

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 402 of 2021

Jiramani Devi Petitioner

Versus

1. State of Jharkhand through
Director General of Police, Dhurwa, Ranchi.
2. Superintendent of Police, Latehar.
3. Union of India through Directorate General,
Central Reserved Police Force, Block No. 1
(Central Government Offices), CGO Complex,
Lodhi Road, New Delhi. Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Shailesh Poddar, Advocate.
For the State : Mr. Manoj Kumar, G.A.-III.
For the Resp. No. 3 (UOI): Mr. Prashant Vidyarthi, Advocate.

11/ 14.08.2023 Heard Mr. Shailesh Poddar, learned counsel appearing for the petitioner, Mr. Manoj Kumar, learned G.A.-III appearing for the State and Mr. Prashant Vidyarthi, learned counsel appearing for the respondent No. 3 (Union of India).

2. This petition has been filed for a direction to hand over the case to CBI or Special Branch of CID Officers for further investigation with regard to the death of the husband of the petitioner namely late Bramhadev Singh.

3. Mr. Poddar, learned counsel appearing for the petitioner submits that on 12.06.2021, about 10-11 tribal men of the Piri Village gathered in front of the house of one Rajeshwar Singh in the morning (around 8 O'clock) to go for hunting as a part of celebrating '*Nem Sarhul*', an annual tribal celebration widely celebrated by the tribals in the State of Jharkhand. He submits that the tribal villagers as part of the custom and tradition, hunt small animals from the forest like rabbits, boars etc. to feed their guests. He further submits that for hunting they used a '*bhartua gun*', which is a locally made gun filled with gunpowder before firing and only a single shot can be fired, which is traditionally used to hunt small animals and to scare animals to save the crop. He further submits that on the even day, six people in group of 10-11 people were formed and in one of the group, Bramhadev Singh was aged about 24 years, the deceased and husband of the petitioner was there. He submits that the first group, moved towards the forest for about 50 feet, then suddenly the security personnel

started firing from the other side without giving any warning. He further submits that some of the persons saved their lives by way of hiding themselves behind the mahua tree, Bramhadev, Dinatha and all four raised their hands by placing the gun on the ground and shouted that they were common people, not Maoist, and requested not to shoot. Bramhadev by way of taking out his t-shirt and pant, raised his hands and pleaded to prove that he was completely innocent villager, but the firing continued. He further submits that Dinanath Singh was first hit by a bullet in the hand and then Bramhadev Singh, who is the deceased husband of the petitioner was hit, who fell on the ground as soon as he was shot. He further submits that seeing the tragedy, the other persons fled away from the place of occurrence.

4. Learned counsel appearing for the petitioner further submits that Bramhadev's aunt Panpatiya Devi, reached the spot to see Bramhadev, she was chased away and verbally abused by the security forces. He further submits that villagers saw that the security force personnel came from the forest towards the village and lifted Bramhadev Singh and carried him across the river and the villagers reported that the said Bramhadev was alive by then, because his hands and feet were trembling. He further submits that the security forces placed Bramhadev on the ground across the river and again shot him and the security forces then changed his cloths, after this Bramhadev is seen wearing a pair of blue jeans and yellow t-shirt, which has been widely published in the newspaper as a part of cover-up by the security which amounts to a fake encounter, upon an innocent villager. He further submits that in these backgrounds, the petitioner and the elder brother of the victim were offered an amount of Rs. 30,000/- to Rs. 35,000/- in cash and also promised a job by the local police and they admitted before the family members that they had made a mistake and requested them to take the money and forgive them. He submits that in the aforesaid background, the local police on seeing that the petitioner was not ready to compromise, they have given threats and went ahead by way of lodging of a false case, being Garu P.S. Case No. 24 of 2021 on 13.06.2021 against the six villagers. He submits that the petitioner has made a complaint against the police officials and wrote to the Officer-in-Charge of Garu Police Station,

Latehar, despite of that even after more than five months, the FIR has not been registered and thereafter the petitioner has been compelled to approach the learned Chief Judicial Magistrate, Latehar in complaint case No. 378 of 2021, wherein the learned Chief Judicial Magistrate, Latehar has been pleased to direct to register the case under Section 156(3) Cr.P.C., however, the police sat tight over the matter and the FIR was not registered in spite of the direction of the learned court.

