

SHREE SHREE RAM JANKI JI ASTHAN TAPOVAN A
MANDIR & ANR.

v.

THE STATE OF JHARKHAND & ORS.

(Civil Appeal No.4003 of 2019) B

MAY 01, 2019

[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]

Investigation: Transfer of land of deity – Public Interest Litigation by respondent No. 8 challenging the transfer – No grievance was made by respondent No. 8 to any public authority in respect of the alleged transfer by the Trustees nor any report was lodged before the concerned police station making grievance of any one of the facts stated in the writ petition so as to initiate the process of investigation under the Criminal Procedure Code – High Court held that there is no provision in the original Trust Deed to transfer the property of the Deity but new Trust Deed was prepared with ulterior motive, to usurp the property of the Deity and to facilitate illegal transfer of land of the Deity – High Court further held that there was large scale illegality which required to be enquired into and directed the CBI to enquire/investigate the criminality part in giving such sanction – In the instant appeal, the Trust and the Pujari of the Mandir challenged the directions of High Court on the ground that the Board of Religious Trust had granted approval for transfer of the property – Held: s.44 of the Bihar Hindu Religious Trust Act, 1950 gives power of transfer of immovable property of a religious trust after taking previous sanction from the Board – Such permission is to convert any property of the Trust after approval of the District Judge as provided by s.28 (j) of the Act – Thus, High Court was not justified in creating a suspicion on an act of transferring the land of the Deity – The vesting of the property in Deity is a religious endowment but has no public element in it, the grievance of which can be made in a writ petition filed in the public interest – High Court passed an order directing investigation by CBI by casually returning a finding that permission was obtained by the Trust by misrepresentation and fraud – High Court completely misdirected

- A *itself in directing the CBI to take over investigation in a matter which related to the rights of the trustees to sell property of a religious Trust or Deity, giving rise to civil dispute – The order of the High Court is set aside – Bihar Hindu Religious Trust Act, 1950 – s.44 – Public Interest Litigation – Trust – Religious endowment.*
- B *Constitution of India: Seventh Schedule, List II Entry 1 and 2 – Transfer of land of deity – Challenge to the said transfer – High Court held that there was large scale illegality which required to be enquired into and directed the CBI to investigate – Held: The public order (Entry 1) and the police (Entry 2) is a State subject falling in List II of the VII Schedule of the Constitution – It is a primary responsibility of the investigating agency of the State Police to investigate all offences which are committed within its jurisdiction – The investigations can be entrusted to CBI only in exceptional circumstances – Such power cannot and should not be exercised in a routine manner without examining the complexities and nature of offence – Trust – Religious endowment.*
- C *responsibility of the investigating agency of the State Police to investigate all offences which are committed within its jurisdiction – The investigations can be entrusted to CBI only in exceptional circumstances – Such power cannot and should not be exercised in a routine manner without examining the complexities and nature of offence – Trust – Religious endowment.*
- D *offence – Trust – Religious endowment.*

Allowing the appeal, the Court

- HELD:** 1. The High Court ought to have refrained from entertaining such Public Interest Litigation in respect of alleged wrongful sale of property of the religious bodies. Section 44 of the Bihar Hindu Religious Trust Act, 1950 gives power of transfer of immovable property of a religious trust after taking previous sanction from the Board. Such permission is to convert any property of the Trust after approval of the District Judge as provided by Section 28 (j) of the Act. The stand of the appellants is that they have obtained approval as contemplated by the Act and such approval has been sought as an act of prudent management. Therefore, the High Court was not justified in creating a suspicion on an act of transferring the land of the Deity. [Paras 10, 11] [143-C-E]
- G 2. The finding recorded by the High Court that the Deity could not transfer its land in any case is not tenable. The sweeping remarks that the allegations are against the Government and the Board which consist of Government functionaries; therefore, the matter requires to be investigated by CBI are wholly untenable

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and such sweeping remarks against the Government and/or the Board should not have been made. The functioning in the Government is by different Officers and the working of the Executive has inbuilt checks and balances. Therefore, merely because, permission has been granted by a functionary of the State Government will not disclose a criminal offence. The High Court has thus travelled much beyond its jurisdiction in directing investigations by CBI in a matter of sale of property of the Deity. Still further, the High Court has issued directions without their being any complaint to the local police in respect of the property of the religious Trust. [Para 19] [149-E-G]

