Accordingly, the prayer under Section 156(3) Cr.P.C. is allowed.

I/C, Contai P.S. is directed to register a case on the basis of the petition of complaint as an F.I.R.

Let the petition of complaint be sent to I/C, Contain P.S. for causing investigation after treating the petition of complaint as an F.I.R.

Copy of order along with petition U/S 156(3) Cr.P.C. forwarded to the I/C, Contai P.S. for his information and taking necessary action.

To 18.04.22. for report by the I/C, Contai P.S.”

It was informed on behalf of the State that pursuant to such order passed by the learned A.C.J.M., Contai the police authorities registered Contai Police Station Case No.78 dated 18.02.2022 under Sections 120B read with Section 403/ 406/ 409/ 477A of the Indian Penal Code.

Mr. Moitra learned senior advocate appearing for the petitioner submitted that the learned Magistrate at the inception should not have entertained the application under Section 156(3) of the Code of Criminal Procedure as there were non-compliance relating to the mandate expressed by the Hon'ble Supreme Court. To that effect learned advocate drew attention of the Court to the averments made in the application under Section 156(3) of the Code of Criminal Procedure and emphasized that there are no averments to the effect that after the Inspector-in-Charge, Contai Police Station refused to register F.I.R. an approach or an information was sent to the Superior Officer of the police for compliance of Sub-Section (3) of Section 154 of the Code of Criminal Procedure. Learned advocate further submitted that in the order so passed by the learned A.C.J.M., Contai there was no satisfaction also recorded by the learned Magistrate regarding any document being enclosed with reference to compliance under Section 154(3) of the Code of Criminal Procedure. Additionally it was contended on behalf of the petitioner that the learned Magistrate mechanically passed the impugned order dated 17.02.2022 ignoring the mandate of the Hon'ble Supreme Court in ***Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors.*** reported in ***2015 (6) SCC 287*** as there was no affidavit affirmed along with the application under Section 156(3) of the Code of Criminal Procedure. In order

to support his contention learned advocate for the petitioner drew attention of the Court to paragraphs 29 to 34 of the said judgment which are as follows:-

“29. *At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.*

30. *In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

31. *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an*

application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

32. *The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.*

33. *At this juncture, we may fruitfully refer to Section 32 of the Sarfaesi Act, which reads as follows:*

“32. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.”

In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR

under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind.

34. *In view of the aforesaid analysis, we allow the appeal, set aside the order passed [Priyanka Srivastava v. State of U.P., Criminal Misc. WP No. 24561 of 2011, decided on 23-12-2011 (All)] by the High Court and quash the registration of the FIR in case Crime No. 298 of 2011, registered with Police Station Bhelupur, District Varanasi, U.P.”*

Learned advocate also relied upon **Babu Venkatesh & Ors. Vs. State of Karnataka** reported in **2022 SCC Online SC 200** to emphasize the issues relating to non-compliance of Section 154(3) of the Code of Criminal Procedure and no affidavit being their along with the application under Section 156(3) of the Code of Criminal Procedure. Attention of the Court was drawn to paragraphs 23 to 29 of the said judgment which are set out as follows:-

“23. *After analysing the law as to how the power under Section 156(3) CrPC has to be exercised, this Court in Priyanka Srivastava v. State of U.P. [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] has observed thus : (SCC p. 306, paras 30-31)*

“30. In our considered opinion, a stage has come in this country where Section 156(3)CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass

certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari [Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

24. This Court has clearly held that, a stage has come where applications under Section 156(3)CrPC are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

25. This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3)CrPC are filed in a routine

manner without taking any responsibility only to harass certain persons.

