

127+294

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20420-2022 (O&M)

ANGAD DUTTA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS.

.....RESPONDENTS

Present:- Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Malkiat Singh, DAG, Punjab.

Mr. Aayush Gupta, Advocate and
Mr. Abhishek Sharma, Advocate
for respondent No.5.

Mr. Ravi Kamal Gupta, Advocate
for Central Bureau of Investigation.

CRM-39840-2024

This is an application under Section 528 of BNSS, 2023 for placing on record Annexures R-5/8 to R-5/17 and for exemption from filing certified copies thereof.

Notice in the application.

On the asking of the Court, Mr. Jaspal Singh Guru, AAG, Punjab accepts notice on behalf of the respondent-State and Mr. Aayush Gupta, Advocate and Mr. Ravi Kamal Gupta, Advocate have put in appearance on behalf of respondents No.5 and Central Bureau of Investigation respectively, who have no objection in case the above-said application is allowed.

In view of the reasons mentioned in the application as well as no objection suffered on behalf of the aforesaid respondents, the same is allowed subject to all just exceptions. Annexures R-5/8 to R-5/17 are taken on record. Exemption sought for is granted.

Application stands disposed of.

CRM-M-20420-2022

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. seeking directions to respondents No.2 & 3 to handover the investigation of the FIR No.0049, dated 25.04.2022 (Annexure P-3), under Sections 406, 379 IPC, registered at Police Station New Baradari, Jalandhar against the petitioner, to some independent agency to conduct fair and impartial investigation and for cancellation of aforesaid FIR.

2. Thereafter, Fastway transmission moved an application bearing No.CRM-38303-2024 to be impleaded as respondent No.5 being a necessary party against whom various complaints have been lodged at the behest of the petitioner and such like various other cable operators within the State of Punjab from time to time. The said application was allowed vide order dated 20.09.2024 and Mr. Aayush Gupta, learned Advocate filed Power of attorney on behalf of newly added respondent-Fastway Transmission Pvt. Ltd. as respondent No.5.

3. The predecessor Court issued notice on motion on 12.05.2022 in the matter and almost after one year, a short reply was filed on behalf of respondents No.1 to 4 i.e. State of Punjab vide affidavit dated 17.03.2023 of Mr. Balwinder Singh Randhawa, PPS, Additional Deputy Commissioner of Police-I, Jalandhar.

4. Before arguments could proceed in the matter, the counsel for petitioner sought time stating that the talks of amicable settlement are going on between the petitioner and respondent No.5 as is recorded in the order dated 13.02.2024.

5. The settlement could not reach and this Court noticing that the investigation in FIR No.0049, dated 25.04.2022 (Annexure P-3), which is the subject matter of the present petition has not made any headway called the State of Punjab to file a status report qua the investigation conducted so far and the hearing was deferred to 07.08.2024 and on that date, the case could not reach and it was adjourned by order to 06.11.2024.

6. Feeling aggrieved against the said adjournment, the petitioner moved an application bearing CRM-36342-2024 seeking preponment of the main case which was allowed considering the reasons submitted therein and no objection given on behalf of State of Punjab. The matter was accordingly ordered to be listed on 20.09.2024 instead of 06.11.2024 by this Court vide its order dated 11.09.2024.

7. On at date i.e. on 20.09.2024, after impleadment of respondent No.5-Fastway transmission Pvt. Ltd. in the memo of parties on its application CRM-38303-2024, this Court called upon Commissioner of Police, Jalandhar to come present on 25.09.2024. Looking at the compelling circumstances as evident in the light of grievance raised by the petitioner as well as respondent No.5, who are alleging against each other of registration of false and frivolous cases resulting into disrupted running of cable network in larger part of the State of Punjab. It is also clear on record inasmuch as in the instant FIR No.0049 itself, no progress at all has been made towards

investigation and the matter was deferred to 25.09.2024.

8. On 25.09.2024, Mr. Swapan Sharma, Commissioner of Police, Jalandhar came present, who filed an affidavit dated 20.09.2024, which was taken on record.

9. At the same time, respondent No.5 also filed reply to the petition via application bearing CRM-39031-2024 along with Annexure R-5/1 to R-5/7. The said reply was taken on record.

10. During the course of hearing, the Commissioner of Police, Jalandhar who came present in Court in compliance of order dated 20.09.2024, was categorically inquired about the status of the investigation in the present FIR to which he would submit that it is still going on.

