

PETITIONER:
STATE OF WEST BENGAL & ORS. ETC.

Vs.

RESPONDENT:
SAMPAT LAL & ORS. ETC.

DATE OF JUDGMENT 04/12/1984

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
BHAGWATI, P.N.
SEN, AMARENDRA NATH (J)

CITATION:
1985 AIR 195 1985 SCR (2) 256
1985 SCC (1) 317 1984 SCALE (2) 942
CITATOR INFO :
RF 1985 SC 735 (4)
RF 1991 SC 1260 (42)

ACT:
Code of Criminal Procedure 1973-Death under suspicious circumstances-Allegation of murder-Investigation still in the hands of police-High Court appointing a Special officer to inquire into the offence-Judicial interference in investigation When arises.

"inquiry" and "investigation"-Difference between.

Natural Justice-Letter to the Chief Justice of High Court. treated as writ petition-Death under suspicious circumstances-Allegation of murder-High Court issuing direction to enquire into causes of death-No opportunity given to the State Police officers-Whether violative of principles of Natural justice.

Delhi Special Police Establishment Act 1946-ss. 5 and 6-Whether s.6 applicable when Court gives direction to C.B.I to conduct an investigation.

HEADNOTE:

The respondents addressed two letters to the Chief Justice of the Calcutta High Court regarding mysterious death of two young boys living in Barrackpore area near Calcutta alleging, inter alia, that the local police was not conducting the investigation into the unnatural death of the two boys fairly and properly and was trying to make it a case of suicide and requested the High Court to order a thorough investigation into the incident by an independent machinery which would command confidence and be acceptable to the local police. A single Judge of the High Court, before whom the letters were placed, treated the two letters as a formal petition and, without giving notice directed issue of a rule to the State of West Bengal and other authorities to show cause why a writ in the nature of mandamus may not be issued directing investigation in accordance with law to be conducted over the unnatural death of the two boys. In the meanwhile the Judge also appointed Deputy Inspector General, Central Bureau of Investigation to make as inquiry and report to the High Court as to how

the two boys met their death. The appellants preferred an appeal against the said order before the Division Bench which also confirmed the order of the Single Judge with the modification that the DIG, CBI will act as a special officer. Hence this appeal.

The appellants contended (i) that the order of the Single Judge was vitiated having been made in violation of rules of natural justice; (ii) that the order was also bad as the learned Single Judge had not cared to inform himself as to the stage of investigation and if there was any lacuna therein and he proceeded to act on certain assumptions for which there was no basis or foundation, (iii) that since there had been no breach of duty, the court had no jurisdiction to interfere with the investigation which, under the law, was vested in the police authorities and therefore the directions given by the Single Judge and upheld with certain modifications by the Division Bench were not proper.

Allowing the appeal,

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HELD: 1. It is clear from the order passed by the Learned Single Judge that no bearing was afforded to the State Government or its officers when direction to appoint the special officer in whom power of inquiry was to be vested was made. There was no basis at that stage to assume that the contents of the letters as also the facts stated in the columns of the newspaper had not been contradicted. It was the State Government or its officers who alone could have authoritatively indicated the facts showing whether the allegations contained in the letters or the newspaper report were true and if so to what extent or how the investigation was being carried on and what stage it had reached so as to enable the court to come to a prima facie authorities were not discharging properly their statutory obligation to carry out an investigation But when no notice was given to the State Government and no opportunity was offered to them, it is difficult to see how an ex parte order could be made on such an assumption. If the facts stated in the letter or the writ petition are credible and there is such urgency that the ends of justice might be defeated by not making an ex parte order or giving of notice without ex parte order might lead to aggravation of oppression or exploitation or removal or elimination of evidence, the court would certainly be justified in making an ex parte order. But in the instant case, there were no such circumstances at all and the court could have very well issued notice to the respondents and tried to find out whether there was any necessity directing the appointment of DIG, CBI to act as a Special officer and requiring the police authorities of the State to extend all possible help as may be required by him. [270C-H: 271A]

(2) The appointment of a Special officer with a direction to enquire into the commission of an offence can only be on the basis that there has not been a proper investigation. There is a well defined hierarchical administrative set up of the police in the State of West Bengal as in all other States and to have created 3 new channel of inquiry or investigation is likely to create an impression that everything is not well with the statutory agency

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and it is likely to cast a stigma on the regular police hierarchy. In the facts and circumstances of the instant case and the nature of the order made in view, the direction to appoint a Special officer with powers to inquire should not have been made until the appellants has been given a

hearing and the court had the papers of investigation laid before it for being prima facie satisfied that the investigation had either not been proper or adequate. [271C-E]

(3) Under the Code of Criminal Procedure which lays down the procedure to be followed when report of an offence is lodged with the police, the power to investigate is vested in the police. The procedure laid down in the Code is clear and definite. Investigation is a matter for the police under the scheme of the Code. Judicial opinion seems to be settled and there are several authorities of the Supreme Court where interference by the Court into police investigation has not been approved. There is however, residuary jurisdiction left in the court to give directions to the investigating agency when it is satisfied that the requirements of the law are not being complied with and investigation is not being conducted properly or with due haste and promptitude. The court has to be alive to the fact that the scheme of the law is that the investigation has been entrusted to the police and it is ordinarily not subject to the normal supervisory power of the court. But in the instant case, the material placed before the court did not justify an exception to be made to the rule indicated by the Supreme Court and the appointment of a Special officer was not called for at this state. [262D; 270B; 278H; 279A-C]

State of West Bengal v. S.N. Basak [1983] 2 S.C.R. 52
S.N. Sharma v. Bipin Kumar Tiwari & Ors. [1970] 3 S.C.R. 946.
State of Bihar v J. A. C. Saldanha & Ors. [1980] 2 S.C.R. 16 followed.

kings Emperor v. Khwaja Nazir Ahmed [1944] L.R. 71 referred to.

