



CRM-M-2336-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2336-2024

Date of decision: 03.12.2024

NXXXX

... Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manoj Tanwar, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG, Haryana.
Mr. Shiv Kumar Sharma, Advocate for respondent No.7.
Mr. Ravi Kamal Gupta, Retainer Counsel for the CBI.

SUMEET GOEL, J.

1. The petition in hand has been filed, by the FIR complainant/victim, under Section 482 of Cr.P.C., 1973 praying for transfer of investigation in case FIR No.530 dated 14.09.2023 registered under Sections 120-B, 376-D, 506, 509 of IPC at Police Station Industrial Sector 29, Panipat, Haryana (hereinafter referred to as '*FIR in question*') to some independent investigating agency; for a further direction to DGP, Haryana to take action against the Investigating Officer and Supervisory Officer of the FIR in question & for direction to the DGP, Haryana and SP, Panipat to afford police protection to the petitioner.

2. The gravamen of the FIR in question is that the complainant has averred that her husband, who was a businessman,

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was arrested in one FIR registered in District Mahendergarh, along with some other persons & to secure bail therein for her husband, the accused (in the FIR) have extorted money from her. It has been further alleged in the FIR that the petitioner has been living with her husband in Panipat since the date of her marriage in July 2013. It has been further alleged in the FIR that the husband of the petitioner and his elder brother, namely Suresh Kumar, jointly run a business under the name of Bhavesh Taxo Fab Firm. However, in October 2020, the husband of the petitioner and Suresh were called for investigation by the Bhiwani Police in connection with an FIR No. 19/2019 regarding GST-related matters. Despite their cooperation, they were arrested on 08.01.2021. After their arrest, the maternal cousin of the petitioner i.e. accused Sandeep Mangla, and his associates, including Deepti Mangla, Sachin alias Sonu, and Vinay, assured the petitioner that they could resolve the case by using their Police connections and demanded a significant amount of money. Over several months, the aforementioned accused had extorted approximately ₹1.5 crores from the petitioner under the pretext of bribing the officials to settle cases against the husband of the petitioner. It has been further alleged in the FIR that the petitioner was forced to sell all her jewellery, a plot, and also had to borrow money from the relatives. Despite paying such a hefty amount to the accused, the husband of the petitioner could not secure bail, nor was there any progress in the cases registered against the husband of the petitioner. Consequently, on 25.11.2022, when the petitioner visited the house of accused Sandeep after being called,

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then accused Sonu and Vinay locked the petitioner inside the room, physically assaulted the petitioner, and raped her while the accused Deepti abetted the act. All the accused in connivance with each other had also recorded the video of assault and used it to blackmail the petitioner. However, out of fear, the petitioner remained silent but later on informed her husband and brother-in-law upon their release from the jail in the year 2023. Thereafter, various attempts were made to resolve the matter through a family Panchayat but all the efforts remained unsuccessful as the accused became violent and started assaulting the family members of the petitioner. It has been further alleged that the accused have not only ruined the life of the petitioner but also continued to threaten her and her family members. The petitioner had also provided the video recordings and the evidence of the extortion and threats issued by the accused. In view of the facts narrated hereinabove, the petitioner had requested for strict action against the accused as also seeking protection for her family and recovery of the extorted money given to the accused.

3. Learned counsel for the petitioner has argued that there are specific allegations of rape as also extortion of money against the accused named in the FIR but the police has chosen to put up chargesheet (final report) only against one accused namely Sachin alias Sonu and that too only under Sections 420/406/201 of the IPC. Learned counsel has iterated that the police has not conducted free and fair investigation into the FIR in question on account of influence exerted by an IPS Officer of Haryana cadre who is a close relative of



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one of the FIR named accused. Learned counsel has further submitted that there are allegations against the accused not only of raping the petitioner (herein) but also of extorting money from her in the name of senior police officials and the trial Court Judge &, therefore, it would not be possible for the local police to carry out free and fair investigation. It has been urged, on behalf of the petitioner, that the nature as also the severity of allegations in the FIR in question warrant that investigation be carried out by a specialized agency. Learned counsel for the petitioner has, thus, sought for grant of prayer(s) as made in the petition.

4. Notice of the petition in hand was issued to State of Haryana/its functionaries whereupon a status report/reply dated 11.03.2024 was filed by Sh. Suresh Kumar, HPS, DSP (Traffic) , Panipat (Haryana) relevant whereof reads as under:-

