IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 139 of 2021

Devanand Oraon, aged about 48 years, S/o Dahru Oraon, R/o Vill.- Dandai Hehal, Ratu, P.O. & P.S. Ratu, District- Ranchi, Jharkhand
... Petitioner

-Versus-

1. The State of Jharkhand
2. The Home Secretary, Govt. of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District- Ranchi, Jharkhand
3. The Director General of Police, Jharkhand, Police House, Dhurwa, P.O. & P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent of Police, Sahebganj, P.O. & P.S. Sahebganj, District- Sahebganj, Jharkhand
5. The Officer-In-charge, Sahebganj, P.O. & P.S. Sajebganj, District- Sahebganj, Jharkhand
6. Pramod Kumar Mishra, S/o Not known, Sub Divisional Officer, Sahebganj, Head of Special Investigating Team, P.O. & P.S. Sahebganj, District- Sahebganj, Jharkhand
7. Priya Dubey, D/o Not known, I.G. Santhal Pargana, Dumka, P.O. & P.S. Dumka, District- Dumka, Jharkhand
8. The Central Bureau of Investigation, through its Director, Plot No.-5/B, 6th Floor, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, P.O. & P.S. Lodhi Road, New Delhi, Delhi-110003
9. Senior Superintendent of Police, Ranchi, Police House, P.O. G.P.O., P.S. Kotwali, District- Ranchi **... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. R.S. Mazumdar, Sr. Advocate
Mr. Rajeev Kumar, Advocate
For the State : Mr. P.A.S. Pati, G.A.-II
Mr. Kaushik Sarkhel, G.A.-V
For the Respondents (In I.A. No.4188/2021) : Mr. Kapil Sibal, Sr. Advocate
Mr. Arunabh Choudhary, Advocate
For the CBI : Mr. Rajiv Sinha, A.S.G.I.

10/01.09.2021. Heard Mr. R.S. Mazumdar, learned Senior counsel assisted by Mr. Rajeev Kumar, learned counsel appearing for the petitioner, Mr. P.A.S. Pati, learned G.A.-II and Mr. Kaushik Sarkhel, learned G.A.-V appearing for the respondent-State, Mr. Kapil Sibal, learned Senior counsel and Mr. Arunabh Choudhary, learned counsel appearing for the respondent in I.A. No.4188 of 2021 and Mr. Rajiv Sinha, learned A.S.G.I. appearing for the respondent-CBI.

2. This criminal writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

3. I.A. No.2449 of 2021 has been filed for intervention in the petition.

4. It has been stated in the interlocutory application that the applicant/intervenor is a social worker and she has knowledge of the case and that is why the applicant has filed this interlocutory application for intervention.

5. The respondent-State has vehemently opposed the said intervention application by filing reply to the said interlocutory application on the ground that this intervention petition is a politically motivated petition and the applicant is a member of a political party in opposition in the State of Jharkhand.

6. In that view of the matter, this Court is not inclined to entertain this intervention petition. Accordingly, I.A. No.2449 of 2021 stands dismissed.

7. The hearing of this case was resumed after cessation which was earlier sent to Hon'ble the Chief Justice on administrative side and thereafter this matter has been re-assigned to this Court. Yesterday, all the counsels had concluded their arguments. As few minutes were left in the Court time, as such this matter was adjourned for today.

8. This case is having a chequered history. On 17.06.2021, this matter was taken up and the State was directed to file the counter affidavit and on that day, direction was also issued to provide security to the parents of Late Rupa Tirkey and the matter was adjourned for 29.07.2021.

9. On 29.07.2021, time was again sought on behalf of the respondent-State, which was allowed and on that day, the Director General of Police, Jharkhand, Ranchi and Superintendent of Police, Sahebganj were directed to transmit entire records of UD Case No.09/2021 registered on 03.05.2021 in a sealed cover. These facts have also been indicated in the order dated 13.08.2021.

10. The matter was again placed before this Court by the order of Hon'ble the Chief Justice and the matter was listed on 26.08.2021. On that day, one interlocutory application was placed before this Court, numbered as I.A. No.4188 of 2021, which has been filed under Article 215 of the Constitution of India read with Sections 11 and 15 of the Contempt of Courts Act, 1971. On that day, when the Court asked the learned counsel for the respondent-State, namely, Mr. P.A.S. Pati, learned G.A.-II and Mr. Kaushik Sarkhel, learned G.A.-V whether they have filed any affidavit for apology or not, the reply was that the notice has not been issued as yet and the matter was adjourned for 31.08.2021.

11. When the matter was taken up on 31.08.2021, although notice was not issued, I.A. No.4188 of 2021 was opposed on behalf of Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II by Mr. Kapil Sibal, learned Senior counsel and Mr. Arunabh Choudhary. This I.A. shall be considered by this Court in the later part of the judgment.

12. This criminal writ petition under Article 226 of the Constitution of India has been filed by the father of Late Rupa Tirkey, who was posted as Sub Inspector in Mahila Thana in the district of Sahebganj. The prayer in the writ petition is made for direction to hand over the entire investigation

to the Central Bureau of Investigation (CBI) on the ground that the police officers at different level are trying to hassle the matter. The prayer is also made for direction to immediately stop the investigation as one Pankaj Mishra, who is kingpin and the person behind the murder of Late Rupa Tirkey as she was not abiding his dictate in managing various case which was pending before her.

13. It has been stated in the writ petition that in the night of 2nd-3rd May, 2021, the petitioner has been informed that his daughter has committed suicide by way of hanging herself in the quarter. The complaint was lodged on 03.05.2021 on the basis of the statement of Sub Inspector Satish Kumar Soni and U.D. Case No.09/2021 was registered. On 04.05.2021, the mother of deceased lodged a complaint before the Superintendent of Police, Sahebganj stating therein that her daughter has been murdered and she has not committed suicide. Certain reason has also been disclosed in the said complaint. On these premises, by way of filing I.A. and supplementary affidavit certain facts have been brought and it has been stated that the conduct of the police of the district Sahebganj is under suspicion and the investigation is required to be handed over to the CBI for fair investigation.

14. Mr. R.S. Mazumdar, learned Senior counsel appearing for the petitioner by way of drawing attention of the Court to Annexure-1 of the writ petition submitted that on 03.05.2021, on the written statement of Satish Kumar Soni the case of suicide was registered as U.D. Case No.09/2021. By way of drawing attention of the Court to the said annexure, he submitted that from very first date Satish Kumar Soni has come to the conclusion that Rupa Tirkey has committed suicide. By way of referring Annexure-2 of the writ petition, which is the complaint filed by the mother

of Late Rupa Tirkey, he submitted that there are allegations of torture and murder against three persons, but no F.I.R. has been registered by the police against those persons. He further submitted that all of a sudden on 09.05.2021, Borio P.S. Case No. 127/2021 was lodged under Section 306 of the Indian Penal Code. According to Mr. Mazumdar, for one case why two cases have been registered in criminal law. He also submitted that U.D. Case was being investigated by the I.O. namely Snehlata Surin, however she has been asked to hand over the investigation to one Rajesh Kumar, Inspector on 05.05.2021. He further submitted that as per paragraph 22 of the case diary, the I.O. is shown as S.B. Choudhary. He further submitted that U.D. Case is required to be investigated under Section 174 of the Code of Criminal Procedure (Cr.P.C.) and Borio P.S. Case No.127 of 2021 is to be investigated under Sections 156 and 157 of Cr.P.C. He further drawn attention of the Court to page 120 of the counter affidavit, filed on behalf of the respondent-State and submitted that external injuries have been found in the Postmortem report. According to him, peculiarly the I.O. has put question from the team, who have conducted Postmortem however, the doctors refused to answer and submitted that they are answerable to the court of law during needful cross examination. By way of referring paragraph 10 of the counter affidavit, he submitted that it has been recorded therein that her daughter has informed the mother about torture being made, however the I.O. without lodging any F.I.R. proceeded to investigate the matter in U.D. Case. He further drawn attention of the Court to paragraph 12 of the counter affidavit of the State and submitted that on 05.05.2021, the I.O. Snehlata Surin was directed by the S.D.P.O., Sahebganj to handover charge of the case to one Rajesh Kumar, Police Inspector,

Rajmahal. He also submitted that what is the reason of changing the I.O. has not been disclosed by the State in the counter affidavit. By way of referring paragraph 22 of the counter affidavit of the State, he submitted that on 09.05.2021, Borio P.S. Case No.127/2021 was registered under Section 306 of the Indian Penal Code against Shiv Kumar Kanogiya and investigation was handed over to one S.B. Choudhary. By way of referring paragraph 32 of the counter affidavit of the State, he submitted that without lodging any F.I.R. against Pankaj Mishra, the I.O. has taken the statement of the said person. He also referred Annexures-E, E/1 and E/2, which are the statements under Section 160 Cr.P.C. of the father of Late Rupa Tirkey (petitioner), mother of Late Rupa Tirkey and sister of Late Rupa Tirkey respectively. By way of referring these annexures, he submitted that all have stated in their statements that Late Rupa Tirkey was murdered and at the time of recovery of the body, she was found semi-naked and according to them, something wrong has been done to Late Rupa Tirkey and it is not a case of suicide. By way of drawing attention of the Court to Annexure-H at page 121 of the counter affidavit of the State, he submitted that one bottle was seized from the kitchen of Late Rupa Tirkey and later on it was said in the report that during investigation, nothing has been found to be poisonous. The bottle found on the bed was not seized and it was not sent for investigation. By way of referring supplementary affidavit dated 05.08.2021, wherein, colour photographs taken at the place of occurrence have been annexed, he submitted that as per these photos, it is crystal clear that Late Rupa Tirkey has been murdered on the ground that while hanging her knees are touching the bed. He also referred other photographs, which have been annexed in the counter affidavit. He further

drawn attention of the Court to paragraph 39 read with Annexure-J at page 124 of the counter affidavit and submitted that the petitioner has been made accused. He submitted that on the basis of love relationship between Late Rupa Tirkey and Shiv Kumar Kanogiya, the police has investigated the case and not proceeded in the murder aspect. On these backgrounds, he submitted that the police is not investigating the matter in right direction. Moreover, the man who is very close to the Chief Minister of the State and who happened to be a spokesperson of ruling party is involved and that is why the police is not investigating the matter in right direction. He further submitted that one interlocutory application being I.A. No. 2588 of 2021 has been filed for setting aside the notification of the State of Jharkhand where a One Man Commission has been appointed.