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3. The public order (Entry 1) and the police (Entry 2) is a State subject falling in List II of the VII Schedule of the Constitution. It is a primary responsibility of the investigating agency of the State Police to investigate all offences which are committed within its jurisdiction. The investigations can be entrusted to Central Bureau of Investigation on satisfaction of the conditions as specified therein only in exceptional circumstances as laid down in State of West Bengal case. Such power cannot and should not be exercised in a routine manner without examining the complexities, nature of offence and some time the tardy progress in the investigations involving high officials of the State investigating agency itself. [Para 20] [150-A-C]

State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571 : [2010] 2 SCR 979 – followed.

Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others v. Sahngoo Ram Arya and Another (2002) 5 SCC 521; Sujatha Ravi Kiran v. State of Kerala and Others (2016) 7 SCC 597 : [2016] 3 SCR 492; K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Others (2013) 12 SCC 480 : [2013] 9 SCR 199; Bimal Gurung v. Union of India (2018) 15 SCC 480 : [2018] 4 SCR 843 ; T.C. Thangaraj v. V. Engammal and Others (2011) 12 SCC 328 : [2011] 9 SCR 647 – referred to..

- | A | <u>Case Law Reference</u> | |
|---|---|--------------------|
| | [2010] 2 SCR 979 | followed |
| | (2002) 5 SCC 521 | referred to |
| | [2016] 3 SCR 492 | referred to |
| B | [2013] 9 SCR 199 | referred to |
| | [2018] 4 SCR 843 | referred to |
| | [2011] 9 SCR 647 | referred to |
| C | CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4003
of 2019 | |
| | From the Judgment and Order dated 07.06.2017 of the High Court
of Jharkhand at Ranchi in Writ Petition (PIL) No. 1590 of 2017 | |
| D | G. Gurukrishna Kumar, Sr. Adv., Kumar Anurag Singh, Zain A.
Khan, Kumar Shivam, Jaykrishnan C.D., Ms. Tulika Mukherjee,
Advs. for the Appellants. | |
| | Ms. Pinky Anand, ASG, Ms. Vibha Datta Makhija, Ajit Kr. Sinha,
Sr. Advs. Ms. Ranjana Narayan, Rajesh Ranjan, Praveen, Ms. Saudamini
Sharma, Arvind Kumar Sharma, Mukesh Kumar Maroria, Manish Kumar | |
| E | Saran, R. Krishna, Tapesh Kumar Singh, Aditya Pratap Singh,
Krishnanand Pandeya, Amitabh Verma, Birendra Bikram, Bankey Bihari,
Advs. for the Respondents. | |
| F | The Judgment of the Court was delivered by
HEMANT GUPTA, J. 1. The present appeal is directed against
an order passed by the High Court of Jharkhand at Ranchi on 07.06.2017
directing the Central Bureau of Investigation to investigate and to take
appropriate action at the earliest and conclude the investigations preferably
within six months. The High Court held as under:- | |
| G | “.....This Court is of <i>prima facie</i> view that land of the deity
could not have been transferred in any case. This large scale
illegality needs to be enquired into. Now the question is, who will
do so? The land and trust which is involved in this case is of
Ranchi. Allegation is against the Government and the Board. Board | |
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consists of Government functionaries. In this case, another issue is illegally sanctioning of map by Government Officials. We find, as submitted by the petitioner that in one Public Interest Litigation being WP(PIL) No. 1531 of 2011 (Har Narain Lakhota Vs. State of Jharkhand and Others) this Court directed the CBI to enquire/investigate the criminality part in giving such sanction in respect of many buildings of Ranchi. The said order has been upheld by the Hon'ble Supreme Court. This is also one of such case, which needs investigation.

16. On this background, this Court feels that this matter be also entrusted to the Central Bureau of Investigation for investigating the criminality part. This would also include the aspects and the intent involved in creation of Trust Deed dated 20.9.2005, transfer/conversion of land, permission of maps and all other incidental issues involved.”