11. Such response of an IPS Officer was shocking to note that in an FIR (Annexure P-3) with the alleged offences under Section 406 and 379 IPC, lodged at the behest of complainant Joybir Singh Kataria against the petitioner namely Angad Dutta, the investigating agency has consumed two and a half years by now. The nature of allegations if read out are also of such nature which do not require investigating agency to consume such extraordinary span of long two and a half years. The contents of FIR in that context would be material to be looked into which would read as under:-

*“To, The Station House Officer, PS Baradari, Jal.
Subject:-Complaint against the following accused 1. M/S
NEW DEFENCE NETWORK through its proprietor /
owner Mr. Angad Datt s/o Sh. Anil Datt having its office
at # H. No. 89-B, Defence Colony, Jalandhar-1,
Jalandhar, Puniah- 144009. 2. M/s CCN Digital India
(Proprietorship concern of Madan Mo Lal) having its*

correspondence address Gali Mata Rani, Near Old Stand, Bathinda-151001. For immediate register of FIR for committing the offence under section 406, 420, 120-B of IPC. I am Joybir Singh Kataria S/a Balbir Singh, am the Authorized Representative of the Complainant Company Fastway Transmissions Pvt. Ltd. having its Corporate Office at 5th Floor, Grand Walk Mall, Ferozpur Road, Ludhiana. I am the Authorised Representative of the Complainant Company, who is fully authorized and competent to sign, verify and file any criminal complaint, suit, appeal, revision, petition, etc. and or initiate any other legal proceedings in any police station, court, commission Forum / Authority, etc. Copy of the Board Resolution in favour of the said Authorised Representative is annexed herewith as Annexure-1. I wish to bring to your knowledge various grave offences committed by the abovementioned accused persons within your jurisdiction. (1.) The Complainant Company is an Indian Company duly incorporated under the provisions of the Companies Act, 1956 having its corporate Office at 5th Floor, Ground Walk Mall, Ferozpur Road, Ludhiana. The Complainant is a Multi System Operator. (2.) That the accused no. 1 is a Local Cable Operator (hereinafter referred to as "LOC") and is the propertorship concern of Mr. Angad Datta S/o Sh. Anil Datta and is carrying on its business as a Cable Operator. (3.) The accused no. 2 is one of the competing Multi System Operator (hereinafter referred to as "competing MSO"), re-transmitting the digital cable TV signals to the subscribers of various broadcasters in the territory / areas wherein the accused no. 1 also operates. (4.) As an MSO, the complainant has established control rooms / head-ends and network operations for re-

transmission of various free-to-air and pay channels of various broadcasters to the subscribers through affiliated LCOs through digital cable TV Services. (5.) The digital Cable TV signals are supplied in any encrypted digital addressable mode. The subscriber is required to install a Set Top Box (including a viewing Card) referred to as STBs which would de- encrypted the digital signals at the subscribers premises, so that the digital cable TV signals are received by the consumers / subscribers so that the consumer could view the channels of his / her choice. The STBs are issued to the LCO by MSO as per the request made by LCO to MSO which are required to be installed at the premises of the subscribers / consumer. (6.) That the accused no. 1 approached the complainant company for availing the services of Complainant Company for further distribution of digital cable TV signals to the subscribers in the territory of Jalandhar and for such purpose, the accused no. 1 executed an agreement dated 03th November 2020 with the complainant company. Copy of such agreement is enclosed as Annexure-2 to this complaint for your reference. (7.) On the request of accused no. 1 the complainant company issued / entrusted 894 include SD and HD number of STBs along with accessories to accused no. 1. Those STBs are sole & exclusive property of the complainant company and entrusted to the accused no. 1 only for the purpose of seeding the same at the premises of subscribers. The list of STBs is enclosed Annexure- 3 to this complaint for your reference. (8.) That Complainant Company in term of the agreement signed and undertaking given by the accused no. 1 provided and entrusted him with assets such as set top boxes (STB) and other accessories etc. (9.) As per the terms of the executed agreement between

accused no. 1 and the complainant company accused no. 1 is responsible for the installation of the STBs (as entrusted to him [on his request] by the complainant company) at the premises of the subscribers. In addition, the accused person is obligated to collect the one time activation charges and monthly subscription charges from subscribers and deposit with the complainant company their share in the terms of the agreement. (10.) It is to be noted that the STBs are and remain sole and exclusive property of the complainant company and the accused no. 1 is obligated to take care of these STBs and not to illegally swap / replace the STBs of the complainant company with the STBs of any other MSO in terms of the agreement. Further, accused no. 1 is also obligated to intimate the complainant company promptly about any alteration, tempering with STB including the misuse, replacement, removal and shifting of STBs without the written consent of Complainant Company. (11.) The complainant company provided quality services to the accused no. 1. The accused no. 1 availed the services from the complainant company without any objection. (12.) It has come to the notice of the complainant company that accused no. 1 has started illegal swapping of the STBs supplied by the complaining company with the STBs of the accused no. 2 and accordingly stopped the services of the complainant company abruptly which is not only breach of the terms of the agreement but also amount to criminal breach of trust. (13.) The accused no. 1 further in gross violation of the agreement and with the fraudulent intention of cheating the complainant company firstly availed the services of the complainant company and thereafter removed the property of the complainant from the

