

Allahabad High Court

Smt. Alka Rai W/O Late Krishna Nand ... vs Union Of India (Uoi) Through ... on 23 May, 2006

Author: A Lala

Bench: A Lala, S Shankar

JUDGMENT Amitava Lala, J.

1. This writ petition is made for the following reliefs:

i. a writ, order or direction in the nature of certiorari quashing the impugned order dated 31.1.2006 (Annexure no. 1 to this writ petition) passed by respondent no. 3.

ii. a writ, order or direction in the nature of mandamus directing the respondents to transfer and entrust the investigation of the case crime no. 589 of 2005 under Sections 147, 148, 149, 302, 307, 120B IPC & 7th Crime Act Police Station Bhanwarkol District Ghazipur to Central Bureau of Investigation and further direct the respondent no. 2 to carry out a speedy and expeditious investigation in the aforementioned case within a specified time.

iii. a writ, order or direction in the nature of mandamus directing the State of U.P. to hand over the investigation of case crime no. 589 of 2005 to Central Bureau of Investigation as per the condition precedent under Section 6 of Delhi Police Establish Act, 1946 (read as Delhi Police Establishment Act, 1946).

iv. any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case to meet the ends of justice.

v. award cost of the petition to the petitioners.

2. Factually, the petitioner no. 1 is the widow of Late Krishna Nand Rai and the petitioner no. 2 is his real brother, who is also the complainant. Late Sri Krishna Nand Rai had been contesting the assembly elections on Bhartiya Janta Party ticket from the constituency of Mohammadabad, District Ghazipur and he ultimately succeeded in trouncing Afzal Ansari, the real brother of Mukhtar Ansari, the two main accused in the present incident, and was ultimately elected as Member of Legislative Assembly.

3. According to the petitioners, Afzal Ansari is presently a sitting Member of Parliament from Ghazipur and is an active enrolled member of the Samajwadi Party. His real brother Mukhtar Ansari is an independent M.L.A. from Mau and is supported by the ruling party of the State. The very secured position of these persons backed politically by the present ruling government in the State emboldened them to eliminate their political rivals including Late Sri Krishna Nand Rai.

4. According to the petitioners, in order to appreciate their criminal background the criminal history of these persons is necessary to be enumerated, which is as follows:

1. Case Crime No. 106/88, under Section 302 I.P.C., Police Station Kotwali, Ghazipur.

2. Case Crime No. 201/88, under Section 302 I.P.C., Police Station Cantt., Varanasi.
3. Case Crime No. 124/90, under Section 364/395/397 I.P.C., Police Station Bara Gaon, Varanasi.
4. Case Crime No. 266/90, under Section 467/468/420 I.P.C., Police Station Mohammadabad, Ghazipur.
5. Case Crime No. 399/90, under Section 147/148/149/307 I.P.C., Police Station Kotwali, Ghazipur.
6. Case Crime No. 682/90, under Section 247/506 I.P.C., Police Station Kotwali, Ghazipur.
7. Case Crime No. 172/91, under Section 147/148/302 I.P.C., Police Station Mohammadabad, Ghazipur.
8. Case Crime No. 44/91, under Section 302 I.P.C., Police Station Kotwali, Ghazipur.
9. Case Crime No. 294/91, under Sections 307/302 I.P.C., Police Station Mughal Sarai, District Chandauli.
10. Case Crime No. 456/93, under Sections 365/387 I.P.C., Police Station Tilak Marg, New Delhi.
11. Case Crime No. 503/93, under Section 5 TADA Act, Police Station K.G. Marg, New Delhi.
12. Case Crime No. 834/95, under Sections 353/504/506 I.P.C., Police Station Kotwali, Ghazipur.
13. Case Crime No. 165/96, under Sections 323/352/307 I.P.C., Police Station Kotwali, Ghazipur.
14. Case Crime No. 169/96, under Section 302 I.P.C., Police Station Mohammadabad, Ghazipur.
15. Case Crime No. 192/96, under Section 3 of U.P. Gangster Act, Police Station Kotwali, Ghazipur.
16. Case Crime No. 284/96, under Section 3 N.S.A. Act, Police Station Kotwali, Ghazipur.
17. Case Crime No. 285/90, under Section 302 I.P.C., Police Station Bhelupur, District Varanasi,
18. Case Crime No. 229/91, under Sections 147/148/302 I.P.C., Police Station Chetganj, District Varanasi.
19. Case Crime No. 19/97, under Sections 364/365/302/120B, 34 I.P.C., Police Station Bhelupur, District Varanasi.
20. NCR/9/97, under Section 506 I.P.C., Police Station Saidpur, District Ghazipur.
21. Case Crime No. 52/98, under Section 3 N.S.A. Act, Police Station Bhelupur, District Varanasi.