5. When this matter was taken up on 13.01.2022, the following order was passed, which is quoted hereinbelow:-

“This petition has been taken through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic.

Learned counsel for the petitioner submits that on 12.06.2021, around 10 to 11 tribal men of the Piri village gathered in front of the house of one Rajeshwar Singh in the morning around 8 o'clock to go for hunting as a part of celebrating 'Nem Sarhul', an annual tribal festival widely celebrated by the tribals in the State of Jharkhand and suddenly the security force started firing from the other side without giving any warning. He further submits that one Bramhadev Singh (petitioner's husband) was killed in the said firing. He also submits that when the security force realised that innocent villager was shot dead, the security force again assaulted the victim. He further submits that the wife of the deceased made representations before the Deputy Commissioner, Latehar, the Chief Secretary of the State of Jharkhand and the Director General of Police, State of Jharkhand. He submits that fair investigation is not being done.

Let notice be issued upon respondent nos.1 to 3. Mr. Manoj Kumar accepts notice on behalf of respondent nos. 1 and 2 and Mr. Niraj Kumar accepts notice on behalf of respondent no.3.

The respondents are directed to file counter affidavit within four weeks.

Let this matter appear on 17.02.2022.”

6. Non-registration of the FIR, in spite of the order of the learned Chief Judicial Magistrate, Latehar under Section 156(3) Cr.P.C. was further considered by this court by order dated 12.05.2022 and the

supplementary counter affidavit was directed to be filed by the State of Jharkhand and thereafter only, the FIR, being Garu P.S. Case No. 11 of 2022 was registered against the named accused police officials. It has further been disclosed that the case has been entrusted to the CID and both the cases were being investigated by the CID. Further the progress report was called by this court by order dated 04.07.2023, pursuant thereto, supplementary counter affidavit has been filed, where in Annexure-D, it has been admitted that Late Bramhadev Singh died by police bullet, however, the case has been closed stating therein the mistake of fact being Garu P.S. Case No. 11 of 2022 and so far as Garu P.S. Case No. 24 of 2021 is concerned, the final form has been submitted in that case also stating therein that the lack of evidence. In the said Annexure-D, the request has also been made for proper compensation to the petitioner.

7. Learned counsel appearing for the petitioner submits that although, the case is registered against the named erring police personnel, however, by way of Annexure-D, the said case has been closed stating therein the lack of evidence. He submits that in view of said document, the case has already been proved of fake encounter, due to which, Bramhadeo Singh died. He further submits that not only that, he was further tortured and by way of another shot, he has been put to death. He submits that this has happened with the innocent villager in the State of Jharkhand, where promises are being made to protect the Tribals. He further submits that in view of that it is an admitted fact that death of the deceased Bramhadeo Singh has occurred due to police bullet and this court may hand over this matter to the CBI and the petitioner may kindly be provided the suitable compensation.

8. On the other hand, Mr. Manoj Kumar, learned counsel appearing for the State submits that the CID has investigated the matter and thereafter in both the cases, final forms have been submitted stating therein the mistake of fact and lack of evidence respectively. He submits that by the said Annexure-D, annexed with the supplementary counter affidavit, recommendation has been made for proper compensation. He further submits that in view of that this matter may kindly be disposed of.

9. Mr. Prashant Vidyarthi, learned counsel appearing for the respondent No. 3 (UOI) submits that so far as CRPF personnel are

concerned, they were far away from the spot in question, from which, the deceased was heart.

10. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials available on record including the counter affidavit as well as the supplementary counter affidavit and also the contents of the FIR filed by the police officials and the FIR registered pursuant to the efforts made by the petitioner herein. In view of Annexure-D, it is an admitted fact that Bramhadeo Singh died due to bullet injury caused by the police. The FIR has already been registered against the erring police officials and the case has been closed saying the mistake of facts and in view of the admitted position, at least Section 304 IPC is made out, however, the CID has chosen to come to the conclusion to give a clean chit to the erring police officials.

