

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR**

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**SB:- Hon'ble Shri Justice G. S. Ahluwalia****MCRC 10446/2017**

Prabal Dogra

Vs.

Superintendent of Police, Gwalior  
& State of MP

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Shri Rajiv Sharma, counsel for the applicant.

Shri Girdhari Singh Chauhan, Public Prosecutor for the  
respondents-State.

Shri Arun Kumar Barua, counsel for the complainant.

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**ORDER**

(Passed on 30/11/2017)

This application under Section 482 of Cr.P.C. has been filed seeking a direction to the police to conduct fair and impartial investigation in Crime No.350/2017 registered by Police Station Kampoo, Gwalior as well as for a directing the S.H.O. of concerning Police Station/investigating officer to get the injured medically examined by the Medical Board.

**(2)** The necessary facts for the disposal of the present application in short are that complainant Avneesh Sharma, lodged a police complaint on 31-7-2017 at Police Station Kampoo Distt. Gwalior, alleging therein that on 30-7-2017, at about 11:40 P.M., when he was returning back after leaving one Vikram Bhadauria, one swift car came there, and the applicant along with other co-accused persons alighted from the swift car and accusing that the complainant had killed the father of the applicant in the year 2008, the applicant, fired a gun shot on the complainant, causing injury on the back side of the head of the complainant. Another gunshot was fired, however, it missed. The co-accused Golu Parmar, fired another gunshot, but it also missed. Other co-accused persons were shouting that the complainant should not be spared. As Dheeru Bhargav and other persons came on the spot, and after noticing them, the accused persons, including the applicant went away. The police registered the F.I.R. in crime no.350/2017 for offence under Section 307,

34 of I.P.C. The complainant was sent for medical examination.

**(3)** The applicant made an application to the Superintendent of Police, Gwalior and the Collector, Gwalior to conduct a free and fair investigation and to get the complainant medically examined by a Medical Board, but as no heed was paid, therefore, the present application has been filed seeking aforementioned directions. The prayer of the applicant in the present case is as under :-

"It is, therefore, most respectfully prayed that the petition filed by the petitioner may kindly be allowed and issuing direction to respondents to conduct the fair and impartial investigation into matter and also to issuing the direction to the concerning S.H.O., Police Station Kampoo, to conduct medical examination of injured Avneesh Sharma @ Raja by the Medical Board Distt. Gwalior in connection with crime No.350/2017 registered at P.S. Kampoo, Dist. Gwalior for offence punishable under Section 307,34 of I.P.C., in the interest of justice."

**(4)** It is submitted by the Counsel for the applicant, that free and fair investigation is the fundamental right of the accused, as guaranteed under Article 21 of the Constitution of India and therefore, it is obligatory on the part of the police to conduct the investigation from all necessary and possible angles. It is submitted that the complainant is an influential person being the leader of Congress Party and in connivance with the Doctors, a false M.L.C. has been got prepared to the effect that the complainant has suffered firearm injury, whereas in fact, no injury was sustained by the complainant. Thus, it was directed that the respondents may be directed to conduct the investigation in free and fair manner and further the complainant may be got medically examined by the Medical Board, Gwalior.

**(5)** *Per contra*, it is submitted by the Counsel for the State that it has been alleged by the applicant, that the complainant has got the forged M.L.C. report prepared in connivance with the Doctor, however, the Doctor has not been made a party to this application. When an allegation of *mala fide* is made against a person, then he should have been made a party to this petition, in order to answer the allegations and in absence of necessary

party, the petition is bad and is liable to be dismissed. It is further submitted that there is no allegation against the investigating officer, to *prima facie* show that the investigation in free and fair manner is not being done. The applicant by this application, merely seeks indulgence of this Court so that the complainant may be re-examined by the Medical Board. The incident had taken place on 30-7-2017, and after 4 months, no useful purpose would be served by getting the complainant examined by Medical Board. It is further submitted that it is well established principle of law that the Courts should not supervise the investigation, and the investigation is the prerogative of the Police. In absence of any allegation of *mala fides* against the investigating officer, the present application is not maintainable.

(6) Heard the learned Counsel for the parties.