15. To buttress the argument on the point of Section 174 Cr.P.C., learned Senior counsel for the petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Manoj K. Sharma v. The State of Chattisgarh***, reported in ***(2016) 9 SCC 1***.

16. Paragraphs 19, 20 and 22 of the said judgment are quoted herein below:

> "***19.*** *The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short. When the body cannot be found or has been buried, there can be no investigation under Section 174. This section is intended to apply to cases in which an inquest*

is necessary. The proceedings under this section should be kept more distinct from the proceedings taken on the complaint. Whereas the starting point of the powers of the police was changed from the power of the officer in charge of a police station to investigate into a cognizable offence without the order of a Magistrate, to the reduction of the first information regarding commission of a cognizable offence, whether received orally or in writing, into writing. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. The purpose of registering FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report and only after registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. In George v. State of Kerala2, it has been held that the investigating officer is not obliged to investigate, at the stage of inquest, or to ascertain as to who were the assailants. A similar view has been taken in Suresh Rai v. State of Bihar.

20. *In this view of the matter, Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of "inquiries" in cases of accidental or suspicious deaths and are entirely distinct from the "investigation" under Section 157 of the Code wherein if an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall proceed in person to the spot to investigate the facts and circumstances of the case. In the case on hand, an inquiry under Section 174 of the Code was convened initially in order to ascertain whether the death is natural or unnatural. The learned Senior Counsel for the appellants claims that the earlier information regarding unnatural death amounted to FIR under Section 154 of the Code which was investigated by the police and thereafter the case was closed.*

22. *In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence and in the case on hand there was no FIR registered with Police Station Mulana neither any investigation nor any report under Section 173 of the Code was submitted. Therefore, challenge to the impugned FIR under Crime No. 194 of 2005 registered by Police Station Bhilai Nagar could not be assailed on the ground that it was the second FIR in the garb of which investigation or fresh investigation of the same incident was initiated."*

17. By way of referring this judgment, Mr. Mazumdar, learned Senior counsel submitted that the police has acted contradictory to Sections 174

and 175 of Cr.P.C. and no enquiry was done as per the said provisions.

18. On the point of non-lodging of F.I.R. pursuant to complaint made by the mother of Late Rupa Tirkey, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Lalita Kumari v. Government of U.P. & Others***, reported in ***(2014) 2 SCC 1***.

19. Paragraphs 119 and 120 of the judgment are quoted herein below:

> "***119.*** *Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.*
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> ***Conclusion/Directions***
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> ***120.*** *In view of the aforesaid discussion, we hold:*
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> ***120.1.*** *The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
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> ***120.2.*** *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
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> ***120.3.*** *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
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> ***120.4.*** *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be*

> *taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*
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> ***120.5.*** *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
>
> ***120.6.*** *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
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> *(a) Matrimonial disputes/family disputes*
>
> *(b) Commercial offences*
>
> *(c) Medical negligence cases*
>
> *(d) Corruption cases*
>
> *(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*
>
> *The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."*

20. By way of referring this judgment, learned Senior counsel for the petitioner submitted that once the nature of allegation in the case was serious and found to be cognizable, F.I.R. need to be registered immediately and the police was bound to lodge the F.I.R., which has not been done in the case in hand.

21. Learned Senior counsel for the petitioner further submitted that viscera of Late Rupa Tirkey was not preserved and in a suspected case of poisioning, it was mandatory to preserve viscera and to send the viscera to the FSL so that prosecution cannot be frustrated, which has been considered by the Hon'ble Supreme Court in the case of ***Joshinder Yadav v. State of Bihar***, reported in ***(2014) 4 SCC 42***.

22. Paragraph 25 of the said judgment is quoted herein below:

> ***"25.*** *We must note that this is the third case which this Court has noticed in a short span of two months where, in a case of suspected poisoning, viscera report is not brought on record. We express our extreme displeasure about the way in which such serious cases are dealt with. We wonder whether these lapses are the result of inadvertence or they are a calculated move to frustrate the prosecution. Though the FSL*

> *report is not mandatory in all cases, in cases where poisoning is suspected, it would be advisable and in the interest of justice to ensure that the viscera is sent to the FSL and the FSL report is obtained. This is because not in all cases there is adequate strong other evidence on record to prove that the deceased was administered poison by the accused. In a criminal trial the investigating officer, the prosecutor and the court play a very important role. The court's prime duty is to find out the truth. The investigating officer, the prosecutor and the courts must work in sync and ensure that the guilty are punished by bringing on record adequate credible legal evidence. If the investigating officer stumbles, the prosecutor must pull him up and take necessary steps to rectify the lacunae. The criminal court must be alert, it must oversee their actions and, in case it suspects foul play, it must use its vast powers and frustrate any attempt to set at naught a genuine prosecution. Perhaps, the instant case would have been further strengthened had the viscera been sent to the FSL and the FSL report was on record. These scientific tests are of vital importance to a criminal case, particularly when the witnesses are increasingly showing a tendency to turn hostile. In the instant case all those witnesses who spoke about poisoning turned hostile. Had the viscera report been on record and the case of poisoning was true, the prosecution would have been on still firmer grounds."*

23. On the point of referring the matter to the CBI and biased investigation, learned Senior counsel for the petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Disha v. State of Gujarat & Others***, reported in ***(2011) 13 SCC 337***.

24. Paragraph 21 of the said judgment is quoted herein below:

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

25. He further submitted that the constitutional courts in appropriate cases can direct for further investigation by any independent agency for fair investigation and for the fair trial, which has been considered by the Hon'ble Supreme Court in the case of ***Dharam Pal v. State of Haryana*** , reported

in ***(2016) 4 SCC 160***.

26. Paragraphs 24 and 25 of the said judgment are quoted herein below:

> *"**24.** Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.*
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> ***25.** We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law"."*

27. Learned Senior counsel for the petitioner further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***State of Punjab v. Davinder Pal Singh Bhullar & Others***, reported in ***(2011) 14 SCC 770***.

28. Paragraph 75 of the said judgment is quoted herein below:

> ***"75.*** *Thus, in view of the above, it is evident that a constitutional court can direct CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible."*

29. Learned Senior counsel for the petitioner also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Manohar Lal Sharma v. Principal Secretary & Others***, reported in ***(2014) 2 SCC 532***.

30. Paragraphs 24, 26, 33, 38 and 61 of the said judgment are quoted herein below:

> ***"24.*** *In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the*

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

26. *One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.*

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

38. *The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.*

61. *At the outset, one must appreciate that a constitutional court monitors an investigation by the State police or the Central Bureau of Investigation (for short "CBI") only and only in public interest. That is the leitmotif of a constitutional Court-monitored investigation. No constitutional court "desires" to monitor an inquiry or an investigation (compendiously referred to hereinafter as "an investigation") nor does it encourage the monitoring of any investigation by a police authority, be it the State police or CBI. Public interest is the sole consideration and a constitutional court monitors an investigation only when circumstances compel it to do so, such as (illustratively) a lack of enthusiasm by the investigating officer or agency (due to "pressures" on it) in conducting a proper investigation, or a lack of enthusiasm by the Government concerned in assisting the investigating authority to arrive at the truth, or a lack of interest by the investigating authority or the Government concerned to take the investigation to its logical conclusion for whatever reason, or in extreme cases, to hinder the investigation."*

31. Learned Senior counsel for the petitioner submitted that when the State Government has appointed One Man Commission for enquiry in

criminal case, commissions of enquiry are more suited for enquiring into such matters of public importance where the purpose is to find out the truth so as to learn lessons for the future and devise policies or frame legislation to avoid recurrence of lapses. Such commissions do not suitably serve the object of punishing the guilty. In case of an enquiry commission, the local police officials headed by the same officials will cooperate with the Enquiry Commission and they have to submit the evidence/documents, as required by the Enquiry Commission which will cause manipulation of evidence on the part of the persons involved in the offence. Moreover, it is not prescribed in the Cr.P.C. To buttress this argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Sanjiv Kumar v. State of Haryana & Others***, reported in ***(2005) 5 SCC 517***.