22. Case Crime No. 37/99, under Section 3 N.S.A. Act, Police Station Kotwali, District Ghazipur.
23. Case Crime No. 17/99, under Section 506 I.P.C., Police Station Bhelupur, District Varanasi.
24. Case Crime No. 106/99, under Sections 307/302/120B I.P.C., Police Station Hazratganj, Lucknow.
25. Case Crime No. 209/2002, under Section 3/7; 25 Arms Act, Police Station Hazratganj, District Lucknow.
26. Case Crime No. 116/2001, under Section 364A I.P.C., Police Station Anpara, District Sonebhadra.
27. Case Crime No. 9-A/2004, under Sections 147/148/149/307 I.P.C., Police Station Cantt., Lucknow.
28. Case Crime No. 1580/05, under Sections 147/148/149/302/435/436/153A I.P.C., Police Station Kotwali Mau, District Mau.
29. Case Crime No. 493/2005, under Sections 302/506/120B I.P.C., Police Station Mohammadabad, Ghazipur.
30. Case Crime No. 589/2005, under Sections 147/148/149/302/307/120B I.P.C. and 7th Criminal Amendment Act, Police Station Bhanwar Kol, District Ghazipur.

5. According to the petitioners, to demonstrate that the Ansari brothers were in planned way eliminating their political rivals specially those who were connected with Late Krishna Nand Rai, the following incidents are being indicated, which would illustrate their modus operandi--

- i. Bhartiya Janta Party worker Akshay Kumar Rai alias Tuntun Pahalwan was murdered at Raghuwarganj Patti.
- ii. Jhinku Gihar, who belonged to BJP, was murdered on 26th April, 2004 on the polling day for the election of the Member of Parliament in the District Ghazipur.
- iii. Bhartiya Janta Party worker Sobhnath Rai was murdered on 26th April, 2004 on the polling day for the election of Parliament in the District Ghazipur.
- iv. A serious attacks on the life of Devendra Rai a committed party worker and ex'Gram Pradhan of Village Sukh Dehra, P.S. Bhanwarkol.
- v. Bhartiya Janta Party worker Kallu Rai, resident of Village Sherpur, Police Station Bhanwarkol was murdered along with his driver.

vi. Akhilesh Rai, who happens to nephew of Late Devendra Rai, Ex- Gram Pradhan of village Sukh Dehra a committed party worker was murdered at Mohammadabad Police Circle along with other persons.

vii. Ramendra Rai a committed B.J.P. worker was murdered on 8th/9th June, 2005 who was the resident of village Goraur, Police Station Karimuddinpur, Ghazipur.

viii. Rajendra Rai a committed B.J.P. Worker was murdered on 27th July, 2005, he was Ex-Block Pramukh of Bhanwarkol Block, resident of Village Simra, Police Station Mohammadabad.

ix. Rajesh Rai, Gram Pradhan Hariharpur, was murdered along with Bhola Singh and one Anr. person.

x. Ultimately Sri Krishna Nand Rai, seating B.J.P. M.L.A. (husband of petitioner no. 1) along with 7-8 persons was murdered on 29th November, 2005.

6. The petitioners contended that although the matters were taken to the State Government upto the level of the Chief Minister of the State, but all were in vain. The political party, in which the deceased was the member, raised the question in the Parliament and made agitation/s. In response thereto Home Minister of India replied by saying that Central Government has no objection about enquiry by the Central Bureau of Investigation (in short called 'C.B.I.') but State has not given consent. Then they were forced to proceed with a writ petition before this Court. We have carefully gone through the writ petition in the earlier occasion and found that at one stage the investigation is already transferred to a different agency i.e. C.B.C.I.D. by the State itself which was ultimately returned back. Hence, the Court thought that it is not proper to pass an extreme order at this stage. However, in disposing the previous writ petition, being Criminal Misc. Writ Petition No. 12982 of 2005 (Smt. Alka Rai and Anr. v. Union of India and Ors.), on 21st December, 2005 this Court was pleased to pass the following order:

Amitava Lala. J. - Petitioner No. 1 is a widow of deceased M.L.A. of a political party and petitioner no. 2 is the brother. They have made this writ petition for a direction in the nature of mandamus upon the respondent no. 1 to transfer and entrust the investigation of the case Crime No. 589 of 2005 Under Section 147, 148, 149, 302, 307, 120B IPC and 7th Crime Act, Police Station Bhanwarkol District Ghazipur to Central Bureau of Investigation and further direct the respondent no. 2 to carry out a speedy and expeditious investigation in the aforementioned case. It was further prayed that the charge of Investigation will be handed over to Central Bureau of Investigation as per the condition precedent under Section 6 of Delhi Police Establish Act, 1946 (read as Delhi Police Establishment Act, 1946). We have come across the entire statement as made in the writ petition and also cited judgement before this Court (State of West Bengal and Ors. v. Sampat Lal and Ors.). In the said judgement a discussion was made in respect of entrustment of investigation from one investigation to other i.e., Central Bureau of Investigation by the Court. In paragraph 13 therein it was held in respect of the above Act as to whether the consent is required or not. It was held by the Court that although such provision of consent is available under Section 6 of the Act but that does not apply when the Court gives a direction to the C.B.I. to conduct the investigation.

The relevant paragraph 13 of (State of Bengal and Ors. v. Sampat Lal and Ors.) is as follows:

The question has not been reconvened before us and it has been accepted by counsel for all the parties including the Additional Solicitor General that while Section 6 of the Delhi Special Police Establishment Act, 1946 ('Act' for short) would require the consent of the State Government before jurisdiction under Section 5 of that Act is exercised by officers of that establishment, when a direction is given by the Court in an appropriate case, consent envisaged under Section 6 of the Act would not be a condition precedent to compliance with the Court's direction. In our considered opinion, Section 6 of the Act does not apply when the Court gives a direction to the CBI to conduct an investigation and counsel for the parties rightly did not dispute this position. In this view, the impugned order of the learned single judge and the appellate decision of the Division Bench appointing DGI, CBI to inquire into the matter would not be open to attack for want of sanction under Section 6 of the Act.

According to us each and every case is to be considered on the proper prospective. From the paragraphs no. 9 and 10 it appears that the State Government once transferred the investigation to the C.B.C.I.D. from the local police pursuant to the earlier prayer. In paragraphs 9 and 10 of the writ petition it has been contended by the petitioners themselves as follows:

9. That to illustrate the aforesaid position the petitioners beg to invite the attention of the court to the incident dated 26.4.2004, which was the day of polling of the parliament elections, when two supporters of Late Krishna Nand Rai, namely, Jinku Gihar and Shobh Nath Rai were murdered at the instance of the very same Ansari brothers. The terror, created by them did not allow a named F.I.R. to be lodged and the said incident was investigated by the local police for seven eight months without any results. On protests being lodged by the then Superintendent of Police, Ghazipur Sri B.R. Meena reported the incident to the State Government and also informed the authorities that the local police is not in a position to carry out the investigations on account of local political pressures and as such the investigation should be transferred to the C.B.C.I.D.

10. That the State Government transferred the investigation to the C.B.C.I.D. and after two or three months the C.B.C.I.D. expressed its inability to proceed with the investigation. Thus both the state agencies failed to carry out any investigation and which clearly demonstrates that the accused succeeded in preventing the investigation on account of their political clout, which they wield as they have a direct nexus with the present ruling government.

Therefore, it can not be said at this stage that the matter will be sent to the C.B.I., without due consideration by the appropriate authority in respect of the matter. At the time of due consideration the authority will consider, if necessary to protect the life and property of the family members of the deceased. Therefore, upon hearing the parties, we are of the view that the writ petition can be disposed of with the directions to the Principal Secretary Home, Government of U.P. Lucknow to consider the representation already made by the petitioner within a period of fortnight upon giving fullest opportunity of hearing and by passing a reasoned order thereon. For the purpose of effective adjudication a copy of the writ petition along with annexures can be treated as part and parcel of the representation.

Thus, the writ petition, stands disposed of.

No order is passed as to costs.

7. By making the instant writ petition (the 2nd writ petition) on 07th February, 2006, the petitioners contended before this Court that in spite of the specific directions given by this Court on 21st December, 2005 no opportunity of hearing was given to them and no order was passed within the stipulated period. Thereafter, when they proceeded with a contempt application, under the threat of contempt an order was passed on 31st January, 2006 by refusing to transfer the investigation to C.B.I. without affording any opportunity of hearing to the petitioners. Now when the point was threshed out in this writ petition, by filing a counter affidavit on 01st March, 2006 the Principal Secretary (Home) said that opportunity of personal hearing is given to the petitioners to appear before the deponent on 03rd March, 2006. How a posterior date can be said to be 'opportunity of personal hearing is given', even by the pen of Principal Secretary (Home) is unknown to this Court. It is a clear case of 'after thought' but hurriedly incorporated. It appears that by hook or by crook a Principal Secretary wanted to avoid the delicate situation. Now the question is why such delicacy unless, of course, undue influence is there?