(7) The complainant was medically examined by C.M.O./Medico-legal Officer, Casualty, J.A. Hospital, Gwalior on 31-7-2017 and found the following injury :

"A cutting shaped wound present over scalp occipital region. Size 8x2cm placed superficially. Direction Oblique right to left upward. Blackening, tattooing, burning present. Firearm injury."

Thus, according to the Doctor, a gunshot injury was found on the back of the head of the complainant.

(8) Now, the centripetal question for determination is that to what extent, the High Court in exercise of power under Section 482 of Cr.P.C. can issue direction to the investigating officer.

The Supreme Court in the case of **Sidhartha Vashisht alias Manu Sharma vs. State (NCT of Delhi)** reported in **2010 6 SCC 1** has held as under :-

**"197.** In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. 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.

**198.** A person is entitled to be tried according to the law in force at the time of commission of offence. A person could not be punished for the same offence twice and most significantly cannot be compelled to be a witness against himself and he cannot be deprived of his personal liberty except according to the procedure established by law. The law in relation to investigation of offences and rights of an accused, in our country, has developed with the passage of time. On the one hand, power is vested in the investigating officer to conduct the investigation freely and transparently. Even the courts do not normally have the right to interfere with the investigation. It exclusively falls in the domain of the investigating agency. In exceptional cases the High Courts have monitored the investigation but again within a very limited scope. There, on the other a duty is cast upon the Prosecutor to ensure that rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot-free while an innocent is not punished. Even in the might of the State the rights of an accused cannot be undermined, he must be tried in consonance with the provisions of the constitutional mandate. The cumulative effect of this constitutional philosophy is that both the courts and the investigating agency should operate in their own independent fields while ensuring adherence to basic rule of law.

**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 de hors his position and influence in the society.

**200.** In *Kashmeri Devi v. Delhi Admn* 1988

*Supp. SCC 482* it has been held that the record of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime. The courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of the criminal investigation and jurisprudence. *Contra veritatem lex nunquam aliquid permittit*: implies a duty on the court to accept and accord its approval only to a report which is the result of faithful and fruitful investigation. The Court is not to accept the report which is *contra legem* but (*sic*) to conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is two-fold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution before the court and the guilty is punished in accordance with law.

**201.** Historically but consistently the view of this Court has been that an investigation must be fair and effective, must proceed in proper direction in consonance with the ingredients of the offence and not in haphazard manner. In some cases besides investigation being effective the accused may have to prove miscarriage of justice but once it is shown the accused would be entitled to definite benefit in accordance with law. 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. These well-established principles have been stated by this Court in *Sasi Thomas v. State*, (2006) 12 SCC 421 *State (Inspector of Police) v. Surya Sankaram Karri* (2006) 7 SCC 172 and *T.T. Antony v. State of Kerala* (2001) 6 SCC 181."

The Supreme Court in the case of **V.K. Sasikala Vs.**

**State** reported in **(2012) 9 SCC 771** has held as under :-

"**12.** The parameters governing the process of investigation of a criminal charge, the duties of the investigating agency and the role of the courts after the process of investigation is over

and a report thereof is submitted to the court is exhaustively laid down in the different Chapters of the Code of Criminal Procedure, 1973 (CrPC). Though the power of the investigating agency is large and expansive and the courts have a minimum role in this regard there are inbuilt provisions in the Code to ensure that investigation of a criminal offence is conducted keeping in mind the rights of an accused to a fair process of investigation. The mandatory duty cast on the investigating agency to maintain a case diary of every investigation on a day-to-day basis and the power of the court under Section 172(2) and the plenary power conferred in the High Courts by Article 226 of the Constitution are adequate safeguards to ensure the conduct of a fair investigation."

The Supreme Court in the case of **Pooja Pal Vs. Union of India** reported in **(2016) 3 SCC 135** has held as under:-

**"86.** A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or re-investigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

**87.** Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always

accountable to the law-abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

**88.** The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in *Vinay Tyagi v. Irshad Ali* (2013) 5 SCC 762 to encompass two imperatives; firstly, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

**89.** Prior thereto, in the same vein, it was ruled in *Samaj Parivartan Samudaya v. State of Karnataka* (2012) 7 SCC 407 that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

**90.** That the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial was reiterated by this Court in *Rattiram v. State of M.P.* (2012) 4 SCC 516. It was postulated that the criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is the perception of a trial from the viewpoint of criminal as well as the victim when judged in the social context.

