CASE NO.:
Writ Petition (civil) 13381 of 1984

PETITIONER:
M.C. Mehta

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 27/11/2006

BENCH:
S. H. Kapadia & D. K. Jain

JUDGMENT:
J U D G M E N T
I. A. No. 431 IN
Writ Petition (Civil) No. 13381 of 1984
with
I.A. No. 451, I.A. Nos. 438, 439, 442-443, 445 and 447
in I.A. No. 431, I.A. No. 440 and I.A. No. 441 in I.A. No. 440.

KAPADIA, J.

Delay condoned in I.A. No. 443 in I.A. No. 431 in W.P. (C) No. 13381/84.

A purported vertical difference of opinion in the administrative hierarchy in CBI between the team of investigating officers and the law officers on one hand and Director of Prosecution on the other hand on the question as to whether there exists adequate evidence for judicial scrutiny in the case of criminal misconduct concerning Taj Heritage Corridor Project involving 12 accused including former Chief Minister has resulted in the legal stalemate which warrants interpretation of Section 173(2) Cr. PC.

BACKGROUND FACTS:

On 25.3.2003, the Uttar Pradesh Government started a project known as Taj Heritage Corridor Project (hereinafter referred to as "the project") to divert the Yamuna and to reclaim 75 acres between Agra Fort and the Taj and use the reclaimed land for constructing food plazas, shops and amusement activities in terms of development of Heritage Corridor for Taj Trapezium Zone (hereinafter referred to as the "TTZ") at Agra. This led to the filing of an I.A. No. 387 in Civil Writ Petition No. 13381/84 pending in this Court. Vide Order dated 16.7.2003 this Court observed that, it was painful that the concerned persons in power are trying to damage or endanger the World Heritage by their hasty/ irregular/ illegal activities. By the said order, this Court directed a detailed inquiry as to who cleared the project, for what purpose it was cleared, and why it was cleared without the sanction of the competent authority. This Court also inquired as to whether their exists any illegality or irregularity and, if so, this Court called for the names of the concerned officers/ persons. Accordingly by the said order, a CBI inquiry was ordered. A report on the preliminary inquiry was called for from CBI within four weeks.

By Order dated 21.8.2003 in I.A. No. 376 in Writ Petition (C) No. 13381/84 this Court ordered CBI to verify from the assets of the officers/ persons as to whether there was any flow of funds into their accounts from the state exchequer. This order was passed on the basis of the confidential report submitted by CBI to this Court under which it was reported that a sum of Rs. 17 crores were released from the state exchequer without proper sanction of the competent authority.

By Order dated 18.9.2003 in I.A. No. 376 in Writ Petition (C) No. 13381/84 this Court after reciting the above facts noted the contents of the

report submitted by CBI on 11.9.2003, which report recorded the following conclusions:

"15. An amount of Rs. 17 crores was unauthorisedly released by Shri R.K. Sharma, Secretary, Environment, U.P. without the approval of the departmental Minister. (Ref. Para 3.1.E.4 page 64 and para 3.1.E.31, page 81)

16. Contrary to the provisions existing in the State Government which require that in case of every non-recurring expenditure of Rs. 5 crores and above, approval of the Expenditure Finance Committee (EFC) of the State Government is required, no such approval was either sought or obtained before sanctioning the amount of Rs. 17 crores (Ref. Para 3.1.E.11, page 67).

17. An amount of Rs. 20 crores was sanctioned by Shri Naseemuddin Siddiqui, the then Minister of Environment, U.P. for release without approval of DPRs and techno-feasibility reports and without clearance of the Expenditure Finance Committee (EFC) of the State Government and CCEA, Government of India (Ref. Para 3.1.E.39, page 86).

18. Shri Siddiqui subsequently tampered with the file and made interpolations in the Government records with an objective to cover up the fact that he had sanctioned Rs. 20 crores on 21/05/2003. (Ref. Para 3.1.E.40 (1 and 2) page 87).

19. Shri Siddiqui and Dr. V.K. Gupta, the present Secretary, Environment, U.P. pressurized Shri Rajendra, Prasad, Under Secretary, Environment Department, U.P. who also tampered with the file and made interpolations to cover the fact that the Minister had sanctioned Rs. 20 crores. (Ref. Para 3.1.E.37, page 86).

20. Shri K.C. Mishra, Secretary, Environment and Forest Government of India tampered with the file and made interpolations in Government records in order to cover up his omissions of not approving the proposals of his Joint Secretary and Special Secretary for writing to the State Government for a report and to ask them to carry out work only after necessary approvals and clearances. He obscured some portions of the notes dated 21/10/2002 and 08/05/2003 of Dr. Saroj, Additional Director, Ministry of Environment and Forest so as to show that he was not a part of the decision making and had not shown his consent to the proposed project. (Ref. Para 3.1.E.42 page 89).

