IN THE HIGH COURT OF MADHYA PRADESH
A T J A B A L P U R

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF NOVEMBER, 2023

WRIT PETITION No. 3348 of 2021

BETWEEN:-

DEVMANI TIWARI S/O CHHOTELAL TIWARI, AGED ABOUT 46 YEARS, OCCUPATION: MANAGER, SEWA SAHKARI SAMITI MARYADIT NAHARPUR TAHSIL GAURIHAR, DISTRICT CHHATARPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI DEVENDRA KUMAR TRIPATHI - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY COOPERATIVE DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **REGISTRAR COOPERATIVE SOCIETIES M.P. BHOPAL (MADHYA PRADESH)**

3. **DEPUTY REGISTRAR COOPERATIVE SOCIETIES DISTRICT CHHATRPUR (MADHYA PRADESH)**

4. **CHIEF EXECUTIVE OFFICER ZILA SAHAKARI KENDRIYA BANK LTD. DISTRICT CHHATRPUR (MADHYA PRADESH)**

5. SEWA SAHKARI SAMITI THROUGH ITS ADMINISTRATOR NAHARPUR DISTRICT CHHATRPUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI GAJENDRA PARASHAR – PANEL LAWYER, SHRI MANOJ KUMAR MISHRA – ADVOCATE FOR INTERVENOR)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed against order dated 19.01.2021 passed by Registrar, Cooperative Societies, M.P. by which Registrar, Cooperative Societies has directed for initiation of criminal proceedings against petitioner.

2. It is submitted by counsel for petitioner that Deputy Registrar, Cooperative Societies, Chattarpur by its letter dated 03.12.2019 had directed the Chief Executive Officer, Jila Sahakari Kendriya Bank Maryadit, Chattarpur to initiate proceedings under the service rules as well as for registration of criminal case. It was further directed to lodge a dispute under Section 64 of M.P. Cooperative Societies Act as well as for attachment of property of petitioner under Section 68 of M.P. Cooperative Societies Act.

3. It is the case of petitioner that aforesaid order was challenged by petitioner by filing W.P. No.27915/2019 and the said writ petition was disposed of by order dated 19.12.2019 with liberty to approach the Registrar by filing an appeal. It was further directed that in case if any application for grant of stay is filed, then the same shall also be entertained by Registrar. It was further observed that in case if the appeal is filed within a period of 10 days from the date of order, till then

no action shall be taken against him. Accordingly, petitioner preferred an appeal on 28.12.2019 and the Registrar decided the stay application after two months and rejected the same on the ground of non-maintainability of appeal. Again petitioner filed W.P. No.6805/2020 which was disposed of by order dated 19.03.2020 and order dated 19.12.2019 was set aside and the matter was remanded back to the Registrar for fresh adjudication of application on merits, till then they were restrained from taking coercive action against petitioner. Now by order dated 19.01.2021 the Registrar has allowed the appeal on the ground of competency and has directed the Deputy Registrar, Cooperative Societies, Chattarpur to issue instructions to the society to take departmental action as well as to take criminal action against petitioner.

4. Challenging the order dated 19.01.2021, it is submitted by Shri Tripathi that petitioner is aggrieved by direction to initiate criminal action against him. It is submitted that no opportunity of hearing was given to petitioner before issuing such a direction. It is further submitted that if any FIR is lodged on the instructions of the Deputy Registrar, then it would be by an incompetent authority. Furthermore, Section 64 of Madhya Pradesh Cooperative Societies Act provides for an efficacious mode of recovery of losses sustained by society and under these circumstances, registration of FIR is not warranted.

5. *Per contra*, petition is vehemently opposed by counsel for State. It is submitted that anybody can put the criminal agency in motion and unless and until it is specifically provided under the Act that FIR shall be lodged by an officer not below a particular rank, the locus of complainant cannot be looked into.

6. Heard learned counsel for parties.

Whether the suspect has a right of pre-audience

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

> **"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* [*Narmada Bai* v. *State of Gujarat*, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , 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)
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> > "*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)
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> **25.** Again in *Sanjiv Rajendra Bhatt* v. *Union of India* [*Sanjiv Rajendra Bhatt* v. *Union of India*, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , 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)
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> > "*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* [*Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , *Mayawati* v. *Union of India* [*Mayawati* v. *Union of India*, (2012) 8 SCC 106 : (2012) 3 SCC (Cri) 801] , *Dinubhai Boghabhai Solanki* v. *State of Gujarat* [*Dinubhai*

Boghabhai Solanki v. *State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , *CBI* v. *Rajesh Gandhi* [*CBI* v. *Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , *CCI* v. *SAIL* [*CCI* v. *SAIL*, (2010) 10 SCC 744] and *Janata Dal* v. *H.S. Chowdhary* [*Janata Dal* v. *H.S. Chowdhary*, (1991) 3 SCC 756 : 1991 SCC (Cri) 933] ."

