REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6198-6199 OF 2008

(Arising out of SLP (C) Nos. 24777 – 24778 of 2005)

Nirmal Singh Kahlon .... Appellant

Versus

State of Punjab and others .... Respondents

WITH

CIVIL APPEAL NOS. 6200-6201 OF 2008

(Arising out of SLP (C) Nos. 25226 – 25227 of 2005)

J.P. Singla and others .... Appellant

Versus

State of Punjab and others .... Respondents

J U D G M E N T

S.B. SINHA, J.

Leave granted.

1. These two appeals involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. Nirmal Singh Kahlon, Appellant in appeals arising out of SLP (C) Nos. 24777-24778 of 2005 was the Rural Development and Panchayats Minister in the Government of Punjab while the three appellants in appeals arising out of SLP (C)Nos. 25226-25227 of 2005 were working as Deputy Directors in the Department of Rural Development and Panchayats, Government of Punjab at the relevant time.

3. The State of Punjab had enacted the Punjab Panchayati Raj Act, 1994.

4. An advertisement for recruitment of 190 Panchayat Secretaries was issued in the year 1992 for which written test was held in the year 1994 ; however, the posts could not be filled. In the meantime 545 Panchayat Secretaries were appointed on ad hoc basis by the State.

5. One of the applicants, who applied for the post in response to the advertisement of 190 posts, challenged the said ad hoc appointments by way of a writ petition which was marked as C.W.P. No.9835 of 1996, titled Palvinder Singh v. State of Punjab, which was disposed of by a Division Bench of the Court on 20th September, 1996 by directing inter alia the

completion of the selection process as well as for available posts with the department. Selection against 190 posts of Panchayat Secretaries, for which written test had already been held was to be finalized on or before 20th November, 1996.

6. Two more advertisements were issued; first on 17/18th September, 1996 for filling up 700 posts and second on 14th October, 1996 for filling up 800 posts of Panchayat Secretaries respectively.

Another advertisement was issued on 19th September, 1998 inviting applications from the female candidates also for the post of Panchayat Secretaries.

In response to the abovementioned advertisements over 1.5 lacs applications were received, the processing job whereof was handed over to a Delhi based computer firm. Result of the written test was declared on or about 14th October, 2000 in which 3286 candidates were declared successful. They were called for interview.

However, no further action appears to have been taken pursuant thereto or in furtherance thereof. Another writ petition was filed in the High Court of Punjab and Haryana which was marked as CWP No.11912 of 2000, titled Harmesh Singh and others v. State of Punjab and others. By an order dated 30th August, 2001, selection for the post of Panchayat Secretaries was directed to be completed within one month. The said order was not interfered with by this Court in a Special Leave Petition filed by the State which was marked Special Leave Petition (Civil) No. 15843 of 2001 by an order dated 24th September, 2001. Interviews of the eligible candidates were held thereafter and 908 candidates were selected.

7. In or about March, 2002 a change in the State Government took place. The Congress Party came into power after election. The new Government made an attempt to reinstate the Panchayat Patwaris whose services had been terminated by the previous Government pursuant to the orders of the High Court.

8. Selection of the said 908 candidates was the subject matter of another writ petition which was marked as CWP No.5283 of 2003 entitled Veero Devi v. State of Punjab and others. In the said writ petition the Court

formed a prima facie opinion that irregularities in the selection process had been committed. By an order dated 3rd April, 2002, the High Court issued the following directions :-

> "The Bench Secretary is directed to give copy of this order to learned Deputy Advocate General who shall forward the same to the Advocate General, Punjab. The Advocate General, Punjab shall send the copy of the order to the Chief Secretary, Punjab, who shall ensure that a thorough probe is conducted into the selections made by the Directorate of Department of Rural Development and Panchayats by an officer not below the rank of Secretary to the Government. After conducting the probe, the report be produced before the Court within a period of 8 weeks. The desirability of issuing other directions would be considered by the Court after examining the report."

The nature of litigation, therefore, was changed from private interest litigation to public interest litigation.

9. In terms of the said order an enquiry was made by one Shri P. Ram, the then Financial Commissioner, Rural Development and Panchayat Department. He was of the opinion that the entire selection process was

required to be set aside. A recommendation was made that an investigation into the whole affair be made by the Vigilance Department.

10 Pursuant thereto a first information report was lodged by the Vigilance Department on 14th June, 2002 against several persons including appellant, Nirmal Singh Kahlon, for alleged commission of offences under Sections 420, 467, 468, 120(B) of the Indian Penal Code and Sections 13(1)(d)(e) and 13(2) of the Prevention of Corruption Act, 1988, the material portion whereof reads as under :-

> "It has come to knowledge that Sh. N.S. Kahlon Ex. Minister Rural Department and Panchayat had during his tenure made recruitments to the various posts of Tax Collector, Patwaris, Peons, Clerks etc. for his benefit by illegal means by taking heavy amounts of money as bribes. In this way for his favourites who were not fulfilling the requirement like less age, less qualification and manipulating the marks in the answer sheet, recruitment were made to P. Sect and deserving candidates were side lined. Similarly, to fulfil the backlog in handicap category recruitments of Gram Sewaks were made and the candidates, who were deserving were not recruited. It has also come to knowledge that Kamalpreet Kaur, Advocate District Fatehgrah Sahib who was fulfilling the basic qualifications in handicap quota for the "Mukh Sewak" was also sidelined. Rs. 3 lacs were demanded from her by sending Manjet Singh Steno, office of R.D.P. to her residence. When she was not able to give money in bribe, then she was not recruited to the post. In

