IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Nishita Mhatre

A.S.T. No. 352 of 2014
With
A.S.T.A. No. 254 of 2014

Sri Tapas Paul
… Appellant
Vs.

Biplab Kumar Chowdhury & Ors.
… Respondents

AND

A.S.T. No.355 of 2014
With
A.S.T.A. No.255 of 2014

The State of West Bengal & Ors.
… Appellants
Vs.

Biplab Kumar Chowdhury
… Respondent

For the Appellant in
A.S.T. No.352 of 2014 : Mr. Kishore Dutta, Senior Advocate
Mr. Rajdeep Majumder
Mr. Srijib Chakraborty

For the Appellants in
A.S.T. No.355 of 2014 : Mr. Kalyan Bandopadhyay, Senior Advocate
Mr. Manjit Singh, Public Prosecutor
Mr. Joytosh Majumdar
Mr. Abhratosh Majumdar
Mr. Pawan Kumar Gupta
Mr. Suman Sengupta
Mr. Sirsanya Bandopadhyay
Mr. Subhro Lahiri

For the Respondent No.1 in
A.S.T. No.352 of 2014
&
For the Respondent in
A.S.T. No. 355 of 2014 : Mr. Aniruddha Chatterjee
Mr. Sukanta Chakraborty
Mr. Rahul Karmakar
Mr. Sakabda Roy

Heard on : 10.09.2014, 11.09.2014. 12.09.2014

Judgment on : 25.09.2014

Nishita Mhatre, J.:

1. A learned Single Judge of this Court (Dipankar Datta, J) has, by an order dated 28th July, 2014, entertained Writ Petition No.20515(W) of 2014 filed by one Biplab Kumar Chowdhury. By way of interim relief, the learned Single Judge has directed that an FIR be registered against Tapas Paul, a Member of Parliament, on the basis of the complaint dated 1st July, 2014 lodged by the petitioner with the Inspector-in-Charge, Nakashipara Police Station, District Nadia, for his utterances at a public meeting addressed by him, which was telecast by private television channels on 14th June, 2014. The learned Judge has further directed that in view of the sensitivity of the matter the investigation should be entrusted to the Criminal Investigation Department (hereinafter referred to as "CID"), and has directed the Director General of Police to issue instructions to the DIG, CID for a free, fair, proper and meaningful investigation of the FIR. The learned Single Judge has then ordered that the investigation would be monitored by this Court and that the Investigating Officer should not file the police report under Section 173(2) of the Cr.P.C. without obtaining leave of this Court.

2. Aggrieved by this decision of the learned Single Judge the State of West Bengal and Tapas Paul have filed two separate appeals. These appeals were heard by the Division Bench (Girish Chandra Gupta and Tapabrata Chakraborty, JJ). The learned Judges of the Division Bench could not reach any consensus in the appeals. Gupta, J, has held that the learned Single Judge ought not to have concluded even prima facie, which cognizable offences had been committed by Paul or directed the registration of an FIR without the police forming an opinion in the matter. He was of the opinion that this would create hurdles for the Magistrate or the Court to decide whether there are sufficient grounds for proceeding to try the accused. The learned Judge has further held that no direction to monitor the investigation ought to have been issued when neither the enquiry nor the investigation had commenced. As regards maintainability of the writ petition, Gupta J has observed that the learned Single Judge had no occasion to examine whether the writ petition was maintainable as these arguments were advanced for the first time before the Division Bench. As the writ petition is still pending the learned judge confined his decision to the impugned order. While setting aside the impugned order, Gupta, J. observed that he hoped and trusted that the State would act sincerely and investigate the matter in accordance with law and bring the complaint of the writ petitioner to its logical conclusion.

3. Chakraborty, J on the other hand, has concurred with all the observations and findings of the learned Single Judge and, has therefore, dismissed the appeals.

4. As there was a difference of opinion between the learned Judges of the Division Bench, the matter has been assigned to me by the Hon'ble the Chief Justice on 28th August, 2014. The point of difference has been framed thus by the Division Bench:

> **"Whether the impugned order in the facts and circumstances of the case is sustainable in law?"**

5. I have heard the parties at length. For convenience they will be referred to as they were arrayed in the writ petition.

6. Before I proceed to consider the point of reference it would be useful to refer to Clause 36 of the Letters Patent under which the reference has been made to me. It reads as under:

> *"**36. Single Judges and Division Court** - And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose, in pursuance of section one hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges, and the Judges are divided*

in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it."

