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

\+ CRL M.C No. 6330/2019

Order reserved on: 18.02.2020
Date of decision : 08.11.2021

RAJ KUMAR INSPECTOR, NCB NEW DELHI …… Petitioner

Through: Mr.Shailesh N Pathak &Ms.Shivangi Jain, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION (CBI)…..Respondent

Through: Mr.Anupam S. Sharma, SPP for CBI with Mr.PrakarshAiran, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, vide the present petition seeks the quashing of the FIR bearing No. RC DAI-2019-A-0019 dated 24.5.2019 under Section 120-B of the Indian Penal Code, 1860, read with Section 7,8 and 13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988 registered against him by the Superintendent of Police, CBI, ACB, New Delhi.

2. The petitioner was an Intelligence Officer of the Narcotics Control Bureau and had since been compulsorily retired by the department on 13.07.2019.

3. RC-DAI-2019-A-0019 was registered on 24.5.2019 against the petitioner, an Inspector of the NCB, Delhi, and against one Vishwadeep Bansal (private person), Sh. Neeraj Bhatia, Director of M/s Three B Healthcare Ltd. & M/s Laborate Pharmaceuticals and unknown officials of the NCB and unknown private persons.

4. As per the reply that the respondent CBI has submitted to the petition, the team of the NCB, Chandigarh, conducted a raid on 31.5.2016 at the factory premises of M/s Three B Healthcare Ltd., at Ponta Sahib (HP) during which raid Mr.Rajender Singh Rajput, General Manager, was present at the said factory premises and during the said raid the NCB team found 6 kg of Codiene Phosphate in the almirah of Sh.Rajender Singh Rajput. Sh. Neeraj Bhatia of the said M/s Three B Healthcare Ltd., is stated to have contacted Mr.Vishwadeep Bansal S/o Sh.Rajender Prasad Bansal R/o H. No. 1/4/111, Sector -16, Rohini, Delhi-89 and requested him to get the matter settled with the NCB officials as Sh.Neeraj Bhatia was apprehensive that the NCB officials would arrest Sh.Rajender Singh Rajput and would also file a criminal complaint in the matter which would damage his reputation. The said Sh.Vishwadeep Bansal is stated tohave assured Sh.Neeraj Bhatia that he would get the matter settled after negotiating with the senior officers at the NCB, Head Quarters, New Delhi and as per the source of information Sh.Vishwadeep Bansal met some senior officers of the NCB at the NCB Head Quarters, New Delhi and thereafter asked Sh.Neeraj Bhatia to make a payment of Rs.12,00,000/- and thus Sh.Neeraj Bhatia on 13.6.2016 sent an amount of Rs.12,00,000/- to Sh.Vishwadeep Bansal

at Delhi for making further payment to the NCB officials and the source further informed that Sh.Vishwadeep Bansal made the payment of Rs.12,00,000/- to Raj Kumar, Inspector, NCB, New Delhi, i.e., to the petitioner herein.

5. The CBI thus submitted that the said allegations disclosed the commission of cognizable offences punishable under Section 120-B read with Section 7,8 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, on the part of Sh.Raj Kumar, Inspector, NCB, Delhi, i.e., the present petitioner, Sh.Vishwadeep Bansal, Sh.Neeraj Bhatia, Director of M/s Three B Healthcare Ltd., unknown officials of the NCB and unknown private persons and thus a regular case was registered against Shri Raj Kumar, Inspector, NCB, i.e. the present petitioner, apart from the case having also been registered against Sh.Vishwadeep Bansal, Sh.Neeraj Bhatia, Director M/s Three B Healthcare Ltd., unknown officials of NCB and unknown private persons under Section 120-B read with Section 7,8 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

6. The petitioner, through the present petition, submits that the genesis of this case, which he claims is malicious, is the factum that he had submitted a complaint dated 22.7.2015 to the Dy.Director, NCB stating therein that some officials of the Delhi Zonal Unit of the NCB were extorting money from firms using his name and thus the petitioner herein was asked by the department vide letter No. IV/24/2015-Vig.1002 dated 5.8.2015 to provide information of the names of the officials of the Delhi Zonal Unit (DZU) who were allegedly extorting money. The petitioner submits that he responded

to this letter dated 5.8.2015 vide his letter dated 1.9.2015 addressed to the Deputy Director (Admin.), NCB, New Delhi indicating therein that the persons who were extorting money using his name were the same as named in FIR No. 892/2015, Police Station Shahbad Dairy, New Delhi.

7. As per the petition, the FIR No. 892/2015 dated 1.8.2015 Police Station Shahbad Dairy was lodged on 1.8.2015 on the complaint of Sh.Vishwadeep Bansal (the private persons, accused in RC-DAI-2019-A-0019 under Section 384/34 of the Indian Penal Code, 1860 against some of the officials of the NCB named P.V.Chowdhary and others for demanding Rs.25,00,000/- to settle the matter which was finally agreed to be Rs.12,00,000/-.

8. The petitioner submitted that he was a witness to the incident of arguments between Sh.Vishwadeep Bansal and the NCB officials named in the FIR No. 892/2015 under Sections 384/34 of the Indian Penal Code, 1860 registered at the Police Station Shahbad Dairy and that the petitioner on that day came across Sh.Vishwadeep Bansal while pacifying the parties. The petitioner submits that as a consequence he was placed under suspension vide order No. F.NO. II/4 (16)-2015-Vig-208 issued on 17.05.2016 under the signatures of the then Director General, Narcotics Control Bureau, on the basis of the finding of the Preliminary Enquiry dated 13.5.2016 received from M/s Cooper Pharma Ltd. The petitioner submits that he has been falsely implicated vide RC No. DA1/2019/A/0019 dated 24.5.2019 registered by the Superintendent of Police (CBI), ACB, New Delhi,

the petitioner being a public servant along with two private persons, namely Sh.Vishwadeep Bansal and Sh.Neeraj Bhatia.