2. The said directions were issued finding that the property of Deity Shree Shree Ram Janki Ji Asthan Tapowan Mandir¹ at Ranchi has been transferred against the mandate of the Trust Deed created by the author of the Trust to establish Shree Ram Janki Tapowan Mandir Trust² on 25.02.1948. The said Trust was reconstituted on 12.05.1987 by virtue of registered deed. Still further, by another deed dated 20.09.2005, there was again reconstitution of the Trust.

3. The High Court entertained the Public Interest Litigation preferred by Respondent No. 8, and held that there is no provision in the original Trust Deed to transfer/sale of the property of the Deity but with ulterior motive, new Trust Deed was prepared in the year 2005 to usurp the property of the Deity and to facilitate illegal transfer of land of the Deity.

4. The directions issued by the High Court are subject matter of challenge before this Court by the Trust and by Pujari of the Mandir. The argument is that there is provision to develop and transfer the property of the Deity. Some of the properties of the Trust were being illegally encroached by local inhabitants and for better return and to increase the funds, the properties were transferred. The appropriate approvals have been obtained from Bihar State Board of Religious Trust

¹Mandir

²Trust

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A and that the learned Judicial Commissioner has granted approval of transfer of immovable property.

5. The High Court found that properties were endowed to the Deity by the Trust Deed of 1948 and that the Trustees became custodian of the same. The subsequent Trust Deed of 1987 again prohibits the Trustees from selling or transferring or settling a land of the Mandir or Deity. The Trust Deed of 1948 and that of 1987 were authored by Mahant Shri Janki Jiwan Sharan but subsequently on 20.09.2005 a new Trust Deed has been created. Mahant Shri Ram Sharan Dass registered the said Trust Deed though the founder was Late Janki Jiwan Sharan. The said Trust Deed has a clause by which landed property can be sold.

6. The High Court found that the permission of Jharkhand State Hindu Religious Trust Board granted in the year 2006 was based upon permission granted by Bihar State Board of Religious Trust in the year 1994 which was obtained by misrepresentation and fraud.

D 7. The writ petitioner has invoked the Public Interest Jurisdiction of the High Court, inter-alia claiming the following reliefs:-

E “(i) For issuance of an appropriate writ(s)/order (s)/ direction(s) or a writ in nature of mandamus commanding upon the respondents to conduct an inquiry preferably by an Agency other than the Agency of the State in the matter of illegal transfer of property belonging to Sri Ram Janki Tapowan Mandir Trust since the substantial properties of the trust has been misappropriated by the members of the Trust in connivance with the government officials for sale of land belonging to the Trust as well as for construction of building over the land considering the fact that the valuable property of the Trust has been illegally transferred to the private persons who have the support of the most of the higher authorities of the State.”

F G 8. The Public Interest Litigation was filed by Respondent No. 8 projecting himself as a responsible and vigilant citizen of the Country and being a Hindu by faith, therefore, as under pious responsibility to protect the interest of the Deity as per his faith. The Respondent No. 8 has not lodged any report before the concerned police station making

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grievance of any one of the facts stated in the writ petition so as to initiate the process of investigations under the Code of Criminal Procedure, 1973³. The writ petitioner has not made any grievance to any public authority in respect of the alleged transfers by the Trustees as well.

9. The High Court has passed an order directing investigation by Central Bureau of Investigation by casually returning a finding that permission was obtained by the Trust by misrepresentation and fraud. The High Court was again not careful to return findings on the disputed questions of fact and that too in a public interest writ petition.

10. The vesting of the property in Deity is a religious endowment but has no public element in it, the grievance of which can be made in a writ petition filed in the public interest. We do not say any more than the fact that the High Court should have refrained from entertaining such Public Interest Litigation in respect of alleged wrongful sale of property of the religious bodies.

11. Section 44 of the Bihar Hindu Religious Trust Act, 1950⁴ gives power of transfer of immovable property of a religious trust after taking previous sanction from the Board. Such permission is to convert any property of the Trust after approval of the District Judge as provided by Section 28 (j) of the Act. The stand of the appellants is that they have obtained approval as contemplated by the Act and such approval has been sought as an act of prudent management. Therefore, the High Court was not justified in creating a suspicion on an act of transferring the land of the Deity.