21. Central Forensic Science Laboratory has given a report that interpolations were made in the files by Shri Naseemuddin Siddiqui, the then Minister, U.P., Shri Rajendra Prasad, Under Secretary, U.P. and Shri K.C. Misra, Secretary, Environment and Forests, Government of India (Ref. Para 3.1.G.21, pages 106-107 and 3.1.E.44 (5-6), page 90)."

Accordingly, this Court inter alia directed CBI to register an FIR and make further investigation in accordance with law. By the said order, CBI was also directed to take appropriate steps for holding investigations against the former Chief Minister, Ms. Mayawati, and Mr. Nasimuddin Siddiqui, former Minister for Environment, U.P.. CBI was also directed to make investigations against other officers mentioned hereinabove. By the said order the Income Tax department was also directed to cooperate with CBI in further investigation. By the said order, CBI was directed to take into consideration the provisions of the IPC, the Prevention of Corruption Act, 1988 and the Water (Prevention and Control of Pollution) Act, 1974.

By order dated 19.7.2004 in I.A. No. 376 etc. in Writ Petition (C) No. 13381/84 this Court directed CBI to furnish a self-contained note in respect of its findings against the officers of the State Government/ Central Government. CBI was given eight weeks time to complete the investigation in respect of FIR No. RC.18 and three months time was granted to complete the investigation in respect of FIR No. RC.19.

By Order dated 25.10.2004 in I.A. No. 376 etc. in Writ Petition (C) No. 13381/84 this Court noted that two disciplinary enquiries were required to be instituted by the State Government against Shri Punia, former Principal Secretary to C.M., U.P.. This was because CBI had submitted two distinct notes. On 25.10.2004 the departmental enquiry on CBI note I stood completed. However, learned counsel appearing for the State of U.P. submitted that in the absence of CBI furnishing to the disciplinary authority the statement of the former Chief Minister, the second disciplinary proceeding could not be initiated by the State against Shri Punia. This aspect is important. The case of Shri Punia was that he had acted under oral instructions of the former Chief Minister. This was required to be enquired into by the departmental enquiry, therefore, the State requested CBI to furnish the statement of the former Chief Minister which CBI had collected during investigation under RC.18. At that stage, time was sought by the CBI on the ground that investigation into RC.18 was nearing completion and that CBI was awaiting legal scrutiny of the matter. Therefore, this Court adjourned the matter stating that the second disciplinary enquiry against Shri Punia arising out of CBI note II stands deferred until availability of the statement of the former Chief Minister of the State. That statement was ordered to be given to the State Government within three weeks. It was further ordered that, if within three weeks CBI failed to make available the said statement then the State Government will proceed with the initiation of disciplinary enquiry against Shri Punia on the basis of the material available. Accordingly, this Court adjourned the matter stating that after legal scrutiny the report shall be submitted before this Court.

In the meantime, CBI submitted its report with detailed Annexures running into hundreds of pages.

By order dated 14.3.2005 in I.A. No. 431 in Writ Petition (Civil) No. 13381/84, since the report of CBI was voluminous, this Court after going through the provisions of the Central Vigilance Commission Act, 2003 (hereinafter referred to as the "CVC Act") directed the records relating to prosecution of twelve accused be placed before the Central Vigilance Commission (hereinafter referred to as the "CVC") for scrutiny and recommendation. CVC was added as a party. Basically this Court wanted CVC to analyse the Report of CBI and give to the Court the summary of recommendations of various officers in the administrative hierarchy of CBI as the Court was informed that there was divergence of opinion between them.

To complete the chronology of orders passed by this Court, we may point out that the Director, CBI submitted his Status Report as on 31.12.2004 to this Court in which he stated as follows:

"5. As regards investigation of RC0062003A0018, it is submitted that as there was difference of opinion between the officers of CBI in relation to the implication of individuals in the case, the matter was referred to the learned Attorney General of India through the Ministry of Law for obtaining his esteemed opinion in this case. The learned Attorney General has since given his considered opinion that in absence of any evidence to suggest criminal mens rea on the part of any individual and due to lack of evidence of any pecuniary benefit to any of the officers or any other person, the proper course of action would be to take disciplinary action against the officers for their omission and misconduct. I have gone through the report of investigation, comments of various officers including the opinion of the Learned Attorney

General and I am of the opinion that the evidence is not sufficient to launch prosecution.

