

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.68 of 2021

Arising Out of PS. Case No.-311 Year-2020 Thana- KOTWALI District- Munger

AMAR NATH PODDAR Son of Shri Hari Lal Poddar Resident of Lohapatti,
Bekapur, Munger, Bihar- 811201.

... .. Petitioner/s

Versus

1. The State of Bihar through its Additional Chief Secretary Having its Office Situated at- Old Secretariat, Patna- 800001, Email Id- secy-home-bih@nic.in, Phone No.- 0612-2294050.
2. The Bihar Police through its Director General of Police Having its office situated at- Police Headquarters, Sardar Patel Bhawan, Nehru Marg, Patna- 800023, Email ID- dgp-bih@nic.in, Phone No.- 0612-2217833
3. The Central Bureau of Investigation (CBI), through its Superintendent of Police, Patna, Bihar Having its office situated at- Dr. S.K. Singh Path, Bailey Road, Patna- 800022, Email ID- hozpat@cbi.gov.in, Phone No.- 0615-2235577.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Alakh Alok Srivastava, Adv. Mr. Manas Prakash, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, A.G. Mr. Anjani Kumar, AAG-4 Mr. Nadim Seraj, GP-5 Mr. Shailesh Kumar, AC to GP-5 Mr. Shailendra Kumar Singh, AC to AAG-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 07-04-2021

This writ application has been preferred for issuance of a writ, order or direction in the nature of a writ of mandamus commanding the respondent no. 3, Central Bureau of Investigation (in short "C.B.I.") to conduct a free, fair, independent and effective investigation, in a time bound manner, under monitoring of this Court; further prayer has been made to direct respondent nos. 1 and 2 to immediately disburse



a compensation of Rs. 5 crore to the petitioner, for the brutal killing of the young son of the petitioner in the alleged police firing. Petitioner has prayed for such other order(s) or relief(s) as may be deemed fit and proper in the facts and circumstances of the case.

Case of the Petitioner

Briefly stating, it is the case of the petitioner that on 26.10.2020 while his son namely Anurag Kumar, aged about 18 years was peacefully watching the procession of immersion of Maa Durga idol, he was killed in a police firing. The petitioner alleged that the police personnel led by the then Superintendent of Police (S.P.) of Munger, namely, Ms. Lipi Singh was insisting the procession for hurriedly completing the Maa Durga idol immersion in the night itself without following the traditional hierarchical procession which led to a chaos. The son of the petitioner was present in the immersion procession near DCM Showroom at Deen Dayal Chowk and he was peacefully watching the Maa Durga idol immersion procession. He was completely unarmed and was peacefully standing at that place, out of his devotion.

The petitioner has alleged that the Munger Police led by the then S.P. did not follow the procedures provided under the



Bihar Police Manual in the matter of resorting to firing on a crowd, they indulged in indiscriminate and brutal firing on the Maa Durga Devi devotees. The petitioner has named one Sushil Kumar Singh, a police officer, who was officer in-charge of Basudevpur Outpost and it is alleged that he had fired upon the son of the petitioner. The petitioner refers to the photographs of the body of his son lying in his mother's lap to submit that it was a brutal murder in the hand of the police who resorted to firing unauthorizedly and without putting a word of caution to crowd.

The petitioner refers to the video footage which emerged in the social and electronic media in which few officials of Munger Police and also a person in white cloth (later on identified as one Kumar Krishna) were seen brutally beating the innocent and unarmed Maa Durga devotees near an idol, in the middle of the road. He has also placed before this Court the internal report of the Central Industrial Security Force (hereinafter called 'CISF') which states that the bullet firing was initiated by Munger Police. A copy of the newspaper report has been brought on record as Annexure '4'. It is stated that two days after the alleged incident, the then S.P., namely, Ms. Lipi Singh and the then



District Magistrate were transferred under order of the Election Commission of India.

Lodgment of F.I.R.

It is stated that on 27.10.2020 the post-mortem of the petitioner's son was conducted at Sadar Hospital, Munger where his cause of death was mentioned as injuries caused by firearm. Petitioner has alleged that while the petitioner was receiving the body of his son at the Sadar Hospital, Munger, few police officials of the Munger Police fraudulently and deceitfully obtained petitioner's signature on a paper. According to him, he could not even understand the ulterior motive of the police personnel of Munger Police, however, subsequently the petitioner came to know that the Munger Police had converted the said signed document in a complaint and after four days registered F.I.R. No. 311 of 2020 dated 31.10.2020 at P.S. Sadar, Kotwali, District-Munger under Section 302/34 I.P.C. and Section 27 of the Arms Act, in connection with the murder of the petitioner's son against unknown accused persons.

The petitioner claims that he had been repeatedly requesting the concerned officials of Munger Police to register F.I.R. against the guilty police personnel for brutal killing of his son. It is, then stated that the entire incident of the Munger firing



was being inquired into by the Commissioner, Magadh Division hence vide his complaint dated 31.10.2020, the petitioner requested the Commissioner, Magadh Division-cum-Inquiry Officer of Munger firing incident to direct for registration of F.I.R. against the above named police personnel. A copy of the complaint dated 31.10.2020 submitted by the petitioner to the Commissioner, Magadh Division-cum-Inquiry Officer of Munger firing incident has been enclosed as Annexure '7' to the writ application.

The petitioner wrote letters in this regard to the various authorities. It is alleged that despite lapse of two months from the aforesaid date of brutal killing of the petitioner's son, no F.I.R. was registered against named policeman or against any other culprit and no arrest was made in this regard as also no effective step has been taken by the Munger Police and Munger Administration to impart justice to the petitioner. In this background, the present writ application has been preferred.

Mr. Alakh Alok Srivastava, learned counsel assisted by Mr. Manas Prakash, learned advocate has led the argument on behalf of the petitioner. Having narrated the entire facts, as stated above, learned counsel has submitted that the alleged incident took place as the police personnel led by the then S.P.,



Ms. Lipi Singh did not follow the procedure and the safeguards provided under the Bihar Police Manual to control the crowd. There was no coordination between the district administration and the district police. The devotees in the immersion procession were brutally assaulted causing injury to many persons. Police personnel opened fire on the procession of devotees, prior to firing police did not resort to any alternative method to control the crowd, rather the devotees in the crowd were being mercilessly beaten, here also the mandates provided under the Bihar Police Manual were not followed.

Learned counsel submits that a free and fair investigation and trial of the case is a fundamental right of a victim. Although, in the writ petition, no specific statement has been made but in course of hearing, learned counsel has made submissions that because of the political clout and connections of the then Superintendent of Police, the investigation has not progressed.

According to him, the then S.P. Ms. Lipi Singh is prima-facie indulged in excess use of police force on the devotees on 26.10.2020. This has been made one of the grounds (ground number XIII) in the writ application. It is submitted that there is a reasonable apprehension in the mind of the petitioner that he is



not likely to get justice if the matter is allowed to be investigated by the Bihar Police.

It is submitted that the enquiry report submitted by the Commissioner, Magadh Range has been lying with the State respondent but they have not acted upon the same and no action has been taken against the erring officials.