12. The question as to whether the High Court could direct CBI to take over investigation in the facts of the present case needs to be examined. The Constitution Bench in its judgment reported as **State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others**⁵ has examined the question as to the rights of CBI to investigate a criminal offence in a State without its consent. This Court examined Entry 2 of List II of VII Schedule of the Constitution. It was held that the legislative power of the Union to provide for the regular police force of one State to exercise power and jurisdiction in any area outside the State can only be exercised

³Code

⁴Act

⁵(2010) 3 SCC 571

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- A with the consent of the Government of that particular State in which such area is situated. The Court held that though the Court had wide powers conferred by Articles 32 and 226 of the Constitution, but it must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order is necessary for doing complete justice and enforcing fundamental rights. The relevant extract from the judgment reads as under:-
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- C “**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. Insofar 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 extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a 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.”
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- G 13. The Court approved earlier two Judge Bench Judgment reported as **Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others v. Sahngoo Ram Arya and Another**⁶ wherein it was held that the High Court under Article 226 of the

⁶(2002) 5 SCC 521

Constitution can direct inquiry to be conducted by CBI but such power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is need for such inquiry. It was held that it is not sufficient to have such material in the pleadings. The Court also held that the right to live under Article 21 include the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen. The relevant extracts from the judgment read as under:-

“5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of *Common Cause*⁷. This Court in the said judgment at paragraph 174 of the Report has held thus: (SCC p. 750, para 174)

“174. The other direction, namely, the direction to CBI to investigate ‘any other offence’ is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person’s involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of ‘LIFE’ and ‘LIBERTY’ guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of ‘LIFE’ has been explained in a manner which has infused ‘LIFE’ into the letters of Article 21.”

6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has

⁷(1999) 6 SCC 667

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- A committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a *prima facie* case calling for an investigation by CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a *prima facie* case established to direct an inquiry has proceeded on the basis of “ifs” and “buts” and thought it appropriate that the inquiry should be made by CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of *Common Cause*.⁷
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14. It is the said findings, which were approved specifically by the Constitution Bench in **State of West Bengal (supra)** holding as under:-

- D “71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a *prima facie* case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.”
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15. A three Judge Bench Judgment reported as **Sujatha Ravi Kiran v. State of Kerala and Others**⁸ held that the extraordinary power of the Constitutional Courts in directing CBI to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest. This Court held as under:-
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- “10. Taking into account the law laid down by this Court in *Committee for Protection of Democratic Rights*⁹, direction for investigation by CBI was declined by this Court in *K. Saravanan Karuppasamy v. State of T.N.*¹⁰ and *Sudipta Lenka v. State of Odisha*¹¹.

⁸(2016) 7 SCC 597

⁹*State of W.B. v. Committee for Protection of Democratic Rights (supra)*

H ¹⁰(2014) 10 SCC 406

¹¹(2014) 11 SCC 527

11. Considering the facts and circumstances of the case in hand, in the light of the above principles, we are of the view that the case in hand does not entail a direction for transferring the investigation from the State police/special team of State police officers to CBI. The facts and circumstances in which the offence is alleged to have been committed can be better investigated into by the State police. However, having regard to the nature of allegations levelled by the petitioner, we deem it appropriate to direct the State of Kerala to constitute a special team of police officers headed by an officer not below the rank of Deputy Inspector General of Police to investigate the matter.”

16. In another three Judge Bench Judgment reported as **K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Others**¹², it was held that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency only in rare and exceptional circumstances. The Court gave instances 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 to instil confidence in the investigation.

17. In another two Judge Bench Judgment reported as **Bimal Gurung v. Union of India**¹³, this Court held that the power of transferring such investigation must be in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties and to instil confidence in the public mind. It was held as under:-

“29. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In *K.V. Rajendran v. Supt. of Police*, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State

¹²(2013) 12 SCC 480

¹³(2018) 15 SCC 480

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- A authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation *prima facie* is found to be tainted/biased.”

