

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 459 of 2020

Ashok Kumar

Vs

The Central Bureau of Investigation & Anr.

For the Petitioner : Mr. Milon Mukherjee, Ld. Sr. Adv.
Mr. Biswajit Manna.

For the Opposite Party no. 2/CVC : Mr. Atarup Banerjee,
Ms. Sarda Sha.

For the CBI : Mr. Amajit De.

Hearing concluded on : 29.04.2024

Judgment on : 22.05.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred against an Order dated 27.06.2019 passed by the Learned Judge, 3rd Special (C.B.I. Designated) Court, in RC 36/A/10 Bankshall Court, Calcutta in connection with RC 0102010A0036 dated 25.11.2010 thereby granting liberty to the prosecution to conduct further investigation.
2. The petitioner's case is that he is a member of Indian Revenue Services, (1993 batch) and is presently posted as the Commissioner of Income Tax, Madurai, Tamil Nadu.
3. That RC 0102010A0036 dated 25.11.2010 had been registered for investigation on the basis of a source information alleging that the petitioner while functioning as the Additional Commissioner, Range IX, Income Tax Department, Kolkata during the period 2001 to 2009 has acquired huge assets and other pecuniary resources grossly disproportionate to his known sources of income. A preliminary enquiry was conducted wherein it has been alleged that the petitioner being a public servant by abusing his official position earned huge amount and the same were deposited in bank accounts opened in the name of certain nonexistent/non functional companies/firm registered at Mumbai/Hazaribag and in the name of his family members, all maintained with Andhra Bank, Hazaribag. It has also been alleged that vast plots of lands were allegedly purchased in the name of the father of the petitioner and his other family members.

4. It has also been alleged that although the companies/firms were registered at Mumbai/Hazaribag addresses, but the bank accounts were opened in the name of the companies/firms at Hazaribag.
5. It has been further alleged that several acres of land have been acquired in the name of the father and brother of the petitioner at his native place at Dipugarha, Hazaribag and its adjacent areas out of the ill gotten money of the petitioner.
6. After completion of their investigation for more than three years, the Investigating Agency submitted **its Final Report/Closure Report being No. 5/2013 dated 29.12.2013**. In the said Final Report the Investigating Agency prayed for discharge of the accused persons as the available evidence was not sufficient to substantiate the allegations in the First Information Report against the petitioner and his co-accused persons being his father and brother.
7. In the report the Investigating Agency submitted that investigation has not yielded direct and conclusive evidence to prove the allegation of possession and disproportionate assets by the petitioner in the name of Benami Holders as alleged in the First Information Report, in a Court of Law. As such, the Investigating Agency was of the opinion that prosecution may not be recommended against the petitioner as well as also the private accused persons in absence of evidence.
8. However, the investigation alleged to have revealed oral and circumstantial evidence to sustain the charge of possession of

disproportionate assets to the tune of Rs. 9,52,312/- (14.58% of income from unknown sources) **in the departmental proceeding.**

Accordingly, the Income Tax Department was requested to take necessary action in that regard and also regarding other incidental matters, which may be found relevant for the Income Tax Department during investigation in respect of the accused persons and their fictitious companies and trusts.

9. On 13.01.2014, a copy of the report in final form was placed before the Court of the Learned Special Judge. The Learned Special Judge upon receipt of such report was pleased to direct the Investigating Officer to personally appear along with the case diary before the Court.
10. Thereafter on 12.03.2014 the FRT was taken up for consideration in presence of the Investigating Officer. The Learned Judge upon perusal of the record/case diary and the report, was pleased to accept the report of the Investigating Agency and discharge the accused person from the case. The Learned Judge further directed the Investigating Agency to return the documents/articles so seized during the course of investigation to the accused person.
11. That the opposite party submitted to the Central Vigilance Commission (CVC) and the Director General of Income Tax (Vigilance), the CVO for Income Tax Department, a voluminous report with annexures allegedly containing evidence running into 565 pages to sustain charge of possession of disproportionate assets to the tune of