**91.** This Court in *NHRC v. State of Gujarat* (2009) 6 SCC 767 did proclaim unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are *raison d'être* for their existence."

The Supreme Court in the case of **Nahar Singh Yadav Vs. Union of India** reported in **(2011) 1 SCC 307** has held as

under :-

**"21.** Reverting to the main issue, a true and fair trial is sine qua non of Article 21 of the Constitution, which declares that:

*"21. Protection of life and personal liberty.—* No person shall be deprived of his 'life' or 'personal liberty' except according to procedure established by law."

It needs no emphasis that a criminal trial, which may result in depriving a person of not only his personal liberty but also his life has to be unbiased, and without any prejudice for or against the accused. An impartial and uninfluenced trial is the fundamental requirement of a fair trial, the first and the foremost imperative of the criminal justice delivery system. If a criminal trial is not free and fair, the criminal justice system would undoubtedly be at stake, eroding the confidence of a common man in the system, which would not augur well for the society at large. Therefore, as and when it is shown that the public confidence in the fairness of a particular trial is likely to be seriously undermined, for any reason whatsoever, Section 406 CrPC empowers this Court to transfer any case or appeal from one High Court to another High Court or from one criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court, to meet the ends of justice.

**22.** It is, however, the trite law that power under Section 406 CrPC has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well.

**23.** In *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158 while explaining the import of the expression "fair trial", this Court had observed that: (SCC p. 184, para 36)

"36. ... Fair trial obviously would mean a trial before an impartial judge, a fair



prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

**24.** In *Maneka Sanjay Gandhi v. Rani Jethmalani* (1979) 4 SCC 167 speaking for a Bench of three learned Judges of this Court, V.R. Krishna Iyer, J. said: (SCC p. 169, para 2)

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

**25.** In *Abdul Nazar Madani v. State of T.N.* (2000) 6 SCC 204 dealing with a similar application, this Court had echoed the following views: (SCC pp. 210-11, para 7)

"7. ... The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has

always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."

**26.** In *K. Anbazhagan v. Supdt. of Police* (2004) 3 SCC 767 this Court had an occasion to deal with the prayer for transfer of a criminal trial from Tamil Nadu to another State mainly on the ground of apprehension of political interference in the trial. While finally directing the transfer of the case to the State of Karnataka, the Court observed thus: (SCC p. 784, para 30)

"30. Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner."

**27.** Recently, in *Amarinder Singh v. Parkash Singh Badal*, (2009) 6 SCC 260 while dealing with two transfer applications preferred under Section 406 CrPC on the ground that with the change in State Government, the trial was suffering setback due to the influence of the new Chief Minister as also the lack of interest by the Public Prosecutor, P. Sathasivam, J., speaking for a three-Judge Bench has observed thus: (SCC p. 273, paras 18-20)

"18. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done.

On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC.

20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one."

The Supreme Court in the case of **Manohar Lal Sharma Vs. Principal Secretary and others** reported in **AIR 2014 SC 666** has held as under :

"**29.**In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The Courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the Court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by

the police is found to be not bona fide or the investigation is tainted with animosity, the Court may intervene to protect the personal and/or property rights of the citizens."

**(9)** Article 20 of the Constitution of India reads as under :

**"20. Protection in respect of conviction for offences.—**(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."

Article 21 of the Constitution of India reads as under :-

**"21. Protection of life and personal liberty.—**No person shall be deprived of his life or personal liberty except according to procedure established by law."

**(10)** Thus, Article 20 and 21 of Constitution of India, guarantee protection to the citizens of India that no person accused of any offence shall be compelled to be a witness against himself and no person shall be deprived of his life or personal liberty except according to procedure established by law and no one shall be prosecuted and punished for the same offence more than once.