> this way, Kahlon has accepted heavy amounts as bribes for transfers, appointments and promotions and he has accumulated moveable and immovable assets in excess of the known resources. This has also come to knowledge that Kahlon has got leased 2 acres of Shamlat land at village Phabhat, Tehsil Dera Bassi, District Patiala for 7 years in the name of his close relative Burwinder Singh s/o. Ajnala by mis-using his position, whereas Shamlat land cannot be leased out for such a long period. In this way Ex.R.D.P.M. has earned crores of rupees by mis-using his position through recruitments, transfers, appointments and promotions and has accumulated countless assets and cash. By misusing his powers, he had made wrong appointments for his benefit and the deserving candidates were overlooked. By doing this Ex.RE.D.P.M. has committed crime under Section 420, 467, 468, 120(B), 13(1)(d)(e) read with 13(2)."

11. A charge sheet was filed against Nirmal Singh Kahlon and J.P. Singla (appellant No. 1 in Civil Appeals arising out of SLP (C) Nos. 25226-25227 of 2005), Ex. Deputy Director of Rural Development and Panchayats. Appellant Nos. 2 and 3 in Civil Appeals arising out of SLP (C) 25226-25227 of 2005 were shown as the witnesses in the said report.

12. It appears somewhat strange that despite the same a statement was made before the Court on behalf of the State of Punjab on 1st November,

2002 that the investigation was proposed to be handed over to the Central Bureau of Investigation.

13. On or about 16th November, 2002 Secretary to the Government of Punjab, Department of Rural Development issued a letter addressed to the Chief Secretary to the Government of Punjab, opining that the case should be investigated by the Crime Branch of the State Police.

14. In view of the aforementioned report the High Court, by an order dated 31st October, 2002, directed the Additional Advocate General to obtain instructions as to what action the Government has been contemplating on the enquiry report. It was observed :-

> "The State Government will have the option of suo moto making further investigation by removing all those named in the report from their respective offices so as to ensure that the further enquiry is not influenced by any of those officers. It may also order a CBI probe into the entire scandal involving appointment of Panchyat Secretaries."

15. On 1st November, 2002 the State Government made a statement that a decision had been taken to handover the investigation in regard to the scandal involving selection of Panchayat Secretaries to the Central Bureau of Investigation and also to take action against the officers named in the enquiry report.

Selection of the candidates, however, was cancelled by State Government by its order dated 10th December, 2002.

16. The Central Bureau of Investigation, however, expressed its inability to take up investigation opining that the same may be conducted by the State Vigilance Department. One of the grounds on which the said stand was taken was lack of man power as also infra structure.

An affidavit to that effect was to be filed on or before 13th November, 2002 and the matter was adjourned to 15th November, 2002. On that date a prayer was made for some more time to file a comprehensive affidavit. The writ petition was listed before the High Court on 10th February, 2003 on which date it noticed the decision of the State Government to handover the investigation to the Central Bureau of Investigation. The State took some adjournments. Proceedings sheet of the High Court dated 25th April, 2003 reads as under :-

" From the records, it appears that for very good reasons, the Government of Punjab decided to hand over the investigation of scandal involving selection of Panchayat Secretaries, who are writ petitioners, to Central Bureau of Investigation and also to take action against the officers named in the inquiry report, that the Central Bureau of Investigation stands impleaded as Respondent No.5 in Civil Writ Petition No.5283 of 2002 and that today an application has been filed for placing on record DO No.18/79-02-4/RDE 4/560 dated 04/03/2003 and DO No. I/C/2003-CHG/NZ dated 02/04/2003 of the Director Central Bureau of Investigation, Government of India, New Delhi, as Annexure R-1 and Annexure R-2 on behalf of Respondent No.1 and 2, stating, inter alia, that Central Bureau of Investigation has communicated that it would not be able to take up the investigation of the above said scandal and it may get probed through the State Vigilance after the court had adjourned the further hearing of the case awaiting the submission of the report of Central Bureau of Investigation. Unfortunately, even though Central Bureau of Investigation is Respondent No.5 in Civil Writ Petition No.5283 of 2002, a copy of aforementioend application has been served on Shri Rajan Gupta, Advocate so that we could have a positive response of Central Bureau of Investigation through its counsel and adjudge the correctness or otherwise of the stand of the Central Bureau of Investigation as communicated to the State."

17. Despite the same no notification was issued by the State of Punjab handing over the investigation to the Central Bureau of Investigation. Proceedings sheet dated 30th April, 2003 inter alia reads :-

> "In regard to one of the submissions made by Shri Rajan Gupta, Learned counsel that no notification has been made by the Punjab Government handing over the investigation to the CBI, we hope and trust that necessary notification in that regard will be published by the Punjab Government within couple of days."

18. On or about 2nd May, 2003 the State Government issued a Notification in terms of Section 6 of the Delhi Special Police Establishment Act, 1946 (for short the 'Act'), the relevant portion whereof reads as under:-

> " And whereas during the course of arguments, after considering the reply of the CBI and the arguments of the Standing Counsel for the CBI on 31.4.2003, Hon'ble Punjab and Haryana High Court directed the State Government to issue necessary Notification well before the next date of hearing i.e. 7.5.2003 to enable the CBI to take into hands the investigation of the recruitment of 909 Panchayat Secretaries.