Rs.9,52,312/- (14.58% of income from known sources) in the departmental proceedings. As per the laid down procedure in the vigilance manual, the internal enquiry was initiated and a copy of the said report by the CBI was issued to the applicant. The applicant submitted his version in three volumes running into 573 pages relying on the same set of documents which were either part of the CBI report or were submitted during the course of the CBI investigation, which proved that there was no disproportionate assets in case of the applicants. In the mean time the promotion of the applicant which was due on 16.09.2015 was kept on hold by the Appointments Committee of Cabinet (ACC). There were certain doubts raised by the DGIT (Vig.) which were clarified by submission of a final version letter on 30.05.2016 running into 99 pages satisfying all the doubts raised by the office of DGIT (Vig). Apparently the detailed submission made by the applicant was considered and the DGIT (Vig.) proceeding also came to conclude that there were no disproportionate assets in the case of the applicant.

- 12.** It is further submitted by the petitioner that, possibly due to such internal enquiry evidencing no disproportionate assets reinforced by the favourable order of Central Administrative Tribunal (CAT) New Delhi dated 16.01.2017 in OA No. 4141/2015 and the favourable order of the Hon'ble High Court Delhi dated 10.04.2018 in W.P.(C) 3500/2018 & CM Nos. 13825-27/2018 in response to the appeal of

the Income Tax Department, the pending promotion of the applicant was reconsidered by the ACC and **the applicant was honorably cleared for promotion with retrospective effect from 16.09.2015 restoring seniority and all pecuniary benefits to the appellant.** In view of the order of the Appointment Committee of Cabinet, the CBDT passed the order promoting the applicant to the rank of Commissioner of Income Tax and was subsequently posted as Commissioner of Income Tax (Appeals), Madurai. The applicant had to pass through a long ordeal for 3 years due to unsubstantiated allegations contained in the report of the opposite party, which was ultimately proved to be unacceptable also during the departmental vigilance proceedings.

13. On 24.06.2019 an application for further investigation was filed on behalf of the opposite party no.1 before the Court of the Learned Special Judge wherein it was mentioned that **the prayer for further investigation was made as the Central Vigilance Commission after going through the report of the opposite party, has observed that there were various aspects of Benami properties, bank accounts, shell companies and shares which need further investigation.** The Central Vigilance Commission further suggested assistance of Central Board of Direct Taxes and that of a Forensic Auditor. The opposite party no. 1 then proposed to conduct further investigation on the following points:-

- a) *Investigation into the assets, income and expenditure of the relatives, HUF and companies of the accused public*

servant in conjunction with the assets, income and expenditure of the accused public servant.

- b) To conduct Forensic analysis of books of accounts, statement of accounts of the companies, HUF's and Trusts in the name of relatives of the accused public servant which reflected intricate transactions of routing of funds through multiple bank accounts maintained with different banks to identify the initial infusion of funds.*
- c) To look into details of transactions relating to purchase of shares of an unlisted company (M/s Vencap Educational Projects Pvt. Ltd.) at a huge premium of Rs. 240/- per share by five shell companies based in Kolkata and the subsequent sale of the said shares by these companies to Shri Ajay Kumar, Smt. Rupmala Kumari (W/o Ajay Kumar) and associates at a face value of Rs. 10/-, transfer of funds from M/s Vananchal Constructions Pvt. Ltd. (company of the father and brother of accused public servant Ashok Kumar) to the aforesaid companies of Kolkata and vice-versa.*
- d) To find out the source of fund used for purchasing immovable properties in the name of Shri Bhagat Kisan Education Foundation (a trust run by father of the accused public servant) against a total consideration of Rs. 1.50 crores during the period 2008-09.*
- e) To further investigate the exact role played by Shri Ashok Kumar in creating the assets in the name of his father Shri Bhagat Kisan, brother Shri Ajay Kumar and their companies and trust.*

14. The Learned Magistrate upon receipt of the application dated 24.06.2019 was pleased to grant liberty to the opposite party to conduct further investigation in the case as prayed for.