**(11)** The personal liberty of a person cannot be curtailed except according to procedure established by law. The Supreme Court in the case of **Pooja Pal(supra)** has held that a trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof.

**(12)** The Supreme Court in the case of **Shatrughan Chauhan Vs. Union of India** reported in **(2014) 3 SCC 1**, has held as under :-

**"57.** Another vital aspect, without mention of

which the present discussion will not be complete, is that, as aforesaid, Article 21 is the paramount principle on which rights of the convict are based, this must be considered along with the rights of the victims or the deceased's family as also societal consideration since these elements form part of the sentencing process as well. It is the stand of the respondents that the commutation of sentence of death based on delay alone will be against the victim's interest."

The Supreme Court in the case of **Karan Singh Vs. State of Haryana** reported in **(2013) 12 SCC 529** has held as under :-

**"16.** The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The investigating officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The investigating officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth". Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias. Words like "personal liberty" contained in Article 21 of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the investigating officer to ensure that an innocent person should not suffer from unnecessary harassment of false implication, however, at the same time, an accused person must not be given undue leverage. An investigation cannot be interfered with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous

influence, and investigation must be carried out with equal alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Article 21 of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19, 20 and 21 of the Constitution."

The Supreme Court in the case of **Babubhai Vs. State of Gujarat** reported in **(2010) 12 SCC 254** has held as under :-

"**38.** Unless an extraordinary 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 v. Bipen Kumar Tiwari*, (1970) 1 SCC 653)"

**(13)** Thus, it is clear that only when a person who has been arraigned as an accused points out that investigation is being done because of extraneous influence, or *mala fide*, or bias or in short that the investigation is a tainted investigation, and an extraordinary case of gross abuse of power by the investigating officer is made out, only then the Courts can interfere in the matter and can issue directions for ensuring free and fair investigation.

**(14)** The next question for determination is that whether an accused can seek a direction to the investigating officer, to investigate the matter from his angle of defence or not?

The word "Fair" means free from any biases, *mala fides*, arbitrariness. Thus, unless and until, an allegation of bias, or *mala fides* is alleged against the investigating officer, pointing out the instances, *prima facie* proving beyond reasonable doubt, that the investigating officer, is indulged in tainted, biased investigation, it cannot be said that the investigating which is being done by the investigating officer, is not free and fair. The words "free and fair" are relative words. A free and fair

investigation for some one, may be a tainted investigation for another. Therefore, it is obligatory on the part of person, alleging tainted investigation, to make out a strong and a case beyond doubt, that the investigating officer for one reason or the other, is biased against the accused or is conducting tainted investigation with *mala fides*. Merely because the person arraigned as an accused feels that he has been falsely implicated, he cannot seek direction for the police to conduct the investigation from his defence point of view also.

**(15)** It is well established principle of law that investigation is the domain of the police.

The Supreme Court in the case of **S.M. Datta Vs. State of Gujarat**, reported in **(2001) 7 SCC 659** has held as under :-

"2. Since the decision of the Privy Council in *Khwaja Nazir Ahmad (King Emperor v. Khwaja Nazir Ahmad (1944) 71 IA 203)* and till this day there is existing one salutary principle that in normal circumstances, the law courts would not thwart any investigation and criminal proceedings initiated must be allowed to have their own course under the provisions of the Code. The powers of the police ought to stand unfettered to investigate cases where they suspect or even have reasons to suspect the commission of a cognizable offence and the first information report (FIR) discloses such offence. The Judicial Committee in the decision of *Nazir Ahmad* observed: (AIR p. 22)

"In Their Lordships' opinion, however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Just as it is essential that everyone accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result

if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it and not until then."

**3.** It is paramount to note however, that the observations of Lord Porter in *Nazir Ahmad* stand qualified by inclusion of the following: (AIR p. 22)

"No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation...."

**4.** The qualified statement of the Judicial Committee however stands noted in *Sanchaita Investment (State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561)*. Incidentally, *Sanchaita Investment* and subsequent decisions, including *Bhajan Lal (State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335)* and *Rajesh Bajaj (Rajesh Bajaj v. State NCT of Delhi (1999) 3 SCC 259)* in one tune stated that if an offence is disclosed the court will not interfere with an investigation and will permit investigation into the offence alleged to have been committed. If, however, the materials do not disclose an offence, no investigation should normally be permitted.

