



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 22nd OF APRIL, 2025

MISC. CRIMINAL CASE No. 50860 of 2018

PRAKASH PAWAIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Deepak Shrivastava and Ms. Anupama Goyal- Advocates for applicant.

Shri Mohit Shivhare – Public Prosecutor for respondent No.1/State.

Shri Padam Singh- Advocate for respondent No.2.

ORDER

This application, under Section 482 of Cr.P.C., has been filed seeking the following relief(s):-

अतः प्रार्थना है कि पिटीशनर द्वारा प्रस्तुत पिटीशन अंतर्गत धारा 482 जा.फौ. स्वीकार की जाकर पुलिस थाना ईसागढ में दर्ज एफ.आई.आर. अपराध क्रमांक 388/18 एवं उक्त एफ.आई.आर. के आधार पर जारी समस्त कार्यवाही/प्रोसीडिंग निरस्त किये जाने की आज्ञा प्रदान करने की कृपा करें।

2. The prosecution story, in short, is that prosecutrix lodged an FIR alleging that her husband is a labourer and she has three children and for the last one year she is residing in Ishagarh, District Ashok Nagar in a rented room for the purposes of education of her children. Earlier, she was residing in the house of one Ghanshyam Jatav. A dispute had arisen between her husband and her younger brother in law and therefore, applicant who is working as a head



constable had come to record the statement of her husband and since then applicant is known to her. Later on, applicant started frequently visiting her house. On 09.01.2018, her husband had gone to Ashok Nagar in connection with labour work and she was all alone in her house and her children had gone to school. It was approximately 01:00 - 01:30 pm. Applicant came to her house and he was in an inebriated condition. He enquired about whereabouts of her husband. She informed that he has gone on work. Prosecutrix was not well and she was lying in her room. Since it was time for her children to return from the school, therefore, the doors of the house were open. At that time, applicant caught hold of both her hands and gagged her mouth, as a result she could not raise an alarm and thereafter applicant committed rape on her and went away. She lost her consciousness and her clothes were also disturbed. At that time, her daughter aged about six years came back from the school and got her awoken. Thereafter, she made a call to her husband from the mobile phone of the daughter of landlord and informed about the incident. On the very same day, her husband came back at about 4-5 pm. Thereafter, she went to Police Station Ishagarh but her report was not lodged. Then multiple complaints were made against applicant. It was further alleged that once again about one and a half months thereafter, applicant also started residing on rent in the house of Munnalal contractor. He came to the room of prosecutrix and started talking nonsense and also tried to sexually violate her. On the basis of the FIR lodged by the prosecutrix, Police Station Ishagarh, District Ashok Nagar lodged the FIR in Crime No.388/2018 for the offence punishable under Sections 342, 376 IPC.

3. Challenging the FIR lodged by the prosecutrix, it is submitted by counsel for applicant that according to the prosecutrix, the incident had taken place on 09.01.2018 whereas the FIR was lodged on 02.12.2018. It is further submitted



that in fact daughter of applicant had lodged an FIR against the husband of prosecutrix on 28.02.2018 in Crime No.87/2018 registered at Police station Ishagarh, District Ashok Nagar for offence punishable under Section 354(A) of IPC on the ground that at about 10:30 pm while she was going to washroom then the husband of the prosecutrix had caught hold of her hand with an evil intention. On hearing her cries, her mother reached there and thereafter husband of prosecutrix ran away. It is submitted that by way of counterblast to the FIR lodged by the daughter of applicant, the prosecutrix started making complaint to various authorities alleging rape by applicant. The SDO (P), Chanderi, District Ashok Nagar conducted a preliminary enquiry and submitted his report dated 26.04.2018 to Superintendent of Police, Ashok Nagar which was accepted by Superintendent of Police, Ashok Nagar. Similarly, another enquiry report was submitted by the Additional Superintendent of Police, Ashok Nagar, thereby giving clean chit to applicant. Thus, it is submitted that the FIR in question is bad in law. Furthermore, when the prosecutrix realized that her false allegations are not being taken note of by the police and she has been exposed by the SDO (P), Chanderi, District Ashok Nagar and Additional S.P., Ashok Nagar, then she lodged a complaint at Police Station Kotwali, District Ashok Nagar for offence under Section 342, 376 IPC which was recorded at Serial No.0 and it was transferred to Police Station Ashok Nagar and thereafter, the impugned FIR has been lodged. It is further submitted that even the prosecutrix had made a report against her husband Bhagwat Jatav and mother-in-law Panabai alleging that they were pressurizing her to make an illegal demand of money from Bhagwat Lodhi, Surendra Lodhi, Jagdish Lodhi, Umesh Lodhi and Rajendra Lodhi and in case if they do not give money then she should lodge a false FIR. When she refused to do so, then she was beaten by Bhagwat Jatav



and her mother-in-law Pana Bai and later on she turned hostile and accordingly, her husband and mother-in-law were acquitted by JMFC, Ashok Nagar by judgment dated 01.08.2018 in RCT No.598/2018. Therefore, it is submitted that the prosecutrix is of a dubious character and thus the FIR in question is liable to be quashed.