subscriber premises with the aid and help of accused no. 2. (14.) That the accused persons collusion have further withheld the STBs and its accessories in their unlawful possession. The complainant company apprehend that the accused persons may sell the STBs of the complainant company in market and have earned unlawful proceeds from such sale thereby causing huge financial loss to the company. (15.) These above mentioned accused persons are the beneficiaries of all above mentioned wrong acts and deeds and having been hand in glove with each other and were well aware of the fact that their said acts and deeds are wrongful acts / offence, still they went ahead with aforesaid modus-operandi with a common intention to cause wrongful loss to the complainant company and wrongful gain to themselves. (16.) Several verbal request were made by complainant to accused persons to return STB but accused no. 1 has till date not returned the property of the complainant and remain illegally possession of the property of the complainant that with pre-determined conspiracy the accused person acted together and taken away the complainant owned set top box from the subscribers premises. (17.) That the accused no. 1 instated of protecting the STBs (which were given to the accused no. 1 in trust for a specific purpose of installing the same in the premises of subscribers), in collusion with accused no. 2 started swapping and selling the STBs of the complainant company, hence the accused persons have committed the offence of criminal breach of trust, theft and dishonest misappropriation of property after being involved in criminal conspiracy the aforesaid action of the accused no. 1 in collusion with the accused no. 2 of causing wrongful gain to himself and wrongful loss to the complainant company by misappropriating the

property of the complainant company. (18.) That the accused persons with their malafide intention and criminal conspiracy to cause wrongful loss to the complainant party and to get wrongful gains by misappropriating them has illegally detained or parted / soled the aforementioned assets of the complainant company. The premises where the accused persons have committed offence punishable various provisions of IPC 1860 is situated in jurisdiction of your police station. Your good office is requested to register a criminal complaint / case against accused no. 1 and 2 on the basis of above complaint and initiate a detail investigation as required in the present matter we also request your good office should take immediate and necessary action against the accused as per the provisions of the law. (COMPLAINANT) Sd/- (In English) Joybir Singh Kataria 98740-82111, 25.04.2022 Authorized Signatory Fastway Transmission Pvt. Ltd. (Authorized Representative of Complainant).”

11. At the same time, this Court when questioned the Officer present in Court qua the status of FIRs registered at the instance of respondent No.5 detailed 43 in numbers at Annexure R-5/3 and twelve FIRs registered against respondent No.5, the response of the State was that nothing has been done so far in these FIRs. Even Mr. Malkiat Singh, learned DAG, Punjab also informed the Court in so many words that the State Government has done nothing in any of the FIR so far.

12. The only explanation given by learned State counsel, was that Special Investigating Team has been constituted by this Court in an earlier

petition vide its order dated 10.04.2024 bearing CWP No.28277 of 2023, which consists of Dr. Sharad Satya Chauhan, IPS Special Director General of Police, MD, Punjab, Police Housing Corporation-Chairman, Mr. G. Nageshwar Rao, Addl. DGP, Provisioning, Nodal Officer, Niti Aayog-Member and Mr. S. Rahul, DIG, Vigilance-Member.

13. The aforesaid order is placed on record by respondent No.5 at Annexure R-5/2. When this Court asked about the progress made by this Special Investigating Team in various FIRs which are 10 in number, lodged by respondent No.5 as detailed in prayer of that civil writ petition. The State as well as Commissioner of Police, Jalandhar are on record to say that even this Special Investigating Team so constituted by this Court in above-stated civil writ petition has also not conducted any investigation so far.

14. It is also noticeable that apart from the FIRs at the behest of certain cable operators including the one petitioner before this Court as well as by respondent No.5, there are 74 other criminal complaints in various Districts of State of Punjab including Patiala, Ludhiana, Jalandhar and Amritsar apart from the 03 complaints pending with the Chief Election Commissioner and one with the Chief Minister of the State of Punjab.

15. The factual matrix needs to be looked at as has been unfolded during the course of submissions made from both the sides including the petitioner and respondent No.5.

