$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th September,2024
Pronounced on: 28th November, 2024

\+ **CRL.REF. 3/2021**

COURT ON ITS OWN MOTION .....Petitioner
Through: Mr. Vikas Padora (Amicus Curiae) with Mr. Dipanshu Chugh, Adv.

versus

STATE .....Respondent
Through: Mr. Anupam Sharma, SPP-CBI with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra, Mr. Ripudaman Sharma, Mr. Vashisht Rao & Mr. Syamantak Modgill, Advs.

AND

\+ **W.P.(CRL) 388/2022 & CRL.M.A. 3314/2022**

CENTRAL BUREAU OF INVESTIGATION .....Petitioner
Through: Mr. Vikas Padora (Amicus Curiae) with Mr. Dipanshu Chugh, Adv.

versus

STATE .....Respondent
Through: Mr. Anupam Sharma, SPP-CBI with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra, Mr. Ripudaman Sharma, Mr. Vashisht Rao & Mr. Syamantak Modgill, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present connected cases arise from the same order of dismissal and/or letter of reference dated 4th October, 2021. One is a criminal reference made by the ld. Special Judge, C.B.I Court-20 (Prevention of Corruption Act), Rouse Avenue District Courts, New Delhi and another is a criminal writ petition preferred by the Central Bureau of Investigation ('*CBI*') against the said order of dismissal.

I. BACKGROUND

3. The said cases arise from a series of allegations regarding corruption that occurred during the execution of certain purchase orders placed for the supply of spare parts by various Public Sector Undertakings (hereinafter '*PSUs*') including the Hindustan Aeronautics Ltd. (hereinafter '*HAL*'), Oil & Natural Gas Corporation (hereinafter '*ONGC*'), Gas Authority of India (hereinafter '*GAIL*') to M/s Rolls Royce Plc. (London). The allegations made in the said PE related to certain purchase orders placed to Rolls Royce, London. It is claimed that a source informer of CBI had informed that during the period of 2007-2011, **undisclosed commissions** amounting to approximately 10-11.3% of the contract value were paid by Rolls Royce Plc. (hereinafter '*Rolls Royce*') to M/s Aashmore Pvt. Ltd. (Singapore) and M/s Infinity for appointing the latter as a commercial advisor to Rolls Royce in contracts with different PSUs. The informer alleged that these amounts paid as commission to M/s Aashmore Pvt. Ltd. were kickbacks to unknown officials of HAL, ONGC and GAIL involved in the procurement process who illegally aided Rolls Royce in the process of procuring the contract. Based on the source information, the CBI had registered Preliminary Enquiry-PE AC-1 2014 A0005 on 21st March, 2014.

4. Upon initiation of enquiry, as per the PE it was revealed that M/s Rolls Royce Ltd. was prohibited from engaging the services of any intermediary/third party in the supply of materials/spare parts as per the conditions enumerated in the purchase orders and the integrity pact. Thus, the appointment of a commercial advisor was stated to be violative of the terms & conditions of the purchase orders and integrity pact in respect of the supply transactions. Further, it was revealed that such appointments and the payments of commission made with respect to purchase orders of GAIL and ONGC were wilfully concealed by Rolls Royce at the time of the subsequent bid/tender with HAL. Lastly the enquiry officer is stated to have made several requests to M/s Aashmore Pvt. Ltd. and its promoters: Mr. Ashok Patni and Mr. Wolfram Krockow, for providing details of the accounts in which commissions were received from Rolls Royce, however, the said company and individuals did not extend cooperation to the enquiry. Based on the above-mentioned events and information, the enquiry officer *prima facie* concluded that M/s Aashmore Pvt. Ltd was hiding the corrupt public servants of HAL, ONGC and GAIL involved in the process of procurement and illegal gratification. Thus, the enquiry officer-Additional SP, CBI filed a complaint, based on which the CBI then registered the FIR/RC. The said FIR bearing no. FIR/RC No. AC-1 2019 A0004 is the subject matter of these cases.

5. After the registration of the FIR, the CBI moved an application before the Special Judge, CBI claiming that the payment of commission to M/s Aashmore Pvt. Ltd. by Rolls Royce was illegal and the same was made into three bank accounts in Singapore *vis-a-vis* HSBC Pvt. Bank, HSBC and United Overseas Bank. The case of the CBI was that, India and Singapore are members of the International Criminal Police Organization

('*INTERPOL*') which enables mutual assistance in criminal matters between members countries. The CBI wanted to collect certain documents from Singapore and also wanted to investigate certain persons.

6. The details of the documents which the CBI wanted to collect from Singapore were the following :

A. *Bank Documents in respect of Account No. (i) 8205-072850-0001 with HSBC Pvt Bank at 21, Collyer Quay, HSBC Building, Singapore of M/s Aashmore Pvt Ltd.*

B. *Bank Documents in respect of Account No. 260-655741-178 with Hong Kong & Shanghai Banking Corporation of M/s Aashmore Pvt. Ltd.*

C. *Bank Documents in respect of Account No. 101-348-103-8 with United Overseas Bank Ltd., 80, Raffles Place, UOB Plaza, Singapore of M/s Aashmore Pvt. Ltd.*

7. In addition, the CBI wanted to investigate the bank officials of the said banks. The CBI moved an application for issuance of a letter rogatory under Section 166A of Code of Criminal Procedure (Hereinafter '*Cr.P.C*'). The prayer in the said application is as under:

> *"It is, therefore, prayed that this Hon'ble Court may kindly be pleased to issue the letter rogatory Letter of Request u/s 166(A) of Code of Criminal Procedure. 1973 in favour of the Competent Authority (Govt. of Republic of Singapore) for obtaining original documents as given in* ***Annexure - 6*** *and recording statements of witnesses/persons as me mentioned in* ***Annexure - 7*** *for the purpose of completing investigations in the aforesaid criminal case."*

8. Upon hearing this application, the Special Judge, CBI was of the

opinion that the FIR does not show commission of any cognizable offense particularly under the Prevention of Corruption Act, 1988 (Hereinafter '*PC Act*'). In his opinion, the source informer had only expressed doubts about the payment of any kickbacks. Therefore, non-cooperation by M/s Aashmore Pvt. Ltd. cannot be presumed to constitute hiding of corrupt public officials. The Special Court then came to the conclusion that there was no justifiable reason for registration of the present FIR, and since the Special Court could not quash the FIR the following questions were referred as questions of law for decision by this Court. The observations of the Special Court are set out below:

