

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(IN APPEAL FROM ORDERS PASSED IN THE
CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**MAT 168 of 2023
IA No: CAN 1 of 2023**

**The State of West Bengal and others
Vs.
Kalpana Das Sarkar and others**

For the appellants	:	Mr. Joyjit Choudhury, Mr. Subir Kumar Saha, Ms. Bedashruti Bose
For the respondent nos.1 to 11	:	Mr. Bikramaditya Ghosh, Ms. Supriya Singh, Mr. Deborshi Dhar
For the CBI	:	Mr. Sudipto Kumar Mazumdar, Mr. Ajoy Kumar Singhanian
Hearing concluded on	:	19.09.2023
Judgment on	:	21.09.2023

Sabyasachi Bhattacharyya, J:-

1. The present appeal has been filed against two orders of the same learned Single Judge. The writ petition from which the appeal arises, bearing WPA No. 2103 of 2023, was filed by eleven (11) writ petitioners, who are respondents herein, alleging a deep-rooted financial scam. It was alleged that the writ petitioners are members of the Alipurduar Mohila Samabay Rindan Samity Limited and had

invested money in the said Society. However, subsequently, the petitioners were swindled, upon which the petitioners lodged complaints with the police, resulting in registration of First Information Report (FIR) and initiation of a criminal case. The petitioners allege that despite the investigation having been handed over to the CID of the State from the police authority, no substantial progress took place in the investigation, apparently insinuating that the CID was hand-in-glove with the accused persons.

2. Upon such writ petition being filed, the learned Single Judge, *vide* order dated August 24, 2023, had directed the investigation to be handed over from the CID to the CBI of the Eastern Region/Zone and also the Enforcement Directorate (ED) of the Eastern Zone.
3. A recall application was taken out on behalf of the CID which was dismissed by the learned Single Judge *vide* order dated September 15, 2023 with a cost of Rs. 5 lakh to be paid by the CID, West Bengal to the High Court Legal Services Authority.
4. Challenging both the said orders, the present appeal has been preferred.
5. Learned Additional Public Prosecutor, appearing for the State/appellant argues that the learned Single Judge had no jurisdiction to pass the orders impugned herein, since the writ petition was in the nature of a Public Interest Litigation (PIL) and the learned Single Judge did not have the determination to take up the same. The determination to take up PILs lies with the Division Bench of the

Hon'ble the Chief Justice and, as such, the impugned orders are without jurisdiction.

6. Learned Additional Public Prosecutor places heavy reliance on the averments made in the writ petition and contends that the crux of the allegations is that there is public interest involved, since several innocent citizens of Alipurduar are involved. Even the primary relief sought is investigation by a Central Agency.
7. Learned Additional Public Prosecutor next argues that after filing of charge-sheet, the writ court loses its jurisdiction. It is argued that under the provisions of the Code of Criminal Procedure, the appropriate authority is the jurisdictional magistrate, who is to be approached for reopening an investigation, seeking direction of reinvestigation or *de novo* investigation. The said forum has been bypassed by the writ court, it is argued, which is *de hors* its jurisdiction and in contravention of law.
8. Thirdly, it is argued that nowhere in the impugned orders and/or the writ petition has it been disclosed that the CID was unable to carry out the investigation properly or that there was any serious flaw in the investigation of the CID.
9. Learned counsel places reliance on the report and the supplementary report filed by the CID before the learned Single Judge to argue that extensive investigation has already been carried out by the CID and a charge-sheet has been filed. Thus, it is argued that the impugned orders are perverse.

10. It is further argued that insofar as the second impugned order dated September 15, 2023 is concerned, the same is also without jurisdiction, since the original records are lying with the trial court and it was not for the CID to hand over the records.
11. In fact, it is submitted that the CBI has, in the meantime, taken photocopies of the records lying with the Public Prosecutor for the purpose of complying with the impugned orders.
12. Learned Additional Public Prosecutor places reliance on *State of West Bengal v. Committee for Protection of Democratic Rights*, reported at (2010) 3 SCC 571, for the proposition that direction to the CBI to conduct investigation is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.
13. It is argued that in the present case, such a high case has not been made out either in the writ petition or in the impugned orders.
14. Learned counsel next cites *K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and others*, reported at (2013) 12 SCC 480, where the Supreme Court held, *inter alia*, that the power of transferring an investigation to any other independent investigating agency like the CBI must be exercised in rare and exceptional cases.

Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances should the court make any expression of its opinion on merit relating to any accusation against any individual. It is argued that the said norms as laid down by the Supreme Court have been violated by the learned Single Judge while passing the impugned orders.

15. Learned Additional Public Prosecutor next cites *Sakiri Vasu v. State of Uttar Pradesh and others*, reported at (2008) 2 SCC 409, where the Supreme Court held, *inter alia*, that no one can insist that an offence be investigated by a particular agency, although an aggrieved person has a right to claim that the offence be investigated properly. Moreover, it was observed that it is open to the aggrieved person to file an application under Section 156(3) of the Code of Criminal Procedure before the learned Magistrate concerned, who can direct the FIR to be registered and a proper investigation to be made, where such investigation was not made.
16. Learned counsel argues that in view of contravention of the said propositions, the impugned orders should be set aside.
17. Learned counsel appearing for the writ petitioners/respondents herein argues that the CID did not make any independent investigation at all but stalled the investigation at the stage when it was with the police.

- 18.** It is pointed out that the investigation was handed over to the CID in the year 2020, but precious little had been done by the CID apart from relying on the steps taken by the Assistant Registrar of Cooperative Societies (ARCS) before it was handed over to the CID. In fact, only the accused persons who were named by an enquiry committee appointed by the ARCS have been arrested so far. It is further argued that the CID, to frustrate the writ petition, has filed charge-sheet during pendency of the same.
- 19.** Learned counsel denies that any supplementary affidavit containing the charge-sheet was filed before the learned Trial Judge at the time of hearing.
- 20.** By meticulously placing several portions of the report filed by the CID as well as the charge-sheet annexed to the purported supplementary report, it is argued that the CID has not even sent the accounts of the recalcitrant Society for forensic audit report. However, in the same breath, the CID has apparently relied on the said accounts and seeks to indict two Government Officials, without any reasonable basis, merely to show its independence.
- 21.** Learned counsel places reliance on *Bimal Gurung v. Union of India and others*, reported at (2018) 15 SCC 480, where the Supreme Court held, *inter alia*, that commencement of trial and examination of witnesses cannot be an absolute impediment for exercising the constitutional power vested in the High Courts and the Supreme Court to ensure a fair and just investigation. The power to order fresh, *de novo* or reinvestigation being vested with the constitutional courts, the

commencement of trial and examination of some witnesses cannot be such an impediment. It was observed that there cannot be any fetter to the power of the Supreme Court or the High Courts in transferring the investigation even after the filing of charge-sheet.

- 22.** Learned counsel next cites *Roshan Deen v. Preeti Lal*, reported at (2002) 1 SCC 100, for the proposition that the power conferred on the High Court under Articles 226 and 227 of the Constitution of India is to advance justice and not to thwart it. The very purpose of the same is that no man should be subjected to injustice by violating the law.
- 23.** In view of such wide jurisdiction of this Court, it is argued that the interference by the learned Single Judge was proper and justified and ought not to be disturbed by this Court in appeal. Learned counsel places reliance on *Wander Ltd. and another v. Antox India (P) Ltd.*, reported at 1990 Supp SCC 727 and *Roshan Deen (supra)* to argue that the scope of interference in intra-court appeals is extremely limited and could only be resorted to when there was arbitrariness, capriciousness, perversity or contravention of settled propositions of law by the Trial Court.
- 24.** Learned counsel for the CBI contends that the CBI has duly complied with the order of the learned Single Judge and, upon obtaining the copies of the Case Records, has re-registered an FIR. A copy of such FIR is filed in court and is kept on record.
- 25.** Upon hearing learned counsel of parties and perusal of the materials on record, the matter is taken up for decision.

- 26.** The first objection taken by the appellants is that the learned Single Judge acted without jurisdiction, since the writ petition was in the nature of a PIL.
- 27.** However, the said ground cannot be accepted. It is evident from the pleadings and the annexures of the writ petition that the writ petitioners are personally affected by the impugned action of the respondents therein. Each of the writ petitioners were members of the concerned Society and have allegedly suffered due to their money being misappropriated by the Society and its officer bearers.
- 28.** In fact, the writ petitioners have lodged complaints, on the basis of which FIRs have been registered. Thus, it cannot be said that the writ petitioners have no personal axe to grind insofar as the cause of action is concerned.
- 29.** Merely because a personal cause of action also has a public law element involved due to the magnitude of the alleged offence, the jurisdiction of the learned Single Judge to entertain the writ petition cannot be denuded by labelling the writ petition as a PIL or a class action.
- 30.** In fact, the power of judicial review under Articles 226 and 227 of the Constitution has involved over the years and disputes having public element components can also be canvassed by individuals. Thus, the argument of the appellants on such count is turned down.
- 31.** The next objection taken by the appellants is that the writ court loses jurisdiction after filing of charge-sheet.

