[2025] 10 S.C.R. 66 : 2025 INSC 1095

Vinod Kumar Pandey & Anr.
v.
Seesh Ram Saini & Ors.

(Civil Appeal No. 11740 of 2025)

10 September 2025

[Pankaj Mithal* and Prasanna B. Varale, JJ.]

Issue for Consideration

Issue arose as regards the correctness of the order passed by the High Court holding that prima facie cognizable offences are made out for investigation against the appellant-officers of the CBI, and directing the Delhi Police to register a case.

Headnotes†

Code of Criminal Procedure, 1973 – s.154 – Registration of FIR upon receiving information about cognizable offence – Writ petitions seeking directions for registration of FIR against appellants- officers on deputation to CBI alleging commission of offences u/ss.506, 341, 342, 166, and ss.218, 463, 465, 469, 166 and 120-B IPC – Single Judge of the High Court rejecting the conclusion reached by the CBI's enquiry officer that no offence was made out and that the allegations of abuse and coercion were unsubstantiated, held that prima facie cognizable offences made out for investigation against the officers, directed the Delhi Police to register a case, and to get the matter investigated by the Special Cell – Appeals thereagainst, dismissed by the Division Bench – Interference:

Held: Not appropriate to interfere with the impugned judgment and order of the High Court in exercise of the discretionary jurisdiction u/Art.136 **–** Report of the CBI at best is a preliminary enquiry report submitted before the registration of the FIR **–** However, such an enquiry is not ordinarily contemplated in law before registration of FIR, and hence is not a conclusive report to be relied upon to oust the power of the Constitutional Court to record its own conclusion about commission of a cognizable offence, if any, on the material or the allegations in the complaints – Genuineness or credibility of the information is not the condition precedent for registration of an FIR – If the Constitutional Court has exercised its discretion in

* Author

entertaining the petitions and directing for the registration of the FIR against the two officers, on being satisfied that the commission of a cognizable offence is prima facie made out against them, no good reason to interfere with such discretion – Opinion expressed by the High Court in regard to commission of the cognizable offences is only a prima facie opinion and has to be treated as such, so as not to affect the discretion of the I.O., subsequent to the investigation – Registration of the FIR against the two officers not likely to cause any prejudice to them – They will have the right to participate in the investigation to establish that they have not committed any offence, as alleged – It would however, not be a prudent exercise at this stage to scuttle the registration of the FIR or the investigation, when the High Court in exercise of its constitutional powers had opined that prima facie, a cognizable offence is made out against the officers, that too upon elaborate consideration of the preliminary inquiry report of CBI – It would be dichotomy of justice if such offence is allowed to go uninvestigated particularly when there is involvement of the officers on deputation to CBI – Justice must not only be done, but must also be seen to be done – It is high time that sometimes those who investigate must also be investigated to keep alive the faith of the public at large in the system – Investigation would be conducted by the Delhi Police itself but by an officer not below the rank of Assistant Commissioner of Police – I.O. may consider inquiry conducted by the Joint Director, CBI during the investigation by him, but not to treat it as conclusive – I.O. would conduct the investigation without being influenced by any finding or observation made by the High Court or this Court and conclude the same as expeditiously as possible. [Paras 28, 32-41]

Case Law Cited

Pradeep Nirankarnath Sharma v. State of Gujarat **[2025] 4 SCR 32 : (2025) 4 SCC 818;** *Sakiri Vasu v. State of U.P.* **[2007] 12 SCR 1100 : (2008) 2 SCC 409;** *Ramesh Kumari v. State (NCT of Delhi)* **[2006] 2 SCR 403 : (2006) 2 SCC 677;** *Anurag Bhatnagar & Anr. v. State (NCT of Delhi) & Anr.,* **2025 INSC 895;** *Lalita Kumari v. Government of Uttar Pradesh and Ors.* **[2013] 14 SCR 713 : (2014) 2 SCC 1 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Constitution of India.

List of Keywords

Cognizable offences; Investigation; Officers of the CBI; Delhi Police to register a case; Registration of FIR upon receiving information about cognizable offence; Registration of FIR; Investigation by the Special Cell; Report of the CBI; Preliminary enquiry report; Constitutional Court; Closure report; Filing of chargesheet.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11740 of 2025

From the Judgment and Order dated 13.03.2019 of the High Court of Delhi at New Delhi in LPA No. 1194 of 2006

With:

Civil Appeal No(s). 11742, 11743, and 11741 of 2025

Appearances for Parties

Advs. for the Appellants:
Ranjit Kumar, Kirtiman Singh, Sr. Advs., R. Chandrachud, Waize Ali Noor, Ms. Vidhi Jain, Minal Kumar Sharma, Mrinal Sharma, Mrinal Kumar Sharma, Zillur Rahman, D. Venkta Krishna.