> *"26. Under Section 154 CrPC Officer in charge of police station is under obligation to record (in the book kept by such officer in such form as the State Government may prescribe) substance of information relating to commission of cognizable offense. The word to be emphasized here is "commission" of cognizable offense which word means information oral or in writing must relate to "commission" of offense (cognizable). Requirement of Section 154 CrPC is definite information or confirm information about the commission of offense from the point of view of informant at least because when investigation is undertaken investigating agency has also to collect evidence confirming commission of offense and other evidences are directed towards connecting the suspect with the crime as perpetrator of crime. If there is no evidence of commission of crime there is no way to hold anyone guilty of that crime.*
>
> *27. Hence, neither the source informer gave definite information about the "commission" of any offense not to speak of offenses under Prevention of Act, 1988 nor could Preliminary Enquiry confirm about the "commission" of offense under the Prevention of*

Corruption Act, 1988 or under the penal law and therefore, there appears no justifiable reason for the registration of the present FIR/RC at least for an offense under the P. C. Act, therefore, certain legal questions arise in the present circumstance which need adjudication by Hon'ble High Court in reference because if no call is taken on questioned raised herein vis-a-vis the present FIR/RC, then the continued investigation may result in wastage not only of services of already limited manpower of the investigating agency but also of public money. This Court is making separate reference to the Hon'ble High Court for answering following legal queries:-

a. *Whether Officer in charge of a Police Station is at liberty to register FIR and enter investigation even if information does not disclose commission/happening of offense (cognizable)?*

b. *Whether the Metropolitan Magistrate or the Special Court, as the case may be, cannot bring to notice of Hon'ble High Court for appropriate order of quashing regarding the FIR registered on the basis of information not disclosing commission (happening) of offense (cognizable)? In order word whether Magistrate or the Special Court has to remain silent spectator till filling of report under Section 173(2) CrPC and keep on assisting the Investigating Agency by issuance of search warrant, letter rogatory etc., as and when asked for by the investigating agency during investigation?*

c. *Does not power of supervision over investigation, of the Magistrate or the Special Court include questioning the registration of FIR on facts not disclosing commission of offense (cognizable)? If yes, what course of action should Magistrate or the Special Court follow if it holds the view that the facts in the FIR does not disclose happening/commission of any offense?*

d. *In the event of doubt (reflected from the informant's points of view) about the commission of offense (cognizable), will it not be appropriate for CBI to seek permission of Hon'ble High Court or Hon'ble Supreme Court to register FIR/RC for investigation of doubtful commission of offense (cognizable)?*

e. *Whether the power of reference under Section 395(2) can be exercised by the Court of Session or Metropolitan Magistrate only during the hearing of the case i.e., only after chargesheet has been filed and accused summoned/arrested and not during the investigation, if certain question of law arises?"*

9. After making the reference, *vide* the same order dated 4th October, 2021, the Special Court dismissed the petition seeking issuance of letter rogatory:

> *"28. In view of the above discussion and reference being made to Hon'bIe High Court, prayer made in the application for issuance of letter rogatory is hereby declined with liberty to CBl to move the application afresh if Hon'ble High Court decides the reference in favour of continuation of investigation or does not find any irregularity/illegality in the registration of the present FIR/RC and in continued investigation."*

10. The above order has been challenged by the CBI in ***W.P. (Crl.) 388/2022***. As the subject matter of both the cases is the same, the said cases were tagged together.

11. This Court is, therefore, concerned with the questions raised in the reference by the Special Court as also the petition filed by the CBI. In the reference matter *i.e.*, ***Crl. Ref. 3/2021,*** this Court had appointed Mr. Vikas

Padora as the *Amicus Curiae*. Submissions have been heard on behalf of the CBI and the *Amicus*.

II. MAINTAINABILTY OF REFERENCE

12. Question (e), among the referred questions, relates to the maintainability of the reference itself. Therefore, the first and foremost aspect to be considered is whether the present reference itself would be maintainable? Question (e) reads as under:-

> ***"e. Whether the power of reference under Section 395(2) can be exercised by the Court of Session or Metropolitan Magistrate only during the hearing of the case i.e., only after chargesheet has been filed and accused summoned/arrested and not during the investigation, if certain question of law arises?"***

13. The question raised above is considered in two parts:

A. Whether a reference can be made at the during investigation/ before filing of the chargesheet?

14. The above said question essentially relates to the period within which a reference can be made under Section 395(2) of the CrPC. The said section reads as under:

> *"395. Reference to High Court.—(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is Subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.*

Explanation.—In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in <u>any case pending before it</u> or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon."

15. The reading of the section shows that a reference can be made if the case is pending before the concerned Sessions Judge or a Magistrate. The term '***case***' is not defined in Cr.P.C. The stand of the CBI is that the scope of the phrase '***case pending***' shall be limited the period of trial period *i.e.*, period between which the cognizance is taken and the judgement is delivered. To this extent, CBI had relied on certain cases which interpret similar/associated phrases such as '***Proceedings before a Criminal Court***' in Section 10(3) of the Passport Act, 1967 and '***Institution of a case***' with respect an amendment to the schedule I of Cr.P.C. On the said basis, the learned Counsel on behalf of CBI submitted that unless and until there is a case pending (trial) before the Court of Session or a Metropolitan Magistrate, a reference cannot be made to the High Court and that this reference, arising from an application before the trial, is not maintainable as the case currently is not pending before the Special Court.