11. Article 21 of the Constitution of India was being considered by the Hon'ble Supreme Court in the case of *People's Union for Civil Liberties Versus State of Maharashtra & Ors.*, reported in (2014) 10 SCC 635, with regard to police encounters causing death of causing grievous injuries, wherein it has been held that such types of cases are required to thorough investigation by the independent agency and guidelines have been issued, at para-31 to 31.16, which are quoted hereinbelow:-

“31. In the light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant PUCL, amicus curiae and the affidavits filed by the Union of India, the State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:

31.1. Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such

intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

31.2. If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

31.3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including bloodstained earth, hair, fibres and threads, etc. related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. Post-mortem shall be videographed and preserved;

(g) Any evidence of weapons, such as guns,

projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

31.4. A magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to the Judicial Magistrate having jurisdiction under Section 190 of the Code.

31.5. The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

31.6. The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

31.7. It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc. to the court concerned.

31.8. After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the investigating officer, must be concluded expeditiously.

31.9. In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

31.10. Six-monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six-monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post-mortem, inquest and, wherever available, the inquiry reports:

(i) Date and place of occurrence.

(ii) Police station, district.

(iii) Circumstances leading to deaths:

(a) Self-defence in encounter.

(b) In the course of dispersal of unlawful

assembly.

(c) *In the course of affecting arrest.*

(iv) *Brief facts of the incident.*

(v) *Criminal case no.*

(vi) *Investigating agency.*

(vii) *Findings of the magisterial inquiry/inquiry by senior officers:*

(a) *disclosing, in particular, names and designation of police officials, if found responsible for the death; and*

(b) *whether use of force was justified and action taken was lawful.*

31.11. *If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.*

31.12. *As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.*

31.13. *The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.*

31.14. *An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.*

31.15. *No out-of-turn promotion or instant gallantry rewards shall be bestowed on the officers concerned soon after the occurrence. It must be ensured at all cost that such rewards are given/recommended only when the gallantry of the officers concerned is established beyond doubt.*

31.16. *If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as abovementioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the Sessions Judge concerned shall look into the merits of the*

complaint and address the grievances raised therein.

12. In view of the above backgrounds, the court has to ensure that accused persons are punished and that might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers, which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. The victim cannot be afforded to be treated as an alien or total stranger to the criminal trial and further not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation. Identical was the situation in the case of *Neetu Kumar Nagaich Versus State of Rajasthan & Ors.*, reported in (2020) 16 SCC 777 and while considering Section 173 of the Cr.P.C., the Hon'ble Supreme Court in paras-10 and 11 held as follows:-

“10. Normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the investigation has not been conducted in a proper and objective manner, as observed in Kashmeri Devi v. Delhi Admn. [Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482 : 1988 SCC (Cri) 864] , fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. The power

may also be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances the court may, in order to prevent miscarriage of criminal justice, direct de novo investigation as observed in Babubhai v. State of Gujarat [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] . A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair. The observations in this context in Babubhai [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] are considered relevant at para 45 as follows: (SCC p. 272)

“45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court [Ganeshbhai Jakshibhai Bharwad v. State of Gujarat, 2009 SCC OnLine Guj 12130] makes a fresh investigation.”

11. In Bharati Tamang v. Union of India [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] , relief was sought in a writ petition to quash the charge-sheet and the supplementary charge-sheet coupled with a mandamus for a de novo investigation by a Special Investigation Team of competent persons having impeccable credentials to unravel the conspiracy. This Court relied on the following extract from Zahira Habibulla H. Sheikh v. State of Gujarat [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , as follows: (Bharati Tamang case [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] , SCC pp. 594-97, paras 33, 37-38 & 41)

“33. ...‘56. ... Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.’ (Zahira Habibulla H. Sheikh case [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , SCC pp. 192-93, para 56)

37. In the decision of Babubhai v. State of Gujarat [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] , in para 40, this Court held that the scheme of investigation particularly Section 173(8) CrPC provides for further investigation and not of reinvestigation but held in para 42 as under: (SCC p. 272)

‘42. Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances.’

38. Therefore, at times of need where this Court finds that an extraordinary or exceptional circumstance arise and the necessity for reinvestigation would be imperative in such extraordinary cases even de novo investigation can be ordered.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, courts have to deal with the same with an iron hand appropriately within the framework of law.

41.5. In order to ensure that the criminal

prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigating Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.”