Advs. for the Respondents:
Tushar Mehta, Solicitor General, Suryaprakash V. Raju, A.S.G., Dhruv Mehta, Yashraj Singh Deora, Ms. R. Bala, Sr. Advs., Ms. Anupama, P. N. Puri, Arvind Kumar Sharma, Mukesh Kumar Maroria, Kanu Agarwal, Udai Khanna, Sughosh Sunramanyam, Ms. Balaji Srinivasan, Rajesh Kumar Singh, Annam Venkatesh.

Judgment / Order of the Supreme Court

Judgment

Pankaj Mithal, J.

1. Delay condoned.

2. Leave granted.

3. Heard Mr. Ranjit Kumar, learned senior counsel, Mr. S. V. Raju, learned Additional Solicitor General and Mr. Dhruv Mehta, learned senior counsel for the parties.

4. The cases are quite simple but have a chequered history, involving the appellants, who are two officers of the Central Bureau of Investigation[1]. One is Vinod Kumar Pandey, the then Inspector of CBI, and the other is Neeraj Kumar, the then Joint Director of CBI.

5. The two petitions being Writ Petition (Crl.) No. 675 of 2001 and Writ Petition (Crl.) No.738 of 2001 under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure[2], 1973 came to be filed by one Vijay Aggarwal and other by one Sheesh Ram Saini respectively, seeking directions for registration of First Information Report[3] against the above two officers on deputation to the CBI, namely, Vinod Kumar Pandey and Neeraj Kumar for committing offences under Sections 506, 341, 342 and 166, and Sections 218, 463, 465, 469, 166 and 120-B of the Indian Penal Code[4], 1860, as alleged in the writ petitions respectively.

6. The aforesaid two writ petitions were decided by the Single Judge of the High Court on 26.06.2006 but by separate order(s) passed in identical terms. Both the petitions were partly allowed and directions were issued to the Delhi Police to register a case on the basis of the allegations contained in the complaint dated 05.07.2001 lodged by Sheesh Ram Saini with PS Lodhi Colony and complaint dated 23.02.2004 addressed to Commissioner of Police, Delhi by Vijay Aggarwal respectively, and to get the matter investigated by the Special Cell of the Delhi Police by an Officer not below the rank of Assistant Commissioner of Police, uninfluenced by the findings and the observations contained in the Inquiry Report dated 26.04.2005 conducted by the Joint Director, CBI.

7. In short, the writ petitions were partly allowed with the direction to register the FIR with the finding that *prima facie* cognizable offences are made out for investigation against the appellant-officers.

8. Aggrieved by the aforesaid judgment(s) and order(s) of the High Court dated 26.06.2006, both the officers of the CBI preferred separate Letters Patent Appeal(s)[5] before the Division Bench of the

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1 *Hereinafter referred to as 'CBI'*

2 *Hereinafter referred to as'Cr.P.C.'*

3 *In short 'FIR'*

4 *In short 'IPC'*

5 *Hereinafter referred to as 'LPA'*

High Court. The said LPAs were dismissed on 13.03.2019 on the ground of maintainability.

9. Out of the present four appeals, two appeals [D.No.10495 of 2019 and D.No.10508 of 2019] are against the order(s) of the learned Single Judge dated 26.06.2006 partly allowing the petitions, and other two appeals [S.L.P.(C) No. 7900 of 2019 and S.L.P.(C) No. 7897 of 2019] are against the order of the Division Bench of the High Court dated 13.03.2019 dismissing the LPAs as not maintainable.

10. We had made it clear to the parties in the very beginning that we would not enter into the question of maintainability of the LPAs so as to adjudicate the appeals arising out of their dismissal for the reason that we would consider the correctness of the judgment and order(s) dated 26.06.2006 on merits as would have been done in the LPAs by the Division Bench. The counsel for the parties agreed and proceeded to advance arguments accordingly on merits.

11. A preliminary objection was raised with regard to delay of more than 12 years in challenging the judgment and order(s) of the Single Judge dated 26.06.2006.