7. It has been argued by Mr. Aniruddha Chatterjee, the learned Counsel appearing for the writ petitioner, that I must accept the view of one or the other learned Judge of the Division Bench *in toto*. He has relied on the judgment of the Division Bench of this Court in the case of ***Jyoti Prokash Mitter v. The Hon'ble Mr. Justice H. K. Bose, Chief Justice of High Court, Calcutta*** reported in ***AIR 1963 Calcutta 483*** in support of his submission that the third Judge or referee Judge is entitled only to accept one or the other view and cannot form a third opinion. The learned Counsel for the State has relied on the decision of the Bombay High Court in the case of ***Central Bureau of Investigation v. Vashitha Rambhau Andhale & Anr.*** in Appeal No.763 of 2007, where the there was a difference of opinion between the two learned Judges of the Division Bench and, therefore, the matter was referred to a third learned Judge. However, this case was decided on the basis of Section 392 of the Cr.P.C. and not under Clause 36 of the Letters Patent which is almost identical to the Letters Patent governing the Calcutta

High Court. Therefore, this judgment, in my opinion, is not applicable to the facts in this case. A learned Single Judge of this Court (Sanjib Banerjee, J,) in the case of ***Shivani Properties Private Limited v. United Bank of India*** in APD No.304 of 2013, while deciding a reference under Clause 36 of the Letters Patent observed that *"if there are two possible answers to a question and there is a difference of opinion in a two-Judge Bench, the reference to a third Judge would suffice to achieve the majority view on the point. However, if several answers are possible on the point of difference, the majority opinion may not be achieved upon a reference being made to a third Judge for it would only be a third opinion."* In the case of ***Jyoti Prokash Mitter*** (supra), the Special Bench observed that it is desirable and certainly preferable that the point of difference should be stated by the learned Judges and the Judge or Judges to whom the reference is made is required to state his or their opinion on the point. The same should be ultimately decided in terms of Clause 36. In the present case the learned judges of the Division Bench have differed completely on the conclusions drawn and directions issued by the learned single judge and have framed the point of difference as aforesaid. It is necessary to bear in mind that the impugned order of the learned single judge is based primarily on four different points, namely, (i) the maintainability of and the entertainment of the writ petition; (ii) registration of the FIR pursuant to the complaint dated 1st July, 2014; (iii) entrusting the investigation to the CID; and (iv) monitoring of the investigation by this Court. I would therefore have to deal with all these

points to decide whether the order of the learned Single Judge is sustainable in law.

8. The brief facts giving rise to the present impasse are as follows:

Tapas Paul, Respondent No.7 in the writ petition, is a Member of Parliament, who was elected in the last elections to the Lok Sabha held in May, 2014. A speech that he had purportedly delivered in the presence of his constituents was telecast on June 14, 2014 by private television channels. A complaint was lodged by the petitioner on 1st July, 2014 with the Nakashipara Police Station pointing out that the Member of Parliament had declared openly that he “carries a revolver” which he will use to “liquidate” activists of the CPI(M) party and that he had also claimed that he was a “top gangster”. These startling and controversial remarks were made, according to the complainant, by Tapas Paul while addressing a gathering of people at a public meeting in Chowmatha, Tehatta in Nadia district, which falls within his Parliamentary constituency of Krishnagar. According to the petitioner, the television channels had telecast his remarks which were made in Bengali which when translated into English read as “I'm not from Kolkata … but Chandernagore. I carry *maal* (firearms). If anybody dares to touch our supporters, I'll come and shoot them myself. Let them stop me if they can.” The complainant enclosed copies of the newspaper articles and a compact disk (C.D.) containing video footage of the speech. Copies of this complaint were sent to different authorities including the Director General of Police, West Bengal and the Superintendent of Police,

Nadia. The related newspaper report which was enclosed with the complaint also mentioned that he said *"I am from Chandannagar. Leaders are created by the workers. I am also a goonda. I will shoot you guys if a Trinamool Congress worker is ever attacked. If you have the guts, then stop me. Keep this in mind."* He is further reported to have stated *"Earlier, you guys have bullied me on various occasions. If you insult the mothers and daughters of Trinamool workers. Then I won't spare you. I will let loose my boys in your homes and they will commit rape. I will teach each of you a lesson."* It appears that soon after these abominable and disgusting statements were published in the media, both electronic and print, Tapas Paul denied that he had used the word "rape" and said that he had said "raid". It appears that thereafter Paul apologised for having made the statements, probably on the advice of the party to which he owes allegiance. As no FIR was registered for almost 15 days after the complaint was lodged, the petitioner approached this Court under Article 226 of the Constitution of India. He filed the writ petition on 15th July, 2014, and prayed for a mandamus to the police commanding them (i) to arrest Paul and make efforts to provide safety and security to the villagers, (ii) to take steps to complete the investigation and/or to treat the complaint dated 1st July, 2014 as the FIR and to submit a police report in terms of Section 173(1) of the Cr.P.C. within a specific period, and (iii) to direct investigation through the CID. Certain interim reliefs were also prayed for, namely, to direct the police (a) to initiate a case immediately against Paul and to submit a status report and updates in respect of the investigation and (b) to

ensure that there is no breach of peace within the jurisdiction of the Nakashipara Police Station.