15. It is stated that the petitioner was unaware of the order dated 27.06.2019 passed by the Learned Special Judge. The petitioner came to know about the same for the first time on 15.11.2019 upon receipt of a notice dated 08.11.2019 which was said to be treated as notice under Section 91 of the Code of Criminal Procedure from the Investigating Officer.

16. The petitioner states that the Investigating Agency has prayed for further investigation on the basis of the direction of the Central 'Vigilance Commission' for taking assistance of forensic auditor on essentially **the same set of issues which were investigated in-depth by the CBI during the 3 long years of rigorous investigation.** The investigation revealed that there was no disproportionate assets in the case of applicant and the relatives were not found to benamidars of the applicant. Besides the direction of the CVC, there is no oral or documentary evidence with the CBI.

17. Hence the Revision.

18. From the materials on records the following facts are evident:-

- a) On Completion of Investigation by the opposite party no.2 an application dated 29.12.2013 was filed before the trial Judge stating as follows:-

**"Submission of the Report in the Final Form U/s
173 Cr.P.C.**

Dated: 29.12.2013

Most Respectfully Sheweth:-

- I. That the above noted case was registered on 25.11.2010 on source information and the original FIR of the case has already been submitted to the Ld. Court, which has been taken on the judicial records of the case by the Ld. Court.*
- II. That the investigation of the aforesaid case has since been completed, which has not substantiated the allegation of the FIR beyond reasonable doubt. Hence, a Report in the Final Form, u/s 173 Cr.P.C. is hereby forwarded to the Ld. Court.*

III. It is respectfully prayed that the Ld. Court may be pleased to accept the aforesaid Final Report, discharge the accused persons from the case and order the return of the seized documents and articles to the concerned persons, in the interest of justice.

Sd/-
Addl. Supdt. Of Police
CBI: SPE: ACB: Kolkata
(Investigation Officer)”

b) In the said Report in final form it is stated as follows:-

“REPORT IN FINAL FORM
(Under Section 173 Cr.P.C.)

Dated: 29.12.2013

Investigation has not yielded direct or conclusive evidence to prove the allegation of the possession of disproportionate assets by the accused public servant. Shri Ashok Kumar (A-1) in the name of benami holders as alleged in the FIR, beyond all reasonable doubt in a Court of law, Shri Shree Bhagat Kisan (A-2) and Shri Ajay Kumar (A-3) are private persons , hence, prosecution may not be recommended against them for the offence punishable u/s 109 IPC r/w Sec 13(2) r/w 13(1)(e) of the P.C. Act, 1988 in the absence of the evidence to prosecute the principal accused public servant, Shri Ashok Kumar (A-1) for the substantive offence u/s 13(2) r/w 13(1)(e) of the P.C. Act, 1988.

Nevertheless, investigation has revealed oral and circumstantial evidence to sustain the charge of possession of disproportionate assets to the tune of Rs. 9,52,312.07/- (14.58% of income from all known sources) by Shri Ashok Kumar (A-1) in departmental proceedings. Investigation has also revealed several instances of non-intimation of financial transactions by Shri Ashok Kumar (A-1) under 18(2) of CCS (Conduct) Rules. Accordingly, the Income Tax Department is being requested to take necessary action in this regard and also regarding other incidental matters, which have been found relevant for the Income Tax Department during investigation in respect of the accused persons and their fictitious companies and Trust.

Charge*(Attach separate sheet, if necessary)*

In view of the facts and circumstances of the case, the available evidence may not be sufficient to substantiate the allegations of the FIR against the accused S/Shri Ashok Kumar (A-1), Shree Bhagat Kisan (A-2) and Ajay Kumar (A-3) beyond reasonable doubt.

