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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 6 OF 2021

Param Bir Singh S/o Hoshiyar Singh .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

WITH
INTERIM APPLICATION ST. NO. 6356 OF 2021
(NOT ON BOARD, TAKEN ON BOARD)
(For Intervention)
IN
PUBLIC INTEREST LITIGATION NO. 6 OF 2021

Vinod Anand Dubey .. Applicant

In the matter between:

Param Bir Singh S/o Hoshiyar Singh .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.Vikram Nankani, Senior Advocate a/w Dr.Birendra Saraf and Mr.Sharan Jagtiani, Senior Advocates, a/w Mr.Subodh Desai, Mr.Chetan Kapadia, Mr.Sunny Punamiya and Mr.Akshay Bafna, Advocates for Petitioner.

Mr.A.K.Singh and Mr.Piyush Singh, Advocates for Applicant/Intervenor in I.A. St. No.6356/2021.

Mr.A.A. Kumbhakoni, Advocate General a/w Mr. Deepak Thakare, Public Prosecutor, a/w Mr.Akshay Shinde, "B" Panel Counsel and Mr.Manoj Badgujar, Advocate for State.

Mr.Anil C. Singh, Additional Solicitor General a/w Mr.D.P. Singh, Mr.Amogh Singh and Mr.A.A.Ansari, Advocates for Respondent nos. 2 and 3.

**WITH
WRIT PETITION NO. 1541 OF 2021
(NOT ON BOARD, TAKEN ON BOARD)**

Dr. Jaishri Laxmanrao Patil (Advocate) .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Dr.Jaishri L. Patil, Petitioner-in-person.

Mr.A.A. Kumbhakoni, Advocate General a/w Mr.Deepak Thakare, Public Prosecutor, a/w Mr.Akshay Shinde, "B" Panel Counsel and Mr. Manoj Badgujar, Advocate for State.

**WITH
PUBLIC INTEREST LITIGATION ST. NO. 6072 OF 2021
(NOT ON BOARD, TAKEN ON BOARD)**

Ghanshyam Upadhyay .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. Subhash Jha, Mr. Nilesh Ojha a/w Mr. Samir Vaidya, a/w Mr.Harekrishna Mishra a/w Mr.Siddharth Jha, Mr.Abhishek Mishra a/w Mr. Munish Hemani i/b Law Global for Petitioner.

Mr.A.A. Kumbhakoni, Advocate General a/w Mr.Deepak Thakare, Public Prosecutor, a/w Mr.Akshay Shinde, "B" Panel Counsel and Mr. Manoj Badgujar, Advocate for State.

**WITH
PUBLIC INTEREST LITIGATION ST. NO. 6166 OF 2021**

Mohan Prabhakar Bhide .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.Alankar Kirpekar and Mr.Shekhar Bhagat, Advocates
i/b Maglegal for petitioner.

Mr.A.A. Kumbhakoni, Advocate General a/w Mr.Deepak
Thakare, Public Prosecutor, a/w Mr.Akshay Shinde, "B"
Panel Counsel and Mr. Manoj Badgujar, Advocate for
State.

**CORAM :DIPANKAR DATTA, CJ &
G. S. KULKARNI,J.**

HEARD ON: MARCH 31, 2021

DELIVERED ON: APRIL 5, 2021

P.C.:

1. It is said that none can see time, but many a time, time makes us see many things hitherto before unseen. So true. The proceedings of which we are seized lays bare incidents, allegations and approaches of a kind which, at least, the two of us have not experienced before. It is time that has made us realize that the realities of life would have to be examined to give shape to law, for, law would cease to serve its purpose if justice cannot be

administered. With such realization in mind, we now proceed to complete the task at hand.

2. This batch of 3 (three) Public Interest Litigation (hereafter "PIL") and 1 (one) Criminal Writ Petition (hereafter "CrWP"), instituted under Article 226 of the Constitution, have a common origin. It may not be inapt to note the facts and circumstances preceding institution of these petitions, before we proceed to consider the individual grievances, the diverse prayers that the petitioners have made and the arguments advanced on behalf of the parties. Incidentally, the petitioners before us belong to the intellectual strata of society. An accredited police officer, an advocate and a self-proclaimed criminologist, an advocate, and a chartered accountant-cum-teacher are the petitioners whereas the applicant seeking intervention claims to be a social worker.

3. On February 25, 2021, a First Information Report bearing no.35 of 2021 was registered with the Gamdevi Police Station, Mumbai, upon a vehicle parked at Altamount Road near Antilia, the residence of industrialist Shri Mukesh Ambani, laden with explosives was detected. Since the explosive substances were suspected to be used for committing an offence, investigation commenced at the instance of the Anti-Terrorist Squad. In due course of time, the National Investigation Agency (hereafter "the NIA") started conducting simultaneous investigation. Soon

thereafter, the owner of the vehicle died under mysterious circumstances. During the course of its investigation, the NIA arrested Shri Sachin Vaze (hereafter "Shri Vaze"), a police officer attached to the Crime Branch, Mumbai. Upon such arrest, the role of Shri Vaze came under the scanner and certain incriminating materials were seized. On March 17, 2021, the incumbent Commissioner of Police, Mumbai Police, Shri Param Bir Singh (hereafter "Shri Param Bir") was transferred and posted as the Commandant General of Home Guards and Civil Defence, Maharashtra State. Simultaneously, Shri Hemant Nagrale took over as the Commissioner of Police, Mumbai Police. On March 20, 2021, Shri Param Bir by a letter complained to the Hon'ble Chief Minister, Government of Maharashtra. Exception was taken by Shri Param Bir to untruthful statements made against him by the Home Minister, Shri Anil Deshmukh (hereafter "Shri Deshmukh"). Relevant paragraphs from such complaint are quoted hereunder for comprehending the seriousness of the allegations levelled by Shri Param Bir against Shri Deshmukh:

- "5. Shri Anil Deshmukh, Hon'ble Home Minister, Maharashtra has stated in an interview conducted under the aegis of 'Lokmat' and extensively reported on 18th March 2021 that: (a) there were serious lapses committed at my office, by the Mumbai Police and me in the investigation of the Antilia incident; (b) my serious lapses are not pardonable; and, (c) my transfer is not on administrative grounds.
6. At one of the briefing sessions in the wake of the Antilia incident held in mid-March 2021 when I was called late

evening at Varsha to brief you, I had pointed out several misdeeds and malpractices being indulged into by the Hon'ble Home Minister. I have similarly briefed the Hon'ble Deputy Chief Minister, Maharashtra, the President of the Nationalist Congress Party, Shri Sharad Pawar and other senior Ministers also about the misdeeds and malpractices. On my briefings, I noticed that some of the Ministers were already aware about some aspects mentioned by me to them.

- "7. In the aforesaid context, Shri Sachin Vaze who was heading the Crime Intelligence Unit of the Crime Branch of the Mumbai Police was called by Shri Anil Deshmukh, Hon'ble Home Minister, Maharashtra to his official residence Dyaneshwar several times in last few months and repeatedly instructed to assist in collection of funds for the Hon'ble Home Minister. In an around mid-February and thereafter, the Hon'ble Home Minister had called Shri Vaze to his official residence. At that time, one or two staff members of the Hon'ble Home Minister including his Personal Secretary, Mr. Palande, were also present. The Hon'ble Home Minister expressed to Shri Vaze that he had a target to accumulate Rs.100 crores a month. For achieving the aforesaid target, the Hon'ble Home Minister told Shri Vaze that there are about 1,750 bars, restaurants and other establishments in Mumbai and if a sum of Rs.2-3 lakhs each was collected from each of them, a monthly collection of Rs.40-50 crores was achievable. The Hon'ble Home Minister added that the rest of the collection could be made from other sources.
8. Shri Vaze came to my office the same day and informed me of the above. I was shocked with the above discussion and was mulling over how to deal with the situation.
9. A few days later, Shri Sanjay Patil, ACP Social Service Branch, was called by the Hon'ble Home Minister at his official residence to hold discussion about the hookah parlors in Mumbai. The meeting was attended by other officers and Shri Palande, Personal Secretary to the Hon'ble Home Minister. Two days later, Shri Patil along with DCP Bhujbal were called at the official residence of the Hon'ble Home Minister for a meeting. While ACP Patil and DCP Bhujbal were made to wait outside the Hon'ble Home Minister's cabin, Mr. Palande went inside

the chamber of the Hon'ble Home Minister and after coming out took ACP Patil and DCP Bhujbal on the side. Mr. Palande informed ACP Patil that the Hon'ble Home Minister was targeting a collection of Rs. 40-50 crores which was possible through an approximate 1,750 bar, restaurants and establishments operating in Mumbai. I was informed by ACP Patil about the demand to make collections for the Hon'ble Home Minister.