“(xi) That on 01.02.2024, the facts and circumstances of the case were verified by Sh. Mayank Mishra, IPS, the then Assistant Superintendent of Police, Panipat cum Incharge of the Special Investigating Team and by Sh. Deepak Kumar, Inspector, SHO, P.S. Sector 29, Panipat cum member of SIT. The fifty audio call recordings and one video recording submitted by the complainant on 19.09.2023, were carefully examined. CDR record of mobile Numbers of accused persons and complainant were also carefully examined. It was reveled that the accused persons have not extorted any money by threatening her of death or grievous injury. They have also not talked about any incident of rape as alleged by the complainant. It was found that the husband and brother-in-law of complainant were having nine GST cases registered against them in different districts. It was also revealed from the call recordings that the husband and brother-in-law of complainant were arrested in those cases and complainant had voluntarily given money to accused Sachin on different dates so as to obtain the relief of bail in those cases. It was also



revealed from the call recordings produced by complainant that accused Sachin @ Sonu was demanding return of Rs.15 lakhs from the complainant which he had given to the complainant as financial help for securing the bail of complainant's husband and brother-in-law. Similarly, complainant has taken Rs. 5 lakhs as financial help from the father of accused Sandeep namely Ramesh Mangla and accused Sandeep had given Rs. 8 lakhs as financial help to the complainant. Accused Sandeep and Sachin @ Sonu were only demanding their return of money. Moreover, enquiry from the members of the Panchayat revealed that no incident of altercation took place between them. Hence accused Sandeep, Dipti and Vinay were found to be innocent in the present case. However, it was found that Sachin @ Sonu has taken money from complainant on account of getting bail of the husband of complainant and brother-in-law of complainant but he has not utilized entire amount for the said purpose. It was found that Sachin @ Sonu misappropriated the money given by the complainant. Hence, Sections 120-B, 323, 384, 506, 509 of IPC were deleted from the case and Section 406, 420 of IPC were added in the case as per the nature of crime.

(xii) That on 15.02.2024, Special Investigation Team was re-constituted by the order of Superintendent of Police, Panipat vide order No.4995-97 dated 15.02.2024. The SIT consists of following members:-

(i) Sh. Narender Singh, DSP, Samalkha, Panipat as Incharge and (ii) Station House Officer, Sector 29, Panipat and (iii) ESI Rajesh Kumar, 111, Panipat, P.S. Sector-29, Panipat.

(xiii) That on 16.02.2024, accused Sachin & Sonu was joined in the investigation of the case and was interrogated with regards to allegations in the FIR. Finding incriminating evidences against him from the investigation of the case till date and other evidences, he was arrested in this case in due course of law. During investigation on 17.02.2024, he confessed his role in crime and was produced before the Court of learned CJM, Panipat and his two days police remand was taken for effecting recovery of his mobile phone, sim card and money. Thereafter, he amended his disclosure statement on 18.02.2024 and disclosed that he had thrown his mobile phone and sim card in the river and that he had already spent the money in food and drinking. Thereafter, Section 201 was added in this case as per the nature of crime. True copy of Disclosure Statement of Accused Sachin @ Sonu is annexed herewith as Annexure P-3.



3. *That thereafter on 16.02.2024, an application was filed in the learned Trial Court, Panipat for taking voice samples of accused Sachin @ Sonu which was allowed vide order dated 07.03.2024.*

4. *That the further investigation of the case is still under progress. It is pertinent to mention here that there was total 4 accused in this case out of which 3 accused namely Sandeep, Dipti and Vinay were found to be innocent and accused Sachin @ Sonu was arrested in this case on 16.02.2024.*

5. *That the investigation of the case has been conducted in a fair and impartial manner. The present petition is liable to be dismissed as the present case is being investigated by the Special Investigation Team constituted by Superintendent of Police, Panipat. During investigation of the case, accused Deepti Mangla, Vinay and Sandeep were not found to be involved in the present case and were declared to be innocent on the basis of facts and circumstances of the case as detailed in para 2(vii) and para 2 (xi) of the present status report. The contents of Para 2 (vii) and Para 2 (xi) are not reproduced here for the sake of brevity and to avoid repetition.”*

After having raised submissions in tandem with this status report, learned State counsel has further iterated that final report/challan has been filed by the police against accused-Sachin alias Sonu only on 24.09.2024 under Sections 406/420/201 of IPC & hence no cause survives with the petitioner to seek transfer of investigation. Learned State counsel has further argued that, once the challan/final report has been presented by the police, the instant petition has been rendered infructuous. Accordingly, dismissal of the petition in hand is sought for.

5. Notice of the petition was issued only to the official respondents i.e. respondents Nos.1 to 4 but respondent No.7-Sachin Kumar (against whom challan/final report has been put up by the police under Sections 406/420/201 of IPC) has entered appearance,



on his own, through counsel. It has been submitted by the learned counsel appearing for this respondent that he has been falsely implicated in the FIR in question and the challan/final report put up by the Panipat Police is without any basis. It has been further argued that there is no ground for the petitioner to seek investigation by an independent agency, let alone the CBI & hence the instant petition deserves to be dismissed.

6. Vide order dated 23.04.2024, notice of the present petition was issued to CBI whereupon the learned Retainer Counsel for CBI had entered appearance. It has been iterated on behalf of CBI that the power to transfer investigation to CBI is to be exercised only in exceptional cases whereas the facts of the present petition do not disclose any such exceptional situation. Learned Retainer Counsel has further submitted that CBI shall abide by the directions issued by this Court and shall endeavour to effectively comply with the same.

Prime Issue

7. The prime issue for consideration in the present petition is as to whether the investigation/further investigation of the FIR in question ought to be transferred to an independent Investigating Agency/CBI.

The analogous legal issues that arise for consideration of this Court are as follows:-

(A) Whether the High Court has power to handover an investigation/further investigation of a case to the CBI. In case



such power exists, what are parameters for consideration thereof.