**5.** The approach of this Court and the law as laid down by the Judicial Committee in *Nazir Ahmad* cannot but be termed to be in accordance with the principles of justice. While liberty of an individual are "sacred and sacrosanct" and it is a bounden obligation of the court to protect them but in the event of commission of a cognizable offence and an offence stand disclosed in the first information report, interest of justice requires further investigation by the investigating agency. Needless to record that investigation of an offence is within the exclusive domain of the police department and not the law courts. In



the event of disclosure of an offence, it is a duty incumbent to investigate into the offence and bring the offender to book in order to serve the cause of justice and it is only thereafter the investigating officer submits the report to the court with a prayer to take cognizance of the offence under Section 190 CrPC and it is on submission of the report that the duty of the police ends, subject however to the provisions as contained in Section 173(8) of the Code. There is thus a clear and well-defined area of operation and demarcated function in the field of investigation of crimes and its subsequent adjudication. In this context reference may be made to the decision of this Court in *State of Bihar v. J.A.C. Saldanha*, (1980) 1 SCC 554 .

**6.** While an offence if disclosed in the FIR ought not to be thwarted at the initial stages, but in the event however, the materials do not disclose an offence, no investigation should normally be permitted. It is in this context this Court in *Sanchaita Investment* observed: (SCC pp. 597-98, para 65)

"65. In my opinion, the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted..... ."

The Supreme Court in the case of **D. Venkatasubramaniam vs. M.K. Mohan Krishnamachari** reported in **(2009) 10 SCC 488**, has held as under :-

**"17.** Be it noted that there is no allegation of dereliction of any duty on the part of the investigating agency. There is also no allegation of any collusion and deliberate delay on the part of the investigating agency in the matter of investigation into the case that had been promptly registered on the information lodged by the respondent. The petition almost reads like a civil suit for recovery of the money.

**18.** As noted hereinabove, the petition has been filed within one week of registration of the crime by which time the police had already started serious investigation as is evident from the material available on record. It is also required to notice that none of the appellants have been impleaded as party-

respondents to the petition filed under Section 482 of the Code. The State represented by its Sub-Inspector of Police, Central Crime Branch, Egmore, Chennai alone was impleaded as the respondent. The investigating agency in its counter filed in the High Court stated that after obtaining necessary legal opinion, a case was registered and "commenced the investigation". It is also stated in categorical terms that the police had "inquired all the connected witnesses, recorded their statements and also collected the material documents and confirmed commission of cognizable offences by all the accused".

**19.** The High Court, within a period of one month from the date of filing of the petition, finally disposed of the same observing that,

"it is obligatory on the part of the respondent police to conduct investigation in accordance with law, including recording of statements from witnesses, arrest, seizure of property, perusal of various documents and filing of chargesheet. It is also needless to state that if any account is available with the accused persons, or any amount is in their possession and any account is maintained in a nationalised bank, it is obligatory on the part of the respondent police to take all necessary steps to safeguard the interest of the aggrieved persons in this case".

The Court accordingly directed the police to expedite and complete the investigation within six months from the date of receipt of a copy of the order. The said order of the High Court is impugned in these appeals.

\* \* \* \*

**25.** It is the statutory obligation and duty of the police to investigate into the crime and the courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. In *M.C. Abraham v. State of Maharashtra (2003) 2 SCC 649* this Court observed: (SCC pp. 657-58, para 14)

"14. ... Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations

enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection."

**26.** It is further observed: (*M.C. Abraham case*, SCC pp. 659-60, para 17)

"17. The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating

agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation."