10. The aforesaid meeting at the official residence of the Hon'ble Home Minister with Shri Patil and Shri Bhujbal occurred on 4th March 2021 as informed to me by Shri Patil. In order to remind myself about the exact conversation that I had with ACP Patil, I messaged ACP Patil on 16th March 2021. Shri Patil has reconfirmed the aforesaid date and details to me on message on 16th March 2021 & 19th March 2021....."

Note: He has quoted the message conversations between him and Shri Patil, ACP between March 16, 2021 to March 19, 2021, which are 17 in number.

- "11. After the meeting of Shri Vaze with the Hon'ble Home Minister, he had discussed the instructions of the Hon'ble Home Minister with Shri Patil and both of them had approached me with their predicaments.
12. The Hon'ble Home Minister has as a regular practice been repeatedly calling my officers and giving them instructions in respect of the course to be followed by them in performance of their official duties. The Hon'ble Home Minister has been calling my officers at his official residence bypassing me and other superior officers of the Police Department to whom those respective Police officers report to. The Hon'ble Home Minister has been instructing them to carry out official assignments and collection schemes including financial transactions as per his instructions based on his expectations and targets to collect money. These corrupt malpractices have been brought to my notice by my officers.
15. Dutybound to do so, I held to my professional view as advised by legal experts. The Hon'ble Home Minister kept insisting otherwise despite having been informed by me about the opinion of legal experts on this issue.

- Due to my resistance, the Hon'ble Home Minister was unhappy with me as the political mileage desired to be derived from the registration of the abetment of suicide case in Mumbai in the death of Shri Mohan Delkar, Member of Parliament against senior officials of Dadra & Nagar Haveli was not being achieved.
17. It has been my experience during the last more than one year as Commissioner of Police, Mumbai that the Hon'ble Home Minister has on numerous occasions called several officers from the Mumbai Police to his official residence at Dyaneshwar for giving instructions to adopt a specific course of action in police investigations. These acts of political interference are illegal & unconstitutional and Courts in our country including the Hon'ble Supreme Court of India have in the past come down heavily on such acts of interference in police investigations. In the event of my expressing reservations against the interference from the Hon'ble Home Minister and resistance from me in that regard, the Hon'ble Home Minister has found my reservations and resistance undesirable.
 21. In these circumstances, the assertions of the Hon'ble Home Minister to the effect that my transfer is not for administrative or routine reasons, I have conducted serious lapses and the serious lapses in the investigation committed by me are unpardonable are all statements contrary to the record and seem to be for extraneous and vindictive reasons.
 23. I have humbly apprised you of the true picture in order to place before you for consideration and corrective action, being fully cognizant to the retaliation that is likely against me for placing the true picture on record."

4. The day following the complaint, i.e., March 21, 2021, Shri Param Bir moved a writ petition under Article 32 of the Constitution of India before the Supreme Court being Writ Petition (Civil) No.385 of 2021 seeking, *inter alia*, a mandamus directing the CBI, the 3rd respondent, to immediately conduct an unbiased, uninfluenced, impartial and fair investigation in the various "corrupt

malpractices” of Shri Deshmukh as well as for a writ, order or direction to quash and set aside the order dated March 17, 2021 transferring him from the post of Police Commissioner, Mumbai.

5. On March 21, 2021 itself, Dr. Patil, the petitioner in Criminal Writ Petition No.1541 of 2021, lodged a complaint, *inter alia*, with the Malabar Hill Police Station and the Director, Anti-Corruption Bureau of the Central Bureau of Investigation (hereafter “the CBI”). Relevant passages from the translated version of the complaint, in vernacular, read as follows:

“I, Advocate (Dr.) Jayashree Laxmanrao Patil,
.....

I further state that, Param Bir Singh, Officer in Indian Police Service, Former Commissioner of Police, Mumbai and the present Director General of Police, Home Guards and Civil Defence has written a letter to Uddhav Thackeray, the Hon’ble Chief Minister, and the same has reached the public at large through social media. In the said letter, it is claimed that the Hon’ble Home Minister Anil Deshmukh had given a target to Sachin Vaze to make recovery of Rupees 100 crores every month. Further, many serious allegations have been levelled in the said 8-page letter, addressed to the Hon’ble Chief Minister. The said allegations are the clear-cut proof for they committing corruption and the mastermind Anil Deshmukh, Home Minister of Maharashtra, Sharad Pawar, Sachin Vaze are involved therein.

The letter written by Param Bir Singh of Indian Police Service to the Hon’ble Chief Minister Uddhav Thackeray, should have been immediately given to the concerned Police Station as a First Information Report under Section 154(3) of the Criminal Procedure Code, as a Senior Police Officer and an offence was required to be registered but the same has not happened. When a criminal conspiracy from any complaint, information is found as a Senior Police Officer, it is necessary to

register an offence as per the (decision) given by the Hon'ble Supreme Court in (Lalita Kumari vs Govt. of U.P. & Ors on 12 November, 2013) case. Such action does not seem to have been taken in the present case. Because, reason is clear that the offender himself is a head of the Home Ministry and a leader of Nationalist Congress Party. Therefore, because of the undue influence, the legal procedure could not be completed nor it was found that the public servant Param Bir Singh showed any such courage. Hence, it is necessary for Hemant Nagrale, the present Commissioner of Police, Mumbai to take immediate cognizance of this and to register the offence against the concerned persons. It is the duty and responsibility of Hemant Nagrale, Commissioner of Police, Mumbai, being a senior police officer.

Cognizable offences are evident from the plain reading of the letter sent by Param Bir Singh, the officer in the Indian Police Service, to the Hon'ble Chief Minister Uddhav Thackeray. I am also relying upon the letter given by Param Bir Singh to the Hon'ble Chief Minister Uddhav Thackeray in my this complaint and producing the same as evidence.

To,
The Hon'ble Chief Minister,
Maharashtra State,
Mumbai.

Respected Sir,

Re: Untruthful statements by the Hon'ble Home Minister, Maharashtra in relation to the transfer of Shri Param Bir Singh.

Sd/-
Seal of the Notary
A.R. Surve
Govt. of India"

6. No action was taken on such complaint, which prompted Dr. Patil to invoke the writ jurisdiction of this Court by presenting the CrWP dated March 23, 2021. The prayer therein is for a mandamus

or any other appropriate writ, order or direction directing the CBI/Enforcement Directorate (hereafter "the ED"), or any independent agency to conduct unbiased, uninfluenced, impartial and fair investigation in the various corrupt malpractices of Shri Deshmukh, the 6th respondent, as well as into the role played by Shri Param Bir. Further prayer made by Dr. Patil is for a direction on the respondent police and investigation authorities to bring criminal law in motion by exercising the power under Section 154 of the Code of Criminal Procedure (hereafter "the CrPC") on her complaint dated March 21, 2021. Also, a prayer is made by Dr. Patil for a direction on the investigating officer to secure the CCTV footage of the dates mentioned by Shri Param Bir in his report dated March 20, 2021 submitted to the Hon'ble Chief Minister of the Government of Maharashtra. It is noted that no interim relief has been claimed by Dr. Patil.

7. The writ petition of Shri Param Bir was considered by the Supreme Court on March 24, 2021. We consider it appropriate to quote the order passed by the Supreme Court on the writ petition in its entirety, since much would depend on it. The order reads as under:

"ORDER

We have heard learned senior counsel for the petitioner. We pointed out at the inception that the concerned person Mr. Anil Deshmukh, Minister concerned has not been impleaded as a respondent. Learned senior counsel submits that the same appears to be a mistake and that

he is willing to forthwith implead Mr. Anil Deshmukh as respondent No.4. At his oral request, Mr. Anil Deshmukh is impleaded as respondent No.4 and National Investigation Agency (NIA) as respondent No.5, as it is stated that the investigation has been handed over to the NIA by the Central Government.