12. The said delay has been explained taking the ground that the appellants were *bona fide* pursuing their LPAs before the Division Bench of the High Court and once they realized that the LPAs are not maintainable and they have been dismissed as not maintainable, they decided to challenge the judgment and order(s) passed by the learned Single Judge before the Supreme Court.

13. In view of the above explanation, though technically, pursuing the LPAs and the time spent thereon may not be a very good cause to condone the delay but since there is no willful or deliberate delay or any default on part of the appellants in assailing the judgment and order(s) of the Single Judge dated 26.06.2006 rather they were all thoroughly vigilant of their rights, we have ignored the delay and have heard the parties on merits, more particularly, on the correctness of the judgment and order(s) of the Single Judge.

14. Mr. Ranjit Kumar, learned senior counsel for the appellants, argued that the information/complaint submitted by Sheesh Ram Saini and by Vijay Kumar Aggarwal does not make out a cognizable offence for enabling the Court to direct for the registration of the FIR. The High Court could not have directed for the registration of the FIR

as the procedure laid down by the various decisions of this Court was not followed before approaching the High Court. Secondly, the High Court could not have recorded a finding of commission of a cognizable offence which leaves nothing for the Investigating Officer[6] to opine on after the completion of the investigation, except to submit a chargesheet. He further argued that in the so-called preliminary inquiry conducted by the Joint Director, CBI, it has been reported that no cognizable offence is made out for the purpose of investigation, therefore, it was not open for the High Court to have substituted its own finding and to direct for the registration of the FIR.

15. He emphasized that even if for the sake of argument it is accepted that a case for investigation is made out against Vinod Kumar Pandey, there is no averment or iota of material to rope in Neeraj Kumar, the other officer.

16. A further submission has been made by Mr. Ranjit Kumar, learned senior counsel for the appellants, that the High Court manifestly erred in directing the investigation to be conducted by the Special Cell of the Delhi Police, which ordinarily investigates the matters relating to terrorism. The High Court also committed an error in directing the exclusion of preliminary inquiry report dated 26.04.2005 of the Joint Director, CBI from consideration during the investigation.

17. Mr. S. V. Raju, learned Additional Solicitor General for the respondents, pressed an application for the impleadment of the CBI contending that as the preliminary inquiry was conducted by an officer of the CBI and the case involves allegations against the officers of the CBI, therefore, the CBI is a proper party so as to defend the inquiry report and its officers.

18. On merits, he submitted that the complaints do not make out any cognizable offence and are barred by Section 197 Cr.P.C., as whatever acts have been performed by the officers, they were in discharge of their official duties. The complaints are also hit by Section 140 of the Delhi Police Act, 1978 and are barred by limitation.

19. Admittedly, the CBI was a party in the writ petitions before the High Court and had not chosen to assail the impugned order(s), meaning thereby that the CBI never felt aggrieved by the said order(s). The

6 *In short 'I.O.'*

CBI, even if impleaded, would be added as the respondent or a proforma respondent. It is well recognized in law that a respondent or a proforma respondent may support the judgment impugned but cannot assail the same in his capacity as a respondent. The CBI has not independently challenged the aforesaid order(s) of the High Court.

20. Moreover, the CBI is not the party actually aggrieved by the direction given by the High Court for the registration of the FIR against the two officers. It is the officers who are aggrieved in their personal capacity and not the institution to which they are on deputation. It is, therefore, for the officers to defend themselves by taking appropriate legal remedies and the CBI has nothing to do with it. This apart, the report of the CBI is not under challenge, therefore, the contention that CBI has to support the report of its officer is not appreciable. Accordingly, we do not deem it necessary to permit impleadment of the CBI and to consider any objections as raised by the learned Additional Solicitor General.

21. The plain reading of the impugned judgment and order(s) of the Single Judge of the High Court dated 26.06.2006 reveals that the officers of the CBI in the dock have committed irregularities, if not illegality in discharge of their official duties and are *prima facie* guilty of the commission of the offences as alleged. This is clearly reflected from the averments contained in the complaints and the petitions. Both the officers have acted in connivance, and it is alleged that one of the officers, Vinod Kumar Pandey, had acted at the behest of the Senior Officer, Neeraj Kumar. The question whether Vinod Kumar Pandey acted on the advice or behest of Neeraj Kumar or whether they were in connivance, is a matter of fact which has to be investigated.