8. According to us, there is a marked distinction between the position in the earlier writ petition and in this writ petition. In the earlier writ petition the stage was not prepared for the purpose of passing an extreme order by the Court to transfer the investigation to C.B.I. or any other agency. The Court was under the impression that since an effort was made by the State to transfer the investigation to C.B.C.I.D., although in the related case crime, at least they have tried to make out a clear picture of fair investigation. Such C.B.C.I. p. returned the investigation to the State. No explanation is given by the Principal Secretary (Home) in the affidavit as to why the investigation is retransferred to the State police. On the other hand, the State did not give any opportunity of hearing to the petitioners but passed an order refusing to transfer the investigation to C.B.I.. Therefore, the State wanted to compel the petitioners to accept the investigation by the State police. It is well known that investigation by the C.B.I. is far more effective investigation than the State police or C.B.C.I.D.. The Court can not refrain from taking judicial notice that sometimes in such type of matters the Police forces under the States can not avoid business. It is to be remembered that both the agencies either State police including Special Task Force (S.T.F.) or C.B.C.I.D. are controlled by the State. In such circumstances, the investigation by other agency other than State police or C.B.C.I.D. can not be ruled out to maintain the clean image of the State. The petitioners will not get back the departed soul, but they will definitely get their mental satisfaction about existence of rule of law in the State.

9. At this juncture learned Government Advocate contended that there can not be any allegation against the State investigating authority. Six persons were named in the first information report, out of which three persons are already in jail. Investigation has been made. Charge-sheet has been filed against five persons. One is absconding and proceeding under Section 82/83 Cr.P.C. has been initiated against such person. He is shown as absconding from 1999 in other case and an award of Rs. 1,00,000/- has been provided by C.B.I.. For other person, namely, Munna Bajrangji, an amount of Rs. 50,000/- was awarded by the State in other case. Investigation was initiated on the basis of an application under Section 173(8) Cr.P.C.. Investigation as against one Mukhtar Ansari is pending

and he is in jail. For security of the family 10 gunners have been provided. At this stage if the investigation is transferred, complication may arise. In reply, the petitioners contended that there can not be any faith in respect of the local police. It is alleged that the local police authorities are sponsorer of the incident. The issue is very sensational and political in nature. No inch should be left for the local police for investigation under such circumstances. The contents of the letter which was written to the Chief Minister of the State on 02nd December, 2005, are as follows:

With grief and agony, I am sending this petition with my brother-in-law (devar) Brijesh Kumar Rai and I pray that in this matter the action may be taken expeditiously.

My husband Late Sri Krishna Nand Rai was elected member of legislative assembly from Mohammadabad (Ghazipur), who was murdered on 29.11.2005 at about 3 P.M., when he was going from Siyari to Kanuwan, in transition. My husband Late Sri Krishna Nand Rai accompanied by Shri Shyam Shankar Rai (Ex-Block Pramukh, Mohammadabad), Sri Ramesh Rai (Ex-President, B.J.P., Bhanwarkol Block), Shesh Nath Patel, Village-Nawapura, Akhilesh Rai, Village- Firozpur, Munna Yadav, Village Goraur and the government provided gunner Nribhay Narain Upadhyay, who were also murdered.

My husband had a prior apprehension that, he shall be murdered by Mukhtar Ansari, M.L.A., and Afzal Ansari, Member of Parliament, Ghazipur. In this regard he had made representations before police officials and prayed that his security might be increased.

Prior to this incident many innocent civilians were murdered in the locality of Mohammadabad through the conspiracy of Mukhtar Ansari and Afzal Ansari. Ghazipur police has been acting on their directions. The incident had taken place at 3 P.M. in the evening and till the next day morning no police officer had visited my house. I was informed by many persons that the police had reached the place of occurrence after around 5 hours.

My husband and six other persons accompanying them, were killed as a result of a big conspiracy, wherein Mukhtar Ansari and Afzal Ansari had conspired to kill them. At the same time some high police officials were also involved in this conspiracy. Afzal Ansari is elected M.P. from Samajwadi Party and he has a full dominance over the District Ghazipur administration. Mukhtar Ansari is an independent M.L.A. from Mau and general belief is, that he is a mini Chief Minister for Ghazipur and Mau. I am also informed that in the murder sophisticated automatic and semi-automatic weapons i.e. AK-47 and AK-56 were used. The role of the local police is highly suspicious and they are in collusion with the accused persons.