(emphasis supplied)

26. Recently, a three-Judge Bench of this Court in *E. Sivakumar* v. *Union of India* [*E. Sivakumar* v. *Union of India*, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , while dealing with the appeal preferred by the "accused" challenging the order [*J. Anbazhagan* v. *Union of India*, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] 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 [*J. Anbazhagan* v. *Union of India*, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] . In para 129 of the impugned judgment, reliance has been placed on *Dinubhai Boghabhai Solanki* v. *State of Gujarat* [*Dinubhai Boghabhai Solanki* v. *State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , 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* [*Narender G. Goel* v. *State of Maharashtra*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] , 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* [*Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] , 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 W.B.* v. *Committee for Protection of Democratic Rights* [*State of W.B.* v. *Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] . In para 70 of the said decision, the Constitution Bench observed thus : (SCC p. 602)

"*70*. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some

> allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and 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 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. Rather, averment in the petition as filed was to buttress the reliefs initially prayed for (mentioned in para 8 above) — regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A-16 to A-20) 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 organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor is it 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 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. The first two modified reliefs claimed in the writ petition, if they were to be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the accused concerned (A-16 to A-20). Amongst them, Sudha Bhardwaj (A-19), Varvara Rao (A-16), Arun Ferreira (A-18) and Vernon Gonsalves (A-17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the accused concerned is not in a position or incapacitated to take recourse to legal remedy and not otherwise."

8. This Court in the case of **Prabal Dogra vs. Superintendent of**

Police, Gwalior and State of M.P. by order dated **30.11.2017** passed in **M.Cr.C.No.10446/2017** has held that accused has no say in the matter of investigation.

9. The Supreme Court in the case of **State Bank of India and others v. Rajesh Agarwal and others**, reported in **(2023) 6 SCC 1** has held that accused has no right of opportunity of hearing before initiation of criminal proceedings. It has been held as under:

> **"37.** While the borrowers argue that the actions of banks in classifying borrower accounts as fraud according to the procedure laid down under the Master Directions on Frauds is in violation of the principles of natural justice, RBI and lender banks argue that these principles cannot be applied at the stage of reporting a criminal offence to investigating agencies. At the outset, we clarify that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by this Court.
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> **38.** In *Union of India* v. *W.N. Chadha* [*Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , a two-Judge Bench of this Court held that that providing an opportunity of hearing to the accused in every criminal case before taking any action against them 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 self-defeating" [*Id*, SCC p. 293, para 98.] . Again, a two-Judge Bench of this Court in *Anju Chaudhary* v. *State of U.P.* [*Anju Chaudhary* v. *State of U.P.*, (2013) 6 SCC 384 : (2013) 4 SCC (Cri) 503] has reiterated that the Code of Criminal Procedure, 1973 does not provide for right of hearing before the registration of an FIR."

10. Thus, it is clear that contention of petitioner that direction to lodge the FIR has been issued without giving any opportunity of hearing to petitioner is misconceived and accordingly, it is rejected.

11. The Supreme Court in the case of **Vinubhai Haribhai Malaviya and others v. State of Gujarat and another,** reported in **(2019) 17 SCC 1** has held as under:

> **"44.** *Union of India* v. *W.N. Chadha* [*Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171], is a judgment which states that the accused has no right to participate in the investigation till process is issued to him, provided there is strict compliance with the requirements of fair investigation. Likewise, the judgments in *Nagawwa* v. *V.S. Konjalgi* [*Nagawwa* v. *V.S. Konjalgi*, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , *Prabha Mathur* v. *Pramod Aggarwal* [*Prabha Mathur* v. *Pramod Aggarwal*, (2008) 9 SCC 469 : (2008) 3 SCC (Cri) 787] , *Narender G. Goel* v. *State of Maharashtra* [*Narender G. Goel* v. *State of Maharashtra*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] and *Dinubhai Boghabhai Solanki* v. *State of Gujarat* [*Dinubhai Boghabhai Solanki* v. *State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , which state that the accused has no right to be heard at the stage of investigation, has very little to do with the precise question before us. All these judgments are, therefore, distinguishable. Further, *Babubhai* v. *State of Gujarat* [*Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] , is a judgment which distinguishes between further investigation and re-investigation, and holds that a superior court may, in order to prevent miscarriage of criminal justice if it considers necessary, direct investigation de novo, whereas a Magistrate's power is limited to ordering further investigation. Since the present case is not concerned with re-investigation, this judgment also cannot take us much further. Likewise, *Romila Thapar* v. *Union of India* [*Romila Thapar* v. *Union of India*, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , held that an accused cannot ask to change an investigating agency, or to require that an investigation be done in a particular manner, including asking for a court-monitored investigation. This judgment also is far removed from the question that has been decided by us

in the facts of this case."

