

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1903 OF 2021

The State of Maharashtra
through Additional Chief Secretary
Home Department, Mantralaya,
Government of Maharashtra ...Petitioner
vs.

The Central Bureau of Investigation,
Through its Superintendent of Police,
Anti Corruption-V, Plot No. 5B, First Floor,
CGO Complex, Lodhi Road,
New Delhi-110003. ...Respondent

WITH
INTERIM APPLICATION NO. 1578 OF 2021
IN

WRIT PETITION NO. 1903 OF 2021

Dr. Jaishri Laxmanrao Patil
Aged 44 years, Occ : Advocate/Criminologist,
Residing at 1601, Crystal Tower, Parel TT,
Parel East, Mumbai, 400012 ...Applicant

In the matter between :

The State of Maharashtra
through Additional Chief Secretary
Home Department, Mantralaya,
Government of Maharashtra ...Petitioner
Vs.

The Central Bureau of Investigation
Through its Superintendent of Police,
Anti Corruption -V, Plot No. 5B,
First Floor, CGO Complex, Lodhi Road,
New Delhi-110003. ...Respondent

WITH
INTERIM APPLICATION NO. 1577 OF 2021
IN

WRIT PETITION NO. 1903 OF 2021

Ghanshyam Upadhyay
aged 51 years, Occupation -Advocate
having his office at 506,
Arcadia Premises, 195 NCPA Road,
Nariman Point, Mumbai 400 021. ...Applicant

In the matter between :

The State of Maharashtra
through Additional Chief Secretary
Home Department

...Petitioner

vs.

The Central Bureau of Investigation
through its Superintendent of Police

...Respondent

Mr. Rafique Dada, Senior Advocate, a/w Mr. Darius Khambata, Senior Advocate, Mr. Deepak Thakre, PP, Mr. Akshay Shinde, APP Mr. Phiroz Mehta, Mr. Tushar Hathiramani for Petitioner-State.

Mr. Tushar Mehta, Solicitor General of India a/w. Mr. Anil C. Singh, Addl.S.G., Mr. Sandesh D. Patil, Mr. Aditya Thakkar, Mr. D. P. Singh, for Respondent No.2/CBI.

Mr. Subhash Jha i/b Law Global Advocates for Applicant/Intervener in IA/1577/2021.

Dr. Jaishri Patil, Applicant/Intervener-in-person in IA/1578/2021.

CORAM : S.S. SHINDE &

N.J. JAMADAR, JJ.

Reserved for Judgment on : 23rd June 2021.

Judgment Pronounced on : 22nd July 2021.

(THROUGH VIDEO CONFERENCE)

JUDGMENT :

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.

2. The State of Maharashtra has presented this petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 to quash and set aside the 4th and 5th unnumbered paragraphs of the FIR RC 2232021A0003, bearing Book No. 1379, Serial

No. 001 of 2021 dated 21st April 2021, registered at AC-V, CBI, New Delhi, for the offences punishable U/sec. 120-B of Indian Penal Code, 1860 ('the Penal Code') and section 7 of the Prevention of Corruption Act, 1988 as amended by the Prevention of Corruption (Amendment) Act, 2018 by CBI- respondent.

3. The State claims to be constrained to invoke the writ and inherent jurisdiction of this Court in the backdrop of the following facts :

(a) A FIR bearing CR No. 35/2021 was registered with Gamdevi Police Station, when a SUV laden with Gelatine was found near the residence of an industrialist. Initially, investigation was carried out by the Anti-Terrorist Squad of the State. Later on, the National Investigation Agency (NIA) took over the investigation of the said crime. Shri Sachin Vaze, API attached to the crime investigation Unit of Crime Branch, Mumbai came to be arrested by NIA. Shri Param Bir Singh, the then Commissioner of Police, Mumbai came to be transferred to the post of Commandant General of Home Guards, Maharashtra State by an order dated 17th March 2021. Taking umbrage to certain Press reports attributed to Shri

Anil Deshmukh, the then Home Minister, Shri Param Bir Singh addressed a letter on 20th March 2021 to the Hon'ble Chief Minister wherein allegations were made against Shri Anil Deshmukh.

(b) On the following day, Dr. Jaishri Patil lodged a report with Malabar Hill Police Station, primarily on the strength of the allegations contained in the said letter dated 20th March 2021 addressed by Shri Param Bir Singh. A copy of the said letter was annexed to the said report.

(c) A series of proceedings were instituted before this Court and the Supreme Court. First, Writ Petition being Writ Petition (Civil) No.385/2021 was instituted by Shri Param Bir Singh before the Supreme Court seeking, *inter-alia*, a direction to Central Bureau of Investigation (CBI) to conduct impartial and fair investigation in the alleged “corrupt malpractices” of Shri Anil Deshmukh and a writ, order or direction to quash and set aside the aforesaid transfer order dated 17th March 2021. By an order dated 24th March 2021, the said writ

petition came to be disposed of as withdrawn with liberty to approach the High Court.

(e) Shri Param Bir Singh, armed with the said liberty, filed a Public Interest Litigation No. 6 of 2021 in this Court seeking, *inter-alia*, issuance of writ of mandamus to respondent No.3-CBI to conduct unbiased, uninfluenced, impartial and fair investigation, in the various corrupt malpractices of Shri Anil Deshmukh, and also to issue writ of mandamus to respondent No.1-State to ensure that transfer/posting of police officials are neither done on any consideration of pecuniary benefits to any politician, nor in contravention of the directions of the Supreme Court of India in the case of ***Prakash Singh & Ors Vs. Union of India & Ors.***¹.

(f) On the very day, Dr. Jaishri Patil filed Criminal Writ Petition No. 1541 of 2021 seeking, *inter-alia*, unbiased, uninfluenced, impartial and fair investigation in various corrupt malpractices of Shri Anil Deshmukh, the then Home Minister and the role played by Shri Param Bir Singh, the then

1 (2006)8 SCC 1

Commissioner of Police, Mumbai.

(g) Public Interest Litigation, being P.I.L. (St.) No. 6072 of 2021, was filed by Shri Ghanshyam Upadhyay praying for a direction for thorough investigation against the persons whose names found mention in the letter of Shri Param Bir Singh by drawing personnel from independent investigating agencies.

(h) Another P.I.L., being PIL (St.) No.6166 of 2021, was filed by Mr. Mohan Prabhakar Bhide seeking appointment of a Committee headed by a retired Judge of the Supreme Court or this Court to investigate into the allegations made by Shri Param Bir Singh.

4. A Division Bench of this Court, presided over by the Hon'ble the Chief Justice, disposed of all the above-numbered petitions by an order dated 5th April 2021. This Court was of the view that, in the backdrop of the nature of the allegations, directions were required for facilitating an unbiased, impartial and fair but effective probe so that the truth is unearthed. Since Shri Anil Deshmukh was the Home Minister, there could be no fair, impartial, unbiased and untainted probe, if the same were

entrusted to the State Police Force. Thus, the probe was required to be entrusted to an independent agency like CBI. This Court was of the opinion that the interest of justice would be sufficiently served if the Director, CBI was directed to initiate a preliminary enquiry into the complaint of Dr. Jaishri Patil, which had the letter of Shri Param Bir Singh addressed to the Hon'ble Chief Minister, as an annexure. The Director, CBI was, thus, ordered to conduct the preliminary enquiry, preferably within 15 (fifteen) days. Post completion of preliminary enquiry, it was further ordered, the Director, CBI was at liberty to decide on the future course of action, in accordance with law.