16. The petitioner would submit that he is a cable operator for the last many years and doing business with fastway cables but the subscription charges became exorbitant and service being not to the satisfaction of customers, demand for installation of DS Cable TV started flowing in. Faced

with the situation, the petitioner alleged to have asked number of times to the complainant Joybir Singh Kataria son of Balbir Singh Kataria to reduce the subscription charges of Fastway cable but nothing happened and the petitioner was constrained to install set up box of DS Cable of few of its customers. It is the assertion of the petitioner that merely for the aforesaid reason, Joybir Singh Kataria-complainant became furious and along with certain bouncers and goons trespassed in the house of the petitioner on 25.04.2022 with the intention to kill but luckily he was not at home, however, the complainant did not spare even his mother and sister-in-law to whom complainant and his persons abused at late evening despite the fact that the two ladies were alone at home. He would also state that his mother and sister-in-law was confined wrongfully in a room and the whole of the house of petitioner was searched who took away all such set top boxes of DS Cable TV and other expensive articles related to the cable system whatever was available at that time which was witnesses by residents of the locality who gathered outside the house of the petitioner on hearing noises.

17. The petitioner also urges that things did not stop here as after some time complainant Joybir Singh Kataria along with Harmanbir Singh and Rajan, this time accompanied with the Police from Police Station New Baradari, Jalandhar and seeing all that mother and his sister-in-law got frightened, who did not open the door of the house but the complainant and his other accomplice including the police officials with the help of wooden ladder climbed to the roof of the house of the petitioner and trespassed from the roof and barked into the house from the back courtyard. It was at this time, the brother of the petitioner reached home who is working as SDO in

the Municipal Corporation, Jalandhar who was taken away by the police in illegal detention without having an FIR registered against him or any other allegation of any kind. It was after the intervention of certain respectable of the society who reached to the police station got released the petitioner's brother. The above said occurrence alleged to have been recorded which went viral on social media immediately on that very day including certain local news channels.

18. The petitioner details his woes pointing out that instead of addressing to his complaints raised before the police authorities, the present FIR No.0049, under Sections 406 and 379 IPC came to be registered on 25.04.2022 at Police Station New Baradari, Jalandhar at the behest of Joybir Singh Kataria against the petitioner whereas the whole story is otherwise in which it is the petitioner's family which was manhandled abused and threatened apart from theft committed by the complainant himself who took along various set top box of DS Cable apart from confining wrongfully his mother and sister-in-law.

19. The representation submitted by the petitioner immediately after he came to know about the incident on 25.04.2022 and subsequently on 26.04.2022 to the DGP Punjab, Commissioner of Police, Jalandhar as well as Station House Officer, police station New Baradari, Jalandhar but no action has been taken on his complaints till date.

20. It is also pleaded on his behalf that Director General of Police, Punjab entered the said complaint bearing No.3196/GC-5/DGP/22 dated 29.04.2022 (Annexure P-2) and forwarded the same to the Commissioner of Police, Jalandhar to take necessary action.

21. It is the case set up by the petitioner that a cognizable offence is clearly established on bare perusal of the complaints submitted on his behalf but neither an inquiry has been conducted so far nor FIR has been registered. He has also relied upon a judgment rendered by the constitutional Bench of Hon'ble Apex Court in "*Lalita Kumari versus Government of U.P. and others*", 2013 (4) RCR (Crl.) 979 which held registration of FIR to be mandatory under Section 154 Cr.P.C., if the complaint discloses a cognizable offence and no preliminary inquiry is required in that eventuality. This Court has been made to go through the photographs depicting the law and order situation prevailing in this dispute in particular as is evident from collective scrutiny of the Annexure P-1.

22. This Court has already discussed the reply/status report filed on behalf of the State in the earlier part of this order which in nutshell clearly demonstrates total inaction on the part of police authorities.

23. In counter to the allegations made by the petitioner, respondent No.5 has brought on record certain facts alleging high handedness of the State through its political leaders belonging to the Aam Aadmi Party. Once such instance has been averred at Annexure R-5/7 showing that one company namely M/s Red Sprout Media Pvt. Ltd. was incorporated on 03.11.2023, the Director of which is Mr. Harmeet Singh, MLA of Aam Aadmi Party from Sanour constituency, Patiala. Annexure R-5/8 is a rent agreement executed by M/s Red Sprout Media Pvt. Ltd. 20.11.2023 which has been witnessed by two persons namely Gulsher Singh Jeji and Mr. Amandeep Kamboj.

24. There is an FIR referred at Annexure R-5/14 bearing No.189

dated 13.11.2023 under Sections 307, 506 and 120-B of IPC along with Sections 25 & 27 of Arms Act, lodged by Gulsher Singh Jeji against the Managing Director of M/s Fastway Transmission Pvt. Ltd. Namely Sh. Gurdeep Singh. The said FIR is alleged to be a counter to an earlier FIR No.15, dated 22.02.2024, under Sections 307 and 34 IPC along with Sections 25 & 27 of Arms Act, got registered by CEO of M/s Fastway, namely Mr. Peeyush Mahajan against Amandeep Kamboj as accused with the allegation of firing a gun shot with an intent to kill the complainant. It is vehemently asserted that police has not arrested the accused Amandeep Kamboj till date after a lapse of almost 7 ½ months inasmuch as the accused has not even sought bail from the Courts. The said accused had been openly canvassing for the Aam Aadmi Party in the State especially at Sanour, constituency during the Lok Sabha Elections, 2024 who can be seen accompanying the wife of Chief Minister of Punjab in certain video clips in the possession of respondent No.5.