12. The Supreme Court in the case of **Naser Bin Abu Bakr Yafai v. State of Maharashtra and another,** reported in **(2022) 6 SCC 308** has held as under:

> **"44.** The second ground which has been urged on behalf of the appellants is that the submission of the charge-sheet before the CJM, Nanded and the order of committal are a nullity since the jurisdiction to investigate the offence was entrusted to NIA, Mumbai and the jurisdiction was vested with the Special Court. The continuation of the investigation by ATS, Nanded has been analysed above and it has been held to be in accordance with the mandate of Section 6(7) of the NIA Act. Now, sub-section (1) of Section 11 empowers the Central Government to constitute Special Courts "for the trial of Scheduled Offence". Sub-section (1) of Section 13 provides that, notwithstanding anything contained in the CrPC, every Scheduled Offence investigated by NIA shall be tried only by the Special Court. Hence, the exclusive jurisdiction of the Special Court to try a Scheduled Offence under sub-section (1) of Section 13 attaches where the Scheduled Offence has been "investigated by the [NIA]". Further, sub-section (1) of Section 16 is an enabling provision which empowers a Special Court to take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such offence. However, this clearly would not affect either the antecedent investigation by ATS, Nanded prior to NIA, Mumbai having taken up the investigation or the submission of the charge-sheet as a logical consequence of the investigation which was conducted by ATS, Nanded. The enabling provisions of sub-section (1) of Section 16 would not invalidate the submission of the charge-sheet to the CJM, Nanded or the order of committal made to the ASJ, Nanded.
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> **45.** In this context, it would be worthwhile to revisit the fundamental principle which was enunciated by the

Bench of three learned Judges in *H.N. Rishbud* [*H.N. Rishbud* v. *State of Delhi*, (1955) 1 SCR 1150 : AIR 1955 SC 196] . It was held that the cognizance or trial based on it would not necessarily be nullified even in a case where the investigation was found to be invalid. The Court, speaking through Jagannadhadas, J. held : (AIR p. 203, para 9)

> "*9*. … Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial."

46. The Court held that if therefore cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to an investigation, "there can be no doubt that the result of the trial which follows cannot be set aside unless illegality in the investigation can be shown to have brought about a miscarriage of justice" : (*H.N. Rishbud case* [*H.N. Rishbud* v. *State of Delhi*, (1955) 1 SCR 1150 : AIR 1955 SC 196] , AIR p. 204, para 9)

> "*9*. … If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Parbhu* v. *King Emperor* [*Parbhu* v. *King Emperor*, 1944 SCC OnLine PC 1 : (1943-44) 71 IA 75 : AIR 1944 PC 73] and *Lumbhardar*

> *Zutshi* v. *R.* [*Lumbhardar Zutshi* v. *R.*, 1949 SCC OnLine PC 64 : (1949-50) 77 IA 62 : AIR 1950 PC 26]
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> These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."
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> **47.** We must of course clarify that in the present case, the Court is dealing with a situation where the investigation by ATS, Nanded was valid in terms of the provisions of Section 6(7) of the NIA Act."

Whether FIR can be lodged where remedy under Section 64 of M.P. Cooperative Societies Act is available or not?

13. The aforesaid question is no more *res-integra*.

14. The Supreme Court in the case of **State of Madhya Pradesh v. Rameshwar and others**, reported in **(2009) 11 SCC 424** has held as under:

> "**48.** Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law,

particularly when charges under the Prevention of Corruption Act, 1988, are involved."

