IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 8th OF JULY, 2024

WRIT PETITION No. 14638 of 2024

(ABHISHEK PANDEY

Vs

THE STATE OF MADHYA PRADESH AND OTHERS)

Appearance:

(PETITIONER IS PRESENT IN PERSON)

(SMT. SWATI ASEEM GEORGE – DEPUTY GOVERNMENT ADVOCATE FOR THE RESPONDENTS/STATE)

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs :-

> *"I. Issue a writ in the nature of mandamus directing the Respondent No.1 to 4 to conduct the fair, impartial and proper enquiry into the matter of Petitioner by independent agency and take cognizance against the responsible erring police officers.*
>
> *II. Issue a writ in the nature of certiorari to quash the impugned FIR dated 07.04.2024 registered by the Respondent No.6 in FIR No.178/2024 vide Annexure P/5 and further be pleased to quash impugned FIR dated 13.04.2024 registered by the Respondent No.7 in FIR No.183/2024 vide Annexure P/9.*
>
> *III. Issue any other writ, order or direction as this Hon'ble Court deems fit."*

2. The photocopy of case diary of Crime No.178/2024, registered at Police Station Bhedaghat, District Jabalpur and Crime No.183/2024, registered at Police Station Lordganj, District Jabalpur are available.

3. It is submitted by the petitioner that being a student leader, he went to British School, Kudan. However, the Principal of British School lodged an FIR alleging that the petitioner as well as Aryan Tiwari and his friends forcibly entered inside the school and started alleging that why the school is functioning and accordingly they started abusing the staff in the name of mother and sister. When the Principal of the school objected to it, then the petitioner and his friend Aryan as well as their colleagues started damaging chair, tables, monitor etc. and accordingly caused damages to the school property and also threatened that in case if they come out, then they would be killed. Accordingly, on the said complaint, FIR No.178/2024 has been registered in Police Station, Bhedaghat, District Jabalpur. Similarly, FIR No.183/2024 has been registered at Police Station Lordganj, District Jabalpur on the report of the police officers on the allegations that the petitioner and Aryan Betia were wanted in Crime No.178/2024 and accordingly, they went to the house of the petitioner at 6:00 a.m. and informed him that he is required in a non-bailable offence registered in Crime No.178/2024, then the petitioner started abusing the police party and challenged that he would not open the gate of the house and the police party must leave the place and also alleged that why the police has come to his house. He was informed by the police party that a non-bailable offence has been registered against him and in case if the petitioner does not cooperate with the investigation then they will be required to arrest him and also insisted that he should open the gate of the house. The accused refused to open the gate of the house and challenged that complainant may do whatever he wants. The entire incident was videographed by a Constable No.1977 Ritik. Accordingly, CSP, Bargi was informed about

the incident. Under an apprehension that the petitioner may abscond, the police party entered inside the house of the petitioner through the house of his neighbourers and again asked the petitioner to accompany them, then he started abusing the police party by using filthy language in the name of their mother and sister and also started scuffling with them and also abused as to why they have come and accordingly he tried to run away. The police party tried to arrest him and accordingly, the petitioner, his uncle and aunty not only abused the Sub-Inspector Prashant Maneshwar, Constable Hari Singh Rajput, Constable Harish Daheriya, Head Constable Ram Prakash Gurjar in the name of mother and sister and also assaulted them by fists and blows. In the meanwhile, one ASI, posted in Police Station, Lordganj also reached on the spot. When the petitioner was tried to be arrested, then he continued to abuse them filthily and also had a scuffle with the complainant and with great difficulty the petitioner was arrested.

4. It is submitted by the petitioner himself that before registering the offence, the police must have conducted a preliminary inquiry and before registration of offence, the petitioner was entitled for hearing.

5. Considered the submissions made by the petitioner.

Whether an FIR can be quashed on the ground of non-holding of preliminary inquiry or not?

6. The offences in question were committed on 5.4.2024 and 13.4.2024.

7. The Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and Others** reported in **(2014) 2 SCC 1** has held as under :-

"**120.** In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(*a*) Matrimonial disputes/family disputes

(*b*) Commercial offences

(*c*) Medical negligence cases

> (*d*) Corruption cases
>
> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.
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> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.
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> **120.7** While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
>
> **120.8.** Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

8. Holding of a preliminary inquiry is desirable and the FIR cannot be quashed on the ground of non-holding of preliminary inquiry.

