

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R 1474 of 2024

Bikash Bej and Ors

versus

**The Central Bureau of Investigation, Special Crime
Branch, Kolkata & Anr.**

With

C.R.R 1510 of 2024

Farid Saha and Ors

versus

**The Central Bureau of Investigation, Special Crime
Branch, Kolkata & Anr.**

For the Petitioners : Mr. Sabyasachi Banerjee,
Mr. Soumen Mohanty,
Mr. Agnish Basu,
Mr. Soham Dutta,

For the CBI : Mr. Dhiraj Trivedi, Id. DSGI
Mr. Amajit De, special PP

**Heard On : 12.04.2024, 15.04.2024, 16.04.2024, 19.04.2024
& 22.04.2024.**

Judgement On : 22-04-2024.

Tirthankar Ghosh, J. :

The revisional applications being CRR 1474 of 2024 and CRR 1510 of 2024 involve common question of facts and law and arise out of the same case, as such both of them are decided and disposed of by a single order.

The revisional applications have been preferred for quashing of the notices dated 03-04-2024 issued under Section 160 of the Code of Criminal Procedure by the Central Bureau of Investigation, SCB, Kolkata in connection with RC0562021S0052 dated 21-12-2021 under Sections 302/34 IPC.

The background of the case refers to the order passed by the Hon'ble High Court, Calcutta in WPA No 16932 of 2021 which is related to post poll violence and wherein Marishda PS Case No. 71 of 2021 dated 30-03-2021 was transferred to the CBI pursuant to the order dated 31.01.2023.

Accordingly, the case was re-numbered as above and the investigation of the case commenced at the instance of the CBI, SCB, Calcutta.

At the time of hearing of the revisional application, the Central Bureau of Investigation has submitted a report and a copy of the chargesheet has also been filed. The brief facts of the case as set out in the chargesheet are as follows :-

“The instant case was registered by CBI, SCB, Kolkata on 21.12.2021 u/s 302 & 34 of IPC, in compliance to the order dated 19.08.2021 of the Hon'ble High Court of Calcutta at Kolkata in WPAs (A) 142, 143, 144, 145, 146, 147, 148, 149 & 167 of 2021 by re-registering Marishda PS FIR No. 71/2021 dated 30.03.2021.

The Hon'ble High Court at Calcutta in its order dated 31.01.2023 in WPA No. 16932 of 2021 (Ratan Dalai versus State of Bengal & Ors.) issued directions which are as follows:- "In terms of the decision of the Full Bench of this Court, inter alia, in WPA (P) No. 142 of 2021 dated 19.08.2021, let the FIR (Case Number 71 of 2021 of Marishda Police Station) shall stand transferred for further investigation to the Central Bureau of Investigation."

FIR Number 71/2021 of PS Marishda, Distt. Purba Medinipur was registered on the basis of complaint dated 30.03.2021 lodged by Sh. Kalipada Shit s/o Late Basanta Kumar Shit r/o, Village + PO + PS - Marishda, Dist.-Purba Medinipur, West Bengal.

It was alleged in the FIR that on 30.03.2021 (at about 10.00 AM), the accused persons, namely, (1) Shankar Samanta, (2) Sk. Jamir, (3) Tapas Bej, (4) Bibhas Bej, (5) Lalu Ari, (6) Sourav Bera, (7) Pradip Mondal @ Batul, (8) Debabrata Panda, (9) Bikash Bej, (10) Ashok Jena and (11) Ratan Jena under the shelter of TMC picked up Janmenjoy Dalai @ Chandu, an active worker of CPI(M) in the north Kanthi Assembly, forcefully on motor cycle near Masagaon Bridge in a planned manner and took him to Kandua Village at Bhaja Chowly Area. There he was badly beaten by the said miscreants with lathi, iron rods, sharp weapons and caused wounds all over his body and threw him dead in an empty place.

After investigation, the State police filed charge sheet on 30.06.2021 against 06 accused persons, including 4 FIR named accused persons; viz., (i) Shankar Samanta, (ii) S.K. Jamir, (iii) Lalu Ari & (iv) Sourav Bera and 2 more persons; viz. (i) Tapas Mondal & (ii) Mithun Kala.