Bhagwant Singh v. Commissioner of Police, Delhi [1983] 3 S.C.C. 344 held not applicable.

(4) 'Inquiry' and 'investigation' are statutory terms defined in the Code. In the instant case whatever name the work entrusted to the Special officer be called, there can be no dispute that he was required to ascertain facts from the witnesses and documents, if any, in regard to the death of the two boys. This process necessarily involved a fact finding inquiry by ordinarily tapping the same sources as the investigating agency was expected to contact. This, therefore, necessarily involved a duplicate investigation. In view of the fact that there were two separate channels Placed in active charge of investigation to be conducted contemporaneously, confusion was bound to occur and working of the two channels at a time was likely to prejudice the proper investigation making the exposing of the truth buried under mystery more difficult. Carrying this duplicate process was not likely to serve the cause of justice nor help in achieving the object for which it had been set up. The Special officer was not to exercise the power under s.5 of the Delhi Special Police Establishment Act 1946, and if be wanted any real

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assistance in the matter of investigation, it had to be carried through the police officers of the State Administration. This was likely to bring in further confusion in as much as the witnesses were likely to be contacted by the same police office on more than one occasion-once in the course of investigation conducted by the police and again to meet the requirements of the Special officer. We are sure that the High Court never intended the cause of justice to be prejudiced and the serious attempt to find out the truth to be aborted. [273D-F; H; 274A-C]

(5) While section 6 of the Delhi Special Police

Establishment Act 1946 would require the consent of the State Government before jurisdiction under s.5 of that Act is exercised by officer of that establishment, when a direction is given by the court in an appropriate case, consent envisaged under s.6 of the Act would not be a condition precedent to compliance with the court's direction. Section 6 of the Act does not apply when the court gives a direction to the C.B.I. to conduct an investigation. In this view, the impugned order of the learned single judge and the appellate decision of the Division Bench appointing DIG, CBI to inquire into the matter would not be open to attack for want of sanction under s.6 of the Act. [269B-D]

(6) In the instant case, the Court allowed the appeal and set aside the order of appointment of the Special officer and observed that the investigation carried out has not been quite satisfactory. However, in the facts and circumstances of the case, there is no necessity to take away the investigation from the hands of the State Police machinery which is the statutory agency. The court pointed out that though there are occasions when death remains a mystery in spite of the best of efforts, it hopes that with an honest attempt and since efforts made, the truth would be found out and the police authorities of the State would be in a position to give a creditable account of themselves. The court also suggested that the Director General of Police, West Bengal, will appoint a competent supervisory officer from the higher ranks of the State police with expertise in investigation to supervise the investigation in the present case. [279D; 282E-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 570 of 1983.

From the Judgment and order dated 27th September, 1983 of the Calcutta High Court in C.R. No. (W) of 1983 arising out of original order Tender No. 1583 of 1983.

WITH

Petition for Special Leave to Appeal (Crl.) No. 2671 of 1983. From the Judgment and order dated 27th September, 1983 of the Calcutta High Court in C.R. No. (W) of 1983 arising out of original order Tender No. 1583 of 1983.

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Somnath Chatterjee, HK Puri, S. Ghosh and VK Behl for the petitioners.

Ashok Sen, Shankar Das Banerjee, DN Das and Shri Narain, for the respondents.

KG Bhagat, Additional Solicitor General. RN Poddar Miss Halida Khatoon for the Union of India.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The appeal is under Article 134 (a) with leave from the Calcutta High Court and is directed against the judgment of a Division Bench of that Court dated September 27, 1983. The Special Leave Petition is under Article 136 of the Constitution and is also directed against the same decision. Both these matters are thus connected and arise out of the incident relating to the death of two young boys of Barrackpore area near Calcutta. This judgment of ours will dispose of both the matters.

Two letters, one by one Sampat Lal, respondent I in the criminal appeal and another by respondents I (a) to I (n), both dated June 1, 1983, were received by the learned Acting Chief Justice of the Calcutta High Court. The letter sent by Sampat Lal alleged that two young boys by names Tirthankar

Das Sharma and Sanjib Chatterjee, living in Barrackpore area, were missing since the afternoon of March 2, 1983. Information was given at the local police station late at night on the same day and wide publicity that the two boys were missing but no information about their whereabouts was received till April 5, 1983. On that day it transpired that dead bodies of two boys had been found from the railway track near Pandua railway station and they had been disposed of by the local police without taking any steps for their identification. Verification of the photographs maintained by the Railway Police at Bandel and the wearing apparel of the two boys kept at the police station clearly indicated that the dead bodies were of the two missing boys. The letter alleged that the parents of the two boys had approached several authorities including the Chief Minister of the State. Without taking any serious notice of the matter, the Chief Minister was alleged to have made a statement to the effect even before com-

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petition of the investigation that it was a case of suicide. From the A reports published in a Bengali newspaper it appeared that the two boys had been murdered. The letter further alleged that the local police had been threatening the parents of the deceased and other people living in the locality. The local people were, therefore, feeling insecure and had lost confidence in the administration. They wanted that investigation should be conducted by an independent machinery which would command confidence and be acceptable to the local people. They also asked for adequate protection to be given to the residents of the area.

In the second letter similar allegations were made but certain details not given in the first letter were given regarding the incident C and the following relief was claimed:

"Hence on behalf of residents of Barrackpore our humble prayer to the Honourable Chief Justice is that the Government should instruct some neutral organisation like C.B.I., to investigate in search of unnatural death and solve the mystery to satisfy the people of this area and the soul of State. This is apparent from delay in investigation, its incidents and in flow of publicity that when some neutral active investigation the reason of such death or who is the murderer or what is the real mystery cannot be known definitely. After C.B.I. Or some such organisation conducts the investigation, we the residents of Barrackpore promise to help them with heart and soul. Our humble submission is that you may kindly accept our requests and try to stop the police from this negligence in investigation and also stop them from submitting motivated false informations and also we submit that through neutral investigation the real mystery should be exposed to our contention. In case the police or some persons have some kind of motivation behind this the Honourable Court may take a role to set a precedence by ordering investigation into that."

