

A ANANT THANUR KARMUSE

v.

THE STATE OF MAHARASHTRA & ORS.

(Criminal Appeal No.13 of 2023)

B FEBRUARY 24, 2023

[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

C *Code of Criminal Procedure, 1973 – s.173(8) –Further Investigation – Transfer of Investigation to CBI –Appellant shared a viral picture of then Cabinet Minister on facebook–As per him, appellant was forcibly took from his residence by police officers and beaten up and threatened by the police – FIR lodged by appellant, however, name of the Cabinet Minister not named in FIR – Writ Petition was filed in the High Court seeking transfer of investigation to CBI or to any other agency–During the pendency of the writ petition, the trial Court framed the charges against the accused on the basis of the chargesheets filed –The High Court refused to transfer the investigation –High Court while dismissing the petition observed that once the charges have been framed by the Magistrate/Trial Court and therefore, it can be said that the trial has begun and therefore, thereafter, re- investigation/further investigation is not permissible– On appeal, held : Investigation may be transferred to the CBI only in “rare and exceptional cases” –High Court has not committed any error in refusing to transfer the investigation to CBI –The real investigation started only after the intervention of the High Court and after passing various orders in the present proceedings by the High Court – Even according to the State investigating agency, still the further investigation is required on certain aspects – The victim has a fundamental right of fair investigation and fair trial –Therefore, mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation / re-investigation / de novo investigation, if the facts so warrant – No proper investigation by the State investigating agency at the relevant time and even the material evidences were also not collected – High Court has committed a very serious error in not ordering and/or permitting the State police agency to further investigate into the FIR.*

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Partly allowing the appeal, the Court

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HELD :1.Bearing in mind the position of law, in the facts, and circumstances of the case, this Court is of the opinion that the High Court has not committed any error in refusing to transfer the investigation to CBI. Even the appellant has not vehemently pressed such a prayer. The Court is in complete agreement with the view taken by the High Court insofar as refusing to transfer the investigation to CBI is concerned. Applying the law laid down by this Court in the case of Dharam Pal and Bharati Tamang and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation / re-investigation / de novo investigation even after the charge sheet is filed and the charges are framed.[Paras 7.4 and 11][70-E-F; 75-D]

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3. It is required to be noted that in the present case, the allegations in the FIR, right from very beginning, were against the accused No. 13, who at the relevant time was the sitting Cabinet Minister occupying the high position. Even at the relevant time, when the State Police investigated the FIR bearing No. 120 of 2020, in the first chargesheet and the second chargesheet did not name the accused No. 13. Even the investigation was also conducted in a perfunctory manner. The real investigation started only after the intervention of the High Court and after passing various orders in the present proceedings by the High Court. The allegations in the FIR were very serious including the misuse of powers by the sitting Cabinet Minister and of abducting, kidnapping and beating the complainant.[Para 12.1][75-G-H; 76-A-B]

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4. Be that as it may,even according to the State investigating agency, the further investigation is required. As observed and held by this Court in its various decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation / re-investigation / de novo investigation, if the facts so warrant. [Para 12.3][77-B]

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5. The endeavour of the Court should be to have the fair investigation and fair trial only. Therefore, in the facts and

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- A circumstances of the case narrated hereinabove, this Court is of the opinion that a case is made out for further investigation and the State agency may be permitted to conduct a further investigation and to bring on record the further material, which may be in the furtherance of fair investigation and fair trial. The High Court has committed a very serious error in not ordering and/or permitting the State police agency to further investigate into the FIR bearing Nos. 119 and 120 of 2020. The High Court has not considered the relevant aspects narrated hereinabove and therefore interference of this Court is warranted. [Para 13][77-E-G]
- C *Himanshu Kumar and Ors. Vs. State of Chhattisgarh and Ors.*, 2022 SCC Online SC 884; *Bharati Tamang Vs. Union of India and Ors.*, (2013) 15 SCC 578:[2013] 14 SCR 525; *Dharam Pal Vs. State of Haryana and Ors.*, (2016) 4 SCC 160 : [2016] 1 SCR 194 – relied on.
- D *Babubhai Vs. State of Gujarat*, (2010) 12 SCC 254 : [2010] 10 SCR 651; *Ram Jethmalani Vs. Union of India* (2011) 8 SCC 1 : [2011] 8 SCR 725; *Vinubhai Haribhai Malviya and Ors. Vs. State of Gujarat and Anr.*, (2019) 17 SCC 1 : [2019] 15 SCR 936; *Rama Chaudhary Vs. State of Bihar*, (2009) 6 SCC 346 : [2009] 5 SCR 482–referred to.