6. As disciplinary action has already been initiated by the authorities concerned on the direction of Hon'ble Supreme Court, action will be taken by filing a closure report under section 173 Cr. PC in the competent court incorporating all the facts/ circumstances revealed during the course of investigation."

CONTENTIONS:

Shri Krishan Mahajan, learned amicus curiae would submit that in the instant case, at the present stage, the question is of investigation and not of prosecution. Under the Code of Criminal Procedure (Cr. PC), investigation consists of : site inspection, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence relating to the commission of the offence which may consist of the examination of various persons, the search and seizure and, lastly, formation of opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173 Cr. PC. Learned counsel submitted that the final step in the investigation, namely, formation of the opinion is to be of the officer in charge of the police station. This authority cannot be delegated although a provision entitling superior officers to supervise or participate is there under Sections 158 and 173(3) Cr. PC. Learned Counsel urged that the officer in charge of the police station or the investigating officer is the sole person who has to form the opinion under Section 173 Cr. PC and file the police report. In this connection, learned counsel pointed out that in this case Shri D.C. Dwivedi, Deputy Superintendent of Police, CBI, Anti Corruption Bureau, Lucknow was the I.O.. He had filed the F.I.R. with thirteen sheets attached to it, registering a regular case after series of preliminary reports submitted to this Court in I.A. Nos. 376/03 and 431/05 filed by the amicus curiae. This case was assigned to the I.O. by Shri K. N. Tiwari, Superintendent of Police, CBI, Anti Corruption Bureau, Lucknow. According to the learned counsel, the functions of the magistracy and the police are entirely different and though in the circumstances of a given case the Magistrate may or may not accept the report, he cannot infringe upon the jurisdiction of the police by compelling the police to change its opinion. Learned counsel submits that a field of activity reserved for the police and the executive has been expressly carved out under the Cr. PC.

Learned counsel further submitted that, the I.O. works under the entire CBI hierarchy; that the S.P. works under his supervisory officer of DIG rank in terms of the CBI (Crime) Manual-2005 (hereinafter referred to as the "Manual"). But this entire administrative structure of the CBI has to function according to the provisions of the Cr.PC in the matter of investigation, in the matter of filing the charge-sheet/ final report under Section 173(2) and the superior officers of CBI cannot substitute the opinion of the S.P. if that opinion states that a case on the material gathered during the investigation has been made out. Similarly, if the S.P. opines on the basis of the material collected that no case is made out, such an opinion cannot be substituted by the higher hierarchy of the officers in CBI. In this connection, it is pointed out that, in the present case, the FIR registered is for offences under Section 120B r/w Sections 420, 467, 468, 471 IPC as also under Section 13(2) r/w Section 13(i)(d) of the P.C. Act, 1988. It was urged that there are no separate provisions in the Delhi Special Police Establishment Act, 1946 or the P.C. Act, 1988 as to the manner or the steps to be taken in the investigation of such offences and, therefore, though the investigation is conducted by the CBI, the provisions under Chapter XII of the Cr. PC would equally apply to such investigation. Learned counsel submitted that the position of the entire hierarchy of CBI in the matter of filing of police report by the S.P. and formation of the opinion by the S.P. on the basis of the evidence collected during the investigation is to be seen in the context of fair and impartial investigation. He is the Officer-in-charge of the police station. Learned

counsel, therefore, submitted that in a Supreme Court monitored investigation the S.P. has to file his report before the Supreme Court only and not before the entire hierarchy of CBI whose only role is to supervise investigation. This hierarchy of CBI, according to the learned counsel, cannot make the S.P. to change his opinion. They cannot substitute the opinion of the S.P. with their own opinion. Learned counsel further contend that, in a Supreme Court monitored investigation even where the report of the S.P. is a closure report and the Director, CBI and Attorney General agree with the opinion of the S. P., still it is the duty of the CBI to place the entire material before the Supreme Court and it is for the Court to examine and be satisfied that the authorities have reasonably come to such conclusion.

It was next urged that the Director of Prosecution in the CBI has no role to play at the stage of investigation which includes formation of an opinion by the S.P.

Shri Rao, learned senior counsel on behalf of the CVC submitted that pursuant to the directions of the Supreme Court dated 14.3.2005 CVC had examined the records of CBI made available to it. The CVC had also called for further information from CBI. After vetting the entire record, CVC had submitted its report to this Court on 9.5.2005. Learned counsel submitted that under Section 8(1)(a) of the CVC Act, the CVC is empowered to exercise superintendence over the functioning of CBI insofar as it relates to the investigation of offences alleged to have been committed under the P.C. Act, 1988 and, therefore, when the CBI investigates under the P.C. Act, 1988 against public servants serving in connection with affairs of a State Government, such investigation is subject to the superintendence of CVC. This submission was made on behalf of CVC because it was argued on behalf of some of the accused that CVC had no power of superintendence of cases involving public servants employed in connection with affairs of the State Government.