(emphasis in original)

13. The power of Constitutional Court may extent to direct the re-investigation was again noticed in the case of ***Pooja Pal Versus Union of India & Ors.***, reported in **(2016) 3 SCC 135**, which was considered in para-12 of the aforesaid judgment, which reads as under:-

“12. Even the representation made by the mother of Raju Pal on 26-1-2005 to the Senior Superintendent of Police to hand over the dead body of her son to her for final rites was not heeded too. All fervent requests and appeals made by her in this regard failed. The appellant has alleged that not only she as a widow was given a chance to have a parting glance of the body of her husband, the dead bodies were disposed of hurriedly without any notice to her as well as other family members of Raju Pal presumably to wipe off all possible clues in support of the heinous crime. The appellant was married to the deceased Raju Pal only on 16-1-2005 i.e. hardly a week before the tragic incident.”

14. In view of the above, it is now well settled that if a citizen, , who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential

persons, prays before a Court for a direction of investigation of the said alleged offence by CBI, such prayer should not be granted on mere asking. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. The said question was again the subject matter before the Hon'ble Supreme Court in the case of *Anant Thanur Karmuse Versus State of Maharashtra & Ors.*, reported in (2023) 5 SCC 802, where in paras-34, 40, 42 and 48, it has been held as follows:-

“34. In Himanshu Kumar [Himanshu Kumar v. State of Chhattisgarh, (2023) 12 SCC 592 : 2022 SCC OnLine SC 884] , this Court had occasion to consider the power of the Court to transfer investigation to any other independent agency. After taking into consideration the catena of judgments on the point, it is reiterated that investigation may be transferred to CBI only in “rare and exceptional cases”. In SCC paras 44 to 55, it is observed and held as under:

“44. It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by CBI, such prayer should not be granted on mere asking.

45. A Constitution Bench of this Court, in State of W.B. v. Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , has made the following observations pointing out the situations where the prayer for investigation by CBI should be allowed : (SCC p. 602, para 70)

“70. ... Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such powers should be exercised, but time and again it has been reiterated that such an order is not to be

passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.'

46. *In the above decision, it was also pointed out that the same Court in Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya [Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya, (2002) 5 SCC 521 : 2002 SCC (L&S) 775] , had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency.*

47. *In an appropriate case when the Court feels that the investigation by the police authorities is not in ... a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to hand over the investigation to an independent agency like CBI. By now it is well settled that even after the filing of the charge-sheet the Court is empowered in an appropriate case to hand over the investigation to an independent agency like CBI.*

48. *The extraordinary power of the constitutional courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to CBI to conduct investigation must be exercised with great caution as underlined by this Court in Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic*

Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] as adverted to hereinabove, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

49. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

50. The above principle has been reiterated in K.V. Rajendran v. Supt. of Police [K.V. Rajendran v. Supt. of Police, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] . Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held : (SCC p. 485, para 13)

'13. ... This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State Police lacks credibility and it is necessary for

having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.”

51. Elaborating on this principle, this Court further observed : (K.V. Rajendran case [K.V. Rajendran v. Supt. of Police, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] , SCC p. 487, para 17)

‘17. ... the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.’

52. The Court reiterated that an investigation may be transferred to CBI only in “rare and exceptional cases”. One factor that courts may consider is that such transfer is “imperative” to retain “public confidence in the impartial working of the State agencies.” This observation must be read with the observations made by the Constitution Bench in Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

53. In Romila Thapar v. Union of India [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , one of us, A.M. Khanwilkar, J., speaking for a three-Judge Bench of this Court (Dr D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused “does not have a say in the matter of appointment of investigating agency”. In reiterating this principle, this Court relied upon its earlier decisions in Narmada Bai v. State of Gujarat [Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , Sanjiv Rajendra Bhatt v. Union of India [Sanjiv

Rajendra Bhatt v. Union of India, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , E. Sivakumar v. Union of India [E. Sivakumar v. Union of India, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , and Divine Retreat Centre v. State of Kerala [Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] . This Court observed : (Romila Thapar case [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , SCC p. 776, para 30)

‘30. ... the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation.’

54. It has been held by this Court in CBI v. Rajesh Gandhi [CBI v. Rajesh Gandhi, (1996) 11 SCC 253 : 1997 SCC (Cri) 88 : 1997 Cri LJ 63] , that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

55. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used “sparingly” and only “in exceptional circumstances”. In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power.”