32. Paragraphs 13, 14 and 15 of the said judgment are quoted herein below:

> "***13.*** *We have given our thoughtful consideration to the respondents' proposal for entrusting the whole matter to a Commission of Inquiry, assisted by a special investigating task force. The flaw with Commissions of Inquiry, as revealed by experience, is that they do not have enough teeth and for their functioning they have to depend on the State's assistance. Commissions of Inquiry remain pending for unreasonable lengths of time. The reports submitted do not bind the State and in spite of transparency and public hearings which the Commissions often hold, at times with fanfare, the reports hardly serve any purpose. By the time the reports are submitted the public memory has already fainted and people are not any more bothered about the results. It is in the discretion of the State to take or not to take any action on the report submitted by the Commission of Inquiry and the experience is that the follow-up action depends more on political considerations rather than for public good.*
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> ***14.*** *We feel, Commissions of Inquiry are more suited for inquiring into such matters of public importance where the purpose is to find out the truth so as to learn lessons for the future and devise policies or frame legislation to avoid recurrence of lapses. Such Commissions do not suitably serve the object of punishing the guilty.*
>
> ***15.*** *In the peculiar facts and circumstances of the case, looking at the nature of the allegations made and the mighty*

> *people who are alleged to be involved, we are of the opinion, that the better option of the two is to entrust the matter to investigation by CBI. We are well aware, as was also told to us during the course of hearing, that the hands of CBI are full and the present one would be an additional load on their head to carry. Yet, the fact remains that CBI as a Central investigating agency enjoys independence and confidence of the people. It can fix its priorities and programme the progress of investigation suitably so as to see that any inevitable delay does not prejudice the investigation of the present case. They can think of acting fast for the purpose of collecting such vital evidence, oral and documentary, which runs the risk of being obliterated by lapse of time. The rest can afford to wait for a while. We hope that the investigation would be entrusted by the Director, CBI to an officer of unquestioned independence and then monitored so as to reach a successful conclusion; the truth is discovered and the guilty dragged into the net of law. Little people of this country, have high hopes from CBI, the prime investigating agency which works and gives results. We hope and trust the sentinels in CBI would justify the confidence of the people and this Court reposed in them."*

33. By way of referring supplementary counter affidavit filed by the respondent-State dated 12.08.2021, learned Senior counsel for the petitioner further submitted that it has been questioned that affidavit has been sworn by the *pairvikar* and not by the petitioner, which is not in accordance with the High Court of Jharkhand Rules and the same is not maintainable at this belated stage when the parties have exchanged the affidavits and in criminal case, *pairvikar* are allowed to file the affidavit. He further submitted that only on the basis of technicalities, entire case cannot be dismissed. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Union of India & Others v. R. Reddappa & another***, reported in ***(1993) 4 SCC 269***.

34. Paragraph 5 of the said judgment is quoted herein below:

> *"**5.** More than a decade has gone by since these employees were dismissed for participating in strike called by the Union recognised by the Railways. But end has not reached. Barring appellate and revisional authority whose discretion too was attempted to be curtailed by issuing circular no court or tribunal has found the orders to be well founded on merits.*

> *True the jurisdiction exercised by the High Court under Article 226 or the tribunal 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 way of rendering justice. We are not impressed by the vehement submission of the learned Additional Solicitor General that the CAT, Hyderabad exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an enquiry. The jurisdiction to exercise the power under Rule 14(ii) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action was vitiated due to erroneous assumption of jurisdictional fact therefore the Tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation."*

35. On these backgrounds, learned Senior counsel for the petitioner submitted that it is a fit case for handing over the matter to the CBI for proper investigation.

36. On behalf of the State, Mr. Rajiv Ranjan, learned Advocate General has addressed the Court till 13.08.2021. Thereafter, this matter was being argued on behalf of the respondent-State by Mr. P.A.S. Pati, learned G.A.-II and Mr. Kaushik Sarkhel, learned G.A.-V. Mr. Rajiv Ranjan, learned Advocate General has submitted on the earlier occasion when the hearing of the case was proceeded that in terms of High Court of Jharkhand Rules, this petition is not maintainable as the petitioner has not sworn the affidavit, which is against Rule 48 of the High Court of Jharkhand Rules, 2001. He further submitted that Late Rupa Tirkey was posted in Sahebganj and she was found hanging in the quarter. There is no question of murder. He took the Court to paragraphs 4, 8, 9 and 10 of the counter affidavit, filed on behalf

of the respondent-State and by way of referring these paragraphs, he submitted that the case was registered on the report of one Satish Kumar Soni on 03.05.2021 as a *Sanha*. He also submitted that videography in presence of one relative of Late Rupa Tirkey was done and thereafter the body was drawn from the loop. He further submitted that she has committed suicide due to personal reason. By way of referring paragraph 8 of the counter affidavit, he submitted that inquest report was prepared on 04.05.2021 in presence of one Sanjay Kumar, Executive Magistrate, Sahebganj and seizure list was also prepared, which are mentioned in paragraphs 17 and 18 of the U.D. case diary. By way of referring paragraph 9 of the counter affidavit, he submitted that I.O. of the case submitted a report to obtain Call Detail Record (CDR) of the mobile of Late Rupa Tirkey, Shiv Kumar Kanogiya and the petitioner. He further submitted that Late Rupa Tirkey and Shiv Kumar Kanogiya were in love and from SMS and Whatsapp messages, it has been disclosed that she has committed suicide. To buttress this argument, Mr. Rajiv Ranjan, learned Advocate General has drawn attention of the Court to paragraphs 1, 3, 16, 17, 39, 63, 64, 67 and 72 of the case diary of U.D. Case No.09/2021 and submitted that SMS which have been quoted therein, have been recorded and after going through those SMS, it is clear that suicide was committed due to personal reason. On the point of viscera, he submitted that the doctor came to the conclusion that there is no requirement of preserving viscera and that is why viscera was not preserved. According to him, Borio P.S. Case No.127/2021 was registered on 09.05.2021 after the statement of Shiv Kumar Kanogiya. He further drawn attention of the Court to paragraphs 4, 9, 12, 39, 76, 78 and 86 of the case diary of Borio P.S. Case No.127/2021

and submitted that in those paragraphs the conversation between Late Rupa Tirkey, Shiv Kumar Kanogiya and the father of Late Rupa Tirkey (petitioner) have been recorded. On these premises, he submitted that there is no violation of Cr.P.c. and investigation has been done in right direction. He left the argument of this case w.e.f. 26.08.2021, when this matter was again taken up after re-assignment by Hon'ble the Chief Justice.

37. Mr. P.A.S. Pati, learned G.A.-II and Mr. Kaushik Sarkhel, learned G.A.-V on 31.08.2021 submitted that the learned Advocate General has already completed his arguments and there is no requirement of further argument. However, they relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Kartar Singh v. State of Punjab***, reported in ***(1994) 3 SCC 569*** in the scope of jurisdiction under Article 226 of the Constitution of India.

38. Paragraph 357 of the said judgment is quoted herein below:

> ***"357.*** *In a recent judgment, this Court in State of Maharashtra v. Abdul Hamid Haji Mohammed after examining a question regarding the justification of the High Court to exercise its jurisdiction under Article 226 for quashing the prosecution for an offence punishable under the TADA Act has observed thus :*
>
> > *"... It is no doubt true that in an extreme case if the only accusation against the respondent prosecuted in the Designated Court in accordance with the provisions of TADA Act is such that ex facie it cannot constitute an offence punishable under TADA Act, then the High Court may be justified in invoking the power under Article 226 of the Constitution on the ground that the detention of the accused is not under the provisions of TADA Act. We may hasten to add that this can happen only in extreme cases which would be rare and that power of the High Court is not exercisable in cases like the present where it may be debatable whether the direct accusation made in conjunction with the attendant circumstances, if proved to be true, is likely to result in conviction for an offence under TADA Act. ... There was thus no justification for the High Court in the present case to exercise it jurisdiction under Article 226 of the Constitution for examining the merits of the controversy much less for quashing the prosecution of*

> *respondent Abdul Hamid in the Designated Court for offences punishable under TADA Act."*
>
> *After observing thus, the Court finally concluded :*
>
> *"The view taken by the High Court on this aspect is contrary to law apart from being unjustified and impermissible in exercise of its jurisdiction under Article 226 of the Constitution."*

39. They further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Hari Singh v. State of U.P.***, reported in ***(2006) 5 SCC 733*** and by way of referring paragraphs 1 and 3, they submitted that this petition is not maintainable.