(Translated from the original letter in Bengali).

On June 6, 1983, the learned Acting Chief Justice directed the letters to be treated as a writ petition and asked the same to be placed before Borooah, J. On June 7, 1983, the matter appeared

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before the learned judge. Mr. Ghosh appeared on behalf of the persons who had written the letters. Mr. Shankar Das Banerjee appeared on behalf of Ananda Bazar Patrika, a

widely circulated Bengali daily from Calcutta, in two issues of which dated May 12 and May 18, 1983 detailed reports about the incident on the basis of investigation said to have been carried by a private detective agency known as 'The Secret Eye'. Borooah, J. read the letters and the reports in the two issues of the newspaper, heard Mr. Ghosh as also Mr. Shankar Das Banerjee and observed, inter alia:

"When an unnatural death occurs or a prima facie case of the commission of a cognizable offence is brought to the notice of the police authorities, it is their duty under the Code of Criminal Procedure to conduct an investigation and ascertain the cause of the death. Reading the letters and the newspaper reports which do not appear to have been contradicted by any authoritative statement from the police authorities, I, in the interest of justice, treat the two letters as formal petition under Article 226 of the Constitution after dispensing with the necessary formalities .. "

He ordered that a rule should issue to the State of West Bengal and other State authorities to, show cause why a writ in the nature of mandamus may not be issued directing investigation in accordance with law to be conducted over the unnatural deaths of Tirthankar Das Sharma and Sanjib Chatterjee. He also directed cause to be shown as to why a direction may not be given for production of all the records relating to investigation conducted till then. He further directed:

"Pending disposal of this rule, I direct the Deputy Inspector General Bureau of Investigation, 13 Lindsay Street, Calcutta-16 to cause an enquiry to be made and report to this Court by the 23rd of June 1983 as to how the two boys met their death. The police authorities of the State will extend all possible help as required by the Central Bureau of Investigation, and the Ananda Bazar Patrika will also make available to the Central Bureau the reports submitted to the newspaper by the Detective Agency."

Borooah, J. further directed the Superintendent of Police, 24

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Pargans, to issue necessary instructions so that the proper protection may be given to the people of the locality of Barrackpore and threats would not be meted out to them. He prohibited publications relating to the death of the two boys in any newspaper within the State of West Bengal.

On June 9, 1983, an oral prayer was made on behalf of the State of West Bengal for staying operation of the orders and on the following day an appeal was preferred against the order of Borooah J. and the appeal was placed before a Division Bench consisting of Mr. Justice Pyne and Mr. Justice S. C. Sen. Grievance was made on behalf of the State of West Bengal that Borooah, J. had made his order without giving any notice to it and without finding out if the investigation conducted by the police authorities under the law was not adequate, and as to whether the manner of investigation was such that it required the Deputy Inspector General of the Central Bureau of Investigation at Calcutta to be appointed to enquire into the incident. At the appellate stage on behalf of the State Government materials were placed before the Court in support of its contention that adequate investigation had been undertaken as would be expected in the ordinary course over an incident of the type under consideration. Long arguments were advanced before the Division Bench and the two learned judges devoted considerable attention to the matter and wrote out two

separate and lengthy E judgments-Pyne, J. held that:

"I respectfully agree with the observations made by the Supreme Court in the facts and circumstances of the above case (Bhagwant Singh v. Commissioner of Police, Delhi, [1983] 3 S.C.C. 344). I am also of the view that in the facts and circumstances of the instant case it would not be proper for me to speculate as to whether the unnatural death of the two boys was caused by suicide or murder. I am, however, very much concerned with the question whether the investigation into the cause of the unnatural death of the two boys by the appellants is being conducted fairly and properly and after taking all materials, evidence and circumstances into consideration in accordance with law.. In the instant case the Deputy Inspector General, Central Bureau of Investigation is not called upon to exercise any power or to investigate into any

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matter under Delhi Special Police Establishment Act or any other statuts. In view of what has been stated herein before and in the fact and circumstances of the case, I appoint Deputy Inspector General, Central Bureau of Investigation as the Special officer in this case. The Special officer will make the enquiry about the correctness of the facts, allegations and inferences contained in the reports of 'Secret Eye' dated 8th and 14th May, 1983, as well as those in the two letters of the respondents both dated 1st June, 1983, copies whereof are Annexures 'A' and 'B' respectively to the affidavit of Bappaditya Roy affirmed on 20th June, 1983 and in the reports published in the two issues of Ananda Bazar Patrika dated May 12 and 18, 1983. I, therefore, direct Deputy Inspector General, Central Bureau of Investigation to make necessary enquiry along the line aforesaid. For the purpose of making such enquiry and report Deputy Inspector General, Central Bureau of investigation will be entitled to take into consideration fresh evidence, oral or documentary, materials and statements, if any, offered to him. The report of the Deputy Inspector General, Central Bureau of Investigation will be submitted to the trial court within three weeks from date. The police authorities of the State and the respondents will extend all possible help as required by the Deputy Inspector General, Central Bureau of Investigation in the matter of enquiry.. "

Sen, J. took note of the fact that no opportunity had been given to the State and its officers by Borooah, J. before he made the order dated June 7, 1983. He also came to hold:

"In my opinion, in a case like this, an interim order directing the CBI to make a report should not have been passed without giving a hearing to the State Government. No case of urgency was made out at any stage. In my opinion, an order of the magnitude of a CBI enquiry should not have been passed without giving a hearing to the State Government."