In this circumstances I humbly pray that this incident may be investigated by C.B.I., so that the accused persons and white collars criminals could be exposed and punished. In case the investigation is delayed, then the evidence of the incidents could be destroyed.

The criminals have snatched the person, on whom I was dependent; at least it must be ensured that in future no other sister may have to see, such a day.

Applicant Sd/-AlkaRai.

(ALKA RAI) Village & Post Goraur Police Station Karimuddinpur District Ghazipur.

10. According to us, whether the investigation will be transferred to any other agency other than the local police is depending upon the facts and circumstances of each case. Normally the State is the authority to transfer the investigation from one agency to other. Considering the importance of the matter the State itself thought it fit that in one of the matter, investigation should be made by C.B.C.I.D. but the C.B.C.I.D. had returned. There is no specific denial in respect of failure of the C.B.C.I.D. in the affidavit of the Principal Secretary (Home), Government of Uttar Pradesh, Lucknow. Only in paragraph 7 (iii) of such counter affidavit, the State has made following evasive statement:

Said investigation was also transferred to the CBCID and thereafter it was returned back to the local police of the district on 27.06.2005, and the investigation is going on.

11. The petitioners specifically contended that the State Government transferred the investigation to the C.B.C.I.D. and after two or three months the C.B.C.I.D. expressed its inability to proceed with the investigation. Thus, both the State agencies failed to carry out any investigation and which clearly demonstrates that the accused succeeded in preventing the investigation on account of their political clout, which they wield as they have a direct nexus with the present ruling government.

12. However, we are of the view that the statement of the Principal Secretary (Home), Govt. of U.P., Lucknow made in paragraph-8 and its sub-paragraphs are to be quoted hereunder:

8. That the contents of paragraph 7 of the writ petition are wrong hence denied. However, for the sake of convenience, detail of the cases with progress report are being submitted as below:

7(i) The case crime no. 346 of 2003 was registered under Section 147, 148, 149, 506 and 302 IPC. In the said case crime number, accused Mukhtar Ansari was not named. However, three accused were arrested by the Police on 22-08-2003 and thereafter, charge sheet no. 65 dated 16-10-2003 was sent to the Court concerned. In the said case, trial is pending before the Addl. District and Sessions Judge-II, Ghazipur.

7(ii) In respect to the case crime no. 184 of 2004 under Section 302 IPC in regard to the murder of Jhinku Gihar initially the investigation was conducted by the police, but thereafter, it was transferred to the CBCID. and thereafter it was against transferred to the local police on 27-06-2005.

7(iii). In respect of case crime no. 185 of 2004 under 302 IPC, it is submitted that one Shobhnath Rai was murdered on 26-04-2004 and thereafter, FIR was lodged against unknown accused. Said investigation was also transferred to the CBCID and thereafter it was returned back to the local police of the district on 27-06-2005. and the investigation is going on.



7(iv). In respect of case crime no. 453 of 2004 under Section 307/506 IPC, it is submitted that all three accused were arrested by the police on 02-11-2004, and thereafter charge sheet no. 83 dated 27-12-2004 was submitted in the Court concerned.

7(v). In respect of case crime no. 360 of 2004 under Section 302, 307 IPC, 7 Criminal Law Amendment Act and 3/5 S.C.S.T. Act, it is submitted that one Kallu Rai was murdered on 23-09-2004. During the course of investigation accused Vishwanath Rai and Sintu Raj were arrested on 03.10.2004. Other accused Angad Rai and Umesh Rai alias Gora surrendered before the Court below. Charge sheet no. 68 dated 06.11.2004 has already been filed in the Court concerned.

7(vi). Akhilesh Rai was murdered on 16.11.2004 and case crime no. 479 of 2004 under Section 302, 120B IPC was lodged against the unknown accused. During the course of investigation, one accused namely punit kumar was arrested in connection of the crime and sent to jail. Second accused Jhunna Rai was killed in police encounter on 18/19.05.2005. Other accused namely Ramesh Singh surrendered before the Court concerned. Other accused involved in the said case were also arrested and sent to jail. Thereafter, charge sheet no. 14 dated 02.04.2005 was submitted and sent to the Court concerned.

7(vii). Case crime no. 250 of 2005 under Section 147, 148, 149, 302, 307 IPC was lodged against five or six unknown persons. During the course of investigation, four persons were sent to jail and against one accused namely Radhey Shyam Rai proceedings under Section 82/83 Cr.P.C. was initiated and thereafter charge sheet under Section a-50a dated 07.02.2006 was submitted to the Court concerned.