The investigation by CBI has revealed that Shri Janmenjoy Dalai was earlier working for CPM & subsequently shifted to TMC. During the 2021 West Bengal Assembly elections, he shifted his allegiance to BJP & campaigning for BJP. The Assembly elections were held on 27.03.2021. On the date of election itself, i.e., on 27.03.2021, Shri

Nand Dulal Maity (a Distt. level President of TMC) was assaulted by some persons, including victim Late Janmenjoy Dalai. In this regard, a FIR no. 155/ 2021 was registered on 28.03.2021 u/s 341, 323, 325, 307, 427, 506 & section 34 IPC on the complaint of Shri Budhdeb Maity (A-11) son of Shri Nand Dulal Maity. It is alleged that when his father was retuning in vehicle no. WB-32 1340 with Shri Prabir Mishra, a candidate of Uttar Kanthi, the miscreants attacked his father with wooden sticks, iron rods & beat him brutally. Shri Nand Dulal Maity was admitted in hospital in critical condition. Names of 38 miscreants were given, including name of Late Janmenjoy Dalai.

After this incident, due to fear of life from Sh. Nand Dulal Maity and his associates, deceased Janmenjoy Dalai stayed at the home of one of his relatives & friends Sh. Lalu Ari on 28.03.2021 and 29.03.2021 or nearby area.

Investigation by the CBI has revealed that Shri Lalu Ari & Late Janmenjoy Dalai were friends & in the habits of taking alcohol. On the day of incident, i.e., on 30.03.2021, they purchased fish & vegetable from market of Contai. They were supposed to go to the residence of one Smt. Suparna Nayak W/o Sh. Deb Kumar Nayak & spend some time at her residence. Since Smt. Suparna Nayak was not found at her residence at around 0930 hrs. on 30.03.2021, Shri Lalu Ari & victim Late Janmenjoy Dalai gave the fish & vegetables to the neighbor of Smt. Suparna Nayak.

Thereafter both Janmenjoy Dalal and Lalu Ari came to Masagnon Bridge on motorcycle. Sh. Lalu Ari parked his motorcycle and purchased a water bottle of Re. 10 from near by shop. At this place Debabrata Panda @ Jyotiya Panda caught Lalu Ari and Tapas Bej and Sk. Jamir caught victim Janmenjoy Dalai, Buddhadeb Maity s/o Nanda Maity and Pradip Mondal @ Batul were also present with Debabrata Panda, Tapas Bej and Sk. Jamir when Lalu Ari and deceased Janmenjoy Dalai were caught by them at the Masagnon Bridge,

However, Shri Lalu Ari somehow was able to escape from the assailants. After escaping he immediately telephoned Asim Das at 10:26 hrs. on 30.03.2021 with an intention to rescue Janmenjoy Dalai. The investigation has further revealed that after the incidence mentioned in the preceding para, late Janmenjoy Dalai was seen being forcibly taken on bike from Masagaon Bridge to Jaganath Bazar, Arjun Maity was driving the bike, Bikram Das was a pillion rider & victim Janmenjoy Dalai was sitting between them on the bike. A gamchha was tied with the right leg of Janmenjoy Dalai & other end was held by Bikram Das. He was also giving blow to Janmenjoy Dalai & abusing him. Buddhdeb Maity alongwith one pillion rider was driving another Motorcycle. There were other persons also but the eye witness could not identify them.

At Jaganath Bazar late Janmenjoy Dalai was beaten by Sk. Jamir and Sankar Samanta, Pradip Mondal and Bikram Das and Mithun Kala and Budhdeb Maity. Shri Shaikh Jamir & Shri Sankar Samanta were carrying iron rods, Shri Pradip Mondal and Shri Bikram Das were carrying lathis and Mithun Kala was empty handed. While being beaten late Janmenjoy Dalai was crying, feeling sorry and pleading for his release.