It is submitted that the A.S.I. rank officer of Kotwali P.S. was entrusted with the investigation who did not act at all for two months. He did not collect any material such as blood samples from earth and road or CCTV footage from the nearby places and in fact the procedures required to be followed in course of investigation of serious cases such as murder/killing as laid down in the Police Manual have not at all been followed. As an eye-wash, a team of eight police personnel was constituted under leadership of the newly transferred S.P. and directions were issued to the SIT to conduct investigation on several points but such direction of the supervising authority i.e. D.I.G., Munger were completely ignored.

It is submitted that the I.O. did not visit the hospital to record statement of the injured who had been brought to hospital by their family members. Even the deceased was brought to hospital by his family only. It was made a 'special report' case



on paper but a very shoddy and perfunctory kind of investigation has been done. The 'special report' cases are brought to the notice of the senior officers at headquarter level for information and further inputs but in this case no action was taken at the headquarter level.

According to the petitioner, the then S.P. Munger and the I.O./SIT led by the present S.P., Munger have allowed the crucial evidences to disappear over the period in order to save the accused police personnel.

Learned counsel has relied upon a number of judgments of the Hon'ble Supreme Court and has referred the propositions of law laid down in **R.S. Sodhi, Advocate Vs. State of U.P. 1994 (Supplementary) (1) SCC 143, Mohammed Anis Vs. Union of India and others 1994 Supp (1) SCC 145, West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal and Ors. (2010) 3 SCC 571; Narmada Bai Vs. State of Gujarat and Ors. (2011) 5 SCC 79; Rubabuddin Sheikh Vs. State of Gujarat and Ors. (2010) 2 SCC 200 and Ramesh Kumari Vs. State (N.C.T. of Delhi) and Ors. (2006) 2 SCC 677.**

It is his submission that the investigation be entrusted to an independent agency i.e. C.B.I. and the same be monitored to



ensure timely conclusion of investigation and that no interference at political or executive level takes place in course of investigation.

One of his grievances of the petitioner is that till date the State respondents have not provided any ex-gratia or interim compensation as a solace to the victim family.

Stand of the State respondents.

A counter affidavit has been filed on behalf of respondent nos. 1 and 2. It is sworn by the Deputy Inspector General, Human Rights. In the counter affidavit, a stand has been taken that the Home Department, Govt. of Bihar vide Memo No. 115 dated 08.10.2020 had issued instructions to complete the traditional Durga Puja immersion on 25.10.2020 and the District Administration was asked to ensure the compliance of guidelines issued by the Election Commission of India to conduct free and fair poll and to ensure that it is not violated due to any programme related to Durga puja. It is stated that the District Administration of Munger had issued joint order vide Memo No. 1716/C, dated 22.10.2020 under the signature of the then District Magistrate and the then Superintendent of Police, Munger to complete the traditional Durga Puja immersion on 25.10.2020 by late night. Annexure 'A' and 'B' to



the counter affidavit are the copies of the memos referred in the counter affidavit.

It is stated that on 26th October, 2020, problem of law and order arose during immersion of God Durga procession. People participation in procession turned into unlawful and unruly assembly who started pelting stones and opened fire on security forces. Some persons received injuries caused by firearms and hard/blunt substance. According to the counter affidavit, one person who received firearms injury on his body was later on identified as son of this petitioner, he was brought to hospital where he was declared dead. In this connection one F.I.R. being Kotwali (Munger) P.S. Case No. 298 of 2020 dated 27.10.2020 under Section 147/148/149/323/324/325/326/307/332/333/353/302/120(B), I.P.C. and Section 27 of the Arms Act was registered on the basis of written statement of the Sub-Inspector of Police, Brajesh Kumar Singh, Station House Officer, Mufassil (Munger) Police Station.

It is stated that one pointed portion of ammunition was recovered from the body of the injured Chandan Kumar which has been sent to the Forensic Science Laboratory, Bihar, Patna for scientific examination vide Memo No. 44 dated 22.02.2021.



According to the affidavit, three persons, namely Chandan Kumar, Ashutosh Kumar and Saurabh Kumar were injured in the incident of stone pelting and firing by assembled crowd which would be evident from the injury report provided by Superintendent of the Sadar Hospital, Munger.

According to the counter affidavit, illegal arms were recovered from the place where unlawful mob had gathered and subsequently fled away. In this connection Kotwali P.S. Case No. 299 of 2020 dated 27.10.2020 under Section 25(1-B)A, 26 (1-B), 27 and 35 of the Arms Act has been registered on the basis of written statement of Sub-Inspector of Police Sushil Kumar, In-charge, Basudevpur Outpost (Kotwali Police Station). Annexure 'G' to the counter affidavit is the copy of the F.I.R. and it shows recovery of one country made pistol and one loaded country made pistol made of steel and five empty cartridges of .315 as also one 12 bore cartridge.

It is stated that Munger Police did not resort to firing nor it was informed by any other police personnel deployed on duty on the said occasion to have fired but it has come to light during the investigation of the case that thirteen rounds were fired in the air by the 'CISF' personnel to control the unlawful mob and for their self-defence.



It is further stated that on the basis of video footage one F.I.R. bearing Kotwali Munger P.S. Case No. 312 of 2020 dated 01.11.2020 has been registered under Section 147/342/323/153(A)/295(A) and 307 of the Indian Penal Code and this case is also pending investigation. In paragraph '25' of the counter affidavit it is reiterated that no police had fired towards or on the devotees of the Maa Durga by police force.

Developments during pendency of the writ petition

This case was listed for the first time before this Court on 12.02.2021. On going through the order dated 25.01.2021 passed by Hon'ble Supreme Court in SLP (Cr.) No. 36/2021 this Court noticed that Hon'ble Apex Court desired that the case be decided by this Court preferably within two months. Thus, with the consent of the parties dates were fixed for completion of pleadings and hearing. Vide it's order dated 12.02.2021, this Court called upon the State respondents to file their counter affidavit with all such materials which they may desire to place on the record in connection with this case.

It appears that soon after the order dated 12.02.2021, the R-2 decided to transfer the investigation of this case and the other three connected cases to the Crime Investigation Department (C.I.D.) of Bihar police vide letter no.63 dated



17.02.2021 and letter no.92 dated 23.02.2021.

In course of hearing, thus, a counter affidavit has been filed on behalf of the C.I.D. which has been sworn by S.P. (C.I.D., Bihar, Patna). It discloses that further investigation of Kotwali P.S. Case No. 298 of 2020 and Case No. 311 of 2020 have been handed over to the C.I.D. and Weaker Section Division. According to the State respondents the cases are under investigation by the C.I.D., which specialises in investigation of complex and heinous cases. It is further stated that C.I.D. has taken charge of the investigation with effect from 03.03.2021.

A Special Investigation Team (S.I.T.) under the command of Shri Pramod Kumar Rai, Dy. S.P., C.I.D. has been constituted vide Memo No. 382/C dated 02.03.2021 and the Chief Investigation Officer of the S.I.T. has prepared an investigation action plan for the investigation of the two cases. High level committee of C.I.D. has reviewed the action plan of S.I.T. and after reviewing, 53 points investigation plan has been finalised and handed over to the S.I.T. on 16.03.2021 for investigation in speedy manner and to submit progress report within 15 days.