16. On the contrary, the learned *Amicus* has submitted various decisions where the reference has been entertained at stages before the commencement and after the culmination of the Trial. In ***Re an Accused v. State of Kerala***[1]**,** where a reference to the High Court was made from an appeal before the Sessions Judge, Kozhikode; the division bench of Kerala High Court interpreting the phrase '*case pending before it*' held that there is nothing in Section 395 of Cr.P.C restricting the power to refer only to the original jurisdiction. It held that a reference can be made by a Sessions Court even from its appellate, revisional jurisdiction. The observations in the said decision are set out below:

> ***"7.*** *In Sulaiman a Sessions Judge made a reference to the Lower Burma Chief Court in the view that the construction of S. 57, Excise Act which was involved in the appeal pending before him was an important question of law on which there should be an authoritative ruling. In refusing the reference the Chief Court held:*
>
> > *"When an Appellate Court does not dismiss an appeal summarily, it is bound by the provisions of S. 423 of the Code of Criminal Procedure which define its powers—these powers do not authorize the Court to refer to the High Court for decision a question of law arising in the appeal. Nor does S. 438 confer any such authority; that section permits the Sessions Judge to report for orders the result of his examination of any proceeding before an inferior Criminal Court, but does not apply to appellate proceedings pending before the Sessions Judge himself. It is clearly the intention of the law*

[1] MANU/KE/0730/2007

that all questions arising in a criminal appeal should be determined by the Appellate Court itself.

Since the question referred by the Sessions Judge is not properly before the Court no decision can be given on it. The learned Judge will have to decide it according to his own judgment. If either party should be aggrieved at the Sessions Court's orders in appeal, it will be open to that party to move this Court in revision if he thinks fit."

8. In substance the reasoning of the court was that the Sessions Judge had no power to refer the question of law involved in the appeal pending before him as no such power has been conferred on him by the provisions which deal with appeals and that he was bound to dispose of the appeal of course with the question of law. With respect we find it unable to agree. In the context the power to make a reference is governed by S. 395 and in this case by sub-section (2) and the power must have its full play unless it is restricted by some other provision. Sub-section (2) is general in the sense that it is not limited to cases where the Sessions Court is acting in its original capacity excluding its appellate or revisional capacities. The court is bound to dispose of every work, original, appellate or revisional according to the prescribed procedure and subject to the prescribed powers. The reasoning in Sulaiman's case, if valid, must apply to the original or revisional capacities also; there is nothing compelling in it to restrict the decision to appeals alone. It is the Sessions Court that is given the power to make the reference; it does not cease to be the Court of Session when it hears the appeal; indeed the appropriate appellate court for the cases specified in the "Chapter on Appeals"—Chapter XXIX—is the Court of Session. We could find no special reason to think that the Sessions Court in its appellate capacity is outside the provisions of sub-section (2); it is still a

> ***Court of Session and therefore competent to make a reference. The expression "hearing" and "case" in the sub-section are also general in scope; far from supporting the opinion in Suiaiman they go against it. A Court of Session is therefore competent, in its original or appellate jurisdiction, to make a reference under sub-section (2) provided of course the prescribed conditions exist."***

17. Similarly, in ***Mahesh Chand v. State of Rajasthan***[2], and in ***Ajaz Ahmad Dobi & Ors v. State***[3], both of which are discussed in detail in the next section, the High Court had entertained references made by the learned Trial Court during investigation. Therefore, the High Courts in the above-mentioned cases have dealt with references under Section 395 made either before the charge sheet was filed or after the judgment was pronounced *i.e.*, beyond the period of trial.

18. Further, the inclusion of a broad term like 'Case' in place of a specific term like 'Trial' appears to reflect the legislative intent to empower Judges to refer questions of law at any stage of the criminal process, in order to facilitate the delivery of justice in a comprehensive manner. Thus, it is clear that a reference can be made even before the charge sheet is filed or even during an investigation. Accordingly, the Question (e) is answered.

19. However, it is important to note that the Special Court has adopted a unique procedure in this case while considering an application for issuance of letter rogatory under Section 166A. The Court **has dismissed the application for issuance of letter rogatory** on the grounds of lack of merits in the FIR **while simultaneously, referring five questions for the decision by the High**

[2] MANU/RH/0019/1986
[3] MANU/JK/0246/2020

Court. Therefore, the next aspect to be considered is whether the present reference itself would be maintainable in the absence of the root case (*i.e.*, the application seeking letter rogatory u/s under Section 166A from which the reference was made.

B. Is a reference maintainable if the case from which the reference arises is dismissed ?

20. In ***Mahesh Chand v. State of Rajasthan***[4], a reference under Section 395 of Cr.P.C was made from a set of bail applications of the accused **at the stage of investigation**. But at the time of reference, the bail application from which the question was referred for adjudication had already been dismissed. In such a circumstance, the Full Bench of the Rajasthan High Court observed that in the absence of any case to be resolved upon the answering of the referred questions, the said reference is merely academic in nature and the Court declined to decide the questions. The observations in the said decision are set out below:

> *"8. Before going into the questions raised by Kasliwal J. we may straightway dispose of the other three references, for we find that they do not present any difficulty against such disposal. Let us first take up Criminal Reference No. 4 of 1983 which was registered as such in this Court on an order of reference, dated, Nov. 30, 1983, made by the learned Sessions Judge Jodhpur. As already stated, before making the said reference, the learned Sessions Judge had already dismissed the application under Section 439, Cr. P.C. on Nov. 16, 1983. In other words, the case (i.e. the bail application), involving the question or questions of law raised by the learned Sessions Judge in his order of reference for decision by the High Court, was no longer*

[4] MANU/RH/0019/1986

pending before him on the date when he made this reference. A plain reading of Section 395, Cr. P.C. would at once show that no reference to the High Court is maintainable under that section unless the question referred is necessary to be decided for the disposal of the pending case. Sub-section (2) of Section 395, Cr. P.C., which is material for our present purpose, reads :

> *A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of Sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.*

It will be seen that in order that a Sessions Judge may make a valid reference under Section 395(2), Cr. P.C. it must be shown that the question of law referred for decision of the High Court arises in a case pending before him. We have already mentioned that the bail application, which is said to have thrown up the question of law referred for the decision of the High Court, had already been disposed of by the learned Sessions Judge, Jodhpur on Nov. 16, 1983. ***Since the case involving the question referred was no longer pending before the learned Sessions Judge on Nov. 30, 1983, he had no power or jurisdiction to make the reference. On that ground mainly, and also on the ancillary ground that a Court should not engage itself in deciding moot controversies and academic questions, we decline to decide the questions raised in Criminal Reference No. 4 of 1983.*** *The application for bail made by Pramod Kumar which is still pending before the single Bench and which has been kept so pending on account of the reference made by the learned Sessions Judge, Jodhpur relatable to the bail application of the said Pramod Kumar made earlier before the Sessions Judge, may be sent back to the single Bench for disposal according to law."*