5. Since the fate of the challenge hinges upon the import of the order passed by this Court on 5th April 2021, it may be apposite, at this juncture itself, to extract the paragraphs 82 and 83 of the said order, which incorporate operative directions. They read as under :

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

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

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

6. The aforesaid order was challenged by the State as well as Shri Anil Deshmukh by filing Special Leave Petition (Criminal) Diary No. 9414/2021 and SLP (Crl.) No. 2999-3002/2021, respectively. The Supreme Court dismissed the Special Leave Petitions by order dated 8th April 2021 expressing the view that the nature of allegations, the personas involved and the seriousness of the allegations required an independent agency to inquire into the matter.

7. In the meanwhile, pursuant to the order passed by this Court, preliminary enquiry vide PE2232021A0001 was registered by the respondent against Shri Anil Deshmukh, the then Home Minister and unknown others, on 6th April 2021.

8. During the course of the preliminary enquiry, the respondent called upon the petitioner to furnish, *inter-alia*, following documents :-

(a) Letter/Report of the then Commissioner, State Vigilance Department Smt. Rashmi Shukla, dated 21st August 2020.

(b) Minutes of meeting of Police Establishment Board.

9. The petitioner contested the relevance of the aforesaid documents and the authority of CBI to requisition those documents in the context of the aforesaid order passed by this Court.

10. The preliminary enquiry, according to CBI, *prima-facie* revealed that a cognizable offence is made out wherein the then Home Minister and others attempted to obtain undue advantage for improper and dishonest performance of their public duty. Thus, FIR No. RC 2232021A003 of 2021 came to be registered on 21st April 2021 at AC-V, CBI, New Delhi against Shri Anil Deshmukh and unknown persons for the offences punishable U/ sec. 120-B of Indian Penal Code, 1860 and Sec. 7 of the Prevention of Corruption Act, 1988 as amended by the Prevention of Corruption (Amendment) Act, 2018.

11. Unnumbered paragraph Nos. 4 and 5 of the said FIR lodged by Shri R.S. Gunjiyal, Deputy Superintendent of Police, AC-V, CBI, New Delhi, of which the State seeks quashment, read as under :

“.....

Enquiry has also revealed that Shri Sachin Vaze, Assistant Police Inspector, Mumbai Police had been reinstated into the police force after being out of the police service for more than 15 years. The inquiry further revealed that Shri Sachin Vaze was entrusted with most of the sensational and important cases of Mumbai City and that the then Home Minister was in knowledge of the said fact.

Further, the petition of Shri Param Bir Singh (Annexure-C, 104 pages) also finds mention of the fact that the then Home Minister of Maharashtra and others exercised undue influence over the transfer and posting of officials and thereby exercising undue influence over the performance of the official duty by the officials.

.....”

12. The petitioner asserts that the respondent by registering the FIR, with the afore-extracted 4th and 5th unnumbered paragraphs, is venturing to conduct investigation into such areas and aspects of the matter which are beyond the scope of the inquiry and investigation directed to be conducted by this Court by the aforesaid order. The petitioner further asserts that, by the aforesaid device, the respondent has made an endeavour to introduce the matters namely, reinstatement of Shri Sachin Vaze, API and alleged undue influence over the transfer and posting of police officials and exercise of undue influence over the performance of official duties by those officials, for which there is no mandate in the order passed by this Court. Nor those matters find even a reference in the letter of Shri Param Bir Singh and the complaint of Dr. Jaishri Patil, which

were principally taken into account by this Court, while directing the inquiry by CBI.

13. On the legal premise, the petitioner asserts that the authority of the respondent to conduct investigation in respect of a matter falling within the province of the State is governed by the provisions of section 6 of the Delhi Special Police Establishment Act, 1946 (for short, 'the DSPE Act'). Since the State of Maharashtra has revoked general consent to the respondent to exercise the powers U/sec. 6, the only source of authority is the order passed by this Court entrusting the investigation. Thus, the respondent cannot venture to investigate into a matter beyond the scope of the directions contained in the said order. The petitioner, thus, avers that the extent and not just the limit of the exercise of the power to investigate has to be strictly within the bounds or limits circumscribed by the directions issued by this Court. Consequently, the endeavour on the part of the respondent to bring within the ambit of investigation the matters which do not emanate from the order dated 5th April 2021, being in flagrant violation of the provisions contained in section 6 of the DSPE Act, is illegal and without jurisdiction. Hence, this petition to quash and set aside the afore-extracted 4th and 5th unnumbered paragraphs of the said FIR.

14. An affidavit in reply is filed on behalf of the respondent-CBI. At the

outset, it is contended that the petition is misconceived and an abuse of process of law. The competence and propriety of the State in presenting the petition to scuttle the investigation is seriously questioned. The respondent contends that the petitioner-State, having acted in breach of an express direction of this Court to the individuals/agencies to render the necessary co-operation in the investigation of a serious matter is disentitled to get any relief which operates to the prejudice of the public interest. Justifying the incorporation of aforesaid unnumbered paragraphs, the respondent contends that those paragraphs contain pure and simple statements of fact. Such statements of fact cannot be subject matter of a prayer for quashment. It is contested that the order dated 5th April 2021 precludes the respondent from investigating into the matters referred to in the aforesaid paragraphs. On the contrary, according to the respondent, the matters referred to therein, are specifically and directly linked to and arise from the complaint of Dr. Jaishri Patil and the letter of Shri Param Bir Singh. The mandate to carry out investigation into those matters, thus, necessarily flows from the order passed by this Court. In any event, according to the respondent, a mere incidental transgression would not result in the violation of the provisions of section 6 of the DSPE Act.

15. An affidavit in rejoinder was tendered on behalf of the petitioner.

The petitioner contested the claim of the respondent that the State did not offer requisite co-operation in terms of the order passed by this Court. It was denied that the contents of the 4th and 5th unnumbered paragraphs of the FIR were pure statements of fact. The petitioner reiterated that the respondent has no authority in law to conduct investigation in matters for which no direction for investigation has been passed by this Court. The endeavour of the respondent to venture into investigation in the matter of reinstatement of Shri Sachin Vaze, transfer and posting of police officials and the report of Ms.Rashmi Shukla was stated to be actuated by a design to conduct a roving inquiry into the administrative affairs of the State Government.

16. It would be contextually relevant to note that Dr. Jaishri Patil, the petitioner in Writ Petition No.1903 of 2021 (*The State of Maharashtra through Additional Chief Secretary Home Department Vs. The Central Bureau of Investigation through its Superintendent of Police*) has preferred an application for intervention being Interim Application No. 1578 of 2021 (*Dr. Jaishri Laxmanrao Patil Vs. The Central Bureau of Investigation*) seeking her impleadment as a party respondent to this petition and also a direction for impleadment of Shri Sachin Vaze. Mr.Ghanshyam Upadhyay, the petitioner in Writ Petition No. 1903 of 2021 also preferred an application for intervention being Interim Application

No. 1577 of 2021 (*Ghanshyam Upadhyay vs. The Central Bureau of Investigation*) and sought his impleadment as party respondent.

17. In the backdrop of the nature of the controversy and the reliefs sought in the petition, and the fact that the applicants were the petitioners before this Court in Writ Petition No. 1541 of 2021 (*Dr. Jaishri Laxmanrao Patil (Advocate) Versus The State of Maharashtra & Ors.*) and connected matters, which were disposed of by order dated 5th April 2021, we thought it expedient to allow the applicants to intervene in the matter and advance submissions.

18. It would be necessary to note that in the intervention application, Dr. Jaishri Patil had sought the impleadment of Shri Sachin Vaze as a party respondent. A copy of the application purportedly filed by Shri Sachin Vaze before the NIA Court was annexed to the application. The prayer for impleadment of Shri Vaze, who is an accused, is completely misconceived. As regards the application allegedly submitted by Shri Vaze before the NIA Court, we are persuaded to observe that the said communication is not at all germane to the controversy, which we are called upon to determine, and thus does not deserve to be taken note of. We refrain from observing anything more lest we may be understood to have taken cognizance thereof.