22. The Single Judge of the High Court in Writ Petition (Crl.) No. 738 of 2001, upon consideration of the material on record including the inquiry report dated 26.04.2005 of the Joint Director of CBI, found that cognizable offences were *prima facie* made out against the officers of the CBI i.e. the appellants. The allegation that the documents were seized on 26.04.2000 without preparation of the seizure memo stood substantiated even in the inquiry report, which recorded that the memo of seizure was prepared only on 27.04.2000 and not at the time of seizure on 26.04.2000. The Court disagreed with the explanation that the documents were taken for scrutiny on 26.04.2000 noting that such a version was contrary both to the

records and the findings of the inquiry itself. The Single Judge also refused to accept that it was a procedural irregularity and held that the preparation of seizure memo in the facts and circumstances of the case was not in accordance with the CBI Crime Manual and attracted penal provisions of Sections 218, 463, 465, 469, 166 and 120-B IPC.

23. The High Court in Writ Petition (Crl.) No.675 of 2001, preferred by Vijay Aggarwal, observed that V.K. Pandey had summoned Vijay Aggarwal on 07.06.2001 and 11.06.2001 in clear derogation of a bail order dated 27.11.2000 passed by the Special Judge, which *prima facie* indicated a mala fide and malicious exercise of authority.

24. The Court held that the allegations of abuse, intimidation, and threats, including use of vulgar language to coerce Vijay Aggarwal to ensure withdrawal of his brother's complaint against Neeraj Kumar, were serious and not unfounded. The Court observed that such conduct was grave in nature and *prima facie* disclosed the commission of cognizable offences under IPC.

25. The High Court rejected the conclusion reached by the CBI's enquiry officer that no offence was made out and that the allegations of abuse and coercion were unsubstantiated. It was observed that the correctness or veracity of the allegations could not have been gone into at the stage of a preliminary enquiry and that such allegations, being serious in nature, could not be brushed aside lightly. The Court clarified that Vijay Aggarwal's failure to file objections to the enquiry report could not amount to acceptance of its findings.

26. The Writ Court emphasized that CBI officers, being public servants, cannot claim immunity if they knowingly prepare false or incorrect records during the course of seizure or abuse their official position. Such acts on their part are serious acts and are not capable of being ignored and therefore, investigation in the matter is necessary.

27. In ***Pradeep Nirankarnath Sharma v. State of Gujarat,***[7] this Court, in a very recent judgment held, that where the allegations pertain to the abuse of official position and corrupt practices while holding public office, such actions fall squarely within category of cognizable offences and therefore, they are to be inquired into, and holding

7 (2025) 4 SCC 818

of any preliminary inquiry before the registration of the FIR is not necessary. If the information provided to the police or the preliminary report discloses a commission of a cognizable offence, the police is duty bound under Section 154 Cr.P.C. to register an FIR without any delay.

28. The report of the CBI at best is a preliminary enquiry report submitted before the registration of the FIR. However, such an enquiry is not ordinarily contemplated in law before registration of FIR, and hence is not a conclusive report to be relied upon to oust the power of the Constitutional Court to record its own conclusion about commission of a cognizable offence, if any, on the material or the allegations in the complaints.

29. Undoubtedly, the High Court(s) should discourage writ petitions or petitions under Section 482 Cr.P.C. where alternative remedies are available. Nonetheless, as observed even in ***Sakiri Vasu v. State of U.P.,***[8] it is equally true that alternative remedy is not an absolute bar for invoking the extraordinary jurisdiction or the inherent jurisdiction of the High Court under Article 226 of the Constitution or Section 482 Cr.P.C.

30. In ***Ramesh Kumari v. State (NCT of Delhi)***[9], the Court denounced the dismissal of the petition seeking registration of the FIR, solely on the ground of alternative remedy, and held that ground of alternative remedy would not be a substitute in law for refusing to register a case when the complaint of the citizen makes it a cognizable offence.

31. In a recent landmark decision, ***Anurag Bhatnagar & Anr. v. State (NCT of Delhi) & Anr.***[10], this Court held that although the complainant approached the Court, in that case the Magistrate, without exhausting the alternative remedies available, it was a mere procedural irregularity and not illegality, as the Court was competent to order registration of the FIR. It was further observed that when information disclosing commission of cognizable offence is conveyed to the police, they cannot refuse to register the FIR.