26. *This Court has further held that, prior to the filing of a petition under Section 156(3)CrPC, there have to be applications under Sections 154(1) and 154(3)CrPC. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3)CrPC. Inasmuch as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.*

27. *In the present case, we find that the learned Magistrate while passing the order under Section 156(3)CrPC, has totally failed to consider the law laid down by this Court.*

28. *From the perusal of the complaint it can be seen that, the complainant Respondent 2 himself has made averments with regard to the filing of the original suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156(3)CrPC. The High Court has also failed to take into consideration the legal position as has been enunciated by this Court in Priyanka Srivastava v. State of U.P. [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153], and has dismissed the petitions by merely observing that serious allegations are made in the complaint.*

29. *We are, therefore, of the considered view that, continuation of the present proceedings would amount to nothing but an abuse of process of law.”*

Petitioner also relied upon **Ramdev Food Products Pvt. Ltd. Vs. State of Gujarat** reported in **(2015) 6 SCC 439** to draw attention of the Court in respect of the exercise of powers under Section 156(3). Reliance has been placed on paragraphs **11, 12, 20 and 22.1** which are set out as follows:-

“11. On the other hand, contention on behalf of the alleged accused is that both the powers of the Magistrate : (i) directing investigation under Section 156(3); and (ii) direction under Section 202 to seek a report from police after investigation to enable the Magistrate to decide whether to proceed further and issue process are qualitatively different and are in different chapters of the Code. Thus, as per scheme of the Code, power of the police in pursuance of directions under the said two provisions is not the same. The Magistrate has discretion either to direct registration of a case under Section 156(3) or to conduct inquiry himself as the situation may warrant. This discretion is to be exercised by the Magistrate in his wisdom and having regard to the nature of material available. The direction under Section 156(3) to register a criminal case and to investigate is to be exercised where the Magistrate is satisfied that *prima facie* a cognizable offence has been committed. On the contrary, where he thinks it necessary to conduct further inquiry before deciding whether he should proceed further in the matter, the matter has to be dealt with under Section 202. Mere allegation of forgery is not enough to require the Magistrate to pass the order under Section 156(3).

12. It is further submitted that in the present case, the civil proceedings are pending between the parties where the question of genuineness or otherwise of the partnership deed is an issue. The process of criminal law cannot be used when a dispute is primarily of civil nature. Simultaneously initiation of criminal proceedings may be permitted where an offence is shown to have been committed. Thus, the Magistrate was entitled to satisfy himself as to whether any cognizable offence had been committed before proceeding further. The Magistrate was not satisfied from the material available that any cognizable offence had been committed and he rightly decided to conduct further enquiry under Section 202. Having regard to the limited nature of inquiry under Section 202 which option had been rightly chosen by the

Magistrate, direction to the police to investigate and give a report was limited by the very purpose for which the limited inquiry was to be held, as against procedure for investigation in cases not covered under Section 202 of the Code. The purpose was to enable the Magistrate to decide whether there was ground to proceed further. The Magistrate having taken cognizance of the offence and the police having not registered a criminal case nor the Magistrate having directed registration of criminal case, procedure and power of the police in the matter are different and in such a situation police did not have the power to arrest without permission of the Magistrate as was the view of the Gujarat and other High Courts.

20. *It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , it was observed : (SCC p. 711, para 11)*

11. “The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected

in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

The above observations apply to category of cases mentioned in para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

22.1. *The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.”*

A reference was made to the order dated 06.01.2023 passed in W.P.A. 175 of 2023 in respect of a criminal case which according to the petitioner was foisted because of political vendetta. Learned advocate appearing for the petitioner also drew attention of the Court to the Supplementary Affidavits so filed particularly with respect to the series of cases which were initiated against the petitioner and his elder-brother because of their political affiliation. Learned Senior advocate submits that the delay in lodging the F.I.R. after the petitioner was not associated with the college or the Municipality itself goes to show that there was vindictiveness on behalf of the complainant and mala fide attached to initiation of such criminal case which should be interfered by this Court as the continuance of the same would be abuse of the process of law.

Mr. Saswata Gopal Mukherjee, learned Public Prosecutor appearing on behalf of the State narrates the background of the present case and submits that the letter of the opposite party no.1/complainant was received by the Inspector-in-Charge of Contai Police Station on 1st February, 2022 and after assessing the accusations a preliminary enquiry was initiated to ascertain regarding the truth relating to the substance of the allegations. The complainant/opposite party no.1 preferred Public Interest Litigation before the Hon'ble High Court at Calcutta which was taken up on 15th February, 2022 and in W.P.A. No.57 of 2022 the Hon'ble Division bench presided over by the Hon'ble Chief Justice was pleased to hold as follows:-