(B) Whether the High Court is empowered to transfer investigation from the police to the CBI even after the police has completed investigation and has presented final report/chargesheet (Challan).

(C) Whether the accused/suspects are entitled to be heard before the High Court passes an order for handing over investigation/further investigation to the CBI.

8. This Court, firstly, proceeds to discuss the above legal issues that have arisen for consideration in the present petition.

Re: Legal Issues

(A) *WHETHER THE HIGH COURT HAS POWER TO HANDOVER AN INVESTIGATION/FURTHER INVESTIGATION OF A CASE TO THE CBI. IN CASE SUCH POWER EXISTS, WHAT ARE PARAMETERS FOR CONSIDERATION THEREOF.*

Relevant Statutory Provisions

Article 226 of the Constitution of India reads as under:-

“226. Power of High Courts to issue certain writs.-(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.



(3) *Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under Clause (1), without-*

(a) *furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and*

(b) *giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.)*

(4) *The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.”*

Section 482 of Code of Criminal Procedure, 1973 reads as under:-

“482. Saving of inherent powers of High Court.-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

Section 528 of BNSS, 2023 reads as under:-

“528. Saving of inherent powers of High Court.-Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

Relevant Case Law



9. The precedents, germane to the matter(s) in issue, are as follows:-

(i) A Five Judge Bench of the Hon'ble Supreme Court in a judgment titled as ***State of West Bengal and Others versus The Committee for Protection of Democratic Rights, West Bengal and Ors., 2010(3) SCC 571***, held as under:

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary 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. Otherwise CBI would be flooded with large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

(ii) A Three Judge Bench of the Hon’ble Supreme Court in a judgment titled as ***Mithilesh Kumar Singh versus State of Rajasthan, 2015(1) RCR (Criminal) 437***, has held as under:

“9. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard and fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are common place when State police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows



that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.”

(iii) A Three Judge Bench of the Hon’ble Supreme Court in a judgment titled as ***Vishal Tiwari versus Union of India and others, 2024 INSC 3*** has held as under:-

“32. This Court does have the power under Article 32 and Article 142 of the Constitution to transfer an investigation from the authorized agency to the CBI or constitute an SIT. However, such powers must be exercised sparingly and in extraordinary circumstances. Unless the authority statutorily entrusted with the power to investigate portrays a glaring, willful and deliberate inaction in carrying out the investigation the court will ordinarily not supplant the authority which has been vested with the power to investigate. Such powers must not be exercised by the court in the absence of cogent justification indicative of a likely failure of justice in the absence of the exercise of the power to transfer. The petitioner must place on record strong evidence indicating that the investigating agency has portrayed inadequacy in the investigation or prima facie appears to be biased.”

(iv) A Three Judge Bench of the Hon’ble Supreme Court in a judgment titled as ***K.V. Rajendran versus Superintendent of Police, CBCID South Zone, Chennai & Others, 2013 AIR Supreme Court 2103***, has held as under:

“10. In view of the above, the law can be summarised to the effect that the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top



officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.”

(v) The Hon’ble Supreme Court in a judgment titled as ***Royden Harold Buthello & anr. versus State of Chhattisgarh &ors., AIR 2023 SC 1231***, has held as under:-

“15. Suffice it to say that transfers have been ordered in varied situations but while doing so the test applied by the Court has always been whether a direction for transfer, was keeping in view the nature of allegations, necessary with a view to making the process of discovery of truth credible. What is important is that this Court has rarely, if ever, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion. There is no reluctance on the part of the Court to grant relief to the victims or their families in cases, where intervention is called for, nor is it necessary for the petitioner seeking a transfer to make out a cast-iron case of abuse or neglect on the part of the State Police, before ordering a transfer. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case.”

Analysis re: law

10. Powers of the High Court, to hand-over the investigation of a case/FIR to CBI, have been delved into deeply, by the Hon’ble Supreme Court in the case of ***Committee for Protection of Democratic Rights and Others*** (supra) wherein it has been held that such power does not impinge upon the federal structure of the Constitution. It has been thus held that such power does vest in the High Court, while exercising its writ jurisdiction under Article 226 of the Constitution of India. The Hon’ble Supreme Court has enunciated



that the fundamental rationale for vesting such powers in the High Court lies in the principle that ensuring a fair & thorough investigation is of utmost significance. The principle of fair trial, as has been developed, with the passage of time, now informs and invigorates many areas of law. It has been enumerated, adjoined and reflected in numerous rules and practices. The principle of fair trial is also a persistent ongoing incubation process, continually adapting to the emergent, new and mutable circumstances as well as to exigencies of the situation, peculiar, at times; & furthermore, it is dynamically related to the nature of crime, person(s) involved (whether directly or operating from behind); social impact, societal needs and even manifold expedient factors behind-the-scenes; which may stymie administration of the criminal justice system. Correspondingly, in our system of administration of the criminal justice, fairness of investigation is the foremost stipulation and integral feature, for a trial to be just and fair. A trial based on a partisan, motivated, biased or ineffectual investigation can hardly be validated to be fair, since the essence and primary objective thereof stands vitiated. The discovery, vindication and upholding of the truth is the cardinal purpose for the existence of the Courts of Justice & for garnering these objects, which are indubitably invaluable and important, proper and fair investigation is absolutely vital. It is, thus, indubitable that the High Court can direct for transfer of investigation in exercise of its writ jurisdiction under Article 226 of the Constitution of India.