9. The petitioner has placed reliance on paragraph 9.1 in Chapter 9 dedicated to preliminary enquiries as detailed in the CBI Crime Manual, 2005, wherein it has been stated to the effect:-

> *"When, a complaint is received or information is available which may, after verification as enjoined in this Manual, indicates serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 CrPC, a Preliminary Enquiry may be registered after obtaining approval of the Competent Authority. To put it more precisely, verification of an information or a complaint is a pre-requisite condition' and that only after satisfying the said pre requisite, decision can be taken whether to register a regular case (FIR) in matter where cognizable offence (s) is made out else a Preliminary enquiry is essentially required to a certain criminal culpability on the part of suspect."*

10. The petitioner thus submitted that the verification of an information or a complaint is a pre-requisite condition and that only after satisfying the said pre-requisite, the decision can be taken whether to register a regular case/FIR in the matter where the cognizable offence (s) is made out or whether a preliminary enquiry is essentially required to ascertain the criminal culpability on the part of suspect.

11. The petitioner has also placed reliance on paragraph 10.4 in Chapter 10 of the CBI Manual, 2005, which reads to the effect:-

> *"10.4 ……"In case of decision to register a case after verification of source information, the FIR may be drafted in concise but comprehensive manner and must contain all details, which prima facie indicate commission of the specific*

cognizable offence(s) by the accused, or each accused, in case there are more than one. Due care must be taken while drafting the FIR and naming the accused persons. Names on only those persons should be mentioned in the FIR against whom prima facie material indicating their complicity in the offences is disclosed in the text of the FIR. The draft of the FIR must be thoroughly vetted by the Superintendent of Police. In important matters, even DIG may see the draft of the proposed FIR and approve it before registration. They may take assistance of Law Officers, where considered necessary". ....."

12. The petitioner thus submits that the CBI is thus obliged to necessarily verify a source of information and that the FIR is required to contain all details which prima facie indicate the commission of the specific cognizable offences by the accused or each accused in case there are more than one accused and that a specific emphasis had been laid down to exercise utmost care in drafting the FIR and naming the accused persons and it was submitted thus on behalf of the petitioner that it is only the names of those persons that should be mentioned in the FIR against whom prima facie material indicating their complicity in the offences is disclosed in the text of the FIR.

13. The petitioner submits that Chapter 9 of the CBI Manual, 2005, has to apply not only for the sake of transparency in the functioning as a part of criminal justice system but also to ensure scrupulous invocation of sections of law to be applied on the suspect persons in light of their specific acts of omission and/or commission.

14. Inter alia, reliance is placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Vineet Narain V. State***; (1998) 1 SCC 226 submitting to the effect that it had clearly been

stipulated therein that the CBI should scrupulously follow the provisions of the CBI Crime Manual which is a sacrosanct document and that thus the same casts a legal obligation on the CBI to follow the provisions of its manual in its letter and spirit.

15. Reliance was also placed on the verdict of the Hon'ble Supreme Court in ***Lalita Kumari V. State of U.P***. (2014) 2 SCC 1 to contend to the effect that if no cognizable offence is made out in the information given then the FIR need not be registered immediately and that the police could conduct a sort of preliminary verification or enquiry for the limited purpose of ascertaining as to whether a cognizable offence had been committed, particularly, in a case involving corruption. Observations in paragraph 119 of the said verdict were specifically relied upon on behalf of the petitioner:-

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

information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR".

16. The petitioner has submitted that the respondent being an officer of the IRS (the petition having been filed by the petitioner against the CBI through Sh. Sudhanshu Dhar Mishra, IRS, Superintendent of Police, ACB (CBI)) submits that he has signed as an Officer In Charge of Police Station CBI/ACB New Delhi and is not a Police Officer as there is no annexure to the FIR to show that he is enrolled under the Police Act, 1861 having the certificate under Section 8 thereof nor has he been so authorized under Section 2(h) of the Code of Criminal Procedure.

17. The petitioner has submitted that no other officer from various investigating agencies specially created by the State or Central Government can automatically deemed to be a police officer in the absence of specific provisions to that effect in the statute itself except under the provisions of the Police Act, 1861, or under Sections 2(h) & (o) of the Cr.P.C., 1973. The petitioner submits that even under the Income Tax Act, the Customs Act, NDPS and FEMA, the authorized officers have been empowered to register a case, initiate investigation, conducting surveys and searches, collect evidence, record statements, arrest a person and file a complaint to prosecute a person for the commission of an offence under the respective Act/Acts and that these officers have not been designated nor given powers vested in a police officer under the Police Act, 1961 in order to exercise such police

powers as lawfully required under the provisions of the Code of Criminal Procedure.

18. The petitioner submits that he has been maliciously arrayed as an accused in the instant FIR and that there is an unexplained delay of almost three years between the date of the alleged occurrence and that the FIR having been registered on 24.5.2019 with the date of the occurrence being shown as during the year 2016 in the FIR, in a sharp contrast to the remark " No delay" in column 8 of the FIR which seeks reasons for delay in reporting by the complainant/informant and that the FIR gets bereft of the advantage of spontaneity and there is a danger which creeps by the introduction of a coloured version or a saturated story.