“The grievance is in respect of non-registration of FIR on the basis of the complaint made by the petitioner therefore it is a grievance of personal nature, which cannot be agitated in a PIL. That apart, the writ under Article 226 of the Constitution is not a proper remedy seeking direction to register an FIR or to carry out the investigation. If the petitioner has any grievance in respect of nonregistration of the FIR or improper investigation, then the proper remedy available to him is to take recourse to the provision of Cr.P.C. The Hon'ble Supreme Court in the matter of Sakiri Vasu vs. State of Uttar Pradesh and others reported in (2008) 2 SCC 409 has held as under:

“25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 Cr.P.C. before the police officers

concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

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

The opposite party no.1 thereafter preferred an application under Section 156(3) of the Code of Criminal Procedure before the learned A.C.J.M., Contai being M.P. Case No.60 of 2022 and the learned A.C.J.M., Contai by its order dated 17th February, 2022 was pleased to direct the Inspector in Charge, Contai Police Station to register a case on the basis of the petition of complaint treating the same as F.I.R.

Learned Public Prosecutor submits that since the learned A.C.J.M., Contai directed to register a case, the Inspector in Charge, Contai Police Station had no other option except to register the case and proceed with the collection of the materials. To illustrate his argument learned Public Prosecutor relied upon State of Haryana Vs. Bhajan Lal & Ors. reported in 1992 Supp (1) SCC 335. Attention of the Court was drawn to paragraphs 28 to 33 of the said judgment which is set out as follows:-

“28. *Before discussing which of the submissions ought to prevail, we shall in the foremost deal with the legal principles governing the registration of a cognizable offence and the investigation arising thereon. Section 154(1) is the relevant provision regarding the registration of a cognizable offence and that provision reads as follows:*

“154. Information in cognizable cases.— (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.”

29. *The above sub-section corresponds to Section 154 of the old Code (Act of 1898 to which various amendments were made by Act 26 of 1955) and also to Section 154 of the Code of Criminal Procedure of 1882 (Act 10 of 1882) except for the slight variation in that expression ‘local government’ had been used in 1882 in the place of ‘State Government’. Presently, on the recommendations of the Forty-first Report of the Law Commission, the sub-sections (2) and (3) have been newly added but we are not concerned with those provisions as they are not relevant for the purpose of the disposal of this case except for making some reference at the appropriate places, if necessitated. Section 154(1) regulates the manner of recording the first information report relating to the commission of a cognizable offence.*

30. *The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a “cognizable offence” (as defined under Section 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to “an officer*

incharge of a police station” (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as “First Information Report” and which act of entering the information in the said form is known as registration of a crime or a case.

31. *At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer*

subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. *Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression “information” without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, “reasonable complaint” and “credible information” are used. Evidently, the non-qualification of the word “information” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, ‘reasonableness’ or ‘credibility’ of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word “information” without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that ‘every complaint or information’ preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that ‘every complaint’ preferred to an officer in charge of a police station shall be reduced in writing. The word ‘complaint’ which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word ‘information’ was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there*

must be an information and that information must disclose a cognizable offence.

33. *It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.”*

In tune with the aforesaid judgment it was submitted on behalf of the State that the duty of the police authorities on receiving an information was to check its credibility and to see whether a cognizable offence was made out or not and to collect materials in support thereof. It has further been submitted that since the offence informed related to previous years and involved collection of documents, the police authorities were collecting the materials from the different authorities which included the college and municipality and the same would be reflected from the report which was submitted before the Hon'ble Division Bench by the Inspector in Charge, Contai Police Station. However, the police authorities till the said date did not register the F.I.R. only because of the fact that the supporting materials relating to the allegations did not disclose a cognizable offence for registration of F.I.R. and the same was in tune with the judgment of the Hon'ble Apex Court in ***Lalita Kumari Vs. Government of Uttar Pradesh & Ors.*** reported in **(2014) 2 SCC 1**. Reference was made to paragraph 120.5 and 120.6 wherein it was held as follows:-

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

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

- (a) Matrimonial disputes/family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*

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

Learned Public Prosecutor submitted that the Hon'ble Supreme Court created a category of offence for conducting preliminary enquiry and the present case falls within (d) and (e) of paragraph 120.6 of the said judgment. It was emphasized by the learned Public Prosecutor that the police authorities were exercising their powers in accordance with law and the same would be transparent from a conjoint reading of the paragraphs as referred to above in the case of **Bhajan Lal & Ors. (supra)** and **Lalita Kumari (supra)**. The police authorities were in the process of collection of materials and they were left without any option except to register the F.I.R. as the learned A.C.J.M., Contai passed directions to register such F.I.R.