> Now, therefore, in pursuance of the provisions of Section 6 of the Delhi Special Policed Establishment Act, 1946 (Central Act 25 of 1946) and all others powers enabling him in this behalf, the Government of Punjab is pleased to accord his consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Punjab for investigating into the alleged scandal of selection of 909 Panchayat Secretaries made in the year 1996 to 2001 in the Department of Rural Development and Panchayats under the relevant provisions of the law and any other offence in relation to or in connection with the said alleged scandal of appointments committed in the course of the same transaction or arising out of the said matter."

19. In view of the aforementioned Notification the High Court by its order dated 7th May, 2003 directed :-

> " Having regard to the peculiar facts and circumstances of the instant case, it was the court which took a view earlier that mater is such, which requires, in the interest of justice, investigation by the Central Bureau of Investigation and then the State of Punjab came to nearly agreeing to the observations made by the court, though after sometime the Court noticed some dilly dallying on the part of the State Government but ultimately it decided to hand over the investigation to the C.B.I. We reiterate that in the peculiar facts and circumstances investigation by Central Bureau of Investigation appears to be not only just and proper but a necessity.

> Accordingly, we hope and trust that the Central Bureau of Investigation will do its best to investigate and book the real culprits. We respect that Central Bureau of Investigation will do its investigation within a reasonable time though we appreciate the limited resources, which it is having. We are sure that if the Director of Central Bureau of Investigation moves the Government of India to provide more funds and/or offices, it will consider the request, if so made, objectively and suitable decision will be taken by the Government of India."

20. The Central Bureau of Investigation, however, informed the High Court on 13th August, 2003 that a special team had been sent for a meaningful investigation in respect of the allegations, and the same had proceeded to a considerable length. The Central Bureau of Investigation thereafter registered a first information report on 26th June, 2003

21. Appellants filed applications which were marked as CM Nos. 6907 - 6908 of 2005 and 18993-18994 for recalling of the orders dated 30th April, 2003 and 7th May, 2003; the prayers made wherein read as under :-

> "(a) Recall the orders dated 30.4.2003 (Annexure C-4) and orders dated 7.5.2003 (Annexure C-6) which have resulted in the notification dated 2nd May, 2003 of the State Government hading over the investigation to

C.B.I. and the second FIR No. 8(s) of 2003 dated 26.6.2003.

(b) set aside and quash the notification of the Government dated 2nd May, 2003 (Annexure C-6) and the consequential second F.I.R. No.8 (s) of 2003 dated 26.6.2003."

By reason of the impugned judgment dated 4th October, 2005, the said applications have been dismissed.

22. This Court on 12th December, 2005 while issuing notice passed the following interim order :-

" The C.B.I. may continue with the investigation, but the final report shall not be filed till the next date of hearing"

23. Mr. P.P. Rao and Mr. Raju Ramachandran, learned senior counsel, appearing on behalf of the appellants, would submit :-

1) As per the records and in particular the affidavit of Chief Secretary of the State the High Court was not made aware of the fact that the charge sheet had already been submitted on 19th September, 2002

before a court of competent jurisdiction and cognizance in the matter had been taken and thus the High Court acted illegally and without any jurisdiction in directing fresh investigation by the Central Bureau of Investigation.

2) Although the High Court in its impugned judgment noticed that the charge sheet had been submitted on 19th September, 2002 but failed and/or neglected to deal with the implication thereof which demonstrates total non application of mind on its part.

3) The Act does not envisage a State Government to give consent for investigation by the Central Bureau of Investigation in respect of an offence which had already been investigated and charge sheet submitted.

4) In any event the learned Magistrate before whom the charge sheet had been filed did not form an opinion that the investigation was faulty and/or did not satisfy the requirements of law, no reinvestigation could have been directed by the High Court in exercise of its power under Article 226 of the Constitution of India or otherwise. Even such an order of reinvestigation or further investigation is not contemplated under Section 173(8) of the Code of Criminal Procedure (for short 'the Code').

5) Section 173(8) of the Code does not envisage any investigation by a central agency created under the Act after filing of a charge sheet, in which event, the Court of Magistrate alone has the jurisdiction to issue any further direction regarding investigation.

6) As a first information report had already been lodged by the Vigilance Department, another first information report for the same cause of action could not have been lodged by the Central Bureau of Investigation in view of the decisions of this Court in T.T. Antony v. State of Kerala, [(2001) 6 SCC 181].and Kari Choudhary v. Mst. Sita Devi and others, [(2002) 1 SCC 714].

7) The Central Bureau of Investigation itself in IAs. 3 and 4 stated that a fresh first information report had been registered on 26th June, 2003 , which goes to show that earlier first information report as also the material collected therein had been totally ignored.

8) The High Court in its impugned judgment, although accepted that a second first information report on the same set of allegations, (not being a counter case) cannot be allowed but did not advert to the legal implication thereof.

9) After the submission of the report under sub-section (2) of Section 173 of the Code, a further investigation by another agency is impermissible in law.

10) The High Court committed a serious error in opining that the first information report has been lodged only for the purpose of further investigation arising out of the first information report lodged by the Vigilance Department.

