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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-61691-2023 (O&M)
Date of Decision: 02.07.2024**

SUNEET KAUR

... Petitioner

Versus

STATE OF PUNJAB & OTHERS

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Ahluwalia, Advocate with
Mr. Jaiveer Singh, Advocate
for the petitioner.

Mr. Rahul Jindal, Asstt. A.G., Punjab
for respondent Nos.1 to 4.

Mr. S.S. Narula, Advocate with
Mr. G.S. Dhillon, Advocate
for respondent No.5.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for the transfer of the investigation in FIR No.207 dated 15.10.2022 (Annexure P-1) registered under Sections 177, 420, 465, 467, 468, 471 IPC at Police Station Dakha, District Ludhiana Rural to an independent agency outside the State of Punjab or under the supervision of an IPS Officer.

2. The brief facts of the case are that one late Lt. General Sant Singh (hereinafter known as the deceased) was the owner of movable and immovable properties including land situated at Village Dakha, Tehsil and District Ludhiana. He died on 27.11.1975 leaving behind his wife, Dharam Kaur, his sons Sardool Singh and Sukhnandan Singh (lunatic) and a daughter,



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Naseeb Kaur. Sardool Singh is alleged to have prepared an unregistered Will dated 19.10.1975 purportedly executed by the deceased in favour of his grand-daughters namely Geetinder Kaur and Sanjit Kaur daughters of Sardool Singh and Amarjeet Kaur with respect to the land situated in Village Dakha Tehsil and District Ludhiana.

3. Naseeb Kaur the daughter of the deceased (and mother of the petitioner/complainant) instituted a civil suit claiming her share in the estate of the deceased including the land in question. The civil suit was decided on 20.11.2017 by the Court of Civil Judge, Senior Division, Ludhiana. Aggrieved by the said judgment, Naseeb Kaur filed a Civil Appeal No.19 of 2018 which is pending adjudication before the Court of the Addl. District Judge, Ludhiana.

4. The major chunk of the land of the deceased which was under litigation had been acquired by the National Highway Authority of India (NHAI) for the purposes of the Delhi-Katra Express Highway. As per procedure envisaged under the National Highways Act, 1957, the amount of compensation was to be deposited in the Court of the Addl. District Judge, Ludhiana wherein both the parties were litigating with respect to the inheritance of the aforesaid property.

5. On 20.07.2021 (Annexure P-3), emails were sent to the SDM, Ludhiana by Deepinder Singh Gill, Advocate and Ahbaab Singh Grewal (respondent No.5) in favour of Sanjeet Kaur and Geetinder Kaur to the effect that they had given powers of attorney to their mother Amarjeet Kaur to



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receive the amount of the award and their respective shares be deposited in their bank accounts.

6. Based on the powers of attorney referred to in the emails above, Amarjeet Kaur filed the first set of three affidavits to the effect that there was no litigation pending on the property. Based on the affidavits, the competent authority released an amount of Rs.28,75,00,106/- (after deducting TDS) in favour of Amarjeet Kaur and her daughters Geetinder Kaur and Sanjeet Kaur on 26.07.2021. The relevant document in that regard is attached as Annexure P-2 to the petition.

7. A second set of affidavits was filed by the accused on 20.05.2022 (Annexure P-15). However, the petitioner came to know about the filing of the false affidavits and the transactions referred to above. Therefore, she filed a complaint to the SSP Ludhiana (Rural) bearing No.2918-PC-1 with the allegations that during the pendency of the appeal in the civil suit, Amarjeet Kaur and her daughters Geetinder Kaur and Sanjeet Kaur had got released an amount of Rs.28,75,00,106/- by filing false affidavits to the effect that there was no litigation on the property.

The SSP Ludhiana (Rural) marked an inquiry to the S.P. (Headquarter), Ludhiana. On conclusion of the inquiry, the S.P. (Headquarter), Ludhiana found that Amarjeet Kaur had prepared false affidavits on the basis of the powers of attorney of her daughters to the effect that there was no litigation pending with respect to the acquired land and had filed them before the SDM, Ludhiana. Amarjeet Kaur, Geetinder Kaur and



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Sanjeet Kaur had received the first instalment (approximately of Rs.28,75,00,106/- after deducting TDS) and therefore an FIR should be registered against all under Sections 420/120-B IPC after obtaining the opinion of the D.A. (Legal).