Learned Public Prosecutor also distinguished the judgments relied upon by the petitioner in **Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors.** reported in **(2015) 6 SCC 287** and **Babu Venkatesh & Ors.**

Vs. State of Karnataka & Anr. reported in **(2022) 5 SCC 639**. According to the learned Public Prosecutor in Priyanka Srivastava (*supra*)) a defaulter was pursuing to implicate certain bank officials in a criminal case and repeated applications under Section 156(3) of Cr.P.C. were being filed. In such background the Hon'ble Supreme Court introduced compulsory affidavit for the complainant who sets the criminal law into motion to take the responsibility of the allegations made therein. The said case has no bearing on the facts of the present case where State as the Investigating Agency were conducting the preliminary inquiry. Distinguishing ***Babu Venkatesh & Ors. (supra)*** on the issue that in the instant case there was an information made to the police authorities on 1st February, 2022 and by way of mail the Superintendent of Police was also informed by the complainant. There was substantial compliance of Section 154(1) and Section 154(3) of the Code of Criminal Procedure. It was further submitted that the Investigating authorities did not find any materials which was suppressed by the complainant in the information so lodged on 1st February, 2022 and the factum of no affidavit being under Section 156(3) of the Code of Criminal Procedure or no such reference being made in respect of the information sent to the superior police officers in Section 154(3) of the Code of Criminal Procedure are not applicable to the facts of the present case. Reliance was lastly made by the State in ***Tilly Gifford Vs. Michael Floyd Eshwar & Anr.*** reported in **(2018) 11 SCC 205**, paragraphs 3, 7 and 8 of the said judgment which have been relied upon by the State are set out as follows:-

“3. A perusal of the order of the High Court released on 21-5-2015 would indicate that the High Court has gone far beyond the

contours of its power and jurisdiction under Section 482 CrPC to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numerous pronouncements over the last half century. Time and again, it has been emphasised by this Court that the power under Section 482 CrPC would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law.

7. *On a consideration of the statements of the persons examined in the course of investigation, referred to above, as well as the statements of other such persons examined, findings were recorded by the enquiry officer in his report submitted to the High Court which, inter alia, is to the following effect:*

“On 2-3-2013, a complaint was lodged with Nazarbhad PS of Mysore City by Eward Joubert Vaningen wherein he was accompanied by Tilly Gifford, Ajit Lobo and Marina Meyn. The then PI, Nazarbhad Police Station Mr Mohan did not act on the complaint immediately and the same complaint was considered only on 11-3-2013 at 1845 hours wherein a criminal case was registered vide Nazarbhad Police Station Cri. No. 46/13 under Sections 403, 409, 420 and 464 IPC. The original complaint of Edwin Joubert Vaningen was missing from the case file. Serious procedural lapses in registration of the FIR was seen and the misplaced original complaint and the delay in the registration of the FIR till 11-3-2013 (day prior to the death of Edwin Joubert Vaningen) raise serious doubts regarding the reasons for such delay. The delay in taking action on the complaint of Edwin Joubert Vaningen between 2-3-2013 to 11-3-2013 only benefits Michael Floyd Eshwer. The delay and the advantage it gives to Michael Floyd Eshwer

would safely permit us to conclude that omission and commissions by the then PI of Nazarbad Police Station Mr Mohan and the then DCP Shri Basavaraj Malagatti were at the behest of Michael Floyd Eshwer.”