The investigation has further revealed that on 30.3.2021, at about 10.40 AM, Shri Amit Deb I/C of Marisdha PS. received a phone call that Chandu @ Janmenjoy Dalai & Lalu Ari were coming from Contai on bike & at Nilpur Bridge/Mosagaon Bridge someone kidnapped him. He immediately called Shri Kingsuk Maity, Village police, Marisdha PS for retrieving information & also ordered Shri Mrinmay Bhunia, Mobile Officer, ASI to go & check the matter. Further, Shri Kingsuk Maity, Village police, Marisdha PS called back after approx. 40 min, that nothing found yet and if something happened, he will report accordingly. Shri Mrinmay Bhunia, Mobile Officer, ASI called back after an hour at around 11.30 AM that they found Chandu @ Janmenjoy

Dalai at 83 bigha (at a distance of about 4-5 Kms from Jaganath Bazar) in bleeding condition & someone had badly beaten him & broken his hands & legs. Sh. Amit Deb, SI instantly ordered them to take the victim to Egra Super speciality Hospital. Late Janmenjoy Dalai was alive in vehicle when he was in transit to hospital from the Scene of Crime Sh. Subhir Pal, Circle Inspector & Sh. Amit Deb, SI, O/C Marisdha PS, Bhupatinagar Circle left for Egra Super Specialty hospital & when they were on their way Sh. Amit Deb received a phone call from Mobile Officer that they were close to the hospital but Janmenjoy Dalai stopped breathing & he was no more. On hearing this, Shri Amit Deb ordered to take him to hospital for further proceedings and he himself returned to Marisdha PS.

Thus accused persons; viz., (i) Sh. Shankar Samanta, (ii) Sh. Sheikh Jamir, (iii) Sh. Pradeep Mondal, (iv) Sh. Buddhadeb Maity, (v) Sh. Bikram Das, (vi) Sh. Arjun Maity, (vii) Sh. Debabrata Panda (viii) Sh. Tapas Bej and (ix) Mithun Kala in Criminal Conspiracy with each other abducted late Janmenjoy Dalai for murder and thereafter murdered him in furtherance of their common intention.

The investigation has further revealed that deceased Janmenjoy Dalai was from Scheduled Caste class as notified by Govt. of West Bengal. All the accused persons except Shri Mithun Kala were from General Category. The accused persons were very much aware that deceased Janmenjoy Dalai is from Scheduled Caste.

The aforesaid acts of accused person viz. (i) Sh. Shankar Samanta, (ii) Sh. Sheikh Jamir, (iii) Sh. Pradeep Mondal, (iv) Sh. Buddhadeb Maity, (v) Sh. Bikram Das, (vi) Sh. Arjun Maity, (vii) Sh. Debabrata Panda (viii) Sh. Tapas Bej constitute offence punishable u/s 120 B r/w 302, 364 & 34 IPC and u/s 3 (2) (v) of SC & ST (Prevention of Atrocities) Act and substantive offences thereof. The aforesaid act of accused person Mithun Kala constitute offence punishable u/s 120 B r/w 302, 364 & 34 IPC.

Closure of the case is recommended in respect of 02 accused persons; viz. (i) Lalu Ari, (ii) Tapas Mondal as no evidence could be found against them during investigation by CBI. No oral or documentary evidence surfaced during CBI investigation which prove that Shri Lalu Ari was involved with accused persons and he gave a tip to accused persons that he alongwith deceased Janmenjoy Dalai is visiting Masagaon Bridge in the morning of 30.03.2021.

The further investigation has been kept open in the instant case under provisions of section 173 (8) Cr. PC.

Prayer

In view of above, it is prayed that.

(a) Cognizance of offences punishable u/s 120 B r/w 302, 364 & 34 IPC and u/s 3 (2) (v) of SC & ST (Prevention of Atrocities) Act and substantive offences thereof may be taken against accused persons viz.

(i) Sh. Shankar Samanta, (ii) Sh. Sheikh Jamir, (iii) Sh. Pradeep Mondal, (iv) Sh. Buddhadeb Maity, (v) Sh. Bikram Das, (vi) Sh. Arjun Maity, (vii) Sh. Debabrata Panda (viii) Sh. Tapas Bej.