Although the investigation has revealed some links of Shri Ashok Kumar (A-1) with the acquisitions of assets in the name of the Trust and companies of Shri Shree Bhagat Kisan (A-2) and Shri Ajay Kumar (A-3), indicating his involvement in the incorporation of various non-functional companies and financial transactions with some of the said companies from the account of Ashok Kumar HUF, which creates reasonable grounds to suspect the commission of the offences alleged in the FIR, the said evidence may not be sufficient to prove the allegations against Shri Ashok Kumar (A-1) that he had acquired and possessed disproportionate assets in the name of Benami holders during the check period and abetment of the said offence by Shri Shree Bhagat Kisan (A-2) and Shri Ajay Kumar (A-3), beyond all reasonable doubt.

Accordingly, the instant Final Report u/s 173 Cr.P.C. is, hereby, filed before the Ld. Court with the prayer that the same may be accepted and the accused persons named above may be discharged from the case and the documents/articles seized during the course of the investigation of the case, may be ordered to be returned to the concerned persons and offices/institutions, in the interest of justice.

Sd/-

**Addl. Supdt. Of Police
CBI: SPE: ACB: Kolkata
(Investigation Officer)"**

- c) Vide an order dated 12.03.2014 passed by the Learned Special Court in case no. 36(A) of 2010, the Learned Judge accepted the said Final Report held as follows:-

"Case No. 36 (A)/ 2010

Dated: 12.03.2014

.....After perusal of the entire FRT and the CD and its connected papers, I am of the view that no criminality on behalf of Sri Ashok Kumar is said to have been proved by the investigating agency. Accordingly, the instant final report u/s 173 Cr.P.C. is hereby accepted and the accused person named in the FIR is hereby discharged from this case.

The investigating agency is directed to return the documents/articles so seized during the course of investigation to the person/offices/institutions from whom they were seized.

**Sd/-
Judge”**

d) By an application dated 24.06.2019, Inspector CBI, ACB, Kolkata, prayed for permission to conduct further investigation in the said case being CBI RC 36(A)/2010 under Section 173(8) Cr.P.C. on the following ground:-

- I. That the CVC after going through the report of CBI, has observed that there were various aspects of benami properties, bank accounts, shell companies and shares which need further investigation. Assistance of Central Board of Direct Taxes and that of a forensic auditor were also suggested. Therefore further investigation is essential to look into the said facts and circumstances.
- II. That CBI proposed to conduct further investigation u/s 173(8) Cr.P.C., on the points as earlier noted in paragraph 12 of this Judgment.

19. It was further stated by the opposite party herein:-

That the aforesaid stand of the prosecution and the legal position involved herein has also been affirmed by the Hon'ble Supreme Court of India in the matter of State of Rajasthan Vs. Aruna Devi, 1994(3) Crimes 849 (850) wherein the Apex Court has observed that "*where during further investigation fresh material comes on surface, acceptance of final report would not preclude the Magistrate from taking cognizance of the offence*"

20. Heard the Learned counsels for the petitioner and the opposite parties being the Central Bureau of Investigation and the Central Vigilance Commission.

21. The Central Vigilance Commission has placed its report dated 31.01.2014 being no. 443/RC 0102010A0036, addressed to the Director General of Income Tax (Vigilance) with the following recommendations based on the CBI's report.

"CBI Report- 443/RC 0102010A0036

Dated: 31.01.2014

14. Recommendation:-

In view of above facts and circumstances of the case as discussed above, the evidence on record is not considered sufficient to recommend the prosecution of Shri Ashok Kumar (A-1) u/s 13(2) r/w 13(1)(e) of the PC Act, 1988. Consequently, the co accused, Shri Shree Bhagat Kisan(A-2) and Shri Ajay Kumar (A-3) are not recommended for prosecution for the abetment of the aforesaid offence of

the possession of disproportionate assets by Shri Ashok Kumar (A-1), as alleged in the FIR.