19. Inter alia, the petitioner submits that the source informant being allegedly aware of the transaction of Rs.12,00,000/- on 13.6.2016 from Sh.Neeraj Bhatia (accused No. 3) to Sh.Vishwadeep Bansal (accused No.2) in terms of Section 39 of the Cr.P.C. was under a legal obligation to report forthwith the commission of such an offence to the nearest magistrate or police officer of such commission or intention. The petitioner further submitted that the source had given the information mentionedin the FIR to the effect that a team of the Narcotics Control Bureau, Chandigarh, conducted a raid on 31.5.2016 at the factory premises of M/s Three B Healthcare Ltd., at Paonta Sahib (HP) but that the petitioner was under suspension w.e.f. 17.5.2016 and was not a member of the said raiding party and was neither posted at any point of time in the Narcotics Control Bureau, Chandigarh.

20. Inter alia, the petitioner submits that the details in the FIR have been given with much precision and the same are thus apparently fabricated. The petitioner further submits that it is beyond comprehension as to why Sh.Neeraj Bhatia (accused No.3) had voluntarily chosen to approach Sh.Vishwadeep Bansal (a private person, and not an officer of the NCB) and thus the same gives reasons to suspect that Sh.Neeraj Bhatia was aware that Sh.Vishwadeep Bansal is a broker who could act as a conduit to settle the issue with NCB officials through his extraneous means and thus the conduct of Sh.Neeraj Bhatia as an abettor, prima facie, has not been looked into by the CBI which has not invoked Section 12 of the Prevention of Corruption Act, 1988 against Sh.Neeraj Bhatia.

21. The petitioner submits that the contents of the FIR indicate to the effect that the source had disclosed that Sh.Vishwadeep Bansal had assured Sh.Neeraj Bhatia that the former would get the matter settled after negotiating with senior officers of the NCB, Head Quarters, New Delhi and that this disclosure of the purported source showed that Sh.Vishwadeep Bansal had a close acquaintance with senior officers of the NCB, Head Quarters, New Delhi and it was not one official but more than one senior officer of the NCB, Head Quarters, New Delhi. The petitioner further submits that no senior officers have been named in the FIR except the petitioner whose name appears as accused No.1 in the FIR though he is not a senior officer, *per se*, in the official hierarchy, of the NCB Head Quarters, New Delhi and is only a non-gazetted official. The petitioner has further submitted that as per the FIR the source had informed about

Sh.Vishwadeep Bansal having met some senior officers of the NCB at NCB Head Quarters, New Delhi, but despite the names of the senior officers and the dates of such meetings were not disclosed for reasons best known to their purported source and even the date of the making of the payment of Rs.12,00,000/- had not been specified in the FIR nor was it known whether it was a payment of a bribe or otherwise.

22. The petitioner further submitted that the FIR is silent in relation to the aspect as to who had taken the amount of Rs.12,00,000/- sent by Sh. Neeraj Bhatia to Sh.Vishwadeep Bansal at Delhi for making further payments to the NCB officials and thus there is some one who had handled the amount in question who has not been arraigned as an accused in the FIR by the CBI.

23. Inter alia, the petitioner submits that the very factum that it has been stated in the FIR "*Accordingly, Sh. Neeraj Bhatia on 13.06.2016 sent an amount of Rs.12 lakh to Sh. Vishwadeep Bansal at Delhi for making further payment to NCB officials*", itself indicated that there was undisclosed payment made previously which had not been specified in the FIR.

24. The petitioner has further submitted that except for the statement in the FIR to the effect:

> *"source has further informed that Shri Vishwadeep Bansal has made payment of Rs.12 Lakh to Sh.Raj Kumar, Inspector, NCB, New Delhi*.",

there are no other averments against the petitioner.

25. It has further been submitted by the petitioner that the date, place and mode of the alleged payment of Rs.12,00,000/- by Sh.

Vishwadeep Bansal to him has not been mentioned in the FIR nor is there a whisper of a demand of a bribe and its acceptance by the petitioner nor any allegation about the petitioner being known to Sh.Vishwadeep Bansal or Sh. Neeraj Bhatia which clearly ruled out any criminal offence under Section 7, 8 and 13(2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988 read with Section 120B of the Indian Penal Code, 1860 and thus the petitioner seeks the quashing of the FIR in question against him.

26. The petitioner has further submitted that in as much as the respondent Mr.Sudhanshu Dhar Mishra, Superintendent of Police, CBI, ACB, New Delhi was the Officer In charge of the Police Station CBI, ACB, New Delhi, he was not lawfully empowered and competent to register the FIR and that there was nothing to show that he was a police officer in terms of the Police Act, 1861 and that the FIR was liable to be quashed as only a police officer could exercise the power of In Charge of the police station in terms of 2(o) and Section 36 of the of the Cr.P.C., 1973 and no one else.

27. The petitioner submits further that the FIR is liable to be quashed in as much as there is only a solitary allegation in the FIR against him and that the same does not disclose any commission of any cognizable offence on the part of the petitioner and that there is no preliminary enquiry that has been conducted in terms of the CBI Manual as per paragraph 10.3 thereofto ascertain the alleged criminal culpability or otherwise in respect of the suspect persons as also to ascertain whether there has been any commission of cognizable offences that has been made out.

28. The petitioner further submits that the FIR is liable to be quashed in as much as the allegations against the petitioner in the impugned FIR are so inherently probable on the basis of which no man of ordinary prudence much less a police officer can ever reach a just conclusion for registration or investigation of a case qua the petitioner and that the FIR is liable to be quashed in as much as the allegations in the FIR do not justify an investigation by the police officer under Section 156 of the Cr.P.C., 1973 against him. The petitioner has reiterated that the FIR has been lodged against him maliciously in order to settle the personal grudge or acrimony owing to the complaint dated 22.7.2015 made by the petitioner against certain officials of the Narcotics Control Bureau.

