

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 11652 of 2023

Petitioner :- Preeti Singh

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Devbratt Yadav, Ram Pratap Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Rajendra Kumar-IV,J.

1. Heard Sri Ram Pratap Yadav, learned counsel for the petitioner and learned A.G.A. appearing for the State respondents.

2. Present petition has been filed with the following prayers:-

"(v) Issue a writ order or direction in the nature of Mandamus commanding the Superintendent of Police Jaunpur to ensure the Fair Investigation of the Crime being Crime No. 43 of 2022 lodged on 22.02.2022 Under Section 167, 166, 218, 419, 420, 418, 466, 468, 474, 471, 504, 506, 120-B of Indian Penal Code, Police Station-Badlapur, District Jaunpur by transferring the investigation of some other investigating Officer, in the better interest of justice.

(vi) Issue a writ order or direction in the nature of Mandamus commanding the Superintendent of Police Jaunpur to withdraw the investigation from the Crime Branch in regard to the Crime referred to above so that investigation of the Crime may not be diluted in any manner and real culprits may be booked who are accountable for the commission of the Crime, in the better interest of justice."

3. Initially, the FIR in question was filed by the petitioner herself, however, during investigation by the Crime Branch she was implicated as an accused, therefore, at present it is not in dispute that the status of petitioner is that of an accused in the aforesaid case and she had come forward to challenge the aforesaid first information report by filing Criminal Misc. Writ Petition No. 10367 of 2023 (Preeti Singh vs. State of U.P. and others), which after arguments got dismissed as withdrawn vide order dated 6.7.2023, however, with the observation that no liberty to file fresh for the same cause of action is being granted. The aforesaid order dated 6.7.2023 is quoted as under:-

"1. Heard Sri R.P. Yadav, learned counsel for the petitioner and Sri Rajesh Khare, learned AGA for the State-respondents.

2. The petitioner, by means of this writ petition under Article 226 of the Constitution of India, has invoked the jurisdiction of this Court with prayer to quash the impugned First Information Report dated 22.02.2022 registered as Case Crime No. 43 of 2022, under Sections 167, 166, 218, 419, 420, 418, 466, 468, 474, 471, 504, 506, 120-B IPC, P.S. Badlapur, District Jaunpur and for a direction to the respondents not to arrest the petitioner in pursuance of impugned First Information Report.

3. After some argument, learned counsel for the petitioner submits that he may be permitted to withdraw the present writ petition.

4. Accordingly, the present petition stands dismissed as withdrawn. It is made clear

that no liberty to file fresh for the same cause of action is being given."

4. This clearly proves that the status of the petitioner at present is that of an accused.

5. Submission of learned counsel for the petitioner is that the petitioner is a lady, who is fighting with the anti-social elements and infact she had filed the first information report and therefore, her arrest will affect the investigation of the crime and real guilty person will go scot free. The accused nominated in the first information report are very influential person and therefore, they are avoiding the fair investigation of the crime and have managed to get the same transferred to Crime Branch with ulterior motive and now the petitioner has been made an accused in the present case itself. Submission, therefore, is that a writ of mandamus be issued to ensure fair investigation in Case Crime No. 43 of 2022 and a mandamus be issued to the Superintendent of Police, Jaunpr to withdraw the investigation from the Crime Branch so the investigation may not be diluted in any manner and real culprits may be booked who are accountable for the commission of offence.

6. In support of his arguments learned counsel for the petitioner has placed reliance on judgments of Hon'ble Apex Court in the case of **Pooja Pal vs. Union of India and others (Criminal Appeal No. 77 of 2016)** decided on 22.1.2016 and judgments of this Court dated 18.4.2023 passed in **Criminal Misc. Writ Petition No. 5988 of 2023 (Smt. Sarita Gautam vs. State of U.P. and others)** and dated 12.4.2019 passed in **Application U/S 482 No. 14210 of 2019 (Kali Charan and others vs. State of U.P. and another)**. He has also placed reliance on a judgment of Hon'ble Court in the case of **Babubhai vs. State of Gujarat and others 2010 (12) SCC 254** to submit that even the accused has also right seeking fair investigation.

7. Much emphasis was given by learned counsel for the petitioner by placing reliance on judgment of Hon'ble Apex Court in the case of **Babubhai (supra)** that the investigating agency is duty bound to conduct the fair investigation avoiding mischief and harassment to any of the accused and it is submitted that not only fair trial but fair investigation is also constitutional right guaranteed under Article 20 and 21 of the Constitution of India and therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law. It is next submitted that the investigating agency cannot be permitted to be investigated in tainted and biased manner. Relevant paragraphs relied on by learned counsel for the petitioner in **Babubhai (supra)** are quoted as under:-

"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence

as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).