Accordingly, CBI recommends **RDA for Major Penalty** against Shri Ashok Kumar (A-1) for the possession of Disproportionate Assets to the tune of Rs.9,52,312.07 (14.58%), which constitutes violation of Rule 3 of CCS (Conduct) Rules, 1964. Further, CBI also recommends **departmental action for major penalty** against Shri Ashok Kumar (A-1) for the violation of rule 18(3) and 18(2) of the CC (Conduct) Rules 1964 on the instances mentioned at para 9.68 above.

**Sd/-
Superintendent of Police
Central Bureau of Investigation
Special Police Establishment
Anti-Corruption Branch,
Kolkata.”**

22. A recommendation dated 22.08.2016 vide file No. DGIT(V)/EZ/CBI/09/2010 was submitted to the Director, Central Vigilance Commission, New Delhi by the Joint Director of Income Tax (vig) Unit –III, New Delhi with the following findings:-

“Conclusion while placing the recommendation:-

File No. DGIT(V)/EZ/CBI/09/2010

Dated: 22.08.2016

8. The reports of CBI and ADG (V) EZ have been examined and it is seen that:-

a) Neither the CBI nor ADG (V)EZ have been able to establish direct nexus between Shri Ashok Kumar and the Companies/Trust in the names of his brother and father. The investigation of CBI did not bring out any evidence to form conclusive opinion that the money transacted through the account of Shri Bhagat Kishan could be attributed to Shri Ashok Kumar. No direct evidence has been established by CBI to establish any link between Shri Ashok Kumar and cash

receipt/expenditure in the name of Companies/Trust of his father and brother.

b) The CBI has stated that it has already done detailed investigation and no conclusive evidence was found to establish any direct link between the officer and his family members in the matter of running the affairs of fictitious firms. The Closure Report of the CBI has also been accepted by the CBI Court.

c) In the earlier report dated 12.06.2015 submitted by ADG(V)EZ, he had not included the amount of Rs. 20 Lakhs received by Shri Ashok Kumar as loan from his father, in the income of the officer during the check period (i.e in Statement – C) on the ground that Shri Ashok Kumar did not furnish the copy of his father's bank accounts reflecting the transaction. Now, the officer has furnished copy of bank account of his father (at pages 2047-2049/c of the enclosed file). It has been stated that the cheque was directly utilised for obtaining two bank drafts of Rs 10 Lakhs each (total Rs. 20 lakhs) paid by the officer as one time alimony in marriage dispute of the officer. ADG(V)EZ has further stated that source of funds in the bank account of the officer's father has not been examined as the investigation of CBI also did not bring out any material evidences to form conclusive opinion that the money transacted through the account of Shri Bhagat Kishan, father of the officer, could be attributed to the officer.

d) In view of the above, the loan of Rs. 20 Lakhs taken by the officer from his father has been taken as his income during the check period by ADG(V)EZ, thereby reducing the DA to NIL as per the revised calculation given by ADG(V)EZ (reference para 7.C supra).

9. *As regards the observation of the CVC on the issue of unauthorized absence of Shri Ashok Kumar During the period June, 2006 to December, 2007 is concerned, it has been stated by ADG(V)EZ that the leave application of Shri Ashok Kumar from 10.07.2006 to 04.12.2007 had been forwarded to CBDT on 15.02.2008, but the decision is still pending. This matter is an administrative issue and will be dealt with separately. Letter has been written to the Joint Secretary (Admn.), CBDT, to consider the officer's application expeditiously. The final report on this issue shall be sent to the CVC accordingly.*

10. *In view of the report of ADG(V)EZ, the Department is of the view that the revised conclusion of ADG(V)EZ in respect of calculation of Disproportionate Assets at NIL in the case of*

Shri Ashok Kumar, Addl. CIT, Kolkata, during the Check Period 01.09.2011 to 30.11.2010, which has been done after examination of the CBI Report dated 02.03.2016 and officer's representation dated 21.08.2015, may be accepted. Further, administrative warning may be issued to the officer (As proposed vide Department UO Note dated 24.07.2015) for non submission of intimations regarding his financial transactions.