8. *We have extracted the aforesaid findings (which clearly appear to be against the respondent-accused) only to highlight the fact that the statements on which reliance has been placed have been appreciated by the inquiry officer and conclusions have been drawn and reached, which fact would be suggestive of an imminent requirement of appreciation of materials to be unravelled by a proper investigation so as to arrive at the necessary findings on the core issue i.e. the legal existence of a valid FIR. However, taking into account the fact that the inquiry was conducted pursuant to the order of the High Court to unravel the truth surrounding the lodging of the FIR and was not a step in the investigative process which, in any case, has been interdicted by the High Court by the impugned order [Michael Floyd Eshwar v. State of Karnataka, 2014 SCC OnLine Kar 12407] , we do not consider it prudent to come to one conclusion or the other with regard to the said findings. However, the findings of the inquiry would clearly indicate that a large volume of material facts surrounding the lodging of the FIR and its authenticity needs to be investigated and the truth unravelled. But this is what has been interdicted by the High Court. In the above situation, we find ourselves unable to agree with the view taken by the High Court. On the contrary, we are of the opinion that the FIR in question should be fully investigated in accordance with law and thereafter further legal consequences as may be warranted should be allowed to take effect. We order accordingly and direct the completion of the investigation within sixty days from today, whereafter steps in accordance with law will follow.”*

Learned Public Prosecutor lastly concluded by submitting that process of collection of materials is at the very nascent stage and according to him materials were being collected and the same was being done in a smooth manner till 16th February, 2022. However, the registration of the FIR was pursuant to the order passed by the learned ACJM, Contai under Section 156(3) of the Code of Criminal Procedure. The learned Public Prosecutor on a query from the Court, that why only one individual has been singled out as an accused in the formal part of the FIR, it was answered that the police authorities adhered only to the directions of the learned ACJM, Contai since the name of only one individual as an accused was appearing in the application under Section 156(3) of Cr.P.C., the Formal F.I.R. was filled up by the Inspector in Charge of Contai Police Station by inserting the name of the person as an accused which was appearing in the application under Section 156(3) of the Code of Criminal Procedure.

Mr. Soumen Kumar Dutta, learned advocate appearing for the opposite party no.1/complainant submitted that the letter was sent to the police authorities on 1st February, 2022 followed by a mail to the superior police officers on 3rd February, 2022. Learned advocate submitted that the police authorities were not acting in accordance with law although cognizable offence was divulged in the letter of complaint. The complainant having no other option approached the Hon'ble High Court and in W.P.A.(P) 57 of 2022 the Hon'ble Division Bench directed the complainant to approach the jurisdictional Magistrate under Section 156(3) of the Code of Criminal Procedure. Accordingly, the complainant filed the application under Section 156(3) of the Code of Criminal Procedure before the learned A.C.J.M.,

Contai. It was pointed out by the learned advocate that from the report of the Inspector in Charge, Contai Police Station a cognizable offence was made out, however, the same Inspector in Charge refused to register any case. Learned advocate submitted that it was reluctance of the police authorities which compelled the complainant to approach the learned Magistrate and on an appreciation of the materials before him/her which were placed before the learned Court it arrived at an opinion regarding a cognizable offence being made out for which the investigation was required to be conducted and accordingly directed the Inspector-in-Charge, Contai Police Station to register a case. There is no illegality according to the learned advocate in the orders so passed by the learned A.C.J.M., Contai and at this stage there should not be any interference by the High Court while exercising its powers under Section 482 of the Code of Criminal Procedure. Learned advocate also adopted the relevant paragraphs which have been cited by the learned Public Prosecutor relating to ***Bhajan Lal & Ors. (supra)*** and ***Lalita Kumari (supra)***. On specific query regarding the issue of the affidavit and the manner in which it was filed learned advocate replied that the affidavit was filed before the learned A.C.J.M. along with the application under Section 156(3) of the Code of Criminal Procedure. It has been submitted that this Court while exercising its jurisdiction under Section 482 should be slow in interfering with the proceedings while investigation has already commenced.

I have assessed the submissions advanced by Mr. Moitra, learned senior advocate appearing for the petitioner, learned Public Prosecutor appearing on behalf of the State, Mr. Soumen Kumar Dutta, learned

advocate appearing for the complainant/opposite party no.1, I have also taken into account the documents which have been relied upon by the respective parties in the application under Section 156(3), the Supplementary Affidavit so filed by the petitioner, the affidavit in opposition relating to the Supplementary Affidavit, the report so sent by the District Magistrate, Purba Medinipur and I have also considered the documents which were collected by the police authorities.