(b) Cognizance of offences punishable u/s 120 B r/w 302, 364 & 34 IPC may be taken against accused Mithun Kala.

(9) The records of the case be transferred to the court of Ld. Special Court under SC ST Act, Tamluk, Purba Medinipur for further trial as sections of SC/ST Act have been invoked in this case.

17. Refer Notice served : Notice sent

18. Dispatched on: 12.01.2024 & 15.01.2024

19. Number of enclosures:

- (i) List of relied upon witnesses (Annexure "A")
- (ii) List of relied upon documents. (Annexure "B")
- (iii) List of Articles (Annexure "C")

20. List of Enclosures- As above."

From the chargesheet so submitted it reflects that information of further investigation was already conveyed and/or advanced by the Investigating Agency and the grievance of the petitioners are that, in the chargesheet so submitted some of them were exonerated and in spite of the same they have been served with notices under Section 160 CrPC.

It has also been submitted on behalf of the petitioners that under the garb of “Notice to witness” under Section 160 of the CrPC the Investigating Agency is in the habit of arresting the persons when they attend their office. Additionally, it was submitted that majority of these petitioners were earlier served with notices in close proximity of time when the FIR was registered by CBI and in order to victimize them politically they have been served with notices under S.160 CrPC prior to the Lok Sabha elections. After portraying the brief chronology of events leading to the issuance of notice u/s 160 CrPC, Mr. Sabyasachi Banerjee, learned advocate appearing on behalf of the petitioners emphasized on the provisions of Sections 160,161 and 163 of the Code of Criminal Procedure. In order to substantiate his argument, petitioners relied upon the following judgements:

- (i) State represented by Inspector of Police and others –vs- N. M. T. Joy Immaculate & Ors. reported in (2004) 5 SCC 729;
- (ii) Ram Chandra Panda and Anr. –vs- State of West Bengal and anr. reported in 2023 SCC OnLine Cal 55;
- (iii) Sutapa Adhikari & Ors. –vs- The State of West Bengal and Anr. (CRR 2464 of 2022).

Petitioners in order to fortify their contention that an accused cannot be called as a witness with the aid of S.160 CrPC referred to relevant part of the judgement of N. M. T Joy Immaculate and others (supra) which is as follows:

“21. Section 160 of the Code of Criminal Procedure deals with police officer’s power to require attendance of witnesses. This section aims at securing the attendance of persons who would supply the necessary information in respect of the commission of an offence and would be examined as witnesses in the inquiry or trial therefor. This section applies only to the cases of persons who appear to be acquainted with the circumstances of the case i.e. the witnesses requiring the attendance of an accused person with a view to his answering the charge made against him. The intention of the legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, who may be arrested at any time, if necessary.”

Attention of this court was drawn to the judgement of Ram Chandra Pandey & Anr. (Supra) and paragraphs 31, 32 & 33 so relied upon by the petitioners are set out as follows:-

“31. At this stage the judgment of the Privy Council, in *Pakala Narayana Swami v. The King - Emperor* ((1938-39) 43 CWN 473 at Page 480) relied upon by Mr. S.G. Mukherjee Learned Public Prosecutor becomes relevant.

32. The said observation of the Privy Council in respect of Sec. 160 Cr. P.C. makes it clear that the word “any person” may or may not include a “suspect” and finally may be an accused and as the Section (161 Cr. P.C.) prohibits the statement recorded from being signed, it must

therefore also apply to a statement made by a person who eventually becomes an accused.

33. *Several Judgments of Coordinate and Division Bench of this court has also been relied upon on behalf of the petitioners.”*

Reliance was placed on Sutapa Adhikari & Ors. (supra) and the following paragraphs were relied upon by the petitioners “-

“13. *Thus in order to prevent abuse of the process of law by the investigating agency as already discussed and to ensure ends of justice and having considered the rival contentions, CRR 2464 is hereby disposed of with the following direction:-*