Learned counsel for CVC submitted that in order to fulfill the responsibility of exercising superintendence over the functioning of CBI insofar as it relates to investigations of offences under the P.C. Act, 1988, the CVC is entitled to scrutinize investigation reports of the CBI at any stage before filing of charge-sheets/ closure reports. For this purpose, CVC is empowered to issue suitable advice in cases under investigation. Such advice, according to the learned counsel, is in the nature of an opinion, and not a binding direction.

On the facts of the case, learned counsel for CVC urged that, in the present case the preliminary inquiry as well as the investigation were conducted by the CBI against the former Chief Minister, officers of the State Government and others under the direction of this Court. It was the Supreme Court which had referred the matter to CVC and, therefore, the CVC was bound to submit its report. In the circumstances, learned counsel submitted that, it cannot be said that the report of the CVC is vitiated by any illegality or irregularity since the Supreme Court has absolute power under Article 142 of the Constitution to pass any order as is necessary for doing complete justice in any cause or matter pending before it.

Shri Venugopal, learned senior counsel appearing on behalf of the former Chief Minister submitted that this Court should be loathe to interfere in investigation since it is a field of activity reserved for the police and the executive. He submitted that, in the present case, we are still at the stage of investigation and unless an extraordinary case of gross abuse of power is made out, no interference is called for under Article 32 of the Constitution. Learned counsel further submitted that, in the present case, CVC had no role to play, particularly since the case pertains to conduct of the officers who are the employees of the State Government. Learned counsel submitted that public servants serving in connection with affairs of the State Government fell outside the powers of CVC. Learned counsel submitted that, in any event, CVC had no power to direct the manner in which CBI will conclude the proceedings. Learned counsel submitted that the opinion as to whether

the case is made out for judicial scrutiny or not has to be the decision of CBI and unless there is gross abuse of power this Court should not intervene in the field of investigation under Article 32 of the Constitution. Learned counsel urged that, in the present case, there is no such gross abuse of power made out, and, therefore, this Court should not interfere under Article 32 of the Constitution.

ISSUE:

The key issue which arises for determination in this case is: whether on the facts and the circumstance of this case, the Director, CBI, who has not given his own independent opinion, was right in referring the matter for opinion to the Attorney General of India, particularly when the entire investigation and law officers' team was ad idem in its opinion on filing of the charge-sheet and only on the dissenting opinion of the Director of Prosecution, whose opinion is also based on the interpretation of the legal evidence, which stage has not even arrived. The opinion of the Director, CBI is based solely on the opinion of the Attorney General after the reference.

CASE LAW ON THE POWERS AND FUNCTIONS OF THE HIERARCHY IN CBI IN SUPREME COURT MONITORED CASES:

In the case of H.N. Rishbud and Inder Singh v. The State of Delhi this Court held that the Code of Criminal Procedure provides not merely for judicial enquiry into or trial of alleged offences but also for prior investigation thereof. Section 5 of the Code shows that all offences shall be investigated, inquired into, tried and otherwise dealt with in accordance with the Code. When information of the commission of cognizable offence is received, the appropriate police officer has the authority to enter on the investigation of the same. Thus, investigation is a normal preliminary for an accused being put up for trial for a cognizable offence. Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or his subordinate has to proceed to the spot to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender. Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of investigation. A subordinate officer may be deputed by him for that purpose. The investigating officer has also the power to arrest the person under Section 54 of the Code. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer such subordinate officer has to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence, he may decide to release the suspected accused. If, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he has to take necessary steps under Section 170 of the Code. In either case, on completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form. Thus, under the Code, investigation consists of proceeding to the spot, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence and formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of the Code shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for each one of the above steps is that of the officer in charge of the police station (see Section 168 of the Code). This Court had categorically stated in the above judgment that, the final step in the investigation, namely, the formation of the opinion as to whether or not there

is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated. This Court unequivocally observed that, there is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate under Section 551 (corresponding to Section 36 of the present Code). This Court further held that, a police report which results from an investigation as provided for in Section 190 of the Code is the material on which cognizance is taken. But from that it cannot be said that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance.