**27.** This Court while observing that it was not appropriate for the High Court to issue a direction that the case should not only be investigated but a chargesheet must be submitted, held: (*M.C. Abraham case*, SCC p. 660, para 18)

*"18. ... In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. While it is open to the High Court, in appropriate cases, to give directions for prompt investigation, etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency."*

**(16)** It is a well established principle of law that the prosecution cannot be compelled to file those documents, on which it does not want to place reliance. If the prosecution is directed to investigate the matter from the defence point of view of the accused, then it would mean, that by issuing such a direction, a Court has also issued a direction to the prosecution to file even those documents, on which the prosecution otherwise does not want to rely. It is a well established principle of law that a prosecution document, even if it remains unexhibited, can be relied upon by an accused, if the said document is in favour of the accused, or even at the time of framing charge, the prosecution document, in favour of the accused has to be taken into favour.

The Supreme Court in the case of **State of M.P. Vs. Sheetala Sahai and others** reported in **(2009) 8 SCC 617** has held as under :-

**"52.** In this case, the probative value of the materials on record has not been gone into. The materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr Tulsi that where the entire materials collected during investigation have

been placed before the court as part of the chargesheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused.

**53.** The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, sub-section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless.

**54.** The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial. (*State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659)

The Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi** reported **(2005) 1 SCC 568** has held as under :-

**"23.** As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. *Satish Mehra* case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

\* \* \* \*

**29.** Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders

as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case*."

**(17)** Thus, it is clear that where the accused cannot be permitted to produce any document in his favour even at the stage of framing of charge, then in exercise of powers under Section 482 of Cr.P.C., the High Court cannot direct the prosecution to investigate the matter from the defence point of view of the accused. The basic purpose of investigation is to find out the truth in the allegations made by the complainant against the accused. Safeguards have been provided under Section 169 of Cr.P.C. itself. If the investigating officer after concluding the investigation comes to a conclusion that the allegations made by the complainant are false, then it can file a closure report. Thus, it is clear that the investigating officer has to conduct the investigation from all possible angles, and after the final report is filed, then it would be open to the accused or to the victim, to show that the said final report is not worth acceptance. When a closure report is filed, the complainant is entitled for hearing by the Magistrate, before acceptance of the closure report, and where the charge sheet is filed, the accused will have a right to argue on the question of discharge or framing of charges or even proving his defence by leading cogent evidence or by showing preponderance of probabilities.

The Supreme Court in the case of **Rajiv Thapar Vs. Madan Lal Kapur** reported in **(2013) 3 SCC 330** has held as under :

**"30.** Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

**30.1. Step one:** whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

**30.2. Step two:** whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual

assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

**30.3. Step three:** whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

**30.4. Step four:** whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

**30.5.** If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

The Supreme Court in the case of **Prashant Bharti Vs. State (NCT of Delhi)** reported in **(2013) 9 SCC 293** has held as under :-

**"22.** The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") has been dealt with by this Court in *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330 wherein this Court inter alia held as under: (SCC pp. 347-49, paras 29-30)

"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences, inasmuch as it would negate the prosecution's/

complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

**(18)** Thus, it is clear that where the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable and indubitable facts, and the same would rule out the assertions contained in the complaint, the High Court can always look into those documents.

**(19)** Article 21 of Constitution of India provides that no one shall be deprived of his personal liberty except in accordance with procedure established by law. Thus, it is clear that where the accused is in a position to *prima facie* prove that his documents are sound, reasonable and indubitable, then the



same can be looked into, even at an early stage of trial, otherwise, the accused is always entitled to prove his defence in the Trial by either by showing preponderance of probabilities or by leading cogent and reliable evidence.

**(20)** Free and fair investigation is the fundamental right of the accused as guaranteed under Article 21 of the Constitution of India, however, the Courts have limited power to interfere with the investigation as the investigation is the prerogative/domain of police. The Court cannot supervise the investigation and cannot issue directions to the investigating officer, to investigate the case from a particular point of view. The Courts can always interfere with the investigation, when it is shown that the investigating officer has acted in violation of any statutory provision of law putting the personal liberty of a person in jeopardy or the investigation is not *bona fide* or the investigation is tainted being biased or *mala fide*. Thus, in nutshell, where allegations against the investigating officers are made and when the same are found to be proved, only then the Court can interfere with the investigation. However, where a prayer is made that the police be directed to investigate the matter from the accused's point of view, then the Courts cannot interfere with the matter. Even otherwise, the *mala fides* of an informant may not be sufficient to interfere with the investigation.