Case lodged against police officers

It is further submitted that Kotwali P.S. Case No. 312 of



2020 has been registered against the police officers and constables including others for alleged high handedness and use of disproportionate force against the processionists on the basis of a viral video. In this regard it is stated that as the investigation progresses and evidences are collected against the erring official he/she may be made accused in the said case. In paragraph '12' of the counter affidavit it is stated that the S.I.T. has been directed to investigate Kotwali P.S. Case No. 311 of 2020 (the case of the petitioner) in the allegations against one of the police officers who had allegedly killed the son of the petitioner. The S.I.T. shall also conduct scientific investigation and would gather information in this regard.

The case diaries and the inquiry report of the Commissioner, Magadh Division has been provided to this Court in a sealed cover in order to appreciate the submissions of the rival parties.

Action taken on the basis of enquiry report

It is stated that in view of the Commissioner's inquiry report the Home Department vide its' Letter No. 2338, dated 13.03.2021 sought response from eight police officers including the then Superintendent of Police and General Administration Department has been requested to obtain response from the then



District Magistrate, Munger, the then S.D.O., Sadar Munger and the then A.D.M., In-charge of the Control Room, Munger.

Case against the key witnesses

As regards the complaint that key witnesses of the police firing case are being framed in illegal liquor cases by District police, it is stated in the counter affidavit that vide Bihar Police Headquarter Memo No. 99, dated 21.03.2021, C.I.D. and Weaker Section Division has been directed to take over the investigation of Munger Jamalpur P.S. Case No. 141 of 2020 and direction has been issued to the S.I.T. constituted for purpose of this case to take over the investigation of the said case as well.

Submissions of learned Advocate General

At this stage, this Court would record that in course of hearing learned Advocate General has categorically submitted that he would not take much effort to defend the way investigation has been done by Munger Police. The emphasis of the argument of learned Advocate General is that since the investigation has been transferred to C.I.D. of Bihar Police and it is headed by a competent officer such as the present Additional Director General, this Court in the facts of the present case need not exercise its power under Article 226 of



the Constitution of India to transfer the investigation to C.B.I.

Learned Advocate General submits that instead of transferring the investigation to C.B.I., this Court may monitor the investigation, allow six weeks time to the CID to proceed with the investigation and after perusal of the report of the C.I.D. if this Court finds that the investigation is not going in natural direction with adequate speed or that there is any attempt from any corner to influence the investigation, this Court may consider passing of appropriate order including order to transfer the investigation.

Learned Advocate General further submits that until conclusion of investigation of these cases the present A.D.G. Sri Vinay Kumar shall not be transferred to any other department and will be acting fully independent without any interference or imposition in taking decisions pertaining to the investigation of these cases. The A.D.G. may constitute/reconstitute the S.I.T. and in case any officer in police/administration in any rank posted at Munger is found non-cooperative with the investigation, on the request of A.D.G., C.I.D., to facilitate proper investigation the said officer shall be transferred.

In course of hearing when it was pointed out to learned Advocate General in presence of the A.D.G. Mr. Vinay Kumar



that there are some police officers against whom there are allegations and/or earlier they were connected with the investigation and it is alleged that they purposely allowed the evidences to disappear, the learned A.G., in presence of ADG, CID assures this Court that in course of investigation by the SIT of CID if it is found that due to laches on the part of the earlier I.O./SIT of Munger Police the evidences have disappeared, the CID would take necessary legal action in this regard against those police officials who might have caused the evidences to disappear.

The ADG, CID has endorsed the submission of learned A.G. When it was pointed out to learned A.G. that some of the police officers who were connected with the earlier investigation or against whom there are allegations are still posted in Munger, learned A.G. prayed for a short adjournment to seek instruction on this issue. On 25.03.2021, the learned A.G. produced before this Court the memo no.564 dated 24.03.2021 showing transfer of five police officers outside the district of Munger. As regards the S.P., Munger who was heading the SIT earlier though time was again taken to seek instruction but lastly this Court was communicated that the State respondents are not willing to transfer S.P., Munger, reason



advanced for the same is that now the investigation being in the hand of CID, the S.P. Munger has no role to play in course of investigation.

Since, it has transpired that the then DIG Munger who was the supervising authority of case, had issued certain directions to the I.O./S.I.T. under leadership of S.P. Munger but those directions were not complied with, the learned A.G. having realized that there are strong observations of the supervising authority against the I.O./S.I.T. which is further reflecting from the manner in which investigation has been done so far, did not defend the I.O./SIT and rightly so because the investigation on all such issues which may arise in course of further investigation by CID/CBI as the case may be are yet not concluded.

Stand of the ADG, CID

The ADG, CID who has remained present in Court throughout the hearing of the case has made categorical submissions that in the present administrative structure of the CID, it is being headed by an officer in the rank of Director General of Police and Additional Director General of Police is the head. The Department acts totally independently through its own set-up of the senior officers in the rank of I.G., D.I.G., S.P.



and others who are posted at headquarter level. Whenever any investigation is taken up by the CID, a team constituted by the ADG camps at the place of investigation and under continuous guidance of senior officers and ADG the investigation takes place. This Court has been informed that the files relating to an investigation of cases by the CID are not placed before the Director General of Police or any other authorities and as such there is no chance of CID coming under pressure from any corner.

While answering a query of this Court, the ADG, CID has informed that all 'special report' cases are supervised by the S.P. and it is he who is the master of the case and it is his baby. Therefore, it is admitted in course of hearing that earlier SIT constituted by the DIG, Munger Range was being headed by the S.P. Munger. As regards the routing of the communications and instructions to the SIT of the CID, the ADG, CID has informed that none of the communications and instructions will pass through the S.P. Munger, though, for purpose of arrest of an accused or raid at a particular place the CID may require assistance of the local police administration.

A reading of the Police Manual would show that the offices of (i) Fingerprint Bureau (ii) Laboratory (iii) Photo



Bureau (iv) Dog Squad whose branches can be set up in other districts also, Missing Persons Bureau and Juvenile Aid Bureau are attached with the CID.

Opposition of the petitioner-apprehension expressed against C.I.D.

Learned counsel for the petitioner has opposed the submission of learned Advocate General. Pointing out the statements made in paragraph '11' of the first counter affidavit filed on behalf of the State respondents, it is submitted that the statements made therein support the police version of the case even though the investigation is yet to come to an end. Learned counsel submits that it shows the State respondents have made up their mind to accept the police version hence the C.I.D. which is under the control of the Government of Bihar is not likely to conduct an enquiry independently in a free and fair manner.

It is further submitted that the then S.P. happens to be close kith and kin to the party head of the ruling party in the State, thus the petitioner has a reasonable apprehension that because of her involvement the investigation did not take place in right direction, no action was taken on the inquiry report of the Commissioner, Magadh Division for five months.