9. It appears that these atrocious and odious utterances had repercussions the next day because some houses were burnt in Paul's constituency. The website of BBC News India published on 2nd July, 2014 that Paul had confessed that some of his remarks made in the heat and dust of the election campaign had caused dismay and consternation and that he apologised unreservedly for them. He has reportedly stated *"I have no excuses to offer. It was a gross error of judgment and deeply insensitive … It should not have happened. And I assure you it will not happen again."* The video footage which was produced before the learned Single Judge has been described by the learned Judge in his order.

10. In the background of these facts, the learned Single Judge concluded that as regards the utterances a cognisable offence had been made out *prima facie* and therefore, directed the registration of the FIR. The learned Single Judge has also mentioned the provisions of law which were attracted, *prima facie,* for the purposes of registration of the FIR as the State was adamant that the complaint did not disclose that a cognisable offence had been committed.

11. Mr. Kalyan Kumar Bandopadhyay, the learned Counsel for the State, has taken exception to the order of the learned Single Judge on several counts. His first challenge is to the maintainability of the writ petition for directing the police to take cognisance of the complaint and

to file an FIR. He has submitted by relying on several judgments that the writ Court ought not to have exercised its jurisdiction in matters where the FIR has not been registered as the petitioner has recourse to several provisions of the Cr.P.C. which is complete Code in itself for redressing such grievances. He has laid special emphasis on the judgment of the Supreme Court in the case of ***Aleque Padamsee & Ors. v. Union of India & Ors.*** reported in ***(2007) 6 SCC 171*** where the Supreme Court has observed after referring to its earlier decisions that the correct position in law was that police officials ought to register an FIR whenever a cognisable offence is brought to their notice. In case the police officials failed to do so, the remedies to be adopted are set out in Section 190 read with Section 200 of the Code. The next judgment cited by the learned Counsel is ***Doliben Kantilal Patel v. State of Gujarat & Anr.*** reported in ***(2013) 9 SCC 447***, where the Supreme Court has approved of the High Court directing the complainant to avail of the remedy of filing a complaint before the Magistrate if the FIR is not registered. The learned Counsel further submitted that the extra-ordinary writ jurisdiction of this Court need not be exercised when there is an efficacious adequate remedy provided in the Cr.P.C. He supported this argument by relying on the judgments in the case of ***General Manager, Sri Siddeshwara Cooperative Bank Limited & Anr. v. Ikbal & Ors.*** reported in ***(2013) 10 SCC 83***, ***Commissioners of Income Tax & Ors. v. Chhabil Dass Agarwal*** reported in ***(2014) 1 SCC 603***, ***Nivedita Sharma v. Cellular Operators Association of India & Ors.*** reported in ***(2011) 14 SCC 337***. The learned Counsel further submitted that

ample powers are vested in the Magistrate under the Code to direct investigation or to hold a preliminary enquiry in accordance with Code. Since such elaborate provisions are available in the Code there is no need for this Court to exercise its writ jurisdiction according to the learned Counsel. He has also placed reliance on the judgment of the Supreme Court in the case of ***Abhinandan Jha & Ors. v. Dinesh Mishra*** reported in ***AIR 1968 SC 117*** to support his submission.

12. Mr. Kishore Dutta has echoed this argument of Mr. Bandopadhyay that a writ petition is not the appropriate remedy available to the petitioner when an efficacious alternate remedy is prescribed in the Code itself. He has drawn my attention to Sections 154, 156, 157, 190, 200 and 202 of the Cr.P.C. to submit that if a complainant feels the police are deliberately not acting on his complaint, he has recourse to the aforesaid provisions of law and a writ petition ought not to have been entertained as it is not maintainable. He has placed reliance on the judgments of the Supreme Court in the case of ***Devarapalli Lakshminarayana Reddy & Ors. v. V. Narayana Reddy & Ors.*** reported in ***(1976) 3 SCC 252*** and ***Smt. Mona Panwar v. The Hon'ble High Court of Judicature at Allahabad*** reported in ***(2011) 3 SCC 496***, where two different Benches of the Supreme Court have observed that the provisions of the Code are sufficient to counter the inaction of the police in investigating a complaint.

13. Mr. Aniruddha Chatterjee, the learned Counsel appearing for the writ petitioner, on the other hand, has submitted that the High Court's jurisdiction under Article 226 of the Constitution of India is wide and it is only a self-imposed restriction which the High Court normally exercises by refusing to entertain writ petitions on the ground that a statutory remedy is available. The learned Counsel has relied on the judgement of in ***Kishwar Jahan & anr vs State of West Bengal & ors*** reported in ***2007 (4) CHN 526*** where this Court had entertained a writ petition seeking orders for the CBI to investigate the case instead of the CID.