In the case of Abhinandan Jha & Ors. v. Dinesh Mishra this Court held that when a cognizable offence is reported to the police they may after investigation take action under Section 169 or Section 170 Cr. PC. If the police thinks that there is no sufficient evidence against the accused, they may, under Section 169 release the accused from custody or, if the police thinks that there is sufficient evidence, they may, under Section 170, forward the accused to a competent Magistrate. In either case the police has to submit a report of the action taken, under Section 173, to the competent Magistrate who considers it judicially under Section 190 and takes the following action:

(a) If the report is a charge-sheet under Section 170, it is open to the Magistrate to agree with it and take cognizance of the offence under Section 190(1)(b); or decline to take cognizance. But he cannot call upon the police to submit a report that the accused need not be proceeded against on the ground that there was no sufficient evidence.

(b) If the report is of the action taken under Section 169, then the Magistrate may agree with the report and close the proceedings. If he disagrees with the report, he can give directions to the police under Section 156(3) to make a further investigation. If the police, after further investigation submits a charge-sheet, the Magistrate may follow the procedure where the charge-sheet under Section 170 is filed; but if the police are still of the opinion that there was no sufficient evidence against the accused, the Magistrate may or may not agree with it. Where he agrees, the case against the accused is closed. Where he disagrees and forms an opinion that the facts mentioned in the report constitute an offence, he can take cognizance under Section 190(1)(c). But the Magistrate cannot direct the police to submit a charge-sheet, because the submission of the report depends entirely upon the opinion formed by the police and not on the opinion of the Magistrate. If the Magistrate disagrees with the report of the police he can take cognizance of the offence under Section 190(1)(a) or (c), but, he cannot compel the police to form a particular opinion on investigation and submit a report according to such opinion.

This judgment shows the importance of the opinion to be formed by the officer in charge of the police station. The opinion of the officer in charge of the police station is the basis of the report. Even a competent Magistrate cannot compel the concerned police officer to form a particular opinion. The formation of the opinion of the police on the material collected during the investigation as to whether judicial scrutiny is warranted or not is entirely left to the officer in charge of the police station. There is no provision in the Code empowering a Magistrate to compel the police to form a particular opinion. This Court observed that, although the Magistrate may have certain supervisory powers under the Code, it cannot be said that when the police submits a report that no case has been made out for sending the accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet.

The formation of the said opinion, by the officer in charge of the police station, has been held to be a final step in the investigation, and that final step has to be taken only by the officer in charge of the police station and by no other authority.

In the case of Union of India and Ors. v. Sushil Kumar Modi and Ors. investigation was entrusted to CBI in the fodder scam case by the High Court to ensure proper and honest performance of duty by CBI. This Court directed CBI officers to inform the Chief Justice of the Patna High Court about the progress of the investigation and to obtain his directions if so required for conducting the investigation. The Joint Director of CBI submitted his report on the investigation carried out by him to the Chief Justice of the High Court. The High Court found that the Director was trying to interfere with the investigation and, therefore, the High Court directed that all reports of the CBI officers shall be submitted directly to the court without being forwarded to the Director, CBI. This order of the High Court was challenged. It was held that the Director, CBI was responsible and accountable for the proper investigation of the case and, therefore, he cannot be excluded from the investigation. It was, however, observed that the Director, CBI was duty-bound to make a fair, honest and complete investigation and officers associated with the investigation have to function as members of a cohesive team engaged in common pursuit of such an investigation so as to uphold the majesty of the law and preserve the rule of law. It was held that, in case of any difference of opinion between officers of CBI in respect of the investigation, final decision would not be taken by the Director himself or by the Director merely on the opinion of Legal Department of the CBI, but the matter would be decided according to the opinion of the Attorney General of India for the purpose of investigation and filing of the charge-sheet against any such individual. In that event, the opinion would be sought from the Attorney General after making available to him of the opinions expressed on the subject by the persons associated with the investigation as a part of the materials. We quote hereinbelow paras 13 and 14 of the said judgment:

"13. We make it clear that in case of any difference of opinion between the officers of the CBI in relation to the implication of any individual in the crimes or any other matter relating to the investigation, the final decision in the matter would not be taken by the Director, CBI, himself or by him merely on the opinion of the Legal Department of the CBI; and in such a situation, the matter would be determined according to the opinion of the Attorney General of India for the purpose of the investigation and filing of the charge-sheet against any such individual. In that event, the opinion would be sought from the Attorney General after making available to him all the opinions expressed on the subject by the persons associated with the investigation as a part of the materials.

14. It appears necessary to add that the Court, in this proceeding, is concerned with ensuring proper and honest performance of its duty by the CBI and not the merits of the accusations being investigated, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law. Care must, therefore, be taken by the High Court to avoid making any observation which may be construed as the expression of its opinion on merits relating to the accusation against any individual. Any such observation made on the merits of the accusation so far by the High Court, including those in Para 8 of the impugned order are not to be treated as final, or having the approval of this Court. Such observations should not, in any manner influence the decision on merits at the trial on the filing of the charge-sheet. The directions given by

this Court in its aforesaid order dated 19.3.1996 have to be understood in this manner by all concerned, including the High Court."