7(viii). Case crime no. 493 of 2005 under Section 302, 506, 120B IPC was lodged at P.S. Mohammadabad, district Ghazipur in regard to the murder of Rajendra. In the said FIR as lodged by the complainant, role of conspiracy was assigned to Mukhtar Ansari and Afzal Ansari. Charge sheet no. a-90 dated 22.11.2005 was submitted in the court concerned and during the course of investigation, names of Mukhtar Ansari and Afzal Ansari was excluded due the insufficiency of the evidence against them.

7(ix) Case crime no. 711 of 2005 under Section 302 IPC and 7 Criminal Law Amendment Act was registered on 02.10.2005 at P.S. Mohammadabad, District Ghazipur. After thorough investigation, charge sheet no. A-99 dated 19-12-2005 was submitted before the Court.

7(x) Case Crime No. 589 of 2005 under Section 147, 148, 149, 302, 307, 404, 120B IPC and 7th Criminal Law Amendment Act was lodged at P.S. Bhanwarkol, district Ghazipur on 29-11-2005 against 6 named accused namely Munna Bajrangi, Ata-ur-Rahman, Firdaua, Ijaz-ul-Haq, Afzal Ansari and Mukhtar Ansari. Accused Afzal Ansari, Mukhtar Ansari and Ijaz-ul-Haq are already in jail in the said case. Against rest of the three accused as named above, proceeding under Section 82 and 83 Cr.P.C. has already been completed. A thorough investigation was conducted by the police. The said investigation was conducted at the level of Senior Deputy Superintendent of Police and Special Task Force (STF) was also attached with the investigation. Charge sheet no. 6/2006 dated 21-02-2006 has already been submitted before the Court concerned on 25-02-2006. Said charge

sheet has been submitted against five named accused except Mukhtar Ansari and other unknown accused and it is submitted that against them, the investigation is going on.

13. Normally the State forwards the investigation to an agency other than the State agency. It is needless to say that writ court has power to forward the same without referring the matter to the State provided circumstances compelling to do the same. Normally, Court is slow in interfering with transfer of investigation to other agency. In the instant case, the Court referred back the matter to the State for the purpose of taking a decision upon giving hearing to the parties. But the State authority did not choose to do so for some reason or other. Therefore, it is imperative to say that unless hidden cause is there, there can not be any reason of vacillation. The following facts are making the Court of law much more inquisitive:

(i) transfer of investigation to C.B.C.I.D. and retransfer thereof;

(ii) silence of the Principal Secretary (Home) about the cause of retransfer in his affidavit;

(iii) not giving hearing on the representation of the petitioners within the stipulated time as prescribed by this Court in disposing the earlier writ petition;

(iv) passing of departmental order under the threat of contempt without affording any opportunity of hearing to the petitioners; and (v) making a prayer to give such opportunity after passing order only at the time of hearing of this writ petition.

14. With a further surprise it is revealed that even after conclusion of the hearing and judgement being reserved, one of the learned Additional Government Advocate filed an affidavit of one Jagdamba Prasad Dwivedi, Station Officer, Police Station Jangi Par, District Ghaziabad (to be read as Ghazipur) to incorporate the factum that investigation against Mukhtar Ansari is also closed and charge-sheet no. 68 dated 15th March, 2006 has been submitted, to which the petitioners raised strong objection.

15. Approach of the deponent to show urgency is not understandable. When Principal Secretary (Home) himself has taken the responsibility of filing counter affidavit in view of the seriousness of the matter, what prevented the deponent not to bring such fact to the Principal Secretary but to file an affidavit hurriedly when hearing is already concluded, is unknown to this Court. One can not rule out possibility of tactical ploy to prevent the petitioners from getting relief as regards transfer of investigation. It is well known that normally the Court does not interfere with regard to investigation when the charge-sheet/final report is submitted to the Court. But there is still many a slip between the lip and the cup. Preparation of charge-sheet, making it ready for submission or forwarding the same to file it before the Court do not necessarily mean actual submission of charge-sheet in the Court. The affidavit does not say about actual submission of the charge-sheet to the Court. There is no rule for completion of investigation and submission of the charge-sheet before the Court. It has to be followed from the Police Regulation. In any event, even after completion of investigation and preparation of charge-sheet by the police and before it is actually submitted to the competent court, the same can be recalled or reinvestigated by any other agencies or by the superior

authorities or by the same authorities in an appropriate situation. That apart, Section 173(8) Cr.P.C. prescribes as follows:

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

16. Section 173(2) Cr.P.C. says that as soon as the investigation is completed, the Officer-in-charge Of the police station shall forward it to a Magistrate empowered to take cognizance of the offence on a police report. Therefore, neither forwarding will preclude nor placing of the matter before the Magistrate will preclude the police authority for further investigation.