29. The petitioner has also placed reliance on observations in para 102 of the verdict of the Hon'ble Supreme Court in ***State of Haryana V. Bhajan Lal***: 1992 SCC (Cri) 426 to the effect:-

> "102. In the *backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of theprinciples of law enunciated by this Court in a series ofdecisions relating to the exercise of the extraordinary powerunder Article 226 or the inherent powers under Section 482 ofthe Code which we have extracted and reproduced above, wegive the following categories of cases by way of illustrationwherein such power could be exercised either to prevent abuseof the process of any court or otherwise to secure the ends ofjustice, though it may not be possible to lay down any precise,dearly defined and sufficiently channelized and inflexibleguidelines or rigid formulae and to give an exhaustive list ofmyriad kinds of cases wherein such power should be exercised. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report andother materials, if any, accompanying the FIR do notdisclose a cognizable offence, justifying an investigationby police officers under Section 156(1)*

of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
(3) Where the uncontroverted allegations made in the FIR orcomplaint and the evidence collected in support of thesame do not disclose the commission of any offence and make out a case against the accused.
(4) Where, the allegations in the FIR do not constitute acognizable offence but constitute only a non-cognizableoffence, no Investigation is permitted by a police officerwithout an order of a Magistrate as contemplated under Section 155(2) of the Code.
(5) Where the allegations made in the FIR or complaint areso absurd and inherently improbable on the basis of which no prudent person can ever reach a Just conclusion that there is sufficient ground for proceeding against the accused.
(6) Where there is an express legal bar engrafted in any ofthe provisions of the Code or the concerned Act (underwhich a criminal proceeding is instituted) to the institutionand continuation of the proceedings and/or where there isa specific provision in the Code or the concerned Act,providing efficacious redress for the grievance of the aggrieved party.
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

30. The petitioner thus submits that in the absence any cognizable offence against him, the FIR is liable to be quashed in as much as it has caused serious prejudice to his life and liberty as well as to his image and to his right to live with dignity asingrained in to the right to life.

31. Inter alia, the petitioner submits that the FIR is liable to be quashed in view of the absence of any proof of demand for illegal gratification and thus there no criminal misconduct on the part of the petitioner.

32. Inter alia, the petitioner submits that the allegations levelled in the FIR do not constitute even prima facie offences alleged under

Section 7,8 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 120B of the Indian Penal Code, 1860.

33. The CBI through its response dated 22.1.2020 has submitted that the FIR discloses the commission of cognizable offences against the accused persons and that the FIR No. 19(A)/2019 of the CBI was signed by the officer competent to sign it. Inter alia, the CBI submits that the petitioner did not join the investigation despite the notices issued on 4.9.2019, 13.9.2019, 23.9.2019 and 11.10.2019 and that the objections raised by the petitioner are only dilatory tactics with the petition though having been stated to be filed by Sh. Raj Kumar, had been filed by Sh. Darshan Lal, father of the petitioner, appointed as a Power of Attorney holder by the petitioner to appear on his behalf.

34. The CBI has further submitted that the FIR 892/15 dated 1.8.2015 registered on the complaint of Sh.Vishwadeep Bansal at PS Shahbad Dairy is a separate issue whereas the FIR in question RC19(A)/2019 of the CBI was registered on 24.5.2019 and relates to the offence committed in the year 2016 and both FIRs have been separately dealt with by separate agencies i.e., by the Delhi Police and CBI in different years. The CBI has further denied that the applicant/petitioner has been falsely implicated and has submitted that rather the FIR clearly discloses the commission of cognizable offences against the accused including the present petition. The CBI has further submitted that there is no violation of the Crime Manual in the registration of the FIR against the petitioner and there are specific allegations in the FIR of the petitioner having been paid a sum of Rs.12,00,000/- by Sh.Vishwadeep Bansal and that the FIR also

mentions that Sh.Vishwadeep Bansal was paid an amount of Rs.12,00,000/- by Sh. Neeraj Bhatia for making payments to the NCB officials which is itself a serious misconduct and a cognizable offence on the part of the applicant/public servant.

35. Inter alia, the CBI submits that Sh.Sudhanshu Dhar Mishra, IRS had been appointed/deputed as a Superintendent of Police in the CBI by the Government of India and was performing his duties as SP (CBI)/ACB, New Delhi, during the said period in question and in the capacity of SP he has signed the FIR and it has been submitted by the CBI to the effect that Sh. Sudhanshu Mishra, IRS:-

> **"***7. That in reply to averments made in Para no. 2 (XV)of the petition, it is mentioned here that Sh. Sudhanshu Dhar Mishra, IRS has been appointed/deputed as Superintendent of Police in CBI by the Govt.of India and was doing his duties as SP, CBI, ACB, New Delhi during the said period/time and in the capacity of SP, he has signed the FIR.The averments made in Para (XV) of the petition that Sh. Sudhanshu Dhar Mishra is not a Police Officer are wrong and denied as Sh. Sudhanshu Dhar Mishra, IRS was performing his duties of the officer in-charge of Police Station as per Section 2 (3) r/w Section 4C of the DSPE Act, 1946. Section 2(3) reads as under "Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in (any (Union Territory))any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station". Section 4C reads as under 'The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the*

extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of (a) the Central Vigilance Commissioner-Chairperson, (b) Vigilance Commissioners-Members, (c) Secretary to the Government of India in charge of the Ministry of Home Member, (d) Secretary to the Government of India in charge of the Department of Personnel- Member Provided that the committee shall consult the Director before submitting its recommendations to the Central Government."