Order accordingly.

Amended memo of parties be filed during the course of the day.

On further hearing, we put to learned senior counsel as to why the petition should not have been preferred under Article 226 of the Constitution of India before the Bombay High Court as the powers thereunder, if any, are wider. If investigation by an independent agency is being sought for, that is a relief which can also be granted by the High Court. There have also been subsequent developments in the matter as has been noticed in terms of the report of Ms. Rashmi Shukla, Commissioner, State Intelligence Department. The High Court has the requisite authority to address the same.

We have no doubt that the matter is quite serious and affects the administration at large. It also appears that a lot of material which has come in public domain is a consequence of the persons falling out.

Learned senior counsel also seeks to rely upon the judgment in Prakash Singh & Ors. v. Union of India & Ors. - (2006) 8 SCC 1. In our view, this is only a mantra recited periodically, wherever the occasion so suits, and there has been no seriousness by all concerned to ever implement the directions enshrined in the judgment. These directions were based on the principle of insulating police machinery from political/executive interference to make it more efficient and to strengthen the rule of law. It appears that none want to give up, inter alia, the control of police transfers or implement measures that would insulate the police machinery from performing its role without any uncalled for interference.

In view of the aforesaid position, learned senior counsel for the petitioner seeks to withdraw the writ petition with liberty to approach the High Court.

Liberty granted.

Learned senior counsel submits that they will file the petition during the course of the day and would like the matter to be taken up tomorrow itself. That, in our view, would be an appropriate prayer made to the High Court and not by a direction from this Court.

Pending applications stand disposed of.”

8. Availing the liberty granted by the Supreme Court, Shri Param Bir approached this Court on March 24, 2021 itself and instituted Public Interest Litigation (St.) No.6120 of 2021 (registered as PIL No.6 of 2021). The prayer in this PIL is for a mandamus or any other appropriate writ, order or direction directing immediate unbiased, uninfluenced, impartial and fair investigation by the CBI, the 3rd respondent, in the various “corrupt malpractices” of Shri Deshmukh, the 4th respondent, including those mentioned in the petition as well as for a direction on the State of Maharashtra, the 1st respondent, to ensure that transfer/posting of police officials are neither done on any consideration of pecuniary benefits to any politician, nor in contravention of the directions of the Supreme Court in **Prakash Singh & Ors. V/s. Union of India & Ors.**, reported in (2006) 8 SCC 1. As and by way of interim relief, it has been prayed that the State, the 1st respondent, be directed to produce before this Court the complete file containing report of Ms. Rashmi Shukla, the former Commissioner (Intelligence), State Intelligence Department, as well as the connected file of the Home Department, Government of Maharashtra with complete file notings, evidence gathered, comments exchanged thereon and communications, if any, issued therein, as well as for urgent directions to any independent agency

such as CBI to forthwith take custody of the entire CCTV footage from the residence of Shri Deshmukh, the 4th respondent, to prevent destruction thereof. This PIL has been heard as the lead matter in the batch of writ petitions under consideration.

9. The third writ petition in the batch is Criminal Public Interest Litigation (St.) No.6072 of 2021. The petitioner is an advocate, Shri Ghanshyam Upadhyaya (hereafter "Shri Upadhyaya"). The main prayer in the PIL is for a direction for a thorough investigation against the personnel of Mumbai police viz. Shri Vaze, Shri Sanjay Patil, ACP, Shri Dilip Bhujbal, DCP, Shri Param Bir, Shri Deshmukh (not a party to the PIL petition) and all concerned and other private persons/public servants, who were instrumental for collecting extortion/protection money from bars, restaurants as well as other establishments in Mumbai, by drawing personnel from investigating agencies like the CBI, the NIA, the ED and such other investigating agencies as this Court may deem fit and proper, and for further direction to complete the investigation within such reasonable time as this Court may deem fit and proper, without taking any instructions and/or reporting the investigation to anyone, except this Court and also that this Court be pleased to monitor such investigation to ensure fairness and efficacy in respect thereof. There are also prayers for attachment of all moveable and immovable properties acquired by the accused under the provisions

of the Prevention of Money Laundering Act, 2002 forthwith as well as making a departmental probe of properties acquired by them within and outside India under benami names. The final prayer in this PIL is for a direction on the State of Maharashtra, the 1st respondent, to initiate action against all tainted police personnel involved in the collection racket in the city of Mumbai and committing various other offences under the garb of conducting investigation and that direction be issued to the State to sack them in exercise of powers vested under Article 226 of the Constitution of India.

10. The fourth and the last matter of this batch of writ petitions is Criminal Public Interest Litigation (St.) No. 6166 of 2021, at the instance of Shri Mohan Prabhakar Bhide, a chartered accountant as well as a teacher by profession (hereafter "Shri Bhide"). The interim prayer in this PIL vide clause (b) is for a direction to constitute a Special Committee headed by a retired Judge of the Supreme Court or of this Court to investigate into the allegations of Shri Param Bir against Shri Deshmukh and also to investigate into the instances mentioned in the letter dated March 20, 2021 of Shri Param Bir addressed to the Hon'ble Chief Minister of the State of Maharashtra and based on such report of the Special Committee, the prayer [vide clause (a)] is that this Court be pleased to issue an appropriate writ or order directing the State of Maharashtra, 1st

respondent, to initiate appropriate legal action against Shri Deshmukh and Shri Param Bir, the 3rd and the 4th respondents, respectively, and/or any other person directly and/or indirectly involved in the illegal acts mentioned in the aforesaid letter dated March 20, 2021.

11. In the PIL instituted by Shri Param Bir, an application for intervention being Interim Application (St.) No.6356 of 2021 has been filed. The applicant, Shri Vinod Kumar Dubey, claims to be the President of Maharashtra Karjdar Jamindar Haq Bachav Sangharsh Samiti, Mumbai. According to him, Shri Param Bir has instituted the PIL to exert pressure on the Government of Maharashtra in collusion with the opposition party. Being an IPS officer, Shri Param Bir did not lodge any complaint before any authority and maintained silence and it is only after his transfer from the office of the Police Commissioner, Mumbai Police, that he levelled charges against the State of Maharashtra with an ulterior motive. The applicant seeks to point out that although Shri Param Bir has challenged the order of his transfer before the Supreme Court and instituted this PIL before this Court availing the liberty granted by the Supreme Court, he has not challenged the order of transfer with an ulterior motive. It is also the claim of the applicant that he has personal knowledge of certain facts, derived from the media,

which he wishes to bring on record; hence, the prayer for intervention.

12. We place on record that in the midst of hearing, Shri Kirpekar, learned advocate appearing for Shri Bhide tendered a document which we accepted. The said document is a Government Resolution. It is revealed that upon receipt of the complaint of Shri Param Bir, it took about 10 days for the Government of Maharashtra to react. By a Government Resolution dated March 30, 2021, a single-member High-Level Enquiry Committee of Shri Kailas Utamchand Chandiwal, a retired Judge of this High Court has been appointed. In the course of hearing, we have ascertained that the enquiry is not under the Commissions of Enquiry Act, 1952. The scope of the enquiry, as revealed from a translation of the original version in Marathi, is:

- "A. Whether Shri Parambir Singh has submitted in his letter, any evidence to reveal any irregularities/offence committed by Hon'ble Home Minister or any officer from his office, as alleged by Shri Parambir Singh in his letter dt.20.3.2021 or else?
- B. Whether any commission of offence by the said Minister or the employees working in his office is revealed from the allegations levelled by Shri Parambir Singh in his letter dated 20.03.2021 on the basis of the so-called information received from Shri Sanjay Patil, Assistant Police Commissioner and Shri Sachin Vaze, Assistant Police Inspector, written by him after his transfer from the post of the Commissioner of Police, Greater Mumbai, wherein investigation by the Department of Anti-corruption Bureau or any other Investigation Agency is required?
- C. Any other useful recommendations concerned with the present subject."