Sen, J. took notice of the fact that allegations contained in the

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letters had not been supported by affidavit before the learned A single judge. He also took notice of the fact that the materials said to have been obtained on investigation by the detective agency had not been produced before the Division Bench and no affidavit of any competent person had

been filed. Only two affidavits which came before the Division Bench were one by Sampat Lal and the other from the law officer of the newspaper. He, therefore, concluded:

"Mr. Chatterjee is right in his contention that not an iota of evidence has been brought out in the two affidavits that have been filed and also the two newspaper reports on the basis of which the interim order was passed. CBI enquiry into a matter which is already under investigation of the State police is a very serious step. There must be very strong legal grounds for ordering such an enquiry."

According to Sen, J. the writ petition was not maintainable on the strength of the two letters and the two newspaper reports. Though conclusions of Sen, J. were very different from those of Pyne, J., yet he concluded by saying:

"Under the order proposed to be passed, the CBI or any other agency of the Central Government has not been entrusted with the job of investigation. It has been made clear that the DIG, CBI is being appointed the Special officer and not the CBI. The Special officer will be at liberty to appoint his own staff for the purpose of investigation. The costs, charges and expenses will be borne by the respondents. There is no question of employing the men and resources of the CBI for the purpose of carrying out the investigation. The officers of the CBI are not being entrusted with the police power or the police function in the State of West Bengal in any manner whatever." G

"The DIG, CBI has already indicated his unwillingness to carry out the investigation as directed by the learned trial judge. Nobody can be compelled to be a Special officer or a Receiver against his free will and volition. The DIG, CBI is not obliged to act as a Special officer of the Court

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and if he is still unwilling to carry out the duties of a Special officer, he is free to decline it. Specific provisions have been made in the order proposed. The parties have been directed to mention the matter to the Court if the DIG, CBI declines to work as Special officer. In that event, some other Special officer will have to be appointed. I agree to the order that is now sought to be passed by my learned brother."

The Division Bench consisting of Pyne and Sen, JJ. granted leave to appeal to this Court and the criminal appeal has in due course been filed by the State of West Bengal.

As already pointed out, the special leave petition under Article 136 of the Constitution at the instance of the State covers almost the same field as the criminal appeal and, therefore, it had been tagged to be heard alongwith the appeal. It is not necessary to refer to any particular facts in regard to that special leave petition.

Though Sen, J. had indicated doubts about the maintainability of the writ petition on the basis of letters sent to the Court, Mr. Chatterjee fairly conceded before us that he would not dispute the position that it is open to a High Court to entertain grievances received through postal communication and register the same as a writ petition. Mr. Chatterjee, however, suggested and we think that there is great force in, the submission, that when such information is laid before the Court, care and caution should be adopted to ensure that the process of the Court is not abused or misused. The Court should be prima facie satisfied that the

information laid before the Court is of such a nature that it calls for examination and this prima facie satisfaction may be derived from the credentials of the informant, namely, what is the character or standing of the informant or from the nature of the information given by him namely, whether it is vague and indefinite or contains specific allegations as a result of survey or investigation or from the gravity or seriousness of the complaint set out in the information or from any other circumstance or circumstances appearing from the communication addressed to the Court or to a judge of the Court on behalf of the Court. Where the Court is so satisfied prima facie, the Court may not insist on the filing of an affidavit and may proceed to investigate into the allegations with a view to meting out justice to the persons on whose behalf the communication is

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addressed. This would be so particularly where to insist upon an A affidavit at the initial stage may lead to perpetration of injustice or may give rise to a situation where from a practical point of view the doors of justice would be closed to the poor and the disadvantaged. We may, however, point out that where the Court is not so prima facie satisfied, the Court may before issuing notice to the opposite party, ask the lawyer appointed amicus curiae to contact the informant and file an affidavit or a regular writ petition. These are the different procedures which have been adopted by this Court while dealing with communications complaining of violation of the rights of the deprived and vulnerable sections of the community. Since Mr. Chatterjee, has not disputed the validity of the practice of registering of writ petitions on the basis of letters and/or information received by the Court, we are not called upon to examine this aspect of the matter any longer.

Mr. Chatterjee appearing in support of the appeal maintained that under the Code of Criminal Procedure which lays down the statutory procedure to be followed when report of an offence is lodged with the police, the power to investigate is vested in the police. Chapter XII of the Code of Criminal Procedure ('Code' for short) contains provisions regarding the lodging of information with the police as also their power to investigate. It is maintained that as soon as such information was lodged with the police, action as would be proper in the facts of the case, was taken. According to Mr. Chatterjee, all possible steps that could be taken were taken without lapse of any time, Borooah, J. did not call upon the State to produce the papers relating to investigation and without informing himself as to what action had been taken on the report lodged with the police, proceeded to make an interim order which had far reaching effect. According to learned counsel, the Court had no jurisdiction to interfere with the investigation which under the law was vested in the police authorities had so long as there had been no breach of duty, the Court had no power to intervene particularly when the matter was still in the hands of the investigating agency. No opportunity was given to the local police, or for the matter of that, to the State Government, to produce the records of investigation. Thus, without informing himself of the actual stage and position of the investigation already undertaken by the local police, the learned single judge proceeded to act on certain assumption for which there was no basis or foundation. It has been the submission of H

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Mr. Chatterjee before us that the State Government was entitled to notice before the impugned direction on June 7,

1983, was made and the real effect of the direction being to disturb the investigation by introducing a new channel of inquiry, the rules of natural justice required that the State and the police authorities in whom vested the statutory jurisdiction to investigate should have been provided a hearing. Mr. Chatterjee also canvassed that between 'inquiry' and 'investigation' there was a clear distinction under the Code and while investigation referred to the procedure of collection of evidence conducted by a police officer or by any other person authorised by a Magistrate in that behalf, 'inquiry' referred to inquiry other than a trial conducted by a Magistrate or a Court. The main distinction, therefore, was that inquiry was a magisterial process while investigation was the process of collection of evidence through the police machinery and the net effect of the impugned order of the learned single judge was actually the setting up of an investigating agency. Though in the order there was reference to appointment of the DIG, CBI as a Special officer, what he was to carry out was referred to as an inquiry. Continuance of investigation through two separate machineries—one by the agency of the CBI and the other by the normal investigating agency of the police was bound to create confusion and prejudice the investigation into the truth of the allegations.