21. In ***Ajaz Ahmad Dobi & Ors v. State***[5], a bail application of the accused was made to the learned Chief Judicial Magistrate (‘*CJM’*) **at the stage of investigation**. The learned CJM, being unsatisfied with the manner of investigation, upon dismissing the bail application on merits, made a reference under Section 395(2) of Cr.P.C from the said application requesting the High Court to issue a direction to constitute a Special Investigation Team to investigate the offense on the ground of general public interests. The High Court of Jammu and Kashmir upon observing that the reference was made (a) without formulating a ‘question of law’ and (b) upon dismissing the bail application from which the reference was made, held that **a reference can be made only for some compelling reason in an extraordinary circumstance, and not for any fanciful or spent up purpose**. Reference was declined by the Court with the following observations:

> *“9. The Courts, including the Magisterial Courts, have been constituted to do justice in accordance with law. A Judicial Magistrate, while dealing with an application for bail or with proceedings relating to investigation of a case, has to strictly proceed in accordance with the provisions contained in the Code of Criminal Procedure. He cannot go beyond the four corners of law while passing orders in such proceedings.* ***The crime under investigation regarding which the ld. Magistrate has decided the bail application of the accused may, in his opinion, have ramifications of general public importance but the same does not give a licence to the Magistrate to beseech the High Court to issue directions. It seems that the ld. Magistrate sensing that his direction regarding constitution of a Special Investigating Team is not going to be implemented and***

[5] MANU/JK/0246/2020

> ***is likely to be challenged before a higher forum, made the instant reference to circumvent the aforesaid course of action by the State. The ld. Magistrate by passing the order of reference, which does not state any question of law, perhaps wants this Court to treat it as a public interest petition. I am afraid the course adopted by the ld. Magistrate is unknown to law and without any legal sanctity. There was absolutely no occasion for the learned Magistrate to make any reference to the High Court in the facts and circumstances of the case.***
>
> ***10. It is needless to state that a reference should be made by a subordinate court under sub-section (2) or sub-section (1) of Section 395 of Cr.P.C. only for some compelling reason in an extraordinary circumstance, and not for any fanciful or spent up purpose****. In the instant case, the purpose for which the reference has been made by the ld. Magistrate is wholly irrelevant and no question for reference to this Court at all has been stated.* ***The reference is, therefore, wholly unwarranted and deserves to be declined.****"*

22. In ***Brajesh Bahadur Singh v. State of Jharkhand***[6], the High Court of Jharkhand clearly observed that unless a case is pending before the subordinate court, a reference would not lie. The observations of the Court are set out below:

> *"3. From the facts appearing the reference as stated by the learned Sub-Divisional Judicial Magistrate, Gumla,* ***it appears that nowhere it has been stated that any case involving the question referred by him is pending before him.***
> *4. Section 395 of the Code of Criminal Procedure clearly envisages that to make a valid reference under the aforesaid section it must be shown that the question*

[6] MANU/JH/0850/2004

> *of law referred for the decision of the High Court arises* ***in a case pending before the Court****, which has referred it.*
>
> ***If no case is pending before a Subordinate Court, then it has no power or jurisdiction to make reference under Section 395, Cr PC.***
>
> *5. The High Court will not under Section 395, Cr PC answer any hypothetical question of law. Any Subordinate Court cannot make reference to the High Court under Section 395 of the Cr PC unless the questions referred to arise in a particular case pending before it."*

23. Therefore, from the above said decisions it can be observed that for making a valid reference under Section 395(2) of Cr.P.C:

i. The case (any application, petition, trial, appeal or revision *etc*,.) must be pending before the court.

ii. The Court of Session or a Metropolitan Magistrate ought to formulate the question of law arising from the hearing of the said case.

iii. The reference has to be made only for some compelling reason in an extraordinary circumstance, and not for any fanciful or spent up purpose

24. In the present case, the Special Judge under the PC Act, 1988 functioning as the CBI Court has not only made a reference upon the dismissal of the letter rogatory application but has also sought clarification on well settled legal principles, which appears to be unwarranted. In fact, the CBI Court has made various observations on the merits of the matter when the case is at a nascent stage of investigation. The opinion of the said Special Judge is that the FIR, in itself, lacks any basis. The Special Judge goes to the extent of holding that this FIR in itself deserves to be quashed when none of the persons

who are under investigation have sought quashing of FIR.

25. As elaborated in the following sections, it is settled law that the Court's duty is to refrain from interfering in the investigative process and to confine its role to providing judicial assistance in course of investigation. The Apex Court in ***Union of India (UOI) vs. Prakash P. Hinduja and Ors***[7] observed as under

> *"19.* ***Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency."***

26. Thus, in this context, this Court is of the opinion that the impugned order dated 4th October, 2021 dismissing the application of the CBI and raising questions for reference is not maintainable and wholly unsustainable. The order deserves to be set aside and the application of the CBI deserves to be restored to its original number for consideration. Although, this Court is of the opinion that none of the questions raised, in fact, arise for consideration and the legal position thereof is quite well settled, in order to avoid any further delay, the same are being answered briefly.

III. QUESTION-(a)

Whether the officer in charge of a Police Station is at liberty to register an FIR and enter an investigation even if the information does not disclose the commission/happening of offense (cognizable)?

[7] MANU/SC/0446/2003

27. The framing of this question itself shows a lack of basic understanding by the ld. Special Judge. The answer to the question is clearly in the negative. It is the settled position in law that if the information received does not disclose a cognizable offense but, in fact, a non-cognizable offense, the police officer can investigate the same only under the order of a Magistrate under Section 155(2) of Cr.P.C and for the said purpose, the police officer has to approach the concerned Magistrate. This is clear from a reading of Section 155 of Cr.P.C and the decision of the Supreme Court in ***State of Haryana v. Bhajan Lal***[8]. The said paragraph reads as under:

> *"34.* ***In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offense on his own as in the case of cognizable offense, he can investigate a non-cognizable offense under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms Under Section 155(2) of the Code but subject to Section 155(3) of the Code****. Further, under the newly introduced Sub-section (4) to Section 155, where a case relates to two offenses to which atleast one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offenses are non-cognizable and, therefore, under such circumstances the police officers can investigate such offenses with the same powers as he has while investigating a cognizable offense."*