13. Having completed the factual narration, we move on to record the arguments that have been advanced.

14. Appearing on behalf of the State of Maharashtra, Shri Kumbhakoni, learned Advocate General, raised preliminary objections to the maintainability of the proceedings, in particular to the maintainability of the PIL of Shri Param Bir. According to him, no PIL at the instance of Shri Param Bir is maintainable having regard to the fact that the prayers made by him are intrinsically connected to secure personal benefits and that he is vitally interested in the outcome of the PIL for vindication of his own self.

15. Shri Kumbhakoni further contended that the letter addressed to the Hon'ble Chief Minister by Shri Param Bir was based on what he had heard from his subordinates and that there is absolutely no reference to any evidence to establish that the Home Minister had made the alleged statements in the presence of Shri Param Bir. Being based on hearsay evidence, the allegations lack substance and as such did not call for immediate action.

16. Continuing his argument, Shri Kumbhakoni submitted that at various pages of the PIL, Shri Param Bir had averred that the same was instituted pursuant to the liberty granted by the Supreme Court. Shri Kumbhakoni was at pains to show us that while the first prayer in the writ petition under Article 32 of the Constitution

before the Supreme Court is substantially the same as in this PIL, the second prayer in the PIL is completely different from the one prayed before the Supreme Court. While the second prayer before the Supreme Court was for quashing of the order of transfer dated March 17, 2021 and liberty was obtained from the Supreme Court to move a petition before this Court with such prayer, Shri Param Bir conveniently changed track and instituted a PIL instead, for which no liberty was asked for and obtained from the Supreme Court. Instead of challenging the order of his transfer dated March 17, 2021 before the appropriate forum, Shri Param Bir had woven a plea before this Court of there being something grossly wrong with the transfers and postings of police officers. Taking strong exception to the statement made in paragraph 15.1 of the PIL that Shri Param Bir had no personal interest behind institution thereof, Shri Kumbhakoni argued that Shri Param Bir approached the Hon'ble Chief Minister a couple of days after he was transferred and has now come to the Court with dirty hands and a dirty heart. While branding Shri Param Bir as a disgruntled litigant who had sought to play the victim card, Shri Kumbhakoni urged that Shri Param Bir had not revealed in the PIL petition his enmity with the Home Minister.

17. It was further contended by Shri Kumbhakoni that in the civil writ petition instituted before the Supreme Court, personal

grievances were laid by Shri Param Bir seeking redress. There was no assertion of any public interest being involved in his pursuit to have orders/directions, as prayed for; however, having failed to persuade the Supreme Court to admit the writ petition, it was Shri Param Bir himself who prayed for liberty to move this Court. Obviously, without anything more, he should have moved a writ petition under Article 226 with the same prayers; instead, this PIL has been instituted on the basis of a false claim that Shri Param Bir has no personal interest in the matter.

18. Shri Kumbhakoni next contended that allegations were levelled and the Supreme Court approached in no time by Shri Param Bir only after he was transferred by the order dated March 17, 2021. It was pointed out from the letter dated March 20, 2021 that though Shri Param Bir claimed to be aware of interference by the Home Minister in the course of investigation undertaken by the Police Force, not a single complaint had been lodged by him prior to his transfer.

19. Relying on the decision of the Supreme Court in **Kushum Lata V/s. Union of India and Ors.**, reported in (2006) 6 SCC 180, and **Kunga Nima Lepcha and Ors. V/s. State of Sikkim and Ors.**, reported in (2010) 4 SCC 513, Shri Kumbhakoni submitted that the PIL not having been instituted *bona fide* by Shri Param Bir, the same does not deserve to be entertained.

20. The decision of the Supreme Court in **Dr. B. Singh V/s. Union of India and Others**, reported in (2004) 3 SCC 363, was relied on in support of the proposition that in regard to disputes relating to 'service', a PIL is not maintainable.

21. To remind that a PIL is a weapon which has to be used with great care and circumspection and that the judiciary has to be extremely careful to see that no ugly private malice, vested interest and publicity lurking lies behind the beautiful veil of public interest, the decision in **Kalyaneshwari V/s. Union of India and Ors.**, reported in (2011) 3 SCC 287, was referred to.

22. The decisions of the Supreme Court in **Sakiri Vasu V/s. State of U.P. and Ors.**, reported in (2008) 2 SCC 409 and **M. Subramaniam V/s. S. Janaki**, reported in (2020) 16 SCC 728, were relied on by Shri Kumbhakoni to drive home the point that even if the police fails to register an FIR upon receipt of information/complaint disclosing a cognizable offence, the remedy of the aggrieved informant/complainant lies before the concerned Magistrate under Section 156(3) of the CrPC or under Section 200 read with Section 190 of the CrPC and that in its exercise of wise discretion, this Court ought not to entertain the CrWP of Dr. Patil.

23. Referring to the decision in **Lalita Kumari V/s. Government of Uttar Pradesh and Ors.**, reported in (2014) 2 SCC 1, on which Dr. Patil has placed reliance in the CrWP, it was

contended by Shri Kumbhakoni that such a decision does not lay down a proposition of law that if the police fails to register an FIR, remedy of the aggrieved informant/complainant is to invoke the writ jurisdiction of the High Court. Reliance in this connection was placed on the decision of the Kerala High Court in **Michael Varghese V/s. Honourable Pinarayi Vijayan, Chief Minister of Kerala and Ors.**, reported in 2020 SCC OnLine Ker 2794.

24. Our attention was also drawn to the decision in **Ghanshyam Upadhyay V/s. State of Uttar Pradesh and Others**, reported in (2020) 16 SCC 811, by Shri Kumbhakoni. Such decision was rendered on a writ petition of Shri Upadhyay. Shri Kumbhakoni submitted that the allegations made by Shri Upadhyay on the basis of newspaper reports were not accepted by the Supreme Court. It was, accordingly, submitted that Shri Upadhyay having founded his plea in the PIL based on newspaper reports and not on the basis of his personal knowledge in regard to the facts and circumstances referred to in the complaint of Shri Param Bir, his claim ought not to be given any credence.

25. In course of submission, Shri Kumbhakoni apprised us that a High-Level Enquiry Committee had been constituted by the Government of Maharashtra with a retired High Court Judge as the Chairperson to look into the allegations Shri Param Bir had levelled against Shri Deshmukh, and that the Government is eager to have

the cloud of suspicion created by wild allegations levelled by Shri Param Bir cleared so as to instill confidence in the Police Force. In view of such a development, Shri Kumbhakoni submitted that nothing survived for decision in the PIL instituted by Shri Bhide.

26. Resting on the above contentions/submissions, Shri Kumbhakoni appealed to the Court to maintain a hands-off approach and to dismiss all the petitions.

27. Appearing in support of Shri Param Bir, Shri Nankani, learned senior advocate contended that given the exceptional situation, the PIL has been instituted essentially for achieving three purposes: (i) investigation by an independent agency into the allegations contained in the letter dated March 20, 2021 addressed to the Hon'ble Chief Minister of Maharashtra to unearth the truth; (ii) to rid the malaise in respect of transfers and postings of officers of the Police Force at the behest of their political masters; and (iii) effective compliance of the directions contained in **Prakash Singh** (supra).

28. While arguing, Shri Nankani submitted an additional affidavit of Shri Param Bir. Such affidavit includes as annexures a top-secret letter dated August 25, 2020 of Ms. Rashmi Shukla, Commissioner (Intelligence), State Intelligence Department, marked to the Director General of Police, State of Maharashtra as well as a letter dated August 26, 2020 of the Director General of Police

immediately reacting to the former and forwarding a report to the Additional Chief Secretary (Home), Maharashtra State. The additional affidavit further contains as annexures secret documents regarding secret movements of those who are allegedly involved in securing cherry postings for certain police officers. The affidavit also contains a Press Release signed by Shri Deshmukh, the last sentence whereof reads as follows:

“I ask the Chief Minister to conduct an unbiased fair inquiry of Shri Singh’s allegations.”

29. In support of the contention that this Court in exercise of the wide powers conferred by Article 226 of the Constitution is empowered to direct a probe/investigation by the CBI, reference was made by Shri Nankani to the celebrated decisions of the Supreme Court in **State of West Bengal and Ors. V/s. Committee for Protection of Democratic Rights and Ors.**, reported in (2010) 3 SCC 571, and **Subrata Chatteraj V/s. Union of India and Ors.**, reported in (2014) 8 SCC 768.