Mr. Ashoke Sen appeared for the respondents who had written the letters to the High Court while Mr. Shankar Das Banerjee represented the Ananda Bazar Patrika. Learned Additional Solicitor General appeared before us on behalf of the Union Government. Mr. Sen and Mr. Banerjee refuted the contentions advanced on behalf of the appellants by Mr. Chatterjee.

Before we proceed to closely examine the submissions advanced by counsel for the parties, it is proper to clear the ground and formulate the exact points which require examination. It is certainly not for this Court at the present stage to examine and come to a conclusion as to whether this was a case of suicide or murder. If as a result of investigation, evidence is gathered and a trial takes place the Sessions Judge will decide that controversy and it may be that in due course such controversy may be canvassed before this Court in some form or the other. It would, therefore, be wholly inappropriate at this stage to enter such a question. One of the controversies which loomed large before the Division Bench

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Of the Calcutta High Court was as to the appointment of the DIG, CBI to inquire into the matter in the absence of proper consent of the State Government. That question has not been recanvassed before us and it has been accepted by counsel for all the parties including the Additional Solicitor General that while section 6 of the Delhi Special Police Establishment Act, 1916 ('Act' for short) would require the consent of the State Government before jurisdiction under s. 5 of that Act is exercised by officers of that establishment, when a direction is given by the Court in an appropriate case, consent envisaged under s. 6 of the Act would not be a condition precedent to compliance with the Court's direction. In our considered opinion, s. 6 of the Act does not apply when the Court gives a direction to the CBI to conduct an investigation and counsel for the parties rightly did not dispute this position. In this view, the impugned order of the learned single judge and the appellate decision of the Division Bench appointing DIG, CBI to inquire into the matter would not be open to attack for want

of sanction under s. 6 of the Act.

Four questions appear to survive for examination:

- (1) Effect of violation of the Rules of Natural Justice on the order:-

This can be sub-divided into two aspects:

- (i) Whether the order of the single judge is vitiated having been made in violation of rules of natural justice ?
(ii) Whether that order is also bad as the learned single judge had not cared to inform himself as to the stage of investigation and if there was any lacuna therein ?

- (2) What exactly is the role meant to be played by the Special officer and whether the inquiry contemplated to be carried on by him would affect the investigation which was being conducted by the local police authorities?

- (3) Is it open to the Court to interfere with the investigation which is still proceeding and what are the circumstances in which such interference, if any, is possible, and the guidelines to be followed in such matter?

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- (4) Whether in the facts and circumstances of this case the direction given by the single judge and upheld with certain modifications by the Division Bench was proper?

As already point out, power vests in the police authorities of the State Government for conducting investigation into allegations relating to an offence. However, the stand taken by the respondents was that the State Government and the police authorities had not acted properly and the investigation was not being conducted as required by law. As appears from the order of June 7, 1983, Borooah, J. directed notice to issue to the State of West Bengal as also to the other authorities concerned to show cause against the issue of a writ. No hearing was, however, afforded to the State Government or its officers when direction to appoint the Special officer in whom power of inquiry was to be vested, was made. There could be no scope for appointing a special officer unless the statutory channel of investigation was found not to have functioned properly. There was no basis at that stage to assume that the contents of the letters as also the facts stated in the columns of the newspaper had not been contradicted. It was the State Government or its officers who alone could have authoritatively indicated the facts showing whether the allegations contained in the letters or the newspaper reports were true and if so, to what extent, or how the investigation was being carried on and what stage it had reached so as to enable the Court to come to a prima facie conclusion that the State Government and the police authorities were not discharging properly their statutory obligation to carry out an investigation. But when no notice was given to the State Government and no opportunity was offered to them, it is difficult to see how an ex-parte order could be made on such an assumption. When we say this, we do not wish to be understood to say that in no case an ex-parte order can be made by the Court. If the facts stated in the letter or the writ petition are credible and there is such urgency that the ends of justice might be defeated by not making an ex - parte order or giving of notice without ex-parte order might lead to aggravation of oppression or exploitation or removal or elimination of evidence, the Court would certainly be justified in making an ex-parte

order. But here there were no such circumstances at all and the Court could have very well issued notice to the Respondents and tried to find out whether there was

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any necessity for directing the appointment of DIG, CBI to act as A a Special officer and requiring the police authorities of the State to extend all possible help as may be required by him. We are of the view that Borooah, J. should have issued notice to the State Government, afforded a reasonable opportunity to it and its officers who were already in session of the investigation to make a report in regard to the action taken by them and after making an overall judicial assessment of the situation, the need for appointing a Special officer should have been considered.

The appointment of a Special officer with a direction to inquire into the commission of an offence can only be on the basis that there has not been a proper investigation. There is a well defined hierarchical administrative set up of the police in the State of West Bengal as in all other States and to have created a new channel of inquiry or investigation is likely to create an impression that everything is not well with the statutory agency and it is likely to cast a stigma on the regular policy hierarchy. We are inclined . to agree with Mr. Chatterjee for the appellant that in the facts and circumstances of the case and keeping the nature of the order made in view, the direction to appoint a Special officer with powers to inquire should not have been made until the appellants had been given a hearing and the Court had the papers of investigation laid before it for being prima facie satisfied that the investigation had either not been proper or adequate.