11. More often than not, a question arises, as to whether the power (for transfer of investigation of a case/FIR to CBI) can be directed for by the High Court while exercising its powers under Section 482 of Cr.P.C., 1973/528 of BNSS, 2023.

11.1. At the outset, it would be apposite to delve into the nature, scope and ambit of powers of the High Court under Section 482 of Cr.P.C., 1973/528 of BNSS, 2023. Alluding to the provisions of Section 561-A of Cr.P.C., 1898 and Section 482 of Cr.P.C., 1973 & juxtaposing them with Section 528 of BNSS, 2023 unequivocally reflects that the legislature has chosen not to alter this salutary provision *nay* alter any word therein. This, by itself, establishes this provision as an immanent attribute, even ineffaceable, and an enduring doctrine of inherent powers of the High Court. For over a century now, despite overhauling of laws twice during this period, the latest being BNSS of 2023, this provision has remained untouched.

11.2. Section 528 of BNSS, 2023 is, in fact, a reiteration of statutory recognition of the doctrine of inherent jurisdiction of a High Court. This doctrine received statutory recognition, for the first time, when Section 561-A was inserted in the Code of Criminal Procedure Code of 1898 by way of the Code of Criminal Procedure (Amendment Act), 1923. By way of introduction of Section 561-A in Cr.P.C., 1898, the legislature recognized the existence of inherent powers in a High Court and provided that nothing in the Code can be deemed to limit inherent powers of a High Court to make such order(s), as would be necessary to give effect to any order under the



Code *or* to prevent abuse of process of any Court *or* to otherwise secure the ends of justice. It is trite law that this Section does not confer new powers upon a High Court; it only provides that powers which a High Court already inherently possesses, shall be preserved and a provision has been inserted into the statute book *lest* it be misconstrued that only those powers are possessed by a High Court which are expressly conferred by the Code of Criminal Procedure & that all such inherent powers stand extinguished after the Code came into force. In essence, this provision refers to residuary plenary powers of a High Court to do justice. It is notable that such inherent powers, which received statutory recognition at the end of legislature, empowers a High Court to exercise such inherent jurisdiction, not only *apropos* in respect of proceedings before it, but also with regard to proceedings pending before the Subordinate Courts. The legislature, acknowledging the significance and importance of such inherent powers, chose to keep alive the provision of Section 561-A of Cr.P.C., 1898 in the Cr.P.C., 1973 as also the statute currently in vogue i.e. BNSS, 2023, with no change whatsoever, now docketed as Section 528.

11.3. The important aspect that immediately next craves attention is as to what are the “*inherent powers of a High Court*” recognized under Section 482 of Cr.P.C., 1973/Section 528 of BNSS, 2023. In the first place, it deserves to be noticed that these inherent powers are not defined in the statute. Inherent powers are essentially those powers which *ipso facto* exist in the Court by virtue of its



existence. The phraseology of inherent powers as defined in the dictionaries is as under:-

- (a) Black's Law Dictionary defines 'inherent powers' as "Existing in something as permanent, essential, or characteristic attribute."
- (b) Webster's New World Law Dictionary defines it as "A power that must be deemed to exist in order for a particular responsibility to be carried out."
- (c) Oxford (Advanced Learner's Dictionary) defines "inherent" as "existing as a natural or permanent feature".

The maxim of "***quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa, esse non potest***" (when the law gives a person anything it also gives him that without which the thing itself cannot exist) reflects that the inherent powers of a High Court are all such powers which are necessary to do the right and to undo a wrong in the course of administration of justice. Further, the maxim "***ex debito justitiae***" reflects that such powers are given to deliver real and substantial justice for which purpose alone a High Court exists. The powers under Section 482 of Cr.P.C., 1973/582 of BNSS of 2023 are aimed at preserving the inherent powers of a High Court to prevent abuse of the process of any Court or to secure the ends of justice.

11.4. A cumulative reading of the abovesaid makes it crystal clear that the inherent powers of a High Court are powers which are incidental replete powers, which if did not so exist, the Court would be obliged to sit still and helplessly see the process of law and Courts being abused for the purposes of injustice. In other words; such power(s) is intrinsic to a High Court, it is its very life-blood, its very



essence, its immanent attribute. Without such power(s), a High Court would have form but lack the substance. These powers of a High Court, hence, deserve to be construed with the widest possible amplitude. These inherent powers are in consonance with the nature of a High Court, which ought to be, and has in fact been, invested with power(s) to maintain its authority, to prevent the process of law/Courts from being obstructed or abused. It is a trite posit of jurisprudence that though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make it impossible to lay down such provisions, capable of governing every case, which, in fact, arises. A High Court which exists for the furtherance of justice in an indefatigable manner, should therefore, have unfettered power(s) to deal with situations which, though not expressly provided for by the law, need to be dealt with, to prevent injustice or the abuse of the process of law and Courts. The juridical basis of these plenary power(s) is the authority; in fact the seminal duty and responsibility of a High Court; to uphold, to protect and to fulfill the judicial function of administering justice, in accordance with law, in a regular, orderly and effective manner. In other words; Section 528 of BNSS, 2023 reflects peerless powers, which a High Court may draw upon, as necessary, whenever it is just and equitable to do so; in particular, to ensure observance of the due process of law, to prevent vexation or oppression, to do justice *nay* substantial justice, between the parties and to secure the ends of justice.