Case Law Reference

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| F | [2013] 14 SCR 525 | relied on | Para 8.1,11 |
| | [2010] 10 SCR 651 | referred to | Para 8.1 |
| | [2011] 8 SCR 725 | referred to | Para 8.1 |
| | [2016] 1 SCR 194 | relied on | Para 3.4, 8.2,11 |
| | [2019] 15 SCR 936 | referred to | Para 5.6, 9 |
| G | [2009] 5 SCR 482 | referred to | Para 5.7, 10 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.13 of 2023.

- H From the Judgment and Order dated 26.04.2022 of the High Court of Judicature at Bombay in WP No.411 of 2021.

Mahesh Jhethmalani, Siddharth Dave, Sr. Advs., Chirag Shah, A
Utsav Trivedi, Anirudh Ganu, Ms. Manini Roy, Himanshu Sachdeva,
Ms. Shivani Bhushan, Piyush Tiwari, Ms. Kanjani Sharma, Prastut Dalvi,
Ms. Mugdha Pande, Ms. Astha Prasad, Advs. for the Appellant.

Tushar Mehta, SG, Ms. Aishwarya Bhati, ASG, Dr. Abhishek Manu B
Singhvi, Shekhar Naphade, Sr. Advs., Ms. Diksha Rai, Tushar Sonawane,
Ms. Ragini Pandey, Ms. Atiga Singh, Rahul Chitnis, Siddharth
Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Kirti
Dadheech, Rajat Nair, Pratyush Srivastava, Madhav Sinhal, A K Sharma,
Advs. for the Respondents.

The Judgment of the Court was delivered by C

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment
and order passed by the High Court of Judicature at Bombay dated
26.04.2022 passed in Writ Petition No. 411 of 2021 by which the High
Court has dismissed the said writ petition preferred by the appellant D
herein – the victim seeking transfer of the investigation to Central Bureau
of Investigation or to any other agency to investigate / re-investigate the
FIR Nos. 119 of 2020 and 120 of 2020 registered at Vartak Nagar Police
Station, Thane, the original writ petitioner – the victim has preferred the
present appeal. E

2. The facts leading to the present appeal and as per the case on
behalf of the appellant in nutshell are as under:-

2.1 That the appellant is a Civil Engineer, working as a consultant,
shared on his Facebook account on 05.04.2020, a viral picture of one F
Mr. Jitendra Awhad, the then sitting Cabinet Minister of the State of
Maharashtra (who is subsequently arrayed as accused No. 13 after the
High Court intervened), criticizing his act of ridiculing the Hon'ble Prime
Minister of India. According to the appellant, at around 11.50 pm at night
on 05.04.2020, four Policemen, two dressed in Civilian Dress and other
two in uniform came to his residence and forcibly took him to the G
Bungalow of the said Minister. According to the appellant, thereafter,
the Minister instructed his men to beat him and make him apologies for
circulating the said viral picture of the Minister. The Minister threatened
him to delete the post immediately. Thereafter, an ally of the Minister
called the appellant on his number as he left his phone in his house and
told his wife to delete the controversial post. According to the appellant, H

A he was mercilessly and ruthlessly beaten up by the police personnel present at the premises of the Minister.