36. The CBI has further submitted that there is no delay in the registration of the FIR in the facts and circumstances of the case and submits that the provision of Section 39 of the Cr.P.C., 1973 is not applicable in the instant case and that the contents of the FIR are self-explanatory and constitute a cognizable offence on the basis of which the FIR was registered against the accused persons including the petitioner. Inter alia, the CBI submits that the contention of the applicant that the source is silent qua the date, place and mode of the allegedly made payment and it was not known whether the said amount was bribe amount or otherwise cannot be a ground to quash the FIR.

37. Inter alia, the CBI has urged that it is settled law that the FIR is the first step in a criminal procedure and collection of further evidence to ascertain the allegations made in the FIR is another stage of the criminal proceedings and every detail need not be a part of the FIR, the main purpose of which is to initiate criminal proceedings. The CBI has further submitted that the investigation in the matter is in progress and that the petitioner has deliberately avoided to join the investigation despite having been a public servant which itself leads to

one conclusion that he is trying to escape from the case and is endeavouring to escape from the clutches of law. The CBI has further submitted that the CBI has given reasonable opportunities to the petitioner to explain his defence by joining the investigation and by issuance of notices but the petitioner has chosen not to join the investigation. The CBI has further denied that the proceedings in the FIR have been launched on the basis of any malafide or that they have been maliciously instituted to wreak vengeance on the petitioner due to private and personal grudge. The CBI has further submitted that the FIR has to be read as a whole.

38. The CBI has further placed reliance on the verdict of the Hon'ble Supreme Court on the ***T. Vengama Naidu Vs. T. Dora Swamy & Others***;2007 (3) SCR 348, to submit that it is not for the Court at the stage of investigation to examine the nature of the transaction and further to examine as to whether any offence was actually committed by the accused persons or not and at this stage the only inquiry which can be made is as to whether the complaint or the FIR contains the allegations of any offence and that the law in this respect is settled that the FIR has to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of. The CBI has thus sought that the petition filed by the petitioner seeking the quashing of the FIR in question be dismissed.

39. Inter alia, it was submitted through the written synopsis submitted by the CBI dated 24.2.2020 to the effect that the petition had been filed by the petitioner through his Special Attorney Sh. Darshan Lal vide a notarized power of attorney dated 5.11.2019 on a

stamp paper purchased on the same day mentioning the petitioner as a purchaser, and that the petitioner had himself mentioned that he was staying outside due to personal reasons and thus the power of attorney was a fake document in terms of Section 8(1)(a) of the Notaries Act, 1952. Inter alia, the CBI submitted that in terms of Chapter-25 Part-A of the Delhi High Court Rules only petitions for appeal, revision on behalf of a person convicted by a criminal Court or an application for transfer can be presented either by the convicted person himself or by some personauthorized by a duly stamped power of attorney to present it onhis behalf and that there is no provision in the Delhi High Court Rules for filing of the petition for quashing of the FIR under Section 482 Of the Cr.P.C., 1973, through a power of attorney. Inter alia, the CBI has submitted to the effect that the FIR cannot be quashed at the instance of a third party.

40. The CBI has further submitted that the investigating agency has a statutory right toinvestigate cognizableoffences without any interference with thosestatutory rights by an exercise of inherent jurisdiction of this Courtunder Section 482 Cr.P.C. It is further submitted by the CBI that in the instant case, the charge-sheet has notbeen filed and as such the present petition is immature andincompetent and thus the FIR and the consequent investigation cannot be quashed unless no offence is spelt out from the same. It has been reiterated bythe CBI that the averments made in the FIR *prima facie* make out the commission of cognizable offences as mentioned in the FIR and that the merits of the allegations in the FIR cannot be tested presently.

41. The CBI has further submitted that the petitioner has deliberately failed to join the investigation despite notices issued to him by the CBI on 04.09.2019, 13.09.2019, 23.09.2019 and 11.10.2019and is admittedly absconding from the country and it has thus been submitted on behalf of the CBI that a person who tries to evade the process of law does not deserve any sympathy or assistance from the Court with reliance having been placed on behalf of the CBI on the verdict this Court in ***Saurabh V. The State (NCT of Delhi);*** in Crl.M.C. No. 2186/2012 decided on 3.7.2012.

42. It has also been submitted on behalf of the CBI that the plea taken by the petitioner that the FIR has not been correctly registered in as much as it has been registered by the SP-CBI Sh. Sudhanshu Dhar Mishra (IRS) who was not a police officer in terms of the provisions of the Police Act, 1861, is untenable with it having been submitted by the CBI that the CBI is constituted under the Delhi Special Police Establishment Act, 1946, which derives its power to appoint officers and conduct investigation as per the provisions of the said Act with reliance having been placed on behalf of the CBI on Section 2 of the DSPE Act to submit to the effect that it starts with a non-obstante clause mentioning therein that notwithstanding anything contained in the Police Act, 1861, the Central Government may constitute a special force to be called DSPE for investigation of offences notified under Section 3 DSPE Act and that the Superintendent of Police is appointed as per Section 4(c)of the DSPE Act and thus there is no requirement that the Superintendent of Police should be an officer as defined under

the Police Act which is not applicable to the CBI since their appointments are made under the DSPE Act.

43. Inter alia, the CBI has further submitted that the submission made by the petitioner that no preliminary inquiry was conducted as per the CBI Manual, cannot be considered in as much as, as per Chapter-9 & 10 of the CBI Manual, when the information available is adequate to indicate the commission of a cognizable offence or its discreet verification reaches to a similar conclusion, a regular case must be registered instead of a preliminary enquiry and reference has been made by the CBI to paragraph 9.1 of Chapter 9 and paragraph 10.1 of Chapter 10 of the CBI Manual, annexed as Annexure P-7 and P-8 of the petition.