28. The procedure prescribed under Section 155 of Cr.P.C is mandatory in nature even for executive agencies such as CBI. In ***Adesh Kumar Gupta v. CBI***[9], where the Petitioner had sought quashing of the FIR registered by CBI, Anti-Corruption Bureau under Section 168 IPC (a non-cognizable offense) on

[8] MANU/SC/0115/1992
[9] MANU/DE/2516/2015

the grounds that there was non-compliance of mandatory provision of Section 155(1) of the Cr.P.C, the learned Single Bench of Delhi High Court held that the procedure under Section 155 of Cr.P.C was mandatory even in cases registered by the CBI. The relevant observations are as under

> *"19. In this context I am reminded of the luminous observations of Hon'ble Supreme Court in Viteralli v. Seton, 359 U.S. 535: 3L.Ed. 1012 that were echoed by the Hon'ble Supreme Court in the landmark decision reported as R.D. Shetty vs. International Airport Authority of India and Ors., MANU/SC/0048/1979 : AIR 1979 SC 1628 wherein it was observed as follows:-*
>
> > *"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."*
>
> *20**. It requires no reiteration that observance of due process of law is fundamental in the effective functioning of the executive machinery.** The Supreme Court, since 1950, in the celebrated decision in A.K. Gopalan vs. State of Madras, reported as MANU/SC/0012/1950 : AIR 1950 SC 27 has emphasized and re-emphasized the importance of following due process**. The CBI is a premier investigating agency professing high standards of professional integrity and must be held strictly to those standards. Resultantly, the CBI ought to have followed the procedure mandated by law in the recording of the relevant information and further ought to have referred the***

> ***"informant" to the Magistrate. Ex facie this mandatory statutory requirement was violated and not complied with in the present case.***
>
> *21. In view of the aforesaid discussion, the question "whether the impugned order was passed in violation of the procedure prescribed under section 155 of the Code", is answered in the affirmative. The concerned Magistrate has clearly erred in allowing the application filed on behalf of the CBI."*

These cases clearly inform that a Police Officer in charge of a Police Station and CBI, is not at liberty to register FIR and start investigation if the information does not disclose commission of offense a cognizable offense.

29. However, it is also the settled position in law that upon information being given to a Police Officer, he/she only needs to examine whether a cognizable offense has been committed to register an FIR and start an investigation. **Two important aspects that are worth noting are that (a) the threshold that the information received needs to satisfy under Section 157 of IPC is low (standard of reasonable suspicion); and (b) it is completely at the subjective discretion of the Police Officer. In other words, the information has to satisfy only the Police Officer as to the existence of a reasonable basis to suspect the commission of a cognizable offense.** Therefore, at the stage of registration of an FIR, the police need not assess the issue on merits. The Supreme Court in ***Superintendent of Police, CBI & Ors. v. Tapan Kumar Singh*** has observed as follows

> *"22.* ***It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offense reported.*** *An informant may lodge a report about the commission of an offense though he may not know the name of the victim or his*

assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offense committed. ***What is of significance is that the information given must disclose the commission of a cognizable offense and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offense.*** *At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offense, and not that he must be convinced or satisfied that a cognizable offense has been committed.* ***If he has reasons to suspect, on the basis of information received, that a cognizable offense may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself abut the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offense only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offense, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation."***

30. In ***Lalita Kumari v. State of Uttar Pradesh***[10], the Constitution Bench while interpretating Section 154 (1) of Cr.P.C observed as under:

> *"40. The use of the word "shall" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offense.*
>
> *41. In Khub Chand (supra), this Court observed as under:*
>
> > *7...The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations....*
>
> *42. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offenses is promptly registered by the police and investigated in accordance with the provisions of law.*
>
> *43. Investigation of offenses and prosecution of offenders are the duties of the State. For "cognizable offenses", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to*

[10] MANU/SC/1166/2013

the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

44. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

45. In view of the above, the use of the word 'shall' coupled with the Scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offense is given, then it would mandatorily be registered by the officer in-charge of the police station. Reading 'shall' as 'may', as contended by some counsel, would be against the Scheme of the Code. Section 154 of the Code should be strictly construed and the word 'shall' should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

46. In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention

that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offenses which includes offenses covered by Sections 121 to 126, 302, 64A, 382, 392 etc., of the Indian Penal Code. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offense, but it is not obligatory on the officer-in charge of a Police Station to register the report. The word 'shall' occurring in Section 39 of the Code has to be given the same meaning as the word 'shall' occurring in Section 154(1) of the Code."

31. The Supreme Court also concluded in paragraph 111 as under:

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

(i) ***Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offense and no preliminary inquiry is permissible in such a situation."***

32. The conclusion, therefore, on Question (a) is that upon information being received, if the information does not disclose a cognizable offense but rather a non-cognizable offense, the Police or CBI cannot register an FIR or start an investigation. They must file a CSR report and mandatorily follow the procedure prescribed under Section 155 of Cr.P.C to initiate an investigation. But, in case the information discloses the commission of a cognizable offense, an FIR can be registered and investigation can be initiated.

IV. QUESTIONS (b) AND (c)

Question-(b) Whether the Metropolitan Magistrate or the Special Court, as the case may be, can bring to the notice of the Hon'ble High Court for appropriate order of quashing the FIR registered on the basis of information not disclosing commission (happening) of offense

(cognizable)? In order words, whether Magistrate or the Special Court has to remain a silent spectator till filling of the report under Section 173(2) CrPC and keep on assisting the Investigating Agency by issuance of search warrant, letter rogatory etc., as and when asked for by the investigating agency during investigation?

Question-(c). Does not power of supervision over investigation, of the Magistrate or the Special Court include questioning the registration of FIR on facts not disclosing commission of offense (cognizable)? If yes, what course of action should the Magistrate or the Special Court follow if it holds the view that the facts in the FIR do not disclose happening/commission of any offense?

33. As answers to Questions (b) & (c) are closely related, they are answered together in this section. The above two questions require this Court to revisit the basic principles of criminal law. Once an FIR is registered, it is the settled position that investigation is purely within the domain of the Police/ any other investigating agency. The Magistrate whose assistance may be sought at different steps of the investigation is not to go into the validity of the FIR. Earlier the Cr.P.C and presently the B.N.S.S, contemplates various stages at which the Magistrate's assistance could be sought by the police or by the investigating agency These principles have been settled in a catena of judgements.