30. While hearing Shri Nankani, we had asked as to why no FIR had been lodged by Shri Param Bir if he wished to have the CBI investigate the allegations levelled against Shri Deshmukh, having regard to the fact that an FIR is considered as the first step for setting the criminal law in motion. We had also asked Shri Nankani as to whether without there being an FIR, investigation by the CBI could at all be directed by the Court.

31. While not disputing that an FIR is the first step for setting the criminal law in motion, Shri Nankani urged that there have been situations where, even without an FIR, the Supreme Court had directed investigation by the CBI. Our attention in this connection was invited by him to the decision in **Vishwanath Chaturvedi (3) V/s. Union of India and Ors.**, reported in (2007) 4 SCC 380. Placing heavy reliance thereon, it was submitted that it would be wrong in law to judge the interest of a party invoking the PIL jurisdiction without looking into the subject matter of his complaint. According to him, law is laid down therein that an inquiry could not be shut out at the threshold merely because an opponent raises an allegation of commission of an offence; if the petitioner shows failure of public duty, the Court ought to entertain the PIL and pass an appropriate order including direction for investigation by the CBI for securing the ends of justice.

32. Having been told that the Court in **Vishwanath Chaturvedi** (supra) did not direct investigation by the CBI but all that it directed was a preliminary inquiry into the assets of all the respondents and further action was directed to be taken in the matter if, upon scrutiny, a case was made out, Shri Nankani submitted that it is not an investigation but an inquiry that Shri Param Bir, at this stage, is asking for.

33. Shri Nankani also invited our attention to an order dated

October 21, 2020 of the Home Department, Government of Maharashtra, which purports to withdraw the consent accorded to the members of the Delhi Special Police Establishment vide Government Order of the Home Department dated February 22, 1989 as also by any other instruments issued by the Government of Maharashtra from time to time, to exercise the powers and jurisdiction under the Delhi Police Establishment Act, 1946 in the State of Maharashtra. According to Shri Nankani, had such order dated October 21, 2020 not been in existence, Shri Param Bir could have approached the CBI for investigation; however, in view of such withdrawal, remedy under Article 226 of the Constitution is the only course open to him.

34. Referring to the decision in **State of Punjab V/s. Central Bureau of Investigation and Ors.**, reported in (2011) 9 SCC 182, Shri Nankani contended that law is well settled to the effect that investigation can be entrusted to the CBI even after a charge-sheet is filed. Ultimately, what ought to weigh in the mind of the Court is the gravity of the allegations levelled, viz. the rampant corruption in the corridors of politics.

35. The decision in **Sanjiv Kumar V/s. State of Haryana and Ors.**, reported in (2005) 5 SCC 517, was next cited by Shri Nankani to contend that a Commission of Enquiry under the Commissions of Enquiry Act, 1952 is constituted for specific

purposes to find out the truth and to learn lessons for the future and devise policies and frame legislation to avoid recurrence of lapses. Such enquiry is not suitable for investigating corruption in Government and bringing the guilty to book. The said task ought to be left to be conducted by an independent agency like the CBI. The Court having held in such decision that appointing a Commission of Enquiry would not suitably serve the object of punishing the guilty, it was contended that the single-member Committee constituted by the State of Maharashtra would not be sufficient to deal with the magnitude of problem brought to the fore by Shri Param Bir.

36. Reference was also made by Shri Nankani to Section 4 of the Maharashtra Police Act, 1951 as well as to Section 17A of the Prevention of Corruption Act, 1988 to contend that Shri Deshmukh being the head of the organization, it would be a difficult, if not impossible, task to have the police machinery to act against such high functionary; therefore, recourse to writ remedy is the only remedy in the circumstances.

37. Drawing our attention to the order of the Supreme Court dated March 24, 2021, Shri Nankani submitted that the Supreme Court expressed in no uncertain terms that the matter raised by Shri Param Bir is quite serious and affects the administration at large. He, therefore, urged that this is a fit and proper case where interference ought not to be declined based on the preliminary

objections raised by Shri Kumbhakoni.

38. Finally, Shri Nankani invited our attention to the secret report of the Commissioner, State Intelligence Department, and the Director General of Police, Maharashtra State to contend that all is not well in the police department and that it is only with the Court's interference that the malaise could be ridden.

39. Based on the above, Shri Nankani prayed for admission of the writ petition and grant of appropriate interim relief.

40. After Shri Nankani concluded, Shri Kumbhakoni submitted on instructions that the report of the Commissioner, State Intelligence Department, had duly been considered at the appropriate level and since nothing of substance was found, the file was closed.

41. Dr. Patil, appearing in person, invited our attention to the written complaint dated March 21, 2021 lodged by her with the Malabar Hill Police Station, Mumbai, the Director, CBI, Mumbai, the Minister of Home Affairs, New Delhi and the Governor, Maharashtra State. According to her, as her complaint makes out a case of commission of cognizable offence and in view of the decision of the Supreme Court in **Lalita Kumari** (supra), it was the mandatory duty of the police to register an FIR upon receipt thereof. Despite disclosure made by her, neither any FIR was registered nor was she informed of the fate of the complaint prompting her to invoke the writ jurisdiction of this Court. Dr. Patil submitted that although Shri

Param Bir had not lodged any complaint for being registered as an FIR, she prayed that direction be issued to the Director, CBI to register her complaint as an FIR, to investigate the cognizable offences and to place periodical reports before us.

42. After Dr. Patil had concluded her submission, we asked Shri Kumbhakoni whether any action had been taken on the complaint of Dr. Patil by the Officer-in-Charge, Malabar Police Station. We record having heard a feeble submission that a preliminary enquiry might have been embarked upon. While we put it to Shri Kumbhakoni that a preliminary enquiry in terms of paragraph 120.6 of **Lalita Kumari** (supra) was required to be completed within 7 (seven) days, Shri Kumbhakoni read out from his cell phone an order of the Supreme Court modifying paragraph 120.6 to the effect that the time limit of 7 (seven) days would generally be 15 (fifteen) days but in any case, the preliminary enquiry must be completed within 6 (six) weeks. Since we received a confirmation from Shri Kumbhakoni that paragraph 120.8 had not been modified, we requested him to arrange for production of the General Diary/Station Diary. On instructions, Shri Kumbhakoni submitted that although there is an entry in respect of Dr. Patil's complaint in the Inward Register, nothing further is reflected in the General Diary/Station Diary.

43. Shri Subhash Jha, learned advocate appeared in support of

the PIL instituted by Shri Upadhyay and contended that Shri Upadhyay has sought to bring to the notice of the Court an unprecedented situation, where the former Commissioner of Police has complained to the Hon'ble Chief Minister of the State of Maharashtra of the incumbent Home Minister having interfered in police administration and directing the police to extort Rs.100 crore from owners of restaurants, bars and other establishments every month. If indeed, the allegations of Shri Param Bir are true, the situation calls for judicial interdiction. According to him, having regard to the magnitude of rampant corruption in the affairs of the executive, the said allegations are required to be thoroughly investigated immediately or else, evidence could be destroyed and key witnesses made to disappear. Thus, in such circumstances, prayers have been made in the PIL for bringing to book the culprits (which could include both Shri Param Bir and Shri Deshmukh) by constituting a Special Investigation Team consisting of officers drawn from the NIA, the CBI and the ED.

44. While replying to a query of the Court as to whether Shri Upadhyay lodged any complaint for being registered an FIR, Shri Jha contended that the gravity of the situation deserves *suo motu* cognizance by the Court. In any event, Shri Jha prayed that there being a complaint lodged by Dr. Patil and since there cannot be two FIRs registered in respect of the same offence, the Court may

proceed to pass an appropriate order as prayed for in the PIL.