40. Now, so far as the reliance placed upon the decision of this Court in Vinubhai Haribhai Malaviya [Vinubhai Haribhai Malaviya v. State of Gujarat, (2019) 17 SCC 1 : (2020) 3 SCC (Cri) 228] , relied upon on behalf of the respondent-accused is concerned, it is required to be noted that in the said decision, this Court was considering the powers of the Magistrate. Even in the said decision, it is observed and held that there is no good reason given by the Court as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued. It is further observed that power of

the police to further investigate the offence continues right till the stage the trial commences. It is further observed that Article 21 of the Constitution demands no less than a fair and just investigation. In para 42 as such, it is observed and held as under : (SCC pp. 39-40)

“42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] ; Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section

173(8)CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in Amrutbhai Shambhubhai Patel [Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , Athul Rao [Athul Rao v. State of Karnataka, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi), (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.”

42. Applying the law laid down by this Court in Dharam Pal [Dharam Pal v. State of Haryana, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] and Bharati Tamang [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation / reinvestigation / de novo investigation even after the charge-sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court that once the charge-sheet is filed and

the charges are framed, there may not be any order for further investigation/reinvestigation/de novo investigation is accepted, in that case, the accused may see to it that the charges are framed to avoid any fair investigation/fair trial. It would lead to travesty of justice.

48. Be that as it may, even according to the State investigating agency, the further investigation is required. As observed and held by this Court in the aforesaid decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the charge-sheet and framing of the charges cannot be an impediment in ordering further investigation/reinvestigation/de novo investigation, if the facts so warrant.

15. Thus, in view of the above judgments, if a Constitutional Court comes to a conclusion that the investigation has been done in a perfunctory way and it is only an eyewash, the Constitutional Court is duty bound to rise to the occasion to pass an appropriate order.

16. In the case in hand, by way of Annexure-D to the counter affidavit, the CID has itself admitted that the said death has occurred due to the police firing.

17. It is only when this court has intervened thereafter the order, passed by the learned Chief Judicial Magistrate, Latehar under Section 156(3) Cr.P.C. was complied by the State and the case was registered, in which, now it has been admitted that death has occurred due to the firing of the police that too innocent villager has been killed in the State of Jharkhand, where it has been claimed that the Tribals are being protected. The closure report is therefore, in the mind, a clear hasty action leaving much to be desired regarding the nature of investigation, because if a detailed investigation had already been done as is sought to be now suggested, there is no reason why a final report could not have been filed by the investigating agency in the normal course of events and needed an order to do so by the High Court and the court further finds that the closure report, therefore, lacks bona fide and in the interest of justice, the court comes to the conclusion that the case is required to *de novo* investigation to be done to maintain the confidence of the police upon the society and to suggest that the Rule of Law is meant for everybody,

whoever he may be.

18. Accordingly, this court set aside the closure report, arising out of Garu P.S. Case No. 11 of 2022 considering that in Annexure-D to the supplementary counter affidavit, it has been admitted that the death of the deceased has occurred due to police firing. The fresh team of Investigators shall be constituted under a senior police official by the Director General of Police and Secretary, Home Department, Government of Jharkhand consisting of efficient personnel, well conversant with use of modern investigation technology also. No officer, who was part of the investigation team leading to the closure report shall be the part of the team conducted de novo investigation.

19. Much time has already been lapsed and seeing the urgency in the matter, the Court directs that such fresh investigation must be concluded within a maximum period of three months from today and the police report be filed before the court concerned, thereafter the matter shall proceed in accordance with law.