This position was clarified in the case of Union of India and Ors. v. Sushil Kumar Modi and Ors. . It was observed that the nature of the PIL proceedings before the Patna High Court in the fodder scam case was somewhat similar to the proceedings in Vineet Narain's case. It was observed by this Court that, the performance of the PIL proceedings is essentially to ensure performance of statutory duty by the CBI. The duty of the court in such proceedings is to ensure that CBI and other government agencies do their duty in conformity with law. According to the Code, the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the police and by no other authority. It was observed that, in order to ensure compliance of this aspect of the Code, the directions were issued from time to time to CBI that in case of difference of opinion at any stage during the investigation, the final decision shall be of the Attorney General on reference being made to him on the difference of opinion between the officers concerned. This Court further observed in that case that the High Court was only required to ensure that the Director, CBI did not close any investigation based only upon his individual opinion, if there be any difference of opinion between the Director, CBI and the other officers concerned in the CBI.

In Vineet Narain and Ors. v. Union of India and Anr. certain measures by way of checks and balances were recommended by this Court to insulate CBI from extraneous influence of any kind. It was observed that, unless a proper investigation is made followed by a proper prosecution the rule of law will lose significance. Accordingly, directions were issued till such time as the legislature steps in by way of proper legislation. One of the points which arose for determination in that case was the significance of the word "superintendence" in Section 4 of the Delhi Special Police Establishment Act, 1946. It was held that the overall superintendence of CBI vests in the Central Government and, therefore, by virtue of Section 3 of that Act the power vested in the Central Government to specify the offences or classes of offences which are to be investigated by CBI. But once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigation and the power of the investigator cannot be curtailed by the executive instructions issued under Section 4 by the Central Government. The general superintendence over the functioning of the Directorate/ department and specification of the offences to be investigated by CBI is not the same thing, therefore, the Central Government is precluded from controlling the initiation and the actual process of investigation. It was held that, the word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by CBI. Therefore, the Central Government was precluded from issuing any direction to CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Delhi Special Police Establishment Act, 1946. The constitution of the CVC flowed from the judgment of this Court in Vineet Narain6 (supra). It is in this judgment that a direction was given to the Central Government by this Court for granting statutory status to the CVC.

In the case of Union of India v. Prakash P. Hinduja and anr. this Court has held that the provision contained in Chapter XII Cr.PC shows that detailed and elaborate provisions have been made for securing an investigation into an offence of which information has been given. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station. A Magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not, as contemplated by Sections

169 and 170, is to be that of the officer in charge of the police station and a Magistrate has absolutely no role to play at this stage. Similarly, after completion of the investigation while making a report to the Magistrate under Section 173, the requisite details have to be submitted by the officer in charge of the police station without any kind of interference or direction of a Magistrate and this will include an opinion regarding the fact whether any offence appears to have been committed and, if so, by whom, as provided by clause (d) of sub-section (2)(i) of Section 173 Cr. PC. These provisions are applicable even in cases under the P.C. Act, 1988 vide Section 22 thereof. The Magistrate is not bound to accept the final report submitted by the police and if he feels that the evidence and the material collected during the investigation justify prosecution of the accused, he may not accept that report and take cognizance of the offence and summon the accused, which would not constitute interference with the investigation as such. In the said judgment, it was further observed, relying upon the judgment in Vineet Narain6 (supra), that once the jurisdiction is conferred on CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be curtained by any executive instruction issued under Section 4(1) of the Delhi Special Police Establishment Act, 1946.

Analyses of the above judgments show that there is a clear-cut and well-demarcated sphere of activities in the field of crime detection and crime punishment. Investigation of an offence is the field reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive is charged with a duty to keep vigilance over law and order situation. It is obliged to prevent crime. If an offence is committed allegedly, it is the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the police department and finds an offence having been committed, it is its duty to collect evidence for the purposes of proving the offence. Once that is completed, the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 Cr.PC and his duty comes to an end. Therefore, there is a well-defined and well-demarcated functions in the field of crime detection and its subsequent adjudication by the court. Lastly, the term "investigation" under Section 173(2) of the Cr.PC includes opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the concerned court or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts.