34. In ***Nazir Ahmad and The King-Emperor***[11], the Privy Council was dealing with a case where the Appellant was convicted on the strength of a

[11] 1936 SCC OnLine PC 41

confession said to have been made by him to a Magistrate under the provisions of Section 164 of the Cr.P.C. Oral evidence of the said alleged confession was given by the learned Magistrate but the same was not recorded by him. While dealing with the aforesaid situation, the Privy Council observed and held as under:-

> *"The rule which applied is a different and not less well recognized rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."*

35. The Privy Council in ***Emperor v. Khwaja Nazir Ahmad***[12]

> *"12. In their Lordships' opinion however, the more serious aspect of the case is to be found in the resultant interference by the Court with she duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly, acquitted if found not guilty of the offence with which he is charged,* ***so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.***
> ***In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court.***
> ***The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and***

[12] MANU/PR/0007/1944

order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal P.C. to give directions in the nature of habeas corpus"

36. As far back as 1970, the Supreme Court in ***S.N. Sharma v. Bipin Kumar Tiwari & Ors.***[13] observed that the Cr.P.C does not vest the power to the Magistrate to stop an investigation. The observations of the Supreme Court read as under:

> *"5.* ***It may also be further noticed that, even in Sub-section (3) of Section 156, the only power given to the Magistrate, who can take cognizance of an offense under Section 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offense is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate.***
>
> *6. ...*
>
> *7. This interpretation, to some extent, supports the view that* ***the scheme of the Criminal Procedure Code is that the power of the police to investigate a cognizable offense is not to be interfered with by the judiciary****...*
>
> *8. .....* ***It appears to us that, though the Cr. PC gives to the police unfettered power to investigate all cases***

[13] MANU/SC/0182/1970

> ***where they suspect that a cognizable offense has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers."***

37. The Apex Court in ***Union of India (UOI) vs. Prakash P. Hinduja and Ors (Supra)*** observed as under

> *"19.* ***Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency."***

38. From the above, it is clear that the only way in which investigation can be interdicted is through an exercise of the inherent powers by the High Court or the Supreme Court to quash the FIR at the instance of the aggrieved person. Hon'ble Supreme Court in ***Adalat Prasad v. Rooplal Jindal And Others***[14], while overruling the judgment of the Hon'ble Supreme Court in ***K.M. Mathew v. State of Kerala***[15] held that the observation made in ***K.M. Mathew (supra)*** case that no specific provision of law is required for recalling an erroneous order of issuance of process; would run counter to the scheme of Code which

[14] (2004) 7 SCC 338, MANU/SC/0688/2004

[15] (1992) 1 SCC 217

has not provided for review and prohibits interference at interlocutory stages. The Hon'ble Supreme Court was dealing with a case where after issuance of process under Section 204 of the CrPC the summoned accused could make an application for discharge by invoking Section 203 of the Code. The Court observed and held as under:-

> *"15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order**. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of Code."***

39. Similarly, in ***Mithabhai Pashabhai Patel and Ors. vs. State of Gujarat***[16] the Apex Court observed as follows

> *"21. 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."*

40. In ***Union of India v. W.N. Chadha***[17]**,** where the Supreme Court was considering the validity of a letter rogatory issued by the Magistrate, the Court

[16] MANU/SC/0858/2009
[17] MANU/SC/0149/1993

held that even the person against whom the letter rogatory is sought does not have the locus to oppose the same at that stage. The observations of the Supreme Court are set out below:

> *"**48. According to the respondent, even the entire allegations in the FIR do not constitute any offense against any of the accused much less against him and they are all frivolous, baseless and nothing more than mud slinking. Further, he has started attacking the conduct of the investigating agency in requesting the Court to issue letter rogatory and the authority of the Special Court in issuing letters rogatory on 5/7th February, 1990 and subsequently the ratified letter, rogatory issued on 21/22nd August, 1990**. In short, before the High Court his effort was to show that the entire criminal proceeding is an aimless voyage or a roving expedition with oblique motive and that he has been caught in a political cross fire which smacks of personal vendetta and in which he has absolutely no role to play. **The above breathtaking deliberation and debate made before the High Court has yielded the desired effect of quashing the F.I.R., letters rogatory, and all other proceedings arising therefrom, as pointed out earlier.***
>
> *xxx*
>
> ***103. Merely because the Special Judge heard counsel for the CBI before issuing letter rogatory the respondent cannot make such a complaint that he should have also been given prior notice to present his case as we have repeatedly pointed out that the stage of investigation is only at the door. The order sought for from the Special Judge by CBI is only for process of judicial assistance from the competent judicial authorities in the Confederation of Switzerland for investigation and collection of evidence. In such a case the accused has no right to raise the voice of opposition.***

> *158……. **Only if the investigation is freely allowed without any hindrance, the investigating agency can collect all the requisite particulars and bring the names of those public servants on record, the secrecy of which, it is said, is deeply buried in various places and under various Departments.** Hence this reasoning is devoid of any merit."*

Thus, even in the case of issuance of a letter rogatory, the Supreme Court clearly holds that the Magistrate is not to go into merits of the FIR. But, the Court has to satisfy itself with the procedural aspect of the letter rogatory.

41. It is also well settled that the non-identification of an accused in an FIR does not vitiate the same. The FIR, being the first document to commence investigation, can also be registered against an unknown person. In ***Tapan Kumar Singh(Supra)***[18], the nature of the FIR as a document, was dealt with in detail by the Supreme Court, and it observed as under:

> *"21. The High Court fell into an error in thinking that the information received by the Police could not be treated as a First Information Report since the allegation was vague in as much as it was not stated from whom the sum of rupees one lakh was demanded and accepted. Nor was it stated that such demand or acceptance was made as motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show in exercise of his official function, favour or disfavour to any person or for rendering, attempting to render any service or disservice to any person. Thus, there was no basis for a police officer to suspect the commission of an offense which he was empowered under Section 156 of the Code to investigate.*
>
> *22. **It is well settled that a First Information Report is***

[18] MANU/SC/0299/2003

not an encyclopedia, which must disclose all facts and details relating to the offense reported. *An informant may lodge a report about the commission of an offense though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great details all aspects of the offense committed.* ***What is of significance is that the information given must disclose the commission of a cognizable offense and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offense.*** *At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offense, and not that he must be convinced or satisfied that a cognizable offense has been committed.* ***If he has reasons to suspect, on the basis of information received, that a cognizable offense may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offense only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offense, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case***

either himself or depute any other competent officer to conduct the investigation."