11.5. Accordingly, it is unequivocal that the inherent powers of a High Court; recognized by way of Section 528 of BNSS, 2023; are powers which are unbridled, unfettered and plenary in nature. These powers are to be exercised, keeping in view, the following salutary purposes viz; (a) to give effect to any order passed under the code (b) to prevent abuse of process of any Court (c) to otherwise secure the ends of justice.

11.6. The above rumination, in respect of powers of the High Court under Section 482 of Cr.P.C., 1973/528 of BNSS, 2023, when examined in the light of the ratio decidendi of the Hon'ble Supreme Court in the case of ***Committee for Protection of Democratic Rights and Ors.*** (supra), unequivocally leads to the conclusion that such transfer (of investigation of a case/FIR to CBI) can well be directed for by the High Court under its inherent plenary jurisdiction in terms of Section 482 of Cr.P.C., 1973/528 of BNSS, 2023. Such power can be exercised by the High Court upon motion made before it *or* even *suo moto*.

12. The next issue which craves attention is as to what are the parameters, for consideration, for handing over an investigation of a case/FIR to CBI. There is no gainsaying that the availability of a power and exercise thereof, are two distinct issues. The Hon'ble Supreme Court in the case of ***Committee for Protection of Democratic Rights and Ors.*** (supra) has enunciated that such an order (for transfer of case/FIR to the CBI) is to be passed sparingly, cautiously and only in exceptional situation(s) where it becomes



necessary to provide credibility and instill confidence in investigation. It has been further held that, where the incident/offence may have nation-wide or international ramifications, the investigation of the case/FIR may be transferred to the CBI. The Hon'ble Supreme Court in the case of ***Mithilesh Kumar Singh*** case (supra) has held that such order(s) (for transfer of case/FIR) ought not to be passed merely to satisfy the ego or vindicate the prestige of an interested party. In a scenario wherein any police investigation is riddled with inconsistencies, deflections; whether apparent or conspicuous or, even covert and surreptitious; wherein the local police may have used under-hand factus to manipulate facts or the procedures, it would be a fit case for transfer to the CBI. However, any rationale for such a transfer cannot be based on mere apprehension or dissatisfaction with the outcome, on part of the applicant (making such plea), but must rely on credible and verifiable grounds. The Hon'ble Supreme Court in case of ***Royden Harold Buthello*** (supra) has held that such a transfer can be ordered for, if it promotes the cause of justice. The concept, of "*cause of justice*" or "*ends of justice*" are required to be interpreted, as also applied, in a manner so that it serves justice, even handedly, to all the concerned. It is no conundrum that it is neither possible nor desirable to exhaustively enumerate such like situations, hence, it would be appropriate to leave it to the judicial discretion of the High Court.

12.1. Another factor which may be taken into account, while considering such a plea (for transfer of investigation of a case/FIR to



the CBI) is the pre-requisite of public confidence, in the investigating agency, being imperative. An age-old adage reads thus: “*Be you ever so high, the law is above you*”. Investigation into an accusation, made against each and every person, having reasonable basis, ought to be conducted fairly as also expeditiously, irrespective of the position and status of such person. This principle is imperative to retain public confidence in the impartial working of the administration of criminal law & upholding Rule of Law. The Hon’ble Supreme Court in case of ***KV Rajendran*** (supra) has enunciated that investigation may be entrusted to CBI in a case, where high officials of the State are involved, which could cause reasonable apprehension of investigation not being carried out in a free/fair manner.

12.2. The High Court, while considering such a plea for transfer, ought to also take into consideration the limited resources available with the CBI. In criminal proceedings, the aggrieved party craves for a superlative standard in investigation, which is a valuable right of every citizen. It is incumbent upon the police to perform this duty peerlessly and arrive at, just and fair, conclusive results. However, often, the aggrieved parties wish for the highest level of investigating agency of the country, viz., the CBI to take up their case(s) and hence make a plea to such effect before the High Court. Yet, there are operational/infrastructural challenges for the CBI, owing to limited resources, primarily the man-power related



restrictions, due to which it is not pragmatic to saddle the CBI with an excessive volume of cases.

12.3. However; it is all-important that the High Court records cogent reason(s) for entrusting an investigation of a case/FIR to the CBI. A three Judge Bench of the Hon'ble Supreme Court in case of ***Vishal Tiwari*** (supra) has enunciated that the exercise of this power by a High Court is justifiable only if cogent material is brought forward. The need for passing an order, exhibiting reasons thereof, cannot be emphasized upon enough by this Court. For, it is well known that a judgment necessarily has to be a reasoned one, where the mind of the Court, passing such order(s) needs to be revealed by stating cogent cause for passing of such order(s).