The SSP, Ludhiana (Rural) marked the above inquiry to the D.A. (Legal) for an opinion. The D.A. (Legal) opined that an offence under Sections 177, 420, 465, 467, 468, 471 IPC ought to be registered only against Amarjeet Kaur. No cogent reason was given for exonerating the daughters.

Based on the aforementioned inquiries and the opinion of the D.A. (Legal), FIR No.0207 dated 15.10.2022 under Sections 177, 420, 465, 467, 468, 471 IPC, Police Station Dakha, District Ludhiana Rural came to be registered against Amarjeet Kaur alone. The copy of the FIR is attached as Annexure P-1 to the petition.

8. As the daughters of Amarjeet Kaur namely, Geetinder Kaur and Sanjeet Kaur had been exonerated, the petitioner approached the official respondent Nos.3 and 4 for including the names of Geetinder Kaur and Sanjeet Kaur along with respondent No.5 in the FIR. Reference was made to the emails (Annexure P-3) sent by respondent No.5 and the advocate of Amarjeet Kaur namely Deepinder Singh Gill to the SDM, Ludhiana regarding deposit of the award amount in the bank accounts of the daughters of Amarjeet Kaur. It was stated that respondent No.5 was a senior functionary of the ruling dispensation in the State of Punjab and being the nephew of Amarjeet Kaur was interfering with the investigation. One such



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communication was forwarded to the ADGP, Bureau of Investigation Punjab on 27.01.2023 (Annexure P-4).

9. As no action was taken by the Investigating Agency to inculcate Geetinder Kaur and Sanjeet Kaur, the instant petition came to be filed on 30.11.2023 seeking transfer of the investigation to an independent agency outside the State of Punjab or that the investigation be conducted under the supervision of an IPS Officer.

10. On 08.01.2024, the DGP, Punjab was requested to constitute an SIT. The SIT was constituted and ultimately, a report under Section 173(2) Cr.P.C. came to be submitted against Amarjeet Kaur alone under Sections 181 and 420 IPC.

11. The learned counsel for the petitioner contends that the investigation has not been conducted in a free and fair manner due to the interference of respondent No.5 who is a senior functionary of the ruling dispensation in the State of Punjab. The emails (Annexure P-3) sent to the SDM, Ludhiana (West) by Geetinder Kaur and Sanjeet Kaur routed through Deepinder Singh Gill, Advocate and respondent No.5 claiming the amount of the award is telling. In fact, Deepinder Singh Gill, Advocate for Amarjeet Kaur was also a party to the fraud perpetrated by Amarjeet Kaur and her daughters. The first set of false affidavits to the effect that there was no litigation on the property led to the release of Rs.32 crores in favour of Amarjeet Kaur and her daughters. A second set of false affidavits were submitted on 20.05.2022 (Annexure P-15) claiming the balance amount of



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Rs.39 crores which showed a conspiracy between Amarjeet Kaur on the one hand and her daughters, respondent No.5 and Deepinder Singh Gill, Advocate on the other.

The SP (Headquarter), Ludhiana had recommended the filing of a challan against all the three accused. However, for obvious reasons, an opinion was obtained from the D.A. (Legal) to the effect that it was only Amarjeet Kaur who was liable as her daughters had given her powers of attorney on the basis of which it was she alone who had furnished false affidavits claiming the awarded amount. The D.A. (Legal) had not considered the fact that the daughters being the principals who had given their attorneys could not avoid their liability under any circumstances and therefore ought to have been arrayed as accused persons along with Amarjeet Kaur.