14. There can be no doubt that a writ petition is maintainable in the facts of this case. The question is whether it should have been entertained. It is true that a writ petition is not a panacea for undoing and setting right all illegalities. Normally the High Court would not interfere and exercise its writ jurisdiction where a statutory remedy is available to the petitioner. However, the argument advanced by Mr. Bandopadhyay and Mr. Dutta glosses over the fact that the petitioner has not invoked the High Court's writ jurisdiction to punish Tapas Paul. He has had to approach this Court in order to prod the police into taking action on his complaint. The resistance of the police in taking action on the complaint submitted by the petitioner is writ large in this case. The complaint was received on the 2nd July, 2014. It appears that another complaint was received by the same Police Station from a lady which has been entered as G.D. entry No.89 dated 2nd July, 2014. The police did not take any action pursuant to the complaint of the petitioner which is

dated 1st July, 2014 and received by the Nakashipara Police Station on 2nd July, 2014. The complaint filed by the lady, received on 2nd July, 2014 by the police prompted them to issue a letter to the Managing Director of the television channel '24 Ghanta' for an unedited version of the video clipping of the speech of Tapas Paul which was telecast on 14th June, 2014. Details of the transcript were also called for. Mr. Bandopadhyay submitted that this action of the police shows that they had initiated an enquiry in respect of the complaint. According to him the petitioner ought not to have rushed to this Court and should have waited till the police had completed the preliminary enquiries. He has submitted that the police could not have acted immediately on the basis of some stray sentences which were allegedly uttered by Paul without watching the entire video footage of the speech. The learned Counsel submitted that the police would have to see in what context these remarks were made during the course of his speech or else the Constitutional rights of Paul would be adversely affected. He has relied on the judgment of the Bombay High Court in the case of ***Emperor v. Bal Gangadhar Tilak*** reported in ***(1917) 19 B.L.R. 211*** and also the judgment of the Supreme Court in the case of ***Dr. Das Rao Deshmukh v. Kamal Kishore Nanasaheb Kadam & Ors.*** reported in ***(1995) 5 SCC 123*** in support of his submission. These judgements do not in any way support the submission of the learned Counsel. The entire speech would be relevant during the trial to assist the Court in concluding whether the utterances of Paul do constitute a punishable offence. On reading the

complaint if a cognisable offence is made out the police have no option but to register an FIR without anything more.

15. The lack of anxiety of the police and its inertia in acting on the complaint lodged by the petitioner and the other complaints received by them in respect of the statements of Paul is apparent. It was not the absence of the unedited version of the video clipping which prevented the police from acting. Had the police been serious about taking any action in the matter, they would not have been satisfied merely with writing to the Managing Director of one private television channel and not bother to pursue the matter with either that channel or any other channels. The incongruous attitude of the police is evident as even after almost 15 days of the complaint being lodged the police did not find it necessary to take suitable action in the matter. To suggest that the police could not arrive at a decision whether a cognisable offence had been described in the complaint is without any basis. There can be no dispute that Tapas Paul had uttered the aforesaid objectionable words which were heard by those who watched the telecast on 14th June 2014 because he apologised for having used them. Therefore, waiting for the unedited video footage was not necessary, especially when the Compact Disk containing the telecast had been enclosed with the complaint. In the G.D. entry No. 89 dated 2nd July, 2014, it is mentioned that the typed complaint was received but without the C.D. as an enclosure. The police did not find it necessary to enquire with the complainant about the compact disk. They did not consider it their duty to call the complainant to ascertain whether the

C.D. had in fact been submitted along with the complaint. The police have been mute spectators so far. It is no doubt true that a writ petition would not normally be the remedy to initiate a criminal investigation. The complainant would have to take recourse to Section 156(1) and (3) of the Code. However, the present case is not one which is run of the mill. The entire State machinery appears to be stacked in favour of Paul, probably because he belongs to the ruling dispensation. The reluctance of the police to perform their duty in the present case has caused the petitioner to approach this Court in its writ jurisdiction. I do not therefore have any doubt that writ petition is maintainable. The learned single judge was right in entertaining the writ petition. Therefore the order of the learned single judge in so far as the maintainability of the writ petition and its entertainment is sustainable in law.

16. The next question in issue is whether the learned single judge could have directed the registration of an FIR against Paul and while doing so could the sections of the IPC under which, prima facie, cognisable offences have been committed be mentioned in the order.

17. It would be useful to refer at this juncture to the judgment of the Supreme Court in the case of ***Lalita Kumari v. Government of Uttar Pradesh & Ors.*** reported in ***(2014) 2 SCC 1***. The Constitution Bench of the Supreme Court noted the provisions of Sections 154, 155, 156 and 157 of the Cr.P.C. and considered whether it is mandatory for a police official to register an FIR on receipt of information disclosing an offence.

While deciding the issue, the Supreme Court has referred to its earlier pronouncements on this aspect, including the judgements cited by the learned Counsel before me.

18. Chief Justice P. Sathasivam while speaking for the Constitution Bench has observed thus:

> **52.** It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.
>
> **53.** Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.
>
> **54.** Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from

> the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. <u>The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR.</u> It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction. (Emphasis supplied)

19. Referring to the judgment in the case of ***Lallan Chaudhary v. State of Bihar*** reported in ***(2006) 12 SCC 229,*** the Supreme Court held further that the reasonableness or credibility of the information is not a condition precedent for the registration of a case. The Court has further observed:

> **96.** The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith". Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the

knowledge of the investigating agency but also to the subordinate judiciary.