- 32.** Learned counsel for the appellants has cited *K.V. Rajendran (supra)* in support of such proposition. In the said case, the Supreme Court observed, *inter alia*, that where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law.
- 33.** Let us consider the circumstances of the present case in such context. In the writ petition, a direction had been passed on the CID initially to file a report regarding the status of the investigation. Such report was filed pursuant to the order of a learned Single Judge dated June 14, 2023. The report was authored on July 01, 2023. It is alleged by the appellants that a subsequent supplementary status report was filed on August 24, 2023, that is, the date of the first impugned order. The very fact of filing of such supplementary report is disputed by the writ petitioners. However, even if we proceed on the premise that the same was actually filed, surprisingly, the said supplementary report was authored only on August 23, 2023, the day immediately preceding the date when the matter was to be listed and the first impugned order was passed.
- 34.** The charge-sheet indicates that the same was filed only on August 14, 2023. Thus, the filing of the charge-sheet in the present case was done, apparently hurriedly, not only during pendency of the writ petition but about two months after the direction to file a report was passed and even after the initial report was filed by the CID. It has to

be kept in mind that the CID was entrusted with the investigation three years back, in 2020.

35. Thus, such filing of charge-sheet, by itself, cannot be a handle for the appellants to set up an objection that the concerned criminal court could be approached for a further or *de novo* investigation as contemplated in Section 173(8) of the CrPC.
36. In *K.V. Rajendran (supra)*, the Supreme Court observed that where the investigation has already been completed and charge sheet has been filed, superior courts should not ordinarily reopen the investigation. In the present case, however, precious nothing had been done by the CID, let alone filing of charge-sheet, much into the period of pendency of the writ petition. Thus, a premium cannot be given to the appellants merely due to subsequent filing of charge-sheet, to invalidate the legitimacy of the jurisdiction of the court to look into the issue whether the investigation was being conducted properly.
37. Even in *K.V. Rajendran (supra)*, the Supreme Court observed that “ordinarily” superior courts should not reopen investigation, thus, by necessary implication, leaving it open for the court to reopen investigation in appropriate cases. Apart from “rare and exceptional” cases, the Supreme Court found that investigations could be handed over also where the court found it necessary in order to do justice between the parties and instil confidence in the public mind or where investigation by the State Police lacks credibility and it is necessary for having a fair, honest and complete investigation, when it is

imperative to retain public confidence in the impartial working of the State Agencies.

38. In *Sakiri Vasu (supra)* it was observed that no one can insist that an offence be investigated by a particular agency but an aggrieved person has a right to claim that the offence be investigated properly.
39. In the present case, the precise allegation of the writ petitions is that proper investigation was not being undertaken by the CID. In fact, the writ petitioners did not seek the investigation to be transferred to a particular agency. Prayer (a) of the writ petition asks for submission of a status report regarding the investigation. Relief (b) reiterates such prayer in respect of the trail of money. Prayer (c), on the other hand, asks for constitution of a committee presided over by a retired Judge of this court to oversee the investigation. Alternatively, the petitioners ask for investigation by the CBI or the ED or “any other Central Agency”. Hence, the premise of the prayers is that the CID has not been properly investigating the issues involved, for which the investigation may be transferred to any other independent agency.
40. Thus, the limited question which arises here is whether the CID has carried out the investigation properly, sufficient to justify the retention of the investigation in its hands.
41. One other consideration, of course, would be the magnitude of the alleged offences in order to justify the transfer of investigation to a Central Agency.
42. The stage of investigation is revealed from the report of the CID itself. Surprisingly, nothing in the report indicates that the CID undertook

any independent investigation into the matter. It merely fidgeted around the materials handed over to it by the police. Notably, the investigation was handed over to the CID on September 26, 2020. In the report of the CID, it is indicated that it acted on the basis of the enquiry report from the ARCS, Alipurduar who had handed over an enquiry report conducted from February 11, 2020 to February 13, 2020. The statements under Sections 161 and 164 of the Criminal Procedure Code (CrPC) relied on by the CID had also been taken by the District Police, prior to the matter being handed over to the CID. The only persons arrested by the CID throughout its three years of investigation were those named in the said enquiry report. In the name of investigation, the CID did precious little but to arrest the Manager of the Society, its Loan Clerk and Chairperson over the entire period of three years. The seizures mentioned in the CID report were all made contemporaneously with the CID taking over the investigation.