2.2 That the appellant went to the Police Station and he got the information that an FIR bearing No. 119 of 2020 under Section 292 of the Indian Penal Code (IPC) and Section 66(E) of the Information and
B Technology Act has been registered against him by the Police on the complaint of one Mr. Hitesh Wani, accused No. 3 in the present case and close ally of the Minister with sole purpose to threaten him if in case he decides to file a complaint about the said incident. It is the case on behalf of the appellant that thereafter the appellant without fear narrated the entire incident along with the specific allegations against the Minister
C and the other police officials and registered a complaint against the Minister and his men. However, the names of the Minister, against whom the specific allegations were made and his men were not mentioned in the FIR bearing No. 120 of 2020 dated 06.04.2020 for the offences under Sections 365, 143, 144, 147, 149, 324 and 506(2) in the Vartak
D Nagar Police Station, Thane. It is the case on behalf of the appellant that the concerned Minister was not named in the FIR as he was the sitting Cabinet Minister in the government of the State.

2.3 That thereafter apprehending and alleging the bias and alleging that the entire investigation has been conducted in sham and casual
E manner, and nothing significant was done by the Police, the appellant approached the High Court by way of present writ petition praying for transfer of the investigation of the aforesaid FIRs to the Central Bureau of Investigation (CBI), Mumbai or any other agency.

It appears that thereafter various interim orders came to be passed
F by the High Court in the writ petition and the investigating agency of the State was compelled to carry out the investigation. The Police filed the chargesheet initially without naming the concerned Minister namely, Mr. Jitendra Awhad as accused. However, thereafter and during the pendency of the writ petition before the High Court and in view of the constant monitoring of the investigation by the High Court, the Minister Mr. Jitendra
G Awhad was added as accused two years after the said incident. That thereafter during the pendency of the writ petition, the learned Trial Court framed the charges against the accused on the basis of the chargesheets already filed, which according to the appellant was for the lesser offences than the actually committed, like, Kidnapping, abducting
H and causing grievous hurt. That thereafter by the impugned judgment

and order, the High Court has dismissed the said writ petition seeking transfer of the investigation to the CBI and/or any other agency by observing that after the investigation, the chargesheet is filed and the High Court prima facie opined that by filing the chargesheet / supplementary chargesheet, the investigating agency has conducted the investigation from all angles and after considering the medical report and even after collecting the CRD of the Mobile Phone and that once the charges have been framed by the Magistrate / Trial Court and therefore, it can be said that the trial has begun and therefore, thereafter, re-investigation/further investigation is not permissible. By the impugned judgment and order, the High Court has dismissed the said writ petition.

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2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order, the original writ petitioner – the victim has preferred the present appeal.

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3. Shri Mahesh Jethmalani, learned senior counsel appearing on behalf of the appellant has vehemently submitted that the entire investigation was conducted by the investigating agency of the State in a sham and casual manner because one of the accused was the influential Minister of the State.

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3.1 It is submitted that despite the fact that the name of Mr. Jitendra Awhad, Minister and his other men were disclosed in the FIR and a clear case of kidnapping and causing grievous hurt was alleged, no FIR was lodged against the Minister, Mr. Jitendra Awhad and his other men. It is submitted that only after various orders were passed by the High Court in the pending writ petition and the Hon'ble High Court was monitoring the investigation, chargesheet / supplementary chargesheet came to be filed and Mr. Jitendra Awhad was arrayed as an accused in the supplementary chargesheet after a period of two years of the incident.

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3.2 It is further submitted that even the chargesheet is filed with the lesser offences, like for the offences under Sections 324 and 365 and other lesser offences only. It is submitted that despite a clear case is made out for the offence under Section 326 (grievous hurt), which is established from the photographs and a clear case of kidnapping for the offence under Section 367, the chargesheet has not been filed for the offences under Section 326 read with Section 367 IPC.

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3.3 It is further submitted that even the relevant evidence in the form of CDR of the mobile of the appellant as well as that of the

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- A concerned accused have not been collected. It is submitted that even the CCTV footage has also not been collected, which goes to the root of the investigation and the allegations against the accused persons.