It is further submitted that the SIT constituted by C.I.D. is being headed by a Dy.S.P. rank officer. Thus, there are reasons to believe that a Dy.S.P. rank officer would not be able to muster enough courage to examine senior officers in the rank of S.P. and above.

Reply of learned Advocate General

As soon as the above submissions on behalf of the petitioner were advanced, learned A.G. rose to make a statement that what have been stated in paragraph '11' of the first counter affidavit are being withdrawn. Learned A.G. further submitted that such statements are incorporated because of mistake in understanding the instructions. According to him, the State respondents are duty bound to ensure free and fair investigation without any preconceived mind. On the issue of the connection of the then S.P. with the head of the Ruling Party, learned A.G. submits that there is no material to show that the I.O. has been influenced by any person so far, moreover these submissions are being made without there being any statement in the writ application and without making them party in the writ petition.

Further, as regards the Dy.S.P. rank officer of C.I.D. heading the investigation, it is submitted that in course of investigation such officers who are in higher rank shall be



questioned by the A.D.G. and other senior officers at headquarter level and they would be going to 'Munger' whenever required in connection with the investigation of these cases.

This Court has been further informed that after taking over the investigation on 03.03.2021, the SIT, C.I.D. has recorded statements of some witnesses in video.

Submissions as regards 'Compensation'

On the prayer for the award of compensation to the petitioner, learned A.G. has submitted that in the present case the facts reveal that son of the petitioner was there in the procession and presently the matter is under investigation. According to him, the facts of the present case would not be covered within the framework of the scheme of the government so as to award any ex-gratia or interim compensation to the petitioner.

Learned counsel for the petitioner has opposed the stand of the State. It is submitted that the son of the petitioner was peacefully watching the Maa Durga Idol Immersion procession. The procession of the local people who were devotees of Maa Durga was allowed and permitted to proceed for immersion of Maa Durga idol. It was a religious procession



and the devotees who were involved in Pooja at Munger for decades with lot of reverence and veneration were taken by surprise as the police indulged in use of excess force in order to compel the procession to complete immersion of Maa Durga idol during the night itself. It is submitted that the State government is granting ex-gratia compensation to the victims of accident.

It is submitted that the 'CISF' who was available there in connection with ensuing assembly election was requisitioned by Munger Police to control the crowd. It is the 'CISF' report that a quarrel took place between local police and the devotees and it was Munger Police who had first fired whereafter the 'CISF' personnel had fired 13 rounds in the air. Submission is that the firing was done unauthorizedly as no Magistrate was there with the police. The son of the petitioner suffered fire arm injury. Neither from his possession nor from the place where he suffered fire firm assault any fire arm or cartridges live or empty were recovered. Son of the petitioner was not identified indulging in any violence.

It is his submission that the State having failed to protect the life of son of the petitioner is liable to pay an adequate amount of compensation as a solace to the victim



family. Learned counsel has relied upon a judgment of the Hon'ble Apex Court in the case of Association for Protection of Democratic Rights Vs. State of West Bengal and Ors. reported in 2007 (4) CHN 842 which relates to the alleged killing of few agitating farmers in Nandigram (West Bengal) police firing. At the relevant time while directing CBI investigation in the matter, the Hon'ble Division Bench of Calcutta High Court had directed for award of compensation of Rs.5 lacs to each of the lives lost.

Consideration

After hearing learned counsel for the petitioner and learned Advocate General representing the State respondents as also on perusal of the materials on the record, this Court prima-facie observes that till hearing of the writ petition on 12.02.2021 the investigation in the present case had not proceeded in the natural direction. The records speak for themselves. According to the answering respondents, the complaint against the firing by police killing the son of the informant had been made on 27.10.2020. There was no reason for the officer in-charge of the Kotwali police station to direct it to be entered as a station diary entry alone. The allegations were pointing out towards commission of a cognizable offence, therefore the Kotwali Police was obliged to register the complaint as a First



Information Report. The F.I.R. registered by the S.I. of Police Brajesh Kumar Singh giving rise to Kotwali P.S. Case No.298/2020 and the complaint reportedly lodged by this petitioner materially differed with each other. Both the F.I.R. were giving two different versions of the alleged occurrence. The reluctance on the part of Kotwali Police in registering the F.I.R. on 27.10.2020 and taking up the investigation from that angle writs large on the face of the record. The F.I.R. was not lodged for four days. It is only when the informant submitted a complaint again on 31.10.2020 with the Commissioner, Magadh Division who had been sent thereto to enquire into the matter, the FIR was registered on the same day giving rise to Kotwali P.S. Case No.311 of 2020.

This Court would not refer or discuss the entries made in the case diary but can certainly appreciate the facts prima-facie which are indicating towards the conduct of investigation in a completely shoddy and perfunctory manner. The FIR no.311/2020 was registered on 31.10.2020. On 01.11.2020, the I.O. records the statement of the two witnesses. He however did not visit the nearby shops himself to find out the CCTV footage. The I.O. of this case is the same and one person who was investigating the case lodged by police sub-inspector Brajesh



Kumar Singh (posted as officer in-charge of Mufassil police station). The records show that in F.I.R. No.298/2020 registered on 27.10.2020, after 27.10.2020 no step at all was taken towards investigation in accordance with the Rules and procedures prescribed in the Bihar Police Manual. No blood sample was collected from the spot, the I.O. did not take any trouble to record the statements of the injured persons and there is no mention in the case diary that he visited anywhere to record the statement of the witnesses. After 27.10.2020 for two weeks nothing was done in the matter and no explanation has been furnished as to why the case diary were not written for two weeks.

A perusal of the Rule 164 falling under Chapter IX of the Bihar Police Manual would make it clear that how the investigating officer has completely ignored the procedures required to be followed. For brevity shake, this Court is reproducing only one paragraph i.e. Rule 164(h)(iv) hereunder:-

“164(h)(iv). If due to some reason, the case diary cannot be written on any particular day, on which it should be written the date on which it is written should be given. At the same time the reason should also be noted as to why diaries could not be written in time.



Wrong date should not be written in any
circumstance.

At one place, this Court has noticed that the Deputy Inspector General of Police, Munger had constituted eight members Special Investigation Team (In short 'SIT') vide memo no.1820 dated 01.11.2020 under the leadership of the S.P. Munger. The SIT was directed to conduct investigation on the 16 points vide memo no.1811 dated 31.10.2020 but the DIG Munger had to regret that no investigation had taken place as per his direction. He had issued various directions including to collect evidences in scientific manner from the place of occurrence by calling a team from the Forensic Science Laboratory (In short 'FSL'); to record the statements of the police officers/personnel who were posted from Kotwali P.S., Mufassil P.S., Purabsarai O.P. and Basudevpur O.P. and the statements of the members of the Durga Puja Samiti, he had also directed for collecting the 'CCTV' footage but according to him not a single direction issued by him was followed. His observations recorded in connection with the investigation are clearly indicating that the 'SIT' led by the Superintendent of Police was not acting as per the direction of the supervising authority.