4. *Per contra*, application is vehemently opposed by counsel for respondent No.2. Respondent No.2 has filed the written objection. It is submitted that applicant is working as Head Constable in the Police Department and is posted in Police Station Ishagarh, District Ashok Nagar. On 09.01.2018, prosecutrix was raped by applicant and when she went to police station Ishagarh, then owing to the influential position of applicant, coupled with the fact that applicant is posted as Head Constable in the same police station, her FIR was not lodged. Thereafter, taking advantage of his influential position, he in fact got a false report lodged by his daughter against husband of prosecutrix. When the authorities did not listen to the plight of respondent No.2, then she approached various authorities and ultimately the Collector, Ashok Nagar got an enquiry conducted by Woman Empowerment Officer, District Ashok Nagar. The Enquiry Report submitted by Woman Empowerment Officer, District Ashok Nagar was examined by Additional District Magistrate, Ashok Nagar and it was found that applicant had raped the prosecutrix and when the prosecutrix went to lodge the FIR on 09.01.2018 at Police Station Ishagarh, District Ashok Nagar, then her report was not lodged. Accordingly, the Collector, Ashok Nagar, wrote a letter to the Superintendent of Police, Ashok Nagar pointing out that in such sensitive cases, the FIR should have been lodged promptly but the SHO, Police Station Ishagarh has failed to discharge his duties. Accordingly, the report of the Woman Empowerment Officer,



District Ashok Nagar as well as the opinion given by the Additional District Magistrate, Ashok Nagar along with the compact disc were forwarded to the Superintendent of Police Ashok Nagar for action in accordance with law. Only thereafter, the FIR was lodged at Police Station Ashok Nagar at Serial No.0 and it was transmitted to Police Station Ishagarh for further action. It is submitted that still the misdeeds of the Police continued and in the FIR they have not given reference to the report given by the Woman Empowerment Officer, District Ashok Nagar as well as the Additional District Magistrate, Ashok Nagar and the covering letter of District Magistrate, Ashok Nagar. It is submitted that the incident has taken place twice. On 09.01.2018, the prosecutrix was raped and later on, an attempt to commit rape was made by applicant on 27.02.2018. So far as the enquiry reports given by SDO (P) Chanderi, District Ashok Nagar and Additional S.P. Ashok Nagar are concerned, it is submitted by counsel for prosecutrix that since those reports were never placed before the Trial Magistrate, thus, the same cannot be taken into consideration. Furthermore, those reports are tainted given with a view to give undue advantage to applicant.

5. *Per contra*, it is submitted by counsel for the State that whenever the police tried to collect blood sample of applicant, then it was found that he was not available and also submitted that applicant is not entitled to any relief. However, it is submitted that the investigation is still pending.

6. Heard learned counsel for the parties.

7. To understand the controversy in an easier manner, this Court would like to summarize the facts as under:

1. According to the prosecutrix she was raped by applicant on 09.01.2018 but the Police did not lodge the FIR.



2. The daughter of applicant lodged an FIR against husband of prosecutrix alleging eve-teasing on 28.02.2018.
3. An enquiry was conducted by SDO (P), Chanderi, District Ashok Nagar who gave his report dated 26.04.2018 certifying that the allegations made by prosecutrix regarding commission of rape on 09.01.2018 is false.
4. Additional S.P., Ashok Nagar gave his enquiry report dated 24.05.2018 again giving a clean chit to applicant.
5. Both these reports were never placed before the Magistrate for judicial scrutiny and it appears that both these reports were retained by the police department by keeping the same in their office.
6. The Collector, Ashok Nagar, sent a letter dated 12.11.2018 to the Superintendent of Police, Ashok Nagar along with the report of Woman Empowerment Officer and the opinion of the Additional District Magistrate, Ashok Nagar, for action in accordance with law.
7. On 02.12.2018, Police registered the impugned FIR in Crime No.388/2018 at Police Station Ishagarh, after it was transmitted by Police Station Kotwali, District Ashok Nagar.
8. From the narration of aforesaid facts, it is clear that Police Station Ishagarh never took any action on the report made by prosecutrix and decided to conduct preliminary enquiry on the complaints made by prosecutrix. Once the prosecutrix had levelled the allegation of rape, then whether the Police should have conducted preliminary enquiry or not is also a question of debate and indicates that the Police was handling the case with a preconceived notion, that the allegations made by the prosecutrix are not correct.