44. It is submitted by the CBI further that the registration of a preliminary enquiry is not required in each case when a cognizable offence is made out.

45. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the contention raised by the CBI that the petition has been inappropriately filed has essentially to be accepted in as much as the Power of Attorney that has been filed with the petition at page 44 is stated to have been signed by the petitioner who therein states that he is staying outside India due to personal reasons and appoints Mr.Darshan Lal s/o Sh.Hukum Chand as his Power of Attorney holder with the said Power of Attorney having been executed on 5.11.2019 and the stamp paper having also been purchased on 5.11.2019.

46. Be that as it may, in as much as, the petitioner has assailed the registration of the FIR No. RC-DAI-2019-A-0019 dated 24.5.2019 under Section 120-B of the Indian Penal Code, 1860 and Sections 7 and 8 and 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, on the merits raising issues to the effect:-

> *"1. Whether the Respondent no. 1 is the lawful authority to register the FIR under Section 154 of Code of Criminal Procedure or not?*
> *2. Whether the allegation as alleged in FIR constitute any cognizable offence on the part of petitioner punishable under Section 120-B of Indian Penal Code read with Section 7,8 and Section 13 (1)(d), Section (2) of Prevention of Corruption Act 1988 or not?*
> *3. Whether the allegation against the petitioner justify the initiation of procedure of criminal law followed by FIR and investigation thereof or not?*
> *4. Whether the inexplicable delay of three years in registration of FIR is bereft of advantage of spontaneity or does it amount to colored version or not?*
> *5. Whether the conduct of selective amnesia on the part of source/informant casts serious doubt on the true narration of facts or not?*
> *6. Whether the FIR is not attended to with mala fide intent on the part of source in as much as he being witness to the alleged transaction of Rs 12 lakh from Neeraj Bhatia to Sri Vishwadeep Bansal, did not report the matter forthwith to the Magistrate or nearest Police Station or not?*
> *7. Whether the source informant was under legal obligation to report the commission of offence within his knowledge forthwith to the nearest Magistrate or Police Station or not?*
> *8. Whether the Central Bureau of Investigation (CBI) is under legal obligation to scrupulously adhere to the provisions laid down in CBI Manual 2005 or not?*
> *9. Whether CBI is necessarily under legal obligation to verify the complaint or information and thereafter conduct a preliminary enquiry in case misconduct found during*

verification does not justify the registration of a regular case under the provisions of 154 of Code of Criminal Procedure or not?,

it is considered appropriate to consider the submissions made through the petition.

47. As regards the contention raised on behalf of the petitioner that the respondent No.1, i.e., the Superintendent of Police, Anti Corruption Branch, CBI did not have lawful authority to register the FIR under Section 154 of the Cr.P.C., 1973, as rightly contended on behalf of the CBI that in terms of the Delhi Special Police Establishment Act, 1946, as applicable for investigation in any Union Territory in terms of Section 2, 3 and 4 thereof, which read to the effect:-

48.

"2. ***Constitution and powers of special police establishment****.—**(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union territory of offences notified under section 3.***

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout any Union territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union territory have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union territory any of the powers of <u>the</u>

officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging functions of such an officer within the limits of his station.

3. Offences to be investigated by special police establishment*.—The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.*

4. Superintendence and administration of Special Police Establishment*.— (1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission*

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

4A. Committee for appointment of Director.*—(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—*

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition recognised — Member;

as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House

c) the Chief Justice of India or Judge of the Supreme — Member; Court nominated by him

(2) No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951 (61 of 1951),

for being considered for appointment as the Director.

***4B. Terms and conditions of service of Director**.—(1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.*

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.

***4BA. Director of Prosecution**. —(1) There shall be a Directorate of Prosecution headed by a Director who shall be an officer not below the rank of Joint Secretary to the Government of India, for conducting prosecution of cases under this Act.*

(2) The Director of Prosecution shall function under the overall supervision and control of the Director.

(3) The Central Government shall appoint the Director of Prosecution on the recommendation of the Central Vigilance Commission.

(4) The Director of Prosecution shall nothwithstanding anything to the contrary contained in the rules relating to hi conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

*4C. **Appointment for posts of Superintendent of Police and above, extension and curtailment of their tenure, etc.**—(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment*

of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of : —
(a) the Central Vigilance Commissioner —Chairperson;
(b) Vigilance Commissioners —Members;
(c) Secretary to the Government of India in Charge of the Ministry of Home —Members;
(d) Secretary to the Government of India in charge of the Department of Personnel —Members:
Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.
(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.",

it is held that there is no infirmity in the registration of the FIR by the Superintendent of Police, Anti Corruption Branch, CBI, New Delhi, in as much as the FIR relates to an alleged payment of Rs.12,00,000/- to the petitioner herein, an Inspector in the Narcotics Control Bureau, New Delhi, as alleged by Sh.Neeraj Bhatia, Director of M/s Three-B Health Care Ltd. in whose factory premises in the almirah of Rajinder Singh Rajput, the General Manager during the raid conducted on 31.5.2016 at the factory premises of the said M/s Three-B Health Care Ltd., 6 kg Codiene Phosphate was allegedly found and it is alleged that Sh.Neeraj Bhatia, the Director of M/s Three-B Health Care Ltd. contacted one Sh.Vishwadeep Bansal and requested him to get the matter settled with the NCB Officials as Sh.Neeraj Bhatia apprehended that the NCB would arrest Sh. Rajinder Singh Rajput and would also file a criminal complaint in the matter which would

damage his reputation whereafter Sh.Vishwadeep Bansal assured Sh.Neeraj Bhatia that he would get the matter settled after negotiating with the senior officers of the NCB Headquarters, New Delhi and as per source information Sh.Vishwadeep Bansal met some senior officers at the NCB Headquarters and thereafter asked Sh.Neeraj Bhatia to make the payments of Rs.12,00,000/- and thus Sh.Neeraj Bhatia on 13.6.2016 sent an amount of Rs.12,00,000/- to Sh.Vishwadeep Bansal for making further payment to the NCB officials and Sh.Vishwadeep Bansal made the payment of Rs.12,00,000/- to the petitioner herein. The said allegations apparently, as submitted through the FIR, disclose cognizable offences and thus it cannot be contended by the petitioner that the procedure of criminal law could not be invoked in the matter.