This Court has further noticed from the materials on the



record that doctor who examined one of the injured Chandan Kumar had taken out one metallic piece from his thigh and the same was handed over to the I.O. but the same was not sent to the 'FSL' for almost four months. It is only when this Court fixed the matter for filing of the counter affidavit, the things progressed and it is said that the said metallic piece has been sent to 'FSL' on 22.02.2021. There is nothing on the record to show that the I.O./SIT led by S.P. Munger requisitioned the services of the 'FSL' to collect evidences from place of occurrence in some scientific manner.

Admittedly the arms of the police personnel who were on duty and against whom there were allegations of firing upon the mob were not examined. No arms parade took place and there was no verification of the cartridges. The officers were allowed to continue as in-charge of the same police station. These are prima-facie observations of this Court.

As submitted by learned Advocate General and A.D.G., CID the investigation would reveal whether due to any laches on the part of the I.O./SIT the evidences vanished or were allowed to disappear?

This Court would make it clear that the investigation on all aspects shall be done independently and the prima-facie



observations of this Court shall not cause any prejudice to those who are likely to be investigated.

The learned Advocate General did not endeavour to defend the manner in which the investigation has been done by Munger police. Throughout his argument, learned Advocate General kept on giving assurance to this Court that if an opportunity is given to the CID to whom the case has been entrusted, though belatedly, the CID will conduct investigation on all the points and issues with the help of the scientific methods and the truth will be placed before this Court within a reasonable time. Since a case has also been registered on the basis of viral video, in course of investigation the allegations of excesss and unauthorise use of force shall be looked into. Sri Vinay Kumar, the Additional Director General, CID has remained present throughout the hearing of the case and he has answered some of the queries of this Court also. Visibly, he is also not satisfied with the kind of investigation done by Munger police. The A.D.G has, however submitted before this Court that he is now personally supervising the case and 53 points action plan has been prepared by him, on which investigation has already begun. This Court has been informed that the statement of one witness who was claiming to be an eye witness of the



alleged occurrence has been recorded by CID recently and this has been video-graphed also.

Administrative structure of C.I.D.

Since the investigation has been transferred to the CID, this Court thought it just and proper to understand the administrative structure of the CID. For this purpose, the ADG, CID was requested to make statements. This Court has been informed that the CID is a totally independent department which is now headed by the Additional Director General of Police. It has its own officers in the rank of I.G., D.I.G., S.P. and Dy.S.P. etc. who are all posted at the headquarter level. When the case is transferred to the CID, it is investigated through the team constituted for this purpose at the headquarter level and the said team camps at the particular place where investigation is to be done. In the cases handed over to the CID, final instruction shall go from the ADG, CID and there will be no interference by local police.

Question for consideration

Before this Court, at this stage what has, in fact, fallen for consideration is as to whether this case has to be taken ahead on an absolute proposition that wherever there is an allegation against a police personnel of causing injury or death to a person,



the same should be a matter of investigation by the CBI? If it is taken as an absolute proposition that all cases in which police personnel are involved and are likely to be investigated are to be transferred to the CBI then this case may be transferred to the CBI.

**A glance over the Judicial Pronouncements Handing
Over of Investigation to CBI.**

There are series of judgments of the Hon'ble Apex Court wherein it has been repeatedly held that in the cases where the investigation has not been conducted in a proper and objective manner, the Court may consider handing over the investigation to an independent agency to meet the ends of justice.

In the case of **Vinay Tyagi Vs. Irshad Ali** reported in **(2013) 5 SCC 762** the Hon'ble Apex Court observed as under:-

“48. What ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction.....”

In the case of **R.S. Sodhi** (supra) the Hon'ble Apex



Court was considering a case where the investigation with regard to the incident in which 10 persons were reportedly killed in an alleged encounter between the Punjab Militants and the local police, investigation was handed over to the officer of the Inspector General level. The local police officers were also suspected. In paragraph '2' of the said judgment the Hon'ble Apex Court observed as under:-

"2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may



feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order. ”

In the case of **Mohammed Anis** (supra) the Hon’ble Apex Court was considering a challenge to the judgment of the Hon’ble Allahabad High Court directing an investigation by the CBI in the matter of an incident which occurred in the Pilibhit area in which 10 persons were killed on the spot in the alleged encounters. The said order was challenged by the police inspector in public interest. While rejecting the said application,



in paragraph '5' of the judgment the Hon'ble Apex Court observed as under:-

“ 5. In the first place it is difficult to appreciate what public interest the petition seeks to serve and it is even more difficult to appreciate how the petitioner's fundamental rights under Articles 14 and/or 21 of the Constitution can be said to be violated. Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to public interest as well as the interest of justice. This Court was careful enough to state that its order should not be read as a reflection on either the local police or the State Government but that it was actuated by the sole object of ensuring that the outcome of the investigation, whatever it be, is not suspect in the eyes of the people including the family members of those killed in the incident. Therefore, it is difficult to understand how the petition can be said to be in public interest. What public interest it seeks to subserve? In fact the averment in paragraph 1 betrays that the petition is filed on behalf of U.P. Police to protect "the interest of the entire police force of U.P."



The petitioner nowhere alleges that he was serving in that area at the time when the incident occurred. It is, therefore, difficult to understand how his constitutional right under Article 14 and/or Article 21 can be said to have been violated. It is obvious that the petition is misconceived and is merely yet another attempt to frustrate the implementation of the order dated May 15, 1992. In fact such successive attempts on the part of the U.P. Police only strengthens the suspicion calling for an independent investigation. Thus the writ petition is untenable on this preliminary ground.”

In the case of **Ramesh Kumari** (supra) the controversy was with regard to non-registration of a case by the police. There was a case of the appellant that he was in possession of a piece of land. The Hon’ble High Court had granted stay protecting his possession which was extended by the order dated 10.09.1997, in presence of the other side. However, respondents 4 to 9 broke open the lock and removed various articles on 09.09.1997 and 10.09.1997. The appellant submitted an information in this regard to the SHO, Kapashera, but no case was registered by SHO concerned. The matter was brought to the notice of the Police Commissioner but without any result. Having considered the facts and circumstances of the case and taking note of the statements of the learned Additional Solicitor



General the Hon'ble Apex Court directed the CBI to register a case and investigate the complaint filed by the appellant. Paragraph '8' of the said judgment is quoted hereunder for a ready reference:-

“ 8. Mr. Vikas Singh, learned Additional Solicitor General although vehemently opposed registration of the case but he fairly concedes that if at all the case be registered and investigation is to be carried out, the CBI would be an appropriate authority to register a case and investigate. We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI.”

In the case of **Rubabbuddin Sheikh** (supra) the Hon'ble Apex Court noticed that there were allegations against the high police officials of the State of Gujarat and it was contended that if the investigation is allowed to be carried out by the local police authorities, all concerned including the relatives of the deceased may feel that investigation was not proper and in those circumstances it would be fit and proper that the writ petitioner and relatives of the deceased should be assured that an independent agency should look into the matter. It was also a case in which it was alleged that the brother of the



petitioner was killed in a fake encounter and his sister-in-law had gone missing/disappeared at the hands of the Anti-Terrorist Squad (ATS), Gujarat Police. In paragraph '53' and '54' of the said judgment the Hon'ble Apex Court observed as under:-

“53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which High Police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility, however faithfully the local police may



carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI authorities would be an appropriate authority to investigate the case.”