9. Be that whatever it may be.

10. Now, the only question for consideration is that if the police had decided to conduct a preliminary enquiry on a complaint made by the complainant pointing out a heinous offence of rape, then whether the Police was right in keeping the enquiry report with itself without getting it approved from the Magistrate and whether is it the proper course of action or not?

11. The Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh And Others** reported in (2014) 2 SCC 1 has held as under:-

111. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has “*reason to suspect the commission of an offence*”. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

112. Likewise, giving power to the police to close an investigation, Section 157 of the Code also acts like a check on the police to make sure that it is dispensing its function of investigating cognizable offences. This has been recorded in the 41st Report of the Law Commission of India on the Code of Criminal Procedure, 1898 as follows:

“14.1. *Scheme of Chapter.*—If the offence does not appear to be serious and if the station house officer thinks there is no sufficient ground for starting an investigation, he need not investigate but, here again, he has to send a report to the Magistrate who can direct the police to investigate, or if the Magistrate thinks fit, hold an inquiry himself. ...



14.2. *Function of Magistrate during investigation.*—A noticeable feature of the scheme as outlined above is that a Magistrate is kept in the picture at all stages of the police investigation, but he is not authorised to interfere with the actual investigation or to direct the police *how* that investigation is to be conducted.”

(emphasis in original)

Therefore, the scheme of the Code not only ensures that the time of the police should not be wasted on false and frivolous information but also that the police should not intentionally refrain from doing their duty of investigating cognizable offences. As a result, the apprehension of misuse of the provision of mandatory registration of FIR is unfounded and speculative in nature.

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 [Ed.: This correction is based on para 120.7 as corrected vide order in Lalita Kumari v. State of U.P., (2023) 9 SCC 695.] . 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 fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. 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.



12. The Supreme Court in the case of **National Confederation of Officers Association of Central Public Sector Enterprises and Others Vs. Union of India And Others** reported in (2022) 4 SCC 764 has held as under:-

E. CBI's preliminary enquiry

57. A preliminary enquiry on the basis of “confidential source information” in relation to the HZL disinvestment during 1997-2003, was registered by CBI on 6-11-2013. In compliance of this Court's order dated 3-11-2015 [*National Confederation of Officers Assn. v. Union of India*, 2015 SCC OnLine SC 1899] , a status report was submitted by CBI. Furthermore, on 19-1-2016 [*National Confederation of Officers Assn. v. Union of India*, 2016 SCC OnLine SC 1940] , this Court had directed CBI to submit another status report in a sealed cover. By an affidavit dated 14-7-2020, the Head of Branch, Anti-Corruption Branch (“ACB”), Jodhpur has annexed a “self-contained note” dated 6-3-2017, detailing the closure of the preliminary enquiry, after compliance with the process detailed in CBI Crime Manual, 2005 (“CBI Crime Manual”).

58. The above affidavit, the self-contained note closing the preliminary enquiry and additional documents detailing the steps taken by CBI during the preliminary enquiry were shared for the perusal of this Court. The Special Prosecutor, CBI Head Office, New Delhi on 31-7-2014, the Director of Prosecution on 16-10-2014, and the Special Director on 21-3-2016 have stated their reasons for recommending the closure of the preliminary enquiry without registering a regular case.

59. However, the Additional Director, CBI on 22-8-2014, recommended the conversion of the preliminary enquiry into a regular case, against certain named officials and persons under Section 120-B read with Section 420 of the Penal Code, 1860 and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act,



1988. A similar conclusion was reached by the Enquiry Officer (Head of Branch, ACB, Jodhpur) on 4-4-2014, Senior Public Prosecutor, Jodhpur on 21-4-2014, the Head of Branch, Jodhpur, on 25-4-2014, the Head of the Zone, DLI on 13-8-2014, the Deputy Legal Advisor, ACB, Jodhpur on 26-5-2014, the Deputy Superintendent of Police, Jaipur on 12-2-2015 and the Head of Branch, Jodhpur on 13-2-2015.