15. The Supreme Court in the case of **Dhanraj N Asawani Vs. Amarjeetsingh Mohindersingh Basi and others** decided on **25.07.2023** in **Criminal Appeal No.2093/2023** has held as under:

"15. Section 4 of the CrPC provides that all offences under the IPC shall be investigated, inquired, and tried according to the provisions of the CrPC. Section 4(2) structures the application of the CrPC in situations where a special procedure is prescribed under any special enactment.7 Section 4 is extracted below:

> **4. Trial of offences under the Indian Penal Code and other laws**.
> — (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

16. Section 4(2) lays down that the provisions of the CrPC shall apply to all offences under any other law apart from the IPC. However, the application of the CrPC will be excluded only where a special law prescribes special procedures to deal with the investigation, inquiry, or the trial of the special offence. For instance, **in Mirza Iqbal Hussain v. State of Uttar Pradesh**, this Court was called upon to determine whether the trial court had jurisdiction to pass an order of confiscation under the Prevention of Corruption Act, 1947. This Court held that the provisions of the CrPC would apply in full force because the Prevention of

Corruption Act, 1947 did not provide for confiscation or prescribed any mode by which an order of confiscation could be made. Therefore, it was held that a court trying an offence under the Prevention of Corruption Act, 1947 was empowered to pass an order of confiscation in view of Section 452 of the CrPC. In determining whether a special procedure will override the general procedure laid down under the CrPC, the courts have to ascertain whether the special law excludes, either specifically or by necessary implication, the application of the provisions of the CrPC.

17. The CrPC provides the method for conducting investigation, inquiry, and trial with the ultimate objective of determining the guilt of the accused in terms of the substantive law. The criminal proceedings kick in when the information of the commission of an offence is provided to the police or the magistrate. Section 154 of the CrPC details the procedure for recording the first information in relation to the commission of a cognizable offence. It provides that any information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced into writing by them or under their direction. The information provided by the informant is known as the FIR.

18. In **Lalita Kumari v. Government of U P**, a Constitution Bench of this Court held that the main object of an FIR from the point of the view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity to take suitable steps to trace and punish the guilty. The criminal proceedings are initiated in the interests of the public to apprehend and punish the guilty.11 It is a well settled principle of law that absent a specific bar or exception contained in a statutory provision, the criminal law can be set into motion by any individual.

19. In **A R Antulay v. Ramdas Sriniwas Nayak**, a Constitution Bench of this Court held that the concept of

locus standi of the complainant is not recognized in the criminal jurisprudence, except in situations where the statute creating an offence provides for the eligibility of the complainant. The Court observed that the right to initiate criminal proceedings cannot be whittled down because punishing an offender is in the interests of the society:

> "This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(n) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. **Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception**."
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> (emphasis supplied)

21. The respondents have relied on the decision of this Court in **Jamiruddin Ansari** (supra) to contend that the 1960 Act, being a special law, will prevail over the provisions of the CrPC. In **Jamiruddin Ansari** (supra) the issue before a two-Judge Bench of this Court was whether Section 23(2) of the Maharashtra Control of Organized Crime Act, 199914 excludes the application of Section 156(3) of the CrPC. The MCOCA is a special law enacted by the state legislature to prevent and control crimes by organized crime syndicates or gangs.

> Section 23 of MCOCA begins with a non-obstante clause. Section 23(2) provides that the special judge cannot take cognizance of any offence under the MCOCA without the previous sanction of a police officer not below the rank of the Additional Director General of Police. The relevant clause is extracted below: 23. (1) Notwithstanding anything contained in the Code,— (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police; (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police. (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

22. In **Jamiruddin Ansari** (supra), this Court held that the provisions of the MCOCA will prevail over the provisions of the CrPC. The Court held that a Special Judge is precluded from taking cognizance of a private

complaint and order a separate inquiry without the previous sanction of the police officer not below the rank of Additional Director General of Police:

> 67. We are also inclined to hold that in view of the provisions of Section 25 of MCOCA, the provisions of the said Act would have an overriding effect over the provisions of the Criminal Procedure Code and the learned Special Judge would not, therefore, be entitled to invoke the provisions of Section 156(3) CrPC for ordering a special inquiry on a private complaint and taking cognizance thereupon, without traversing the route indicated in Section 23 of MCOCA. In other words, even on a private complaint about the commission of an offence of organised crime under MCOCA cognizance cannot be taken by the Special Judge without due compliance with sub-section (1) of Section 23, which starts with a non obstante clause.