- 3.4 It is further submitted that as observed and held by this Court in the case of **Dharam Pal Vs. State of Haryana and Ors., (2016) 4 SCC 160** (para 25), the Constitutional Courts are envisaged with the power to order fresh, de novo or re-investigation and as observed and held 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.
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- 3.5 It is further submitted by Shri Jethmalani, learned senior counsel appearing on behalf of the appellant that as observed and held by this Court in the case of **Bharati Tamang Vs. Union of India and Ors., (2013) 15 SCC 578**, in case of deficient / unsatisfactory investigation, it is the duty of the Courts to ensure effective conduct of prosecution and the Courts have powers to direct re-investigation in exceptional circumstances in case it warrants due to deficient / unsatisfactory investigation.
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- 3.6 It is submitted that as observed and held in the said decision if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law. It is submitted that it is further observed that it is the duty of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. He has relied upon the observations made by this Court in paragraph 41 of the said decision.
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- 3.7 It is further submitted by Shri Jethmalani, learned senior counsel appearing on behalf of the appellant that even the State has now in the counter affidavit specifically admitted that some further investigation is necessary/required on certain relevant and material aspects, in the interest of justice under Section 173(8) Cr.P.C. It is submitted that now the State has specifically admitted the lapse in the investigation on certain material aspects and according to the State now, further investigation is needed on the relevant aspects mentioned in paragraph 4 of the counter affidavit before this Court. It is submitted that therefore also now the State / investigating agency of the State may be permitted to conduct the further investigation in exercise of the
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constitutional powers to do the complete justice to the victim in A
furtherance of the administration of criminal justice.

4. Shri Tushar Mehta, learned Solicitor General appearing on B
behalf of the State has pointed out certain lapses / lacunae in the
investigation earlier conducted by the State / investigating agency and
highlighted the lacunae from paragraph 4 of the counter affidavit and
has fairly conceded and even so stated in the counter affidavit that a
further investigation in exercise of powers under Section 173(8) Cr.P.C.
is needed / required.

5. Shri Shekhar Naphade and Dr. Abhishek Manu Singhvi, learned C
Senior Advocates have appeared on behalf of the respondent Nos. 3
and 5 and opposed the present appeal.

5.1 It is vehemently submitted by the learned senior counsel
appearing on behalf of the respective contesting respondent Nos. 3 and
5 that as such no case is made out for transfer of the investigation to the
CBI, more particularly, when, now, not only the investigation is concluded D
and the chargesheets have been filed but even thereafter the charges
have also been framed by the Trial Court. It is submitted that therefore
on framing of the charges, it can be said that the trial has begun and
therefore, the case may not be transferred to the CBI as prayed.

5.2 It is further submitted that even otherwise the allegation of E
grievous injuries is raised for the first time. It is submitted that as such
the allegation of grievous injuries alleged to have been caused to the
appellant has not been supported by any record or document. It is
submitted that the appellant never alleged that he suffered a fracture
due to injuries caused upon him.

5.3 It is submitted that the FIR registered by the appellant on F
06.04.2020 is completely silent about the injuries being grievous and any
fracture being caused. It is submitted that the chargesheet filed by the
Police also states that the appellant was examined at Shivaji Hospital
and the medical report was received intimating that the injuries caused
are simple in nature. It is submitted that even the additional statement G
given by the appellant to the Police on 10.04.2020 is also silent on the
aspect of any fracture being caused or the injuries being grievous in
nature.

5.4 It is further submitted that even the Hon'ble High Court in H
paras 16, 17 and 20 has categorically noted the fact that the appellant

- A failed to produce any medical certificate or document evidencing any fracture or injuries being grievous in nature and ruled that the injuries are simple in nature, which is evident from the medical report filed with the charge sheet. It is submitted that, therefore, there is no substance in the allegation that there are any lacunae on the part of the investing agency in indicating a higher offence of grievous hurt / injuries.

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5.5 It is further submitted that even so far as the recovery of CCTV footage is concerned, the same has already been recovered, ceased and in the custody of the learned Magistrate.