11) The Investigating Officer appointed by the Central Bureau of Investigation being not superior in the rank to the police officers of the State Government who had investigated and submitted the report on 19th September, 2002, Section 36 of the Code whereupon reliance has been placed by the State is inapplicable inasmuch the expression 'superior police officer' would mean an officer superior in the same hierarchy i.e. in the State Police and not an officer of the Central Bureau of Investigation.

12) The Notification issued by the State permitting investigation by the Central Bureau of Investigation into the offence pursuant to the order of the High Court must be held to be illegal as the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India could not have issued such a direction. In any event the finding of the High Court that there was no direction

to Central Bureau of Investigation to take over investigation is contrary to the record of the case, as such a direction had been issued by the High Court on 7th May, 2003, on the basis of which first information had been lodged by the Central Bureau of Investigation as per the order of the High Court.

13) The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India in a public interest litigation or otherwise cannot issue such a direction particularly when the jurisdiction to monitor an investigation comes to an end when a charge sheet is filed in view of the decisions of this Court in Vineet Narain v. Union of India, [(1998) 1 SCC 226]. ; State of Bihar v. P.P. Sharma, [1992 Sup. (1) SCC 222] ; Union of India v. Sushil Kumar Modi, [(1998) 8 SCC 661] ; Rajiv Ranjan Singh 'Lalan' v. Union of India, [(2006) 6 SCC 613] ; Rajesh v. Ramdeo, [(2001) 10 SCC 759] and Sasi Thomas v. State, [(2006) 12 SCC 421] ; the High Court having no constitutional power in this behalf which is vested only in the Court of Magistrate.

14) Appellant Nos. 2 and 3 in appeals arising out of SLP (Civil) Nos. 25226 – 25227 of 2005, having been cited witnesses could not have been made accused which is violative of Article 20 of the Constitution of India.

24. Mr. Ravi Shankar Prasad, learned senior counsel appearing on behalf of the State of Punjab, supported the contentions of Mr. Rao.

25. Mr. P.P. Malhotra, learned Additional Solicitor General, appearing for the Central Bureau of Investigation, on the other hand, would submit :-

1) The Act being a special statute, the provision thereof would prevail over the provisions of the Code of Criminal Procedure, 1973 (for short 'the Code'). .
2) The expression 'rank' used in Section 36 of the Code cannot be held to be confined only to the same agency but would mean the investigating agency.
3) In terms of Section 3 of the Act the ultimate authority being the State, it was entitled to entrust the investigation to the Central Bureau of Investigation.
4) The purport and object of inserting sub-section (8) of Section 173, in the Code, as would appear from the report of the Law Commission being laudable in nature, the same deserves liberal interpretation.

5) The earlier first information report lodged by the Vigilance Department was general in character while the later First Information Report being in respect of the scam relating to the appointment of Panchayat Secretaries is the real first information report.

26. A criminal proceeding is initiated on the basis of lodged F.I.R. Commencement of investigation in the matter may be preceded by a preliminary inquiry.

The term 'investigation' has been defined in Section 2(h) of the Code to include all the proceedings under the Code for collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

'Officer in charge of a police station' is defined in Section 2(o) of the Code to mean 'officer in charge of a police station' 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.

Both the definitions are inclusive ones. They have expansive meaning. The interpretation clause thus must receive a liberal interpretation.

27. In terms of Section 3 of the Police Act, 1861, the State has the ultimate say in the matter of superintendence of investigation. Section 36 of the Code must be read harmoniously with the said provision. Therefore, when Section 36 of the Code uses the words 'in rank', it should be given a purposive construction. Although a plain reading of the aforementioned provision appears to be containing three ingredients, namely, (i) the investigation must be carried out by an Officer in charge; (ii) which may be supervised by an Officer superior in rank; and (iii) in respect of a local area to which they are appointed, but in the context of the power of the State vis-à-vis the provisions of Act, the same, in our opinion, deserves a wider application.

An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation.

28. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter.

29. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a central agency which has acquired specialization in such cases.

In that backdrop, it is necessary to examine the rival contentions raised before us.

30. Lodging of a First Information Report by CBI is governed by a manual. It may hold a preliminary inquiry; it has been given the said power in Chapter VI of the CBI Manual. A prima facie case may be held to have been established only on completion of a preliminary enquiry.

Whether the First Information Report lodged by the Vigilance Department of the State and the one lodged by the CBI related to the same cause of action is the question?

31. We would proceed on the basis that on the self same cause of action, two First Information Reports would not be maintainable. A bare perusal of the First Information Report dated 14.6.2002 lodged at the instance of the Vigilance Officer shows that the same was general in nature. One of the several allegations contained therein referred to was that irregularities have been committed in the matter of recruitment of Panchayat Secretaries. No detail, however, was furnished. All the persons involved were not named. What types of irregularities have been committed were not stated.

32. The High Court while entertaining the writ petition formed a prima facie opinion as regards the systematic commission of fraud. While dismissing the writ petition filed by the selected candidates, it initiated a suo

motu public interest litigation. It was entitled to do so. The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is adversorial. In a public interest litigation, the court need not strictly follow the ordinary procedure. It may not only appoint committees but also issue directions upon the State from time to time. {See Indian Bank vs. Godhara Nagrik Co-op. Credit Society Ltd. & Anr. [2008 (7) SCALE 363] and Raju Ramsing Vasave v. Mahesh Deorao Bhavpurkar and others, [2008 (12) SCALE 252].