With reference to the allegations made in the letter of complaint or the direction passed by the learned A.C.J.M., Contai, it reveals from the application under Section 156(3) of the Code of Criminal Procedure that the same was based on information which has been received by the complainant/opposite party no.1 and was sent to the Inspector in Charge, Contai Police Station by a letter dated 1st February, 2022. The contents of the said letter of complaint was devoid of any supporting documentary materials but only based on personal information received by the complainant/opposite party no.1. The contents of the application under Section 156(3) of the Code of Criminal Procedure nowhere states that the information was sent to the Superintendent of Police or in other words, there was compliance of Section 154(3) of the Code of Criminal Procedure, however, the documentary evidence enclosed along with the application under Section 156(3) of Cr.P.C. reflects that an e-mail was addressed to the superior officers of police including the S.P., Purba Medinipur which was considered definitely by the learned A.C.J.M. while the order was passed and do adhere to the dictum relating to information sent to superior officer and compliance of both **Section 154(1)** and **Section 154(3)** of the Code of

Criminal Procedure. The affidavit which was called in question by the petitioner was assessed by this Court after calling for the Lower Court Records wherein it was found that the said affidavit was never in continuation of the application under Section 156(3) of the Code of Criminal Procedure but was in the form of a separate enclosure after all the documents were enclosed. Ordinarily an affidavit is a continuation of an application preferred by the Court of Law which is available after the prayer advanced before the Court. The Notarial Stamp has been enclosed only in the affidavit and do not find its place in any of the pages of the application under Section 156(3) of the Code of Criminal Procedure. This part is peculiar in view of the contention which has been submitted that the complainant/opposite party no.1 who is practicing advocate regularly in the High Court at Calcutta and also the Supreme Court of India. A professional at least must be acquainted as to how an affidavit or verification is provided in all formats of applications before a Court of Law. The affidavit should have been present or should have followed the prayer advanced in the application under Section 156(3) of the Code of Criminal Procedure. The same not being there should have been questioned by the learned Magistrate and a satisfaction recorded to that extent in the order dated 17.02.2022.

The application under Section 156(3) of the Code of Criminal Procedure has been filed against a single accused person that is the petitioner herein who is alleged to have been the President of the Governing Body of the College as also the Chairman of the Contai Municipality. The nature of the allegations or the accusations complained relate to

construction of Girls' Hostel Building of Contai P.K. College, G + 4 Administrative Building of Contai P.K. College, 3rd floor and 4th floor of the same college library, reading room of the said college and the teachers family quarters of the same college. Such construction according to the complainant/opposite party no.1 were by utilizing the Government funds. The complainant should have owed the responsibility of implicating not only the petitioner but all the persons responsible including the Governing Body and the Government Officials who were responsible for disbursing such funds after checking the Utilization Certificate. The approval or disbursal of the funds definitely requires the involvement of Government Officials.

Surprisingly, a reference is also found in the allegation that the petitioner is the brother of the Leader of the Opposition of the West Bengal Legislative Assembly, although the same do not exonerate the petitioner from any offence but being the sole accused in a case where the police authorities were conducting a preliminary enquiry for searching credibility of the information which was furnished on 1st February, 2022 is bound to raise eyebrows as no case was registered till the learned A.C.J.M., Contai passed the direction for registration of the F.I.R. on 17th February, 2022.

The next issue, as such, which crops up is what were the materials available before the learned A.C.J.M., Contai so that the learned Magistrate immediately passed a direction on the same day on the application under Section 156(3) of the Code of Criminal Procedure. The same assumes importance in view of the submissions advanced by the learned Public Prosecutor that at the relevant stage the police authorities were searching in respect of the information furnished on 1st February, 2022 and so did not

register the F.I.R. The Lower Court Records which were called for in this case reflects that the application under Section 156(3) of the Code of Criminal Procedure were accompanied by the letter dated 1st February, 2022 (received by the Contai Police Station), the mail sent to the S.P., Purba Medinipur and other superior officials, the order dated 15.02.2022 passed by the Hon'ble Division Bench in W.P.A.(P) 57 of 2022. A report prepared by the Inspector in Charge, Contai Police Station which was submitted before the Hon'ble Division Bench and a Notarized affidavit.