19. In the wake of the aforesaid facts and pleadings, we have heard Mr. Rafique Dada, the learned Senior Counsel for the petitioner-State, Mr. Tushar Mehta, the learned Solicitor General of India and Shri Anil Singh, the learned Additional Solicitor General for the respondent-CBI, Mr. Subhash Jha, the learned counsel for the intervener-Mr. Ghanshyam Upadhyay, in Interim Application No. 1577 of 2021, and Dr. Jaishri Patil, the intervener-applicant in-person in Interim Application No. 1578 of 2021, at length. The learned counsels have also tendered written submissions in support of the submissions canvassed across the bar. With the assistance of the learned counsels for the parties, we have perused the material on record, including the copies of pleadings filed in the petitions before the Supreme Court and this Court, tendered across the bar.

20. Mr. Rafique Dada, the learned senior counsel commenced the submissions with an emphatic disclaimer that the petitioner-State is not averse to the investigation to be conducted by CBI, in conformity with the order of this Court. The State is, however, constrained to approach this Court on account of the flagrant transgression of the authority and jurisdiction by CBI and the consequent invidious infringement of the constitutional rights of the State under the federal structure. This foundational premise of the case of the petitioner was amplified by Mr. Dada by canvassing multi-pronged submissions.

21. First and foremost, according to Mr. Dada, the extent of police power demarcated by the entries in the Lists in Schedule VII of the Constitution is an inviolable foundation of federal principle. In adherence to federal principle, the authority of CBI to investigate into a matter falling within the province of the State is circumscribed by the provisions contained in section 6 of the DSPE Act. Sans consent of the State Government, CBI has no jurisdiction to enter upon investigation into a matter within the sphere of State Police. In the absence of consent of the State concerned, the CBI can draw legitimacy only from the orders passed by the constitutional courts under Articles 32 or 226 of the Constitution of India. In the latter case, the authority of the CBI to enter into investigation must be construed with reference to the order of the court and the discipline of law warrants that the CBI shall keep itself within the bounds of the order of the Court. Any usurpation of authority to investigate into the matter, which is beyond the province of the mandate of the order by which the CBI is entrusted with the investigation, would fall foul of the statutory regime, enshined in section 6 of the DSPE Act, in consonance with the principle of federal polity.

22. The edifice of aforesaid submission was the judgment of the Constitution Bench of the Supreme Court in the case of *State of West Bengal and Others Vs. Committee for Protection of Democratic Rights*,

***West Bengal and Others*².**

23. Mr. Dada strenuously urged that in the case at hand, the 4th and 5th unnumbered paragraphs of the FIR (extracted above), relate to matters which were not at all adverted to by this court in the order dated 5th April 2020. Those matters, according to Mr. Dada, do not emanate even from the complaint of Dr. Patil, only which this court had taken into account to consider justifiability of directing investigation or preliminary enquiry by CBI. Nor those matters find any mention in the letter of Mr. Param Bir Singh, which was annexed to the complaint of Dr. Patil and constitutes the genesis of the investigation. In contrast, Mr. Dada would urge, this Court, in para 87 of the said order, has contra-indicated by giving liberty to Shri Param Bir Singh to agitate grievances in the matter of transfer and posting before appropriate forum. To buttress the aforesaid submissions, Mr. Dada, took this Court through the order passed by the Division Bench judgment of this Court dated 5th April 2021, complaint of Dr. Patil and the letter of Mr. Param Bir Singh.

24. Mr. Dada further urged that the Supreme Court has frowned upon the transgression of the jurisdiction to investigate into a matter by CBI, where the constitutional court had directed such investigation, in violation of the principle of federal structure. To lend support to this submission, Mr. Dada, placed a very strong reliance on the judgment of the Supreme

² (2010) 3 SCC 571

Court in the case of *Ms. Mayawati Vs. Union of India and Others*³. In the case at hand, the endeavour of CBI to investigate into the matters referred to in unnumbered 4th and 5th paragraphs of the FIR is in clear violation of the authority to investigate invested by the Division Bench of this Court, urged Mr. Dada. In that view of the matter, this Court would be justified in restraining the CBI from usurping the jurisdiction not vested in it by the order of this Court in exercise of the constitutional power, canvassed Mr. Dada.

25. Per contra, Mr. Tushar Mehta, the learned Solicitor General stoutly submitted that the endeavour of the petitioner-State is to dilute the mandate of the order passed by this Court. The authority to investigate into the matters referred to in unnumbered 4th and 5th paragraphs flows from the order passed by this Court. Those matters are intrinsically interlinked with the allegations against the then Home Minister. The reinstatement of Shri Vaze, his special posting, the involvement of Shri Vaze in the alleged extortion at the instance of Mr. Deshmukh and the transfer and posting of the officials to advance the said objective are part of one and the same transaction. The CBI is, thus, not only within its rights but duty bound to investigate into those matters.

26. Mr. Mehta would urge that the extraordinary circumstances in which this Court directed the CBI to initially conduct preliminary enquiry

³ (2012) 8 SCC 106

and thereafter take action in accordance with law, cannot be lost sight of. It could hardly be gainsaid that the allegations made by Mr. Param Bir Singh were grave. In order to uphold the trust of the citizenry in fair and uninfluenced investigation, this Court was persuaded to entrust the investigation to an independent agency. The observations made by this court in the order dated 5th April 2021 as well as the observations of the Supreme Court that the matter was quite serious and affected the administration at large deserve to be kept in view, while determining the extent of authority of CBI to investigate into those matters.

27. Mr. Mehta would further urge that the exercise of powers under Article 226 of the Constitution and section 482 of the Code of Criminal Procedure, 1973 is conditioned by the overarching principle of advancing cause of justice. In the case at hand, according to Mr. Mehta, the conduct of the State in stonewalling requisitions made by the CBI to facilitate a fair investigation also deserves to be taken note of. This conduct on the part of the officials of the State, despite a specific direction of this Court to the authorities/officials to render necessary assistance to CBI, is a matter of concern.

28. Lastly, it was submitted that the significance of well demarcated powers of police to investigate and that of the courts to adjudicate cannot be overlooked. Investigation is the exclusive province of the investing

agency. The courts cannot issue directions to the investing agency as to how and in what manner the investigation is to be carried out. Nor the Court can interdict the investigation.

29. The judgment in the case of *Mayawati* (Supra), according to Mr. Mehta, is of no assistance to the petitioner. The facts in the said case were so distinct that the proposition enunciated therein, does not apply to the case at hand, even remotely. The import of the judgment in the case of *Mayawati* (Supra) has since been explained in the cases of *M/s. Fertico Marketing and Investment Pvt. Ltd. & Ors. Vs. Central Bureau of Investigation and Another*⁴ and *Kanwal Tanuj Vs. State of Bihar and Others*⁵, urged Mr. Mehta.

30. Mr. Subhash Jha, the learned counsel for the intervener-applicant in Interim Application No.1577 of 2021 questioned the locus of the State in filing the instant petition. Mr. Jha would urge that the petitioner-State cannot be said to be an aggrieved person. It defies comprehension as to how the petitioner-State can feel aggrieved by the investigation into a matter of such serious nature. Mr. Jha further urged that the endeavour of the petitioner to seek quashment of certain portions of the FIR is as unsustainable as unusual.