49. Undoubtedly, there appears to be a delay in the registration of the FIR which relates to an occurrence of the year 2016 with the FIR registered on 24.5.2019 but the aspect of the contents thereof being true or otherwise can only be considered at trial and *per se* cannot dislodge the registration of the FIR.

50. As regards the contention of the petitioner that there is selective amnesia on the part of the source informant which casts serious doubts on the narration of the facts, the said aspect also cannot be determined without affording an opportunity to the Investigating Agency to complete its investigation.

51. As regards the contention that the source information did not report the matter to the Magistrate or the nearest Police Station, qua the alleged commission of the offences within his knowledge

forthwith to the nearest Magistrate or to the nearest Police Station, it is essential to observe that the offences allegedly committed by the petitioner as per the FIR relate to offences punishable under Sections 7,8, 13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988, read with Section 120-B of the Indian Penal Code, 1860,which offences do not fall within the ambit of Section 39(1) of the Cr.P.C., 1973, which reads to the effect:

> ***"Section 39(1) in The Code of Criminal Procedure, 1973***
> *(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code, (45 of 1860), namely:-*
> *(i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);*
> *(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);*
> *(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);*
> *(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);*
> *(v) sections 302, 303 and 304 (that is to say, offences affecting life);*
> *(va)[1] section 364A (that is to say, offence relating to kidnapping for ransom, etc.);*
> *(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);*
> *(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);*
> *(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);*

> *(ix) sections 431 to 439, both inclusive (that is to say, offences of mischief against property);*
> *(x) sections 449 and 450 (that is to say, office of house-trespass);*
> *(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house- trespass); and*
> *(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes) shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.",*

which mandates upon the person so aware of commission of offences in the absence of any reasonable excuse forthwith to give information to the nearest Magistrate or Police officer of such commission of offences.

52. As regards the contention raised on behalf of the petitioner that the FIR has been registered maliciously because of the complaint made by the petitioner dated 22.7.2015 to the Dy. Director, NCB, stating that some officials of the Delhi Zonal Unit of the NCB were extorting money from the firms using his name, the said aspect cannot be determined without trial.

53. As regards the contention raised on behalf of the petitioner that the preliminary enquiry was not conducted by the CBI, it is essential to observe that paragraph 9.1 of Chapter 9 of Preliminary Enquiries in the CBI Manual reads to the effect:-

> *"9.1 when, a complaint is received or information is available which may, after verification as enjoined in this Manual, indicate serious misconduct on the part of a public servant but is not adequate to justify*

registration of a regular case under the provisions of Section 154 Cr.P.C., a Preliminary Enquiry may be registered after obtaining approval of the Competent Authority. Sometimes the High Courts and Supreme Court also entrust matters to Central Bureau of Investigation for enquiry and submission of report. In such situations also which may be rare, a Preliminary Enquiry' may be registered after obtaining orders from the Head Office. When the verification of a complaint and source information reveals commission of a prima facie cognizable offence, a Regular Case is to be registered after obtaining orders from the Head Office. When the verification of a complaint and source information reveals commission of a prima facie cognizable offence, a Regular Case is to be registered as is enjoined by law. A PE may be converted into RC as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. ***When information available is adequate to indicate commission of cognizable offence or its discreet verification leads to similar conclusion, a Regular Case must be registered instead of a 'Preliminary Enquiry'.*** *It is, therefore, necessary that the SP must carefully analyse material available at the time of evaluating the verification report submitted by Verifying Officer so that registration of PE is not resorted to where a Regular Case can be registered. Where material or information available clearly indicates that it would be a case of misconduct and not criminal misconduct, it would be appropriate that the matter is referred to the department at that stage itself by sending a self-contained note. In such cases, no Preliminary Enquiry should be registered. In cases, involving bank and commercial frauds, a reference may be made to the Advisory Board for Banking, Commercial & Financial Frauds for advice before*

taking up a PE in case it is felt necessary to obtain such advice."

(emphasis supplied)

54. Thus as in the instant case as per the information received the allegations relate to the alleged commission of cognizable offences punishable under Sections 7, 8, 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 120-B of the Indian Penal Code, 1860, the registration of a regular case in the instant case cannot be held to be inappropriate. Furthermore, as laid down by the Hon'ble Supreme Court in ***CBI & Another V. Thommandru Hannah Vijayalakshmi @ T.H.Vijayalakshmi and Anr.;*** a verdict dated 8.10.2021 in Crl.Appeal No. 1045/2021 as observed vide Part D.3, Analysis, in paragraphs 29 to 33 to the effect:-