20. Seeing the admission made by the police in Annexure-D of the supplementary counter affidavit that the death of the husband of the petitioner has occurred due to the police firing, the court further considered that this court is required to pass the appropriate order to compensate the petitioner suitably, as such recommendation is also there in Annexure-D to the supplementary counter affidavit, however, learned counsel appearing for the respondents-State is not in a position to say about such compensation in view of Annexure-D to the supplementary counter affidavit. The court further finds that the State of Jharkhand has already having a policy in this regard for compensation upon police atrocities and death in police lock-up, in spite of that only recommendation has been done by Annexure-D to the supplementary counter affidavit and the compensation has not been paid as yet. There are lines of judgment on the point of compensation of the High Courts as well as of the Hon'ble Supreme Court and few of them speak as under:-

21. In view of the above the Hon'ble Supreme Court in the case of *Joginder Kumar Versus State of U.P. & Ors.*, reported in (1994) 4 SCC 260, in paras 8 and 9 held as under:-

“8. The horizon of human rights is expanding. At

the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

*9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider; of meeting the challenge which Mr Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered. In *People v. Defore* [242 NY 13, 24 : 150 NE 585, 589 (1926)] Justice Cardozo observed:*

*“The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. The rule of the *Adams case* (*People v. Adams* [176 NY 351 : 68 NE 636 (1903)]) strikes a balance between opposing interests. We must hold it to be the law until those organs of government by which a change of public policy is normally effected shall give notice to the courts that change has come to pass.”*

22. In ***Kiran Bedi Versus Committee of Inquiry & Anr.***, reported in (1989) 1 SCC 494, the Hon'ble Supreme Court has reproduced an observation in para-25 from the decision in ***D.F. Marion Versus Davis*** as under:-

“25. ‘The right to the enjoyment of a private reputation, unassailed by malicious slander is of

ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.’’

23. Further reputation of an individual is an inseparable facet of his right to life with dignity was the subject matter in the case of ***Vishwanath Agrawal Versus Sarla Vishwanath Agrawal***, reported in **(2012) 7 SCC 288**.

24. The excessive use of force by the police was also the subject matter before the Hon'ble Supreme Court in the case of ***Delhi Judicial Service Association Tis Hazari Court, Delhi Versus State of Gujarat & Ors.***, reported in **(1991) 4 SCC 406**, where in para-39 it was held as under:-

“39. Constitutional hurdles over, now we would revert back to the incident which has given rise to these proceedings. The genesis of the unprecedented attack on the subordinate judiciary arose out of confrontational attitude of the local police against the Magistracy in Kheda. The Chief Judicial Magistrate is head of the Magistracy in the district. Under the provisions of Chapter XII of the Code of Criminal Procedure, 1973, he exercises control and supervision over the investigating officer. He is an immediate officer on the spot at the lower rung of the administration of justice of the country to ensure that the police which is the law enforcing machinery acts according to law in investigation of crimes without indulging in excesses and causing harassment to citizens. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have

been the subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police to take maximum care in exercising that power. The police must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated. See Sunil Batra v. Delhi Administration [(1978) 4 SCC 494 : 1979 SCC (Cri) 155] . In Prem Shankar Shukla case [(1980) 3 SCC 526 : 1980 SCC (Cri) 815] this Court considered the question of placing a prisoner under handcuff by the police. The Court declared that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of custody or escort. The Court emphasised that the police did not enjoy any unrestricted or unlimited power to handcuff an arrested person. If having regard to the circumstances including the conduct, behaviour and character of a prisoner, there is reasonable apprehension of prisoner's escape from custody or disturbance of peace by violence, the police may put the prisoner under handcuff. If a prisoner is handcuffed without there being any justification, it would violate prisoner's fundamental rights under Articles 14 and 19 of the Constitution. To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security of a prisoner. In Prem Shankar Shukla case [(1980) 3 SCC 526 : 1980 SCC (Cri) 815] , Krishna Iyer, J. observed: (SCC p. 529, para 1)

“If today freedom of the forlorn person falls to the police somewhere, tomorrow the freedom of many may fall elsewhere with none to whimper unless the court process invigilates in time and polices the police before it is too late.”

(emphasis in original)

The prophetic words of Krishna Iyer, J. have come true as the facts of the present case would show.”

25. In view of the above facts, reasons, discussions and analysis and also considering Annexure-D to the supplementary counter affidavit, wherein, it has been admitted that the death of the husband of the petitioner has occurred due to police firing, the respondents-State shall pay

a sum of Rs. 5,00,000/- (rupees five lakhs) in favour of the petitioner within four weeks from the date of receipt / production of this order and this shall be implemented through the Home Secretary, Government of Jharkhand, Ranchi within the aforesaid period.

26. With the above observation and direction at paras-18 and 25 of this judgment, this petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]