12.4. It goes without saying that it is neither pragmatic nor feasible to lay any universal exhaustive yardstick or inexorable set of guidelines for exercise of such power for transfer of investigation of a case/FIR to the CBI, *for* every case has its own unique factual conspectus which has to be taken into account by the Court which is in *seisin* of the matter in question. It was said by *Lord Denning*, an observation which met with approval by the Hon'ble Supreme Court, that:

"... Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such case, one should avoid the temptation to decide cases (As said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line



a case falls, its broad resemblance to another case is not at all decisive.”

13. As a sequitur to above said discussion, the following postulates emerge:

I. (i) The High Court is well empowered to direct a CBI investigation, of a cognizable offence, alleged to have been committed within the territory of a State/Union Territory. To clarify, such directions can be issued by the High Court without an FIR earlier having been registered by the State/Union Territory. For such direction by the High Court pertaining to investigation by the CBI, the consent of the concerned State/Union Territory is not required.

(ii) While exercising such power, the High Court is empowered to even direct for transfer to CBI, an investigation of an FIR, already registered and being investigated by State/U.T. Police.

(iii) Such power may be exercised by the High Court *either* by way of its writ jurisdiction under Article 226 of the Constitution of India *or* by way of its inherent jurisdiction under Section 482 of Cr.P.C., 1973/Section 528 of BNSS, 2023.

II. (i) Such power should be exercised sparingly, cautiously and in exceptional situations only where it becomes imperative to provide credibility as also instill confidence in investigation *or* where the incident has national/international ramifications *or* when such exercise of power is required for doing complete justice *or* is pertinently required for enforcement of the Fundamental Rights.

(ii) There is no gainsaying that the factors/principles enumerated hereinabove are illustrative in nature, *for* no inexorable formula can be laid down in this regard. In other words, it is not only difficult but is inherently impossible to



state with exhaustive precision such factors/principles, since every case has its own unique factual conspectus.

14. Now this Court proceeds to deliberate upon the second legal issue, namely;

(B) *Re: WHETHER HIGH COURT IS ENTITLED TO TRANSFER INVESTIGATION FROM LOCAL POLICE TO CBI EVEN AFTER LOCAL POLICE HAS COMPLETED INVESTIGATION AND HAS PRESENTED FINAL REPORT/CHARGESHEET/CHALLAN.*

15. The precedents *apropos*, to the matter in issue(s) are as follows:

(i) The Hon'ble Supreme Court in a judgment titled as ***Rubabbuddin Sheikh versus State of Gujarat and others, AIR 2017 Supreme Court 1914***, has held as under:

“54. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr. Rohatgi learned senior counsel appearing for the state of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.”

“79. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, the plentitude and content thereof can neither be enervated nor moderated by any legislation.”

“20. 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.

21. We may further elucidate. The power to order fresh, de-novo or re-investigation 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. xx”



(iv) The Hon'ble Supreme Court in the case of ***Dr. Naresh Kumar Mangla versus Anita Agarwal & Ors. Etc.: AIR 2021 Supreme Court 277***, has held as under:

“The court held that wherever a charge-sheet has been submitted to the court, even this Court would not ordinarily reopen the investigation especially by entrusting it to a specialized agency. However, in a proper case, when the Court feels that the investigation by the police has not been in the proper perspective and that in order to do complete justice, where the facts of the case demand that the investigation be handed over to a specialized agency, a superior court is not bereft of the authority to do so.”

Analysis (re law)

16. More often than not, an argument is canvassed before this Court that once an investigation is concluded and charge-sheet/final report has been submitted before the jurisdictional Court, the High Court does not lose its power to interfere, by direction, for investigation *nay* further investigation/*de novo* investigation by a specialized agency such as the CBI. The Hon'ble Supreme Court has held in the case of ***Rubabbudin Sheikh*** (supra) that, even after charge-sheet has been submitted by the local Police, the investigation can still be handed-over to an independent agency like CBI. This principle of law has been reiterated by the Hon'ble Supreme Court in the case of ***Pooja Pal*** (supra) as also ***Dharam Pal*** (supra). Thus, what is essentially decipherable from the ratio decidendi of these judgments is that, even after completion of investigation by the local Police and presentation of charge-sheet, the High Court would still be vested with the power to order for investigation/further investigation



by a specialized agency including the CBI. Indubitably, a word of caution has been sounded by the Hon'ble Supreme Court in the case of ***Dr. Naresh Kumar Mangla*** (supra) that, once a charge-sheet has been submitted by the local Police, the power for handing over the further investigation to a specialized agency exists but the Court ought not to reopen investigation ordinarily unless the facts so warrant.