25. Another glaring reference has come before this Court is the details of seven FIRs at Annexure R-5/9 lodged against Varun Sharma and Manoj Kumar, employees of M/s Punjab Vibrant Transmissions and M/s NXT Digital, which is in the tabulated form on record.

26. During the pendency of aforesaid FIR wherein in most of the cases either his bail has been declined by the Courts or bailable warrants/NBWs were issued, he has been freely visiting the police stations and once such instance is when he lodged one FIR No.337, dated 02.12.2023 at Police Station Amritsar but still was not taken in custody in the FIRs pending against him involving serious offences like Section 307 IPC and

offences under Arms Act.

27. In total 43 FIRs have been registered at the instance of respondent No.5 whereas 12 FIRs are against respondent No.5 by various cable operators/media houses though being projected as small time operators but allegations against them are demonstrating that they are operating at the behest of ruling party through its big wig political leaders as has been evident from the discussions made hereinabove.

28. The Court is sanguine of the fact that though earlier also, Special Investigating Team was in place but it did not act at all and a learned Single Bench in CWP No.28277 of 2023 ordered the constitution of fresh SIT and referred various FIRs for investigation but it did not include the present FIR i.e. 0049 dated 25.04.2022 police station New Baradari, Jalandhar.

29. Looking into the totality of circumstances as on date, in none of the FIRs the investigation has commenced yet which is an admitted fact on record in the light of statement made by Mr. Malkiat Singh, learned State counsel as well as status report by way of an affidavit submitted by Mr. Swapan Sharma, Commissioner of Police, Jalandhar dated 20.09.2024 and 25.09.2024.

30. Out of many, one illustration to cite other than the present FIR in question is that for the purpose of handing cable optical fibre wires, an agreement had been executed by PSPCL along with the complainant company in the year 2018 which was being extended from time to time but was declined beyond 17.11.2023. This Act of the State was assailed vide CWP No.26428 of 2023 and by an interim order dated 15.12.2023 PSPCL

was refrained from causing any damage and removal of cable wires as is evident from Para 6 of the reply read over by respondent No.5.

31. The company M/s Red Sprouts Media Pvt. Ltd. has been incorporated through Mr. Harmeet Singh, Pathanmajra sitting MLA from Sanour constituency belongs to the ruling party is working as Master Distributor of Multi-System Operator (MSO) and is sabotaging and uprooting the infrastructure of respondent No.5 and other such petitioner like cable operators as has been alleged by respondent No.5 which has resulted into misappropriation and damage to approximately 30000 set top boxes.

32. The allegations *prima facie* are writ large against certain cable operators may be at the behest of certain influential persons including political leaders of the ruling party but the fact remains that such mess and failure of law and order agency is not acceptable in a democratic country like ours. There is no doubt to the elucidation that at the apex of the pyramid lies the constitution supported by four pillars, the one being the media apart from legislature, executive and judiciary. The collective aim enshrined to these four pillars is none other than to establish for welfare of the public and connection with the people.

33. A free and fair media is a key aspect of civil societies, and any oppression of the media by any means is unjust, unbearable and a threat to the freedom of expression and free speech in a civilized society which is the voice of public. Media is a platform where voice is raised, spread and heard on issues of larger public importance like a fire in the jungle to reach far and wide to all connecting individuals. But the political parties driven by their vested interests and motives often tried to suppress the voice of media.

34. it is essential for the survival of the multi signaled transmission companies and media houses that where allegations qua involvement of political figures, associates or their bearers alleged to be hand in glove with the police authorities and Government officials, these media houses are bound to be undermined. It is essential to protect these media houses and companies like the petitioner and respondent No.5 enabling them to work without fear, pressure or coercion of any nature to serve the public with the integrity and sincerity.

35. The constitutional Bench of the Hon'ble Supreme Court of India in "*State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal and others*", 2010(2) RCR (Crl.) 141 has opined to instill confidence in the minds not only of the victim but the public at large. Investigation has to be fair and impartial and the State has a duty to enforce human rights of a citizen by doing so.