23. In view of the stringent provisions of the MCOCA, Section 23 provides a procedural safeguard that no information of an offence alleged under the MCOCA shall be recorded without the prior approval of an officer below the rank of the Deputy Inspector General of Police. No investigation can be carried out by an officer below the rank of Deputy Superintendent of Police. Section 23(2) contains a specific bar against the taking of cognizance by a Special Judge without the previous sanction of a police officer not below the rank of Additional Director General of Police. In **Rangku Dutta v. State of Assam**, 15 this Court interpreted the purport of Section 20-A(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987,16 which was similar to Section 23 of the MCOCA. Section 20-A of the TADA is extracted below:

> "**20-A.Cognizance of offence**.—(1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.
>
> (2) No court shall take cognizance of any offence under this Actwithout the previous sanction of the Inspector General of Police, or as the case may be, the Commissioner of Police."

This Court held that the above provision was mandatory for two reasons: first, it commenced with an overriding clause; and second, it used the expression "No" to emphasize its mandatory nature. The Court observed that the use of the negative word "No" was intended to ensure that the provision is construed as mandatory.

25. Further reliance has been placed by the respondent on the decision of this Court in **Jeewan Kumar Raut** (supra) to contend that Section 81(5B) debars by necessary implication any person other than the auditor or the Registrar from filing an FIR. In that case, the issue before this Court was whether the provisions of the Transplantation of the Human Organs Act, 199417 barred the applicability of Section 167(2) of the CrPC pertaining to the grant of default bail. Section 22 of the TOHO Act prohibits taking of cognizance by courts except on a complaint made by an appropriate authority. This Court held that the TOHO Act is a special statute and will override the provisions of the CrPC so far as there is any conflict between the provisions of the two enactments. The Court further held that the police report filed by the CBI can only be considered as a complaint petition made by an appropriate authority under Section 22 of the TOHO Act. Therefore, the filing of a police report in terms of Section 173(2) of the CrPC was held to be forbidden by necessary implication. Since CBI could not

file a police report under Section 173(2), Section 167(2) of the CrPC was also held to be not applicable.

26. Exclusion by necessary implication can be inferred from the language and the intent of a statute.18 In **Jeewan Kumar Raut** (supra), this Court looked at the words of the statute as well as the overall scheme of investigation under the CrPC to infer that Section 22 of the TOHO Act bars the applicability of Section 167(2) of the CrPC by necessary implication. In the present case, the 1960 Act casts a positive obligation on the auditor or the Registrar to file an FIR when they discover a financial irregularity in a co-operative society. Section 81(5B) demands accountability and vigilance from the auditor and the Registrar in performance of their public duty. Moreover, a plain reading of the said provision does not lead to the conclusion that the legislature intends to debar any person other than the auditor or the Registrar from registering an FIR. Section 81(5B) cannot be interpreted to mean that any other person who comes to know about the financial irregularity on the basis of the audit report is debarred from reporting the irregularity to the police. In the absence of any specific provision or necessary intendment, such an inference will be against the interests of the society. The interests of the society will be safeguarded if financial irregularities in co-operative banks are reported to the police, who can subsequently take effective actions to investigate crimes and protect the commercial interests of the members of the society. In view of the above discussion, it is not possible for us to infer that Section 81(5B) of the 1960 Act bars by necessary implication any person other than an auditor or the Registrar from setting the criminal law into motion.

27. From the narration of submissions before this Court, it appears that on 31 May 2021, the Minister in-charge of the Co-operative department has set aside the audit report while directing a fresh audit report for 2016-2017 and 2017-2018. The order of the Minister has been called into question in independent proceedings before the High Court. This Court has been apprised of the fact that the proceedings are being heard before a Single Judge of the

> High Court. The proceedings which have been instituted to challenge the order of the Minister will have no bearing on whether the investigation by the police on the FIR which has been filed by the appellant should be allowed to proceed. The police have an independent power and even duty under the CrPC to investigate into an offence once information has been drawn to their attention indicating the commission of an offence. This power is not curtailed by the provisions of 1960 Act. There is no express bar and the provisions of Section 81(5B) do not by necessary implication exclude the investigative role of the police under the CrPC.
>
> 28. The High Court has relied on the decision of this Court in State of **Haryana v. Bhajan Lal** to quash the FIR. In that case, this Court held that the High Court can exercise its powers under Article 226 of the Constitution or Section 482 of the CrPC to quash an FIR where there is an express legal bar engrafted in any provisions of a special law with respect to the institution and continuance of the proceedings. As held above, Section 81(5B) does not contain any express or implied bar against any person from setting the criminal law in motion.
>
> 29. In the circumstances, we are of the view that the High Court has erred in quashing the FIR which was lodged by the appellant. It is correct that the FIR adverted to the audit which was conducted in respect of the affairs of the co-operative society. However, once the criminal law is set into motion, it is the duty of the police to investigate into the alleged offence. This process cannot be interdicted by relying upon the provisions of sub-section (5B) which cast a duty on the auditor to lodge a first information report.