CASE LAW ON THE ROLE OF OFFICER IN CHARGE OF THE POLICE STATION:

In the case of K. Veeraswami v. Union of India and Ors. this Court observed vide para 76 as follows:

"76. The charge sheet is nothing but a final report of police officer under Section 173(2) of the CrPC The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in Satya Narain Musadi

and Ors. v. State of Bihar (1980) 3 SCC 152; that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

(emphasis supplied)

In the case of Kaptan Singh and Ors. v. State of M.P. and Anr. this Court held vide para 5 as follows:

"5. From a conspectus of the above decisions it follows that the revisional power of the High Court while sitting in judgment over an order of acquittal should not be exercised unless there exists a manifest illegality in the judgment or order of acquittal or there is grave miscarriage of justice. Read in the context of the above principle of law we have no hesitation in concluding that the judgment of the trial court in the instant case is patently wrong and it has caused grave miscarriage of justice. The High Court was therefore fully justified in setting aside the order of acquittal. From the judgment of the trial court we find that one of the grounds that largely weighed with it for acquitting the appellants was that an Inspector of CID who had taken up the investigation of the case and was examined by the defence (DW 3) testified that during his investigation he found that the story as made out by the prosecution was not true and on the contrary the plea of the accused (appellants) that in the night of the incident a dacoity with murder took place in the house of Baijnath by unknown criminals and the appellants were implicated falsely was true. It is trite that result of investigation can never be legal evidence; and this Court in Vijender v. State of Delhi (1997)6 SCC 171 made the following comments while dealing with this issue:

'The reliance of the trial Judge on the result of investigation to base his findings is again patently wrong. If the observation of the trial Judge in this regard is taken to its logical conclusion it would mean that a finding of guilt can be recorded against an accused without a trial, relying solely upon the police report submitted under Section 173 CrPC, which is the outcome of an investigation. The result of investigation under Chapter XII of the Criminal Procedure Code is a conclusion that an Investigating Officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent court

to take cognizance thereupon under Section 190(1)(b) CrPC and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial court is then required to base its conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof. Since this is an elementary principle of criminal law, we need not dilate on this point any further'." (emphasis supplied)

In the case of R. Sarala v. T.S. Velu and Ors. the facts were as follows. A young bride committed suicide within seven months of her marriage. An inquiry under Section 174(3) Cr.PC was held. The Magistrate conducted the inquiry and submitted a report holding that due to mental restlessness she had committed suicide and no one was responsible. He further opined that her death was not due to dowry demand. However, the police continued with the investigation and submitted a challan against the husband of the deceased and his mother for the offence under Sections 304 B and 498 A IPC. The father of the deceased was not satisfied with the challan as the sister-in-law and the father-in-law were not arraigned as accused. Therefore, the deceased's father moved the High Court under Section 482 Cr.PC. A Single Judge of the High Court directed that the papers be placed before the Public Prosecutor. He was asked to give an opinion on the matter and, thereafter, the court directed that an amended charge-sheet should be filed in the concerned court. This court held as follows:

"In this case the High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal scrutiny. The formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else. There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the superior police officer in the rank as envisaged in Section 36 of the Code. A Public Prosecutor is appointed, as indicated in Section 24 CrPC, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court."

(emphasis supplied)

APPLICATION OF THE ABOVE CASE LAW TO THE FACTS OF THIS CASE:

At the outset, we may state that this Court has repeatedly emphasized in the above judgments that in Supreme Court monitored cases this Court is concerned with ensuring proper and honest performance of its duty by CBI and that this Court is not concerned with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law. Therefore, the question which we have to decide in the present case is whether the administrative hierarchy of officers in the CBI, in

the present case, have performed their duties in a proper and honest manner.

As stated above, the formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else. Under the CBI Manual, the officer in charge of the police station is the S.P.. In this connection, we quote hereinbelow the CBI Manual, which though not binding on this Court in Supreme Court monitored cases, nonetheless, the said Manual throws light on the controversy in hand. We quote clauses 6.1 and 19.15 of the CBI (Crime) Manual-2005 hereinbelow:

"DIRECTOR, CBI\027Matters to be shown to DCBI

6.1 Director, CBI should be informed of all important matters and his advice or instructions obtained wherever this is considered necessary by Special Director, Additional Director, Joint Directors, DIsG, Director of Prosecution, Director, CFSL and other Senior Officers. In particular, the following matters should be referred to him."