40. Paragraphs 1 and 3 of the said judgment are quoted herein below:

> *This petition filed under Article 32 of the Constitution of India is for a direction to conduct enquiry by the Central Bureau of Investigation (in short "CBI") into the murder of one Yashvir Singh, son of the petitioner. The allegation is that though the first information report (in short "FIR") has been lodged with the police to the effect that the said Yashvir Singh has been murdered and has not committed suicide, because of the pressure of some influential people, the police has not taken any positive steps, and on the contrary the petitioner is being harassed and threatened by certain persons. As culled out from the petition, the said Yashvir Singh was posted as Additional Commissioner of Gorakhpur, Uttar Pradesh and was found dead in his official residence on 19-1-2006. The petitioner made a grievance that the police officials in collusion with some relatives—more particularly the in-laws of the deceased Yashvir Singh are projecting it as a case of suicide. It is stated that the petitioner has made several representations to various authorities, but without any avail. It is pointed out that the Superintendent of Police had directed the officer in charge of the police station concerned to enquire into the matter in view of the allegations made by the petitioner. But it is the grievance of the petitioner that no action has been taken purportedly on the basis of the pressure exercised by some influential people who were inimical to the deceased though they are related to him. In essence grievance is that no action is being taken on the first information report lodged by the petitioner.*
>
> ***3.*** *Section 156 deals with "Police officer's power to investigate cognizable cases" and the same reads as follows:*
>
> *"156. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case*

shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

41. They further relied upon the judgment rendered in the case of ***Vinay Tyagi v. Irshad Ali,*** reported in ***(2013) 5 SCC 762***.

42. Paragraphs 23, 43 and 44 of the said judgment are quoted herein below:

"23. *However, in the case of a "fresh investigation", "reinvestigation" or "de novo investigation" there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct "fresh investigation". This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of "fresh"/"de novo" investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a "fresh investigation".*

43. *At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled*

principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

44. *We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. Wherever a charge-sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in Disha v. State of Gujarat, Vineet Narain v. Union of India, Union of India v. Sushil Kumar Modi and Rubabbuddin Sheikh v. State of Gujarat."*

43. By way of referring the above judgment, they submitted that this is not a case to handover the investigation to specialized agency. They also relied upon the judgment rendered in the case of ***Gudalure M.J. Cherian v. Union of India***, reported in ***(1992) 1 SCC 397***.

44. Paragraph 9 of the said judgment is quoted herein below:

"9. *We are, however, not inclined to accept the prayer of the petitioners to transfer the criminal case from the file of IX Additional Sessions Judge, Moradabad."*

45. On the point of transferring the investigation to any agency, they further relied upon the judgment rendered in the case of ***ABCD v. Union of India***, reported in ***(2020) 2 SCC 52***.

46. Paragraphs 10, 11 and 12 of the said judgment are quoted herein below:

"10. *The investigation into the crime registered pursuant to FIR No. 58 of 2018 lodged by the petitioner was conducted by a Special Investigation Team headed by ACP Ms Shweta Tiwari Singh and a charge-sheet has been filed. The apprehension that was expressed at some stage that the mobile phones belonging to Respondent 7 were not being taken in custody, was dealt with by this Court and it was ensured that said mobiles would be in the custody of the investigating agency. The data from those mobiles was also sought to be recovered*

and it must be stated that Respondent 7 did extend cooperation in ensuring that the data could be retrieved. However, the assertion on behalf of the petitioner is that complete data has not been retrieved. Both the mobile phones were also sent for forensic analysis. It is suggested by the petitioner that certain pictures may have been taken by Respondent 7, which data is not presently available. However, what has been extracted from iCloud is fully available with the investigating agency. The data, in any case, would at best point that at various stages there were exchanges and conversation between the petitioner and Respondent 7 but what needs to be gone into at the appropriate stage is the basic submission that Respondent 7 had taken undue advantage of the petitioner on the fateful night. The contention that the mobile phone of the investigating officer was damaged may not be material as details of any conversation between the petitioner and the investigating officer, may also be proved through the mobile phone of the petitioner herself. There is thus, nothing substantial which could either show that the investigation was not well directed or had failed to look into a particular direction. In our considered view, nothing further is required to be done. At this stage, it may be stated that if any video or audio recordings are still being retained by the petitioner, they may be handed over to the Special Investigation Team within two days from today. It is left to the Special Investigation Team to consider whether that part needs to be dealt with in the supplementary charge-sheet which, as indicated above, is contemplated to be filed.

***11.** As regards the crime registered pursuant to FIR lodged by the mother of Respondent 7, protection has been afforded to the petitioner and her family members and the application under Section 438 of the Code has also been dealt with. An application filed by the petitioner under Section 482 of the Code is presently pending with the High Court. It is, thus, clear that the petitioner has been invoking the processes of the court and adequate protection is being afforded to the petitioner and her family members. We, therefore, do not see any reason why the matter presently pending pursuant to the FIR lodged by the mother of Respondent 7 be transferred and investigation be entrusted to any other agency.*

***12.** In the aforesaid circumstances we do not see any reason why investigation into both the aforesaid FIRs, at this stage, be entrusted to any Central Investigating Agency. All that we can say at this juncture is that the charge-sheet filed in the crime registered pursuant to FIR lodged by the petitioner shall be considered by the court concerned on its own merits and in accordance with law."*

47. They further relied upon the judgment rendered in the case of ***Secretary, Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya***, reported in ***(2002) 5 SCC 521***.

48. Paragraphs 5, 6 and 7 of the said judgment are quoted herein below:

> ***"5.*** *While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause. This Court in the said judgment at paragraph 174 of the Report has held thus:*
> *"174. The other direction, namely, the direction to CBI to investigate 'any other offence' is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of 'LIFE' and 'LIBERTY' guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of 'LIFE' has been explained in a manner which has infused 'LIFE' into the letters of Article 21."*
> ***6.*** *It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of "ifs" and "buts" and thought it appropriate that the inquiry should be made by CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause.*
> ***7.*** *Just to point out that there is no prima facie finding by the High Court, while directing an inquiry by the impugned order, we would like to extract the following few sentences:*
> *At p. 8 of the impugned judgment, it is stated: "It is also alleged that the petitioner is being harassed owing to the reason that he was not amenable to the illegal demands made by the Minister concerned." The High Court further observed: "We however, forbear from excoriating the Minister on the basis of what has been said in the said news magazine at this stage." Proceeding further, the Court observed: "If the*

> *allegations in the writ petitions are correct, the rights of the respondents must be vindicated and the party at whose instance such orders have been issued in bad faith, his continuance in the office is not in public interest." At p. 9 of the judgment, the learned Judges observed: "If the allegations made in these and various other writ petitions are found to have any ring of truth, no sane person can claim that the affairs of the State are being run in accord with the Constitution." From the above, we see that the High Court has merely quoted certain allegations made against the Minister. It has not taken into consideration the reply given by the Minister. While directing an inquiry by CBI, the High Court, as stated in the judgment of this Court in the case of Common Cause must record a prima facie finding as to the truth of such allegations with reference to the reply filed. In the instant case, we have noticed that the High Court has merely proceeded on the basis of the averments made in the petitions without taking into consideration the reply filed and without expressing its prima facie opinion in regard to these allegations. This having been not done, we find it necessary that the judgment impugned should be set aside and the matters be remanded to the High Court to consider the pleadings of the parties and decide whether the material on record is sufficient to direct the inquiry by CBI. While doing so, it will take into consideration not only the allegations made in the writ petitions but also the reply given by the Minister. After such an exercise if the Court still thinks that the allegations require a further investigation by CBI then it may do so after recording a prima facie finding which, of course, will be for the limited purpose of directing an inquiry."*

49. By way of referring the above judgment, they submitted that the investigation will be referred to any particular agency only when the High Court come to the conclusion that there is prima facie case of transferring the case.

50. They also relied upon the judgment rendered in the case of ***Shree Shree Ram Janki Ji Asthan Tapovan Mandir v. State of Jharkhand***, reported in ***(2019) 6 SCC 777***.

51. Paragraphs 12 to 20 of the said judgment are quoted herein below:

> *"**12.** The question as to whether the High Court could direct CBI to take over investigation in the facts of the present case needs to be examined. The Constitution Bench in its judgment State of W.B. v. Committee for Protection of Democratic Rights has examined the question as to the rights of CBI to investigate a criminal offence in a State without its consent.*

This Court examined Schedule VII List II Entry 2 of the Constitution. It was held that the legislative power of the Union to provide for the regular police force of one State to exercise power and jurisdiction in any area outside the State can only be exercised with the consent of the Government of that particular State in which such area is situated. The Court held that though the Court had wide powers conferred by Articles 32 and 226 of the Constitution, but it must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order is necessary for doing complete justice and enforcing fundamental rights.

13. *The relevant extract from the judgment reads as under: (Committee for Protection of Democratic Rights4, SCC p. 602, para 70)*

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

14. *The Court approved earlier two-Judge Bench judgment Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya wherein it was held that the High Court under Article 226 of the Constitution can direct inquiry to be conducted by CBI but such power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is need for such inquiry. It was held that it is not sufficient to have such material in the pleadings. The Court also held that the right to live under Article 21 includes the right of a person to live without being hounded by the police*

or CBI to find out whether he has committed any offence or is living as a law-abiding citizen.