60. In view of the difference of opinion between the Director of CBI and the Director of Prosecution, CBI, the matter was to be referred to the Attorney General on 17-10-2014, in accordance with Para 23.21 of CBI Crime Manual. However, the status of this referral has not been alluded to before us, for determination of the closure of the preliminary enquiry.

61. Chapter 9 of CBI Crime Manual details the process of conducting preliminary enquiries. Para 9.1 states that “*a P[reliminary] E[nquiry] may be converted into R[egular] C[ase] as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence*”. In *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], a Constitution Bench of this Court had underscored the duty of the police to register an FIR when the information received prima facie discloses the commission of a cognizable offence. However, the decision recognises that in certain cases, a preliminary enquiry may be held. With specific reference to CBI Manual, this Court noted that “*the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1, para 119 : (2014) 1 SCC (Cri) 524]*” This Court issued inter alia, the following directions : (*Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]* , SCC p. 61, para 120)

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



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.”*

62. In CBI v. Thommandru Hannah Vijayalakshmi [CBI v. Thommandru Hannah Vijayalakshmi, (2021) 18 SCC 135 : 2021 SCC OnLine SC 923] , a three-Judge Bench of this Court held that it is not mandatory to hold a preliminary enquiry in all cases before registering an FIR against a public official, in a matter involving the possession of disproportionate assets. Speaking for the three-Judge Bench, one of us (D.Y. Chandrachud, J.), noted the stage at which a preliminary enquiry is converted into a regular case : (SCC paras 26, 37 & 39)

“26. Hence, all these decisions do *not* mandate that a preliminary enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a preliminary enquiry has not been conducted. The decision in *Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702]* dealt specifically with a case of disproportionate assets. In that context, the judgment holds that *where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against*



the accused on the basis of the information without conducting a preliminary enquiry.

37. ... Hence, two distinct principles emerge from the above :
(i) a preliminary enquiry is registered when information (received from a complaint or “source information”) after verification indicates serious misconduct on part of a public servant but is *not* enough to justify the registration of a regular case; and (ii) when the information available *or* after its secret verification reveals the commission of a cognizable offence, a regular case has to be registered instead of a preliminary enquiry being resorted to necessarily.

39. The precedents of this Court and the provisions of CBI Manual make it abundantly clear that a preliminary enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] holds that if the information received discloses the commission of a cognizable offence at the outset, no preliminary enquiry would be required. *It also clarified that the scope of a preliminary enquiry is not to check the veracity of the information received, but only to scrutinise whether it discloses the commission of a cognizable offence.* Similarly, Para 9.1 of the CBI Manual notes that a preliminary enquiry is required *only* if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. *Even when a preliminary enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offence.* A similar conclusion has been reached by a two-Judge Bench in *Managipet* [*State of Telangana v. Managipet*, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] as well. Hence, the proposition that a preliminary enquiry is mandatory is plainly



contrary to law, for it is not only contrary to the decision of the Constitution Bench in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] but would also tear apart the framework created by the CBI Manual.”

(emphasis in original and supplied)

63. In *Manohar Lal Sharma v. Union of India* [*Manohar Lal Sharma v. Union of India*, (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1] , a three-Judge Bench of this Court, while monitoring an investigation in a matter of national importance, had elaborated on the duty of CBI to convert a preliminary enquiry into a regular case, once a prima facie case involving the commission of a cognizable offence is evinced. R.M. Lodha, J. speaking on behalf of the Court, had also remarked on the nature of the powers of the constitutional court, while monitoring an investigation in exceptional matters. This power could be operationalised to do complete justice : (SCC pp. 553-54, 556 & 560, paras 29, 38 & 50)

“29 [*Ed. : Para 29 corrected vide Official Corrigendum No. F. 3/Ed.B.J./7/2014 dated 10-2-2014.*] . Once jurisdiction is conferred on CBI to investigate the offence by virtue of notification under Section 3 of the DSPE Act or CBI takes up investigation in relation to the crime which is otherwise within the jurisdiction of the State police on the direction of the constitutional court, the exercise of the power of investigation by CBI is regulated by the Code and the guidelines are provided in CBI (Crime) Manual. Para 9.1 of the Manual says that when, a complaint is received or information is available which may, after verification, as enjoined in the Manual, indicate serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 of the Code, a preliminary enquiry (PE) may be registered after obtaining approval of the competent authority. It also says that where the High Courts and the Supreme Court entrust matters to CBI for inquiry and



submission of report, a PE may be registered after obtaining orders from the head office. When the complaint and source information reveal commission of a prima facie cognizable offence, a regular case (RC) is to be registered as enjoined by law. *A PE may be converted into RC as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. When information available is adequate to indicate commission of cognizable offence or its discreet verification leads to similar conclusion, a regular case must be registered instead of a PE.*