31. Dr. Jaishri Patil submitted that the complaint lodged by her with

4 (2020) SCC OnLine SC 395

5 2020 SCC OnLine SC 395

Malabar Hill Police Station comprises the allegations on the matters referred to in aforesaid 4th and 5th unnumbered paragraphs. Investigation into such serious allegations is warranted in public interest. Therefore, this court in exercise of extraordinary jurisdiction ought not to interfere with the investigation lest public interest would be seriously jeopardized.

32. The aforesaid submissions now fall for consideration.

33. To begin with, we deem it appropriate to consider the challenge to the petition on the count of locus of the State. The petitioner-State has based its challenge on the principle of federalism and legislative mandate contained in section 6 of the DSPE Act. Per contra, the respondent asserts that the State can, in no circumstance, be an aggrieved person in the matter of investigation into a serious offence by a specialized agency.

34. Questioning the locus of the State, Mr. Jha placed a strong reliance on the judgments of the Supreme Court in the cases of *Jasbhai Motibhai Desai Vs. Roshan Kumar and Ors.* ⁶, *Satishkumar Nyalchand Shah Vs. State of Gujarat & Ors.* ⁷, and *Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.* ⁸

35. The purport of these judgments is that in order to have a *locus standi* to invoke the extraordinary jurisdiction under Article 226, the petitioner should ordinarily be a person who has a personal or individual

⁶ (1976) 3 SCR 58

⁷ AIR 2020 SC 1158

⁸ (1973) 2 SCC 696

right in the subject matter of the petition, though in the case of some of the writs like *habeas corpus* or *quo warranto* the said rule is relaxed or modified.

36. Mr. Dada countered the submissions on the ground that the challenge to the locus of the petitioner-State is wholly misconceived. In view of the constitutional scheme, the State has every right to insist that there is no encroachment over the domain of its authority. The pronouncement in the case of *State of West Bengal and Others* (Supra), according to Mr. Dada, is a complete answer to the challenge based on the locus of the petitioner.

37. In the case of *Committee for Protection of Democratic Rights* (Supra), the core issue which arose for consideration before the Supreme Court was, whether, in the backdrop of the distribution of legislative powers between the Union and the States, can the third organ of the State i.e., the Judiciary, direct the CBI, an agency established by the Union to do something in respect of a State subject, without the consent of the State Government concerned? Answering the question in the affirmative, the Supreme Court expounded the scope of constitutional prescription in the matter of police, and the provisions of the Delhi Special Police Establishment Act, 1946. Paragraph 69 of the judgment reads as under :-

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise

of its jurisdiction under [Article 226](#) of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under [Article 21](#) of the Constitution in particular, zealously and vigilantly.”

38. It is imperative to note that in the said case, though the question that arose for consideration was in respect of the jurisdiction of the High Court to direct investigation by CBI, in exercise of the powers under Article 226 of the Constitution of India, yet the contours of the sphere of authority of the Central Government and the State Government in the matter of police, were expounded.

39. The hallmark of federalism is the distribution of executive, legislative and judicial authority among the organs which are co-ordinate yet independent. Under the constitutional scheme, there is a division of the legislative power, in the form of the Union List, State List and Concurrent list under Schedule VII. The executive authority corresponds with the legislative powers. (Articles 73 and 162). In the context of the controversy at hand, Entry 2 in List II reads as under :

Entry 2 List II:

"Police (including railway and village police) subject to the provisions of entry 2A of List I."

Entry 2A of List I reads as under :

Entry 2A of List I:

"Development of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment."

Entry 80 of List I is also relevant and reads as under :-

"Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Govt. of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State."

40. A conjoint reading of the aforesaid provisions makes it abundantly clear that Entry 2 in List II confers exclusive jurisdiction on the State in the matters relating to Police, subject to what is provided for in Entry 2A and Entry 80 of List I. The power of Union Legislature to provide for the regular police force of one State to exercise power and jurisdiction in any area outside that State can only be exercised with the consent of the State concerned. Likewise, an investigation by an agency other than the State Police is permissible only with the consent of the State concerned. This distribution of legislative power is in accord with the principle of federalism.

41. The provisions of Delhi Special Police Establishment Act, 1946 are

in tune with the aforesaid constitutional scheme. Section 5 of the DSPE Act empowers the Central Government to extend the powers and jurisdiction of the Special Police Establishment to any area, in a State, not being a Union Territory, for the investigation of any offence or classes of offences specified in the notification issued under section 3. This general power of expansion of powers and jurisdiction of the Special Police Establishment to a matter within the province of a State is, however, controlled by section 6 of the Act. It provides that the enabling provision contained in section 5 shall not invest authority in a member of the Delhi Special Police Establishment to exercise powers and jurisdiction in a State, without the consent of the Government of that State. The power of the State to investigate into a matter arising within its limits is thus inviolable, except where the State gives the consent. The Central Government is, therefore, not entitled to venture into investigation without the consent of the State.

42. The question that comes to the fore is whether a State Government is within its rights in raising a grievance that the investigation ordered by the Constitutional Court is being carried out beyond the mandate of the order? For an answer, it is necessary to keep in view the afore-extracted constitutional and legislative prescription. Undoubtedly, the High Court in exercise of jurisdiction under Article 226 of the Constitution of India is

empowered to order investigation by an agency other than the State Police Force, if upon examination of material placed before it, the High Court is satisfied that a case for ordering such investigation is made out. However, this does not necessarily imply that investigating agency has an unfettered authority to investigate into the matters beyond the scope of the order. Such a view would render the aforesaid provisions otiose.

43. In this view of the matter, we are of the considered view, that the State concerned has a vital interest in ensuring that the investigation, even when ordered by a Constitutional Court, in a matter which otherwise falls within the province of its authority, is within the bounds of the order passed by the Constitutional Court. Therefore, the order of investigation by the High Court would not give a *carte blanche* to the investigating agency to venture into any matter *de-hors* the subject matter of the proceedings before the High Court and thereby disturb the delicate balance of power under the Constitution. From this standpoint, in our view, the challenge to the locus of the petitioner-State, when it alleges that the investigating agency is exceeding its mandate under the order of the Court, is not sustainable.

44. This takes us to another barnacle attached to the hull of the controversy. It was urged on behalf of the respondent and interveners that the petition to quash certain portions of the FIR is untenable. What can be

sought is the quashment of the FIR as a whole or qua a particular accused. However, the prayer to quash particular portions of the FIR is inconceivable.

45. Mr. Dada joined the issue by canvassing a submission that where the investigation agency ventures into the matters which are not at all germane to the subject matter of the order to investigate, it makes no difference whether a separate FIR is lodged or those matters are included in one and the same FIR. To urge that, in such a scenario, the aggrieved party cannot seek quashment of those parts is missing the woods for the trees.

46. On first principles, we do not find that there is any impediment in seeking to restrain an investigating agency from investigating into a matter which is alleged to be beyond the province of its authority and jurisdiction. If a particular aspect of the matter is demonstrably beyond the legal competence of an investigating agency and the rest falls within its authority then the Court, in exercise of its extraordinary powers, would be justified in quashing that part of the first information report. The rider is that there should be a legal bar to investigate into that matter. One of the grounds enumerated in the case of *State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.*⁹ on which the FIR can be quashed is an express legal bar engrafted in any of the provisions of the Code or the concerned Act

⁹ AIR 1992 SC 604

(under which a criminal proceeding is instituted) to the institution and continuance of the proceedings. This ground is not diluted where a part of the FIR is shown to be within the authority of investigating agency.

47. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of *Ishwar Pratap Singh and Others Vs. State of Uttar Pradesh and Another*¹⁰, wherein it was enunciated, *inter-alia*, that there is no requirement that the charge-sheet has to be quashed as a whole and not in part. The aforesaid analogy, in our view, applies with equal force in a case where the investigating agency, according to the petitioner, is allegedly investigating into a matter beyond its jurisdiction along with a matter which is within its authority. We, therefore, find considerable substance in the submissions of Mr. Dada that the fact that the matters which are allegedly stated to be beyond the authority of CBI are included in the FIR, in respect of matters being investigated by the order of the Court, does not disentitle the petitioner to seek quashment thereof.

48. This propels us to the core issue as to whether the inclusion of afore-extracted 4th and 5th unnumbered paragraphs and the investigation in that context is beyond the remit of the order passed by this court on 5th April 2021. For an answer, it may be apposite, at this stage itself, to note the gravamen of indictment in the letter of Shri Param Bir Singh and how

¹⁰ (2018) 13 SCC 612

the Division Bench dealt with the said allegations. For the purpose of the determination of the controversy at hand, the following allegations appear relevant :

“6 At one of the briefing sessions in the wake of the Antilia incident held in mid-March 2021 when I was called late evening at Varsha to brief you, I had pointed out several misdeeds and malpractices being indulged into by the Hon’ble Home Minister.....”

7 In the aforesaid context, Shri Sachin Vaze who was heading the crime intelligence unit of the crime branch of the Mumbai police was called by Shri Anil Deshmukh, Hon’ble Home Minister, Maharashtra to his official residence Dnyaneshwar several times in last few months and repeatedly instructed to assist in collection of funds for the Hon’ble Home Minister. In and around mid-February and thereafter, the Hon’ble Home Minister had called Shri Vaze to his official residence. At that time, one or two staff members of the Hon’ble Home Minister including his personal secretary, Mr. Palande, were also present. The Hon’ble Home Minister expressed to Shri Vaze that he had a target to accumulate Rs.100 Crores a month for achieving the aforesaid target, the Hon’ble Home Minister told Shri Vaze that there are about 1,750 bars, restaurants and other establishments in Mumbai and if a sum of Rs.2-3 lakhs each was collected from each of them, a monthly collection of Rs.40-50 crores was achievable. The Hon’ble Home Minister added that the rest of the collection could be made from other sources.

8 Shri Vaze came to my office the same day and informed me of the above. I was shocked with the above discussion and was mulling over how to deal with the situation.

9While ACP Patil and DCP Bhujbal were made to wait outside the Hon’ble Home Minister’s cabin, Mr. Palande, Personal Secretary to the Hon’ble Home Minister, went inside the chamber of the Hon’ble Home Minister and after coming out took ACP Patil and DCP Bhujbal on the side. Mr. Palande informed ACP Patil that the Hon’ble Home Minister was targeting a collection of

Rs.40-50 Crores which was possible through an approximate 1,750 bars, restaurants and establishments operating in Mumbai. I was informed by ACP Patil about the demand to make collections for the Hon'ble Home Minister.

.....

11 After the meeting of Shri Vaze with the Hon'ble Home Minister, he had discussed the instructions of the Hon'ble Home Minister with Shri Patil and both of them had approached me with their predicaments.

12 The Hon'ble Home Minister has as a regular practice been repeatedly calling my officers and giving them instructions in respect of the course to be followed by them in performance of their official duties. The Hon'ble Home Minister has been calling my officers at his official residence bypassing me and other superior officers of the Police Department to whom those respective Police Officers report to. The Hon'ble Home Minister has been instructing them to carry out official assignments and collection schemes including financial transactions as per his instructions based on his expectations and target to collect money. These corrupt malpractices have been brought to my notice by my officers.

.....

17 It has been my experience during the last more than one year as Commissioner of Police, Mumbai that the Hon'ble Home Minister has on numerous occasions called several officers from the Mumbai Police to his official residence at Dnyaneshwar for giving instructions to adopt a specific course of action in police investigations.....”

.....

20 “.....The call records and phone data of Shri Sachin Vaze be examined to ascertain the truth of the allegations qua me and for the truth to emerge insofar as his association with political functionaries is concerned.”

49. Evidently, the aforesaid allegations bear out the gravity of the situation. The allegations were not restricted to lack of probity in performance of public duty but the administration of law was itself put to test of character. Faced with such crises of public confidence in the enforcement of law, the Division Bench premised the directions for an independent and impartial investigation, on the imperative necessity to restore the public confidence.

50. The observations in paragraphs 75 and 80 of the judgment deserve extraction. They read as under :-

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

.....

80. *In the present case, it is clear that Dr. Patil had submitted her complaint to the Senior Police Inspector of the Malabar Hill Police Station on March 21, 2021; however, except for making an entry in the Inward Register, no action whatsoever, as the law would mandate, was initiated. We have already noted above*

that the allegations as made by Shri Param Bir in the letter dated March 20, 2021, which triggered Dr. Patil to lodge complaint with the Malabar Hill Police Station, Mumbai, is of a serious nature and against the highest functionary of the Government of Maharashtra, when it comes to the functioning of the police department. Prima facie, the issues are such that the very faith of citizens in the functioning of the police department is at stake. If there is any amount of truth in such allegations, certainly it has a direct effect on the citizens' confidence in the police machinery in the State. Such allegations, therefore, cannot remain unattended and are required to be looked into in the manner known to law when, prima facie, they indicate commission of a cognizable offence. It is, hence, certainly an issue of credibility of the State machinery, which would stare at the face when confronted with the expectations of the law and when such complaints are received against high ranking public officials. This Court cannot be a mere spectator in these circumstances. There is certainly a legitimate public expectation of a free, fair, honest and impartial inquiry and investigation into such allegations which have surfaced in the public domain. The necessity to have a probe into such allegations by an independent agency, would also certainly be a requirement of the rule of law. To instill public confidence and safeguard the Fundamental Rights of the citizens, it is necessary that an inquiry and investigation is conducted by an independent agency and for such reasons, we consider it to be in the paramount public interest that an independent probe in the present circumstances would meet the ends of justice."

(emphasis supplied)

51. Professedly without questioning the necessity of an impartial investigation, the State assails the investigation into the matters referred to in 4th and 5th unnumbered paragraphs on the premise that the Division Bench had not at all considered the issue, sought to be raised therein, and thus, the investigation is without jurisdiction. The linchpin of the

submission of Mr. Rafique Dada was that in the order dated 5th April 2021, the Division Bench was extremely careful and cautious in defining and restricting the contours of preliminary enquiry and the consequent investigation, if required. The Division Bench did not deal with the petitions of Shri Param Bir Singh and Mr. Ghanshyam Upadhyay. The material which was explicitly stated to have been taken into account was the complaint of Dr. Jaishri Patil, to which the letter of Shri Param Bir Singh was annexed.

52. The submission appears factually well grounded. The Division Bench made it explicitly clear in paragraph No.50 of the judgment that the controversy which was common to those petitions, could be taken care of within a narrow compass by deciding whether, if at all, and to what extent, if any, action on the complaint of Dr. Patil should be directed to be taken. The Division Bench thereafter went on to consider the justifiability of directing inquiry/investigation on the basis of the complaint of Dr. Patil. In paragraph 55, the Division Bench posed unto itself, the following question :

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

53. Mr. Rafique Dada would further urge that the fact that the transfers and postings of police officers, adverted to in unnumbered 5th paragraph, was expressly excluded from the scope of inquiry by the Division Bench is underscored by the observations in the concluding paragraph of the said order, which reads as under :-

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

54. In the light of the aforesaid clear and unequivocal direction as to what was to be inquired into and interdict against venturing into the aspect of transfer and posting, the action of the respondent-CBI in surreptitiously including those matters is legally unsustainable, urged Mr. Dada. The general principle that in the course of investigation into the offence reported in the FIR, the investigating officer has the authority to investigate into the other offences, found to have been committed in the course of the same transaction or occurrence, under section 157 of the Code of Criminal Procedure, 1973, is inapplicable to the investigation which is ordered by a constitutional court in the absence of the sanction under section 6 of the DSPE Act, submitted Mr. Dada.