45. In course of his submission, Shri Jha referred to the following decisions:

1. **Chandra Deo Singh V/s. V. Prokash Chandra Bose alias Chabi Bose and Anr.**, reported in AIR 1963 SC 1430;
2. **Smt. Nagawwa V/s. V. Veeranna Shivalingappa Konjalgi and Ors.**, reported in AIR 1976 SC 1947;
3. **Manohar Lal V/s. Vinesh Anand and Ors.**, reported in (2001) 5 SCC 407;
4. **Zahira Habibullah H. Sheikh and Anr. V/s. State of Gujarat and Ors.**, reported in (2004) 4 SCC 158;
5. **Mrs. Charu Kishor Mehta V/s. State of Maharashtra and Ors.**, reported in (2010) SCC OnLine Bom 1794;
6. **Narmada Bai V/s. State of Gujarat and Ors.**, reported in (2011) 5 SCC 79;
7. **Noida Entrepreneurs Association V/s. Noida and Ors.**, reported in (2011) 6 SCC 508;
8. **Provident Investment Co. Ltd. V/s. Hemlata Vijaysingh Ved and Ors.**, reported in 2012(3) Mh. L.J. 359;
9. **Kamlakar R. Shenoy V/s. State of Maharashtra and Ors.**, reported in 2019 SCC OnLine Bom 1885;
10. **Satishkumar Nyalchand Shah V/s. State of Gujarat and Ors.**, reported in (2020) 4 SCC 22; and
11. **Dhananjay Kumar V/s. State of Chattisgarh, Through Secretary Home Department and Ors.**, reported in 2020 SCC OnLine Chh 4.

46. Appearing in support of the PIL of Shri Bhide, Shri Kirpekar, learned advocate brought to our notice, as noted above, Government Resolution dated March 30, 2021. It was the contention of Shri Kirpekar that notwithstanding the constitution of the Enquiry Committee, the writ petition ought to be heard upon affidavits being exchanged and after the Committee submits its report.

47. Shri Anil Singh, learned Additional Solicitor General representing the CBI, submitted that no allegations have been levelled against the CBI but a prayer has been made for investigation by the CBI into the complaint of Shri Param Bir, and that if this Court considers it proper to direct the CBI to investigate, such order would be duly implemented.

48. We have heard the contentions/submissions of the parties at considerable length. The stage has now reached for us to give our decision.

49. Much of the debate at the Bar in respect of the omission or failure to furnish information to/lodge a complaint before the police for the same to crystallize into an FIR, which could be investigated, has paled into insignificance in view of the disclosure made by Dr. Patil of she having lodged a complaint disclosing commission of cognizable offence and that such complaint was not given the

attention the same deserved. Had such disclosure been made at the inception of hearing, much of the early exchanges may not have been necessary at all and could be avoided.

50. Be that as it may, we do not wish to be drawn into the larger controversy raised by Shri Kumbhakoni on the aspect of maintainability of the PIL of Shri Param Bir and of Shri Upadhyay. The controversy, in our considered opinion, which is common to these petitions, can be taken care of within a narrow compass by deciding whether, if at all, and to what extent, if any, action on the complaint of Dr. Patil should be directed to be taken.

51. However, prior to dealing with the CrWP of Dr. Patil, we deem it proper to conclude that with the constitution of the High-Level Committee by the Government of Maharashtra vide Government Resolution dated March 30, 2021, the grievance voiced by Shri Bhide in his PIL no longer survives and there is no justifiable reason to keep such PIL pending awaiting the decision of such Committee, as prayed for on his behalf.

52. As we proceed to deal with the objection of Shri Kumbhakoni to the entertainability/maintainability of the CrWP, we recollect the observation of the Supreme Court in its order dated March 24, 2021 that the allegations levelled by Shri Param Bir are serious, affecting the administration at large. We too, with respect, share

the same view and are of the opinion that no decision on the CrWP ought to be rendered oblivious of such an observation.

53. Registration of a case is a *sine qua non* for starting an investigation has been held in **Mohindro V/s. State of Punjab**, reported in (2001) 9 SCC 581. Such registration could be facilitated if information were furnished or a complaint lodged disclosing commission of a cognizable offence. The jurisdictional fact for setting the criminal law in motion is traceable in the CrWP of Dr. Patil, who seems to have provided the necessary and crucial break through by lodging a complaint. She has brought to the notice of this Court the failure of the Senior Police Inspector, Malabar Hill Police Station to follow the legislative mandate as in Section 154 of the CrPC. It is the prayer of Dr. Patil that the criminal law be set in motion by directing registration of an FIR on the basis of her complaint. True it is that Dr. Patil's effort in drafting the CrWP betrays lack of proper care and attention as well as expertise but the issue raised by her is quite serious and we do not think that it would be prudent to refuse interference only on such ground. However, before considering the question of relief that could at all be granted on the CrWP, we would be failing in our duty if we do not consider the decisions cited by Shri Kumbhakoni in support of his preliminary objection to the entertainability thereof.

54. The objection is primarily grounded on existence of an efficacious alternative remedy before the Magistrate under the CrPC, which Dr. Patil has not availed of, and the decisions in **Sakiri Vasu** (supra) and **M. Subramaniam** (supra) have been heavily relied on in this regard.

55. The CrWP of Dr. Patil raises an important issue of lack of enforcement of law by the police. Does this *per se* warrant entertainment of the CrWP? Let us explore the answer.

56. It is well-settled that the jurisdiction under Article 226 of the Constitution of India is very wide and the same is not and cannot be restricted by law; however, various judicial pronouncements have set the limits of exercise of such power or jurisdiction ~ the limits being the self-imposed restrictions conceptualized through judicial wisdom. In the context of the nature of the concern expressed in the CrWP, the restriction to be kept in mind in deciding the question of entertainability is, whether there exists any equally efficacious alternative remedy in a criminal court and even if such a forum of redress is available, should the writ court entertain the writ petition. Where the facts of any case are such that the remedy provided by the law is found to be inadequate or inefficacious to the judicial mind, a writ petition may be entertained and decided. During the more than 70 years of existence of India as a Republic, the Constitutional courts of our country have gained

sufficient experience to separate the grain from the chaff and decide on whether there exists an equally efficacious alternative remedy or any particular writ petition or class of writ petitions should be entertained in the extra-ordinary jurisdiction to uplift the Constitutional jurisprudence. Whenever the court considers it necessary, it may call for reports from the law enforcing agency to ascertain the veracity of the allegations contained in the writ petition/complaint in order that the party against whom the allegations are made may not find an easy escape route on the specious plea of disputed questions of fact being involved or non-exhaustion of an efficacious alternative remedy. Provisions in Section 23 of the Police Act, 1861 and the CrPC cast a duty on the police, *inter alia*, to prevent commission of offence and to bring an offender to justice. Where a person or authority is vested with a duty by specific statutory provisions, to compel such person or authority to perform such duty is certainly within the power and jurisdiction of a writ court. The exercise of such power will be consistent with the Constitutional provision which binds a person, on his elevation as a Judge, by the oath of office administered to him. Where, therefore, there is a duty to act, refusal is the least the law can tolerate.

57. It is true that having regard to the self-imposed restrictions, a High Court exercising writ powers under Article 226 may refuse

to entertain a challenge to an action/inaction of a public official who, being bound to perform certain mandatory duty, acts in disregard thereof, but it cannot be gainsaid that varying fact situations require different approaches, and it would be insensible to either envisage or lay down hard and fast guidelines of universal application. Rule of law, in terms of the Constitution, pervades over the entire field of administration and every organ of the State is regulated by it. In fact, what the Constitution envisages is a rule of law and not rule of goons having political support. An ordered polity within India to promote the integrity of the country and to enliven liberty, equality and fraternity, which Dr. B.R. Ambedkar was heard to say in the Constituent Assembly are not to be treated as separate entities but as a trinity, are the fundamental principles engrained in the Constitution. This trinity can be bypassed or overlooked only if the fabric of which the Constitution is woven be torn to pieces. Regrettably, for indolent State mechanisms and politicians, this can never happen for the courts shall not countenance violation of Constitutional principles by anyone, howsoever high an office he occupies, and hence while acting as the sentinel on the *qui vive* and being always there as a watch guard of the Constitution to repel any attack on it, the courts would ensure that the democratic values enshrined in the Constitution are respected and the ideals upheld.

58. The discretionary power that is vested in the High Court for enforcement of the Fundamental Rights or for any other purpose is meant to be exercised on considerations of justice, and for eradicating injustice. We are reminded of the decision in **Municipal Council, Ratlam, v. Vardichan**, reported in (1980) 4 SCC 162, where Hon'ble V.R. Krishna Iyer, J. speaking for the Bench observed:

“Judicial discretion becomes mandatory duty when facts and circumstances for its exercise are present.”