15. *The relevant extracts from the judgment read as under:*

> *"5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by CBI. This is a requirement which is clearly deducible from the judgment of this Court in Common Cause6. This Court in the said judgment at para 174 of the Report has held thus:*
>
> > *'174. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21.'*
>
> *6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of "ifs" and "buts" and thought it appropriate that the inquiry should be made by CBI. With respect, we think that this is not what is required by the law as laid down by this Court in Common Cause."*

16. *It is the said findings, which were approved specifically by the Constitution Bench in State of W.B. holding as under:*

> *"71. In Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."*

17. *A three-Judge Bench judgment Sujatha Ravi Kiran v. State of Kerala held that the extraordinary power of the Constitutional Courts in directing CBI to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest. This Court held as under:*

> *"10. Taking into account the law laid down by this Court in Committee for Protection of Democratic Rights direction for investigation by CBI was declined by this Court in K. Saravanan Karuppasamy v. State of T.N. and Sudipta Lenka v. State of Odisha.*
>
> *11. Considering the facts and circumstances of the case in hand, in the light of the above principles, we are of the view that the case in hand does not entail a direction for transferring the investigation from the State Police/special team of State Police officers to CBI. The facts and circumstances in which the offence is alleged to have been committed can be better investigated into by the State Police. However, having regard to the nature of allegations levelled by the petitioner, we deem it appropriate to direct the State of Kerala to constitute a special team of police officers headed by an officer not below the rank of Deputy Inspector General of Police to investigate the matter."*

18. *In another three-Judge Bench judgment K.V. Rajendran v. CB-CID, it was held that (at SCC p. 487, para 17) the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency only in rare and exceptional circumstances. The Court gave instances such as where high officials of 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 to instil confidence in the investigation.*

19. *In another two-Judge Bench judgment Bimal Gurung v. Union of India, this Court held that the power of transferring such investigation must be in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties and to instil confidence in the public mind. It was held as under: (SCC p. 496, para 29)*

> *"29. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks*

credibility. Such power has to be exercised in rare and exceptional cases. In K.V. Rajendran v. CB-CID, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation prima facie is found to be tainted/biased."

20. *In an earlier two-Judge Bench judgment T.C. Thangaraj v. V. Engammal, this Court found that merely because complaint was against the police officer, the investigations should not be entrusted to Central Bureau of Investigation. The Court held as under: (SCC pp. 331-33, paras 8-9 & 11-12)*

"8. The learned counsel for the complainant, on the other hand, cited a decision of two-Judge Bench of this Court in Ramesh Kumari v. State (NCT of Delhi)13 in which this Court directed CBI to register a case and investigate into the complaint of the appellant because the complaint was against the police officer and the Court was of the view that the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI.

9. The decision of the two-Judge Bench of this Court in Ramesh Kumari v. State (NCT of Delhi)13 will have to be now read in the light of the principles laid down by the Constitution Bench of this Court in State of W.B. v. Committee for Protection of Democratic Rights4. The Constitution Bench has considered at length the power of the High Court to direct investigation by CBI into a cognizable offence alleged to have been committed within the territorial jurisdiction of a State and while taking the view that the High Court has wide powers under Article 226 of the Constitution cautioned that the courts must bear in mind certain self-imposed limitations.

* * *

11. In the impugned order, the High Court has not exercised its constitutional powers under Article 226 of the Constitution and directed CBI to investigate into the complaint with a view to protect the complainant's personal liberty under Article 21 of the Constitution or to enforce her fundamental rights guaranteed by Part III of the Constitution. The High Court has exercised its power under Section 482 CrPC on a grievance made by the complainant that her complaint that she was cheated in a loan transaction of Rs 3 lakhs by the three accused persons, was not being investigated properly because one of the accused persons is an Inspector of Police. In our considered view, this was not one of those exceptional situations calling for exercise of extraordinary power of the High Court to direct investigation into the complaint by CBI. If the High Court found that the investigation was not being

> *completed because P. Kalaikathiravan, an Inspector of Police, was one of the accused persons, the High Court should have directed the Superintendent of Police to entrust the investigation to an officer senior in rank to the Inspector of Police under Section 154(3) CrPC and not to CBI.*
> *12. It should also be noted that Section 156(3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the police to carry out the investigation properly, and can monitor the same."*

52. Lastly, they relied upon the judgment rendered in the case of ***Bimal Gurung v. Union of India***, reported in ***(2018) 15 SCC 480***.

53. Paragraphs 27, 28, 29 and 50 of the said judgment are quoted herein below:

> ***"27.*** *Before we advert to the facts of the present case and prayers made in the writ petition, it is useful to recall necessary principles as enumerated by this Court while exercising jurisdiction by this Court under Article 32 or the High Court under Article 226 for transferring investigation of a criminal case to a Central agency. The Constitution Bench of this Court in State of W.B._has authoritatively laid down that the High Court under Article 226 and this Court under Article 32 can issue direction to CBI to investigate a cognizable offence within the State without consent of that State. The Constitution Bench also in the above context has held that although this Court has implied power and jurisdiction to direct for the transfer to CBI to investigate a cognizable offence but also has obligation to exercise the said power with great caution which must be exercised sparingly, cautiously and in exceptional situations. In para 70 with regard to exercise of such power, the following has been laid down by the Constitution Bench: (SCC p. 602)*
>
> > *"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must*

be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

28. *The two-Judge Bench of this Court in Dharam Pal v. State of Haryana while referring to the principles for transferring investigation has laid down the following in paras 18, 19 and 24: (SCC pp. 168 & 170)*

"18. A three-Judge Bench in K.V. Rajendran v. Supt. of Police reiterating the said principle stated that:

'13. … the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where 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.'

19. The Court, after referring to earlier decisions, has laid down as follows: (K.V. Rajendran case12, SCC p. 487, para 17)

'17. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of 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 instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.'

* * *

24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the

cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor."

29. *The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In K.V. Rajendran v. Supt. of Police, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation prima facie is found to be tainted/biased.*

50. *As per law laid down by this Court in the above case, when the power can be exercised even after the commencement of the trial there cannot be any fetter to the power of this Court in transferring the investigation even after the filing of the charge-sheet but in view of the facts and reasons as stated above present is not a case where this Court may exercise jurisdiction under Article 32 to transfer the investigation in large number of cases en masse registered against the petitioner and other members of GJM. A judgment on which reliance has been placed by the petitioner is the judgment of Mithilesh Kumar Singh v. State of Rajasthan. The above case was a case where daughter of the petitioner died by falling from four-storey college hostel. The petitioner came with the case that investigation conducted by the local police was not fair and the version put up by the police that the girl committed suicide is not correct. In the above context, this Court held that a trial based on a partisan, motivated, one-sided, or biased investigation can hardly be fair. In paras 11 and 12, the following has been laid down: (SCC pp. 801-02)*

"11. Such being the importance of fair and proper investigation, this Court has in numerous cases arising out of several distinctly different fact situations exercised its power of transferring investigation from the State/jurisdictional police to the Central Bureau of Investigation under the Delhi Police Establishment Act. There was mercifully no challenge to the power of this Court to direct such a transfer and in my opinion rightly so as the question whether this Court has the jurisdiction to direct transfer stands authoritatively settled by the Constitution Bench of this Court in State of W.B. v. Committee for Protection of Democratic Rights.

12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the

> *prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent."*

54. By way of referring the above judgments, they submitted that the scope of Article 226 of the Constitution of India has been discussed by the Hon'ble Supreme Court and in view of these judgments, this case is fit to be dismissed.

55. Mr. Rajiv Sinha, learned A.S.G.I appearing for the respondent-CBI fairly submitted that on merit he has nothing to submit and it is for the Court to come to conclusion whether this case is required to be handed over to the CBI or not.

56. The submission of Mr. Rajiv Sinha, learned A.S.G.I. on the point of

contempt shall be considered when the Court will take the said point.

57. In light of the above facts and judgments referred by the learned counsel appearing for the parties, this Court is required to consider whether prima facie case, on the basis of the record, to handover the investigation to CBI is made out or not. So far as the point of affidavit filed by *pairvikar* is concerned, it transpires that the said affidavit was filed at a belated stage when the arguments are almost completed and affidavits have been exchanged between the parties. It is well known in terms of the High Court of Jharkhand Rules, 2001 that in criminal cases, the accused are not allowed to file an affidavit and only *pairvikars* are allowed to swear the affidavits. Moreover, the final report dated 03.06.2021 in Borio P.S. Case No.127/2021 has been submitted by the Investigating Officer, wherein, he found the father of Late Rupa Tirkey, who is the petitioner in this case, as an accused, which has been disclosed in the case diary supplied to the Court in a sealed cover. The Investigating Officer has not filed charge-sheet against the petitioner awaiting the direction of his superior officer. It shows that the petitioner was also implicated in the case. After exchange of the affidavits and the submissions advanced by the learned counsel for the parties, only on the ground of technicality this Court cannot restrain itself in rendering justice while exercising its power under Article 226 of the Constitution of India. The point of technicality has been considered by the Hon'ble Supreme Court in the case of *Union of India & Others v. R. Reddappa & another (supra)*. Moreover, the father has filed this petition for justice of his daughter against high ups of the State. Thus, the submission of the respondent-State on the point of affidavit is negated by the Court.