17. In [Ram Lal Narang v. State (Delhi Admn.) with other matter] the Supreme Court held that the police has right to investigate the matter even after the cognizance has been taken by the concerned Magistrate on the basis of submission of the report.

18. The scheme of the Code is that first information report will be followed by investigation, the investigation will lead to the submission of a report to the Magistrate, the Magistrate will take cognizance of the offence on receipt of the police report and finally, the Magistrate taking cognizance issue process to the accused. But the statutory rights and duties of police about investigation can not be circumscribed by any power of superintendence or interference in the Magistrate; nor any sanction is required from Magistrate to empower the police to investigate into cognizable offence. In the interest of the independence of the magistracy and judiciary, in the interest of purity of the administration of criminal justice and in the interest of the comity of various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. It is not a mandate but pious desire. The Supreme Court held as follows;

As observed by us earlier, there was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was, exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts, In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

19. Under the criminal writ jurisdiction of this High Court mainly the disputes arose for quashing the first information report and/or not to arrest an accused due to non-availability of provisions of anticipatory bail in the State. In case, charge-sheet/final report is filed, the writ court in its wisdom does not interfere with the matter like a regular appellate or revisional court or court of first instance, where the charge-sheet/final report is to be filed. But that does not necessarily mean that the writ court is powerless to pass an appropriate order at a relevant situation. There is a reason for the writ Court for not interfering with the matter. The reason is that power of investigation is in the hands of the executives but power of prosecution is in the hands of judiciary. Till the filing of Charge-sheet the investigation is in the hands of the executive authority, therefore, the writ court, at a situation, interferes with it but not thereafter to leave it to the competent jurisdiction for its judicial disposal on the basis of the charge-sheet or final report filed therein. There is a difference between the cases, where quashing of first information report and/or not to arrest is prayed by an accused and where investigation is sought to be transferred to other agency by a complainant/informant. This is such a case. In this case only relevant point is that the investigation will be transferred or not to C.B.I.. However, for the effectiveness of the matter, we should discuss about power/s of a Magistrate. A Magistrate can do one of three things:

(i) he may decide that there is no sufficient ground for proceeding further and drop action;

(ii) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report;

(iii) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200 Cr.P.C.

20. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 Cr.P.C. if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

21. However, such Magistrate has no power to recommend the State to transfer the investigation to some other agency. It only lies with the State. In case the State fails to discharge the duty at a situation, an aggrieved may apply under Article 226 of the Constitution of India in the High Court. High Court has power to refer the matter to C.B.I. without being routed through the State. However, since the power is exhaustive, the situation will have to be visualised. In this particular case, this Court had given opportunity to the State. But neither the State had discharged its responsibility nor had shown transparency towards their attitude. Investigation appears to be conducted in a slipshod manner. Therefore, this is a situation where the investigation can be transferred to C.B.I..

22. The next question is whether the investigation can be transferred at a stage of investigation or even thereafter when the charge-sheet has been submitted to the Court or not? We have categorically distinguished the position in between forwarding of the charge-sheet and actual submission of the charge-sheet before the Court. However, when the Supreme Court has laid down the principle that the investigation can not be barred because of taking cognizance by the

Magistrate, the writ court having unfettered power, particularly as regards natural justice, can transfer the investigation to any other agency at any point of time.

23. Last but not the least, with whom the charge-sheet, if any, is filed i.e. the Magistrate since has no power to transfer the investigation to any other agency, at such a situation, like the above, disallowing an aggrieved without passing an order, will obviously create a vacuum. Since there is no alternative remedy available to the aggrieved to get filling up the vacuum by the

24. Magistrate regarding transfer of investigation to any other agency in spite of taking the cognizance, the writ court under Article 226 of the Constitution of India can fill up such vacuum.

25. In 1999 Cri. L.J. 3523 (Munir Alam v. Union of India and Ors. ) a three Judges Bench of the Supreme Court in an appeal from a writ petition held that writ court can interfere and transfer the investigation to C.B.I. even when the State tried to cloud the entire issue irrespective of final report in the committal court. The ratio is that power of the writ court under Article 226 of the Constitution of India is unfettered. As its power is unfettered, such power will be used in a restricted manner. But there should not be any restriction where it is apparent that one of the State machinery has violated the principle Of natural justice or did not consider the fundamental right or an order is passed without jurisdiction or challenge has been thrown in respect of the vires of any Act, rules, governmental order, circular, notification, etc..