- C 5.6 It is vehemently submitted by the learned senior counsel appearing on behalf of the respective private respondent Nos. 3 and 5 – original accused that once the chargesheet has been filed, charges are framed and the trial has commenced, further investigation cannot be permitted. It is submitted that in the present case, the first chargesheet has been filed on 07.12.2020 and thereafter supplementary chargesheets have been filed on 28.7.2021 and 14.10.2021 in FIR No. 120/2020. It is submitted that even the chargesheet in FIR No. 119/2020 has also been submitted to the concerned Magistrate on 13.09.2022. It is submitted that in the present case, the charges have been framed by the concerned Court in FIR No. 120/2020 against the accused Nos. 1 to 12 on 20.08.2021 and on 28.11.2022 against accused No. 13 and, thus, the trial has commenced. It is submitted that since the investigation is complete, chargesheets have been filed and charges have been framed, seeking re-investigation by the appellant is wholly impermissible under the law. It is submitted that upon framing of charges, the operation of Section 173(8) ceases to operate since the trial has commenced as observed and held by this Court in **Vinubhai Haribhai Malviya and Ors. Vs. State of Gujarat and Anr., (2019) 17 SCC 1** (para 42).

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- G 5.7 It is submitted that even as observed and held by this Court in the case of **Rama Chaudhary Vs. State of Bihar, (2009) 6 SCC 346** that from a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of Police report under sub-section (2) on completion of investigation, the Police has a right to “further” investigation under sub-section (8) of Section 173 but not “fresh investigation” or “re-investigation”.

- H 5.8 It is further submitted that so far as the prayer of the appellant to transfer the investigation to CBI is concerned, as observed and held by this Court in catena of decisions, transfer of investigation to C.B.I. is

to be done only in rarest of rare cases. Reliance is placed upon the decision of this Court in the case of **Himanshu Kumar and Ors. Vs. State of Chhattisgarh and Ors., 2022 SCC Online SC 884** (para 44 onwards). It is submitted that as observed and held by this Court in the case of **State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors., (2010) 3 SCC 571**, the power to transfer investigation must be exercised sparingly, cautiously and in exceptional situations. It is submitted that in the present case as on the basis of the chargesheet, the Trial Court has framed the charges, no exceptional case is made out to transfer the investigation to the C.B.I. now.

5.9 Now, so far as the change in its stand by the State, now, so taken in the counter affidavit filed before this Hon'ble Court is concerned, it is submitted that as such before the Hon'ble High Court, the State had defended the investigation throughout. It is submitted that just because the political dispensation in the State has changed, now, the State has filed an affidavit before this Hon'ble Court seeking further investigation in the matter without any substantial evidence and as such the same is impermissible in law. It is submitted that this Hon'ble Court has time and again held that the Governments change but the State remains the same. Reliance is placed upon the decisions of this Court in the case of **State of Karnataka and Anr. Vs. All India Manufacturers Organisation and Ors., (2006) 4 SCC 683** (para 57); **State of Tamil Nadu and Ors. Vs. K. Shyam Sunder and Ors., (2011) 8 SCC 737** (para 35) and **Jal Mahal Resorts Private Limited Vs. K.P. Sharma and Ors., (2014) 8 SCC 804** (para 89).

5.10 Now, so far as the chart filed in the affidavit of the State wherein, the State has mentioned previous cases registered against accused No. 13 is concerned, it is submitted that the State is trying to prejudice this Hon'ble court as the correct status of those cases have not been presented before this Court by the State. It is submitted that out of the said 24 cases, 18 cases have either been withdrawn by the State or disposed of by the respective learned Courts. It is further submitted that in a case filed by a lady, accused No. 13 has been granted anticipatory bail by the learned Court and the lady who registered the FIR against accused No. 13 is herself facing an FIR under IPC and POCSO Act. It is submitted that therefore the allegations made in the counter filed by the State mentioning the previous cases registered against

A accused No. 13 is nothing but a political vendetta and it is requested not to consider the same while considering the issue in the present case.

5.11 Making above submissions, it is prayed to dismiss the present appeal.

B 6. Heard the learned counsel appearing for the respective parties at length.