The report under Section 173(2) Cr.P.C. based on the investigation by the SIT would reveal that the SDM, Ludhiana through whom the compensation amount was released into the account of the accused had not been cited in the list of prosecution witnesses which would show that the report was prepared in a manner which would fail the case of the complainant party. In fact, as false affidavits had been filed before him, the SDM was to proceed under Section 195 Cr.P.C. The role played by respondent No.5 in perpetrating the fraud had not been investigated. Not only were the emails of Geetinder Kaur and Sanjeet Kaur seeking the compensation amount routed through respondent No.5 and Deepinder Singh Gill, Advocate but he (respondent No.5) also wrote an undated letter to the ADGP (Crime), Punjab



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requesting a free and fair investigation without being a party to the case (Annexure P-5). Respondent No.5 also wrote an application dated 31.08.2020 to the office of the Land Acquisition Collector wherein he asked for the release of the said instalments in favour of the accused. This was apparent from the statement made by the concerned Clerk of the Land Acquisition Collector under Section 161 Cr.P.C. (Annexure P-13). A sum of Rs.1,75,00,000 had been transferred to the account of respondent No.5 from the joint account of Amarjeet Kaur and Geetinder Kaur after the accused had received the first tranche of instalments as was apparent from Annexure P-17. The role of Deepinder Singh Gill, Advocate had also not been investigated by the Investigating Agency. He was a signatory and a witness to the false affidavits that there was no litigation on the property despite being the advocate for Amarjeet Kaur and her daughters in the pending appeal. The false affidavits were submitted for receiving the compensation amount. He had also received sum of Rs.50,000/- from Amarjeet Kaur and Geetinder Kaur. The statement under Section 161 Cr.P.C. of Jagjit Singh (stamp vendor) would also show that the stamp papers used by the accused were bought by Amarjeet Kaur, Geetinder Kaur and Sanjeet Kaur. Strangely, the Investigating Officer had adopted the approach of making Amarjeet Kaur join investigation without apparently sending her any notice and then releasing her in a non-bailable offence without her being granted the concession of bail by any Court. The said fact was discernible from the document Annexure P-16. He, thus contends that as the investigation had not



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been conducted in a free and fair manner at the instance of respondent No.5, the same ought to be entrusted to an independent agency like the CBI. Reliance is placed on the judgment in the cases of *State of West Bengal & others Versus The Committee for Protection of Democratic Rights West Bengals & others, 2010(2) R.C.R. (Criminal) 141*, *Rubabbudin Sheikh Versus State of Gujarat & others, 2010(1) R.C.R. (Criminal) 738*, *State of Punjab Versus Central Bureau of Investigation & others, 2011(4) R.C.R. (Criminal) 152*, *E. Sivakumar Versus Union of India & others, 2018(3) R.C.R. (Criminal) 111*, *Disha Versus State of Gujarat & others, (2011) 13 SCC 337*, *Pratibha Manchanda & another Versus State of Haryana & another, Criminal Appeal No.1793 of 2023, decided on 07.07.2023*, *Guru Nanak Vidya Bhandar Trust Versus State of Punjab & others, 2023 NCPHHC 137868*, *Sri Krishan Versus State of Haryana, 1995(2) R.C.R. (Criminal) 543* and *Hari Chand Dewan, 2002(2) R.C.R. (Civil) 637*.

12. On the other hand, the learned State counsel submits that the investigation had been conducted fairly and the culpability, if any, lay with Amarjeet Kaur. The daughters had executed powers of attorney in her favour because of which no liability could be affixed upon them. He, therefore submits that the present petition was liable to be dismissed.

13. The learned counsel for respondent No.5 contends that the respondent No.5 had never interfered with the investigation. He was only watching the interest of his old maternal aunt being a nephew. Merely because he had received money from his aunt Amarjeet Kaur did not signify



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his interference in any manner. In fact, he was not holding any political position and as such, there was no question of using political influence. It was the petitioner who had got the registered FIR by using her influence. He, therefore contends that the present petition was liable to be dismissed. Reliance is placed on the judgment in **Rajiv Ranjan Singh 'Lalan' & another Versus Union of India & others, 2006(3) SCC (Cri) 125** to contend that this Court could not monitor investigation.

14. I have heard the learned counsel for the parties.

15. The judgments referred to by the learned counsel for the petitioner as regards the different facets of a CBI investigation are discussed hereinbelow:-

In **State of West Bengal** (supra), the Hon'ble Supreme Court held that Courts had the power to direct the CBI to conduct an investigation into an offence and the consent of the State Government was not required. The relevant extract of the judgment is reproduced hereinbelow:-

“44. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows :

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

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(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule

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of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

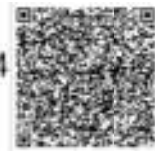
(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State.