33. The process began by calling for a report from a responsible officer of the State. The Financial Commissioner submitted a report. The High Court in its order dated 31.10.2002, as noticed heretobefore, gave two options to the State. The State itself came out with the suggestion that it would like to get the scam investigated by the Central Bureau of Investigation. Indisputably, the Central Bureau of Investigation had shown an initial reluctance to take over the investigation in view of lack of infrastructure but the records of the High Court reveal that at a later stage it had shown interest in the matter. However, in view of the dilly dallying tactics adopted

by the State in issuing appropriate notification in terms of Section 6 of the Act, the High Court expected the State to issue a notification at an early date, by an order dated 30.4.2003. The State concededly exercised the said power.

34. In an ordinary case, we might have accepted the submission of Mr. Rao that the High Court should not direct Central Bureau of Investigation to investigate into a particular offence. The offence, however, is not ordinary in nature. It involved investigation into the allegations of commission of fraud in a systematic manner. It had a wide ramification as a former Minister of the State is said to be involved.

35. This Court in Vineet Narain (supra) held:

> **"8.** The sum and substance of these orders is that the CBI and other governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would

end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of "continuing mandamus"

In P.P. Sharma, IAS and another (supra) this Court held:

"31. Finally, we are at a loss to understand as to why and on what reasoning the High Court assumed extraordinary jurisdiction under Article 226/227 of the Constitution of India at a stage when the Special Judge was seized of the matter. He had heard the arguments on the question of cognisance and had reserved the orders. The High Court did not even permit the Special Judge to pronounce the orders.

32. The Directors of the firm who are also accused persons in this case had approached the Rajasthan High Court for the quashing of the FIR and prosecution against them. The Rajasthan High Court dismissed the writ petition with the following order:

"Sri Bhandari states that in this matter chalan has already been filed in court. The writ

petition has, therefore, become infructuous. The writ petition is dismissed as having become infructuous. No order as to costs."

33. The above order was brought to the notice of the Patna High Court but the High Court refused to be persuaded to adopt the same course. We are of the considered view that at a stage when the police report under Section 173 CrPC has been forwarded to the Magistrate after completion of the investigation and the material collected by the Investigating Officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing proceedings at that stage in exercise of its inherent jurisdiction. We could have set aside the High Court judgment on this ground alone but elaborate argument having been addressed by the learned counsel for the parties we thought it proper to deal with all the aspects of the case."

In Sushil Kumar Modi, (supra), it was opined :-

"6. This position is so obvious that no discussion of the point is necessary. However, we may add that this position has never been doubted in similar cases dealt with by this Court. It was made clear by this Court in the very first case, namely *Vineet Narain* v. *Union of India* that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the

> trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive. It is, therefore, clear that the impugned order of the High Court dealing primarily with this aspect cannot be sustained."

[See also Rajiv Ranjan Singh 'Lalan' and Sasi Thomas (supra)].

36. The question as to whether the Court can order C.B.I. to investigate a cognizable offence in a State without the consent of the State Government stands referred to a larger Bench in State of W.B. v. Committee for Protection of Democratic Rights W.B. and others, [(2006) 12 SCC 534], but then concededly the law as it stands recognizes such a power in the High Court.

37. It was not a case where investigation could be carried out in a slip-shod manner. The first FIR was lodged on 14.06.2002 as against individuals. It referred to the acts of omissions and commissions of the accused named therein. During his tenure as a former Minister, recruitments of various posts of Tax Collectors, Patwaris, Peons, Clerks

were allegedly made by him by illegal means i.e. by taking heavy amount of money as bribe. Even those who were not eligible were allegedly selected. Allegations were also made in regard to filling up of the backlog vacancies in handicap category of Gram Sewaks. Appellant is said to have accepted heavy amount as bribe for transfers, appointments and promotions and, thus, accumulated movable and immovable assets which were said to be disproportionate to his known sources of income.

38. The High Court, however, was concerned only with appointment of Panchayat Secretaries. Public interest litigation was confined to such appointments only. In regard thereto, the only allegation which was made was that he got his favourites appointed who did not fulfill the qualifications, such as, under-aged person, person possessing less qualification, wherefor allegedly marks on the answer sheets were tempered and candidature of suitable candidates was ignored.

39. The Finance Commissioner, of course, had submitted a report earlier, i.e., on 4.09.2001. It refers to a large number of irregularities which were found out by the Committee. According to the Committee, not only

criminal action should be initiated but also departmental action should be taken against a large number of officers.

40. The second FIR lodged by the Central Bureau of Investigation (CBI), however, was on a wider canvass. It was lodged after holding a detailed preliminary inquiry. CBI collected a large number of materials. It had also recorded the statements of a large number of persons. Whereas the first FIR dated 14.06.2002, thus, contained the misdeeds of individuals, the second one depicts a crime committed in course of selection process of Panchayat Secretaries involving a large number of officers.

The High Court was not concerned with individual acts. It was concerned with a scam involving appointment of Panchayat Secretaries.