20. The Constitution Bench took note of an earlier judgment in the case of ***CBI v. Tapan Kumar Singh*** reported in ***(2003) 6 SCC 175*** where the Court had observed that the information given to the police must disclose the commission of a cognisable offence. The Court observed that it is enough if the police officer at this stage, on the basis of the information given, suspects the commission of a cognisable offence. He need not be convinced or satisfied that the cognisable offence has been committed. He is bound to record the information and conduct the investigation, if he suspects a cognisable offence may have been committed. He does not have to satisfy himself about the truthfulness of the information. The true test is whether the information furnished provides a reason to suspect the commission of an offence which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or through any other competent officer. The Court has opined further in the case of ***Lalita Kumari*** (supra) that the burking of crime leads to a dilution of the rule of law in the short term and it has a negative impact on the rule of law in the long run. The non-registration of a large number of FIRs leads to a definite lawlessness in the society. The Supreme Court has also cautioned against the misuse of the provisions by observing that while the registration of the FIR was mandatory, the arrest of the accused immediately on the registration of the FIR was not. These were two

entirely different concepts under law. The Court observed that the aim is not only to ensure that the time of the police should not be wasted on false and frivolous information but also that the police should not intentionally be restrained from doing their duty of investigating cognisable offences. In Para 119 of the said judgment the Supreme Court has summed up its observations thus:

> **119.** Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given

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

21. The Court formulated its conclusions in ***Lalita Kumari's*** case thus:

> **120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> **120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
>
> **120.3.** If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
>
> **120.4.** The police officer cannot avoid his duty of registering offence if cognizable

offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(*a*) Matrimonial disputes/family disputes

(*b*) Commercial offences

(*c*) Medical negligence cases

(*d*) Corruption cases

(*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound

> and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
>
> **120.8.** Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

22. The argument of Mr. Bandhyopadhyay and Mr. Dutta is that the police had commenced an enquiry into the complaint and the Petitioner did not afford an adequate opportunity to the Police to do their duty by rushing to this Court. This contention is not tenable in view of the observations in ***Lalita Kumari's*** case. The Police are not expected to make any enquiries once a cognisable offence is described in the complaint and is attributed to the person against whom the complaint has been lodged. Looking at the allegations in the complaint, it is incomprehensible as to how the police did not find that a cognisable offence had been made out. The Learned Single Judge, while passing his order, has observed that prima facie a cognisable offence has been made out under Sections 115, 141, 153A and 509 of the IPC. Mr. Bandopadhyay has argued that it is not for the High Court to consider whether a cognisable offence has been committed as that is within the

domain of the police. He has relied on the judgments in the case of ***Director, Central Bureau of Investigation & Ors. v. Niyamavedi & Ors.*** reported in ***(1995) 3 SCC 601***, ***Kunga Nima Lepcha & Ors. v. State of Sikkim & Ors.*** reported in ***(2010) 4 SCC 513*** and ***Babubhai Jamnadas Patel v. State of Gujarat & Ors.*** reported in ***(2009) 9 SCC 610*** to buttress his submission.

23. Mr. Kishore Dutta has submitted that the Court must confine itself to the pleadings in the case and cannot pass commands beyond the pleadings by merely adding the word by preceding its conclusion by the term *prima facie*. He has referred to several paragraphs of the impugned judgement and pointed out that the writ petition does not contain any pleadings in that regard. According to the learned Counsel the Learned Single Judge has imputed his personal knowledge to arrive at the conclusion that Paul had committed a cognisable offence and that therefore the FIR should be lodged by mentioning the sections which were attracted. He has fortified his submission by relying on the judgments in the case of ***Kanda & Ors. v. Waghu*** reported in ***AIR 1950 PC 68***, ***Messrs. Trojan and Co. v. RM. N. N. Nagappa Chettiar*** reported in ***AIR 1953 SC 235***, ***Jugal Kishore Kundu v. Narayan Chandra Kundu*** reported in ***AIR 1982 Cal 342***.

24. Perhaps it would have been more appropriate if the learned Single Judge had not mentioned the sections and left it to the police to decide under which provisions of law Paul should be booked. It is evident from the impugned order that the learned Single Judge was compelled to give

a prima facie view of the Sections which could be attracted as the State insisted that the complaint did not disclose any cognisable offence. If exhorting one's constituents to kill the opponents who were members of the party in opposition and to rape the women of their households are not cognisable offences, I wonder what the police would consider is a cognisable offence. The newspaper reports about Paul's speeches, some of which have been annexed to the writ petition and were enclosures to the complaint, ought to have stirred the Police into action. However they chose to remain silent and unresponsive. It was suggested that there were no repercussions and these utterances were made in isolation and therefore could not constitute a cognisable offence. It is not the job of the police officer who is expected to register the FIR to ascertain whether there were repercussions or to determine the veracity of the statements made by Paul. As long as there is a suspicion regarding the commission of a cognisable offence, an FIR must be mandatorily registered. As an aftermath of the Paul's speech, a house in Teghari village belonging allegedly to an activist of the CPI(M) party was demolished. Houses in the villages near the place where the speech was delivered were also allegedly burnt by mobs belonging to the same party as Paul. The incendiary speech of Paul appears to have left a lasting impression on the workers of his party who allegedly acted on his exhortations and incitement. Were the Police waiting for something more serious to happen before they were aroused from their languor and apathy? Considering the facts and circumstances of the present case, I am convinced that the police have been dragging their feet and have failed in

their duty by not registering the FIR against Paul. I am therefore in complete agreement with the learned Single Judge and Chakraborty, J, that the FIR must be registered against Paul. Thus the order of the learned single judge with respet to the registration of the FIR is sustainable in law.