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The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

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

46. *Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is*



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concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police.

This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise 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.”

(emphasis supplied)

In **Rubabbudin Sheikh** (supra), the Hon’ble Supreme Court held that an investigation by the CBI could be ordered even after the report under Section 173(2) Cr.P.C. stood submitted. The relevant extract of the judgment is reproduced hereinbelow:-

“54. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr. Rohatgi learned senior counsel appearing for the state of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the



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proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.”

(emphasis supplied)

In **State of Punjab** (supra), the Hon'ble Supreme Court held that an investigation by the CBI could be ordered even after the report under Section 173(2) Cr.P.C. stood submitted. The relevant extract of the judgment is reproduced hereinbelow:-

“13. Sub-section (1) of Section 173 of the Criminal Procedure Code provides that every investigation by the police shall be completed without unnecessary delay and sub-section (2) of Section 173 provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Under sub-section (2) of Section 173, a police report (charge sheet or challan) is filed by the police after investigation is complete. Sub-section (8) of Section 173 states that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge sheet or challan has been filed by the police under sub-section (2) of Section 173, the police can undertake further investigation but not fresh investigation or re- investigation in respect of an offence under sub-section (8) of Section 173 of the Criminal Procedure Code.



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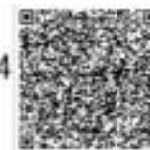
14. Section 482 of the Criminal Procedure Code, however, states that nothing in the Criminal Procedure Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Criminal Procedure Code or to prevent the abuse 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" and "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 direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar*, [(2008)5 SCC 413] opined as under : (SCC p. 415, para 7)



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"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.



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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".



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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.

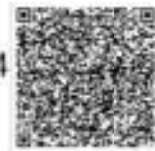
(emphasis supplied)

In *E. Sivakumar* (supra), the Hon'ble Supreme Court held that an accused did not have a right of hearing before an investigation by the CBI was ordered. The relevant extract of the judgment is reproduced hereinbelow:-

“8. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat and Ors., 2014(2) RCR (Criminal) 19 : (2014) 4 SCC 626, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in the case of Narender G. Goel v. State of Maharashtra and Anr., 2010(5) RCR (Criminal) 616 : (2009) 6 SCC 65, in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our



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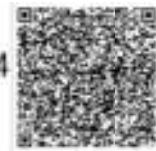
opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.

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

10. The third contention urged by the petitioner, that neither special reasons have been recorded nor the status report of the investigation already done by the Vigilance Commission has been considered, also does not commend us. As noted earlier, the High Court in the impugned judgment has exhaustively analysed all aspects of the matter as can be discerned from paragraphs 84 to 87, 91 to 97, 100 to 107; and again in paragraphs 141-144 which have been extracted hitherto. In our opinion, in the peculiar facts of the present case, the High Court has justly transferred the investigation to CBI after due consideration of all the relevant aspects, which approach is consistent with the settled legal position expounded in the decisions adverted to in the impugned judgment, including the decision in Subrata Chatteraj v. Union of India and Ors., 2014(3) RCR (Criminal) 419 : (2014) 8 SCC 768, which



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predicates that transfer of investigation to CBI does not depend on the inadequacy of inquiry/investigation carried out by the State police. We agree with the High Court that the facts of the present case and the nature of crime being investigated warrants CBI investigation.

11. In the case of Dharam Pal v. State of Haryana and Ors., 2016(1) RCR (Criminal) 926 : (2016) 4 SCC 160, this Court has underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in public at large and the investigating agency. The dictum in paragraph 24 and 25 of this reported decision is quite instructive which read thus:

"24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be



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forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idie fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a



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person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

(emphasis supplied)

In **Disha** (supra), the Hon'ble Supreme Court enumerated the circumstances in which an investigation by the CBI could be ordered. The relevant extract of the judgment is reproduced hereinbelow:-

"21. Thus, it is evident that this Court has transferred the matter to CBI or any other special agency only when the Court was satisfied that the accused had been very powerful and influential person or State authorities like high police officials were involved and the investigation had not proceeded with in a proper direction or it had been biased. In such a case, in order to do complete justice and having belief that it would lend the final outcome of the investigation credibility, such directions have been issued."