59. In **Union of India & Others V/s. R. Redappa & Anr.**, reported in (1993) 4 SCC 269, the Supreme Court ruled that although the jurisdiction exercised by the High Court under Article 226 is not as wide as it is in appeal or revision but once the Court is satisfied of injustice or arbitrariness, then the restriction ~ self-imposed or statutory ~ stands removed and no rule or technicality on exercise of power can stand in the way of rendering justice.

60. We feel tempted to quote here Martin Luther King, Jr., who said: *"Injustice anywhere is a threat to justice everywhere"*. This has been accepted by the Supreme Court to be true in **N. Kannadasan V/s. Ajay Khose**, reported in (2009) 7 SCC 1, while proceeding to hold that the people's faith in the judiciary cannot be afforded to be eroded.

61. We are thus of the view that since the law courts exist for the society, technicalities ought not to stand in the way.

62. Pertinently, the chink in the State's armour is truly manifested by the frivolity of the submissions made on its behalf. The proceedings instituted by Shri Param Bir and Shri Upadhyaya have been opposed on the ground that such institution was not preceded by any written complaint; however, once it came to the fore that Dr. Patil had made a complaint, the track of attack was changed and objection to the entertainability of her CrWP was raised based on **Sakiri Vasu** (supra) and **M. Subramaniam** (supra).

63. Prior to considering such decisions, we may briefly make a reference to the decision of the Supreme Court in **CBI v. State of Rajasthan**, reported in (2001) 3 SCC 333. The central question arising for decision there was:

“Has a Magistrate power to direct the Central Bureau of Investigation to conduct investigation into any offence?”

Such question was answered in the negative.

64. Our reference to the above decision has been necessitated because of the nature of relief claimed in the CrWP by Dr. Patil.

65. The decision in **M. Subramaniam** (supra) would reveal that the High Court directed the police to register an FIR on the basis of the complaint, and after investigation, to file the final report. The

appellants before the Supreme Court were not parties to the writ petition and prayed for permission to file the petition for special leave which, upon being granted, notice was issued and stay ordered. Despite such stay, an FIR was registered under Sections 403, 406, 408, 409, 418(1), 420, 424 and 465 of the Indian Penal Code. Paragraph 5 of the decision records that a civil dispute (emphasis supplied) was pending between the parties and that the appellants alleged that complaint was lodged by the respondent to wreak vengeance against them. It was in these circumstances that the Court proceeded to hold that exercise of jurisdiction by the High Court was not proper, particularly in view of the decision in **Sakiri Vasu** (supra). In paragraph 10, it was clarified as follows:

“10. We would clarify that this Court has not expressed any opinion on merits and whether or not the complaint discloses any criminal offence. The only clarification that is required is that a civil dispute should not be given the colour of a criminal offence, and at the same time mere pendency of the civil proceeding is not a good ground and justification to not register and investigate an FIR if a criminal offence has been committed.”

66. The fact situation in **M. Subramaniam** (supra) is completely different from the fact situation before us. Investigation into a complaint of corrupt practices of a Minister was not the issue there. Such decision is, thus, clearly distinguishable.

67. In **Sakiri Vasu** (supra), no doubt the Supreme Court held that an aggrieved person cannot insist that an offence be

investigated by a particular agency and that he can only claim a fair and proper investigation. It has also been held that the remedy provided by the CrPC ought to be pursued in case an FIR is not registered despite information being laid of a cognizable offence having been committed, instead of the writ court examining the matter and issuing direction. However, it has been restated there that:

“28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

...

31. No doubt the Magistrate cannot order investigation by CBI vide *CBI v. State of Rajasthan* but this Court or the High Court has power under Article 136 or Article 226 to order investigation by CBI.”

(emphasis supplied)

68. Since Dr. Patil has prayed for investigation into her complaint by the CBI, she could not have moved the Magistrate under Section 156(3), CrPC in terms of the law laid down in **CBI** (supra) and **Sakiri Vasu** (supra). That apart, **Sakiri Vasu** (supra) also reiterates the settled position in law that if there is an alternative remedy, the High Court should not ordinarily interfere (emphasis supplied).

69. True it is, Dr. Patil cannot choose the investigating agency having regard to the law laid down in **Sakiri Vasu** (supra). However, as observed above, each case has to be dealt with

keeping in mind its peculiar features. It would need a thorough examination, which we propose to do hereafter, as to whether in the given facts and circumstances the prayer of Dr. Patil for a CBI investigation is maintainable or not.

70. Referring to the decision in **Michael Varghese** (supra), Shri Kumbhakoni had argued that **Lalita Kumari** (supra) does not lay down the law that if an FIR is not registered by the police upon receiving information of commission of a cognizable offence, the aggrieved can approach the writ court without availing the remedy under the CrPC. We do not doubt the law laid down in **Michael Varghese** (supra) or the decision in **Fr. Sebastian Vadakkumpadan V/s. Shine Varghese**, reported in (2018) 3 KLT 177, which was relied upon and concurred with by the Division Bench presided over by the learned Chief Justice. The Calcutta High Court in a decision dated July 22, 2015 in W.P.No. 15268(W) of 2015 (**Biplab Kumar Chowdhury V/s. State of West Bengal & Ors.**) held much to the same effect that **Lalita Kumari** (supra) does not go so far as to declare that a writ petition would be the appropriate remedy, should the police fail or omit to register an FIR despite receiving a complaint disclosing commission of cognizable offence.

71. However, such decisions do not aid Shri Kumbhakoni because of the facts and circumstances giving rise to the CrWP. As we have

observed in the first paragraph, it is indeed unheard of and unprecedented that a Minister could be so openly accused of wrongdoings and corrupt practices by none other than a senior police officer attracting wide attention from all and sundry.

72. It is not also unknown that despite the existence of a remedy, the remedy against the particular mischief complained of and the redress sought for, at times, might be of no avail. It would be opposed to Constitutional philosophy if relief is refused only on the ground of existence of an alternative remedy, which may not be equally efficacious. Therefore, if a case presented before a writ court appears to it to be extra-ordinary, which the CrWP indeed is, there is no bar that could operate for entertaining the same. After all, the rule which requires exhaustion of an alternative remedy is a rule of convenience and discretion, rather than a rule of law.

73. We, therefore, see no reason as to why the CrWP may not be entertained. It is altogether a different question whether Dr. Patil is entitled to the relief claimed by her.

74. While considering the CrWP on merits, we find that one other aspect cannot be overlooked. Shri Kumbhakoni has not urged that the complaint of Dr. Patil does not disclose any cognizable offence. If indeed the police were also of the view that Dr. Patil's complaint did not disclose any cognizable offence, a duty was cast on the police in terms of sub-section (2) of Section 157, Cr.P.C. to inform

her that her complaint would not be investigated since it does not disclose a cognizable offence. It is not the claim of Shri Kumbhakoni that Dr. Patil was so notified. On the contrary, he has been fair to say that the complaint of Dr. Patil was not processed. Although an impression was sought to be initially created that a preliminary enquiry was on, it was ultimately conceded by Shri Kumbhakoni that apart from an entry in the Inward Register, no further/other action was taken on such complaint. Thus, there cannot be any two opinions that the police by not registering an FIR on receipt of Dr. Patil's complaint, and then again by not notifying her that the complaint would not be investigated, have not acted in accordance with law.

75. We have perused the complaint of Dr. Patil to consider as to whether it makes out a *prima facie* case of a cognizable offence. Examination of the veracity and/or credibility of the allegations contained therein is not our task, at this stage. Dr. Patil annexed to her complaint a copy of Shri Param Bir's letter to the Hon'ble Chief Minister. Relevant portions thereof have been extracted supra. The information furnished therein discloses commission of cognizable offences by Shri Deshmukh and in our *prima facie* view, should have been acted upon in the manner required by the CrPC, and as judicially interpreted by the Supreme Court in **Lalita Kumari** (supra). Whether or not an FIR ought to be straightaway registered

on the basis thereof or a preliminary inquiry ought to precede registration of an FIR, is a matter which we propose to consider after applying our mind as to whether the present case deserves to be referred to the CBI.