58. On 03.05.2021, U.D. Case No.09/2021 was registered. On

04.05.2021, the mother of the deceased lodged complaint against Pankaj Mishra, Jyotsana Mahato and Manisha Kumari and the police has not taken any action on that in spite of serious allegation against them. However, the police obliged to examine Pankaj Mishra as stated in paragraph 32 of the counter affidavit of the respondent-State. In paragraph 16 of the writ petition, it has been stated that in the Sahebganj town, another tribal police officer was killed a year back and shown to have committed suicide in the same manner. On perusal of the colour photographs, which has been brought on record by way of filing supplementary affidavit dated 05.08.2021, it is crystal clear that the body was not hanging at the time when her body was found hanging and the knee of the deceased was lying on the bed. Looking to further photographs, it prima facie appears that there are several antemortem injuries, which has also been admitted by the doctors, who have been examined by the Investigating Officer, as contained at page 120 of the counter affidavit filed on behalf of the respondent-State. It is well settled where poisoning is suspected, viscera is required to be preserved, which has been clearly directed by the Hon'ble Supreme Court and one of the judgment has been referred by the learned Senior counsel for the petitioner in the case of *Joshinder Yadav v. State of Bihar (supra)*. In paragraph 7 of the supplementary affidavit dated 16.06.2021, it has been alleged that Jyotsana Mahato has given her statement before the Investigating Officer as to how Late Rupa Tirkey was threatened and harassed by Pankaj Mishra and her statement was changed at the instance of the police official. In paragraph 25 of the supplementary affidavit dated 16.06.2021, it has been stated that the persons who is involved in the crime is right hand of the present Chief Minister of the State and he is also related

with the ruling party. In paragraph 6 of the supplementary affidavit dated 16.06.2021, it is disclosed that pressure was being made upon Late Rupa Tirkey to drop the cases against the close one of Pankaj Mishra. In paragraph 20 of the said supplementary affidavit, it has been disclosed that one person has approached the family members of Late Rupa Tirkey to provide them a Petrol Pump and forget the case of their daughter. In paragraphs 3 and 5 of the supplementary affidavit dated 27.07.2021, it has been stated that police officer as well as high officer of the district Sahebganj were interacting with Pankaj Mishra and the name of some of the police officer has been annexed in the said affidavit.

59. The Court has also gone through the documents and has watched the videography, which has been supplied to the Court in a sealed cover by the State. There is no doubt that voluminous case diary has been produced in the Court. However, this is only because of contents of Call Detail Record between Late Rupa Tirkey and Shiv Kumar Kanogiya and the father of Late Rupa Tirkey, except certain evidence recorded of other persons. On watching the videography, prima facie it appears that her knee was on bed and the body was not hanging. Moreover, no prudent person can commit suicide that too in almost naked condition. It has also been admitted in the case diary that the police officer has covered the body of Late Rupa Tirkey. If such a position was there, the police was required to investigate the matter on the point of murder, but unfortunately from the very first date, U.D. Case No.09/2021 was registered and it was declared that it is a case of suicide. The further question remains that in a criminal case what was the occasion of the State to appoint One Man Enquiry Commission, which is not prescribed in the Cr.P.C. In fact the report of the Commission of enquiry is

neither binding upon the Government nor upon the Courts. However, this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of *Sanjiv Kumar v. State of Haryana & Others (supra).* Not only this, it has been stated in paragraph 20 of the supplementary affidavit that the parents have been offered Petrol Pump by one of the leader of the political party. It is surprising that if it was a case of suicide what was the occasion of offering such things to the parents of the deceased. These all are the questions which raised eye brow on the role of police as it is alleged that high ups of the State are involved.

60. Prima facie it transpires from the record that something is being hiked by the police. Sections 4 and 6 of Delhi Special Police Establishment Act has been considered by the Hon'ble Supreme Court in so many cases and it has been held that if the constitutional courts come to a conclusion that a particular case is required to be handed over to specialized agency, has got power to do so. Thus, this Court is not examining that aspect of the matter as the Court is required to prima facie come to the conclusion that whether the case is required to be handed over to a particular agency or not. There is no doubt that the scope of Article 226 of the Constitution of India is very wide and cannot be restricted by various statutes and to limit the exercise of such power. However, generally the High Court restraint itself by self imposing not to pass any order on routine basis, otherwise the CBI will be burdened with so many litigation.

61. The Court can direct the CBI investigation under exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. Otherwise

CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases. Almost similar situation has been considered by the Hon'ble Supreme Court in the case of ***State of W.B. v. Committee for Protection of Democratic Rights***, reported in ***(2010) 3 SCC 571***. That case was arising out of murder by the workers of the political party and it was alleged in that case that the police has registered the case and later on the investigation was handed over to the CBI. The fact of the present case is almost identical as there is allegation against high ups of the State. At this stage, this Court is not inclined to come to clear finding about this case that it is a case of murder or suicide. The Court is required to come to a prima facie conclusion on the basis of record whether it is a fit case for handing over the investigation to the CBI or not.

62. In the judgment relied by the learned counsel for the State in the case of *Kartar Singh v. State of Punjab (supra),* the Hon'ble Supreme Court has considered Terrorist and Disruption Activities (Prevention) Act, 1907 and Articles 14 and 21 of the Constitution of India. This case is related to the legislative power of the legislature of the State in the matter of enactment of laws and further nature, scope and importance of right guaranteed under basic human rights life, liberty have been discussed in the case.

63. In the judgment relied by the learned counsel for the State in the case of *Hari Singh v. State of U.P. (supra)*, the Hon'ble Supreme Court has considered the fact that the petitioner of that case is under constant threat by some persons and his life and property were in danger and if he seeks any protection, it is the duty of the police officials concerned to provide such security and further Section 190 and 200 of Cr.P.C. has been discussed for

filing the complaint before the Magistrate having the jurisdiction for taking cognizance of the offence. The facts of this case is different in the present case.

64. In the judgment relied by the State in the case of *Vinay Tyagi v. Irshad Ali (supra)*, the Hon'ble Supreme Court has considered that what kind of investigation will be handed over to the central agency or whether the CBI or other investigating agency is empowered to conduct fresh investigation/re-investigation when the cognizance has already been taken further power under Section 156(1) and 156(3) have been elaborated in that case. The facts of the present case are also different from that case.

65. In the judgment relied by the State in the case of *Gudalure M.J. Cherian v. Union of India (supra)*, the Hon'ble Supreme Court has discussed about the unfair police investigation and matter is related to transfer of case from one Sessions Judge to another Sessions Judge and in that case investigation has completed and charge sheet have been submitted and after that investigation was handed over to the CBI and prayer of transfer of case has been dismissed. That case was also different from the facts of the present case.

66. In the judgment relied by the State in the case of *ABCD v. Union of India (supra)* on the point mainly on false affidavit and Hon'ble Supreme Court held that any person who makes attempt to deceive court, interferes with administration of justice can be held guilty of contempt and has decided the case on its own merit. This is not the case in hand.

67. In the judgment relied by the State in the case of *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya (supra)*, in that case also it has been held by the Hon'ble Supreme Court that when can High Court

direct enquiry by the CBI and the High Court must record prima facie case for handing over the investigation to the CBI. To some extent, this judgment is helping the petitioner.

68. In the judgment relied by the State in the case of *Shree Shree Ram Janki Ji Asthan Tapovan Mandir v. State of Jharkhand (supra)*, the Hon'ble Supreme Court has held that CBI investigation can be exercised only in the cases where there is a sufficient material to come to a prima facie conclusion and direction for investigation can be given and up to some extent this case is also helping to the petitioner and the matter is related to the transfer of property of deity by itself. This fact is not involved in the present case.

69. In the judgment relied by the State in the case of *Bimal Gurung v. Union of India (supra)*, the fact of that case is also different as in that case death of several persons including police personnel was admitted by both the parties and large number of F.I.Rs alleging serious offenses arising out of the violent protest and *bandhs* are the matters, on that ground the Hon'ble Supreme Court came to the conclusion that this is not a case to transfer the investigation as the State police is competent.

70. In view of the above facts and considering the submission of the learned counsel for the parties and the law prescribed in this regard and considering that injury has been found on the body, viscera was not preserved, the photographs and video in pen drive, on very first day of incident coming to the conclusion of suicide, two parallel investigations i.e. U.D. Case and F.I.R., frequent changing of I.Os., not lodging the F.I.R. against high ups on complaint of mother of Late Rupa Tirkey, taking statement of Pankaj Mishra in absence of F.I.R., the call details brought on

record of interaction between the high officials and I.O. with Pankaj Mishra, in paragraph 6 of the supplementary affidavit dated 16.06.2021 about pressure upon Late Rupa Tirkey of dropping the cases against close persons of Pankaj Mishra, suicide in naked position as discussed above, this Court comes to a conclusion that this is a fit case in fact it is rarest of rare case to hand over the investigation to the CBI. The CBI is directed to take the investigation of this case immediately and police of Sahebganj shall handover the same to the CBI. Accordingly, this criminal writ petition stands allowed and disposed of.