33. In State of Bihar Vs. P.P. Sharma AIR 1991 SC 1260, this Court has held as under:

"57. Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism.Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power....

60. ...The word 'personal liberty' (under Article 21 of the Constitution) is of the widest amplitude covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily.....

61. An Investigating Officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

34. In Navinchandra N. Majithia Vs. State of Meghalaya & Ors. AIR 2000 SC 3275, this Court considered a large number of its earlier judgments to the effect that investigating agencies are guardians of the liberty of innocent citizens. Therefore, a heavy responsibility devolves on them of seeing that innocent persons are not charged on an irresponsible and false implication. There cannot be any kind of interference or influence on the investigating agency and no one should be put through the harassment of a criminal trial unless there are good and substantial reasons for holding it. Cr.P.C. does not recognize private investigating agency, though there is no bar for any person to hire a private agency and get the matter investigated at his own risk and cost. But such an investigation cannot be treated as investigation made under law, nor can the evidence collected in such private investigation be presented by Public Prosecutor in any criminal trial. Therefore, the court emphasised on independence of the investigating agency and deprecated any kind of interference observing as under:

"17. The above discussion was made for emphasising the need for official investigation to be totally extricated from any extraneous influence..... All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint.

18.A vitiated investigation is the precursor for miscarriage of criminal justice."

(Emphasis added)

35. In Nirmal Singh Kahlon (supra), this Court held that a concept of fair

investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India.

36. In *Manu Sharma Vs. State (NCT of Delhi) (2010) 6 SCC 1*, one of us (Hon'ble P. Sathasivam, J.) has elaborately dealt with the requirement of fair investigation observing as under:-

"197. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India....

199. It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not *prima facie* be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society....

200. The Court is not to accept the report which is *contra legem* (sic) to conduct judicious and fair investigation....

201. The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation.....".

37. This Court in *K. Chandrasekhar Vs. State of Kerala & Ors. (1998) 5 SCC 223*; *Ramachandran Vs. R. Udhayakumar & Ors. (2008) 5 SCC 413*; and *Nirmal Singh Kahlon (supra)*; *Mithabhai Pashabhai Patel & Ors. Vs. State of Gujarat (2009) 6 SCC 332*; and *Kishan Lal Vs. Dharmendra Bafna (2009) 7 SCC 685* has emphasised that where the court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the court may direct a further investigation under Section 173(8) Cr.P.C., even transferring the investigation to an independent agency, rather than directing a re-investigation. "Direction of a re-investigation, however, being forbidden in law, no superior court would ordinarily issue such a direction."

38. Unless an extra ordinary case of gross abuse of power is made out by those in charge of the investigation, the court should be quite loathe to interfere with the investigation, a field of activity reserved for the police and the executive. Thus, in case of a *mala fide* exercise of power by a police officer the court may interfere. (vide: *S.N. Sharma Vs. Bipin Kumar Tiwari & Ors. AIR 1970 SC 786*).

39. In *Kashmeri Devi Vs. Delhi Administration & Anr. AIR 1988 SC 1323*, this Court held that where the investigation has not been conducted in a proper and objective manner it may be necessary for the court to order for fresh investigation with the help of an independent agency for the ends of justice so that real truth may be revealed. In the said case, this court transferred the investigation to the CBI, after coming to the conclusion that investigation conducted earlier was not fair.

40. The above referred to judgments of this Court make it clear that scheme of investigation, particularly, Section 173(8) Cr.P.C. provides for further investigation and not of re- investigation. Therefore, if the Court, comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation and ordinarily not for re-investigation.

41. The expression ordinarily means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes "extra-ordinary" or "special circumstances". (vide: Kailash Chandra Vs. Union of India AIR 1961 SC 1346; Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Bombay AIR 2001 SC 196; and State of A.P. Vs. Sarma Rao & Ors. AIR 2007 SC 137).

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

43. In the instant case, admittedly, the High Court has given detailed reasons for coming to the conclusion that the investigation has been totally one-sided, biased and mala fide. One party has been favoured by the investigating agency. The natural corollary to this finding is that the other party has been harassed in an unwarranted manner. Thus, the cause of the other party has been prejudiced.