*"29 The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a Preliminary Enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in **Lalita Kumari** (supra) holds that if the information received discloses the commission of a cognizable offence at the outset, no Preliminary Enquiry would be required. It also clarified that the scope of a Preliminary Enquiry is not to check the veracity of the information received, but only to scrutinize whether it discloses the commission of a cognizable offence. Similarly, para 9.1 of the CBI Manual notes that a Preliminary Enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a Preliminary Enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the*

commission of a cognizable offence. A similar conclusion has been reached by a two Judge Bench in ***Managipet****(supra) as well. Hence, the proposition that a Preliminary Enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in* ***Lalita Kumari*** *(supra) but would also tear apart the framework created by the CBI Manual.*

30. This view is also supported by the decision of a three judge Bench of this Court in ***Union of India*** *v.* ***State of Maharashtra****, which reversed the decision of a two Judge Bench in* ***Subhash Kashinath Mahajan*** *v.* ***State of Maharashtra*** *which had, inter alia, held that "a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act 1989 and that the allegations are not frivolous or motivated". However, in the three Judge Bench decision, it was held that such a direction was impermissible since neither the CrPC nor the Atrocities Act mandate a preliminary inquiry. Justice Arun Mishra held:*

"68. The direction has also been issued that the DSP should conduct a preliminary inquiry to find out whether the allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. ***In case a cognizable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible.*** *Moreover, it is ordered to be conducted by the person of the rank of DSP. The number of DSP as per stand of the Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR*

would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered, in such a case how a final report has to be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-à-vis to the complaints lodged by members of upper caste, for latter no such preliminary investigation is necessary. In that view of the matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989."

(emphasis supplied)

31. In a recent decision of a two Judge Bench in ***Vinod Dua****v.* ***Union of India and others****, a direction of the Court was sought for requiring "that henceforth FIRs against persons belonging to the media with at least 10 years standing be not registered unless cleared by a committee…". In refusing such a prayer, the Court observed that doing so would be akin to instituting a preliminary inquiry which was not mandated by the statutory framework. Justice U U Lalit, speaking for the Bench held:*

"101…the directions issued in Dr. Subhash Kashinath Mahajan regarding holding of a preliminary inquiry were not found consistent with the statutory framework. The second prayer made in the Writ Petition is asking for the constitution of the Committee completely outside the scope of the statutory framework. Similar such exercise of directing constitution of a Committee was found inconsistent with the statutory framework in the decisions discussed above…Any relief granted in terms of second prayer would certainly, in our view, amount to encroachment upon the field reserved for the legislature. We have, therefore, no hesitation in rejecting the prayer and dismissing the Writ Petition to that extent."

32. In view of the above discussion, we hold that since the institution of a Preliminary Enquiry in cases of corruption is not made mandatory before the registration of an FIR under the CrPC, PC Act or even the CBI Manual, for this Court to issue a direction to that affect will be tantamount to stepping into the legislative domain. Hence, we hold that in case the information received by the CBI, through a complaint or a "source information" under Chapter 8, discloses the commission of a cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence.

33. The above formulation does not take away from the value of conducting a Preliminary Enquiry in an appropriate case. This has been acknowledged by the decisions of this Court in ***P Sirajuddin*** *(supra),* ***Lalita Kumari*** *(supra) and* ***Charansingh****(supra). Even in* ***Vinod Dua****(supra), this Court noted that "[a]s a matter of fact, the accepted norm - be it in the form of CBI Manual or like instruments is to insist on a preliminary inquiry." The registration of a Regular Case can have disastrous consequences for the career of an officer, if the allegations ultimately turn out to be false. In a Preliminary Enquiry, the CBI is allowed access to documentary records and speak to persons just as they would in an investigation, which entails that information gathered can be used at the investigation stage as well. Hence, conducting a Preliminary Enquiry would not take away from the ultimate goal of prosecuting accused persons in a timely manner. However, we once again clarify that if the CBI chooses not to hold a Preliminary Enquiry, the accused cannot demand it as a matter of right. As clarified by this Court in* ***Managipet****(supra), the purpose of* ***Lalita Kumari*** *(supra) noting that a Preliminary Enquiry is valuable in corruption cases was not to vest a right in the accused but to ensure that there is no abuse of the process of law in order to target public servants.",*

it is apparent that the non-conducting of a preliminary enquiry by the CBI though valuable in corruption cases does not vest a right in the accused to the effect that such preliminary enquiry has necessarily to be conducted and it has categorically been held vide para 32 of the said verdict that the institution of preliminary enquiry in the cases of corruption is not made mandatory before the registration of an FIR under the Code of Criminal Procedure, Prevention of Corruption Act, 1988 and even the CBI Manual, with it having been further held thereby that in case the information received by the CBI through a complaint or a source information under Chapter 8 discloses the commission of a cognizable offence, it can directly register a regular case instead of conducting a preliminary enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence.

55. The principles in relation to the parameters for exercise of jurisdiction under Article 226 of the Constitution of India and Section 482 of the Cr.P.C., 1973, when a prayer is made for the quashing of the FIR were laid down in ***Neeharika Infrastructure Pvt. Ltd. V. State of Maharashtra and Others;*** 2021 SCC OnLine SC 315, as enunciated to the effect:-

> ***"80.*** *In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the*

order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

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

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

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

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

xiii)The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv)However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur* ***(supra) and*** *Bhajan Lal* ***(supra), has the jurisdiction to quash the FIR/complaint;***

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether

the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. *However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

xvii)Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can

demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii)Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

(emphasis supplied)

56. In the instant case it is essential to observe that it has been averred by the respondent CBI that the investigation is still in progress and though apparently, the investigation appears to be in progress for a long time now after the registration of the FIR in the year 2019, the same, *per se,* in view of the allegations putforth through the FIR of the alleged commission of the cognizable offence allegedly by the petitioner, the FIR cannot be quashed, the petition is thus dismissed.

ANU MALHOTRA, J.

NOVEMBER 08,2021
SV