55. Since the sheet anchor of aforesaid submission was the judgment of the Supreme Court in the case of *Ms. Mayawati* (Supra), it may be

appropriate to consider the factual backdrop thereof and the enunciation of law therein.

56. In the case of *Ms. Mayawati* (Supra), the Supreme Court had directed an inquiry by CBI to find out as to who had cleared the construction of 'Taj Heritage Corridor Project' at Agra, for what purpose it was cleared without obtaining necessary sanction from the department concerned and the release of Rs. 17 Crores without proper sanction. Pursuant to the said direction, in addition to a FIR registered against the officers and persons concerned, another FIR dated 5th October 2003 was registered against the petitioner therein under section 13(2) read with section 13(1) of the Prevention of Corruption Act, 1988. The Supreme Court found that there was no direction to lodge another/second FIR against the petitioner under the Prevention of Corruption Act, 1988. Thus, the FIR and the investigation pursuant thereto were quashed.

57. The observations of the Supreme Court in paragraphs 27 and 28, which make the factual backdrop abundantly clear, read as under :-

“27 A perusal of the orders prior to the order dated 18-09-2003 and several directions in the order dated 18-09-2003 clearly show that this Court was concerned with illegality/irregularity committed by the officers/persons in carrying out the Taj Heritage Corridor Project. The main allegation relates to an amount of Rs. 17 crores which was released by the State Government without proper sanction. It is also clear that in order to find out who cleared the project and for what purpose it was cleared without obtaining necessary sanction from the Department concerned

and whether there was any illegality/irregularity committed by the officers/persons, this Court thought an inquiry by CBI was considered necessary. In such a situation, the CBI was directed to interrogate and verify their assets. As rightly pointed out by Mr. Harish Salve, there was no occasion for this Court to consider the alleged disproportionate assets of the petitioner separately that too from 1995 to 2003 when admittedly Rs.17 crores were released in September, 2002.

28 *A thorough scrutiny of all the orders including the specific directions dated 18-09-2003 clearly show that the same was confined only in respect to the case relating to Taj Corridor Project which was the subject-matter of reference before the Special Bench. It is relevant to point out para 13(f) of the order dated 18-09-2003 which makes it clear that the CBI could have lodged only one FIR No. R.C. 0062003A0018 dated 05-10-2003. In other words, inasmuch as there being no consideration of alleged disproportionate assets at any stage of the proceedings while dealing with the Taj Corridor matter, there could not have been and in fact there was no such direction to lodge another FIR being No. R.C. 0062003A0019 dated 05-10-2003 exclusively against the petitioner under the P.C. Act.”*

58. In the backdrop of the aforesaid facts, the legal position was expounded in paragraph 30, which reads as under :-

“30 *As rightly pointed out that in the absence of any direction by this Court to lodge an FIR into the matter of alleged disproportionate assets against the petitioner, the Investigating Officer could not take resort to Section 157 of the Code of Criminal Procedure, 1973 (in short ‘the Code’) wherein the Officer-in-charge of a Police Station is empowered under Section 156 of the Code to investigate on information received or otherwise. Section 6 of the DSPE Act prohibits the CBI from exercising its powers and jurisdiction without the consent of the Government of the State. It is pointed out on the side*

of the petitioner that, in the present case, no such consent was obtained by the CBI and submitted that the second FIR against the petitioner is contrary to Section 157 of the Code and Section 6 of the DSPE Act. It is not in dispute that the consent was declined by the Governor of the State and in such circumstance also the second FIR No. R.C. 0062003A0019 dated 05.10.2003 is not sustainable.”

(emphasis supplied)

59. In opposition to this, Mr. Tushar Mehta, the learned Solicitor General would urge that the aforesaid pronouncement is of no assistance to the petitioner. Relying upon a line of decisions, which hold that once a FIR is registered there can be no second FIR in respect of the same occurrence/transaction and the investigating officer is empowered to investigate into the offences other than the reported offences, namely, *T.T. Anthony Vs. State of Kerala*¹¹, *Narmada Bai Vs. State of Gujarat*¹², *Babubhai Vs. State of Gujarat & Others*¹³ and *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation & Anr.*¹⁴, Mr. Mehta stoutly submitted that the matters referred to in the 4th and 5th unnumbered paragraphs essentially emanate from the complaint of Dr. Jaishri Patil and letter of Shri Param Bir Singh. Those matters are intrinsically interlinked and cannot be segregated from the allegations in the letter of Mr. Param Bir Singh.

60. In the case of *T.T. Anthony* (Supra), the Supreme Court had

11 (2000) 6 SCC 181

12 (2011) 5 SCC 79

13 (2010) 12 SCC 254

14 (2013) 6 SCC 348

enunciated the principle in the following words :

“20 From the above discussion it follows that under the scheme of the provisions of [Sections 154, 155, 156, 157, 162, 169, 170 and 173](#) of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of [Section 154](#) Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in [Section 173](#) of the Cr.P.C.”

(emphasis supplied)

61. In *Amitbhai Anilchandra Shah* (Supra), the legal position was postulated in the following terms :

“58.4 Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in [Section 173](#) of the Code. Sub-section (8) of [Section 173](#) of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in

the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under [Section 173\(2\)](#) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under [Section 482](#) of the Code or under Articles 226/227 of the Constitution.”

(emphasis supplied)

62. In the case of *Ms. Mayawati* (Supra), the Supreme Court observed that in a case where there is no consent of the State under section 6 of the DSPE Act and the authority to investigate springs from the order of the Constitutional Court, in the absence of direction in the order of the Court, the Investigating Officer could not have taken resort to section 157 of the Code of Criminal Procedure, 1973 to investigate into a matter which is not covered by the order of the court. However, in our view, the aforesaid principle cannot be stretched to the extent desired by the petitioner. In our understanding, there is no incongruity in the judgment of the Supreme Court in the case of *Ms. Mayawati* (Supra) and the line of decisions which hold the view propounded in the case of *T.T. Anthony* (Supra). These two lines of decisions, in our considered view, operate in different spheres.

63. If a matter is wholly unconnected with the subject matter in respect of which inquiry or investigation is ordered by the constitutional court, the investigating officer is not free to embark upon investigation by resorting to the general provisions contained in section 157 of the Code. In that event, the prohibition contained in section 6 of the DSPE Act

would operate with full force and vigor. However, if a matter is shown to be connected with or emanate from the subject matter of the inquiry/investigation ordered by the Court, in the sense that there is an element of sameness or it partakes the character of *res gestae*, the investigation therein would not stand foul of the provisions contained in section 6 of the DSPE Act.

64. The ratio of the judgment of the Supreme Court in the case of *Ms. Mayawati* (Supra) is required to be appreciated in the context of its factual backdrop. In the said case, the Court was dealing with the illegality/irregularity committed by the officers and persons who carried out the Taj Heritage Corridor Project and the disbursement of amount of Rs.17 Crores, which was allegedly released without sanction, in September 2002. In contrast, on the basis of the order of the Court, second FIR was registered against the petitioner therein with the allegations of amassing assets disproportionate to the known sources of income from the years 1995 to 2003. In such fact situation, the Supreme Court held that there was no occasion for the Supreme Court to consider the said allegation of amassing disproportionate assets and, resultantly, the registration of FIR was without jurisdiction.