"19.15 SP's Report is a very important document and should be prepared personally by the SP in the prescribed format. The concerned Departments/ Government Undertakings assess the CBI investigation of their cases solely on the basis of the SP's Reports. The report should be grammatically correct, clear and unambiguous. The report should be brief without repetitions and should contain all necessary data. The internal differences of opinion among CBI Officers should not find mention in the SP's Report, which should advance all arguments to justify the final order passed by the Competent Authority in the CBI. The final recommendation should be precise. If sanction is required, the relevant Section (including sub-section) of law under which sanction is required should be mentioned with brief grounds. In some of the cases, charge sheets cannot be filed and only complaints by certain statutory authorities can be filed in the Court. In such cases, the relevant section prescribing the filing of a complaint should be mentioned in the SP's Report. It should be borne in mind by the SP that the efficiency and the quality of work done by the CBI would be viewed mainly on the basis of the SP's Report and, therefore, no effort should be spared to make it factually correct, systematic, cogent and logical." (emphasis supplied)

In the present case, the investigating team consisted of the I.O., S.P., D.I.G., Joint Director and Additional Director CBI. In the present case, the law officers consisted of D.L.A. and A.L.A.. In the present case, the entire investigating team as well as the said law officers are ad idem in their mind. They have recommended prosecution. It is only the Director of Prosecution and the Sr. P.P. who have opined that a closure report should be filed. It may be noted that Sr. P.P. does not find place in clause 6.1 which refers to the administrative hierarchy of CBI. Further, the Director of Prosecution is the only officer who had dissented from the opinion of the investigating team including the S.P.. It appears that this opinion is also based only on interpretation of legal evidence. Moreover, as can be seen from the Status Report dated 31.12.2004, the Director, CBI has not given his independent opinion. He has merely relied upon the opinion of the Attorney General. We can understand the Director, CBI expressing an opinion and then referring the matter to the Attorney General. Under the above circumstances, we are of the view that, there was no difference of opinion in the matter of investigation between the concerned officers of CBI and, therefore, there was no question of the Director, CBI referring the matter to the Attorney

General of India. As stated by this Court in the case of R. Sarla10 (supra), the formation of opinion, whether or not there is a case to place the accused on trial has to be of the officer in charge of the police station. One fails to understand why an opinion of Sr. P.P. had been taken in the present case. He is not a member of the hierarchy. The S.P. is not legally obliged to take his opinion. In the circumstances, when there was no difference of opinion in the concerned team, the question of seeking opinion of the Attorney General did not arise. Lastly, even under clause 19.15 of the CBI Manual it is expressly stated that the report of the S.P. should be prepared personally by the S.P. and that the internal differences of opinion among CBI Officers should not find place in the SP's Report. As stated above, CBI was required to follow the procedure in Cr.PC. The result of the investigation by the police is not legal evidence. Keeping in mind the scheme of Sections 168, 169, 170 and 173 of the Cr.PC, in the facts and circumstances of this case, we direct the entire material collected by CBI along with the report of the S.P. to be placed before the concerned court/ Special Judge in terms of Section 173(2) Cr.PC. The decision to accept or reject the report of the S.P. shall be that of the concerned court/ Special Judge, who will decide the matter in accordance with law.

Before concluding two points need clarification. Under Article 142 of the Constitution, this Court is empowered to take aid and assistance of any Authority for doing complete justice in any cause or matter pending before it. In the present case, at one stage of the matter, voluminous records were placed by CBI before this Court along with the recommendations of its officers. To vet and analyse the material, this Court essentially directed CVC to study the material, analyse the findings and give its recommendations as to the manner in which the investigations have been carried out. Since CVC has fairly stated before this Court that its advice is only in the nature of an opinion which is not a binding direction in this case, we are not required to examine the scope of the CVC Act, 2003. Secondly, in our earlier order, we have given time to CBI to complete legal scrutiny when we were told that there was difference of opinion in the administrative hierarchy of CBI. However, after going through the recommendations of the above officers, we are of the view, as stated above, that there was no difference of opinion of the concerned officers and, therefore, there was no question of reference to the Attorney General. We reject the Status Report dated 31.12.2004 as it is a charade of the performance of duty by the CBI. Thus, a case for judicial review is made out.

We, accordingly, direct the CBI to place the evidence/ material collected by the investigating team along with the report of the S.P. as required under Section 173(2) Cr.PC before the concerned court/ Special Judge who will decide the matter in accordance with law. It is necessary to add that, in this case, we were concerned with ensuring proper and honest performance of duty by the CBI and our above observations and reasons are confined only to that aspect of the case and they should not be understood as our opinion on the merits of accusation being investigated. We do not wish to express any opinion on the recommendations of the S.P.. It is made clear that none of the other opinions/ recommendations including that of the Attorney General of India, CVC shall be forwarded to the concerned court/ Special Judge.

In the matters after matters, we find that the efficacy and ethics of the governmental authorities are progressively coming under challenge before this Court by way of PIL for failure to perform their statutory duties. If this continues, a day might come when the rule of law will stand reduced to "a rope of sand".

The above Interlocutory applications are accordingly disposed of.