C 7. By the impugned judgment and order, the High Court has refused the prayer made on behalf of the appellant to transfer the investigation to CBI and also refused the prayer for further investigation /re-investigation of FIR No. 120 of 2020 on merits as well as mainly on the ground that once the chargesheet is filed after investigation and the charges are framed, the Magistrate has no jurisdiction to order further investigation / re-investigation / de novo investigation.

D 7.1 Therefore, the short question, which is posed for the consideration of this Court is:

“Whether in the facts and circumstances of the case, the High Court is justified in denying the relief of transfer of the investigation to CBI and refusing to order further investigation / re-investigation / de novo investigation?”

E 7.2 While considering the aforesaid issue and appreciating the above submissions made on behalf of the respective parties, few decisions of this Court on the power of the Courts to transfer the investigation to another agency like CBI and the powers of the constitutional courts to order further investigation / re-investigation / de novo investigation are required to be referred to.

F 7.3 In the case of **Himanshu Kumar and Ors. (supra)**, this Court had occasion to consider the power of the Court to transfer investigation to any other **independent agency**. After taking into consideration the catena of judgments on the point, it is reiterated that investigation may be transferred to the CBI only in “rare and exceptional cases”. In paragraphs 44 to 53, it is observed and held as under:-

G “44. It is now settled law that if a citizen, who is a *de facto* complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence

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by the CBI, such prayer should not be granted on mere asking. A Constitution Bench of this Court, in the case of the *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*, reported in (2010) 3 SCC 571, has made the following observations pointing out the situations where the prayer for investigation by the CBI should be allowed:

“70.... 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 powers 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.”

(emphasis supplied)

45. In the above decision, it was also pointed out that the same court in *Secretary, Minor Irrigation & Rural Engineering Services, U.P. v. Sahngoo Ram Arya*, (2002) 5 SCC 521, had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a *prima facie* case calling for an investigation by the CBI or any other similar agency.

46. In an appropriate case when the Court feels that the investigation by the police authorities is not in a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to handover the investigation to an

A independent agency like the CBI. By now it is well-settled that even after the filing of the charge sheet the court is empowered in an appropriate case to handover the investigation to an independent agency like the CBI.

B 47. The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India *qua* the issuance of directions to the CBI to conduct investigation must be exercised with great caution as underlined by this Court in the case of *Committee for Protection of Democratic Rights, West Bengal* (supra) as adverted to herein above, observing that
C although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in the investigation or where the incident may
D have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or re- investigation,
E submission of the charge sheet *ipso facto* or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out
F justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

G 48. The above principle has been reiterated in *K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai*, (2013) 12 SCC 480. Dr. B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held:

H “13. ... This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent

investigating agency like CBI. It has been 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, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. ...”

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49. Elaborating on this principle, this Court further observed:

“17. ... 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.”

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50. The Court reiterated that an investigation may be transferred to the CBI only in “rare and exceptional cases”. One factor that courts may consider is that such transfer is “imperative” to retain “public confidence in the impartial working of the State agencies.” This observation must be read with the observations made by the Constitution Bench in the case of *Committee for Protection of Democratic Rights, West Bengal* (supra), that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

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51. In *Romila Thapar v. Union of India*, (2018) 10 SCC 753, one of us, A.M. Khanwilkar, J., speaking for a three-Judge Bench of this Court (Dr. D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused “does not have a say in the matter of appointment of investigating agency”. In reiterating this principle, this Court relied upon its earlier decisions in *Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79, *Sanjiv Rajendra Bhatt v. Union of India*, (2016) 1 SCC 1, *E. Sivakumar v. Union of India*, (2018) 7 SCC

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A 365, and *Divine Retreat Centre v. State of Kerala*, (2008) 3 SCC 542. This Court observed:

“30...the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation.”

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52. It has been held by this Court in *CBI v. Rajesh Gandhi*, 1997 Cri LJ 63, that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

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53. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used “sparingly” and only “in exceptional circumstances”. In assessing the plea urged by the petitioner that the investigation must be transferred to the CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power.”