76. It is well settled that the High Court under Article 226 of the Constitution and the Supreme Court under Article 32 of the Constitution can direct the CBI to investigate into any specific case or to conduct an inquiry against a person. It can do so only when there is sufficient material before the Court to come to a *prima facie* conclusion that there is a need for such an inquiry. Certainly, such an inquiry cannot be ordered as a matter of routine or merely because a party makes an allegation. If after considering the materials on record the Court concludes that such materials disclose a *prima facie* case calling for investigation by the CBI, the Court can make the necessary order. If any authority is required, one may profitably refer to the decisions in **Kashmeri Devi V/s. Delhi Administration & Anr.**, reported in AIR 1988 SC 1323, **Common Cause, A Regd. Society V/s. Union of India & Anr.**, (1999) 6 SCC667, **CBI** (supra) and **T.C. Thangaraj V/s. V. Engammal & Others**, reported in (2011) 12 SCC 328.

77. In **NOIDA Entrepreneurs Association V/s. Noida and Ors.**, reported in (2011) 6 SCC 508, the Supreme Court, while directing the CBI to have a further inquiry, observed that the public

trust doctrine is part of the law of the land. It was observed that the power vested by the State in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. It was observed that the public authorities cannot play fast and loose with the powers vested in them. The Court also observed that functioning of a democratic form of Government demands equality and absence of arbitrariness and discrimination.

78. In **State of Bihar and Another V/s. Ranchi Zila Samta Party and Anr.**, reported in AIR 1996 SC 1515, the Supreme Court observed that the power under Article 226 of the Constitution in a public interest litigation, to order an inquiry and investigation to be taken over from the State Police and entrusting it to the CBI, can be exercised when it was to investigate corruption in public administration, misconduct by the bureaucracy, fabrication of official records, and misappropriation of public funds by an independent agency that would command public confidence. In **State of West Bengal** (supra), the Supreme Court observed that the very plenitude of the power under Article 226 of the Constitution requires great caution in its exercise. Such extraordinary power is required to be exercised sparingly, cautiously and in exceptional situations where it becomes

necessary to provide credibility and instill 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. This principle was reiterated in **K.V. Rajendran V/s. CBCID**, reported in (2013) 12 SCC 480. There, the Supreme Court observed that when investigation by the State Police lacks credibility and it is necessary for having a fair, honest and complete investigation and particularly when it is imperative to retain public confidence in the impartial working of the State agencies, in such circumstances, investigation can be vested by the Court with the CBI. It was observed that the Court's Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency is to be exercised only in rare and exceptional cases, viz. where high officials of the State authorities are involved, or the accusation itself is against the top officials of the investigating agency, thereby allowing them to influence the investigation and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is *prima facie* found to be tainted/biased. These principles have again been recognized and reiterated in a recent decision of the Supreme Court in **Arnab Ranjan Goswami V/s. Union of India and Ors.**, reported in

(2020) 14 SCC 12. Thus, when high officials are likely to be involved and a question of public confidence in the impartial working of the State agencies arises, the writ court in exercise of its jurisdiction under Article 226 of the Constitution is certainly not powerless to order such inquiry and investigation by the CBI.

79. In such context, there is yet another facet, viz. whether the accused would have any say in selecting the method of inquiry or the investigating agency. In **Romila Thapar V/s. Union of India**, reported in (2018) 10 SCC 753, the Supreme Court taking a review of the earlier precedents reiterated the principle that the accused does not have a say in the matter of appointment of the investigating agency while referring to the decisions in **Narmada Bai** (supra), **Sanjiv Rajendra Bhat V/s. Union of India**, reported in (2016) 1 SCC 1 and **Divine Retreat Centre V/s. State of Kerala**, reported in (2008) 3 SCC 542.

80. In the present case, it is clear that Dr. Patil had submitted her complaint to the Senior Police Inspector of the Malabar Hill Police Station on March 21, 2021; however, except for making an entry in the Inward Register, no action whatsoever, as the law would mandate, was initiated. We have already noted above that the allegations as made by Shri Param Bir in the letter dated March 20, 2021, which triggered Dr. Patil to lodge complaint with the Malabar Hill Police Station, Mumbai, is of a serious nature and against the

highest functionary of the Government of Maharashtra, when it comes to the functioning of the police department. *Prima facie*, the issues are such that the very faith of citizens in the functioning of the police department is at stake. If there is any amount of truth in such allegations, certainly it has a direct effect on the citizens' confidence in the police machinery in the State. Such allegations, therefore, cannot remain unattended and are required to be looked into in the manner known to law when, *prima facie*, they indicate commission of a cognizable offence. It is, hence, certainly an issue of credibility of the State machinery, which would stare at the face when confronted with the expectations of the law and when such complaints are received against high ranking public officials. This Court cannot be a mere spectator in these circumstances. There is certainly a legitimate public expectation of a free, fair, honest and impartial inquiry and investigation into such allegations which have surfaced in the public domain. The necessity to have a probe into such allegations by an independent agency, would also certainly be a requirement of the rule of law. To instill public confidence and safeguard the Fundamental Rights of the citizens, it is necessary that an inquiry and investigation is conducted by an independent agency and for such reasons, we consider it to be in the paramount public interest that an independent probe in the present circumstances would meet the ends of justice.

81. In **P. Sirajuddin V/s. State of Madras**, reported in (1970) 1 SCC 595, the Supreme Court had the occasion to caution as follows:

"17. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general... The means adopted no less than the end to be achieved must be impeccable. ***"

(emphasis supplied)

82. We quite agree with Shri Nankani and Shri Jha that an unprecedented case has come before the Court. We also agree with Dr. Patil that directions are required for facilitating an unbiased, impartial, fair but effective probe so that the truth is unearthed and the devil, if any, shamed in accordance with procedure established by law. Here, Shri Deshmukh is the Home Minister. The police department is under his control and direction. There can be no fair, impartial, unbiased and untainted probe, if the same were entrusted to the State Police Force. As of necessity, the probe has to be entrusted to an independent agency like the CBI. While so entrusting, the note of caution in **P. Sirajuddin** (supra) has to be borne in mind. Although we do not see an immediate reason to direct registration of an FIR by the CBI based on Dr. Patil's

complaint, interest of justice, in our opinion, would be sufficiently served if the Director, CBI is directed to initiate a preliminary inquiry into the complaint of Dr. Patil which has the letter of Shri Param Bir addressed to the Hon'ble Chief Minister, as an annexure. This would be in perfect accord with paragraph 120.6 of **Lalita Kumari** (supra). Also, the press release of Shri Deshmukh suggests that he is not averse to facing any inquiry. It is, therefore, ordered accordingly.

83. Such preliminary inquiry shall be conducted in accordance with law and concluded as early as possible but preferably within 15 (fifteen) days from receipt of a copy of this order. We hope and trust that the officer(s) appointed for the purpose of conducting preliminary inquiry shall receive due cooperation from individuals/agencies who are approached therefor. Once the preliminary inquiry is complete, the Director, CBI shall be at liberty to decide on the future course of action, also in accordance with law. Should the Director, CBI see no reason to proceed further, Dr. Patil shall be duly informed of the same.

84. We make it clear that the observations made in this order are for the purpose of addressing the rival claims as raised in these proceedings and are without prejudice to the rights and contentions of the parties who might figure in the position of an accused in future. It is needless to observe that the preliminary inquiry and

further action, if at all required, would proceed uninfluenced by the fact that this Court has ordered such an action.

85. We are conscious that order was reserved by us on March 31, 2021 on the question of admission of the PILs and the CrWP as well as the preliminary objections to the maintainability thereof. In view of the order that we have now passed, no other real concern survives for being addressed by us and, therefore, no useful purpose would be served in keeping this batch of proceedings pending. They shall stand disposed of, together with the application for intervention, without order for costs.

86. Since we have not invited any of the respondents to file reply affidavits, allegations levelled in the PILs/CrWP not dealt with hereinbefore shall not be deemed to have been admitted by such respondents.

87. We also make it clear that Shri Param Bir shall be at liberty to raise grievances, if any, in regard to transfers and postings of police officers and for enforcement of the directions in **Prakash Singh** (supra) before the appropriate forum in accordance with law, if so advised.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)