The procedure laid down in the Code is clear and definite. It may be that in a given case the Court on being prima facie satisfied from circumstances appearing from the record that the statutory agency has not worked in an effective way or the circumstances are such that it may reasonably be presumed or inferred that the statutory agency may not be able to discharge its function of investigation fairly and impartially might reasonably consider supplementing the procedure, but as we have already indicated, there was no adequate material on the record for the learned single G judge to be satisfied that the facts warranted appointment of a Special officer.

Borooah, J. did not describe the DIG, CBI as a Special officer. It is in the judgment of Pyne, J. that we find reference to this term. In his judgment Pyne, J. noted;

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"In view of what has been stated here in before and in the facts and circumstances of the case, I appoint Deputy Inspector General, Central Bureau of Investigation as the Special officer in this case."

(underlining is by us)

Having thus appointed him as a Special officer, he proceeded to indicate that the Special officer will make an enquiry about the correctness of the facts, allegations and inferences contained in the reports of 'Secret Eye' dated the 8th and the 14th May 1983 as well as those in the two letters of the respondents both dated 1 June, 1983, copies whereof are Annexures A' and 'B' respectively to the affidavit of Bappaditya Roy affirmed on 20th June, 1983, and in the reports published in the two issues of Ananda Bazar Patrika dated May 12 and 18, 1983. Sen, J. in his separate judgment made it clear that under the order proposed to be passed, the CBI or other agency of the Central Government

was not being entrusted with the job of investigation.

Investigation into the allegations had already been undertaken and the papers which have been produced before us indicate that the first information lodged with the police was a missing report dated March 21, 1983. Even when such a report had been given contemporaneous steps were taken to trace the two missing boys. The dead bodies were recovered from the railway track on the following day and were independently dealt with as the link between the information about missing of the two boys and the two dead bodies had not been established at that point of time. Autopsy was conducted in due course and as the dead bodies had not been claimed by any relation, the same had been duly disposed of through the contractor for unclaimed bodies. For the first time, on 5th and 6th April, 1983 the link was established when the relatives of the two deceased boys went to Bandel GRPS and identified the clothes kept at the police station to be those that had been worn by the missing boys, and the photographs of the dead boys placed the matter beyond dispute that the two young boys whose dead bodies had been recovered from the railway track and which had been cremated were the missing boys. The parents of the boys met the Chief Minister on April 8, 1983. The Chief Minister issued directions to the police for proper investigation.

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It is stated that on April 14, 1983, the Chief Minister made a statement on the floor of the Assembly wherein he had indicated that the incident appeared to be a case of suicide and not murder. This statement of the Chief Minister was subjected to a lot of criticism in the columns of the newspapers as also in the body of the letters under reference. In course of hearing Mr. Chatterjee produced before us the official text of the Chief Minister's statement. It appears that he had only said that the investigation carried on up to that stage appeared to indicate that it was a case of a suicide. It may not be out of place to point out that the Doctor conducting post-mortem examination had opined that it could be a case of suicide. Obviously the statement on the floor of the Legislative Assembly was on the basis of that medical report which was apparently available to the Chief Minister.

'Inquiry' and 'investigation' are statutory terms defined in the Code. We were told in the course of hearing by counsel for the parties that under the West Bengal Police Manual the terms have different meanings given to them. It is not necessary for our purpose to go into the question any further. By whatever name the work entrusted to the Special officer be called, there can be no dispute that he was required to ascertain facts from the witnesses and documents, if any, in regard to the death of the two boys. This process necessarily involved a fact finding inquiry by ordinarily tapping the same sources as the investigating agency was expected to contract. This, therefore, necessarily involved a duplicate investigation.

The police had already commenced investigation into the allegations. Under the patronage of the Ananda Bazar Patrika the private defective agency had also started investigating into the matter and as would appear from the two reports in the Ananda Bazar Patrika and the materials now placed on the records of the High Court and this Court, some investigation had definitely been carried out by the State agency. This meant that three separate channels were put into operation almost contemporaneously. Over the activity of the private detective agency the Court would ordinarily have no jurisdiction to exercise but in view of the fact that there

were two separate channels placed in active charge of investigation to be conducted contemporaneously, confusion was bound to occur and working of the two channels at a time was

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likely to prejudice the proper investigation making the exposing of the truth buried under mystery more difficult. Carrying this duplicate process, in our opinion, was not likely to serve the cause of justice nor help in achieving the object for which it had been set up. The Special officer was not to exercise the powers under s. 5 of the Act and if he wanted any real assistance in the matter of investigation, it had to be carried through the police officers of the State administration. This was likely to bring in further confusion inasmuch as the witnesses were likely to be contacted by the same police officer on more than one occasion-once in the course of investigation conducted by the police and again to meet the requirements of the Special officer. We are sure that the High Court never intended the cause of justice to be prejudiced and the serious attempt to find out the truth to be aborted.

The next aspect to be considered is whether it is open to the Court to interfere with the investigation which is still proceeding. It has been conceded before us and rightly in our view, that investigation is a matter for the police under the scheme of the Code. Judicial opinion seems to be settled and we have several authorities of this Court where interference by the Court into police investigation has not been approved. This question arose before a Division Bench of three judges in an appeal carried by the same State of West Bengal in the case of *State of West Bengal v. S. N. Basak*, (1) Kapoor, J. quoted with approval the observations of the Judicial Committee in the case of *king Emperor v. Khwaja Nazir Ahmad*, (2) where the Privy Council observed:

"The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under s. 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions being when

(1) [1963] 2 S.C.R. 52.

(2) [1944] L.R. 71.