44. The charge sheets filed by the investigating agency in both the cases are against the same set of accused. A charge sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge sheet. Such investigation would ultimately prove to be precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and accused got injured.

45. Not only the 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. Investigating agency cannot be permitted to conduct an investigation in 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.

46. Thus, the order of the High Court requires modification to the extent that the charge sheets in both the cases and any order consequent thereto stand quashed. In case, any of the accused could not get bail because of the pendency of these appeals before this Court, it shall be open to him to apply for bail or any other relief before the appropriate forum. In case, such an application is filed, we request the appropriate court to decide the same expeditiously and in accordance with law.

47. It is further clarified that those persons who were arrested in connection with CR No. I-155/08 would not stand arrested in connection with CR No. I-154/08. However, if during the fresh investigation, any incriminating material against any person is discovered, the Investigating Authority may proceed in accordance with law. It shall be open to the accused to approach the appropriate forum for any interim relief as per law."

(emphasis supplied)

8. The fact relevant in **Babubhai (supra)** is that after investigation two charge-sheets were filed and both were against one particular community in a case of clash between two communities on a public road on the issue of plying their rickshaws in the area surrounding Dedhal village of district Ahmedabad. The High Court found that the investigation was not fair, hence transferred the case to State CB, CID for further investigation. However, noticeably the High Court did not quash the charge-sheets. In this background the Hon'ble Supreme Court observing that none of the parties raised doubt that the findings of the High Court and that investigation was not done in a fair manner, rather all of them conceded to the same, quashed the charge-sheets (an outcome of such faulty investigation) while upholding the direction of the High Court transferring of cases to State CB, CID.

9. The other previous or subsequent judgments are also on the same line and cover the observations as made in the abovequoted paragraphs in the case of **Babubhai (supra)**.

10. Before proceeding further it would be appropriate to take note that the judgments relied on by learned counsel for the petitioner are the cases where the 'informant' has come forward to challenge the proceedings and most of them relates to direction for further investigation or transfer of the investigation.

11. In the case of **Pooja Pal (supra)** the 'informant' has come forward, wherein after hearing the matter was entrusted to CBI with the task of *de novo* investigation.

12. In the case of **Smt. Sarita Gautam (supra)** again the 'informant' has come forward.

13. In the present case it is the 'accused', who has come forward at the initial stage of the investigation itself.

14. All cases cited by learned counsel for the petitioner are related to further investigation and NOT TO INITIAL STAGE of investigation.

15. In a recent judgment in the case of **State through Central Bureau of Investigation vs. Hemendra Reddy and another 2023 SCC Online SC 515** the Hon'ble Apex Court has observed while dealing with the case of further investigation after final report was submitted and it was observed that the further investigation is merely continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution of India. The principle of double jeopardy would not be applicable to the further investigation. It was also observed that there is nothing in Cr.P.C. to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) Cr.P.C. Paragraph 83 of **Hemendra Reddy (supra)** is quoted as under:-

“83. We may summarise our final conclusion as under:

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.”

(Emphasis supplied)

16. The same view was expressed by Hon'ble Apex Court in the latest judgments as well in the case of **Anant Thanur Karmuse vs. State of Maharashtra and others, 2023 (5) SCC 802**. Paragraph 49 whereof is quoted as under:-

"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 re- investigation, 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 analyzed to decide the needfulness of further investigation or re-investigation 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."

17. We have made reference to all such cases to highlight the fact that the rulings relied on by learned counsel for the petitioner are relate to either further investigation or transfer of the investigation directed by the Magistrate after submission of the police report, or transfer or re-investigation or *de novo* investigation directed by the constitutional court.

18. In the present case, the question is as to whether the accused person has any right or hearing at the investigation stage or to question the manner in which evidence is being collected by claiming a direction for fair investigation?

19. The Hon'ble Apex Court in the case of **Union of India and another vs. W.N. Chadha 1993 Supp (4) SCC 260** has specifically held that under the scheme of Chapter XII of the Code of Criminal Procedure, there are various

provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer. Chapter XII provides for "Information to the police and powers to investigate".

20. Relevant paragraphs of **W.N. Chadha (supra)** are quoted as under:-

"90. Under the scheme of Chapter XII of the Cr.P.C. there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.