26. In (Zahira Habibulla H. Sheikh and Anr. v. State of Gujarat and Ors. ) (commonly known as "Best Bakery case") the Supreme Court held that Sub-section 8 of Section 173 of Cr.P.C. permits further investigation, and even dehors any direction from the Court as such it is open to the police to conduct proper investigation even after the court has taken cognizance of any offence on-the strength of a police report earlier submitted.

27. In (Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors. ) again the Supreme Court said that the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective Justice. It is to be remembered that when defective investigation comes to light during the course of trial, it may be cured by further investigation, if circumstances so permit.

28. In the case of State of West Bengal and Ors. v. Sampat Lal and Ors. it was held that the requirement of consent of the State, as it was held under Section 6 of the Delhi Special Police Establishment Act, 1946, is not the condition precedent for the purpose of invocation of the writ jurisdiction of the Court in transferring the investigation to any other agency i.e. C.B.I.. Factually, this condition was also fulfilled by this Court by passing an order, as referred above, on 21st December, 2005 in Criminal Misc. Writ Petition No. 12982 of 2005 (Smt. Alka Rai and Anr. v. Union of India and Ors. ) in sending the matter to the Principal Secretary (Home), Government of U.P., Lucknow to consider the representation of the petitioners within a period of fortnight upon giving fullest opportunity of hearing and by passing a reasoned order thereon. In such judgement and order this Court categorically held about the desirability of sending the matter to the State Government. The aforesaid ratio is also available in a judgement (Maniyeri Madhavan v. Sub

Inspector of Police and Ors. ).

29. By citing a judgement reported in 2002 (3) AWC 2509 (SC) (Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Ors. v. Sahngoo Ram Arya and Anr. ) learned Additional Government Advocate appearing for the State respondents stated that it is clear that a decision to direct an inquiry by the C.B.I. against a person can only be done if the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the C.B.I. or any other similar agency but the same can not be done as a matter of routine or merely because of a party makes some such allegations. According to us, facts of this case have no quarrel with the aforesaid proposition. On the other hand, the matter is so sensational and the crime is so heinous in the realm of political rivalry that it satisfies the test of prima facie case.

30. So far as (State of Karnataka v. Arun Kumar Agarwal and Ors. ) is concerned, possibly the same has been shown by the respondents to establish that the police investigation can not be ordered by the Court on the basis of suspicion. We are of the view that this principle is well known to us but the Court has to consider the material of each case on the factual matrix. Factual matrix of this case is not at all ignorable.

31. So far as the further cited judgement being reported in 2001 (42) ACC 751 (Smt. Ramwati and Ors. v. State of U.P. and Ors. ) is concerned, a Division Bench of this Court held that normally the investigation should be done by the local police and transfer of investigation to C.B.C.I.D. can be made only if there is sufficient ground for the same. In the said judgement four grounds are mentioned for exercise of such power:

(i) The nature of the crime is so complicated and involved that it is not possible for the local police to properly investigate the same;

(ii) The crime has international, inter-State or inter-division ramifications

(iii) The local conditions are such due to which it has become difficult for the civil police

(iv) Such conditions have arisen due to which a doubt is created in the mind of general public

32. Although the observation is made regarding transfer of investigation to C.B.C.I.D. in certain circumstances but the similar principle can be applicable in respect of C.B.I. having much better infrastructure. Upon going through the facts and circumstances of this case, it can be revealed that it is such a case which definitely falls on the sufficient grounds as prescribed in such judgement. It is duty of the State to transfer investigation to some other agency. Whenever the State authority transfers the investigation to C.B.C.I.D., definitely it was considered by it that the subject matter is such that the investigation should be proceeded by the C.B.C.I.D.. But there is no reason available to this Court why the matter was transferred from C.B.C.I.D. to the local police. It is not a question of

power of the State about transfer or retransfer. It is a matter of reasoning for the purpose of retransfer to justify the cause and to show the transparency. Having no answer to the same and having almost all ingredients, as mentioned above, we are of the view that citation of this judgement on the part of the State will be actually inuring the benefit of the petitioners in getting the order.

33. Therefore, taking into account all aspects of the matter we are of the view that the investigation of the relevant case crime/s should be transferred to C.B.I. irrespective of forwarding charge-sheet/final report, if any, towards the committal court. Hence, the State is directed to transfer the investigation accordingly. However, if the committal court has taken cognizance of the matter, a leave can be obtained by the complainant from there for further Investigation and in that case such investigation can also be proceeded by C.B.I. on the strength of the order of the High Court and be concluded as expeditiously as possible. Thus, the writ petition stands disposed of.

34. No order is passed as to costs.

35. I agree.