- 43.** The documents seized by the CID are 275 in number. However, the quality of the seizures does not match the quantity. The said documents were primarily recovered only from the offices of the Society and the three arrested persons, who were office-bearers of the Society and had been named by the enquiry committee even before the CID took over. The CID apparently took statements under Section 161 and 164 of 39 other witnesses who are merely various account holders, office staff and agents of the Society. In the name of “important documents”, the CID cites in its report a certified copy of

the enquiry report from the ARCS which was prepared even before the CID took charge and various account details, mostly of the three arrested persons.

- 44.** Surprisingly, whereas the writ petition was filed on August 4, 2022, only on May 12, 2023, that is, one year thereafter, a prayer was allegedly made by the CID for obtaining sanction under Section 197(I)(b) of the CrPC against two accused Government Officials. The reasons cited in the report for the delay in the investigation are flimsy. For example, the CID states that in course of interrogation the accused staff members gave vague statements accusing each other for misappropriation. The CID reiterates the enquiry report of a committee which had conducted an enquiry much prior to the CID taking up the investigation. The report was submitted on February 20, 2020 whereas the CID took up the investigation seven months thereafter. The CID further states that some vital registers could not be produced by the accused before the enquiry committee. In fact, the entire plinth of the submissions of CID in the report revolves around the enquiry committee and the incidents which happened before the CID took over the investigation.
- 45.** The CID report contends that the audit report of the Society submitted on March 27, 2018 by one Biswajit Biswas, SAG-I, Cooch Behar Range for the financial year-ending March 31, 2017 has been “ridiculed” by the enquiry committee. Apparently, the audit report was prepared in the absence of authenticated records and he did not

report the faulty cash transactions which had not been reflected in the books of accounts of the Society.

- 46.** In the same breath, however, the CID mentions in its report that the reason for pendency was to carry out a forensic audit of the Society. If a forensic audit of the society was awaited, there could not be any reason why the CID relied on the allegedly tainted audit report to observe in its report that from the statements of a number of witnesses and as per the said tainted audit report, it was learnt that the total number of members of the society was 21,163. The CID again cites the audit report itself to enumerate the amount which has been embezzled. Thus, the contradictory stand of the CID about the audit report, which it relies on and refutes in the same breath, is also suspect.
- 47.** In fact, it is surprising that the CID woke up from its slumber and sought for sanction to proceed against the two government officials about one year after filing of the writ petition. In fact, there is no clear allegation against the two government officials namely Sushanta Pal and Biswajit Biswas, who have been named in the charge-sheet. The charge-sheet, as rightly argued by the respondents/writ petitioners, is virtually a replica of the report of the CID. The entire investigation purportedly done by the CID revolves around the office bearers of the society. It is an admitted position, as reflected in the CID report itself, that the exact amount of loans issued could not be ascertained and that the end-use of the money trail could not be unearthed even after the CID being on the trail for more than three years.

- 48.** Thus, there is sufficient reason to apprehend that the investigation undertaken by the CID does not inspire confidence in the public mind.
- 49.** Considering the question of magnitude, even as per the CID report, there are thousands of small investors, almost all of whom are women coming from the marginalized sections of society, who have been swindled by the society. The said sections of society form the bulk of the Indian polity and are equally, if not more, entitled to Constitutional safeguards than are the creamy layers of society.
- 50.** The allegation in the writ petition revolves around such common people being swindled mercilessly by certain thoroughly unscrupulous people. The amount of money involved runs into crores, being not less than Rs. 50 crore. If the said factual scenario does not lend sufficient magnitude to the offences for handing over the enquiry to a Central Agency, it is doubtful as to what else would.
- 51.** The learned Single Judge in his order dated August 24, 2023 categorically made certain observations which reflect judicial application of mind to the report filed by the CID. It was observed that there were 21,163 members of the Society and that the use of the expression “Samabay Samity” (literally meaning “Cooperative Society” in Bengali) was a misnomer, since it was not a Cooperative Society. The learned Single Judge also took into consideration the fact that the money deposited by the members of the Society shall not be less than Rs. 50 crores. The learned Single Judge observed that the huge amount of money has vanished and that there was a failure on the part of the CID to bring out the most relevant facts that is the names

of borrowers, etc. The learned Single Judge further found that the CID failed to bring out the names of the persons who had cheated the members of the Society. In fact, such stand is corroborated by the CID report which admits its failure to trace out the end-use of the money which has been siphoned off from the small investors. The learned Single Judge was fully conscious of the fact that there was a lackadaisical attitude on the part of the CID and that the money which was cheated was from poor people who are the depositors.