- (i) The investigating agency in connection with Contai Police case no. 46 of 2022 dated 31.01.2022 under sections 120B/409/477A of the Indian Penal Code pending before the learned ACJM Contain Purba Medinipur (if investigation still continuing) will be free to issue another set of notices under section 91/160 of Cr.P.C. to the petitioners, if their presence and interview is required for investigation but in that case the petitioners must be given at least 72 (seventy Two) hour notice.*
- (ii) If at any point of time the investigating agency proposes to accuse any of the petitioners of any alleged offence and proposes to implicate with the case in order to start investigation against all or any of the petitioners, the concerned petitioner(s) shall be served with a written show cause notice and he shall not be arrested for a period of 10 days, from service of such show cause notice to enable him to avail of his remedies against arrest available in law.*
- (iii) It is made clear that this court has not entered into the merit of the complain whatsoever and the observation made herein is*

confined to future notice, if any, under section 160/91 of Cr.P.C. in connection with present petitioners.”

Mr. Trivedi, ld. DSGI appearing on behalf of the CBI submitted that the case was transferred to the CBI on the basis of a writ petition filed by Ratan Dalai, who is the son of the deceased Janmenjoy Dalai and said Ratan Dalai sent a complaint dated 14-09-2021 to CBI naming 54 persons who are suspected to be involved in the offence. The said complaint was enclosed with the FIR of RC 52(S)/2021 – Kol registered by CBI. On completion of investigation CBI submitted chargesheet against 9 accused persons namely (1) Shankar Samanta (2) Sh. Sheikh Jamir (3) Sh. Pradeep Mondal (4) Sh. Buddhadeb Maity (5) Bikram Das (6) Arjun Maity (7) Debabrata Panda & (8) Tapas Bej u/s 120B read with 302,364 & 34 IPC and u/s. 3(2)(v) of Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and against Mithun Kala u/s 120B read with Ss. 302,364 and 34 IPC.

According to the Investigating Agency the learned court was already informed at the time of submission of the charge-sheet that the process of further investigation has been kept open and the learned DSGI in his report before this court has referred to the list of witnesses who named the petitioners, which has compelled the Investigating Agency to cross-check the veracity or the complicity of the persons/petitioners and as such they have been served with notice u/s. 160 of the CrPC.

To substantiate his argument he has relied upon the judgement of Nandini Satpathy –vs- P. L. Dani reported in (1978) 2 SCC 424 and submitted

that the scope of the relevant Section of Cr.PC do permit the Investigating Agency to issue notice under Section 160 of the Code of Criminal Procedure.

Ld. DSGI submitted that further investigation is in progress and majority of the petitioners were served with notice more than once and they have not complied with the same.

Additionally, it has been submitted that the CBI in its first charge-sheet has categorically stated regarding the persons who have been discharged and against whom case has been closed. While in respect of others it has been communicated in the tabular form either 'no evidence found against him during investigation' or 'absconding'.

So, at this stage of further investigation, the investigating agency, in order to verify the names of the persons/petitioners which surfaced from the statement of more than one witness requires their presence before finally concluding the investigation.

I have considered the submissions advanced by both the parties and I am of the view that the grievance expressed by the petitioners are to be addressed by referring to the provisions of Section 160, Section 161 and Section 162 of the Cr.P.C. as the main thrust of contention is that the petitioners have been issued notice as witnesses under section 160 of the Cr.P.C. and there is every possibility that they may be arrested in course of interrogation or in case they attend the office of the CBI.

In *Nandini Satpathy -Vs- P.L. Dani (supra)*, the Hon'ble Supreme Court relying upon *Palkala NSarayana Swami -Vs- King Emperor [AIR 1939 PC 47]*

and *Mahabir Mandal –Vs- State of Bihar* [(1972) 1 SCC 748], was pleased to observe as follows:

“36. *The Privy Council, in Pakala Narayana Swami case [Pakala Narayana Swami v. Emperor, AIR 1939 PC 47, 51 : 66 IA 66, 78] reasoned:*

“If one had to guess at the intention of the Legislature in framing a section in the words used, one would suppose that they had in mind to encourage the free disclosure of information or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statements or both. In any case the reasons would apply as might be thought a fortiori to an alleged statement made by a person ultimately accused. But in truth when the meaning of words is plain it is not the duty of the Courts to busy themselves with supposed intentions.

