IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 25th OF MARCH, 2025

MISC. CRIMINAL CASE No. 12930 of 2025

CHANDRABHAN SINGH BHADORIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri D. R. Sharma – Advocate for applicant.

Shri Mohit Shivhare – Public Prosecutor for respondent/State.

ORDER

This application, under Section 528 of B.N.S.S., 2023, has been filed for quashment of FIR in Crime No.63 of 2025 registered at Police Station Gole Ka Mandir, Gwalior (M.P.) for offences under Sections 74, 75, 76, 296 and 351(3) B.N.S., 2023.

2. It is submitted by counsel for applicant that after the FIR was lodged, applicant made an application to Superintendent of Police, Incharge SHO, as well as I.G. Police for conducting a free and fair investigation, but free and fair investigation has not been done so far. It is submitted that the FIR has been lodged on the false ground that applicant is teasing his own daughter-in-law. It was falsely alleged that on 13.02.2025 at about 10-11 p.m., applicant Chandrabhan tried to hug his daughter-in-law and also offered that she should

sleep with him for once. It was wrongly alleged that not only the applicant pulled the complainant towards himself but had also torn her clothes and teased her. Somehow, complainant succeeded in getting rid from the clutches of applicant and thereafter applicant extended a threat. It is submitted that, in fact, applicant has retired from the post of Sub-Inspector Police, and since daughter-in-law, his son, as well as parents of daughter-in-law had demanded the amount which he had received after retirement but the same was not given, therefore a false FIR has been lodged.

3. Heard learned counsel for applicant.

4. It is well-established principle of law that this Court can quash the FIR only if un-controverted allegations do not make out a cognizable offence.

5. The three Judges Bench of Supreme Court in the case of **Neeharika Infrastructure (P) Ltd. v. State of Maharashtra,** reported in **(2021) 19 SCC 401** has held as under :

> **13.** From the aforesaid decisions of this Court, right from the decision of the Privy Council in *Khwaja Nazir Ahmad*, the following principles of law emerge:
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> **13.1.** Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.
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> **13.2.** Courts would not thwart any investigation into the cognizable offences.
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> **13.3.** However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.
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> **13.4.** The power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". (The rarest of rare cases standard in its application for quashing under Section 482 CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)
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> **13.5.** While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. The power under Section 482 CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.

13.14. However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in *R.P. Kapur* and *BhajanLal*, has the jurisdiction to quash the FIR/complaint.

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482 CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider

on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

6. Even otherwise in the light of judgments passed by the Supreme Court in the cases of **XYZ v. State of Gujarat** reported in **(2019) 10 SCC 337**, **State of Tamil Nadu Vs. S. Martin & Ors.** reported in **(2018) 5 SCC 718**, **Ajay Kumar Das v. State of Jharkhand**, reported in **(2011) 12 SCC 319**, **Mohd. Akram Siddiqui v. State of Bihar** reported in **(2019) 13 SCC 350**, **State of A.P. v. Gourishetty Mahesh** reported in **(2010) 11 SCC 226**, **M. Srikanth v. State of Telangana**, reported in **(2019) 10 SCC 373**, **CBI v. Arvind Khanna** reported in **(2019) 10 SCC 686**, **State of MP Vs. Kunwar Singh** by order dated **30.06.2021** passed in **Cr.A. No.709/2021**, **Munshiram v. State of Rajasthan**, reported in **(2018) 5 SCC 678**, **Teeja Devi v. State of Rajasthan** reported in **(2014) 15 SCC 221**, **State of Orissa v. Ujjal Kumar Burdhan**, reported in **(2012) 4 SCC 547**, **S. Khushboo v. Kanniammal** reported in **(2010) 5 SCC 600**, **Sangeeta Agrawal v. State of U.P.**, reported in **(2019) 2 SCC 336**, **Amit Kapoor v. Ramesh Chander** reported in **(2012) 9 SCC 460**, **Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy** reported in **(2012) 12 SCC 437** and **M.N. Ojha v. Alok Kumar Srivastav** reported in **(2009) 9 SCC 682**, this Court can quash the proceedings only if the uncontroverted allegations do not make out an offence.

7. The gist of FIR has already been reproduced in the previous paragraphs. There are specific allegations against applicant that not only he was teasing his own daughter-in-law, but on 13.2.2025 he also tried to hug her and made an indecent proposal that she should sleep with him and had also torn her clothes. Whether the defence taken by applicant is correct or false cannot be adjudicated by this Court while exercising power under Section 528 of B.N.S.S., 2023.

8. At this stage, it is submitted by counsel for applicant that the police

Authorities may be directed to consider the complaint made by applicant and conduct investigation accordingly.