(emphasis supplied)

In **Pratibha Manchanda** (supra), while setting aside the order granting pre-arrest bail to an accused who had perpetrated a land fraud the Hon'ble Supreme Court directed the constitution of an SIT for a fair investigation. The relevant extract of the judgment is as under:-

"25. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation



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or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress.

26. While we do not wish to comment further on this issue, we believe it is necessary to foil any trace of organised crime perpetrated by land mafia, through an unimpaired and unobstructed investigation.

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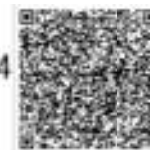
31. Given the facts and circumstances of this case, we expand the scope of inquiry in these proceedings and direct the Commissioner of Police, Gurugram to constitute a Special Investigation Team (SIT) to be headed by an officer not below the rank of Dy. Superintendent of Police along with two Inspectors as its members. The SIT shall take over the investigation forthwith. The SIT shall have the liberty to subject Respondent No. 2, the vendee(s), the Sub Registrar/officials, or other suspects to custodial interrogation to arrive at a definite conclusion, strictly in accordance with law.

32. In case the vendees, the officers/officials of the Registering Authority have secured anticipatory bail from Sessions Court/High Court, the SIT shall be at liberty to seek suitable modifications to such orders so that no impediment is caused in carrying out a fair and free investigation.

33. No interlocutory/interim order passed by the Civil Court shall obstruct the ongoing investigation. The Civil Court shall not, from this point forth, pass any such order in pending civil suits which may hamper the ongoing investigation.



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34. *The SIT shall conclude the investigation as early as possible and not later than two months from the date of this order.*

35. *The Commissioner of Police, Gurugram shall be personally responsible for monitoring the day to day investigation.*

36. *The authorities of NCT of Delhi shall extend full cooperation in the matter of verification of the genuineness of the GPA alleged to have been registered in the office of Sub Registrar, Kalkaji, New Delhi in the year 1996.*

(emphasis supplied)

In **Guru Nanak Vidya Bhandar Trust** (supra), this Court held as

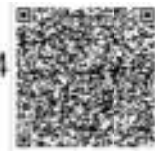
under:-

“12. In the considered opinion of this Court the shifting stand of investigating agency doesn't augur well that too when the matter is pending before this Court. It can't be taken lightly more so keeping in view the mode and the manner in which the process of law has been abused. This shows that neither the offence is routine nor the perpetrator can be taken lightly.

13. At the heart of the controversy lies a huge chunk of land owned by a Charitable Trust situated at the periphery of city of Chandigarh which has now become a prized possession keeping in view the exponential rise in prices of land in the area.

14. The Apex Court in the case of 'Pratibha Manchanda & Anr. v. State of Haryana Criminal Appeal No.1793 of 2023 arising out of SLP (Crl.) No.8146 of 2023, decided on 7th of July, 2023 echoed the same sentiment observing that :

"25. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities



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related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress.

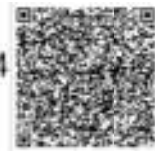
26. While we do not wish to comment further on this issue, we believe it is necessary to foil any trace of organised crime perpetrated by land mafia, through an unimpaired and unobstructed investigation."

15. The present case which started as one of the same specie has attained alarming turn. The abuse of process of law calls for a detailed investigation in the present case so that the trust of the litigants in the system doesn't get eroded. The obtrusion that impinges upon the system needs to be nipped in the bud and the vigil needs to be on the high against any pollutant. Since an attempt has been made to misuse the process of law and to make the legal system a party to the misadventure, it doesn't merely remain an offence of simple forgery. The system can't afford self inflicted scars and thus a thorough and unimpaired investigation from an independent agency is required.

16. Constitution Bench in 'State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others' (2010) 3 SCC 571 while answering the question 'whether High Court in exercise of its jurisdiction under Article [226](#) of the Constitution of India can direct the



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Central Bureau of Investigation established under The Delhi Special Police Establishment Act, 1946 to investigate a cognizable offence, which is alleged have taken place within the territorial jurisdiction of a State without the consent of the State Government?', provided necessary guiding light while observing that :

"Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly."