42. Lastly, as recently as 2021, the Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors.***[19]**,** again reiterated and upheld the above mentioned principles as under

> *"23. In view of the above and for the reasons stated above, …, our final conclusions are as under:*
>
> ***i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;***
>
> ***ii) Courts would not thwart any investigation into the cognizable offences;***
>
> ***iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;***
>
> …
>
> ***v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;***
>
> ***vi) Criminal proceedings ought not to be scuttled at the initial stage;***
>
> …
>
> ***viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;***
>
> ***ix) The functions of the judiciary and the police are complementary, not overlapping;***
>
> ***xii) The first information report is not an***

[19] MANU/SC/0272/2021

encyclopaedia which must disclose all facts and details relating to the offense reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure"

43. The finding of the Supreme Court with respect to '*non-identification of the accused in an FIR'* is subsequently followed in various decisions of this Court which are listed below:

A. ***CBI v. SBI [W.P.(Crl) 2842/2022]***
B. ***CBI v. Shayam Narang [W.P.(Crl) 847/2021]***
C. ***CBI v. Union Bank of India [W.P.(Crl) 1909/2022]***
D. ***CBI v. Punjab National Bank [W.P.(Crl) 2408/2022]***
E. ***CBI v. Bank of Baroda [W.P.(Crl) 2070/2022]***

44. The conclusion, therefore, on Questions (b) and (c) is that the Magistrate or the Special Court must, in fact, remain a silent spectator till filling of the report under Section 173(2) Cr.P.C and limit its actions to judicial assistance because investigation is the prerogative of the police/ investigative agency and the Court shall not interfere with it till the Final Report is submitted. The questioning of the validity of the FIR can only be

raised under the provisions of Section 482 of the Cr.P.C or Articles 226/227 of the Constitution of India and since the concerned learned Metropolitan Magistrate or the Special Court do not exercise inherent powers under the Cr.P.C and there is no provision provided for in the Cr.P.C for bringing to the notice of Hon'ble High Court for appropriate order for quashing of the FIR then the same would be not impermissible. Similarly, the power to supervise an investigation definitely does not include the right to question the same. However, it is also a pre-settled principle of law that learned Metropolitan Magistrate or the Special Court on being approached by the investigating agency for issuing of search warrant or similar assistance will exercise judicial discretion in the overall facts and circumstances of each case. For the sake of the present refernce it will be suffice to say that, although, the validity of the FIR cannot be examined by the concerned Court, however, any assistance sought by the investigating agency during the course of the investigation still have to be determined by such Courts in view of the settled principles of law. Questions (b) and (c) are answered, accordingly.

V. QUESTION - (d)

In the event of doubt (reflected from the informant's points of view) about the commission of the offense (cognizable), will it not be appropriate for CBI to seek permission of Hon'ble High Court or Hon'ble Supreme Court to register FIR/RC for investigation of doubtful commission of offense (cognizable)?

45. In the above question, the doubt raised is that since the Special Judge is of the opinion that no cognizable offense is disclosed, shouldn't the CBI be asked to approach the High Court or the Supreme Court for investigation of

doubtful offenses. The above question is replete with anomalies and errors. The CBI, being an investigation agency, upon having sufficient information for registration of an FIR, as per law, could proceed to register the FIR. In cases where the Investigation Officer of CBI is of the opinion that a complaint received indicates a misconduct, but is not adequate to justify registration of an FIR/Regular Case, he is empowered to proceed with a Preliminary Enquiry (hereinafter '*PE*') to ascertain the existence and nature of the offense. This is provided in paragraph 9.1 Chapter 9 of the CBI Manual which reads as under:

> *"**PRELIMINARY ENQUIRY***
>
> *9.1* ***When, a complaint is received or information is available which may, after verification as enjoined in this Manual, indicate serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 Cr.P.C., a Preliminary Enquiry may be registered after obtaining approval of the Competent Authority.*** *Sometimes the High Courts and Supreme Court also entrust matters to Central Bureau of Investigation for enquiry and submission of report. In such situations also which may be rare, a 'Preliminary Enquiry' may be registered after obtaining orders from the Head Office. When the verification of a complaint and source information reveals commission of a prima facie cognizable offense, a Regular Case is to be registered as is enjoined by law. A PE may be converted into RC as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offense**. When information available is adequate to indicate commission of cognizable offense or its discreet verification leads to similar conclusion, a Regular Case must be registered instead of a Preliminary Enquiry.*** *It is, therefore, necessary that the SP must carefully analyse material available at the time*

> *of evaluating the verification report submitted by Verifying Officer so that registration of PE is not resorted to where a Regular Case can be registered. Where material or information available clearly indicates that it would be a case of misconduct and not criminal misconduct, it would be appropriate that the matter is referred to the department at that stage itself by sending a self-contained note. In such cases, no 'Preliminary Enquiry' should be registered. In cases, involving bank and commercial frauds, a reference may be made to the Advisory Board for Banking, Commercial & Financial Frauds for advice before taking up a PE in case it is felt necessary to obtain such advice."*

46. The said procedure set out in the manual has been approved by the Supreme Court in ***Lalita Kumari (supra)*** as also ***CBI v. Thommandru Hannah***[20]. In ***Lalita Kumari (supra)***, the Supreme Court has observed in the context of police investigations as under:

> *"110. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offense. In such a situation, registration of an FIR is mandatory.* ***However, if no cognizable offense is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offense has been committed.*** *But, if the information given clearly mentions the commission of a cognizable offense, there is no other option but to register an FIR forthwith.* ***Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information***

[20] MANU/SC/0831/2021

is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. *At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offense. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.*

Conclusion/Directions:

111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offense and no preliminary inquiry is permissible in such a situation.

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

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

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

(v) The scope of preliminary inquiry is not to verify the

veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offense.