16.1. Still further, the commencement of a trial and even examination of prosecution witnesses therein, cannot be by itself an absolute impediment, for exercising the power of transfer of an investigation to an independent agency including CBI, since this power is essentially aimed at preserving the cause of justice. If, in the factual matrix of a given case, grave suspicion arises with regard to the sanctity of investigation, the High Court cannot be expected to turn a *Nelson's eye* to injustice being meted out, by accepting the argument that the matter is beyond its consideration since the trial has commenced. In such a situation, a puissant question arises viz., "*What is the true role of a Judge undertaking criminal proceedings*". In such a situation; Is the Judge obliged to assume the role of an umpire as in a cricket match? The answer to this question is, indubitably, NO. A Judge serves as the guiding force of the judicial process, akin to the master of a symphony, harmonizing the competing interests & holding the reins of chariot of justice. Entrusted with the profound responsibility, a Judge is obligated to adopt an active & engaged role in the conduct of proceedings,



ensuring that every facet of the matter is scrutinized with diligence & impartiality. This duty requires a careful balancing of all surrounding circumstances, with the ultimate aim of advancing the cause of justice, safeguarding procedural fairness, and upholding the integrity of the judicial system. If the High Court; which is vested with the powers under Article 226 of the Constitution of India/Section 482 of Cr.P.C., 1973/528 of BNSS, 2023; is to be an effective instrument in dispensing justice, then it ought to have an effective role in the criminal adjudication jurisprudence by evincing intelligent active interest. *Ergo*, the power of the High Court to direct for investigation/further investigation by a specialized agency (including the CBI), does not extinguish when the charge-sheet has been filed by the local Police *may* even when the prosecution evidence has been led.

16.2. No exhaustive set of guidelines to govern, the exercise of such power(s) of the High Court, can possibly be laid-down, however alluring this aspect may be. It is neither fathomable nor desirable to lay down any straightjacket formula in this regard. To do so would be to crystallize into a rigid definition, a judicial discretion, which even the Statute has, for best of all reasons, left undetermined. Any attempt in this regard would be, to say the least, a *quixotic* endeavour. Circumstantial flexibility, one additional or different fact, may make a sea of difference between conclusions in any two cases. Such exercise would thus, indubitably, be dependent upon the factual



matrix of the particular case which the Court is in *seisin* of, since every case has its own peculiar factual conspectus.

17. As a result of above-said rumination, the following postulates emerge:

I. The High Court has power(s) to direct for investigation/further investigation by CBI even when investigation by local Police etc. has concluded and charge-sheet has been filed.

II. The High Court's power; to direct for investigation/further investigation when investigation by local Police etc. is concluded and charge-sheet has been filed; is not denuded even when proceedings in such a trial (emanating from charge-sheet filed by local Police) has commenced and even some/substantial prosecution evidence has been recorded before such trial Court.

III. For a plea (seeking transfer of investigation/further investigation to CBI when local Police has already submitted charge-sheet after culmination of investigation) to succeed, accentuating facts/circumstances are pertinently required to be brought forth.

IV. Such power may be exercised by the High Court *either* by way of its writ jurisdiction under Article 226 of the Constitution of India *or* by way of its inherent jurisdiction under Section 482 of Cr.P.C., 1973/Section 528 of BNSS, 2023.

V. There is no gainsaying that the nature, mode and extent of such exercise of powers by High Court shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case. No exhaustive guidelines can possibly belaid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstances. Making such an attempt is nothing but an utopian endeavour. *Ergo*, this issue is best left to the judicial wisdom and discretion of the Court dealing with such matter.



18. Now this Court proceeds to deliberate upon the third legal issue, namely;

C. *WHETHER THE ACCUSED/SUSPECTS ARE ENTITLED TO BE HEARD BEFORE THE HIGH COURT PASSES AN ORDER FOR HANDING OVER INVESTIGATION/FURTHER INVESTIGATION TO CBI.*

Relevant Case Law

19. The precedents, germane to the matter(s) in issue, are as follows:-

(i) A Three Judge Bench of the Hon’ble Supreme Court in a judgment titled as *E. Sivakumar vs. Unin of India and others, 2018(7) SCC 365*, has held as under:-

“2. xxxxxxxxxxxxxxxxxxxx. *The gravamen of the challenge to the impugned judgment is on four counts:*

(i) xxx xxx xxx xxx
xxx xxx xxx xxx

(ii) *Second, the petitioner though named as an accused in the FIR was not given an opportunity of hearing nor was made a party in the public interest litigation in which the impugned judgment has been passed. Resultantly, the judgment under appeal is a nullity and liable to be set aside only on this score.*

(iii) xxx xxx xxx xxx
xxx xxx xxx xxx

(iv) xxx xxx xxx xxx
xxx xxx xxx xxx

xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx

8. *As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat and Ors., 2014(2) RCR (Criminal) 19 : (2014) 4 SCC*



626, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in the case of *Narender G. Goel v. State of Maharashtra and Anr.*, 2010(5) RCR (Criminal) 616 : (2009) 6 SCC 65, in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be no avail. That per se cannot be the basis to label the impugned judgment as a nullity.

9. Our attention was invited to the observations made in paragraph 73 in the *State of Punjab (supra)*, which in turn adverts to the exposition in *D. Venkatasubramaniam & Ors. V. M.K. Mohan Krishnamachari & Anr.*, 2009(4) RCR (Criminal) 318 : (2009) 10 SCC 488, wherein it has been held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. That may be so, if the order to be passed behind the back of the party was to entail in some civil consequence to that party. But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected.”

(ii) The Hon’ble Supreme Court in a judgment titled as ***Narender G. Goel vs. State of Maharashtra 2009 (Sup) AIR (SC) 1709***, has held as under:-

“11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full



opportunity to rebut/question the validity and authenticity of the prosecution case.”