17. *The aforesaid observations came with necessary caution :*

"This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights."

18. *Gazing at the facts of the present case from the aforesaid guiding light and the caution, this Court finds that the seriousness of the allegations levelled in the present case, the manner in which legal process has been employed to serve the illegal designs of the troublemakers and the conduct of the investigating agency in shifting its stand every now and then, this is one of those cases which calls for a thorough and detailed investigation from an independent agency. In the words of Supreme Court no offender can be left with the feeling that he can get away with any crime which tarnishes the image not only of the investigating agency but judicial*



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system as well (Shahid Balwa v. Union of India (2014) 4 SCC 687).

19. In view of above, respondent No.2 (Central Bureau of Investigation) is directed to conduct investigation in the present case and FIR No.133 dated 10th of March, 2022 ibid.

20. This Court is quite sanguine that Central Bureau of Investigation shall conclude the investigation expeditiously preferably within six months.

21. Till the investigation is concluded, Trial Court is directed not to proceed further.

22. The present petition is disposed off accordingly.

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23. This is an application seeking impleadment filed by the accused.

24. As per settled law accused have no locus so far as the transfer of investigation/inquiry is concerned.

25. Resultantly, the application is dismissed.”

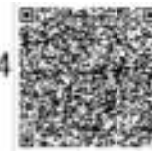
(emphasis supplied)

16. The judgments as regards the culpability of an executor of a power of attorney are discussed hereinbelow:-

In Sri Krishan (supra), it was held as under:-

“3. It is positive case of the petitioner that he is son of the original owner and is holding attorney and that being so, criminal liability cannot be fastened upon him and, if at all, his father could be prosecuted as it is his wishes which were translated by him for selling the plots being attorney only.

4. There appears to be considerable force in the contention of the learned counsel for the petitioner. Attorney acts only at the behest and instance of the owner. It is his wishes



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which he translates on the basis of attorney executed in his favour and it is the owner selling the land, who can possibly be prosecuted and convicted under the provisions of Section [10](#) of the Act. Mr. Duhan, learned AAG, Haryana, has not been able to defend the cause of petitioner on any meaningful argument nor has he brought to the notice of this Court any provisions of the Act or Rules that might entitle the investigating agency to prosecute an attorney of the owner.

5. That being so, the FIR against the petitioner is quashed. However, it shall be open for the prosecution to prosecute owner of the property in accordance with law.

Disposed of accordingly.”

(emphasis supplied)

In **Hari Chand Dewan** (supra), it was held as under:-

“5. The learned counsel for the accused-petitioners has submitted that from the written reply, it would be clear that the prosecution has been launched only against petitioner No. 2 (general attorney of petitioner No. 1), whereas no sanction to prosecute petitioner No. 1 has been accorded. It has been submitted that in the absence of any sanction, petitioner No. 1 could not be prosecuted, whereas petitioner No. 2 being the general attorney could not be prosecuted in the present case, as he had acted on the directions of petitioner No. 1 and had not committed any offence. Reliance has been placed on the law laid down by this Court, in the case reported as "Inderwati v. The State of Haryana and others", (1996-3) 114 PLR 128 and "Sri Krishan v. State of Haryana," 1995(2) RCR (Criminal) 543.

6. There is considerable force in these submissions of the learned counsel for the petitioners. As referred to above, no



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sanction to prosecute petitioner No. 1 was accorded, as required under Section 11 of the Act. Thus, no prosecution could be launched against petitioner No. 1, in the absence of any sanction. So far as petitioner No. 2 is concerned, he had executed the sale deed as the attorney of petitioner No. 1. He had acted on the directions and advise of petitioner No. 1. In (1996-3)114 PLR 128 (supra), it was held by this Court that where the attorney had executed the sale deed on the directions of the owner, only the owner could be prosecuted and not the attorney. In the reported case, the sanction to prosecute was accorded only against the attorney and not against the owner. It was under those circumstances that it was held by this Court that on the basis of the sanction neither Inderwati (owner) could be prosecuted nor Sarvotam Sharma (attorney) could be prosecuted and the prosecution against them would not be valid. Similarly, in 1995(2) RCR 543 (supra), the petition filed by the attorney, seeking the quashment of the FIR, was allowed by this Court, holding that the criminal liability could not be fastened upon his and if at all the original owner, on whose directions the attorney had acted, could be prosecuted.