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

(a) Matrimonial disputes/family disputes

(b) Commercial offenses

(c) Medical negligence cases

*(d) **Corruption cases***

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offenses, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

47. In the context of the CBI, the Supreme Court in ***CBI v. Thommandru Hannah(supra)*** observed as under:

> *"29.* ***The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a Preliminary Enquiry is not mandatory in all cases which involve allegations of corruption.*** *The decision of the Constitution Bench in Lalita Kumari (supra) holds that if the information received discloses the commission of a cognizable offense at the outset, no Preliminary Enquiry would be required.* ***It also clarified that the scope of a Preliminary Enquiry is not to check the veracity of the information received, but only to scrutinize whether it discloses the commission of a cognizable offense.*** *Similarly, para 9.1 of the CBI Manual notes that a Preliminary Enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offense. Even when a Preliminary Enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offense. A similar conclusion has been reached by a two Judge Bench in Managipet (supra) as well. Hence, the proposition that a Preliminary Enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in Lalita Kumari (supra) but would also tear apart the framework created by the CBI Manual.*
>
> *xxx*
>
> *33. The above formulation does not take away from the value of conducting a Preliminary Enquiry in an appropriate case. This has been acknowledged by the decisions of this Court in P Sirajuddin (supra), Lalita Kumari (supra) and Charansingh (supra). Even in Vinod Dua (supra), this Court noted that "[a]s a matter of fact, the accepted norm-be it in the form of CBI Manual or like instruments is to insist on a preliminary*

> *inquiry". The registration of a Regular Case can have disastrous consequences for the career of an officer, if the allegations ultimately turn out to be false. In a Preliminary Enquiry, the CBI is allowed access to documentary records and speak to persons just as they would in an investigation, which entails that information gathered can be used at the investigation stage as well. Hence, conducting a Preliminary Enquiry would not take away from the ultimate goal of prosecuting Accused persons in a timely manner. However, we once again clarify that if the CBI chooses not to hold a Preliminary Enquiry, the Accused cannot demand it as a matter of right. As clarified by this Court in Managipet (supra), the purpose of Lalita Kumari (supra) noting that a Preliminary Enquiry is valuable in corruption cases was not to vest a right in the Accused but to ensure that there is no abuse of the process of law in order to target public servants."*

48. A perusal of the above two decisions would show that a PE is not mandatory in all cases of corruption. The purpose of the PE is only to analyse whether the information received discloses the commission of a cognizable offense.

49. Therefore, in conclusion, the answer to Question (d) is that if the CBI feels that the information received does not disclose sufficient information to justify the registration of a RC/FIR for a cognizable offense, it can register a PE, conduct an enquiry and then arrive at a conclusion as to whether a cognizable offense is disclosed and whether an RC/FIR has to be registered or not. Thus, the question of the CBI approaching the High Court or the Supreme Court does not arise. The remedies of the accused in respect of an FIR are always left open and the CBI, as an investigative agency, cannot be compelled to approach the High Court or the Supreme Court for seeking

permission to register an FIR. Such a procedure is beyond the contemplation of law.

50. The questions referred are accordingly answered as under:

Question (a) - Whether Officer in charge of a Police Station is at liberty to register FIR and enter investigation even if information does not disclose commission/happening of offense (cognizable)?

Upon information being received, if the information does not disclose a cognizable offense but rather a non-cognizable offense, the Police or CBI cannot file an FIR and start an investigation. They must file a CSR report and mandatorily follow the procedure prescribed under Section 155 of Cr.P.C to initiate an investigation.

Question (b) – Whether the Metropolitan Magistrate or the Special Court, as the case may be, cannot bring to notice of Hon'ble High Court for appropriate order of quashing regarding the FIR registered on the basis of information not disclosing commission (happening) of offense (cognizable)? In order word whether Magistrate or the Special Court has to remain silent spectator till filling of report under Section 173(2) CrPC and keep on assisting the Investigating Agency by issuance of search warrant, letter rogatory etc., as and when asked for by the investigating agency during investigation?

The Magistrate or the Special Court must, in fact, remain a silent spectator till filing of report under Section 173(2) Cr.P.C and limit its actions to judicial assistance because investigation is the prerogative of the police/ investigative agency and Court shall not interfere in an investigation till

the Final report is submitted.

Question (c) – Does not power of supervision over investigation, of the Magistrate or the Special Court include questioning the registration of FIR on facts not disclosing commission of offense (cognizable)? If yes, what course of action should Magistrate or the Special Court follow if it holds the view that the facts in the FIR does not disclose happening/commission of any offense?

The power to supervise an investigation definitely does not include the right to question the validity of the FIR. The questions are answered accordingly.

Question (d) - In the event of doubt (reflected from the informant's points of view) about the commission of offense (cognizable), will it not be appropriate for CBI to seek permission of Hon'ble High Court or Hon'ble Supreme Court to register FIR/RC for investigation of doubtful commission of offense (cognizable)?

If the CBI feels that the information received does not disclose sufficient information to justify registration of an RC/FIR for a cognizable offense, it can register a PE, conduct an enquiry and then arrive at a conclusion as to whether a cognizable offense is disclosed and whether an RC/FIR has to be registered or not. Thus, the question of CBI approaching the High Court or the Supreme Court does not arise and such procedure is beyond contemplation of law.

Question (e) – Whether the power of reference under Section 395(2) can be exercised by the Court of Session or Metropolitan

Magistrate only during the hearing of the case i.e., only after chargesheet has been filed and accused summoned/arrested and not during the investigation, if certain question of law arises?

A reference can be made at any stage of a criminal process including at the stage of investigation prior to the submission of final report under Section 173(2) of Cr.P.C. But for making a valid reference under Section 395(2), the case (*i.e.*, any application, petition, trial, appeal or revision *etc.*,) ought to be pending before the Metropolitan Magistrate or the Sessions Judge.

51. In ***W.P. (Crl) 388/2022***, the application of the CBI for issuance of letter rogatory under Section 166A is remanded for consideration before the Special Judge, CBI Court. The case shall, however, be assigned to a different judicial officer then the one who passed the impugned order. The CBI's writ is, accordingly, allowed in the above terms. The reference is disposed of in the above terms.

52. The assistance provided by the ld. *Amicus* has been valuable and the Court acknowledges his assistance as also the assistance of Mr. Anupam Sharma, ld. Counsel for the CBI.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

NOVEMBER 28, 2024/*dj/am*