16. This Court in the case of **Meera Yadav vs. State of M.P. and others** decided on **26.09.2023** in **W.P. No.9743/2022** has held as under:

> "16. Counsel for petitioner could not point out any provision of law, which expressly or impliedly bars the application of provisions of Cr.P.C. and IPC. Merely because procedure has been provided under

> Section 89 and 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 for recovery of the civil liability, it cannot be said that the provisions of Cr.P.C. and IPC have been ousted. For registration of FIR commission of cognizable offence is necessary and the locus of complainant so far as it relates to criminal jurisprudence is concerned has no relevance. Anybody can set criminal agency in motion. In absence of any bar under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 it cannot be said that the FIR could not have been lodged. Accordingly, the aforesaid contention is hereby rejected."

17. Thus, it is clear that in absence of any bar under the Cooperative Societies Act, it cannot be said that no FIR can be lodged even if a cognizable offence is made out. Recovery of loss under Section 64 of M.P. Cooperative Societies Act cooperates in a different field, whereas very purpose of criminal prosecution is to find out as to whether suspect had committed any offence as defined under the Penal Code or not? Thus, in the light of judgments passed by Supreme Court in the cases of **Rameshwar (supra)** and **Dhanraj N Asawani (supra),** the contention of petitioner that since Cooperative Societies Act is a complete code in itself, therefore, no FIR can be lodged is misconceived and it is accordingly rejected.

Competency of Registrar to direct for lodging of FIR

18. It is submitted by counsel for petitioner that unless and until FIR is lodged by a competent authority, the entire investigation would be bad and accordingly, it would be vitiated.

19. The aforesaid contention raised by counsel for petitioner is misconceived and cannot be accepted.

20. The Supreme Court in the case of **H.N. Rishbud v. State of Delhi**, reported in **AIR 1955 SC 196** has held as under:

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (*a*), (*b*) and (*c*) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (*a*) or (*b*) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."
>
> If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Prabhu* v. *Emperor* [AIR 1944 Privy Council 73] and *Lumbhardar Zutshi* v. *King* [AIR 1950 Privy Council 26] . These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

21. The aforesaid judgment passed by Supreme Court in the case of **H.N. Rishbud (supra)** has been relied upon by Supreme Court in the case of **Union of India v. Prakash P. Hinduja and another**, **(2003) 6 SCC 195**.

22. The Supreme Court in the case of **Mukesh Singh v. State (Narcotic Branch of Delhi)**, reported in **(2020) 10 SCC 120** has held as under:

> **"8.3.1.** In *V. Jayapaul* [*State* v. *V. Jayapaul*, (2004) 5 SCC 223 : 2004 SCC (Cri) 1607] , after considering the entire scheme of investigation under CrPC, it is held that investigation by the same police officer who lodged the FIR is not barred by law. It is further observed that such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer and the question of bias would depend on the facts and circumstances of each case. It is further observed that it is not proper to lay down a broad and unqualified proposition that such investigation would necessarily be unfair or biased. In this decision, the decisions of this Court in *Bhagwan Singh* [*Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15 : 1975 SCC (Cri) 737] and *Megha Singh* [*Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] were pressed into service on behalf of the accused, however this Court observed that both the decisions are on their own facts and circumstances and do not lay down a proposition that a police officer who in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of the information furnished by him. In this decision, this Court also considered the scheme of Sections 154, 156 and 157 CrPC and another decision of this Court in *State of U.P.* v. *Bhagwant Kishore Joshi* [*State of U.P.* v. *Bhagwant Kishore Joshi*, AIR 1964 SC 221 : (1964) 1 Cri LJ 140] (para 8). That thereafter this Court did not agree with the submission on behalf of the accused that as the investigation was carried out by the informant who himself submitted the final report, the trial is vitiated. This Court confirmed the conviction by setting aside the order passed by the High Court acquitting the accused solely on the ground that the very same police officer who registered the case by lodging the first information ought not to have

investigated the case and that itself had caused prejudice to the accused. The relevant observations of this Court in *V. Jayapaul* [*State* v. *V. Jayapaul*, (2004) 5 SCC 223 : 2004 SCC (Cri) 1607] are as under : (*V. Jayapaul case* [*State* v. *V. Jayapaul*, (2004) 5 SCC 223 : 2004 SCC (Cri) 1607] , SCC pp. 226-29, paras 4, 6-8, 10 & 12-13)