Learned counsel for the petitioner has referred the judgment of the Hon'ble Apex Court in the case of **Rhea Chakraborty Vs. State of Bihar and Ors.** (known as **Sushant Singh Rajput's case**) reported in **2020 SCC Online SC 654** to submit that because in this case the investigation has to take place with regard to the alleged firing and the CISF personnel are also likely to be investigated, it would be proper to hand over the investigation to the CBI.

Case-laws- transfer of investigation is not a matter of routine.

There are judgments of the Hon'ble Apex Court in the cases of **Sujatha Ravi Kiran Vs. State of Kerala & Ors.** reported in **(2016) 7 SCC 597=AIR 2016 SC 2277**, **Prof. K.V.**



Rajendran vs. Superintendent of Police, CBCID South Zone, Chennai & Ors. reported in (2013) 12 SCC 480 and **Bimal Gurung vs Union Of India** reported in (2018) 15 SCC 480 saying that transfer of investigation of a case to CBI may not be done on mere asking. Paragraph '9' from the judgment of the Hon'ble Apex Court in the case of **Sujatha Ravi Kiran** (supra) is quoted hereunder for a ready reference:-

"9. It is well settled that the extraordinary power of the constitutional courts in directing C.B.I. to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest and for doing complete justice in the matter. A Constitution Bench of this Court in *State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights & Ors.* (2010) 3 SCC 571 held as under:

"69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it



necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts, must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. 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 power 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 instill 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.”

In the case of **K. Saravanan Karuppasamy & Anr. Vs. State of Tamil Nadu & Ors.** reported in **AIR 2015 SC 214** the Hon’ble Supreme Court was considering a writ petition filed by the petitioners who were alleging beating of the students of Dr. Ambedkar Government Law College, Chennai by some miscreants and prayer was made to initiate criminal proceedings



against the guilty police personnel as well as the other persons responsible for the said incident. Petitioners alleged that there were violation of human rights and dereliction of duty on the part of police personnel in preventing the incident. The Hon'ble Supreme Court reiterated paragraph '70' of the judgment of the Hon'ble Apex Court in the case of State of W.B. (supra).

In the case of **Sudipta Lenka Vs. State of Odisha and Ors.** reported in **AIR 2014 SC 3418** the Hon'ble Supreme Court held that in an appropriate case if the Court is satisfied that on account of the accused being powerful and influential the investigation has not proceeded in a proper direction or it has been biased, further investigation may be ordered under Article 226 of the Constitution of India.

In the case of **Bimal Gurung** (supra) transfer of large number of cases were sought for. In the said case a protest was being made by three different associations of Gorkha Janmukti Morcha (GJM) against the declaration by the Chief Minister of West Bengal that one of the three languages in the State would have to be Bengali. Several FIRs were lodged against the petitioner and others under the provisions of the Indian Penal Code and the Prevention of Destruction of Public Property Act; Arms Act; Unlawful Activities (Prevention) Act, 1967; the



Explosives Act; the WBMPO Act and the National Highways Act for the offences under Sections 121, 121A, 143, 148, 149, 153A, 186, 189, 323, 324, 325, 326, 307, 332, 333, 353 and 302 I.P.C. It was alleged that one Dawa Bhutia, GJM supporter died in the shootout. According to petitioner, the Sikkim police had registered a case against S.P. Kalimpong in the said respect. It was the case of the police that on specific information when the police raided a place, during the raid the petitioner and his team opened fire on the police team and because of the said firing one S.I. sustained bullet injury and died. Police seized certain arms and ammunitions.

In the said case, the Hon'ble Supreme Court discussed the necessary principles as enumerated by the Hon'ble Apex Court in the matter of exercising jurisdiction by the Apex Court under Article 32 or the High Court under Article 226 of the Constitution of India for transferring a criminal case to a central agency. Paragraph '70' from the judgment of the Hon'ble Apex Court in the case of **State of W.B.** (supra) has been quoted. The Hon'ble Apex Court also referred paragraphs 18, 19 and 24 from the judgment in the case of **Dharam Pal Vs. State of Haryana** reported in **(2016) 4 SCC 160** and further referred the judgment in the case of **Prof. K.V. Rajendran** (supra) which



are quoted hereunder for a ready reference:-

“28. The two-Judge Bench of this Court in Dharam Pal Vs. State of Haryana (2016) 4 SCC 160 while referring to the principles for transferring investigation has laid down the following in paras 18, 19 and 24: (SCC pp.168 and 170)

“18. A three-Judge Bench in K.V. Rajendran v. Supt. of Police reiterating the said principle stated that: (SCC p. 485, para 13)

‘13. ... 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.’

19. The Court, after referring to earlier decisions, has laid down as follows: (K.V. Rajendran case, SCC p. 487, para 17)

‘17. In view of the above, the law can be summarised to the effect that 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.’

24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair



investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.”

In the said case the Hon’ble Apex Court noticed that in a case of protests, hooliganism, vandalism and destruction of public/private property the State is obliged to maintain law and order as also to protect life and property of the citizens, therefore, it has to take necessary steps to contain such agitation and restore the peace. The petitioner in the said case alleged bias against the State because he was spearheading an agitation demanding a separate Statehood, but the Hon’ble Supreme Court refused to accept the specious pleas of bias against the State. Paragraph ‘45’ and ‘46’ from the judgment in the case of **Bimal Gurung** (supra) are quoted hereunder for a ready reference:-

“45. The “State” is a political unit vested with constitutional duties and obligations. The Governor of the State formally represents the State in whom the executive Power of the State is vested and exercised by him either directly or through officers subordinate to him in



accordance with the Constitution of India. Under Schedule VII List II Entry I of the Constitution, “public order” is a subject allocated to the State. All legislative and executive powers in reference to Public order is thus vested in the State. There is a Council Of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.