9. The Supreme Court in the case of **CentralBureau of Investigation (CBI) and Anr. Vs. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr.** decided 8.10.2021 **in Criminal Appeal No.1045/2021** has held as under :-

> “15. The most authoritative pronouncement of law emerges from the decision of a Constitution Bench in **Lalita Kumari** (supra). The issue before the Court was whether "a police officer is bound to register a first information report (FIR) upon receiving any

information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure 1973…or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same". Answering this question on behalf of the Bench, Chief Justice P Sathasivam held that under Section 154 of the Code of Criminal Procedure 1973, a police officer need not conduct a preliminary enquiry and must register an FIR when the information received discloses the commission of a cognizable offence. Specifically with reference to the provisions of the CBI Manual, the decision noted:

> "89. Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. **It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure.** At this juncture, it is also pertinent to submit that CBI is constituted under a special Act namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act.
>
> **(emphasis supplied)**

However, the Court was also cognizant of the possible misuse of the powers under criminal law resulting in the registration of frivolous FIRs. Hence, it formulated "exceptions" to the general rule that an FIR must be registered immediately upon the receipt

of information disclosing the commission of a cognizable offence. The Constitution Bench held:

> "115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time…
> […]
> **117. In the context of offences relating to corruption, this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.**
> […]
> 119. Therefore, in view of various counterclaims regarding registration or non-registration, **what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith**. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the

> investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."
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> (**emphasis supplied**)

The judgment provides the following conclusions:—

> 120. In view of the aforesaid discussion, we hold:
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> 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
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> 120.2. **If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not**.
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> […]
>
> **120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence**.
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> **120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under**:
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> […]
>
> **(d) Corruption cases**
>
> […]

> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.
>
> (**emphasis supplied**)

The Constitution Bench thus held that a Preliminary Enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a Preliminary Enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a Preliminary Enquiry will depend on the facts and circumstances of each case. As an illustration, "corruption cases" fall in that category of cases where a Preliminary Enquiry "may be made". The use of the expression "may be made" goes to emphasize that holding a preliminary enquiry is not mandatory. Dwelling on the CBI Manual, the Constitution Bench held that: *(i)* it is not a statute enacted by the legislature; and *(ii)* it is a compendium of administrative orders for the internal guidance of the CBI.

16. The judgment in **Lalita Kumari** (supra) was analyzed by a three Judge Bench of this Court in **Yashwant Sinha** (supra) where the Court refused to grant the relief of registration of an FIR based on information submitted by the appellant-informant. In his concurring opinion, Justice K M Joseph described that a barrier to granting the relief of registration of an FIR against a public figure would be the observations of this Court in **Lalita Kumari** (supra) noting that a Preliminary Enquiry may be desirable before doing so. Justice Joseph observed:

> "108. Para 120.6 [of Lalita Kumari] deals with the type of cases in which preliminary inquiry may be made. Corruption cases are one of the categories of cases where a preliminary inquiry may be conducted…
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> […]
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> 110. In para 117 of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 :

(2014) 1 SCC (Cri) 524] , this Court referred to the decision in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and took the view that in the context of offences related to corruption in the said decision, the Court has expressed a need for a preliminary inquiry before proceeding against public servants.

[…]

112. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , one of the contentions which was pressed before the Court was that in certain situations, preliminary inquiry is necessary. In this regard, attention of the Court was drawn to CBI Crime Manual…

[…]

114. The Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , had before it, the CBI Crime Manual. It also considered the decision of this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] which declared the necessity for preliminary inquiry in offences relating to corruption. Therefore, the petitioners may not be justified in approaching this Court seeking the relief of registration of an FIR and investigation on the same as such. This is for the reason that one of the exceptions where immediate registration of FIR may not be resorted to, would be a case pointing fingers at a public figure and raising the allegation of corruption. This Court also has permitted preliminary inquiry when there is delay, laches in initiating criminal prosecution, for example, over three months. A preliminary inquiry, it is to be noticed in para 120.7, is to be completed within seven days.

(**emphasis supplied**)

17. The decision of a two Judge Bench in **Managipet** (supra) thereafter has noted that while the decision in **Lalita Kumari** (supra) held that a Preliminary Enquiry was desirable in cases of alleged corruption, that does not vest a right in the accused to demand a Preliminary Enquiry. Whether a Preliminary Enquiry is required or not will depends on the facts and circumstances of each case, and it cannot be said to be mandatory requirement without which a case cannot be registered against the accused in corruption cases. Justice Hemant Gupta held thus:

> "28. **In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused**. Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that prima facie, the allegations levelled against the accused in the complaint are credible…
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> 29. The Court concluded that the registration of an FIR is mandatory under Section 154 of the Code if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation…
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> 30. **It must be pointed out that this Court has not held that a preliminary inquiry is a must in all cases**. A preliminary enquiry may be conducted pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. **The judgment of this Court in Lalita**

Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.
[…]
32…**The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]**.

33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. **It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed**. Reference in this regard, is made to a judgment of this Court in State of Haryana v. Bhajan Lal [State of

> Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.
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> 34. **Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.**
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> (**emphasis supplied**)

18. In **Charansingh** (supra), the two Judge bench was confronted with a challenge to a decision to hold a Preliminary Enquiry. The court adverted to the ACB Manual in Maharashtra and held that a statement provided by an individual in an "open inquiry" in the nature of a Preliminary Enquiry would not be confessional in nature and hence, the individual cannot refuse to appear in such an inquiry on that basis. Justice M R Shah, writing for the two Judge

bench consisting also of one of us (Justice D Y Chandrachud) held:

> "11. However, whether in a case of a complaint against a public servant regarding accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, an enquiry at pre-FIR stage is permissible or not and/or it is desirable or not, if any decision is required, the same is governed by the decision of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .
>
> 11.1. While considering the larger question, whether police is duty-bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1:(2014) 1 SCC (Cri) 524] has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. **While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is**

further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case.