65. Mr. Tushar Mehta was justified in placing reliance on the judgment of the Supreme Court in the case of *M/s. Fertico Marketing and*

Investment Pvt. Ltd. & Ors. (Supra) wherein the judgment in the case of **Ms. Mayawati** (Supra) was explained and distinguished as under :

“28 Insofar as the reliance on the judgment of this Court in Mayawati (supra), the only question that fell for consideration before this Court was, as to whether any of the orders passed by this Court amounted to issuance of any direction to CBI to conduct a roving inquiry against the conduct of the petitioner commencing from 1995 to 2003 or as to whether the directions were restricted to irregularities in the Taj Corridor matter. The court in the facts found, that there was no such finding or satisfaction recorded by this Court in the matter of the disproportionate assets of the petitioner on the basis of the status report dated 11-9-2003 and as a matter of fact, the petitioner was not even a party before this Court.”

66. The crucial question which wrenches to the fore is whether the matters referred to in 4th and 5th unnumbered paragraphs emanate from or connected with the allegations in the letter of Shri Param Bir Singh. Could those matters be said to be completely unrelated or disjointed from the said allegations. The thrust of the submission on behalf of the petitioner was that there was no allegation in the letter of Shri Param Bir Singh regarding reinstatement of Shri Sachin Vaze. Nor there was a reference, even remotely, that at the instance or with the knowledge of Shri Anil Deshmukh, high profile cases were entrusted to Shri Sachin Vaze. The matter of transfer and posting of officers is conspicuous by its absence in the letter of Shri Param Bir Singh.

67. To appreciate the aforesaid submission, it is imperative to note that

crime was registered against Shri Anil Deshmukh and unknown others for the offences punishable under section 120-B of the Penal Code and section 7 of the Prevention of Corruption Act for having entered into a criminal conspiracy and attempted to obtain undue advantage for improper and dishonest performance of the public duty.

68. We have extracted above, the allegations in the letter of Shri Param Bir Singh. It was alleged that the then Home Minister was indulging in misdeeds and malpractices. Shri Sachin Vaze was called at the residence of the Home Minister several times. He was given a target to accumulate Rs.100 Crores a month. The Personal Secretary of the then Home Minister allegedly conveyed the direction to collect the funds to Shri Sanjay Patil, ACP. Both the officers related the direction to collect funds to the then Commissioner of Police. Apart from the allegation that the then Home Minister directed the Police Officers to collect funds, there are allegations as regards the interference in the matters which were being investigated by the police officers. The Home Minister was repeatedly calling the officers and giving them instructions in respect of the course to be adopted by them in the performance of their official duty. They were instructed to carry out official assignments and collection schemes including financial transactions.

69. Evidently, the aforesaid allegations are not restricted to extortion of

money. The matter of interference in the performance of the official duties by the police officers, including the course of investigation in particular matters, as alleged, has the propensity to erode the very edifice of enforcement of law. From this stand point, the question as to whether the reinstatement of Shri Sachin Vaze, who was allegedly repetitively called at the residence of the then Home Minister and instructed to collect the funds, was a part of the alleged larger conspiracy is a matter for investigation. Indisputably, Shri Vaze had no opportunity to harness his investigation skill, for 15 long years, before reinstatement. Was there any quid pro quo in posting Shri Sachin Vaze in a specialized crime branch and entrusting investigation of important and sensational cases is also a matter which cannot be said to be totally unconnected with the allegations in the letter of Shri Param Bir Singh. Where the alleged objectives were to extort money and influence investigations, then whether particular officers were brought in, or shifted out, to achieve the desired objectives, forms an inseparable part of the alleged conspiracy. Whether the officers, who were at the beck and call of the accused and the alleged confederates, were given particular postings is again a matter which necessarily flows from the allegations. (We have highlighted these issues by way of illustration and we may not be understood to have indicated either the scope of investigation or limits thereof.)

70. Mr. Tushar Mehta submitted with tenacity that the endeavour of the petitioner is directed at persuading this court to interdict the investigation. In view of the well-nigh settled position that investigation is the exclusive domain of the investigating agency, in exercise of the extraordinary jurisdiction under Article 226 and the inherent jurisdiction under section 482 of the Code, this Court ought not to impinge upon the province of the investigating agency. To lend support to this submission, Mr. Tushar Mehta placed reliance on the judgment of the Privy Council in the case of *The King Emperor Vs. Khwaja Nazir Ahmad*¹⁵ and the judgments of the Supreme Court in the cases of *State of Bihar and Anr. Vs. J.A.C. Saldanha & Ors.*¹⁶, and *Divine Retreat Centre Vs. State of Kerala & Ors.*¹⁷. Reliance was also placed on a recent three Judge Bench judgment of the Supreme Court in the case of *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.*¹⁸, wherein the Supreme Court has culled out the principles which would govern exercise of jurisdiction by the High Court under section 482 of the Code and/or Article 226 of the Constitution of India, *inter-alia*, as under :

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

15 SCC OnLine Part 6 page 57

16 (1980) 1 SCC 554

17 (2008) 3 SCC 542

18 2021 SCC OnLine SC 315

ii) *Courts would not thwart any investigation into the cognizable offences”*

71. Mr. Rafique Dada attempted to salvage the position by canvassing a submission that the judgment of the Privy Council in the case of ***Khwaja Nazir Ahmad*** (Supra) was rendered under a different statutory regime in a unitary system of government. The said pronouncement may not apply with equal force where it is pitted against the federal principle, which is a basic structure of the constitution. Thus, according to Mr. Dada, the said proposition that the investigation is the exclusive domain of the investigating agency cannot be pressed into service to wriggle out of situation of want of authority to investigate, in view of the bar contained in section 6 of the DSPE Act.

72. We are afraid to accede to the aforesaid submission. Not for the reason that the pronouncement in the case of ***Khwaja Nazir Ahmad*** (Supra) is oft-quoted and time tested, but for the worth of the principle it enunciates. The foundational premise of ***Khwaja Nazir Ahmad*** (Supra) is not the abstract doctrine of separation of the roles of the police and judiciary but the statutory scheme which demarcates the sphere of authority. Thus we are not persuaded to countenance the submission which seeks to erode the binding efficacy of ***Khwaja Nazir Ahmad*** (Supra). However, if the matter does not properly fall within the province

of the authority of the investigating agency and there is an endeavour to investigate into a matter by usurpation of authority, which the investigating agency does not possess, then the principle that the investigation is the exclusive province of the investigating agency would not clothe the agency with the said authority.

73. The submission on behalf of the petitioner that the Division Bench, (by making observations in paragraph 87 extracted above), gave liberty to Shri Param Bir Singh to agitate the grievances regarding transfer and posting of police officers and thereby indicated that the court did not take cognizance of the said aspect, appears attractive at the first blush. However, on a close scrutiny, the submission does not carry much conviction. In the PIL petition, Mr. Param Bir had additionally sought the following substantive prayer :-

*“(b) To issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondent No.1 to ensure that transfer/posting of police officials are neither done on any consideration of pecuniary benefits to any politician, nor in contravention of the directions of the Hon’ble Supreme Court in **Prakash Singh & Ors Vs. Union of India & Ors. (2006) 8 SCC 1**, which were based on the principle of insulating police machinery from political / executive interference to make it more efficient and to strengthen the rule of law.”*

74. The Division Bench, while recording the submissions of the counsel of Shri Param Bir Singh, (in paragraph 27) noted that the purpose of the

PIL petition was to rid the malaise in respect of transfers and postings of officers of the Police Force at the behest of their political masters. Incontrovertibly, the Division Bench did not consider the said prayer and thought it appropriate to reserve the liberty to the petitioner to raise the grievance before the appropriate forum.