36. The Hon'ble Supreme Court in *Special Leave Petition (Criminal) No.792 of 2008* titled as *State of Punjab versus Central Bureau of Investigation and others* whereby State of Punjab preferred the SLP against order to the High Court handing over the investigation to the CBI for fresh investigation exercising the inherent powers under Section 482 Cr.P.C., held that nothing would be deemed to limit or effect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Criminal Procedure Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice.

"14. Section 482 of the Criminal Procedure Code, however, states that nothing in the Criminal Procedure

Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Criminal Procedure Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Criminal Procedure Code do not 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 the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section

(8) of Section 173 of the Criminal Procedure Code, therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Criminal Procedure Code for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

15. We find support for this conclusion in the following observations of this Court in Mithabhai Pashabhai Patel v. State of Gujarat (supra) cited by Mr. Dhawan:

"13. It is, however, beyond any cavil that "further investigation" "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a as under: (SCC p. 415, para 7) direction. Pasayat, J.

in Ramachandran v. R. Udhayakumar, (2008)5 SCC 413] opined as under: (SCC p.415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation."

"15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The Courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Criminal Procedure Code have to exercise the powers within the four corners of the Criminal Procedure Code and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Criminal Procedure Code and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Criminal Procedure Code in a case

where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Criminal Procedure Code for securing the ends of justice.

16. This position of law will also be clear from the decision of this Court in Nirmal Singh Kahlon v. State of Punjab & Ors. (supra) cited by Mr. Raval. The facts of that case are that the State police had investigated into the allegations of irregularities in selection of a large number of candidates for the post of Panchayat Secretaries and had filed a charge sheet against Nirmal Singh Kahlon. Yet the High Court in a PIL under Article 226 of the Constitution passed orders on 07.05.2003 directing investigation by the CBI into the case as it thought that such investigation by the CBI was "not only just and proper but a necessity". Nirmal Singh Kahlon challenged the decision of the High Court before this Court contending inter alia that Sub-section 8) of Section 173 of the Criminal Procedure Code did not envisage an investigation by the CBI after filing of a charge sheet and the Court of Magistrate alone has the jurisdiction to issue any further direction for investigation before this Court. Amongst the authorities cited on behalf of Nirmal Singh Kahlon was the decision of this Court in Vineet Narain case that once the investigation is over and charge sheet is filed the task of the monitoring Court comes to an end. Yet this Court sustained the order of the High Court with inter alia the following reasons :

"63. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the

officers of the State do not get away. If that be so, the submission of Mr. Rao that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by this Court in Vineet Narain and M.C. Mehta (Taj Corridor Scam) v. Union of India [(2007) 1 SCC 110], loses all significance".

Though the decision of this Court in Nirmal Singh Kahlon v. State of Punjab & Ors. (supra) is in the context of the power of the High Court under Article 226 of the Constitution, the above observations will equally apply to a case where the power of the High Court under Section 482 of the Criminal Procedure Code is exercised to direct investigation of a case by an independent agency to secure the ends of justice.

17. This leads us to the next question whether the High Court in the facts of the present case passed the order for investigation by the CBI to secure the ends of justice. The reasons given by the High Court in the impugned order dated 11.12.2007 for directing investigation by the CBI are extracted herein below:

"The Investigating Officer, who is a D.S.P. in rank, will not be in a position to investigate the case fairly and truthfully, as senior functionaries of the State in the Police Department and political leaders are being named. By this we are not casting any doubts on the investigating team, but it seems that political and administrative compulsions are making it difficult for the investigating team to go any further to bring home the truth. Apart from revolving around a few persons who have been named in the status report, nothing worthwhile is coming out regarding the

interrogation of the police officers, political leaders and others. The investigation seems to have slowed down because of political considerations.

Not less than eight police officials, political leaders, Advocates, Municipal Councilors and number of persons from the general public have been named in the status report. We feel that justice would not be done to the case, if it stays in the hands of the Punjab Police. Having said this, we want to make one thing very clear that the team comprising of Shri Ishwar Chander, D.I.G, Shri L.K. Yadav, S.S.P. Moga and Shri Bhupinder Singh, D.S.P. have done a commendable job in unearthing the scam. We feel it a fit case to be handed over to the C.B.I."

On a reading of the reasons given by the High Court, we find that the High Court was of the view that the investigating officer even of the rank of DSP was not in a position to investigate the case fairly and truthfully because senior functionaries of the State police and political leaders were to be named and political and administrative compulsions were making it difficult for the investigating team to go any further to bring home the truth. It further observed that not less than eight police officials, political leaders, advocates, municipal councilors besides a number of persons belonging to general public had been named in the status report of the State local police. In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to the CBI. The

narration of the facts and circumstances in paragraph 2, 3, 4 and 5 of this judgment also support the conclusion of the High Court that investigation by an independent agency such as the CBI was absolutely necessary in the interests of justice. Moreover, even though the High Court in the impugned order dated 11.12.2007 did make a mention that in case challan has been filed, then the petition will stand as having become infructuous in the order dated 12.12.2007, the High Court has stayed further proceedings before the trial court in the case arising out of FIR No. 82 of P.S. City I, Moga, till further orders. Thus, the High Court was of the view that even though investigation is complete in one case and charge sheet has been filed by the Police, it was necessary in the ends of justice that the CBI should carry out an investigation into the case.