32. Since, it is the duty of the police to register an FIR if a *prima facie* cognizable offence is made out, the police is not required to go

8 (2008) 2 SCC 409

9 (2006) 2 SCC 677

10 2025 INSC 895

into the genuineness and credibility of the said information. It has been so laid down very clearly in ***Ramesh Kumari*** (Supra) that the genuineness or credibility of the information is not the condition precedent for registration of an FIR.

33. The complainants Sheesh Ram Saini and Vijay Kumar Aggarwal have approached the police authorities by means of complaints dated 05.07.2001 and 23.02.2004 to get the matter investigated, but as no action was purportedly taken thereof rather it is alleged that the police authorities expressed reluctance to entertain the complaints as it would not be proper on part of the police to investigate against the officers of the CBI, the complainants approached the Constitutional Court for necessary action.

34. Therefore, if the Constitutional Court has exercised its discretion in entertaining the petitions and directing for the registration of the FIR against the two officers, on being satisfied that the commission of a cognizable offence is *prima facie* made out against them, we see no good reason to interfere with such discretion. At best, as argued by Mr. Ranjit Kumar, learned senior counsel for the appellants, we can say that the opinion expressed by the High Court in regard to commission of the cognizable offences is only a *prima facie* opinion and has to be treated as such, so as not to affect the discretion of the I.O., subsequent to the investigation.

35. The registration of the FIR against the two officers is not likely to cause any prejudice to them. They will have the right to participate in the investigation to establish that they have not committed any offence, as alleged. Thereupon, the I.O. on consideration of the material collected during investigation, may submit a closure report or file the chargesheet. In the event, a closure report is filed and accepted by the Magistrate, the appellants will have no grievance. On the other hand, in the event, a charge sheet is submitted, the appellants will have an opportunity to assail the same before the appropriate forum.

36. It would however, not be a prudent exercise at this stage to scuttle the registration of the FIR or the investigation, when the High Court in exercise of its constitutional powers had opined that *prima facie,* a cognizable offence is made out against the two officers, that too upon elaborate consideration of the preliminary inquiry report of the Joint Director of CBI.

37. It is trite to point out that the offence is alleged to have been committed in the year 2000 and till date the matter had not been allowed to be investigated. It would be dichotomy of justice if such an offence is allowed to go uninvestigated particularly when there is involvement of the officers on deputation to CBI. It is cardinal in law that justice must not only be done, but must also be seen to be done. It is high time that sometimes those who investigate must also be investigated to keep alive the faith of the public at large in the system.

38. In view of the aforesaid facts and circumstances, we do not consider it appropriate to interfere with the impugned judgment and order(s) of the High Court in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India.

39. However, we make it clear that since the Special Cell of the Delhi Police is supposed to investigate the matters concerning terrorism, upon registration of the FIR in the case at hand, the investigation would be conducted by the Delhi Police itself but by an officer not below the rank of Assistant Commissioner of Police.

40. Secondly, in view of the law laid down in ***Lalita Kumari vs. Government of Uttar Pradesh and Ors***.[11], and reiterated thereafter to the effect that registration of FIR is mandatory under Section 154 Cr.P.C. if the information discloses commission of a cognizable offence and no preliminary inquiry before FIR is permissible in such a situation; however, if the information received does not disclose a cognizable offence but indicates necessity of an inquiry being conducted, a preliminary inquiry may be conducted only to ascertain facts disclosing cognizable offence, if any. Thus, treating the inquiry conducted by the Joint Director, CBI as a preliminary inquiry, we permit the same to be looked into, if necessary, by the I.O. during the investigation by him, but not to treat it as conclusive. The I.O. would conduct the investigation strictly in accordance with law without being influenced by any finding or observation made by the High Court in the impugned order(s) or by this Court hereinabove and shall conclude the same as expeditiously as possible, preferably within three months as the matter is quite old.

41. The appellants are directed to join the investigation and to cooperate with the I.O. by appearing before him, as and when called upon.

11 (2014) 2 SCC 1

In the event they join the investigation and appear before the I.O. regularly, no coercive steps shall be taken against them, including that of arrest, until and unless the I.O. records satisfaction that custodial interrogation at any stage is necessary.

42. The two appeals [S.L.P.(C) No. 7900 of 2019 and S.L.P.(C) No. 7897 of 2019] stand disposed of in the above terms and the two appeals [D.No.10495 of 2019 and D.No.10508 of 2019] are partly allowed by modifying the judgment and orders of the High Court dated 26.06.2006 as indicated above.

43. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals disposed of.

†*Headnotes prepared by:* Nidhi Jain