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7.4 Bearing in mind the position of law as discussed above and, in the facts, and circumstances of the case, we are of the opinion that the High Court has not committed any error in refusing to transfer the investigation to CBI. Even the learned counsel appearing on behalf of the appellant has not vehemently pressed such a prayer. We are in complete agreement with the view taken by the High Court insofar as refusing to transfer the investigation to CBI is concerned.

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

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

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

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

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

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

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

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

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

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

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

8.2 In the case of **Dharam Pal (supra)**, after taking into consideration the catena of decisions on the point, it is observed and held H

A that the constitutional courts can direct for further investigation or investigation by some other investigating agency. It is observed that the purpose is, there has to be a fair investigation and a fair trial. It is observed that the fair trial may be quite difficult unless there is a fair investigation. It is further observed and held that the power to order fresh, de novo or re- investigation being vested with the constitutional courts, the
B commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. While observing and holding so, in paragraphs 24 and 25, it is observed and held s under:-

C “24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued
D 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.

E 25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean
F has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been
G said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham

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one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.”

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9. Now, so far as the reliance placed upon the decision of this Court in the case of **Vinubhai Haribhai Malviya and Ors. (supra)**, relied upon on behalf of the respondent – accused is concerned, it is required to be noted that in the said decision, this Court was considering the powers of the Magistrate. Even in the said decision, it is observed and held that there is no good reason given by the Court as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued. It is further observed that power of the police to further investigate the offence continues right till the stage the trial commences. It is further observed that Article 21 of the Constitution demands no less than a fair and just investigation. In paragraph 42 as such, it is observed and held as under:-

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“42. There is no good reason given by the Court in these decisions as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri* [*Sakiri Vasu v. State of U.P.*, (2008) 2 SCC

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- A 409], *Samaj Parivartan Samudaya* [*Samaj Parivartan Samudaya v. State of Karnataka*, (2012) 7 SCC 407], *Vinay Tyagi* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762], and *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92]; *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92] having clearly held that a criminal trial does not
- B begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say
- C that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain
- D cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC,
- E as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned
- F Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculping or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in
- G *Hasanbhai Valibhai Qureshi* [*Hasanbhai Valibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347]. Therefore, to the extent that the judgments in *Amrutbhai Shambhubhai Patel* [*Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel*, (2017) 4 SCC 177], *Athul Rao* [*Athul Rao v. State of Karnataka*, (2018)
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14 SCC 298] and *Bikash Ranjan Rout* [*Bikash Ranjan Rout v. State (NCT of Delhi)*, (2019) 5 SCC 542] have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Admn.)* [(1997) 1 SCC 361] and *Reeta Nag v. State of W.B.* [(2009) 9 SCC 129] also stand overruled.” A

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

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

12. Applying the law laid down by this Court in the aforesaid decisions and the principle of law laid down hereinabove, it is required to be considered whether a case is made out for further investigation / fresh investigation / re-investigation / de novo investigation or not. F

12.1 It is required to be noted that in the present case, the allegations in the FIR, right from very beginning, were against the accused No. 13, who at the relevant time was the sitting Cabinet Minister occupying the high position. Even at the relevant time, when the State Police investigated the FIR bearing No. 120 of 2020, in the first chargesheet and the second chargesheet did not name the accused No. 13. Even the investigation was also conducted in a perfunctory manner. The real investigation started only after the intervention of the High G H