11. In view of the above, the case is referred to the CVC with the recommendation for closure of the Disproportionate Assets case against Shri Ashok Kumar, Addl. CIT, Kolkata.

12. These issues with the approval of Member (P&V), CBDT.

**Sd/-
Jt. Director of Income-tax (Vig.)
Unit- III, New Delhi"**

23. Learned Counsel for the CBI has placed a status report dated 20.11.2023 submitted by ASP/CBI/ACB/Kolkata, as to the further investigation in this case, where in it has been stated as follows :-

**"Status Report
CRR. 459/2020**

Dated: 20.11.2023

5. That, during the course of further investigation, in order to verify the genuineness of agricultural income and corresponding benefits as claimed by the accused persons and their associates/entities, field visits were conducted by CBI along with officials of Revenue Department in Hazaribagh and relevant data were collected from concerned authorities in Hazaribagh district of Jharkhand where most of such landed properties of accused persons are located. Statements u/s 161 Cr.P.C. of relevant witnesses and persons having acquaintance with those agricultural lands of the accused persons or their related entities were also recorded to this effect. The statements of accused persons were also recorded during the intervening

period. However, despite best efforts, no clarification could be obtained from Shri Bhagat Kishan (A-2) as he had been seriously ill and apparently was not in position to interact with CBI team as regards the facts and circumstance of the case.

6. That, it is also pertinent to mention here that CBDT on its part, is facing problem as concerned banks could not provide them the details of suspected transactions which are beyond their mandatory storage period of ten years. Investigation conducted by CBDT is mostly restricted to database (e.g. ITRs, ITD database, MCA portal) as suspected business entities were found to be non-existent during physical verification. **This further limits the scope of investigation apart from difficulties like non-availability of records/documents for the relevant period. Efforts are on to overcome all such cumulative issues that tend to the delay ongoing further investigation and the same, being at an advanced stage, would be concluded expeditiously.**

Sd/-
ASP/CBI/ACB/Kolkata”

24. In *Anant Thanur Karmuse vs The State of Maharashtra & Ors.*, in Criminal Appeal No. 13 of 2023, decided on February 24, 2023, the Supreme Court held:-

“8. Now, so far as the power of the Constitutional Courts to order further investigation / re-investigation / de novo investigation even after the chargesheet is filed and charges are framed is concerned, the following decisions are required to be referred to:-

8.1 In the case of ***Bharati Tamang (supra)***, after taking into consideration the decisions of this Court in the case of ***Babubhai Vs. State of Gujarat, (2010) 12 SCC 254*** (paras 40 and 42) and the subsequent decision of this Court in the case of ***Ram Jethmalani Vs. Union of India (2011) 8 SCC 1*** and other decision on the point, ultimately the principles, which are culled out are as under:

“41. From the various decisions relied upon by the petitioner counsel as well as by respondents’ counsel, the following principles can be culled out.

41.1. The test of admissibility of evidence lies in its relevancy.

41.2. Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

41.4. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6. While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.”

8.2 In the case of **Dharam Pal (supra)**, after taking into consideration the catena of decisions on the point, it is observed and held that the constitutional courts can direct for further investigation or investigation by some other investigating agency. It is observed that the purpose is, there has to be a fair investigation and a fair trial. It is observed that the fair trial may be quite difficult unless there is a fair investigation. It is further observed and held that the power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. While observing and holding so, in paragraphs 24 and 25, it is observed and held as under:

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We

may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

9. Now, so far as the reliance placed upon the decision of this Court in the case of **Vinubhai Haribhai Malviya and Ors. (supra)**, relied upon on behalf of the respondent – accused is concerned, it is required to be noted that in the said decision, this Court was considering the powers of the Magistrate. Even in the said decision, it is observed and held that there is no good reason given by the Court as to why a Magistrate's powers to order further investigation

would suddenly cease upon process being issued. It is further observed that power of the police to further investigate the offence continues right till the stage the trial commences. It is further observed that Article 21 of the Constitution demands no less than a fair and just investigation. In paragraph 42 as such, it is observed and held as under:

“42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409]*, *Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407]*, *Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762]*, and *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92]*; *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92]* having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a *prima facie* guilty person is not so left out. There is no warrant for such a narrow and

restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347]. Therefore, to the extent that the judgments in Amrutbhai Shambhubhai Patel [Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177], Athul Rao [Athul Rao v. State of Karnataka, (2018) 14 SCC 298] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi), (2019) 5 SCC 542] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [(1997) 1 SCC 361] and Reeta Nag v. State of W.B. [(2009) 9 SCC 129] also stand overruled.”

10. Now, so far as the reliance placed upon the decision of this Court in the case of **Rama Chaudhary (supra)** relied upon on behalf of the respondent – accused is concerned, it is required to be noted that in the said decision, this Court was considering the scope of Sections 173(8) and 173(8)(2) Cr.P.C. and the right of the police to “further investigation”. It is observed that the police has no right for “fresh investigation” or “reinvestigation”. However, this Court had no occasion to consider the powers of the constitutional courts, which are dealt with and considered in the case of **Bharati Tamang (supra)** and **Dharam Pal (supra)**.

*11. Applying the law laid down by this Court in the case of **Dharam Pal (supra) and Bharati Tamang (supra)** and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation / re-investigation / de novo investigation even after the charge sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court that once the chargesheet is filed and the charges are framed, there may not be any order for further investigation / re-investigation / de novo investigation is accepted, in that case, the accused may see to it that the charges are framed to avoid any fair investigation / fair trial. It would lead to travesty of justice.”*

25. It thus appears that the prayer dated 24.06.2019 for further investigation was made by the CBI on the basis of CVC’s report dated 31.01.2014 (as no other report by the CVC has been placed before this Court), but the CVC’s recommendation in the said report is only for departmental action for major penalty. There is no other recommendation, more so reason/nor recommendation/or grounds for further investigation.

26. As to what prompted the CBI to pray for further investigation after five years of the CVC’s said report, was not considered by the trial Judge.

27. Paragraph 8 of the application for further investigation dated 24.06.2019 filed by the CBI is vague and clearly not as per the CVC’s report dated 31.01.2014.

28. In the application dated 24.06.2019, the grounds for further investigation in paragraph 9 also relate to the initial investigation

which ended in FRT, wherein the same points were investigated but no evidence was found to substantiate the allegation in the FIR.

- 29. No new evidence or material was placed before the trial Judge to justify allowing the prayer for further investigation.**
- 30. The order dated 27.06.2019 (certified copy) permitting further investigation does not give any reasons/grounds as to why such a prayer is being allowed, which is clearly an abuse of the process of law and thus against the principles of interest of justice.**
31. It is unfortunate that now after almost 5 (five) years, the status report dated 20.11.2023 filed by the CBI, shows that the further investigation has not led to any fruitful result.
- 32. Be that as it may, in the present case, Order dated 27.06.19 permitting further investigation is by itself not in accordance with law, as the prayer for further investigation is beyond the report/recommendation of the CVC on which the prayer for further investigation was allegedly based.**
- 33. CRR 459 of 2020 is thus allowed.**
34. The Order dated 27.06.2019 passed by the Learned Judge, 3rd Special (C.B.I. Designated) Court, in RC 36/A/10 Bankshall Court, Calcutta in connection with RC 0102010A0036 dated 25.11.2010 thereby granting liberty to the prosecution to conduct further investigation, **is set aside/quashed.**
35. All connected applications, if any, stand disposed of.

- 36.** Interim order, if any, stands vacated.
- 37.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 38.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)