[…]

14. In the context of offences relating to corruption, in para 117 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], this Court also took note of the decision of this Court in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] in which case this Court expressed the need for a preliminary enquiry before proceeding against public servants.

[…]

15.1. **Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income**. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. **However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a**

preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

15.2. Even as held by this Court in **CBI v. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305]**, a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. **Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the**

> **observations made by this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and considering the observations by this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State AntiCorruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage."**
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> **(emphasis supplied)**
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> 19. Hence, all these decisions do not mandate that a Preliminary Enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted. The decision in **Managipet** (supra) dealt specifically with a case of Disproportionate Assets. In that context, the judgment holds that where relevant information regarding *prima facie* allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a Preliminary Enquiry."

10. This Court by order dated **14.3.2024** passed in **M.Cr.C.No.9662/2022 Avijit Sharma Vs. State of M.P. and another (Principal Seat)** has held as under :-

> **Whether the FIR is bad on account of not holding a preliminary inquiry.**

> "Thus, it is clear that in given set of circumstances preliminary inquiry may be desirable but non-holding a preliminary inquiry will not vitiate the FIR. Accordingly, the FIR lodged against the applicant cannot be quashed on the ground that preliminary inquiry was not conducted."

11. Thus, the first contention of the petitioner that before registering an offence, a preliminary inquiry into the correctness of the allegations should have been made is *per se* misconceived and is hereby rejected.

Whether the suspect/accused has a right of pre-audience before registration of an offence or not?

12. The Supreme Court in the case of **Romila Thapar and others vs. Union of India and others** reported in **(2018) 10 SCC 753** has held as under:-

> "24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai v. State of Gujarat, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigatingagency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus: (SCC p. 100)
>
> > "64. … It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them."
> >
> > (emphasis supplied)
>
> 25. Again in Sanjiv Rajendra Bhatt v. Union of India, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus: (SCC p. 40)
>
> > "68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in Union of

> India v. W.N. Chadha, Mayawati v. Union of India, Dinubhai Boghabhai Solanki v. State of Gujarat, CBI v. Rajesh Gandhi, CCI v. SAIL and Janata Dal v. H.S. Chowdhary."
>
> (emphasis supplied)

26. Recently, a three-Judge Bench of this Court in E. Sivakumar v. Union of India, while dealing with the appeal preferred by the "accused" challenging the order of the High Court directing investigation by CBI, in para 10 observed: (SCC pp. 370-71)

> "10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on Narender G. Goel v. State of Maharashtra, in particular, para 11 of the reported decision wherein the Courtobserved that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

27. This Court in Divine Retreat Centre v. State of Kerala, has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is

convinced that the power of investigation has been exercised by the investigating officer mala fide.

28. Be that as it may, it will be useful to advert to the exposition in State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.13 In paragraph 70 of the said decision, the Constitution Bench observed thus:

> "70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 13 (2010) 3 SCC 571 38 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned,although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the 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."

29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. 39

Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organization and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal 40 remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

30. In view of the above, it is clear that 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.....”

13. The Supreme Court in the case of **SBI Vs. Rajesh Agrawal** reported in **(2023) 6 SCC 1** has held as under :

> **37.** While the borrowers argue that the actions of banks in classifying borrower accounts as fraud according to the procedure laid down under the Master Directions on Frauds is in violation of the principles of natural justice, RBI and lender banks argue that these principles cannot be applied at the stage of reporting a criminal offence to investigating agencies. At the outset, we clarify that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by this Court.
>
> **38.** In *Union of India* v. *W.N. Chadha*, a two-Judge Bench of this Court held that that providing an opportunity of hearing to the accused in every criminal case before taking any action against them would "frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd, and self-defeating". Again, a two-Judge Bench of this Court in *Anju Chaudhary* v. *State of U.P.* has reiterated that the Code of Criminal Procedure, 1973 does not provide for right of hearing before the registration of an FIR.

Thus, it is clear that the suspect/accused has no right of pre-audience before registration of FIR.

14. Accordingly, the FIR cannot be quashed on the ground that the petitioner was not heard before the registration of offence. Even otherwise, the petitioner has also admitted that on 5.4.2024 he had gone to the school in the capacity of a student leader. Accordingly, the petitioner was directed to address this Court as to whether a person claiming himself to be a student leader can enter inside the school or not?

15. The petitioner could not point out any law by which a self-proclaimed student leader can be permitted to enter inside a school unauthorizedly.

16. No other argument is advanced by the petitioner.

17. As no case is made out warranting interference, therefore, the petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

TG/-