46. The State functions through its various organs consisting of different personnels and authorities. State functionaries have their own rights and obligations entrusted to them under different Statutes governing the field. The Code of Criminal Procedure is one of such Statutes, which govern the law relating to criminal procedure. The authorities and police officers, who are entrusted different obligations and functions under the Code of Criminal Procedure, has to act as ordained by the Code of Criminal Procedure. It is an obligation of the police officers to register a First Information Report when they receive any information regarding commission of a cognizable offence. For recording such offences, they are neither required to await any instructions from any authority or State nor they have to abdicate their obligation to register F.I.R. as required by Cr.P.C. ”

The Hon’ble Apex Court had also referred the judgment of a Two Judge Bench of the Hon’ble Supreme Court in the case of **Anita Thakur Vs. State of J&K** reported in **(2016) 15 SCC 525**. Although the facts of the said case were different and those were connected with the holding of



demonstration but the task of the police and law enforcing agency in a situation where mobs go unruly and violent have been discussed in the said judgment. This Court quotes paragraph '16' thereof hereunder:-

“16. Before adverting to the issue at hand, we would like to make some general remarks about the manner in which these demonstrations are taking shape. Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests: on social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas, etc. take place. It is unfortunate that more often than not, such protestors take to hooliganism, vandalism and even destroy public/private property. In the process, when police tries to control, the protestors/mob violently target policemen as well. Unruly groups and violent demonstrations are so common that people have come to see them as an appendage of Indian democracy. All these situations frequently result in police using force. This in turn exacerbates public anger against the police. In Kashmir itself there have been numerous instances where separatist groups have provoked violence. In this scenario, task of the police and law-enforcing agencies becomes more difficult and delicate. In curbing such violence or dispersing unlawful assemblies, police has to accomplish its task with utmost care,



deftness and precision. Thus, on the one hand, law and order needs to be restored and at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used. Policemen are required to undergo special training to deal with these situations. Many times the situations turn ugly or go out of control because of lack of sufficient training to the police personnel to deal with violence and challenges to their authority. There are various documents in the form of police manual and even international covenants proscribing use of unnecessary force and mandating that force should only be used when it is absolutely necessary. Even when used, it should be minimum and proportional to the situation and its use to be discontinued as soon as the danger to life and property subsides.”

In the case of **Sakiri Vasu Vs. State of U.P. AIR**

2008 SC 907:(2008 AIR SCW 309) held as under:-

“This Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional cases, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.”(Emphasis is mine)

Question-answered

In the light of the case-laws discussed hereinabove, this Court would conclude that there is no absolute proposition



requiring transfer of investigation of a case in which police personnel are allegedly involved unless it becomes necessary to give credibility and instill confidence in investigation. The present case is required to be considered keeping in mind that now investigation is in the hand of 'CID' which is headed by an Additional Director General of Police. The investigation is no longer with the Munger police. Presently, there is nothing before this Court against CID so as to cast a cloud over the credibility of investigation by the C.I.D. The allegation of firing is against an officer in the rank of Sub-Inspector/Inspector of Police. Though, it is alleged that the then S.P. Munger had led the police and excess use of force was applied under her command, in the opinion of this Court the investigation in these cases may proceed under the leadership of an officer in the rank of D.G.P. i.e. the present ADG, C.I.D. This Court has been informed that the present ADG, C.I.D. is a competent officer and has already framed his action plan. This Court has gone through the 53 points action plan prepared by the CID and to this Court it appears that investigation on those points and such other points which may be decided by the ADG, C.I.D. in course of investigation may reveal the truth.

So far as the submission of learned counsel for the



petitioner that because investigation involves CISF also, it would only be just and proper to transfer the investigation to a central agency such as CBI is concerned, this Court would answer the same but before that paragraph '9' from the judgment in the case of **Rhea Chakraborty Vs.State of Bihar and Ors.** (known as **Sushant Singh Rajput's Case**) reported in **2020 SCC Online SC 654** is required to be quoted hereunder for a ready reference:-

“9. Under the federal design envisaged by the Constitution, Police is a state subject under List II of Seventh Schedule of the Constitution. Therefore, investigation of a crime should normally be undertaken by the concerned state's police, where the case is registered. There can be situations where a particular crime by virtue of its nature and ramification, is legally capable of being investigated by police from different states or even by other agencies. The entrustment of investigation to the CBI is permitted either with consent of the concerned state or on orders of the constitutional court. However, investigation of a crime by multiple authorities transgressing into the others domain, is avoidable.”

In the present case, the alleged occurrence has taken place at district town Munger in the State of Bihar, therefore it has to be normally investigated by the Bihar police. Only because the investigation may involve 'CISF' as well may not be a plausible ground to transfer the investigation from C.I.D. to the CBI though it may be done for other reasons as indicated



in the various judgments of the Hon'ble Apex Court.

Recently in the case of **Arnab Ranjan Goswami Vs. Union of India & Ors.** reported in **2020 SCC Online SC 462**, the Hon'ble Supreme Court refused to transfer the investigation from Mumbai Police to CBI. The Hon'ble Apex Court once again reiterated that "...The transfer of an investigation to the CBI is not a matter of routine. The precedents of this Court emphasise that this is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances". 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 by the Constitution Bench in CPDR, West Bengal that mere allegations against the police do not constitute a sufficient basis to transfer the investigation." (Emphasis is mine)

Case distinguished

In the cases on which reliance has been placed by learned counsel for the petitioner it may be noticed that those were mostly cases in which large number of persons were reportedly killed in an alleged encounter between the militants



and the local police. In all those cases, the investigation was still with the local police and there were allegations against very senior rank police officers whereas in the present case a significant development has taken place where the State respondents have handed over the investigation to the 'CID' which is a separate department headed by an officer in the rank of Director General of Police, posted as Additional Director General. The allegations of firing are against the officers in the rank of Sub-Inspector/Inspector. Further, it cannot be believed, in absence of a cogent material that a police officer in the rank of the Director General of Police would not be able to investigate an officer in the rank of Superintendent of Police. A Court of law cannot take a view on mere sentiment.

The apprehensions expressed by learned counsel for the petitioner by pointing out the relationship of the then S.P. with the head of the Ruling Party of the State has no basis to stand at this stage. Moreover, in the writ petition there is no specific statement in this regard and they are not made party in the present writ application. In the case of **Prof. K.V. Rajendran** (supra) a plea of 'bias' was rejected by the Hon'ble Supreme Court when it was found that the person against whom plea of 'bias' is being taken has not been made party and he had



no notice.

To this Court, the facts situation of the present case are somehow completely different with that of those cases in which the Hon'ble Apex Court had directed transfer of investigation to the CBI. In the present case, the Court has been informed that there are altogether 17 FIRs which were lodged in different police stations as regards alleged occurrence. So far as the case lodged by the petitioner is concerned, it alleges use of excess force and killing of his son by the police personnel. Whether such allegations are true, would be the subject matter of investigation by CID. At the same time the police has lodged some FIR in which it is alleged that the persons who had assembled in Maa Durga Idole Immersion had gone violant and they had allegedly been involved in stone pelting on the police as also somebody from the procession had fired. There are viral videos on the basis of which the FIR has been lodged and the allegations against the police personnel are also being investigated.

Transfer of investigation- Not 'imperative' at this stage

This Court has prima-facie observed that Munger police and the SIT constituted for purpose of investigation of the



case has not acted in natural direction but, in the changed circumstances where CID is now investigating the case, this Court in absence of any cogent material is not ready to accept the spacious plea of learned counsel for the petitioner that the 'CID' is not likely to investigate the case in a free and fair manner against the police personnel. No material showing wielding of influence by any person or authority over the 'CID' has been placed before this Court. Thus, at this stage this Court is not required to exercise its' discretionary jurisdiction under Article 226 of the Constitution of India. This Court is, therefore, of the opinion that the test as laid down by Hon'ble Supreme Court for purpose of transfer of an investigation is not satisfied for the present.