18. In the recent case of State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others, [2010]2 SCC 571] a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extra-ordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under Section 482 of the Criminal Procedure Code to direct investigation by the

CBI for securing the ends of justice. In the facts and circumstances of this case, however, the High Court has held that the state local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation has to be handed over to the CBI. In other words, this was one of those extraordinary cases where the direction of the High Court for investigation by the CBI was justified.

19. This is, therefore, not a fit case in which we should exercise our powers under Article 136 of the Constitution and grant leave to appeal. The Special Leave Petition is dismissed.”

37. As far as question of seeking sanction from the Government is concerned under the Punjab Police Act, the proposition was well adjudicated by a larger Bench of the Hon'ble Supreme Court in **“Manohar Lal Sharma versus The Principal Secretary and others”, 2014(4) SCC 1**. The relevant would be para Nos.29 and 38 thereof.

“29. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The Courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the Court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty

and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the Court may intervene to protect the personal and/or property rights of the citizens.

38. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by the CBI under the SPE Act, the same principles apply and CBI as an investigating agency is supposed to discharge its responsibility with competence, promptness, fairness and uninfluenced and unhindered by external influences.”

38. Lastly, the large Bench in “***State of West Bengal and others versus The Committee for Protection of Democratic Rights, West Bengal and others***”, 2010(2) RCR (Crl.) 141, it has been said that this extraordinary power though must be exercised sparingly, cautiously and in exceptional situations, it held that the Apex Court and High Courts have power to direct the CBI to investigate a cognizable offence without the consent of the State Government. In that regard, following part would be of significance to be reproduced hereinbelow:-

9. As regards the exercise of jurisdiction by a High Court under Article 226 of the Constitution, learned counsel submitted that apart from the fact that there is a significant difference between the power of this Court

under Article 142 of the Constitution and the jurisdiction of the High Court under Article 226 of the Constitution because of territorial limitations under Article 226 (1) of the Constitution, a High Court is disentitled from issuing any direction to the authorities situated outside the territories over which it has jurisdiction. According to the learned counsel Clause (2) of Article 226 would have no application in a case, such as the present one, since cause of action was complete at the time of filing the writ petition and the power under Clause (2) can be exercised only where there is a nexus between the cause of action which arises wholly or partly within the State and the authority which is situated outside the State. It was asserted that the CBI being a rank outsider, unconnected to the incident, which took place within the State of West Bengal, the investigation of which was being conducted by the jurisdictional local police in West Bengal, had no authority to take up the case for investigation.

32. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under the said Articles 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the Constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre-constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State for making a law which either takes away totally or abrogates in part a fundamental right.

Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution. It is manifest from the language of Article 245 of the Constitution that all legislative powers of the Parliament or the state Legislatures are expressly made subject to other provisions of the Constitution, which obviously would include the rights conferred in part of the Constitution. Whether there is a contravention of any of the rights so conferred, is to be decided only by the Constitutional Courts, which are empowered not only to declare a law as unconstitutional but also to enforce fundamental rights by issuing directions or orders or writs of or "in the nature of" mandamus, certiorari, habeas corpus, prohibition and quo warranto for this purpose. It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other Articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision. Moreover, it is also plain from the expression "in the nature of" employed in clause (2) of Article 32 that the power conferred by the said clause is in the widest terms and is not confined to issuing the high prerogative writs specified in the said clause but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of the fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, this Court would not be constrained to fold its hands in despair and plead its

inability to help the citizen who has come before it for judicial redress. (per P.N. Bhagwati, J. in Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161).

33. *In this context, it would be profitable to make a reference to the decision of this Court in Nilabati Behera (supra). The Court concurred with the view expressed by this Court in Khatri & Ors. (II) v. State of Bihar & Ors. (1981) 1 SCC 627 and Khatri & Ors. (IV) v. State of Bihar & Ors. (1981) 2 SCC 493, wherein it was said that the Court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the enquiry, needed to ascertain the necessary facts, for granting the relief, as may be available mode of redress, for enforcement of the guaranteed fundamental rights. In his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), observed as under : "35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be*

available to it against the wrongdoer in accordance with law - through appropriate proceedings."