There were no documents enclosed to show regarding any money being siphoned or any documents to reflect that the Governing Body of the said college with the petitioner as President in helm of affairs committed any illegality, irregularity or gross violation. These were simply accusations being made on the basis of personal information which the opposite party no.1 claims to have been obtained from reliable sources.

In view of the judgment of the Hon'ble Apex Court in ***Lalita Kumari (supra)*** even if the allegation of the opposite party no.1 are accepted to be true the same centers around charges of corruption/misappropriation and falsification of accounts which according to the directions of the Hon'ble Apex Court calls for preliminary enquiry as reflected in paragraph 120.6 of the said judgment.

The order dated 17.02.2022 passed by the learned Magistrate reflects that there was a direction to register a case on the application so filed under Section 156(3) of the Code of Criminal Procedure. When the Hon'ble Apex Court expects a preliminary enquiry to be conducted in matters relating to corruption and the facts presented in the application under Section 156(3)

of the Code of Criminal Procedure were bald allegations without any supporting materials or particulars, it was incumbent upon the learned Magistrate to delicately balance between the interest of the society and the liberty of an individual. The learned Magistrate was duty bound in such type of a case to call for a preliminary enquiry report to assess the credibility of the allegations particularly in the background the delayed complaint and no supporting documents or material particulars being available in support of the allegations. Another aspect which is peculiar in the present case is the petitioner being singled out although the contents of the allegations referred to the Governing Body of the whole college.

As earlier pointed out that the same issue being confronted by the learned Public Prosecutor regarding the petitioner being made the sole accused in the formal F.I.R. The State replied that as the application under 156(3) of the Code of Criminal Procedure referred to a single person that is why the petitioner was made the sole accused in the present case. The process adopted by the opposite party no.1 for getting the F.I.R. registered against the petitioner on allegations without material particulars speaks of a design and the reference to his elder brother do create overtones of political agenda.

Having considered the totality of the circumstances i.e. bald allegations without any material particulars, incorporating the petitioner as the sole accused, reference being made to the elder brother of the petitioner who happens to be the Leader of the Opposition in the State Assembly and the learned Magistrate on the selfsame date straight away directed for registration of the case without calling for or perusal of the preliminary

enquiry report, do warrant the interference of this Court in respect of the order dated 17.02.2022 passed in M.P. Case No.60 of 2022 and the subsequent registration of the F.I.R. being, Contai Police Station Case No.78 dated 18.02.2022.

Accordingly, the order dated 17.02.2022 passed by the learned A.C.J.M., Contai in M.P. Case No.60 of 2022 is hereby set aside. Consequently, Contai Police Station Case No.78 dated 18.02.2022 is hereby quashed.

This Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is entitled in a proper case to arrest an abuse of the process of law and at the same time secure the ends of justice. While the proceedings of the revisional application was progressing, this Court directed the District Magistrate, Purba Medinipur to collect materials relating to the violation with regard to the allegations relating to Prabhat Kumar College particularly, the Utilization Certificate which were granted/approved in respect of the disbursement of funds. An Enquiry Committee was formed and report was submitted which was wanting material particulars regarding fixing responsibility of the persons who could have been involved. The enquiry report so submitted before this Court is returned to the learned Public Prosecutor, High Court, Calcutta who would refer the same to the District Magistrate, Purba Medinipur. The District Magistrate, Purba Medinipur will create a file number in respect of the enquiry report, collect further materials fixing responsibility of the persons, if any, which may include individuals responsible in the Governing Body of Prabhat Kumar College, Contai, Government Officials, if any, along with

other persons responsible if at all for siphoning off funds if at all detected. The District Magistrate, Purba Medinipur after conclusion of such enquiry and fixing responsibility of at least some persons both from the college and the Government officials would submit his complaint, if required to the Investigating Agency which may include the Contai Police Station or the other agency who deals with economic offence of the State who would thereafter register the F.I.R. and proceed with the case.

With the aforesaid observations, C.R.R. No. 551 of 2022 is allowed.

Pending applications, if any, are consequently disposed of.

Report of the District Magistrate, Purba Medinipur be returned to learned Public Prosecutor as directed above.

Department is directed to send back to the Lower Court Records to the concerned Court forthwith.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(TIRTHANKAR GHOSH, J.)

Bpg/K.S., A.R.(Ct.)