7. In view of the law laid down by this Court in the aforesaid authorities, in my opinion, the aforesaid FIR and all subsequent proceedings taken thereon against petitioner are liable to be quashed.

8. For the reasons recorded above, the present petition is allowed and the FIR and all subsequent proceedings initiated against the petitioners are hereby quashed.”

(emphasis supplied)

17. The judgments referred to by the learned counsel for the petitioner leave no doubt whatsoever that this Court can order an

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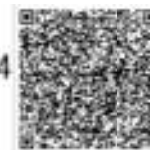
investigation by the CBI even after a report under Section 173(2) Cr.P.C. is submitted and the accused need not be heard before such an order is passed. All that the Court is required to examine before issuing such directions is that the accused persons were powerful and well-connected and that the investigation had been conducted in a biased manner so as to either weaken the prosecution case or to demolish it. Such directions could also be issued in cases where there are interstate ramifications. Further, ordering of such an investigation by the CBI would not amount to monitoring of the same as the CBI is free to conduct such an investigation in accordance with law.

18. Coming back to the facts of the present case, a perusal of the record would reveal that the daughters of Amarjeet Kaur namely, Sanjeet Kaur and Geetinder Kaur have been exonerated on farcical grounds. They were aware that the civil proceedings were pending. They received crores of rupees in their bank accounts as compensation for the acquired land. Stamp papers had been purchased by them. Merely because they had given powers of attorney to their mother cannot absolve them of their apparent culpability as is apparent from the judgments in *Sri Krishan* (supra) and *Hari Chand Dewan* (supra). In fact, *prima facie*, the S.P. (Headquarters), Ludhiana had come to the correct conclusion of their liability as well as that of their mother Amarjeet Kaur.

The role played by respondent No.5-Ahbaab Singh Grewal has not been investigated at all despite him repeatedly approaching the authorities in support of Amarjeet Kaur and her daughters. He has also



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received a huge amount of money in his bank account from Amarjeet Kaur. These aspects have been deliberately overlooked by the Investigating Agency.

Similarly, the role of Deepinder Singh Gill, Advocate who appeared for Amarjeet Kaur and her daughters in the civil case has also not been investigated despite he having signed the false affidavit submitted by Amarjeet Kaur to the effect that there was no litigation on the land. These affidavits were submitted before the SDM, Ludhiana in order to receive the compensation amount.

A perusal of the record would also reveal that the SDM, Ludhiana through whom the money was released into the accounts of the accused has neither chosen to file a complaint against the accused under Section 195 Cr.P.C. for the filing of false affidavits and nor has he been made a prosecution witness. This apparently shows that the report under Section 173 Cr.P.C. was designed in a manner so as to weaken the prosecution case.

Further, the Investigating Officer has rather strangely allowed Amarjeet Kaur to join investigation and then released her in a non-bailable offence without her being granted the concession of bail by any Court of Law. It also appears that no notice was served upon her to join investigation.

19. It is thus apparent from the record that the investigation has not proceeded in a fair and unbiased manner. In fact, it has been conducted with a view to weaken the case of the petitioner/complainant. The active role of respondent No.5 and others in perpetrating the fraud and interfering with the



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investigation cannot be ruled out. Therefore, in order to ensure a free, fair and unbiased investigation, the Central Bureau of Investigation (CBI) is directed to conduct the investigation in FIR No.207 dated 15.10.2022 (Annexure P-1) under Sections 177, 420, 465, 467, 468, 471 IPC Police Station Dakha, District Ludhiana Rural. The same be completed as expeditiously as possible but preferably within a period of 06 months from the date of the receipt of a certified copy of this order.

20. The instant petition stands disposed of in the aforementioned terms.

(JASJIT SINGH BEDI)
JUDGE

02.07.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No