35. *As regards the power of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any Government to enforce fundamental rights and, "for any other purpose". It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two Articles. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but "for any other purpose" as well, i.e. for enforcement of any legal right conferred by a Statute etc.*

38. *Article 21, one of the fundamental rights enshrined in Part III of the Constitution declares that no person shall be deprived of his "life" or "personal liberty" except according to the procedure established by law. It is trite that the words "life" and "personal liberty" are used in the Article as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right to the continuance of person's animal existence. (See: Kharak Singh v. State of U.P., (1964) 1 SCR 332.*

39. *The paramountcy of the right to "life" and "personal liberty" was highlighted by the Constitution Bench in Kehar Singh (supra). It was observed thus : "To any civilised society, there can be no attributes more important than the life and personal liberty of its*

members. That is evident from the paramount position given by the courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order, and consequently, the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. The deprivation of personal liberty and the threat of the deprivation of life by the action of the State is in most civilised societies regarded seriously and, recourse, either under express constitutional provision or through legislative enactment is provided to the judicial organ."

39. Coming back to the case in hand, it is apparent on record that the present FIR is dated 25.04.2022 wherein the petitioner is an accused and facing the sword of investigation over his head. He is also equally in the business of cable network may be a small timer and respondent No.5 as well a well-known company under the title M/s Fastway Transmission Pvt. Ltd. Who has brought on record the glaring aspects that in approximately 50 FIRs against each other lodged by various such media houses/cable operators, police is not taking action and in fact they are being meted out with atrocities at the behest of certain politician acting in the State of Punjab using their influence. The accused in FIR facing allegations of much severity including Section 307 IPC and Arms Act are not being booked despite having been declined bail and are facing execution ofailable/non-ailable warrants are wandering free, visiting to the police stations but still not being arrested.

Mr. Swapan Sharma, Commissioner of Police, Amritsar is on

record vide affidavits dated 20.09.2024 and 29.09.2024 that in any of the FIRs or complaints, no action has been taken so far.

In the light of facts on record that certain media houses are run and controlled by sitting MLAs of either of the political parties may be the ruling party or other opposition parties but acts of omission and commission on their part are causing vandalism, threat and sabotage not only to the equipment but as a whole damning the very fabric of the constitution which is endangering right of free speech and expression to an elucidated fourth pillar of democracy i.e. media. Even after passing of the order dated 10.04.2024 (Annexure R-5/2) in CWP No.28277 of 2023, the SIT constituted therein has also not moved at all despite lapse of almost six months till now.

40. All these aforesaid facts are sufficient enough for this Court to infer that no faith is left in the State Investigating Agency to ensure fair and impartial investigation in the instant FIR as well as other registered cases which have been brought on record either by the petitioner or respondent No.5 may be against each other or involving such like other cable operators under different names. Majority of FIRs can be seen to have been lodged against respondent No.5 who is facing indirect atrocities at the hands of police authorities as well as certain other small time cable operators who are entangled into unwarranted criminal litigation which needs to be brought to an end in the larger interest of the public giving a free hand to the media for raising voice of the people alone.

The pendency of investigation in such large number of cases wherein what to talk of substantial action taken by the agency of the State

but no movement at all has taken place except registration of FIRs or complaints in some instances lying as it is leaving the aggrieved parties at their own mercy whereas it is the abundant duty enshrined under the Constitution of India upon the State Government to redress the grievance that to of the nature involved in the present case and provide conducive atmosphere for working, is sufficient enough for this Court to infer that the prevailing environment for the cable operators/media houses in the State of Punjab will have larger ramification not within the State of Punjab but for the whole country inasmuch as the local channels carrying news though by and large confined to the State of Punjab are aired throughout in this global arena. Considering the sensitivity of the issue involved, State ought to have acted swiftly by stepping into taking all the matters on priority but the investigating agency/police authorities in action raises doubt to their working with transparency and fairness. Such in action of the State police has forced this Court to make *prima facie* opinion that there is no trust left on it and hence, interference at this stage is warranted by exercising inherent jurisdiction under Section 482 Cr.P.C. (Section 528 of BNSS, 2023).

41. Hence, the matter is directed to be transferred to Central Bureau of Investigation who shall after conducting an inquiry furnish a report to this Court within a period of three months from the date of receipt of the certified copy of this order.

42. It is also directed that the police officials/man powers, if any, is to be sought by the CBI, the same shall be called for from the Chandigarh Police only as no trust is left with the Punjab Police as far as present dispute is concerned which has not moved at all for the last more than two years in

most of the cases even to start with the investigation.

43. It is further made clear that no coercive steps be taken against the petitioner as well as respondent No.5 or any of its officials except as warranted by law.

44. To come up for further consideration on 18.10.2024.

01.10.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**