71. Mr. Rajiv Sinha, learned A.S.G.I. appearing for the respondent-CBI is requested to transmit this order to the competent authority of the CBI for needful.

72. Office is directed to handover the documents as well as pen drive in a sealed cover to the office of the learned Advocate General by way of taking acknowledgment.

73. I.A. No. 2588 of 2021 has been filed for setting aside the notification of State of Jharkhand where a One Man Commission has been appointed.

74. In view of the fact as it has been constituted under Commission of Inquiry Act, 1952, this Court is not inclined to interfere the prayer made in the said I.A. and the same is rejected. Accordingly, I.A. No. 2588 of 2021 stands dismissed.

75. Before parting with the judgment, this Court is required to decide I.A. No. 4188 of 2021, which has already been on record.

76. I.A. No. 4188 of 2021 has been filed on behalf of the petitioner under Article 215 of the Constitution of India read with Sections 11 and 12 of the Contempt of Courts Act, 1971 seeking initiation of contempt proceeding

under the Act against Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II for making contemptuous statement before this Court.

77. It has been stated in the interlocutory application that on 13.08.2021, when the matter was taken up, at the outset, the learned Advocate General has made submission that let this matter go out of the list of this Court alleging that on 11.08.2021 after end of the proceeding, the counsel for the petitioner was saying that 200%, the matter is going to be allowed. Thereafter, Mr. Sachin Kumar, learned Additional Advocate General-II came online and he has vehemently submitted that they will not contest the case and this Court ought not to hear this matter and he has made submission in such a language which ought not to have been used in the Court. He vehemently stated that this Court may or may not hear this matter, but the State will not contest the case. It has also been stated in the said interlocutory application that the Court has taken serious note of the matter and asked the learned Advocate General to file an affidavit in this regard, but he has adamantly stated that what he orally submitted is sufficient and he will not file any affidavit. It has further been stated in the said interlocutory application that Mr. Rajiv Sinha, learned A.S.G.I. has also submitted that this is not the way to address the Court and what has happened, that directly cast aspersion on the majesty of the Court and this should be stopped. It has also been stated that the statement made by Mr. Rajiv Ranjan, the learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II has been heard and seen by all the counsels present in the panel.

78. The Court asked the learned counsel appearing for the State as to

whether the learned Advocate General and learned Additional Advocate General-II are inclined to file two lines affidavit or not, the answer was that the notice has not been issued. However, the said I.A. was opposed by Mr. Kapil Sibal, learned Senior counsel along with Mr. Arunabh Choudhary on the ground that this I.A. is not maintainable.

79. On 13.08.2021, in course of hearing of this case two senior law officers of the State, namely, Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II have scandalized the majesty of the Court proceeding, which has been witnessed by many lawyers, who were connected online. On 13.08.2021, the following order was passed:

> "*Heard Mr. Rajeev Kumar, learned counsel for the petitioner, Mr. Rajiv Ranjan, learned Advocate General for the respondent-State, Mr. R.S. Mazumdar, learned Senior counsel for the intervenor and Mr. Rajiv Sinha, learned A.S.G.I. for the respondent-CBI.*
>
> *This criminal writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic.*
>
> *On 17.06.2021, this matter was taken up and the State was directed to file the counter affidavit and the Court also directed to provide security to the parents of late Rupa Tirkey and the matter was fixed for 29.07.2021.*
>
> *On 29.07.2021, the State sought four weeks' further time for filing the counter affidavit. The Court on that day directed the Director General of Police, Jharkhand, Ranchi and the Superintendent of Police, Sahebganj to produce entire records of UD Case No.09/2021 registered on 03.05.2021 in sealed cover, by the next date of listing and it was open to the State to file counter affidavit as well as response to one I.A., which has been filed for intervention in the matter.*
>
> *Pursuant to the direction given by this Court vide order dated 29.07.2021, the documents of UD Case No.09/2021 and F.I.R. No.127/2021 was handed over to the Registry of this Court in sealed cover, which has been handed over by the Protocol of this Court to one of the staff of the undersigned and the same was directed to be kept on record vide order dated 09.08.2021.*
>
> *On 11.08.2021, the learned counsel for the petitioner and the learned Advocate General have almost completed their arguments and the matter was adjourned for two days*

for further argument by rest of the counsels.

Today when the matter was taken up, at the outset Mr. Rajiv Ranjan, learned Advocate General submits that after end of the proceeding on 11.08.2021, learned counsel for the petitioner was saying that 200% the matter is going to be allowed. He submits that let this matter go out of list of this Court. The other State counsel Mr. Sachin Kumar, learned A.A.G.-II supported the arguments of the learned Advocate General.

When the Court asked the learned Advocate General to file the affidavit to that effect, he submits that he will not file the affidavit and said that what he orally submitted that is sufficient.

Mr. Rajiv Sinha, learned A.S.G.I. appearing for the respondent-CBI very fairly submits that this is not the way to address the Court and what has happened today that directly casts aspersion on the majesty of the Court. This should be stopped. This submission has been supported by Mr. R.S. Mazumdar, learned counsel appearing for the intervenor.

Merely on such submission of the learned Advocate General, the Court is not required to recuse from the case as nothing should come in the way of dispensation of justice or discharge of duty as a Judge and judicial decision-making. Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of ***Indore Development Authority v. Manohar Lal and others****, reported in* ***(2020) 6 SCC 304****. Paragraph 47 of the said judgment is quoted herein below:*

> ***"47.*** *Recusal is not to be forced by any litigant to choose a Bench. It is for the Judge to decide to recuse. The embarrassment of hearing the lengthy arguments for recusal should not be a compelling reason to recuse. The law laid down in various decisions has compelled me not to recuse from the case and to perform the duty irrespective of the consequences, as nothing should come in the way of dispensation of justice or discharge of duty as a Judge and judicial decision-making. There is no room for prejudice or bias. Justice has to be pure, untainted, uninfluenced by any factor, and even decision for recusal cannot be influenced by outside forces. However, if I recuse, it will be a dereliction of duty, injustice to the system, and to other Judges who are or to adorn the Bench(es) in the future. I have taken an informed decision after considering the nitty-gritty of the points at issue, and very importantly, my conscience. In my opinion, I would be committing a grave blunder by recusal in the circumstances, on the grounds prayed for, and posterity will not forgive me down the line for setting a bad precedent. It is only for the interest of the judiciary (which is supreme) and the system (which is nulli secundus) that has compelled me not to recuse."*

The Court only with a view to faith that the common man reposes in the judiciary sending this matter before Hon'ble the Chief Justice on administrative side.

> *In such a situation, this Court thinks it proper to place this matter before Hon'ble the Chief Justice on the administrative side for administrative decision.*
>
> *Registry of this Court is directed to place this matter before Hon'ble the Chief Justice immediately."*

80. Thereafter, Hon'ble the Chief Justice again assigned the matter to this Court and that is how this case was listed on 26.08.2021 and the case was adjourned by this Court for 31.08.2021.

81. On that day, Mr. Kapil Sibal, learned Senior counsel apprised the Court about the scope of Section 15 of the Contempt of Courts Act and he has rightly pointed out that what are the modes of contempt in that Section.

82. Sub-section (a) and (b) of Section 15(1) of the Contempt of Courts Act, 1971 stipulates to take action on its own motion by the Court or on motion made by the Advocate General or any other person with the consent in writing of the learned Advocate General. It is not a case where appropriate ground for refusal to act can be looked into by the Court as Advocate General and Additional Advocate General-II are being offenders. Thus, if there is no consent for initiation of contempt, the *suo motu* power is always there to the Court. There are three different modes for initiation of contempt, such as (1) for taking cognizance of criminal contempt of its own motion, (2) on the motion by the Advocate General and (3) any other person, with the consent in writing of the Advocate General. The petitioner could not move in accordance with law and without consent of the Advocate General as Advocate General and Additional Advocate General-II are violators though he has right to move as they have scandalized the majesty of the Court in this case. The *suo motu* action is prescribed in the Act and this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of ***P.N. Duda v. P. Shiv Shanker & Others***, reported in

(1988) 3 SCC 167 and in that case the case of C.K. Daphtary v. O.P. Gupta was considered by the Hon'ble Supreme Court in paragraph 39 of the said judgment, which is quoted herein below:

> ***"39.*** *The question of contempt of court came up for consideration in the case of C.K. Daphtary v. O.P. Gupta. In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court alleged contempt committed by the respondents. There this court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the court. As the Attorney-General did not move in the matter, the President of the Supreme Court bar and the other petitioners chose to bring the matter to the notice of the court. It was alleged that the said President and the other members of the bar have no locus standi. This Court held that the court could issue a notice suo motu. The President of the Supreme Court bar and other petitioners were perfectly entitled to bring to the notice of the court any contempt of the court. The first respondent referred to Lord Shawcross Committee's recommendation in U.K. that "proceedings should be instituted only if the Attorney-General in his discretion considers them necessary". This was only a recommendation made in the light of circumstances prevailing in England. But that is not the law in India, this Court reiterated. It has to be borne that decision was rendered on March 19, 1971 and the present Act in India was passed on December 24, 1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the Attorney-General should be associated with it, and thereafter in U.K. there was report of Phillimore Committee in 1974. In India the reason for having the consent of the Attorney-General was examined and explained by Sanyal Committee Report as noticed before."*