41. The second FIR dated 26.06.2003 enumerates as many as fifteen categories of irregularities committed by various persons involved in the said selection process. Responsibility has not only been fixed upon the appellant but also upon Shri Mandeep Singh, Shri C.L. Premmy, Shri J.S. Kesar, Shri Joginder Singh as also the then Additional Deputy Commissioners of Bhatinda, Ropar and Muktsar. The number of accused

who were involved as per preliminary report of the CBI were as many as fourteen. The first FIR pointed out offences under Sections 420, 467, 468, 120B of the Indian Penal Code and Sections 13(1)(d)(e) and 13(2) of the Prevention of Corruption Act but no allegation of conspiracy was made. In the second FIR dated 26.06.2003, the persons involved were not only the then Minister but also the then Director, the then Division Deputy Director, the then Deputy Directors, the then Additional Deputy Commissioners, the then Block Development Officers, etc.

42. It is in the aforementioned factual backdrop the order of the High Court dated 31.10.2002 assumes significance. By reason of the said order, the State Government was given two options, viz.:

(i) to make further investigation by removing all those names in the report from their respective offices so as to ensure that further inquiry was not influenced by any of those officers; or

(ii) to order a CBI probe into the entire scandal involving the appointment of Panchayat Secretaries.

43. It is in the aforementioned situation the State Government had taken a decision to hand over the investigation of the scandal involving selection of Panchayat Secretaries to the CBI.

44. An offence committed by an individual or two and an offence disclosed in a scandal involving a large number of officers from the lowest category to the highest category is distinct and different. In the first FIR although the provision of Section 120B of the Indian Penal Code was mentioned, no allegation of conspiracy had been made. As indicated hereinbefore, it centered round a large number of acts of omissions and commissions on the part of the appellant Kahlon alone, as would be evident from the following:

> "…By misusing his powers, he has made wrong appointments for his benefit and the deserving candidates were overlooked. By doing this Ex. R.D.P.M. has committed crime under Section 420, 467, 468, 120(B), 13(1)(d)(e) read with 13(2)…"

45. In the aforementioned circumstances, the decision of this Court in Ram Lal Narang v. State (Delhi Administration) [(1979) 2 SCC 322] assumes significance. This Court therein was concerned with two FIRs;

both lodged by the Central Bureau of Investigation. The first one contained allegations against two persons, viz., Malik and Mehra under Section 120B of the Indian Penal Code read with Sections 406 and 420 thereof wherein the CBI filed a chargesheet. Later on, however, some subsequent events emerged resulting in lodging the FIR not only against Malik and Mehra but also against Narang and his two brothers. This Court opined:

> "The offences alleged in the first case were Section 120-B read with Section 420 and Section 406 IPC, while the offences alleged in the second case were Section 120-B read with Section 411 IPC and Section 25 of the Antiquities and Art Treasures Act, 1972. It is true that the Antiquities and Art Treasures Act had not yet come into force on the date when the FIR was registered. It is also true that Omi Narang and Manu Narang were not extradited for the offence under the Antiquities and Art Treasures Act, and, therefore, they could not be tried for that offence in India. But the question whether any of the accused may be tried for a contravention of the Antiquities and Art Treasures Act or under the corresponding provision of the earlier Act is really irrelevant in deciding whether the two conspiracies are one and the same. The trite argument that a Court takes cognizance of offences and not offenders was also advanced. This argument is again of no relevance in determining the question whether the two conspiracies which were taken cognizance of by the Ambala and the Delhi Courts were the same in substance. The question is not whether the nature and character of the conspiracy has changed by the mere inclusion of a few more conspirators as accused or by the addition of one more among the

> objects of the conspiracy. The question is whether the two conspiracies are in substance and truth the same. Where the conspiracy discovered later is found to cover a much larger canvas with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions. We are clear, in the present case, that the conspiracies which are the subject-matter of the two cases cannot be said to be identical though the conspiracy which is the subject-matter of the first case may, perhaps, be said to have turned out to be part of the conspiracy which is the subject-matter of the second case. As we mentioned earlier, when investigation commenced in FIR R.C. 4 of 1976, apart from the circumstance that the property involved was the same, the link between the conspiracy to cheat and to misappropriate and the conspiracy to dispose of the stolen property was not known.
>
> 12. The further connected questions arising for consideration are, what was the duty of the police on discovering that the conspiracy, which was the subject-matter of the earlier case, was part of a larger conspiracy, whether the police acted without jurisdiction in investigating or in continuing to investigate into the case and whether the Delhi Court acted illegally in taking cognizance of the case?"

46. It may be true that in both the FIRs Kahlon was named. He was considered to be the prime accused. But, it is one thing to say that he acted in his individual capacity and it is another thing to say that he conspired

with a large number of persons to facilitate commission of crime by him as a result whereof all of them had made unlawful gains.

47. Even in Ram Lal Narang (supra), we have seen that two of the accused, viz., Mehra and Malik, were common. When two conspiracies are alleged; one is larger than the other, there may be some common factors but the nature of offence would differ. An offence committed would not be judged by mere mentioning of the sections but the mode and manner in which the same was committed as also the nature thereof.