18. In an earlier two Judge Bench Judgment reported as **T.C.**
 B **Thangaraj v. V. Engammal and Others**¹⁴, this Court found that merely because complaint was against the police officer, the investigations should not be entrusted to Central Bureau of Investigation. The Court held as under:-

- C “**8.** The learned counsel for the complainant, on the other hand, cited a decision of two-Judge Bench of this Court in *Ramesh Kumari v. State (NCT of Delhi)*¹⁵ in which this Court directed CBI to register a case and investigate into the complaint of the appellant because the complaint was against the police officer and the Court was of the view that the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI.

- E **9.** The decision of the two-Judge Bench of this Court in *Ramesh Kumari v. State (NCT of Delhi)* will have to be now read in the light of the principles laid down by the Constitution Bench of this Court in *State of W.B. v. Committee for Protection of Democratic Rights*. The Constitution Bench has considered at length the power of the High Court to direct investigation by CBI into a cognizable offence alleged to have been committed within the territorial jurisdiction of a State and while taking the view that the High Court has wide powers under Article 226 of the Constitution cautioned that the courts must bear in mind certain self-imposed limitations.

*** *** ***

- G **11.** In the impugned order, the High Court has not exercised its constitutional powers under Article 226 of the Constitution and directed CBI to investigate into the complaint with a view to protect the complainant’s personal liberty under Article 21 of the Constitution or to enforce her fundamental rights guaranteed by Part III of the Constitution. The High Court has exercised its

H ¹⁴(2011) 12 SCC 328

H ¹⁵(2006) 2 SCC 677

power under Section 482 CrPC on a grievance made by the complainant that her complaint that she was cheated in a loan transaction of Rs 3 lakhs by the three accused persons, was not being investigated properly because one of the accused persons is an Inspector of Police. In our considered view, this was not one of those exceptional situations calling for exercise of extraordinary power of the High Court to direct investigation into the complaint by CBI. If the High Court found that the investigation was not being completed because P. Kalaikathiravan, an Inspector of Police, was one of the accused persons, the High Court should have directed the Superintendent of Police to entrust the investigation to an officer senior in rank to the Inspector of Police under Section 154(3) CrPC and not to CBI.

12. It should also be noted that Section 156(3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the police to carry out the investigation properly, and can monitor the same. (See *Sakiri Vasu v. State of U.P.¹⁶*)”

19. We find that the finding recorded by the High Court that the Deity could not transfer its land in any case is not tenable. The appellant relies upon statutory provisions in support of its stand to transfer of land. The sweeping remarks that the allegations are against the Government and the Board which consist of Government functionaries; therefore, the matter requires to be investigated by CBI are wholly untenable and such sweeping remarks against the Government and/or the Board should not have been made. The functioning in the Government is by different Officers and the working of the Executive has inbuilt checks and balances. Therefore, merely because, permission has been granted by a functionary of the State Government will not disclose a criminal offence. The High Court has thus travelled much beyond its jurisdiction in directing investigations by CBI in a matter of sale of property of the Deity. Still further, the High Court has issued directions without their being any complaint to the local police in respect of the property of the religious Trust.

¹⁶(2008) 2 SCC 409

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- A 20. It may be kept in mind that the public order (Entry 1) and the police (Entry 2) is a State subject falling in List II of the VII Schedule of the Constitution. It is a primary responsibility of the investigating agency of the State Police to investigate all offences which are committed within its jurisdiction. The investigations can be entrusted to Central Bureau of Investigation on satisfaction of the conditions as specified therein only in exceptional circumstances as laid down in **State of West Bengal (supra)** case. Such power cannot and should not be exercised in a routine manner without examining the complexities, nature of offence and some time the tardy progress in the investigations involving high officials of the State investigating agency itself.
- B 21. We find that the High Court has completely misdirected itself in directing the Central Bureau of Investigation to take over investigation in a matter which relates to the rights of the trustees to sell property of a religious Trust or Deity, giving rise to civil dispute.
- C 22. In view of the above, the appeal is allowed. The order of the High Court is set aside and the writ petition is thus dismissed.

Devika Gujral

Appeal allowed.