I have been long and deeply impressed with the wisdom of the rule, now I believe universally adopted, at least in the courts of law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther : [Lord Wensleydale in Grey v. Pearson [(1857) 6 HLC 61, 106 : 5 WR 454] .]”

My Lords, to quote from the language of Tindal, C.J. when delivering the opinion of the Judges in Sussex Peerage case [(1844) 11 CL & F 85, 143 : 65 RR 11] ,

“The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which

passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the law-giver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble which according to Dyer, C.J. (Stowel v. Lord Zouch [(1562) 1 Plowd 353, 369 : 75 ER 536]) is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress. [Lord Halsbury, L.C. in Income Tax Commissioners v. Pemsel [1891 AC 531, 542 : 61 LJQB 265 : 65 LT 621]]”

They reached the conclusion that “any person” in Section 161 CrPC, would include persons then or ultimately accused. The view was approved in Mahabir Mandal case [Mahabir Mandal v. State of Bihar, (1972) 1 SCC 748, 763 : 1972 SCC (Cri) 454 : (1972) 3 SCR 639, 657] . We hold that “any person supposed to be acquainted with the facts and circumstances of the case” includes an accused person who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note “examination of witnesses by police” clinch the matter. A marginal note clears ambiguity but does not control meaning. Moreover, the suppositions accused figures functionally as a witness. “To be a witness”, from a functional angle, is to impart knowledge in respect of a relevant fact, and that is precisely the purpose of questioning the accused under Section 161 CrPC. The dichotomy between “witnesses” and “accused” used as terms of art, does not hold good here. The amendment, by Act 15 of 1941, of Section 162(2) of the CrPC is a legislative acceptance of the Pakala Narayana Swami reasoning and

guards against a possible repercussion of that ruling. The appellant squarely fell within the interrogational ring. To hold otherwise is to hold up investigative exercise, since questioning suspects is desirable for detection of crime and even protection of the accused. Extreme positions may boomerang in law as in politics. Moreover, as the Miranda decision states (pp. 725, 726):

“It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.”

(emphasis added)

In *Dipakbhai Jagdish Chandra Patel -Vs- State of Gujarat* reported in (2019) 16 SCC 547 relying upon the aforesaid judgment the Hon’ble Supreme Court dealt with Section 161 of the Cr.P.C. which is as follows:

“38.Does not the marginal note of Section 161 CrPC confine the power to the police officer to examine the witnesses and will it be denied to him qua a person who is already named as an accused? These questions are no longer res integra.

39. In *Nandini Satpathy v. P.L. Dani* [*Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424 : 1978 SCC (Cri) 236 : AIR 1978 SC 1025] , a Bench

of three learned Judges was dealing with a case which arose from proceedings initiated against the appellant therein under Section 179 IPC. In the course of the judgment, speaking on behalf of the Bench, this is what V.R. Krishna Iyer, J. had to say: (SCC p. 443, para 35)

“35. We will now answer the questions suggested at the beginning and advert to the decisions of our Court which set the tone and temper of the “silence” clause and bind us willy-nilly. We have earlier explained why we regard Section 161(2) as a sort of parliamentary commentary on Article 20(3). So, the first point to decide is whether the police have power under Sections 160 and 161 CrPC to question a person who, then was or, in the future may incarnate as, an accused person. The Privy Council and this Court have held that the scope of Section 161 does include actual accused and suspects and we deferentially agree without repeating the detailed reasons urged before us by counsel.”

(emphasis supplied)

40. *Thereafter, after referring to Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66 : AIR 1939 PC 47] , regarding the scope of the word “confession” the Court held inter alia as follows: (SCC p. 444, para 36)*

“36. ... We hold that “any person supposed to be acquainted with the facts and circumstances of the case” includes an accused person who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note “examination of witnesses by police” clinch the matter. A marginal note clears ambiguity but does not control meaning. Moreover, the suppositions accused figures functionally as a witness. “To be a witness”, from a functional angle, is to impart knowledge in respect of a relevant fact, and that is precisely the purpose of questioning the accused under Section 161 CrPC.”