91. In State of Haryana v. Bhajan Lal [1992] Supp. 1 SCC 335 this Court to which both of us (Ratnavel Pandian and K. Jayachandra Reddy, JJ.) were parties after making reference to the decision of the Privy Council in Emperor v. Khwaja Nazir Ahmad and the decision of this Court in State of Bihar v. J.A.C. Saldanha has pointed out that

"...the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation...."

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

94. Under Section 235(2), in a trial before a Court of Sessions and under Section 248(2) in the trial of warrant cases, the accused as a matter of right, is to be given an opportunity of being heard. Unlike the above provisions which we have referred to above by way of illustration, the provisions relating to the investigation under Chapter XII do" not confer any right of prior notice and hearing to the accused and on the other hand they are silent in this respect.

95. It is relevant and significant to note that a police officer, in charge of a police station, or a police officer making an investigation can make and search or cause search to be made for the reasons to be recorded without any warrant from the Court or without giving the prior notice to any one or any opportunity of being heard. The basic objective of such a course is to preserve secrecy in the mode of investigation lest the valuable evidence to be unearthed will be either destroyed or lost. We think it unnecessary to make a detailed examination on this aspect except saying that an accused cannot claim any right of prior notice or opportunity of being heard

inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law.

96. True, there are certain rights conferred on an accused to be enjoyed at certain stages under the CrPC - such as Section 50 whereunder the person arrested is to be informed of the grounds of his arrest and to his right of bail and under Section 57 dealing with person arrested not to be detained for more than 24 hours and under Section 167 dealing with the procedure if the investigation cannot be completed in 24 hours - which are all in conformity with the 'Right to Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. But so long as an the investigating agency proceeds with his action or investigation in strict compliance with the statutory provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Cr.P.C.

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

120. For all the aforesaid reasons we unhesitatingly set aside the order of the High Court quashing the letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge. The respondent who is a named accused in the FIR has no locus standi at this stage to question the manner in which the evidence is to be collected. However, it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 of the Code indicating that an offence appears to have been committed."

(emphasis supplied)

21. Perusal of the abovequoted paragraphs would clearly indicate that Chapter XII Cr.P.C. provides for information to the police and powers to investigate and this chapter consists of Section 154 to 176, which covers the area from lodging of first information report in a cognizable case, information as to non-cognizable cases and investigation of such cases, police officer's power to investigate and submission of police report as well.

22. As already noticed, Hon'ble Apex Court in paragraph 90 of **W.N. Chadha (supra)** clearly held that under the scheme of Chapter XII Cr.P.C. there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of investigation by a police officer. It has also been observed that the field of investigation of any cognizable offence is exclusively within the domain of investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the

provisions relating to investigation.

23. Hon'ble Apex Court in the case of **State of Bihar vs. J.A.C. 1980 (1) SCC 554** has also held that the accused has no right in regard to the manner and right of the fair investigation. The other exceptions, which are not relevant regarding complaint case etc., have also been noticed. Certain rights of the accused persons have also been noticed, which are all in conformity with the 'Right of Personal Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution of India and valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. It has also been observed that if prior notice of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law relating to the investigation lifeless, absurd and self-defeating.

24. In **W.N. Chadha (supra)** the letter rogatory was under challenge before the High Court. While setting aside the order of the High Court letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21st/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge it was clearly held that the respondent, who is a named accused in the first information report has no locus standi at this stage to question the manner in which the evidence is to be collected, however, it was observed that it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 Cr.P.C. indicating that an offence appears to have been committed.

25. In the case of **C.B.I. and another vs. Rajesh Gandhi and another 1996 (11) SCC 253** Hon'ble Apex Court has held as under:-

"There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with."

(Emphasis supplied)

26. Thus, it is very much clear that at the stage of investigation the accused has no right to be heard and she cannot come forward to claim fair investigation only on the ground that according to her the matter has wrongly been handed over to the Crime Branch and simply for the reason that initially the petitioner was informant and subsequently she had been arrayed as accused in the first information report in question. From perusal of record of petition we do not find any ground worth withdrawing the investigation from the Crime Branch and to transfer the same to some other agency in view of the law as discussed hereinabove.

27. As already noticed the petitioner had come forward to challenge the first information report as an accused, which, after arguments was got dismissed as

withdrawn vide order dated 6.7.2023, however, with the observation that no liberty to file fresh for the same cause of action is being granted.

28. From the discussions made hereinabove it is clear that the present petition filed by the accused is not maintainable for the relief as prayed for and is accordingly dismissed.

Order Date :- 3.8.2023

Lalit Shukla