25. The next issue is whether the investigation should proceed through the Nakashipara Police Station or should be entrusted to the CID. The learned Single Judge has directed that having regard to the sensitivity of the matter it would be appropriate and in the interest of justice to entrust the CID to investigate the complaint. The Director General of Police has been directed to issue appropriate instructions to the DIG, CID for a free, fair, proper and meaningful investigation of the FIR. Mr. Bandopadhyay, learned Counsel for the State, has submitted that this direction of the learned Single Judge was absolutely uncalled for as it pre-empts the State action. According to him, when there are no allegations of *mala fides*, there is no need to change the investigating agency. Mr. Kishore Dutta, learned Counsel for Paul, has urged that the seriousness of any allegation cannot deflect from the procedure which is required to be followed. According to him, therefore, there is no need to entrust the investigation to the CID. Mr. Chatterjee, on the other hand, has submitted that the very fact that the Nakashipara Police Station took no action in accordance with law for over 15 days demonstrates that they were either instructed by their political bosses or were overawed by the situation and therefore, took no action in the matter.

26. In ***State of Punjab v. Davinder Pal Singh Bhullar & Ors.*** reported in ***(2011) 14 SCC 770*** the Court has observed that it was evident that a Constitution Court can direct CBI to investigate a case provided the Court after examining the allegations in the complaint reaches a conclusion that the complainant could make out a *prima facie* case against the accused. CBI cannot be directed to have a roving enquiry as to whether a person was involved in any alleged unlawful activities. The Court observed that the CBI investigation should be directed only in exceptional circumstances when the Court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.

27. Although Mr. Bandopadhyay did raise the aforesaid contentions to counter the insistence on the investigation being conducted by the CID and cited several judgements in that regard, on instructions from the State, he conceded on 11th September, 2014 that the State had agreed to enquire into the incident on the basis of two G.D. entries, in terms of Chapter XII of the Cr.P.C. and that the CID officer posted in the district would investigate the case. Mr. Chatterjee was not satisfied with this statement made on behalf of the State and submitted that the order of the learned Single Judge must be followed. The learned Single Judge, as seen from Para 58 of his judgment, has not directed that a particular officer of the CID should investigate the complaint. The Director General

of Police has been directed to issue instructions to the DIG, CID for a free, fair and meaningful investigation of the FIR. This does not by any stretch of imagination mean that the learned Single Judge has directed only the DIG, CID to conduct the investigation. Thus there is no resistance from the State for an enquiry through the agency of the CID. However this cannot be restricted only for the purposes of an enquiry. The investigation must be conducted by the CID. I have considered the judgements in the case of ***R. S. Sodhi, Advocate v. State of U.P. & Ors.*** reported in ***1994 Supp (1) SCC 143***, ***Inder Singh v. State of Punjab & Ors.*** reported in ***(1994) 6 SCC 275***, ***Rubabbuddin Sheikh v. State of Gujarat & Ors*** reported in ***(2010) 2 SCC 200*** and ***Subrata Chattoraj v. Union of India & Ors.*** in Writ Petition (Civil) No. 401 of 2013 and other connected writ petitions decided on 9th May, 2014 by the Supreme Court. The consistent view of the Supreme Court as elucidated in the aforesaid judgments is that normally there should not be a change in the investigating agency. However, if there are accusations made against the local police which would adversely affect the credibility of the investigation carried out by them, it is both advisable and desirable and in the interest of justice to entrust the investigation to an independent agency. This is because it is necessary to instil confidence in the complainant and the general public that the investigation would be carried out in an unbiased manner. In the case of ***State of West Bengal v. Committee for Protection of Democratic Rights*** reported in ***(2010) 2 SCC 571*** the Supreme Court directed the transfer of the investigation to the CBI as it was of the opinion that the nature of the incident and the

delay in setting up of the SIT was sufficient to warrant such a transfer. Mr. Bandopadhyay has also submitted that when there are no allegations of *mala fides,* there is no need to change the investigating agency. According to him, the learned Single Judge has overstepped his jurisdiction and has pre-empted the State action. He fortifies his submission by relying on the judgment in the case of ***Abhinandan Jha & Ors. v. Dinesh Mishra*** reported in ***AIR 1968 SC 117***.