- A Court and after passing various orders in the present proceedings by the High Court. The allegations in the FIR were very serious including the misuse of powers by the sitting Cabinet Minister and of abducting, kidnapping and beating the complainant. The appellant – original writ petitioner filed the Criminal Writ Petition before the Bombay High Court on 17.04.2020 praying the investigation in FIR Nos. 119 of 2020 and 120
- B of 2020 to be transferred to an independent investigating agency and for sanction under Section 197 Cr.P.C. for investigation and prosecution of public servants. On 23.04.2020, the High Court passed interim order that the CCTV footage and other evidences collected shall be protected and kept in the safe custody of the Chief Judicial Magistrate, Thane.
- C During the period 06.04.2020 to 29.05.2020, the State police recorded the statement of 23 witnesses including the accused No. 13. The statement of the main accused was taken as a witness. The real investigation started thereafter. The first chargesheet came to be filed against accused Nos. 1 to 10 on 07.12.2020. The accused No. 13 – the then sitting Minister against whom the serious allegations were made, even named in the
- D FIR, was not chargesheeted. Even the relevant material evidences were collected in the form of CDR, mobile phones etc. after the High Court intervened and passed various interim orders. The supplementary chargesheet came to be filed against accused Nos. 11 and 12 on 28.07.2021. The accused No. 13 was not even chargesheeted in the
- E supplementary chargesheet. The charges came to be framed against accused Nos. 1 to 12 on 28.08.2021. Only thereafter the supplementary chargesheet came to be filed against the accused No. 13 on 05.03.2022.

- 12.2 It can be seen from the aforesaid that there was no proper investigation by the State investigating agency at the relevant time and even the material evidences were also not collected. At the cost of repetition, it is observed that during the pendency of the writ petition before the High Court and pursuant to the various orders passed by the High Court, the State investigating agency were compelled to investigate in the matter and belatedly the accused No. 13 was chargesheeted in the month of March, 2022. Even according to the State investigating
- G agency, still the further investigation is required on certain aspects. Some of the illustrations / instances which required further investigation are narrated in paragraph 4 of the counter affidavit filed on behalf of the respondent Nos. 1 to 3. Elaborate reasons and on what further investigation is required has not been stated on the apprehension that if

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the same is disclosed at this stage, it may frustrate the very purpose of the investigation / further investigation. A

12.3 Be that as it may, even according to the State investigating agency, the further investigation is required. As observed and held by this Court in the aforesaid decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation / re-investigation / de novo investigation, if the facts so warrant. B

13. Now, so far as the submission on behalf of the accused that earlier the State through learned AG opposed the writ petition and submitted that there was a fair investigation and now with the change in power, the State agency has changed its stand is concerned, the Courts are not concerned with the stand taken by the State at the relevant time and now. Suffice it to say that at the relevant time when the State police agency took a particular stand, accused No. 13 was in power and sitting Minister. The facts narrated hereinabove would suggest the manner in which the earlier investigation was carried out and that the accused No. 13 was only chargesheeted in the second supplementary charge sheet in the month of March, 2022 and not prior to that when the first charge sheet was filed, the supplementary chargesheet was filed and even when the charges against the other accused were framed. The endeavor of the Court should be to have the fair investigation and fair trial only. Therefore, in the facts and circumstances of the case narrated hereinabove, we are of the opinion that a case is made out for further investigation and the State agency may be permitted to conduct a further investigation and to bring on record the further material, which may be in the furtherance of fair investigation and fair trial. The High Court has committed a very serious error in not ordering and/or permitting the State police agency to further investigate into the FIR bearing Nos. 119 and 120 of 2020. The High Court has not considered the relevant aspects narrated hereinabove and therefore interference of this Court is warranted. C D E F G

14. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment and order passed by the High Court refusing to transfer the investigation of the FIR No. 120 of 2020 to CBI is hereby confirmed. The impugned judgment and order passed by the High Court refusing to order further investigation / re- H

- A investigation is hereby quashed and set aside and we direct / permit the State investigating agency to further investigate into the FIR bearing No. 120 of 2020 and on what aspects the further investigation shall be carried out is left to the wisdom of the State investigating agency. Further investigation be carried out and completed as early as possible, preferably within a period of three months from the date of receipt of the present order and the further supplementary report be placed before the learned Magistrate in the Trial/before the concerned Trial Court thereafter forthwith, which may be considered by the Trial Court in accordance with law and on its own merits and the accused be tried accordingly and in accordance with law and on merits.
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- C Present appeal is partly allowed to the aforesaid extent.

Ankit Gyan
(Assisted by : Abhishek Agnihotri and Rahul Rathi, LCRAs)

Appeal partly allowed.