> "*4*. We have no hesitation in holding that the approach of the High Court is erroneous and its conclusion legally unsustainable. There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognizable offence. A suo motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. The scheme of Sections 154, 156 and 157 was clarified thus by Subba Rao, J. speaking for the Court in *State of U.P.* v. *Bhagwant Kishore Joshi* [*State of U.P.* v. *Bhagwant Kishore Joshi*, AIR 1964 SC 221 : (1964) 1 Cri LJ 140] : (AIR p. 223, para 8)
>
> > '*8*. … Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognizable offence. Section 156 thereof authorises such an officer to investigate any cognizable offence prescribed therein. Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for

> investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise.'

***

6. Though there is no such statutory bar, the premise on which the High Court quashed the proceedings was that the investigation by the same officer who "lodged" the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the

reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack.

7. There are two decisions of this Court from which support was drawn in this case and in some other cases referred to by the High Court. We would like to refer to these two decisions in some detail. The first one is the case of *Bhagwan Singh* v. *State of Rajasthan* [*Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15 : 1975 SCC (Cri) 737] . There, the Head Constable to whom the offer of bribe was allegedly made, seized the currency notes and gave the first information report. Thereafter, he himself took up the investigation. But, later on, when it came to his notice that he was not authorised to do so, he forwarded the papers to the Deputy Superintendent of Police. The DSP then reinvestigated the case and filed the charge-sheet against the accused. The Head Constable and the accompanying constables were the only witnesses in that case. This Court found several circumstances which cast a doubt on the veracity of the version of the Head Constable and his colleagues. This Court observed that 'the entire story sounds unnatural'. While so holding, this Court referred to 'a rather disturbing feature of the case' and it was pointed out that : (SCC p. 18, para 5)

> '*5.* … Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake

> investigation …. This is an infirmity which is bound to reflect on the credibility of the prosecution case.'

8. It is not clear as to why the Court was called upon to make the comments against the propriety of the Head Constable, informant investigating the case when the reinvestigation was done by the Deputy Superintendent of Police. Be that as it may, it is possible to hold on the basis of the facts noted above, that the so-called investigation by the Head Constable himself would be a mere ritual. The crime itself was directed towards the Head Constable which made him lodge the FIR. It is well-nigh impossible to expect an objective and undetached investigation from the Head Constable who is called upon to check his own version on which the prosecution case solely rests. It was under those circumstances the Court observed that the said infirmity 'is bound to reflect on the credibility of the prosecution case'. There can be no doubt that the facts of the present case are entirely different and the dicta laid down therein does not fit into the facts of this case.

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10. In *Megha Singh case* [*Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] PW 3, the Head Constable, found a country-made pistol and live cartridges on search of the person of the accused. Then, he seized the articles, prepared a recovery memo and a "*rukka*" on the basis of which an FIR was recorded by the SI of Police. However, PW 3, the Head Constable himself, for reasons unexplained, proceeded to investigate and record the statements of witnesses under Section 161 CrPC. The substratum of the prosecution case was sought to be proved by the Head Constable. In the appeal against conviction under Section 25 of the Arms Act and Section 6(1) of the TADA Act, this Court found that the evidence of PWs 2 and 3

was discrepant and unreliable and in the absence of independent corroboration, the prosecution case cannot be believed. Towards the end, the Court noted "another disturbing feature in the case". The Court then observed : (SCC p. 711, para 4)

> '*4*. … PW 3 Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.'

***

12. At first blush, the observations quoted above might convey the impression that the Court laid down a proposition that a police officer who in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of the information furnished by him. On closer analysis of the decision, we do not think that any such broad proposition was laid down in that case. While appreciating the evidence of the main witness i.e. the Head Constable (PW 3), this Court referred to this additional factor, namely, the Head Constable turning out to be the investigator. In fact, there was no apparent reason why the Head Constable proceeded to investigate the case bypassing the Sub-Inspector who recorded the FIR. The fact situation in the present

> case is entirely different. The appellant Inspector of Police, after receiving information from some sources, proceeded to investigate and unearth the crime. Before he did so, he did not have personal knowledge of the suspected offences nor did he participate in any operations connected with the offences. His role was that of an investigator — pure and simple. That is the obvious distinction in this case. That apart, the question of testing the veracity of the evidence of any witness, as was done in *Megha Singh case* [*Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] does not arise in the instant case as the trial is yet to take place. The High Court has quashed the proceedings even before the trial commenced.
>
> *13*. Viewed from any angle, we see no illegality in the process of investigation set in motion by the Inspector of Police (appellant) and his action in submitting the final report to the Court of Special Judge."