28. The DIG, CID must appoint a competent officer from the CID at the earliest and ensure that a proper, unbiased and meaningful investigation is carried out in the matter. Obviously the DIG, CID is always overall in charge of the investigations being carried out by his department. It would be open for him to oversee the investigation and make sure that his sub-ordinate officer is following the law and is not overawed with either the situation or the suspect. Therefore, the DIG, CID will depute an upright, proficient and experienced officer to handle and investigate the case. The order of the learned single judge directing the CID to take over the case and investigate is thus sustainable in law.

29. The next issue which arises is whether this Court should monitor the investigation. An interim prayer was sought by the petitioner that the Police should start the investigation and submit the updates and status report to this Court in respect of the investigation. The learned Single Judge has opined that this being an exceptional case, the investigation was required to be monitored by the Court in terms of the decision in the case of ***Vineet Narain & Ors. v. Union of India & Anr.***

reported in ***(1998) 1 SCC 226***. The learned Single Judge has further directed that the Investigating Officer shall not file the police report under Section 173(2) of the Cr.P.C. without obtaining leave of this Court. Mr. Chatterjee has relied on the judgment in the case of ***Bharati Tamang v. Union of India & Ors.*** in Writ Petition (Crl.) No. 159 of 2012 where the Supreme Court has directed monitoring of the proceedings which were pending before the Sessions Judge, Darjeeling. The Court further directed that the investigation should be carried out by the CBI and monitored by the Joint Director of the CBI.

30. Mr. Bandopadhyay, the learned Counsel for the State, has criticised this direction of the learned Single Judge and urged that the writ Court cannot take action over the mantle of the police or indeed the Magistrate. He has submitted that in ***Divisional Manager, Aravali Golf Club & anr. Vs Chander Hass & anr.*** reported ***in 2008 AIR SCW 406*** the Supreme Court has decried judicial activism. He drew my attention to the observations of the Court that the judiciary must exercise restraint and not encroach upon the functions of another organ of the State. According to him, it is apparent from the learned Single Judge's order that he has transgressed the boundaries of judicial functioning. The learned Counsel has relied on the judgment in the case of ***State of U.P. & Anr. v. Johri Mal*** reported in ***(2004) 4 SCC 714*** where the Court has observed that the Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with policy decisions of the State. This judgement is

not relevant in the facts of this case as there is no question of interference of with a policy decision of the State. Surely it cannot be argued that it is the policy decision of the State to protect Paul and to turn a Nelson's eye to the wrongs committed by him.

31. The learned Counsel further pointed out the judgements in ***V. C. Shukla v. State (Delhi Administration)*** reported in ***1980 Supp. SCC 249*** and ***Davinder Pal Singh Bhullar's*** case to submit that if *mala fides* have not been alleged against the police there is no need for monitoring of the investigation by the High Court. He has also relied on the judgement in ***Babubhai Jamnadas Patel v. State of Gujarat & Ors.*** (supra) where the Supreme Court observed that monitoring of investigation by Courts in respect of offences allegedly committed were usually not warranted as there were sufficient safeguards in the Cr.P.C. The Court held that normally the investigation of offences is a function of the investigating agencies and the Courts do not interfere with the same. However, the High Court is vested with such powers though the same are invoked only in cases where extra-ordinary circumstances exist necessitating such monitoring by the Courts. Where the investigation into an offence is not being carried out in the manner prescribed the Court's power can be exercised to direct the authorities to conduct themselves in a particular way.

The Court has then observed:

> **46.** The courts, and in particular the High Courts and the Supreme Court, are the sentinels of justice and have been vested

with extraordinary powers of judicial review and supervision to ensure that the rights of the citizens are duly protected. The courts have to maintain a constant vigil against the inaction of the authorities in discharging their duties and obligations in the interest of the citizens for whom they exist. This Court, as also the High Courts, have had to issue appropriate writs and directions from time to time to ensure that the authorities performed at least such duties as they were required to perform under the various statutes and orders passed by the administration.

32. Mr. Bandopadhyay, the learned Counsel, has argued that this Court cannot monitor the investigation and that the powers which are vested in the Supreme Court which have been exercised in the cases cited by Mr. Chatterjee are not available to the High Court acting under Article 226 of the Constitution of India. He has placed reliance on the judgments of the Supreme Court in the case of ***State of Punjab & Ors. v. Surinder Kumar & Ors.*** reported in ***(1992) 1 SCC 489*** and ***C. M. Singh v. H. P. Krishi Vishva Vidyalaya & Ors.*** reported in ***(1999) 9 SCC 40***. This submission of the learned Counsel is untenable in view of the aforementioned observations of the Supreme Court in ***Babubhai Jamnadas Patel's*** case.