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a charge is preferred before it, and not until then. It has A sometimes been thought that s. 561A (now s. 482) has given increased powers to the Court which it did not possess before that section was enacted. But this is not so, the section gives no new powers, it only provides that those which the court already inherently possesses shall be preserved and is inserted as their Lordships think, lest it, should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent powers had survived the passing of that Act."

The Court added: "With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord." on a finding that the High Court had exceeded jurisdiction in interfering with the investigation, the appeal of the State of West Bengal was allowed.

The question again arose in the case of S. N. Sharma v. Bipin Kumar Tiwari & Ors.(8) on this occasion the Court was called upon to examine the scope of magisterial power. After referring to the relevant sections, the Court concluded that:

"The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate."

Then came the case of State of Bihar v. J.A.C. Saldanha & ors.(2) In a peculiar set of fact this Court was again called upon to adjudicate upon the scope of judicial interference over investigation. Speaking on this aspect of the matter, Desai, J. spoke for the Division Bench thus:

(1) [1970] 3 S.C.R. 946.

(2) [1980] 2 S.C.R. 16.

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"There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under s. 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in s. 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in field of crime detection and its subsequent adjudication between the police and the Magistrate."

The observation of the Privy Council which we have already extracted were again quoted with approval, Desai, J. adding:

"This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not be interfered with by the judiciary."

(underlining ours)

This seems to have been the well accepted judicial opinion on

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the subject. It is appropriate at this stage to refer to a later decision of this Court which has been relied upon by the Division Bench of the High Court, being the case of Bhagwat Singh v. Commissioner of Police, Delhi.(1) That case arose out of what is now being described as the notorious bride burning incidents. Investigation had come to an end and a conclusion of the case being one of suicide had been reached. At this stage the Minister of State of Home Affairs in the Government of India (the case related to the Union Territory of Delhi) had taken a decision to entrust the investigation again to the C.B.I. A writ petition was filed before this Court making allegations against the police authorities with reference to the investigation. The conclusion of the investigating agency that it was a case of suicide was challenged. This Court clearly indicated:

"It is not possible in this case, nor indeed would it be right for us to do so, to enter into the question whether Gurinder Kaur committed suicide or was murdered. That is a matter which is properly involved in the trial of a criminal charge by a court possessing jurisdiction. We are concerned here only with an examination of the question whether, after being informed of Gurinder Kaur's death, the police authorities conducted themselves as law and justice required of them."

The Court after dealing with the material placed before it, came to the conclusion:

"Two inferences follow irresistibly from the material before us. One is that the investigation by the police following the occurrence was desultory and lackadaisical, and showed want of appreciation of the emergent need to get at the truth of the case.. The other inference which disturbs us is that the entries in the police case diary (set forth in the annexure to the counter-affidavit on the record) do not appear to have been entered with the scrupulous completeness and efficiency which the law requires of such a document. The haphazard maintenance of a document of that

(1) [1983] 3 S.C.C. 344.

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status not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. We think it to be of the utmost importance that the entries in a police case diary should be made with promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity..'

The Court concluded by observing:

"We have referred to some of the important features of the case. We have done so not for the purpose of determining whether the girl was murdered or had committed suicide, but solely with the object of drawing attention to the manner in which the investigation of the case was conducted. Disappointing as it may seem to those who have desired the institution of criminal action on the basis that a crime has been committed, we do not think that on the material before us we can go that far. The investigation of the case was transferred from the police administration of Delhi to the Central Bureau of Investigation at the instance, we understand, of the petitioner. We hope and trust that this investigation has been completed. If not we would request the Central Bureau of Investigation to complete the investigation within three months from today and take such action as

may be warranted by the result of the investigation. "

Nothing has been said in this decision which runs counter to the well settled proposition laid down by the Judicial Committee of the Privy Council and approved on three occasions by this Court.

The investigation in the present case is still pending as we were told at the Bar. It is quite likely that some day, and we hope and trust that there would be no further delay, the Court of competent jurisdiction would be in seisin of the matter and would be called upon to decide whether it was a case of murder or suicide. We have, therefore, thought it proper exercise of discretion not to enter into the facts and express any opinion one way or the other so as to prejudice the trial that might take place. It is sufficient to indicate that there is residuary jurisdiction left in the Court to give directions

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to the investigating agency when it is satisfied that the requirements A of the law are not being complied with and investigation is not being conducted properly or with due haste and promptitude. The Court has to be alive to the fact that the scheme of the law is that the investigation has been entrusted to the police and it is ordinarily not subject to the normal supervisory power of the Court. We are inclined, on the facts of the case as placed before us, to take the view that the materials placed before the Court did not justify an exception to be made to the rule indicated by this Court and the appointment of a Special officer was not called for at this stage.

What then should be the nature of the order to be made in the case, is the next aspect for consideration. On the conclusion which we have indicated above, the appeal has to be allowed and the order of appointment of the Special officer has to be set aside.

Certain observations to our mind are appropriate and called for regarding further conduct of the investigation by the police authorities. We must indicate also that the investigation carried out has not been quite satisfactory. As already pointed out, the Chief Minister had very appropriately ordered that a thorough and careful investigation should be made into the unfortunate death of Tirthankar and Sanjeeb. Papers were produced before us at time of hearing which indicated that pursuant to the orders of the Chief Minister, the Home Secretary had addressed letters to the top police officers conveying the serious concern of the Chief Minister as also his direction that a thorough and proper investigation should be taken up. From the materials placed before us, we have a feeling that in the conduct of investigation the police authorities have been more concerned with trying to establish that the reports furnished by Secret Eye as appearing in the issues of the Ananda Bazar Patrika were not based on correct materials and that proper conclusions had not been drawn rather than into carrying on an intensive investigation in an objective manner. It further appears that as the police authorities during their investigation could not find any clue to establish the kidnapping of the two boys, they formed a tentative opinion that the two boys had committed suicide. This was based mere upon suspicion than upon any clue obtained during investigation. Once having formed that opinion, it appears

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from the materials produced before us that they laboured to justify the same. The facts and circumstances leave an impression in our mind that the investigation was

channelised for collecting materials to support that view only.