The Supreme Court in the case of **Renu Kumari Vs. Sanjay Kumar and Others** reported in **(2008) 12 SCC 346** has held as under :-

"**11.** As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without

sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings”.

(See [Dhanalakshmi v. R. Prasanna Kumar](#) (1990 Supp SCC 686), [State of Bihar v. P. P. Sharma](#) (1992 Supp (1) SCC 222), [Rupan Deol Bajaj v. Kanwar Pal Singh Gill](#) (1995(6) SCC 194), [State of Kerala v. O.C. Kuttan](#) (1999(2) SCC 651), [State of U.P. v. O.P. Sharma](#) (1996 (7) SCC 705), [Rashmi Kumar v. Mahesh Kumar Bhada](#) (1997 (2) SCC 397), [Satvinder Kaur v. State \(Govt. of NCT of Delhi\)](#) (1999 (8) SCC 728) and [Rajesh Bajaj v. State NCT of Delhi State](#) (1999 (3) SCC 259).

The above position was again reiterated in [State of Karnataka v. M. Devendrappa](#) (2002) 3 SCC 89, [State of M.P. v. Awadh Kishore Gupta](#) (2004) 1 SCC 691 and [State of Orissa v. Saroj Kumar Sahoo](#) (2005) 13 SCC 540, SCC pp. 547-50, paras 8-11.”

**(21)** It is well established principle of law that the free trial is the fundamental right of the accused as well as of the complainant. If the Court supervises the investigation by issuing directions to the investigating officer, and compels the investigating officer to form his opinion based on the directions of the Court, then nothing would be left in the Trial Court.

The Supreme Court in the case of **Manohar Lal Sharma (Supra)** has held as under :

**"39.** However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to

monitor would only mean to maintain surveillance. The concern and interest of the court in such "Court-directed" or "Court-monitored" cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression "Court-monitored" has been interchangeably used with "Court-supervised investigation". Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference."

**(22)** If the facts of this case are considered, then it would be clear that no allegations have been made by the applicant against the investigating officer, but on the contrary, the basic allegations are that he is being falsely implicated by the complainant.

The Supreme Court in the case of **Lalita Kumari Vs. State of U.P.** reported in **(2014) 2 SCC 1** has held as under :-

**"120.** In view of the aforesaid discussion, we hold:

**120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is

permissible in such a situation.

**120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

**120.3.** If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

**120.4.** The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

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

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

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

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

**120.7.** While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

**120.8.** Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and

meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

**(23)** Thus, where a complaint is made disclosing the commission of cognizable offence, then it is mandatory on the part of the police to register the F.I.R. In the present case, the allegations made in the F.I.R., do disclose the commission of cognizable offence. Thus, the police did not commit any mistake by registering the F.I.R. in the matter. Whether the allegations made in the F.I.R. or case diary statements of the witnesses are worth reliable or not, it is for the investigating officer to form its opinion after concluding the investigation. This Court cannot supervise the investigation by issuing directions as to in what manner the investigation is to be done. It is the prerogative of the investigating officer unless and until, it is shown that the investigating officer is doing a biased investigation because of some extraneous considerations or *mala fides*. This Court in exercise of powers under Section 482 of Cr.P.C. cannot direct the police to investigate the case from a particular point of view also. There is no allegation against the investigating officer with regard to dereliction from duties. Even the investigating officer has not been made a party to this petition. Even the Doctor who had examined the complainant and has given the M.L.C. report, has not been made a party to this application, therefore, the allegations of *mala fides* against him can not be considered. No allegations of *mala fides* have been made against the concerning Doctor, except by mentioning that a false M.L.C. report has been prepared in connivance with the Doctor. Further more, whether the M.L.C. report was right or manipulated, can be proved during Trial while cross examining the concerning witness.

**(24)** Thus, this Court is of the view that no case is made out by the applicant warranting any direction to the investigating officer in the matter.

**(25)** The application fails and is hereby **dismissed**.

**(G.S. Ahluwalia)**  
**Judge**

\*MKB\*