38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

50. When the Court monitors the investigation, there is already departure inasmuch as the investigating agency informs the Court about the progress of the investigation. *Once the constitutional court monitors the inquiry/investigation which is only done in extraordinary circumstances and in exceptional situations having regard to the larger public interest, the inquiry/investigation into the crime under the PC Act against public servants by CBI must be allowed to have its course unhindered and uninfluenced and the procedure contemplated*



by Section 6-A cannot be put at the level which impedes exercise of constitutional power by the Supreme Court under Articles 32, 136 and 142 of the Constitution. Any other view in this regard will be directly inconsistent with the power conferred on the highest constitutional court.”

(emphasis supplied)

64. There is no bar on the constitutional power of this Court to direct CBI to register a regular case, in spite of its decision to close a preliminary enquiry. Analogously, this Court has directed the police to register an FIR, once a cognizable offence has been disclosed to it. In *Shashikant v. CBI* [*Shashikant v. CBI*, (2007) 1 SCC 630 : (2007) 1 SCC (Cri) 406] a two-Judge Bench of this Court, has held that this Court has the power to direct CBI to conduct an investigation in exceptional cases, despite CBI's decision to close the preliminary enquiry, even in the exercise of its writ jurisdiction : (SCC pp. 633-64, 637 & 640, paras 3, 17 & 30)

“3. The appellant claims himself to be a vigilant employee. He made an anonymous complaint to the Central Bureau of Investigation alleging corrupt practices and financial irregularities on the part of some officers of his department. Respondent 1 stated that on the basis of a source information, a preliminary inquiry was conducted in which the statements of various officers were recorded. However, the investigating officer was of the opinion that it was not necessary to register a first information report. It recommended for holding of departmental proceedings against the officers concerned. The said recommendation found favour with the higher officers. The opinion of the Central Vigilance Commission was also obtained.

17. The appellant does not deny or dispute that the first respondent initiated a preliminary inquiry upon receipt of the complaint. The question which arises for consideration is as to



whether it was obligatory on the part of the first respondent to lodge a first information report and carry out a full-fledged investigation about the truthfulness or otherwise of the allegations made in the said anonymous complaint.

30. The first respondent [CBI] is a statutory authority. It has a statutory duty to carry out investigation in accordance with law. Ordinarily, it is not within the province of the court to direct the investigative agency to carry out investigation in a particular manner. A writ court ordinarily again would not interfere with the functioning of an investigative agency. Only in exceptional cases, it may do so. No such case has been made out by the appellant herein. The nature of relief prayed for in the writ petition also is beyond the domain of a writ court save and except, as indicated hereinbefore, an exceptional case is made out.”

(emphasis supplied)

65. Upon perusal of the aforementioned reports and recommendations, it is our considered opinion that the disinvestment in 2002 evinces a prime facie case for registration of a regular case. We are desisting from commenting on some crucial facts and names of individuals involved, so as to not cause prejudice to the investigation of the matter. Some details in CBI officials' recommendations to register a regular case, which have not been adequately addressed by the self-contained note closing the preliminary enquiry,.....

13. Thus, it is clear that when the Police comes to a conclusion that the complaint made by the complainant appears to be false, then it has to forward a copy of said finding to the complainant and is also required to forward the report to the Magistrate under Section 169 Cr.P.C./189 of BNSS. Section 157 of Cr.P.C. gives a complete check to the unfettered powers of police.



14. In case if the Police is allowed to close the preliminary enquiry at its own level, then it would give unfettered powers to the police and the opinion formed by the Police would always remain unchallenged. For example, if the Police is not interested in registering a case against a person, then instead of registering an FIR it would take up the matter in preliminary enquiry and then after forming its own opinion would keep the enquiry report with itself and would not send it to the Magistrate for judicial scrutiny. That would lead to dictatorship of the Police. In the present case also, it appears that on two occasions, preliminary enquiry was done by SDO (P), Chanderi, District Ashok Nagar and Additional S.P. Ashok Nagar who gave their enquiry report but that enquiry report was neither supplied to complainant nor it saw the light of the day. On the contrary, it appears that the enquiry report was shared by both the officers with applicant. Applicant has filed the copies of the enquiry reports submitted by SDO (P), Chanderi, District Ashok Nagar and Additional S.P., Ashok Nagar but those enquiry reports have not been issued under Right to Information Act. Thus, it is clear that applicant who is posted as Head Constable had easy access to the enquiry report which otherwise should not have been shared by Superintendent of Police, Ashok Nagar with applicant.