9. Considered the aforesaid submission of learned counsel for applicant.

The moot question for consideration is as to whether the accused/suspect has any right to interfere with the investigation or has any right to seek a direction for the Investigating Officer to investigate the matter in a particular manner?

10. The Supreme Court in the case of **Romila Thapar and others vs. Union of India and others** reported in **(2018) 10 SCC 753** has held as under:-

> "23. After having given our anxious consideration to the rival submissions and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:
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> 23.1. (i) Should the investigating agency be changed at the behest of the named five accused?
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> 23.2. (ii) If the answer to Point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?
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> 23.3. (iii) If the answer to Questions (i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the court-monitored investigation by an independent investigating agency?
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> 23.4. (iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?
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> 24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai v. State of Gujarat, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence

committed by them. Para 64 of this decision reads thus: (SCC p. 100)

> "64. … It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them."
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> (emphasis supplied)

25. Again in Sanjiv Rajendra Bhatt v. Union of India, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus: (SCC p. 40)

> "68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in Union of India v. W.N. Chadha, Mayawati v. Union of India, Dinubhai Boghabhai Solanki v. State of Gujarat, CBI v. Rajesh Gandhi, CCI v. SAIL and Janata Dal v. H.S. Chowdhary."
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> (emphasis supplied)

26. Recently, a three-Judge Bench of this Court in E. Sivakumar v. Union of India, while dealing with the appeal preferred by the "accused" challenging the order of the High Court directing investigation by CBI, in para 10 observed: (SCC pp. 370-71)

> "10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on Narender G. Goel v. State of Maharashtra, in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar

> facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

27. This Court in Divine Retreat Centre v. State of Kerala, has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

28. Be that as it may, it will be useful to advert to the exposition in State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.13 In paragraph 70 of the said decision, the Constitution Bench observed thus:

> "70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 13 (2010) 3 SCC 571 38 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil

> confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. 39 Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organization and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal 40 remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the

appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

30. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation....."

11. The Supreme Court in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat**, reported in **(2014) 4 SCC 626** has held as under:-

"50. In W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , the High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing the order rogatory, on the application of a named accused in the FIR, Mr W.N. Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this Court held as follows: (SCC pp. 290-91 & 293, paras 89, 92 & 98)

> "89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.
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> 92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation

> culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.
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> 98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and selfdefeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

These observations make it abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. In the present case, the appellant was not even an accused at the time when the impugned order was passed by the High Court. Finger of suspicion had been pointed at the appellant by independent witnesses as well as by the

grieved father of the victim.

51. In *Rajesh Gandhi* case [*CBI v. Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , this Court again reiterated the law as follows: (SCC pp. 256- 57, para 8)

> "8. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. … There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, CBI has been directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) CrPC, 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate."

The aforesaid observations would clearly support the course adopted by the High Court in this matter. We have earlier noticed that the High Court had initially directed that the investigation be carried under the supervision of the Special Commissioner of Police, Crime Branch, of the rank of the Additional Director General of Police. It

was only when the High Court was of the opinion that even further investigation was not impartial, it was transferred to CBI.

52. Again *in Sri Bhagwan Samardha [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , this Court observed as follows: (SCC pp. 742-43, paras 10-11)

> "10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang v. State (Delhi Admn.)* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] . The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.
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> 11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation."
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> These observations also make it clear that there was no obligation for the High Court to either hear or to make the appellant a party to the proceedings before directing that the investigation be conducted by CBI.

53. We had earlier noticed that the High Court had come to the prima facie conclusion that the investigation conducted by the police was with the motive to give a clean chit to the appellant, in spite of the statements made by the independent witnesses as well as the allegations made by the father of the deceased. The legal position has

been reiterated by this Court in *Narender G. Goel [Narender G. Goel v. State of Maharashtra*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] : (SCC pp. 68-69, paras 11-13)

> "11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. *[Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.,* (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] this Court observed: (SCC p. 743, para 11) „
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> 11. … There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard."
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> 12. The accused can certainly avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code.
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> 13. We are of the view that what is the evidentiary value can be tested during the trial. At this juncture it would not be proper to interfere in the matter."

Thus, it is clear that the accused has no right to seek any direction from the Court to investigate the matter in a particular manner. This court, while exercising power under section 528 of B.N.S.S., 2023, cannot supervise the investigation.

12. The Supreme Court in the case of **Manohar Lal Sharma Vs. Principal Secretary and others, reported in (2014) 2 SCC 532** has held as under:

> "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.
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> 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 "Courtmonitored" 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 "Courtmonitored" 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."

13. Considering the totality of facts and circumstances of the case, this court is of considered opinion that since the FIR lodged by complainant discloses commission of cognizable offence, therefore, no case is made out warranting interference. Application fails and is hereby ***dismissed***.

(G.S. Ahluwalia)
Judge

(and)