48. Strong reliance has been placed by Mr. Rao on T.T. Antony (supra) and Kari Choudhary (supra).

In T.T. Antony (supra), the first FIR was lodged in 1994; another FIR was lodged three years thereafter on the self-same cause of action. Ram Lal Narang (supra) in the said fact-situation was distinguished on facts, opining:

> "…This Court indicated that the real question was whether the two conspiracies were in truth and substance the same and held that the conspiracies in the two cases were not identical. It appears to us that the Court did not repel the contention of the appellant regarding the illegality of the second FIR

> and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different — the first was a smaller conspiracy and the second was a larger conspiracy as it turned out eventually…"

In Kari Choudhary (supra), the mother-in-law of the deceased Sugnia Devi lodged an FIR that some persons from outside had entered into her bedroom and murdered her by strangulation. During the process of investigation, it was found that the murder took place in a manner totally different from the version furnished in the FIR. According to the investigating officer, the murder was committed pursuant to a conspiracy hatched by her mother-in-law and her other daughters-in-law. A final report was sent. However, another FIR was lodged. The first FIR was lodged on 27.06.1988 and the second FIR was lodged in 30.11.1988. The validity of the first FIR was in question. In that case, another chargesheet was filed on 31.03.2000. This Court held:

> "11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same

case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it."

Kari Choudhary (supra) should be read with Ram Lal Narang (supra).

In State of A.P. v. A.S. Peter [(2008) 2 SCC 383], this Court held:

"16. Even in regard to an independent investigation undertaken by the police authorities, it was observed: (Narang case, SCC p. 338, para 21)

"21. … In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 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."
> 17. It is not a case where investigation was carried out in relation to a separate conspiracy. As allegations had been made against the officer of a local police station in regard to the mode and manner in which investigation was carried out, a further investigation was directed. The court was informed thereabout. Although, no express permission was granted, but evidently, such a permission was granted by necessary implication as further proceeding was stayed by the learned Magistrate. It is also not a case where two charge-sheets were filed before two different courts. The court designated to deal with the matters wherein investigation had been carried out by CID, is located at Chittoor. It is in the aforementioned situation, the Sessions Judge transferred the case pending in the Tirupati Court to the Designated Court at Chittoor. Cognizance of further offence had also been taken by the Chittoor Court."

49. The instant case, in our opinion, stands on a better footing vis-à-vis Ram Lal Narang (supra) in the sense that whereas the first FIR did not make any allegation as regards existence of a conspiracy, the second FIR did. The canvass of two FIRs is absolutely different. The numbers of accused in both the FIRs are also different.

50. We must also bear in mind the distinction between crime committed by an individual or a group of persons vis-à-vis a scam which means "to get

money or property from, another, under false pretences, by gaining the confidence of the victim, also includes; swindle; defraud". [See Advanced Law Lexicon, 3rd edition, 2005, page 4237]

51. We may also notice that in H.N. Rishbud and Inder Singh v. The State of Delhi [1955 (1) SCR 1150] the appellant Rishbud was an Assistant Development Officer and another appellant Inder Singh was the Assistant Project Section Officer. A number of criminal proceedings were pending against them. The cases against them were that they along with some others entered into criminal conspiracies to obtain for themselves or for others iron and steel materials in the name of certain bogus firms and that they actually obtained quota certificates, on the strength of which some of the members of the conspiracy took delivery of quantities of iron and steel from the stock-holders of those articles. They were prosecuted under Sections 120B and 420 of the Indian Penal Code and Section 7 of the Essential Supplies (Temporary Powers) Act, 1947. The public servants were also charged with Section 5(2) of the Prevention of Corruption Act, 1947.

Whereas investigations in respect of Section 5(2) of the Prevention of Corruption Act were required to be made by a police officer not below the

rank of a Deputy Superintendent of Police without the order of a Magistrate of the First Class, investigations under other provisions were not. Therein, the FIRs were lodged in April and June, 1949 but permission for investigation as against the public servants by a police officer below the rank of Deputy Superintendent of Police was given in March and April, 1951.

The question which arose for consideration therein was whether the chargesheets filed in those cases were illegal. This Court examined the scheme of the Code to hold :-

> "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…"

52. Yet again, in Upkar Singh v. Ved Prakash and Others [(2004) 13 SCC 292], a Three-Judge Bench of this Court held:

> "21. From the above it is clear that even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a larger conspiracy than the one referred to in the previous complaint then a further investigation

> under the court culminating in another complaint is permissible."

53. If, in a situation of this nature, lodging of the second FIR was not impermissible in law, the main plank of submission of Mr. Rao that whereas in terms of Section 173(8) of the Code of Criminal Procedure further investigation is permissible, re-investigation is not, takes a back seat.

54. The question can be considered from another angle. If the State has the ultimate supervisory jurisdiction over an investigation for an offence and if it intends to hand over a further investigation even after filing of the chargesheet, it may do so. However, it appears from the records that those officers including the Chief Secretary who were dealing with the public interest litigation were not aware that the chargesheet had been filed in the earlier case. The State Government and the High Court had proceeded on the basis that the investigation was to be handed over to the CBI. The High Court came to know thereof only when an application for modification was filed by the appellants therein. It may be true that the High Court proceeded on the basis that although the CBI had lodged the FIR, the same would be deemed to have been lodged only for the purpose of carrying out further

investigation, but, in our opinion, for the views we have taken, its conclusions are correct.

55. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3.04.2002, was to see that the officers of the State do not get away. If that be so, the submission of Mr. Rao that the monitoring of an investigation comes to an end after the chargesheet is filed, as has been held by this Court in Vineet Narain (supra) and M.C. Mehta (Taj Corridor Scam) v. Union of India and Others [(2007) 1 SCC 110], loses all significance.

56. Moreover, it was not a case where the High Court had assumed a jurisdiction in regard to the same offence in respect whereof the Special Judge had taken cognizance pursuant to the chargesheet filed. The chargesheet was not filed in the FIR which was lodged on the intervention of the High Court.

As the offences were distinct and different, the High Court never assumed the jurisdiction of the Special Judge to direct reinvestigation as was urged or otherwise.

57. The Act is a special statute. By reason of the said enactment, the CBI was constituted. In relation to the matter which were to come within the purview thereof, the CBI could exercise its jurisdiction. The law and order, however, being a State subject, the CBI derives jurisdiction only when a consent therefor is given by the statute. It is, however, now beyond any controversy that the High Court and this Court also direct investigation by the CBI. Our attention has been drawn to the provisions of the CBI Manual, from a perusal whereof it appears that the Director, CBI exercises his power of superintendence in respect of the matters enumerated in Chapter VI of the CBI Manual which includes reference by the State and/ or reference by the High Courts and this Court as also the registration thereof. The reference thereof may be received from the following:

> "(a) Prime Minister of India
> (b) Cabinet Ministers of Government of India/ Chief Ministers of State Governments or their equivalent
> (c) The State Governments
> (d) Supreme Court/ High Courts"

The CBI Manual having been framed by the Union of India, evidently, it has accepted that reference for investigation to the CBI may be made either by this Court or by the High Court.

58. Thus, even assuming that reference had been made by the State Government at the instance of the High Court, the same by itself would not render the investigation carried out by it to be wholly illegal and without jurisdiction as assuming that the reference had been made by the High Court in exercise of its power under Article 226 of the Constitution of India in a public interest litigation, the same would also be valid.

59. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and

when the same surfaced, it was open to the State and/ or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.

60. An order of further investigation in terms of Section 173 (8) of the Code by the State in exercise of its jurisdiction under Section 36 thereof stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction under Section 173(8) of the Code and at the instance of the State having regard to Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) of the Code is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in Sakiri Vasu v. State of Uttar Pradesh and Others [(2008) 2 SCC 409], correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to

make any further investigation without the express permission of the Magistrate.

The ratio laid down in A.S. Peter (supra) (wherein one of us was a member), to which reliance has been placed by Mr. Rao should be considered from that angle.

61. Contention raised that the investigating officer appointed by the CBI would not be a superior officer in rank to the police officer of the State Government in terms of Section 36 of the Code of Criminal Procedure may not detain us in view of our findings aforementioned.

We may, however, observe that the State as in terms of the provisions of the Code and the Act exercises two different and distinct jurisdictions. The power of supervision over investigation vested in the State in terms of Section 3 of the Police Act, 1861 is absolute. It may in a given case having regard to the nature and complexity of the offence may also direct that further investigation in the matter may be carried out by a central agency. The State in terms of the special statute, viz., the Act can always request the CBI to make an investigation / further investigation. The said power of the

State is wholly unrestricted by Section 36 of the Act or otherwise. As a logical corollary if while making preliminary inquiry pursuant to the notification issued by the State in terms of Section 6 of the Act, the CBI comes to know of commission of other and further offence involving a larger conspiracy which required prosecution against a large number of persons who had not been proceeded against at all by the local police officers, we are of the opinion that even lodging of second FIR would not be a bar.

62. If lodging of the second FIR is legally permissible, only because the same has been done at the instance of the High Court could not lead this Court to arrive at a conclusion that its direction in that behalf was wholly without jurisdiction. It will bear repetition to state that law as it stands permits the High Court and this Court to direct investigation made by the CBI. As indicated hereinbefore, it is also recognised by the Central Government, as would appear from the provisions of the CBI Manual referred to hereinbefore.

63. We must, however, not lose sight of the fact that before the High Court it was the State Government who stated that it would like to get the

scam investigated by the CBI. The direction was issued only in view of the said offer and not de'hors the same.

64. For the reasons aforementioned, we do not find any merit in these appeals.

We would, however, in exercise of our jurisdiction under Article 142 of the Constitution of India, like to issue some directions.

In view of the fact that a chargesheet has been filed on the basis of the first FIR and it is stated that two witnesses had also been examined, we would direct the learned Trial Judge to segregate that portion of the trial which has any bearing with the scam relating to the appointment of the Panchayat Secretaries. Appellants, in the other appeals, who had been cited as witnesses therein should not be allowed to be examined except with their consent. All the materials collected by the investigating officer pertaining to the said scam shall be transferred to the Court of Sub-Judge dealing with the CBI matters forthwith so as to enable it to hear that part of the case either independently or together with the chargesheet which may be submitted by the CBI before it. These directions are issued for doing

complete justice to the parties and in terms of the decision of this Court in Divine Retreat Centre v. State of Kerala and Others [(2008) 3 SCC 542], whereupon Mr. Rao himself placed strong reliance.

65. As the investigation is complete, the CBI may file chargesheet before a court having appropriate jurisdiction.

66. The appeals are dismissed with aforementioned directions.

…….J.
[S.B. Sinha]

..……J.
[Aftab Alam]

New Delhi;
October 22, 2008