15. Under these circumstances, if the contention of counsel for respondent No.2 is that applicant was playing an influential role in Police Station Ishagarh, then the same cannot be said to be false or baseless, for the reasons mentioned above. Therefore, even if the preliminary enquiry was conducted by two officers but as those reports never saw the light of the day, accordingly, this Court is of considered opinion that as those enquiry reports did not attain finality, it cannot be said that opinion formed by enquiry officer was correct.



16. So far as contention of applicant that FIR in question was lodged by way of counterblast to the FIR lodged by the daughter of applicant is concerned, under the facts and circumstances of the case, this Court is of considered opinion that it appears that in fact the FIR lodged by the daughter of applicant was by way of counterblast in order to put pressure on the prosecutrix. However, as the said trial is still pending, therefore, this Court would not like to make any further comment in that regard. But one thing is clear that although FIR was lodged by daughter of applicant on 28.02.2018 but in spite of the fact that more than seven years have passed, the said trial is still pending. Accordingly, counsel for applicant was directed to make a submission as to whether complainant i.e. daughter of applicant has ever entered into the witness box or not. After seeking telephonic instructions from applicant, it is submitted by counsel for applicant that daughter of applicant has not entered into the witness box so far.

17. The *mala fides* of Police did not come to an end even at the time of registration of FIR in question. Respondent No.2 has relied upon letter dated 12.11.2018 written by Collector Ashok Nagar to S.P. Ashok Nagar thereby condemning the act of police in not registering the offence on the report lodged by respondent No.2. Only under the pressure of District Magistrate, Ashok Nagar who had written a letter on the basis of report submitted by District Woman Empowerment Officer and opinion given by the Additional District Magistrate, it appears that the FIR in question was lodged by Police Station Kotwali District Ashok Nagar. Thereafter, the FIR which was registered at Serial No.0 was transmitted to Police Station Ishagarh, District Ashok Nagar and the FIR in question was lodged without disclosing the fact that the said FIR is being lodged under the pressure of District Magistrate, Ashok Nagar. In the



impugned FIR, Police has recorded the reasons for delay in lodging the report by the complainant, according to which FIR was lodged after mother of complainant came (मायके से माँ के आने पर) but the fact is that complainant was running from pillar to post from one authority to another authority and the police of Police Station Ishagarh, District Ashok Nagar was trying very hard to suppress the voice of complainant and acted contrary to the provisions of law by forming an opinion on their own & keeping the enquiry report with themselves which never saw the light of the day. The Police should have mentioned the reasons for delay as “non-cooperation by the police”, but instead of mentioning the correct facts, false reason was mentioned in the FIR claiming that the FIR was lodged after mother of complainant came. Thus, Police has assigned false reason for delay in lodging FIR and also tried to support applicant because the delay of approximately 12 months in lodging the FIR merely on the ground that mother of complainant was not present, cannot be said to be plausible explanation. In fact, it was Police Station Ishagarh, District Ashok Nagar which was out and out to suppress the voice of complainant and the complainant was running from pillar to post.

18. This Court by interim order dated 03.01.2019 had directed that enquiry may continue but no coercive action shall be taken against applicant. It is the stand of the State that applicant was directed to appear for collection of blood sample but he is avoiding and is not co-operating.

19. Under these circumstances, it is clear that applicant is still playing an influential role and is trying very hard to manipulate investigation. When there is serious allegation of rape against applicant, it was expected from the Police that it should have acted in a free and fair manner, but unfortunately they have



miserably failed to discharge their duties and applicant is still playing an dominating role in manipulating the investigation.

20. Under these circumstances, the Competent Authority or Director General of Police is directed to immediately transfer applicant to another part of the State so that he may not influence the ongoing investigation. The Competent Authority may also consider to take action against applicant under Rules 9 and 14 of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966. The interim order dated 03.01.2019 is hereby vacated. Police is free to take applicant in custody.

21. Thus, for the reasons mentioned above, this Court is of considered opinion that no case is made out warranting interference.

22. Application fails and is hereby *dismissed*.

(G. S. AHLUWALIA)
JUDGE