(emphasis in original)”

Thus, it has already been settled that ‘any person’ used in Section 160 of the Cr.P.C. would refer to a person acquainted with the relevant facts of the case and its is possible at the time when a person is called for making a statement, he may not be a suspect but eventually may lead to a status of an accused.

In fact, the marginal note/headnote of Section 160 of Cr.P.C. has hardly any impact, particularly with regard to the contents of the section. As the emphasis within the section is with respect to a person acquainted with the facts of the case.

In Ram Nath –vs- State of U. P reported in (2024) 3 SCC 502, the Hon’ble Supreme Court was pleased to hold in para 28 which is as follows:

“28. *The settled law is that if the main section is unambiguous, the aid of the title of the section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature.”*

It cannot be ignored that arrest is a part of an investigation process and as stated in H. N. Rishbud v. State(Delhi Admn) reported in (1954) 2 SCC 934. Para 8 of the relevant judgement is as follows :-

“8. *Thus, under the Code investigation consists generally of the following steps:*

- (1) Proceeding to the spot,*
- (2) Ascertainment of the facts and circumstances of the case,*

- (3) *Discovery and arrest of the suspected offender,*
- (4) *Collection of evidence relating to the commission of the offence which may consist of*
 - (a) *the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,*
 - (b) *the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and*
- (5) *Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.....”*

Further, the power to arrest a person and to exercise such power according to the requirement of the case are completely different aspects and the remedy available for apprehension of arrest under the law are completely different.

In this case, the petitioners have not been able to show a circumstance where the CBI authorities under the garb of Section 160 Cr.P.C. by calling a witness has arrested any person, which distinguishes the present case from *Ram Chandra Panda (supra)* and *Sutapa Adhikari & Ors (supra)*.

So far as the judgment of the Hon’ble Supreme Court in *State –Vs- N.M.T. Joy Immaculate (supra)* is concerned, paragraph 22 of the said judgment reads as follows:

“22. *In the instant case, the High Court, by an impugned order has given a direction to the State Government to issue circulars to all the police stations instructing the police officials that the woman accused/witness should not be summoned or required to attend at any*

police station under Section 160 CrPC but they must be enquired only by women police or in the presence of women police, at the places where they reside. The High Court has issued a further direction to the Government to ensure that this instruction is strictly followed by the police in future.”

The aforesaid paragraph reflects that the High Court passed a direction to the State Government to issue circulars to all the police stations instructing the police officials that the woman accused/witness should not be summoned or required to attend at any police station under section 160 of the Cr.P.C. Therefore the term ‘accused’ was introduced by the High Court in the said case which was never the language in the main provision of Section 160 of the Cr.P.C. and, accordingly, the Hon’ble Supreme Court had to deal with Section 160 of the Cr.P.C. by referring to the issue that there is a distinction between an accused and a witness.

Towards the end of paragraph 21 of N.M.T. Joy Immaculate (*supra*), it has been stated that the police officer are fully authorised to require the personal attendance of the suspects during the investigation.

This, in fact is the reiteration of the earlier view in *Mahabir Mandal (supra)*, wherein the Hon’ble Supreme Court was pleased to observe “the first words of the section prohibiting the statement if recorded from being signed must apply to all the statements made at the time and must therefore apply to a statement made by a person possibly not then even suspected but eventually accused.”

Each case is to be decided on its own facts. In the present case, the petitioners could not show any instance that by issuing notice under section 160 Cr.P.C. any person has been arrested; the statements of the witnesses so examined in course of the investigation and further investigation, resulted in the name of the petitioners having surfaced; once the name of the petitioners surfaced, they come within the ambit of “any person acquainted with the facts and circumstances of the case” which empowers the investigating agency to issue notice under section 160 of the Cr.P.C.

Having arrived at the aforesaid findings, I am of the view that no interference can be made in respect of the prayer so advanced with regard to the issuance of notice to the petitioners under section 160 of the Cr.P.C.

Accordingly, both the revisional applications, being CRR 1474 of 2024 and CRR 1510 of 2024 are dismissed.

Pending application, if any, is consequently disposed of.

Urgent Photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)