It is indeed unfortunate that in spite of the missing report of the two boys having been properly lodged with the appropriate police authorities and the fact that the two boys were missing have been sufficiently publicised as ordinarily done, the bodies of the two boys were allowed to be cremated even before an attempt for identification had been made. There is some material in the records of investigation indicating that two railway tickets from Barrackpore to Pandua had been found in possession of the two dead boys and for non-seizure of those two tickets the Assistant Sub-Inspector incharge had actually been suspended. It is indeed difficult to understand why the Assistant Sub-Inspector should not have seized the two tickets if they were found on the dead bodies of the two boys, even if he felt it was a case of suicide. Assuming that this fact of recovery of two tickets from the dead bodies of the two young boys was true, a clue was available than that two boys had travelled from Barrackpore and when this link through the railway tickets was available, it is incomprehensible why the police officers failed to contact the police authorities at Barrackpore. If that had been done, there would have been a possibility of the link being established, particularly when the missing report was available and the investigation of the case could have taken a different turn.

It is necessary that the investigating agency must disabuse its mind of the tentative conclusion that death was suicide. Our saying so does not mean that after a proper investigation they may not reach the same conclusion. All that we intend to point out is that conclusion should not have been the basis upon which the investigation should have proceeded. Nor had the stage come to draw that conclusion without further investigation. There are aspects which militate against the theory of suicide. Normally one would not commit suicide unless there are strong and compelling reasons for it. Thus, ordinarily there has to be a very pressing motive behind every case of suicide. Sufficient material to prima facie establish the existence of such a motive has not yet been

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brought on the record of investigation. Both the deceased boys were teenagers. Tirthankar has been pictured as a bright boy good at his studies and appeared to be responsive in nature—took active interest in various fields of life appropriate for his age. The picture of Tirthankar as a disappointed and frustrated lover is again not supported by much evidence. The reactions of human mind have no set form and it may be that Tirthankar was an unusual boy full of sentiments and could have acted in an unusual manner. But that cannot be a conclusion drawn either on suspicion or on materials which do not readily fit into that theory. Even if the view of the investigating agency in regard to Tirthankar's motive is accepted, there does not appear to be any motive at all so far as his associate is concerned, except that as a loyal friend he was prepared to act the way Tirthankar went. For Sanjeeb to have chosen to commit suicide the material collected till now seems to be very weak. There have been rare instances where loyalty has known no limitations but there is no justifying material to credit Sanjeeb as possessing such a rare quality.

If suicide had to be committed it did not require the two boys to travel to such a distance and die at an unknown place on the railway track. The place where the dead bodies

were found was not indeed very lonely and the apprehension of being detected before the attempt to commit suicide would be successful could not be eliminated. The two boys were sufficiently grown up to be credited with logical behaviour. There has been a lot of criticism and explanation advanced before us relating to the mode of travelling to reach Pandua. Some railway tickets were sold for Pandua and there is conclusion as to whether the sale related to two or 2 tickets. The material relating to the time of sale is also not very clear. If proper investigation is made and further attention is devoted, it is quite likely that more material would come to light on the basis of which one or the other of the competing explanations for the death can find credibility and the investigation can then proceed in the right direction.

There is another aspect to which we must immediately turn. Affidavits and other materials were placed before us regarding the investigation-both by the private agency, namely, Secret Eye, and the statutory channel. The language used by the top police officers

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in the official reports is indeed unfortunate. They have expressed themselves not only in intemperate and improper language but have even gone to the extent of being abusive in their approach. The language used in the reply of Shri Debabrata Dhar, Director of Secret Eye to the report is equally bad. The investigation conducted by the private agency as also official channel was intended to find out the truth. While both these agencies were-or were required-to devote their entire attention in unearthing the truth, they should not have got themselves entangled in a battle of words. We indicate our strong disapproval of the attitude adopted by both.

Public mind appears to have been greatly shaken and agitated on account of the mysterious death of the two boys. This is an event over which the people of the State are justifiably concerned. They do reasonably expect the police authorities to concentrate their full attention and by using the expertise at their command to unearth the mystery and proceed on the basis of the truth discovered by them. It is, therefore, necessary that greater candour should be exhibited and the investigating agency should with an open mind, collect all the material available and then only eliminate that which has to be discarded and retain the rest to be used for their purpose. We are alive to the position that there are occasions when death remains a mystery in spite of the best of efforts. But we hope and trust that with an honest attempt and sincere efforts made, the truth would be found out and the police authorities of the State would be in a position to give a creditable account of themselves.

We do not think there is any necessity to take away the investigation from the hands of the State police machinery which is the statutory agency. We would, however, suggest that the Director General of Police, West Bengal, will appoint a competent supervisory officer from the higher ranks of the State police with expertise in investigation to supervise the investigation in the present case. The police authorities will, we hope, avail of any credible/material collected by Secret Eye, if such material is made available to the police authorities. We hope and trust that a determined effort would be made by the State Government and its Police authorities to get at the truth and in the event of this case appearing

to be a case of murder, the murderer would be proceeded against the A dealt with according to law. We are sure that the police authorities would take it as a matter of challenge, rise to the occasion and by their performance, justify their stand in these proceedings that they were competent to investigate and there was no necessity of the CBI being called in, as was done by the High Court.

In view of what we have decided, no orders are necessary in the connected special leave petition.

M.L.A.

Appeal allowed.

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JUDIS