83. In the case of P.N. Duda *(supra)*, the Hon'ble Supreme Court has also considered where neither the Attorney General nor the Solicitor General is in a position to consider a request under Section 15(1)(c), it is open to the

petitioner to seek the consent of some other law officer such as the Additional Solicitor General. Paragraph 62 of the said judgment is quoted herein below:

> "***62.*** *The last question that remains to be touched upon is whether, in a case where neither the Attorney-General nor the Solicitor-General is in a position to consider a request under Section 15(1)(c), it is open to the petitioner to seek the consent of some other law officer such as the Additional Solicitor-General. Apart from the fact that, in the present case, the petitioner would have had the same criticism against the Additional Solicitor-General as he had against the Attorney-Genera1/Solicitor-General, the clear answer to the question appears to be that it is not open to him to seek such consent. Section 15 is quite clear that the written consent of only those officers as have been specifically authorised by the section would be taken note of for entertaining a petition under the section. But this does not, in any way, deprive the petitioner of his remedy as he can come to court, as indeed he has done, requesting the court to take suo motu action."*

84. Thus, the Hon'ble Supreme Court held that it does not, in any way, deprive the petitioner of his remedy as he can come to Court, as indeed he has done, requesting the Court to take *suo motu* action.

85. The Hon'ble Supreme Court again considered the petition filed for action under Section 15 of the said Act in the case of ***Bal Thackrey v. Harish Pimpalkhute & Others***, reported in ***(2005) 1 SCC 254*** and held that the prayer is not made for *suo motu* action and it was not moved with the consent, the petition is not maintainable. However, the case of Bal Thackrey is different from present case as two officers of the State are contemners. The facts as narrated in the said I.A. cannot be denied as this Court is itself a witness and this Court has faced humiliation on that day.

86. Although Mr. Rajiv Ranjan, the learned Advocate General and Mr. Sachin Kumar, the learned Additional Advocate General-II have thrashed this Court in such words which have been described in the said I.A. and humiliation cannot be described in words. In spite of that, this Court

restrained itself to take *suo motu* action upon them and sent the matter to Hon'ble the Chief Justice on administrative side. The facts narrated in the said I.A. are correct. However, the Court is not inclined to proceed on the basis of the said I.A. as it is not in a proper format and not in accordance with the High Court of Jharkhand Rules, 2001. There is no prayer of *suo motu* action in the said I.A. and both the contemners are not made parties in this regard. Thus, the prayer made in I.A. No. 4188 of 2021 stands rejected. Accordingly, I.A. No. 4188 of 2021 stands dismissed.

87. Now, the only option before the Court is to take *suo motu* cognizance of the conduct of two senior law officers of the State. In the case of *P.N. Duda (supra)*, the Hon'ble Supreme Court considered the observation of Lord Denning in paragraph 15 of the said judgment, which is quoted herein below:

> *"**15**. Lord Denning in Regina v. Commissioner of Police of the Metropolis, ex parte Blackburn observed as follows:*
>
> *"Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.*
>
> *It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.*
>
> *Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."*

88. If the Judges are fairly criticized for any judgment, we restrained

ourselves. We did not interfere into any discussion and we happily accept fair criticism. On 13.08.2021, before passing any order the two law officers of the State scandalized the Court proceeding and the matter was sent before Hon'ble the Chief Justice on administrative side. The scene was created by Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II. The said I.A. was filed with service of an advance copy upon the office of the learned Advocate General, but till date no affidavit of apology on behalf of both the counsels have been filed, meaning thereby they have not realized what they have done on 13.08.2021. This is one aspect of the matter. On 26.08.2021, this Court asked Mr. P.A.S. Pati and Mr. Kaushik Sarkhel, learned counsel for the respondent-State about the said affidavit, in the blank way they straightway submitted that notice has not been issued. On 31.08.2021, the same thing was repeated by the Court to Mr. Kapil Sibal, learned Senior counsel as well as Mr. Arunabh Choudhary, who opposed I.A. on behalf of the Advocate General and Additional Advocate General. Had there been an unreserved, clean and immediate apology on behalf of those two senior law officers of the State, undoubtedly be given greater weight, but this has not been done that too on repeated request by the Court. Admittedly on 13.08.2021, the things happened is recorded in the order and the same has also been stated in I.A. No.4188 of 2021. This matter has been re-assigned to this Bench by the order of Hon'ble the Chief Justice. Not taking any action of criminal contempt on 13.08.2021 does not mean that it is implied to maintain silence. Nobody can be permitted to tarnish the image of the temple of justice. In the case in hand, Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II, who are senior

law officers of the State undermined and tarnished the image of the Court. An Advocate has no wider protection than a layman when he commits an act which amounts to contempt of court which is not permissible. A reference may be made to the judgment rendered by the Hon'ble Supreme Court in the case of ***Jaswant Singh v. Virender Singh***, reported in ***1995 Supp (1) SCC 384***.

89. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. The foundation itself has been sought to be shaken by acts none other than two first law officer of the State. It is for this purpose that the courts are entrusted with extraordinary powers of punishing for contempt of court, those who indulge in acts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalising it. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. It has been observed by the Hon'ble Supreme Court in the case of ***Rajendra Sail v. M.P. High Court Bar Assn.***, reported in ***(2005) 6 SCC 109***.

90. When a contempt is committed in the face of the High Court or the Supreme Court to scandalize or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalizing the institution thereby lowering its dignity in the eyes of the public, which has been held by the Hon'ble Supreme Court in the case of ***Ram Niranjan Roy v. State of Bihar***, reported in ***(2014) 12 SCC 11***. Paragraph 16 of the said judgment is quoted herein

below:

> "***16.*** *Thus, when contempt is committed in the face of the High Court or the Supreme Court to scandalise or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalising the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempt committed in the face of the court need a strict treatment. The appellant, as observed by the High Court was not remorseful. He did not file any affidavit tendering apology nor did he orally tell the High Court that he was remorseful and he wanted to tender apology. Even in this Court he has not tendered apology. Therefore, since the contempt was gross and it was committed in the face of the High Court, the learned Judges had to take immediate action to maintain honour and dignity of the High Court. There was no question of giving the appellant any opportunity to make his defence. This submission of the appellant must, therefore, be rejected."*

91. On repeated request by the Court, affidavit has not been filed. In view of refusal of filing the affidavit, they have not left any option and compel this Court to take *suo motu* action.

92. Both have sought and bullied the Court and behaved in the manner that the Court felt that they are trying to threaten it. This has been done in open Court in the presence of senior and junior counsels of the bar and as also in the presence of Mr. R.S. Mazumdar, learned Senior counsel and Mr. Rajiv Sinha, learned A.S.G.I. for the Union of India, who are the witnesses to entire incidents. It is necessary to see at outset that what implication and impression would such a conduct have on the senior and junior members of bar. The Court feels that the majesty of the Court would be at risk, if such a conduct is not checked at the stage of its budding. It has the potential of carrying the message across board that the courts can be manhandled to the desired ends of a litigator. This would ultimately result in lowering the authority of the institution and bears the possibility of creating anarchy of a

system on the unfortunate date as has been submitted by Mr. Rajiv Sinha, learned A.S.G.I. appearing for the respondent-CBI yesterday with heavy heart submitted that he is witness of what has happened on that day and how the Court has been humiliated. He further submitted that he has not seen this in the history of Jharkhand High Court. In view thereof, the Court has been humiliated and with heavy heart, it is said that this is humiliation of not an individual Judge, but the entire institution, if it is not dealt with iron hands it may see progress and will jeopardise the administration of justice. The system in which the Judges can be bullied by the litigators to say that Justice will be done as will be matter of myth and will give rise to very nasty tendency of being more vocal in the Court then being a learned.

93. The Court having found that Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II have prima facie committed criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 and compel this Court to take *suo motu* action against them under Section 15 of the said Act.

94. In view of the above facts, following order is being passed:

(i) W.P. (Cr.) No.139 of 2021 is allowed in terms of paragraph no. 70 of this order and the same stands disposed of.

(ii) Office is directed to register *suo motu* motion as Suo Moto Contempt Proceedings in terms of Rule 389 and other relevant Rules of the High Court of Jharkhand Rules, 2001 and under Article 215 of the Constitution of India read with Section 15 of the Contempt of Courts Act, 1971 for the purpose of record.

(iii) Office is directed to issue notice under Section 17 of the Contempt of Courts Act to Mr. Rajiv Ranjan, learned Advocate

General and Mr. Sachin Kumar, learned Additional Advocate General-II at their address as per the Contempt of Courts Act and High Court of Jharkhand Rules. Notice shall be accompanied by the entire record of this case including the disposed of I.As., this order and order dated 13.08.2021, to be made returnable on 05.10.2021.

(iv) Since every case of criminal contempt under Section 15, is required to be heard and determined by the Bench of not less than two Judges in terms of Section 18 of the said Act, office is directed to place the matter before Hon'ble the Chief Justice for necessary consideration.

(Sanjay Kumar Dwivedi, J.)

Ajay/