This Court is of the view that subject to the directions contained in this judgment here-in-after the 'CID' having already assumed the investigation must get an opportunity to act freely, collect all the evidences and submit its' first report to this Court within four weeks from today. Since, the learned Advocate General has requested that the investigation may be monitored by this Court, taking into consideration his request as well as the fact that investigation in this case has not progressed with the desired pace and precision, this Court deems it just and



proper to monitor the investigation for the present keeping in mind the purpose of continuing mandamus in a Court monitored investigation.

Directions

(i) In the opinion of this Court, in order to ensure free and fair investigation of the case, the State respondents shall ensure that all the eight members of the SIT including S.P. Munger be shifted to some other place for the present within three days from today. This Court would, however make it clear that the order to shift them elsewhere be not taken as any indictment of all those officers by this Court and no adverse inference shall be drawn against them for this reason alone.

(ii) The CID shall proceed with the investigation of the case in the natural direction, in accordance with law and submit its first report in a sealed cover before this Court within a period of four weeks from today.

(iii) This Court deems it just and proper to direct that in course of investigation of the cases transferred to the CID, in order to maintain uniformity and consistency in the matter of investigation, if the A.D.G. CID finds that any other or all the connected case(s) is/are required to be investigated



simultaneously, he would request the competent authority to transfer those cases as well to the CID and the same will be considered forthwith.

(iv) This Court records the statement of the ADG, CID that the files relating to investigation shall not go to any other authority as he is not required to seek any instruction/direction from any other authority. The ADG, CID shall take all decisions and wherever required the respondent nos.1 and 2 and all other authorities working under them shall render full cooperation including administrative assistance, etc. to the CID.

(v) The ADG, CID shall decide on the constitution of the SIT as per requirement and wherever required he will constitute a team of senior officers above the rank of Dy.S.P. to interrogate the police personnel who are likely to be investigated.

(vi) The learned A.G. has assured this Court that during investigation of these cases, the A.D.G., CID Sri Vinay Kumar shall not be transferred anywhere else. The statement of learned A.G. shall form part of this order.

Liberty is there to the petitioner to point out to this



Court in course of monitoring of the investigation if the investigation is not going on in the natural direction or that it has been 'biased' and 'influenced' by any person.

Both the sides will be at liberty to mention the matter as and when required, if so advised.

Award of Compensation

Having heard learned counsel for the petitioner and learned Advocate General, this Court finds that the facts disclosed so far point out an admitted position that the son of the petitioner was unarmed in the procession, there is no allegation that he was indulged in any unlawful act, however he has been killed as a result of the firing which took place on 26.10.2020. It was certainly an unfortunate incident in which the son of the petitioner has been killed. Normally, in such cases the State Government is giving some ex-gratia payments to the victims who die accidentally leaving it open for him to realise adequate amount of compensation from the wrongdoer but in this case, as reported to this Court no compensation at all has been made available to the petitioner who is admittedly a victim being father of the deceased. The submissions of learned Advocate General denying the benefit of compensation to the victim in the



facts of the present case would not impress this Court. This Court has perused the enquiry report of the Commissioner, Magadh Division and is fully convinced that it is one of those cases in which the victim is required to be compensated by the State. This Court would not disclose the contents of the enquiry report but it's judicial conscience compels it to exercise it's extra-ordinary power under Article 226 of the Constitution of India to award a suitable amount of compensation to the petitioner.

This Court need not go into any discussion on the power conferred upon this Court under Article 226 of the Constitution of India to reach out to injustice and make appropriate orders including directions to pay damages or compensation. In the case of **Dwarka Nath vs. Income-Tax Officer, Special Circle, D Ward, Kanpur and another** reported in **AIR 1966 SC 81**, the Hon'ble Supreme Court held as under:-

“Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in



the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under article 226 with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Courts can function arbitrarily under this Article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels. AIR 1961 SC 1731 and AIR 1954 SC 440 Foll. ”

In the case of **Air India Statutory Corporation and others vs. United Labour Union & Ors.** reported in **(1997) 9 SCC 377**, the Hon'ble Apex Court held “The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The court as *sentinel* in the *qui vive* is to mete out justice in given facts...”



In the case of **Nilabati Behera (Smt.) Alias Lalit Behera (Through the Supreme Court Legal Aid Committee Vs. State Of Orissa And Ors.** reported in (1993) 2 SCC 746, the Hon'ble Supreme Court held as follows:-

“..... ‘A claim in public law for compensation’ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection, of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is ‘distinct from, and in addition to, the remedy in private law for damages for the tort’ resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers....”

The power of the High Courts under Article 226 to mould the reliefs so as to compensate the victim has been affirmed by the Hon'ble Supreme Court on numerous occasions including in the case of **Common Cause, A Registered Society Vs. Union Of India & Ors.** reported in (1999) 6 SCC 667,



D.K. Basu Vs. State Of West Bengal reported in (1997) 1 SCC 416 and **Rudul Sah vs State Of Bihar & Another** reported in (1983) 4 SCC 141.

In the given facts of this case, the Court is of the considered opinion that the case of the petitioner was required to be considered for at least ex-gratia payment at this stage. But the learned A.G. has taken a categorical stand that the case would not fit in the criterion to award compensation.

The deceased was a young man aged about 18 years. He got serious injuries while participating in the Maa Durga Idole Immersion procession. The State had a responsibility to safeguard the life of a citizen. Whether the son of the petitioner was killed in the police firing allegedly resorted by police or by some one else from the crowd are the matters of investigation but in the facts of this case where enquiry report of the Commissioner, Magadh Division is available for taking a prima-facie view the State need not wait for the outcome of the investigation even as to make available compensation to the victim. Whether son of the petitioner died as a result of firing by police or by any miscreants from the mob would not be relevant for the simple reason that in any case the State had failed to protect the life of the son of the petitioner who was a spectator in



the procession of Maa Durga Idole Immersion.

In the case of **D.K. Basu** (supra), their Lordships of the Hon'ble Supreme Court had observed as under:-

“44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation or the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

* * * * *

54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and



the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is nor available and the citizen must revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”

In the case of Association for Protection of Democratic Rights (supra) the Hon’ble Calcutta High Court, while transferring the investigation of Nandigram police firing case directed the State government of West Bengal to pay a



sum of Rs.5 lakhs a compensation to each of the victims. The State of West Bengal took a plea that it had paid compensation to only those who were not involved in violence against police but ultimately the State government had to pay compensation to all the injured irrespective of the claim of the government of their involvement in the violence against police.

In the present case, there is no allegation that the petitioner's son was involved in any act of violence. Thus, in the light of the aforementioned discussions, this Court directs the State respondents to pay a sum of Rs.10 lacs towards compensation to the petitioner who being the father of the deceased has remained in mental pains and sufferings and has to further remain in mental pain as also deprivation in his life on several counts because of the death of his young son. Let this amount be deposited in the account of the petitioner within one month from today. It is, however, left open for the petitioner to claim further compensation under private law remedy against the wrongdoer.

Let this matter be listed with the report of the CID after four weeks.



The C.I.D. through its Additional Director General be
made party respondent no.4 in the present writ application.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	06.04.2021
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