33. Mr. Dutta, the learned Counsel for Paul, has submitted that the order passed by the learned Single Judge was not a reminder to the

police to perform their duty, but had the trappings of a diktat. By passing the order, the learned Single Judge had according to the learned Counsel, left no option with the police and was playing a supervisory role. He further submitted that the investigation in a case can be handed over to a different agency only if there is a faulty investigation or to instil public confidence in the investigation. The learned Counsel urged that this stage has not been reached as yet in the present case and, therefore, the question of changing the investigating authority does not arise. According to him, the local police have not been given adequate opportunity to act on the complaint submitted. Reliance has also been placed on the judgment in the case of ***Sashikant v. Central Bureau of Investigation & Ors.*** reported in ***2006 AIR SCW 6182*** where it is held that a statutory duty is cast on the investigating authority to carry out an investigation in accordance with law. The Court has observed that it is not ordinarily within the province of the Court to direct an investigation in a particular manner. The Writ Court should not, therefore, ordinarily interfere with the functioning of the investigation agency unless it is an exceptional case.

34. In ***Manohar Lal Sharma v. Principal Secretary & Ors.*** reported in ***(2014) 2 SCC 532*** a bench of three learned judges of the Supreme Court has observed thus:

> **24.** In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is

ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

25. *Lord Denning*[12] has described the role of the police thus:

"In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust: and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

> The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."
>
> **26.** One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

35. The Court then observed that monitoring of investigation/enquiries by the Court is intended to ensure the proper progress of the investigation without directing or channelizing the mode or manner of the investigation. The idea is to retain public confidence in the impartiality of the investigation and to ensure that the investigation is made on a reasonable basis into every accusation, irrespective of the position and status of the person. The Court went on to observe that the monitoring of an investigation by the Court aims to lend credence to the enquiry or investigation being conducted by a premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity. The Court has distinguished between the supervision of an investigation and monitoring of the investigation in the following terms:

> **39.** However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry.

To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such “Court-directed” or “Court-monitored” cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression “Court-monitored” has been interchangeably used with “Court-supervised investigation”. Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and

> it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference.

36. Several judgments have been pointed out by the parties before me as to whether it is permissible for the High Court under Article 226 of the Constitution of India to monitor an investigation. There is no doubt that the High Court does have the jurisdiction under Article 226 of the Constitution of India to do so. However, in the present case, the learned Single Judge has apparently not merely decided to monitor the investigation but to supervise it. This would be evident from the fact that the police have been directed not to submit any report under Section 173(2) of the Cr.P.C. without obtaining the leave of this Court. This would mean that the High Court would be at liberty to decide whether the report submitted by the Investigating Officer was correct or it should be varied. Full powers are vested in the Magistrate once the report is submitted under Section 173(2) to decide whether to accept the report or to order further investigation. These powers of the Magistrate cannot be taken away by the High Court by directing that the report ought not to be filed without obtaining leave of the Court. If the idea is to monitor the investigation all that could have been directed is that the High Court should be informed of the steps been taken towards bringing the petitioner's complaint to its logical end. I am afraid that the direction to submit the report under Section 173(2) only after obtaining the leave of

this Court would amount to supervision of the investigation rather than mere surveillance. It is true that Paul being a Member of Parliament and owing allegiance to the ruling party in the State could overwhelm the investigating authorities. Therefore, this Court could, at best, ensure that there is a speedy investigation into the case. The High Court cannot supervise the investigation or formulate the opinion in the form of a report under Section 173(2) of the Code as that would impinge on the powers of the Magistrate. The Trial Court would be influenced or bound by such a finding. Moreover, once the investigation process is set in motion, the provisions of the Cr.P.C. are sufficient to take care of all exigencies. If the report submitted under Section 173(2) is found to be unacceptable by the Magistrate, he has the jurisdiction to direct further investigation in the matter. If it is found that the report is credible, the Magistrate can close the matter and bring a quietus to the controversy. In the event the complainant is aggrieved by the order, he is always at liberty to submit a protest petition which is the normal practice followed. Besides, in case his efforts fail the complainant can always approach this Court at that stage to set right the illegalities.

37. I am of the opinion that monitoring the investigation in the manner directed by the learned Single Judge is not permissible in the circumstances of this case as that could impinge upon the powers of the Magistrate. Therefore, I do not agree with the direction of the learned Single Judge that the report under Section 173(2) should not be filed without seeking leave of this Court. It is necessary to repose some faith

in the CID which will now investigate the matter and bring it to its logical end. I trust that the CID officer appointed in this case will leave no stone unturned and conduct a fair and thorough investigation into the case and not one designed only to favour Paul.

38. Accordingly, in my view the judgment of the learned Single Judge is sustainable in so far as it entertains the writ petition, directs the registration of the FIR and investigation by the CID. However, there is no need for this Court to monitor the investigation. The judgement of the learned Single Judge is thus partly sustainable.

39. The point of difference referred to me is answered accordingly.

(Nishita Mhatre, J.)

Later:

After this order is passed, Mr. Srijib Chakraborty, the learned Advocate appearing for Tapas Paul, the Respondent No.7/Appellant, seeks a stay of this order for a limited period.

In my view, there is no need to stay this order. Hence, the prayer for stay is refused.

(Nishita Mhatre, J.)