- 52.** Hence, there was sufficient reasoning in the impugned order dated August 24, 2023 to back up the conclusion of the learned Single Judge in handing over the investigation to the CBI and the ED, since cheating of huge magnitude and money laundering is potentially implicit in the nature of the allegations made.
- 53.** It is well-settled that in intra-court appeals, the test for interference is patent arbitrariness, perversity, patent contravention of settled law and gross unreasonableness. None of the said tests are satisfied in the present case. Thus, we would not be inclined, even if a different view were to be possible, particularly within the limited scope of an intra-court appeal, to interfere with the order of the learned Single Judge dated August 24, 2023, thereby substituting our own reasons for those given by the learned Single Judge in coming to his conclusions.
- 54.** As regards the second impugned order dated September 15, 2023, the observations of the learned Single Judge were that the CID was playing with the court. The ground for such observation that that the CID had filed the recall application and that none of the papers and

documents relating to investigation by CID had been handed over to the CBI and ED.

- 55.** Certain questions were raised by the learned Single Judge, such as why the CID is so much interested in not handing over the investigation to the CBI and ED and whether the CBI is apprehensive of something which would otherwise come to light. The apparent premise of the rejection was that the CID had no business in filing the recall application.
- 56.** It is evident that the learned Single Judge was somewhat swayed by emotion in making the said observations, which might have coloured the order dated September 15, 2023.
- 57.** First, the CID have taken the defence that the original records are not with the CID but lying in the trial court in view of the charge-sheet having already been filed, which could have been a reasonable ground for the CID having not handed over the documents in original to the CBI.
- 58.** Even thereafter, the CBI officials have obtained the certified copies/copies of the records from the learned Public Prosecutor who was representing the CID which substantiates the claim of the CID that the originals are lying in the court.
- 59.** Such considerations are not reflected in the order of the learned Single Judge.
- 60.** However, on merits, no fault could be found with the order dated September 15, 2023 inasmuch as the recall application of the CID was rejected. The CID, being an Investigating Agency, cannot have any

interest either way. In fact, neutrality demands that once a direction is given for transfer of the investigation, the erstwhile Investigating Agency should hand over the papers immediately to the Agencies lastly appointed. Instead of doing so by handing over the copies available with learned Public Prosecutor of the CID, the CID delayed the matter of handing over the documents. In the absence of any material basis, we are not inclined to attribute any intention behind such action on the part of the CID, since there might very well have been *bona fide* misconceptions as the records were lying in the trial court. However, we do not find any scope of entertaining or allowing the recall application filed by the CID on merits as the CID did not have any *locus standi* to do so. Hence, although the reasoning of the order dated September 15, 2023 could be mellowed down, the conclusion reached by the learned Single Judge in the said order was perfectly justified.

- 61.** However, in the circumstances as indicated above, the cost of Rs.5 lakh imposed on the CID ought not to have been imposed and is required to be set aside.
- 62.** In view of the above observations, MAT 168 of 2023 along with IA No: CAN 1 of 2023 are disposed of without interfering with the first impugned order dated August 24, 2023 passed in WPA No. 2103 of 2023.
- 63.** Insofar as the second impugned order dated September 15, 2023 is concerned, the same is modified to the extent that the cost of Rs. 5 lakh imposed on the CID is set aside, however, affirming the other

part of the order whereby the recall application filed by the CID was rejected.

64. The aspersions cast against the CID in the form of questions raised in the order dated September 15, 2023, being without any apparent basis, are also expunged from the order dated September 15, 2023.
65. The CBI and ED will be at liberty to approach the trial court for making appropriate prayers to file additional/supplementary charge-sheet upon further investigation and take necessary steps for conducting the trial as the Investigating Agencies in charge, stepping into the shoes of the CID. The petitioners will also be at liberty to approach the trial court, by citing the order of the learned Single Judge dated August 24, 2023, seeking a further/fresh/*de novo* investigation.
66. There will be no order as to costs.
67. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)