75. In the aforesaid context, Mr. Tushar Mehta, the learned Solicitor General canvassed a submission that the liberty granted to Shri Param Bir in paragraph No.87 was in respect of agitating grievances to ensure transparent transfer and postings in conformity with the directions of the Supreme Court in the case of *Prakash Singh*, in future. It does not imply that the Division Bench foreclosed the inquiry on the aspect that the petitioner and others exercised undue influence over the transfer and posting of police officials and thereby exercised undue influence over the performance of official duties by those officers. Mr. Dada joined the issue by inviting the attention of the Court to the interim relief sought by Shri Param Bir Singh in the said PIL petition in the nature of direction to the State to produce the file containing report of Mrs.Rashmi Shukla, the then Commissioner (Intelligence). It was, thus, urged that the transfer and postings, which were already effected, were sought to be put on the radar. Since the court did not delve into that aspect of the matter, it is now impermissible to venture into investigation in that matter.

76. The submission loses sight of the fact that the Division Bench, in terms, observed that the issues raised in the letter were such that the very faith of citizens in the functioning of the police department and credibility of the State machinery was at stake and to instill public confidence and safeguard the fundamental rights of the citizens, an independent probe was necessitated.

77. Implicit in the allegation that funds were to be extorted from specified and vulnerable sources, is the element that there would be either no enforcement or laxity in enforcement of law. Moreover, the charge is of criminal conspiracy. It is trite that it is the unlawful agreement and not its accomplishment, which is the gist or essence of the criminal conspiracy. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. There is often multiplicity of human agency and plurality of means. In the backdrop of the nature of the allegations, whether the police officers were given particular posting and assignments, so as to exercise undue influence over them, and also reinstatement of Shri Vaze after 15 years, cannot be said to be matters which are beyond the purview of the inquiry ordered by the court.

78. On a proper construction of the prayer clause (b) in the petition of Shri Param Bir Singh and the observations of the Division Bench in paragraph No.87, extracted above, we are persuaded to agree with the

submission of Mr. Tushar Mehta that the said prayer was with a view to cleanse the system of transfer and postings of the police officials allegedly made for extraneous consideration, in future. The reference to the report of Mrs. Rashmi Shukla, the then Commissioner (Intelligence), in the interim relief sought by Shri Param Bir Singh is required to be appreciated in the light of the fact that in the wake of the controversy at hand, the said report of Mrs. Rashmi Shukla was also a matter of discussion in public domain. Even the Supreme Court, in its order dated 24th March 2021, noted that there have been subsequent developments in the matter as has been noted in terms of the report of Mrs. Rashmi Shukla, Commissioner, State Intelligence Department.

79. The manner in which the State claimed to have dealt with the said report assumes salience. The Division Bench recorded (in paragraph 40) that Shri Kumbhakoni, the learned Advocate General, submitted on instructions that the report of the the Commissioner, State Intelligence Department, had been duly considered at the appropriate level and since nothing of substance was found, the file was closed. If that is the position, we are unable to appreciate the steadfast resistance on the part of the State to share the said report with CBI.

80. In the alternative, Mr. Rafique Dada submitted that the exercise of seeking the report submitted by Mrs. Rashmi Shukla, the then

Commissioner (State Intelligence Department) is actuated by the objective of derailing the investigation in C.R. No.2/2021 registered by Cyber Police Station, Mumbai against Mrs.Rashmi Shukla. The investigation in C.R.No.2/2021 is underway. The consistent demand by the respondent to furnish the said report thus amounts to unjustifiable interference in the said investigation. We are unable to accede to this submission. It would be suffice to note that there are adequate provisions to take care of a situation where the same object constitutes material/evidence in more than one investigation/trial.

81. During the course of the hearing, we were anxious to know as to whether CBI would investigate into the acts and omissions of the officers/ persons who might have had a role in the matter, apart from the named accused. Mr. Tushar Mehta, the learned Solicitor General assured the court about the integrity of investigation. It was submitted that CBI would conduct the investigation dispassionately. The investigation is issue-centric. It was further submitted that it was not uncommon that the person who sets the law in motion is eventually indicted post investigation. The endeavour of CBI would be to honour the spirit of the order whereunder the investigation has been directed.

82. Mr. Dada expressed an apprehension that a roving inquiry into the transfer and posting of all officers may have a demoralizing effect on the

police force. The apprehension on the part of the State apparently stems from the impression that all the transfers and postings may be put in the dock. In our view, the aspect of transfer and posting of police officers, referred to in 5th unnumbered paragraph of the FIR is essentially linked to the allegations of abuse of official position by the then Home Minister and his confederates.

83. The investigation agency can, in our view, legitimately inquire into the aspect of transfer and posting of police officers so also reinstatement of Shri Vaze after 15 years, to the extent those transfers and posting have the nexus with the offences alleged against the then Home Minister and his associates keeping in view the observations of the Division Bench in the order dated 5th April 2021. Conversely, the order of the Division Bench cannot be construed as giving unfettered authority to CBI to inquire into the transfer and posting of the police officers generally, which do not reflect upon the alleged acts and conduct expressly attributed to the then Home Minister and his alleged confederates and the resultant offences.

84. We part with the judgment with the assurance that the officers of the Delhi Special Police Establishment, a premier investigating agency, are and must be fully alive to their responsibility. The duty of the police, constituted under either the State enactment or Special Acts is to act in accordance with the law of the land. They serve none but the law. Such

nature of the duty which the police discharge in a society governed by rule of law, is described by Lord Denning in *R. V Metropolitan Police Commissioner*¹⁹ as follows :

" I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself."

(emphasis supplied)

85. By way of abundant caution, we clarify that the observations hereinabove have been made for the limited purpose of adjudicating the challenge in the present Petition by the State and the same will have no bearing on the determination of Writ Petition No. 1902 of 2021 (*Param Bir Singh s/o Hoshiyar Singh Vs. The State of Maharashtra & Ors.*), Writ Petition No. 1843 of 2021 (*Param Bir Singh s/o Hoshiyar Singh Vs. The State of Maharashtra & Ors.*), Writ Petition No. 1901 of 2021 (*Rashmi Uday Shukla Vs. The State of Maharashtra & Ors.*) and Writ Petition No. 1934 of 2021 (*Rachana Ravindra Bhoir Vs. The State of Maharashtra*) which are pending consideration before this Court and they shall be decided on their own merits.

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86. The upshot of aforesaid consideration is that subject to the observations in paragraph Nos. 81 to 85 hereinabove, the petition deserves to be dismissed.

87. Hence, the following order :

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) In view of the disposal of the Writ Petition, interim applications also stand disposed of.

Rule stands discharged.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)

88. At this stage, Mr. Dada, the learned Senior Counsel for the petitioner-State submits that the statement not to insist upon requisitioned documents from the State, which was made on behalf of CBI, as recorded in the order dated 26th May 2021, and is in operation till date, may be continued for a period of two weeks.

89. Mr. Tushar Mehta, the learned Solicitor General submits that the said statement on behalf of CBI was made in peculiar circumstances, and in view of the dismissal of the petition, the respondent-CBI would not be

in a position to continue the statement which was made on 26th May 2021.

90. Thereupon, Mr. Dada made an oral application of staying the effect and operation of this judgment for a period of two weeks so as to facilitate the petitioner-State to peruse the judgment and decide the future course of action. This prayer is also resisted by Mr. Tushar Mehta, the learned Solicitor General.

91. Since we have dismissed the petition finally by recording adequate reasons and no restraint was in operation, apart from the aforesaid statement made on behalf of CBI, we do not think it expedient to stay the effect and operation of this judgment. Otherwise, it would amount to interfering with the investigation, which is underway.

92. The oral application, thus, stands rejected.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)