8.3.2. In *S. Jeevanantham* [*S. Jeevanantham* v. *State*, (2004) 5 SCC 230 : 2004 SCC (Cri) 1584] , though the investigation was carried out by the complainant — police officer himself and it was submitted relying upon the decision of this Court in *Megha Singh* [*Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] , that in case the informant/complainant and the investigator is the same, the trial is vitiated, this Court refused to set aside the conviction and acquit the accused on the aforesaid ground by observing that the accused failed to show that the investigation by the complainant — police officer himself has caused prejudice or was biased against the accused. It is required to be noted that it was also a case under the NDPS Act. The relevant observations are as under : (*S. Jeevanantham case* [*S. Jeevanantham* v. *State*, (2004) 5 SCC 230 : 2004 SCC (Cri) 1584] , SCC pp. 231-32, paras 2-3)

> "*2*. We heard the learned counsel for the appellants. The counsel for the appellants

contended that PW 8, the Inspector after conducting search prepared the FIR and it was on the basis of the statement of PW 8 the case was registered against the appellants and it is argued that PW 8 was the complainant and he himself conducted the investigation of the case and this is illegal and the entire investigation of the case is vitiated. Reliance was placed on the decision in *Megha Singh* v. *State of Haryana* [*Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] wherein this Court observed that the constable, who was the de facto complainant had himself investigated the case and this affects impartial investigation. This Court said that the Head Constable who arrested the accused, conducted the search, recovered the pistol and on his complaint FIR was lodged and the case was initiated and later he himself recorded the statement of the witnesses under Section 161 CrPC as part of the investigation and such practice may not be resorted to as it may affect fair and impartial investigation. This decision was later referred to by this Court in *State* v. *V. Jayapaul* [*State* v. *V. Jayapaul*, (2004) 5 SCC 223 : 2004 SCC (Cri) 1607] wherein it was observed that : (*State* v. *V. Jayapaul case* [*State* v. *V. Jayapaul*, (2004) 5 SCC 223 : 2004 SCC (Cri) 1607] , SCC p. 227, para 6)

> '*6*. … We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified

> proposition, in the manner in which it has been done….'
>
> *3*. In the instant case, PW 8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellants was narcotic drug and the counsel for the appellants could not point out any circumstances by which the investigation caused prejudice or was biased against the appellants. PW 8 in his official capacity gave the information, registered the case and as part of his official duty later investigated the case and filed a charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation."

10.1. Under Section 173 CrPC, the officer in charge of a police station after completing the investigation is required to file the final report/charge-sheet before the Magistrate. Thus, under the scheme of CrPC, it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same. Officer in charge of a police station has been defined under Section 2(*o*) CrPC and it includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.

10.2. As observed and held by this Court in *Lalita Kumari* v. *State of U.P.* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524 : AIR 2014 SC 187] , the word "shall" used in Section 154 leaves no discretion in police officer to hold preliminary

> enquiry before recording FIR. Use of expression "information" without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to further investigate the information, which is reduced in writing."

23. Counsel for petitioner could not point out any provision of law which requires that in the financial offences committed by an employee of Cooperative Society, FIR can be lodged only by an officer not below the particular rank. Therefore, this Court is of considered opinion that even if petitioner is of view that investigation done upon FIR lodged under the directions of Registrar would not be a valid investigation, still in the light of judgment passed by Supreme Court in the case of **H.N. Rishbud (supra)**, the trial would not vitiate.

24. The Supreme Court in the case of **Vishwa Mitter v. O.P. Poddar and others**, reported in **1984 SC 5** has held that "as a rule any person can set a criminal Court in motion. Any person having knowledge of commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence". The exceptions to this rule are contained in Section 195-198 of Cr.P.C.

25. The Supreme Court in the case of **A.R. Antulay v. Ramdas Sriniwas Nayak and another**, reported in **1984 SC 718** has held that "it is well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary".

26. Thus, it is clear that locus of complainant is not a relevant factor for setting the criminal agency in motion.

27. It is not the case of petitioner that allegations made against

petitioner do not make out a non-cognizable offence.

28. No other argument is advanced by counsel for petitioner.

29. For the reasons mentioned above, this Court is of considered opinion that no case is made out warranting interference.

30. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

vc

VARSHA CHOURASIYA

Digitally signed by VARSHA CHOURASIYA
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