Analysis (re law)

20. If prior notice and an opportunity of hearing is to be mandatorily given to an accused; in every criminal case at every stage before taking any action against him; such a procedure would frustrate the object of proceedings; obstruct prompt action as the law demands; cause defeat of the ends of justice & will render provisions of law relating to investigation as lifeless, absurd and immobilized. The Hon’ble Supreme Court in the three Judge Bench of *E Sivakumar* (supra), has held that the accused is not entitled to an opportunity of hearing as a matter of course, in a petition seeking impartial investigation. To the similar effect, is the ratio decidendi of the judgment of the Hon’ble Supreme Court in case of *Narinder G Goel* (supra). Therefore, the inevitable conclusion is that, an order by High Court, whereby investigation of a case/FIR is transferred to the CBI, cannot be said to be illegal on account of it not complying with the salubrious principle of “*audi alteram partem*”. Consequentially, there is no right *nay* indefeasible right vested in the accused/suspects for being provided an opportunity of hearing, before transfer of investigation of a case/FIR to CBI. However, this Court must hasten to add a word of caution herein; *viz.* the High Court would be entitled to call upon the accused or allow them to state his stand, if accentuating circumstances are brought forward before the High Court to allow so.



21. As a result of above-said rumination the following postulates emerge:

I. There is no right *may* indefeasible right vested in the accused/suspect, to be heard, before the High Court passes an order for transfer of investigation of a case/FIR to CBI.

II. (i) In case, a plea (for transfer of investigation of a case/FIR to CBI) brings forth accentuating circumstances requiring the accused/suspect to put forward his version for opposing such a plea, the High Court would be well empowered to grant such an opportunity.

(ii) It is neither conceivable nor desirable to even venture to lay-down any exhaustive set of guideline(s) in this regard, however alluring this aspect may be. Such exercise of inherent powers ought to be best left to the discretion of the Court which is in *seisin* of the matter, as every case is *sui generis* in nature.

Analysis (Re facts of the case in hand)

22. Now this Court reverts to the facts of the case in hand to ratiocinate thereupon.

23. The prime prayer made in the petition in hand is for transfer of the investigation of the FIR in question from Panipat Police to some independent agency. The ground(s) primarily set-up in the case is that the investigation has not been conducted in the proper perspective by the Police under the influence of a Haryana Cadre IPS Officer, who is a relative of one of the FIR-named accused. From the material brought forward before this Court, it is clear that this Officer has not been associated with the investigation either as an Investigating Officer or in supervisory capacity. The case in hand is not the one wherein the accused/suspect is a senior



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Police Officer. A perusal of the status report submitted by the State indicates that, the facts involved in the FIR in question, were verified by an SIT (Special Investigating Team) headed by an IPS Officer, whereinafter final report/charge-sheet under Sections 420/406/201 of IPC was presented against the respondent No.7.

23.1. The factum of material not having been found against the charge-sheeted accused in respect of offences under Sections 376-D/506/509 of IPC and the other FIR-named accused not having been charge-sheeted cannot be taken to be a good ground for transfer of the investigation of the FIR, in question, to CBI. It goes without saying that the petitioner (herein) has a remedy, in accordance with law, to seek further investigation or seek consideration of the concerned Court for summoning of additional accused etc. Simply because the case put forth by the petitioner (herein)/FIR-complainant has not been found to be true in *toto* by the Police, it cannot be considered a cause, good enough, to transfer the investigation of the FIR in question, to an independent agency much less the CBI.

23.2. At this stage, it is apt to note that this Court had not considered the merits of the submissions made by the learned counsel for respondent No.7 (charge-sheeted accused) as no accentuating facts have been brought forward to allow an opportunity of hearing to him.

23.3. Since the charge-sheet put up by the Police is pending adjudication before the concerned Court at Panipat, this Court does not find any cause, much less good cause, to direct the Director



General of Police, Haryana, to take any action against the Investigating Officer and Supervisory Officer of the FIR in question as ratiocinating upon this issue, at this stage, would amount to adjudicating upon the veracity of the investigation carried out so far by the Police.

24. No perceptible material has been brought forward before this Court for grant of a direction to the Director General of Police (Haryana) and Superintendent of Police, Panipat (Haryana) to afford police protection to the petitioner. It is, thus, indubitable that the said apprehension expressed on behalf of the petitioner is nothing but a bald assertion. Accordingly, this prayer deserves rejection for the *nonce*.

Decision

25. It is, thus, directed as follows:

(i) The petition in hand; seeking for transfer of investigation in the FIR No.530 dated 14.09.2023 registered under Sections 120-B, 376-D, 506, 509 of IPC at Police Station Industrial Sector 29, Panipat, Haryana, to an independent agency & for issuance of direction to the DGP, Haryana to take action against the Investigating Officer as also Supervisory Officer of the FIR in question & for direction to the DGP, Haryana and SP, Panipat, Haryana to afford police protection to the petitioner; is dismissed for the *nonce*.

(ii) Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the



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Court below shall proceed further, in accordance with the law,
without being influenced by them.

(iii) Pending application(s), if any, shall also stand disposed
of.

(SUMEET GOEL)
JUDGE

December 03, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes