

(2017) 03 CAL CK 0114
In the Calcutta High Court
Case No : W.P. No. 5243(W) of 2016

Brajesh Jha

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Citation : (2017) 03 CAL CK 0114

Hon'ble Judges : Nishita Mhatre, ACJ. and Tapabrata Chakraborty, J.

Bench : Division Bench

Advocate : Kalyan Kumar Bandopadhyay, Jyoti Prakash Chatterjee, Ms. Pramiti Bandopadhyay, Sirsanya Bandopadhyay, Advocates, for the Respondents No. 13, 15, 16-18 & 20 (in WP No.5243 (W) of 2016); Bikash Ranjan Bhattacharya, Ravi Sankar Chattopadhyay, Uday Sankar Chattopadhyay, Anindya Sundar Das, S. Bagchi, S.S. Chattopadhyay, Santanu Majhi, Ms. Snigdha Saha, Advocates, for the Petitioners (in W.P. Nos.5175(W) of 2016 & 5224 (W) of 2016); Jayanta Kumar Mitra, Ld. Advocate General, L.K. Gupta, Ld. Addl. A.G., Abhratosh Majumdar, Government Pleader, Tapan Kumar Mukherjee, Subhobrata Dutta, T.M. Siddiqui, Somnath Naskar, Advocates, for the State (in all the petitions); Ujjal Kumar Roy, Pradip Kumar Das, Advocates, for the Union of India; Asraf Ali, Shankar Banerjee, Advocates, for the CBI; Arunava Ghosh, Anindya Lahiri, Shamim Ahmed, Mainak Ganguly, Ms. Pranati Das, Advocates, for the Respondent No.10 (in W.P. No.5243(W) of 2016); Partha Ghosh, Ajay Chaubey, Shamik Chatterjee and Hemraj Adhikari, Advocates, for the Petitioner (in W.P. No.5243 (W) of 2016); S.K. Kapur, Niladri Bhattacharjee, Gopal Halder, Uttiyo Mullick, Prithwish Kumar Basu, Soham Bandopadhyay, Advocates, for the Respondent No.12 (in WP No.5243(W) of 2016); Partha Sarathi Sengupta, Billwadal Bhattacharyya, Subhro Kanti Roy Chowdhury, Deborshi Dhar, Advocates, for the Respondent No.19 (in WP No.5243(W) of 2016); Manisankar Chattopadhyay, Tarak Nath Sarkar, Advocates, for the Respondent No.21 (in W.P. No. 5243 (W) of 2016); Kishore Dutta, Ratul Biswas, Advocates, for the Respondent No.22 (in WP No.5243(W) of 2016); Dipayan Chowdhury, Suvradal Choudhury, Souma Bhattacharya, Ms. Priyanka Chowdhury, Ms. Srija Banerjee, Advocates, for the Election Commission of India; Sabyasachi Chatterjee, Sourav Mondal, Dyutiman Banerjee, Pintu Karan, Advocates., for the Applicant in CAN 114 of 2017; Jyoti Prakash Chatterjee, Advocate, for the Respondent Nos. 11 & 14 (in WP No.5243(W) of 2016)

Final Decision : Disposed Off

Judgement

Nishita Mhatre, ACJ. - An extremely disturbing and alarming issue has arisen before us regarding alleged acts of corruption committed by persons who hold high public offices in the State of West Bengal. It is disquieting and deplorable to say the least. If the allegations are true such persons have no business to continue in the positions they hold today either as elected representatives of the people of West Bengal or as Ministers of the Government of West Bengal or in employment as a senior officer in the State's Police force. If the accusations are false, it is worrisome that the reputation of these individuals has been sullied by a person who claims to be a journalist and has published audio-video footage depicting these alleged acts; and, by others, who claiming to be public spirited citizens have filed these public interest litigations on viewing that footage.

2. The Petitioners in WP 5243(W) of 2016 and WP 5175(W) of 2016 and the second Petitioner in WP 5224(W) of 2016 are all practicing advocates. The first Petitioner in WP 5224(W) of 2016 is a businessman and the General Secretary of the West Bengal Pradesh Congress Committee. As the issues involved in these petitions are the same, we have heard them together. All the petitions are directed against the State, the Central Bureau of Investigation and the State Police. The persons against whom allegations of indulging in corrupt practices have been made have been impleaded as Respondents in WP 5243(W) of 2016. For the sake of convenience I will refer to the Respondents as impleaded in WP 5243(W) of 2016 (*Brajesh Jha v. Union of India*).

3. The Petitioners have pleaded that on 14th March, 2016 they watched a news telecast in which the Respondents Nos.11 to 22 (hereinafter referred to as "Respondents") were seen receiving illegal gratification for promising and assuring a representative of an unknown company to assist it in improving its business, using their positions and the high offices they occupied. According to the Petitioners, they noticed these audio-visuals on all news channels in the electronic media, which proclaimed them as a part of a "sting operation" conducted by Respondent No.10. The Petitioners claimed that this news was published in the print media on the next day, that is, on 15th March, 2016. They have further mentioned that Respondent Nos.11 to 21, who are all members of the All India Trinamul Congress (hereinafter referred to as "TMC") and are either Ministers of the Government of West Bengal or Members of Parliament or the State Legislature and Respondent 22, Commandant, Special Striking Force, Barrackpore, an officer of the West Bengal Police, had indulged in criminal activities "to cheat the faith of public and commit criminal breach of trust in respect of public money and thus misappropriated huge amount in utter breach of trust, faith and confidence reposed upon them causing wrongful gain to themselves and wrongful loss to public". The Petitioners have stated that they filed a complaint in the Shyampukur Police Station, Kolkata on 15th March, 2016. They then submitted the complaint by mail to the Central Bureau of Investigation (hereinafter referred to as "CBI") and Enforcement Directorate (hereafter

referred to as "ED"), so that appropriate steps could be taken against the Respondent Nos.11 to 22 in accordance with law. According to the Petitioners, the State Police would not investigate the alleged offences impartially because of the extraneous influence which could be exerted on them. The Petitioners contended that the Respondents have committed offences punishable under the Prevention of Money Laundering Act, 2002, the Prevention of Corruption Act, 1988 besides offences under the Indian Penal Code and other similar statutes. The Petitioners have prayed that the Court should direct the CBI and the ED to investigate the activities of Respondent Nos.11 to 22 which were telecast on the news channels on 14th March, 2016. They have also prayed that Respondent Nos.11 to 21 should be prohibited from contesting the West Bengal Assembly Elections of 2016 as candidates of the TMC without their names being cleared by the investigating agencies. The writ petitions have been filed on 16th March, 2016.

4. On 18th March, 2016, being the first day that the matters were listed on Board, notices were issued to all the Respondents. On 22nd March, 2016 which was the returnable date, most of the Respondents were represented. Since Respondent No.10 which is a limited company was not represented, the Division Bench of this Court directed the Respondent No.10 to place on record its Articles of Association and Memorandum of Association and the names of its Directors and the Managing Director who was at the helm of affairs. The shareholding pattern was also directed to be disclosed as well as the date on which the company came into existence. By the same order the Respondent No.10 was directed to reveal whether the alleged information and visuals recorded in the year 2014 was with it or it had received the same from a third party. These disclosures and details regarding the video recording were expected to be made on affidavit. The Respondent No.10 was directed to produce the original video and devices with which it was recorded. These directions were issued subject to the objections raised by the Respondents regarding the maintainability of the petition.

5. On 8th April, 2016 the Court noted that an affidavit of Mathew Samuel was placed on record. Since the details furnished did not reflect the information sought by the Court, he was directed to supply the information mentioned in the earlier order by a fresh affidavit. Parties were then directed "to hand over tapes to Court in the light of apprehension expressed in the affidavit by the deponent." Three days later, on 11th April, 2016, arguments were advanced on whether the original video tape and the device could be taken into custody of the Court. As the issues involved in the petition were sensitive and which could have serious ramifications, the Court directed that "video tapes and the device should be kept in safe custody." Accordingly the Court constituted a team of three persons, i.e., namely, the Registrar (Original Side) of the High Court, the Inspector General of Police and the Superintendent of Police, CBI, ACB, Calcutta to "secure the video tapes and the device". The team was entrusted with the task of taking in its custody the articles used by Mathew Samuel for recording the videos after

preparing an inventory. The handing over of the "video tapes" and the recording device by Samuel to the team was directed to be video graphed. A further order was passed on 19th April, 2016 taking on record the sealed envelopes containing an iPhone smartphone handset which was used to record the clippings which were televised, the pen drive in which they were stored and another memory card. The devices were kept in a bank locker which was to be operated by the three officers of the team jointly and the key was to be kept in custody of the Registrar (Original Side), High Court. After perusing the additional affidavit of the Editor-in-Chief of the news portal, www.naradanews.com, namely, Mathew Samuel the Respondents were permitted to file their exceptions to the affidavit. On 29th April, 2016 the Court passed a further order after the iPhone and the pen drive were placed in custody. The Court did not accept the suggestion of Mathew Samuel that the cost of the laptop should be deposited with him before he parted with it and directed him to hand it over. Two devices, i.e. an iPhone and a pen drive and the hard disc of the laptop owned by Mathew Samuel were sent to the Director of Central Forensic Science Laboratory (hereinafter referred to as "CFSL"), Hyderabad to determine by a preliminary inquiry whether the iPhone and the pen drive were "engineered/doctored" or were genuine. The Director, CFSL, Hyderabad was directed to maintain secrecy and to complete the task expeditiously and in any event within four weeks to ascertain whether the recordings on the devices were genuine. On 24th June, 2016 the Court found that the report of the CFSL, Hyderabad disclosed that it did not have the facility to analyse and authenticate all the video footage. Therefore the devices were sent to the CFSL, Chandigarh which was similarly tasked to determine the authenticity of the video footage.

6. On 5th August, 2016 copies of the report of the CFSL, Chandigarh were received. All original reports and devices were directed to be placed in a sealed cover in a bank locker for being made available when required.

7. At every stage, before the aforesaid orders were passed, the Respondents vehemently opposed any suggestion for taking the devices into safe keeping. Affidavits in opposition have been filed by various Respondents in which the locus standi of the Petitioners and the maintainability of the writ petitions have been questioned. They have cast a doubt on the authenticity of the audio-video footage submitted for analysis to the CFSL. Serious allegations have also been made against Mathew Samuel. Surprisingly, the Respondent No.12 has not filed any affidavit, but his elder son Swarup Mitra, who is not a party to the petitions, has filed an affidavit on his behalf. This affidavit is of no use as the Respondent No.12 must answer the petition to which he is a party. Swarup Mitra has not disclosed in his affidavit as to why it was necessary for him to file the affidavit rather than his father.

8. On 16th September, 2016 the matter appeared again before another Division Bench which noted that before the matter could be investigated by the CBI or the police, it was necessary for the Court to be satisfied that a written complaint

about a cognizable offence had been filed before the police by the Petitioner. The Court then observed, "The video footage of persons who are alleged to have taken illegal gratification in consideration of advancing favour may be a climax of the story, but that cannot be the whole story itself". It was not disclosed by the writ Petitioners or by the Respondents or even by Respondent No.10, Mathew Samuel, whom the Court described as "the mastermind of the entire episode who allegedly conducted the sting operation". The Court directed the Respondent No.10 to disclose on oath what prompted him to plan the sting operation and how it was executed, giving minute particulars of every step. The Court opined that in the absence of such full disclosure it would be difficult for the Court to assess the need for an investigation by the CBI or even by the Police. The petitions were adjourned from time to time till they were heard finally by us.

9. The main grounds of opposition to the petitions are as follows:

(1) That the petitions were not maintainable because (a) the Petitioners have no locus standi to file the present petitions which were motivated by the personal and political interest of the Petitioners rather than any public interest; (b) there is no cause of action nor are there any foundational facts based on which the petitions have been filed; (c) the petitions do not reveal any cognizable offence alleged to have been committed by the private Respondents.

(2) No FIR was registered against the Respondents and therefore, no investigation could commence.

(3) The provisions of Cr.P.C. are sufficient to address the grievances, if any, set out by the Petitioners in their respective petitions.

(4) The High Court should not order either an inquiry or investigation by the CBI.

(5) There is a delay of almost two years in the telecast after the alleged recording of the incidents which makes it vulnerable and subject to suspicion.

(6) The antecedents of Mathew Samuel are not above board and sting operations are not legal in India.

I will now deal with each of the aforesaid grounds of opposition seriatim.

Maintainability of the writ petition

(a) Locus Standi of the Petitioners

10. It has been argued by the learned Advocate General appearing for the State that the petitions are not maintainable as the Petitioners have no locus to file the same and that they were not based on any cause of action nor was any cognizable offence described in the petitions. He has fortified his arguments by referring to several judgments which I will presently advert to. Mr. Kalyan Kumar Bandopadhyay, appearing for the Respondent Nos. 13, 15, 16, 17, 18 and 20, has echoed the same submission and cited several judgments. Mr. Kishore Dutta, the learned Counsel appearing for Respondent No.22, the Commandant Special

Striking Force, Barrackpore, has submitted that no class of persons was affected by the alleged sting operation or the telecast of the offending video recording and therefore the writ petitions were not in consonance with the Public Interest Litigation Rules notified on 23rd August, 2010 by this Court. He has pointed out that no research had been conducted by the Petitioners before filing the PIL. Mr. S. K. Kapur, the learned Counsel for Respondent No.12, argued that the writ petitions being based on an illegal act of Mathew Samuel which was done with an ulterior motive should not be countenanced. For all these reasons Counsel urged that the writ petitions were not maintainable and should be dismissed. Mr. Jyoti Prakash Chatterjee, learned Counsel for Respondent No.s 11 and 14 adopted the submissions canvassed by Mr. Bandopadhyay and Mr. Dutta.

11. Per contra, Mr. Bikash Ranjan Bhattacharya, learned Counsel who led the arguments on behalf of the writ Petitioners, has drawn our attention to the fact that the Petitioners were seeking an inquiry into the genuineness of the telecast showing Respondent Nos.11 to 22 accepting money for favours which they promised to perform in their official capacity and for further action by the CBI, in his submission, was sufficient for maintaining the writ petitions. He has submitted that the Petitioners have filed the petitions in response to the disturbing telecast of 14th March, 2016 and have sought an inquiry into this sensitive matter. The learned Counsel has further submitted that the Petitioners being practicing advocates of this Court and Petitioner No.1 in WP 5224(W) of 2016 being an office bearer of a political party were entitled to draw the Court's attention to the largely illegal activities depicted in the telecast and the Court was required to take action so that these activities could be inquired into by the appropriate authorities. He drew our attention to the report of the CFSL, Chandigarh which indicates that none of the videos were tampered and that those which could be retrieved were genuine. The learned Counsel urged that it could not be said that the Petitioners had no locus to prefer the petitions as they were interested in ensuring that decency, honesty and probity is maintained in public life by those who are holding high office. He submitted that citizens expect that the conduct of their representatives in parliament and the state legislatures are untainted and unblemished and the telecast has shown them in very poor light. The Petitioners cannot be faulted for rushing to this Court for immediate redress. Therefore the maintainability of the writ petitions cannot be doubted.

12. The submission that the Petitioners had moved the writ petitions only to embarrass the ruling party in the State of West Bengal is based on the fact that the Petitioner in WP 5243(W) of 2016 had contested the West Bengal Assembly Elections of 2016. The Assembly Elections were declared on 1st March, 2016 and the petitions were filed on 16th March, 2016. According to the Respondents it is evident that the Petitioners moved the petition on 18th March 2016 and had an ulterior motive rather than having the interest of the public at heart.

13. The notification issued on 23rd August, 2016 defines Public Interest Litigation as follows:

"Public Interest Litigation shall include a litigation the subject matter of which is a legal wrong or a legal injury caused to a person or to a determinate class of persons by reasons of violation of any constitutional or legal right or any burden imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, and for redressal of which any member of the public not having any personal interest in the subject matter presents an application for an appropriate direction, order or writ in this court under Article 226.

Notwithstanding anything contained above, in any appropriate case, though the Petitioner might have moved a Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest involved therein may treat the subject of litigation in the interest of justice as a public interest litigation."

14. The allegation in the writ petitions is that the Petitioners had watched a television news channel which telecast a video of a sting operation in which several members of the TMC who were Ministers of the Government of West Bengal or were parliamentarians or members of the state assembly and a high ranking police officer were shown accepting bundles of cash from an unknown person for favouring him or his company with governmental works or clearances at a later stage. This depiction, if true, is a legal wrong and has caused injury to the entire population of West Bengal and the electorate. It cannot be said that such an expose of persons holding high public offices is not of public interest or that the public at large are not affected by it. Therefore, I do not agree with the learned Counsel of the Respondents, including the learned Advocate General, that there was no public interest involved in the writ petitions or that the Petitioners had no locus to file the petition.

15. In the case of *Janata Dal v. H. S. Chowdhary & Ors* reported in (1992) 4 SCC 305 the Supreme Court has observed that though there were no hard and fast rules regarding public interest litigation, it was necessary to lay down certain guidelines. The Court then referred to several of its earlier judgments and observed thus:

"89. From the above pronouncements, it emerges that this summit Court has widely enlarged the scope of PIL by relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or association complaining violation of any fundamental rights and also entertaining Writ Petitions filed under Article 32 of the Constitution by public spirited and policy oriented activist persons or journalists or of any organisation rejecting serious challenges made with regard to the maintainability of such petitions rendered many virtuoso pronouncements and issued manifold directions to the Central and the State Governments, all local and other authorities within the territory of India or under

the control of the Government of India for the betterment of the public at large in many fields in conformity with constitutional prescriptions of what constitutes the good life in a socially just democracy. The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial systems in other part of the world.

... ..

109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

16. In the case of T. N. Godavarman Thirumalpad v. Union of India & Ors reported in (2006) 5 SCC 28 the Apex Court observed as follows:

"Howsoever genuine a cause brought before a Court by a public interest litigant may be, the Court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt. In a given exceptional case where bona fides of a public interest litigant are in doubt, the Court may still examine the issue having regard to the serious nature of the public cause and likely public injury by appointing an amicus curiae to assist the Court but under no circumstances with the assistance of a doubtful public interest litigant. No trust can be placed by court on a mala fide applicant in public interest litigation. These are basic issues which are required to be satisfied by every public interest litigation. It is always necessary to determine real motive behind a public interest litigation.

A person acting bona fide alone can approach the Court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of locus standi exercised in favour of bona fide public interest litigants has immensely helped the cause of justice."

17. Mr. S. K. Kapur, appearing for Respondent No.12, has drawn our attention to the judgment of the Supreme Court in the case of Dr. B. Singh v. Union of India reported in (2004) 3 SCC 363 to fortify his submission that the credibility of a Petitioner who files a public interest litigation has to be adjudged. The Court opined that a person acting bona fide and having sufficient interest in the proceeding of the public interest litigation will alone have locus standi. He must come to the Court with "clean hands, clean heart, clean mind and clean objective." The Court cautioned,

"12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that

behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

... ..

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect."

18. In the case of Kunga Nima Lepcha & Ors v. State of Sikkim & Ors reported in (2010) 4 SCC 513 the Supreme Court observed that remedies evolved by way of writ jurisdiction are of an extraordinary nature and should not be granted as a matter of course. The onus is on a Petitioner to demonstrate the violation of a fundamental right in order to seek relief under writ jurisdiction. The Court has also observed that the fact that the petition was instituted by individuals belonging to a rival political party would raise an apprehension that the petition was motivated by political rivalry rather than by public spirited concern regarding the misuse of office by the incumbent Chief Minister and alleged corruption on his part. A similar view has been reiterated in Adarsh Shiksha Mahavidyalaya &

Ors v. Subhash Rahangdale & Ors reported in (2012) 2 SCC 425.

19. After considering the aforesaid judgments, in my opinion, it cannot be said that the Petitioners have no locus standi to file the present petitions. Moreover, it is now well-settled that when the interest of the public is the foremost consideration for filing a writ petition, the Courts will normally entertain it. However, the Courts would consider whether such a petition has been filed with an ulterior motive or with an aim to embarrass the persons against whom the writ petition has been filed only for a private reason or because the Petitioner is motivated by considerations other than for bringing to the fore issues which touch the public at large. It is true that the Petitioner in WP 5243(W) of 2016 contested the assembly elections of 2016 and the Petitioner No.1 in WP 5224(W) of 2016 is an office bearer of the Congress Party. However, that by itself cannot lead to any suspicion about their intentions in filing the PIL. It cannot be denied that the video footage which they had watched and which was, in fact, telecast not only by the local news channels but also by the national news channels, was alarming and startling to say the least. Any reasonable person who has the interest of the society at heart and who cares about ethical behaviour being maintained in public life would have been shocked similarly. There is no reason to believe that the filing of the present petition is not bona fide.

(b) No foundational facts or cause of action.

20. The argument of Mr. Bandopadhyay that, the petition is not maintainable because there are neither any foundational facts in the petition nor has a cause of action been disclosed, fails to impress me. In D.L.F. Housing Construction (P) Ltd v. Delhi Municipal Corpn. & Ors reported in (1976) 3 SCC 160 the Supreme Court observed that it was hazardous to embark upon the determination of the points involved in a writ petition without there being a firm and adequate factual foundation. Mr. Dutta has argued that no research was done by the Petitioner before filing the PIL and therefore such Petitioners should not be encouraged as their motive in filing the petition was to embarrass the Respondents who are holding high public offices.

21. In the case of S. P. Anand v. D. D. Deve Gowda reported in AIR 1997 SC 272 the Court observed that a person filing a public interest litigation owes it not only to the public but also to the Court that he does not rush to the Court without undertaking any research to raise the issues in the public interest litigation. The Court warned that "a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights."

22. The contents of the petition, the annexures thereto and the affidavits filed by Mathew Samuel certainly do disclose serious misdemeanour and malfeasance on the part of the Respondents which necessitates an inquiry. As mentioned earlier, Mathew Samuel has filed affidavits disclosing how the "sting operation" was

conducted. He has stated that he befriended a person who knew the Respondents and who acted as a conduit for meeting the Respondents. He met Respondent No. 14, the MLA and Councillor of Kolkata Municipal Corporation and convinced him that a multi-national corporation, which he represented, was lobbying for various other companies so that their work could be pushed through smoothly with the assistance of various politicians. According to Mathew Samuel, he explained that the company was willing to offer a bribe as a token amount and also a commission on the contract being awarded by the Government in favour of the fictitious company. The Respondent No.14 then introduced Mathew Samuel to Respondent No.21. Mathew Samuel has stated that when he conducted the sting operation, he was working with Tehelka which published a news magazine. He was commissioned to conduct the sting operation for which an amount of Rs. 25 lacs was sanctioned. However, after he completed the operation, the management of Tehelka refused to publish it, which he claims was probably because the Tehelka Magazine was belonged the Alchemist Group, owned by a Member of Parliament of the TMC.

23. Mr. Bandopadhyay and the other learned counsel representing the Respondents drew our attention to the observations of the Division Bench in its order dated 16th September 2016 that in the absence of full disclosure of the manner in which the sting operation was conducted, it was difficult to direct an enquiry by the Police, much less by the CBI. The learned Counsel contended that these observations bind us and that we cannot take a different view from the one expressed by the Division Bench. Reliance is placed on the decision in the case of *Prahlad Singh v. Col. Sukhdev Singh* reported in AIR 1987 SC 1145 to fortify the submission that the decision given by the Court at an earlier stage of the case is binding at a later stage. The aforesaid judgment was in respect of the High Court's decision not to accept the findings which were recorded when an ex parte order was passed which at a later stage were rejected when the ex parte order was set aside. This judgment has no application to the facts in the present case. The order of the Division Bench dated 16th September, 2016 in fact directed the Editor-in-Chief of the Respondent No.10 to disclose, what prompted him or his team to plan the sting operation and how he and his team had executed the plan. Therefore, it cannot be said that the observations in the order of 16th September, 2016 would hold sway even after the affidavit was filed by Mathew Samuel.

24. Now considering the statements made in the affidavit of Mathew Samuel there is no doubt that he did conduct the sting operation. Whether such a sting operation is permissible and legal in India is something I will advert to at a later stage. However, there was sufficient ground work done by Mathew Samuel which is reflected in his affidavits. The telecasts were seen by the Petitioners who then complained both to the Police and the CBI for necessary action. It is true that the Petitioners did not wait for any length of time before they approached the Court. But one would have to consider the circumstances prevailing at that point of time. The elections to State Assembly were declared and the Respondents were

contestants. The Petitioners were keen, naturally, to ensure that persons who they had seen allegedly accepting bribes did not continue in the public space and pollute the political and social milieu. Therefore, although the order of 16th September, 2016 reflects that only the "climax" was mentioned in the petition, the affidavit of Mathew Samuel dated 11th November, 2016 clearly depicts the process by which the videos were filmed and then telecast. Considering these facts, on reading the petitions and the affidavits of Mathew Samuel it is apparent that the foundational facts and so also the cause of action can be gathered. The submission of Mr. Dutta that no research was conducted by the Petitioner before filing the public interest litigation and it was therefore not maintainable is without merit.

(c) No cognizable offence described in the petition

25. All the learned Counsel appearing for the Respondents including the Advocate General for the State have asserted that no cognizable offence has been described in the petition and therefore such a petition calling for a CBI inquiry need not be entertained. All the Counsel were at pains to point out that neither was there a cognizable offence as understood under the Prevention of Corruption Act nor under the provisions of the IPC. They urged that assuming there was video footage which had been telecast showing the Respondents accepting money from Mathew Samuel and his cohorts, the ingredients of the offence punishable under the Prevention of Corruption Act were not made out. They have pointed out that since there was no demand made by any Respondent for money, the mere fact that each of them allegedly accepted cash would not constitute a bribe. They have drawn our attention to Sections 7 and 13 of the Prevention of Corruption Act.

26. In *Banarsi Dass v. State of Haryana* reported in (2010) 4 SCC 450, *B. Jayaraj v. State of Andhra Pradesh* reported in (2014) 13 SCC 55, *K. L. Bakolia v. State through CBI* reported in (2015) 8 SCC 395 and *Krishan Chander v. State of Delhi* reported in (2016) 3 SCC 108 the Supreme Court held that for arriving at a conclusion about the guilt of an offence under Section 13(1)(d) of the Prevention of Corruption Act, there must be a demand and secondly there must be acceptance in the sense that the accused received illegal gratification, as a condition precedent for constituting the offence. A demand of bribe money is the *sine qua non* for convicting an accused for an offence punishable under the aforesaid Sections of the Prevention of Corruption Act.

27. By relying on the aforesaid judgments the learned Advocate General and Mr. Bandopadhyay have submitted that the Petitioners have miserably failed to narrate in their petitions that an offence punishable under the Prevention of Corruption Act had been committed, and he urged, therefore, that the question of directing the CBI to hold any inquiry does not arise.

28. Similarly, Mr. Partha Sarthi Sengupta, learned Counsel appearing for Respondent No. 19 has argued that the writ petitions should be dismissed as

they do not disclose the commission of a cognizable offence by his client. He submitted that any direction to conduct a preliminary inquiry would affect the fundamental rights of the Respondents. He has relied on *Sita Ram and Ors v. State of U.P.* reported in AIR 1979 SC 745 and *State of U.P. v. Mohammad Naim* reported in AIR 1964 SC 703.

29. It is apparent from the aforesaid judgments cited by the learned Counsel for the Respondents that those judgments were delivered in respect of criminal proceedings where the issue was whether an offence had been proved to have been committed by the accused under the provisions of the Prevention of Corruption Act. These judgements are not relevant in the present case. The PIL has been filed, not for taking cognizance of an offence, but for ordering an inquiry into certain acts alleged to have been committed by the Respondents which were captured on camera, and which one can deduce, *prima facie*, are cognizable offences.

30. A contention was also raised by the learned Counsel for the Respondents that the offence under Section 7 of the Prevention of Corruption Act is completed only when the money, even if demanded, is accepted for the discharge of the official duties of the Respondents. Reliance was placed by the learned Counsel for the Respondents on *N. K. Ganguly v. CBI, New Delhi* reported in (2016) 2 SCC 143, *N. Sunkanna v. State of Andhra Pradesh* reported in (2016) 1 SCC 713 and *K. L. Bakolia (supra)*. In *N. Sunkanna (supra)*, the Supreme court observed that in a prosecution under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, the mere possession and recovery of tainted currency notes from the accused, without proof of demand, would not bring home the charge under Section 7 since the demand of illegal gratification is an indispensable factor to constitute the offence.

31. Mr. Manisankar Chattopadhyay, learned Counsel appearing for Respondent No.21, submitted like the other Counsel for the Respondents that there is nothing on record to establish that any demand was made by his client for a bribe. He urged that a mere offer of money cannot be construed as a bribe; it can also be a donation. He pointed out that the Conduct of Election Rules permit the election expenses for the West Bengal Assembly to the extent of Rs. 28,000/-. He submitted that the video recordings uploaded on the electronic media do not disclose whether any demand was made by Respondent No.21 in the course of an alleged interview. In such circumstances, according to him, since no cognizable offence has been disclosed on the part of Respondent No.21, the question of directing an investigation by either the State Police or the CBI does not arise.

32. As mentioned earlier the aforesaid judgments are with respect to prosecutions launched against the accused under the Prevention of Corruption Act and therefore are not relevant for considering the issue before us. I am certain that these petitions are maintainable. I do not find that the Petitioners' bona fide and credentials are in doubt. Their perception and reaction on seeing

the visuals was the same as that of any reasonable person, untainted by any ulterior motive. The sensitive and serious nature of the public cause that they have espoused overshadows, in my opinion, any doubt about the bona fides of the Petitioners. The foundation for filing the petitions is the telecast of the audio-video footage showing the Respondents in very poor light, accepting wads of cash. Newspaper reports about the telecast have been annexed to the petitions. These images and reports require an in depth investigation by an independent agency.

No FIR is registered - therefore no investigation can start

33. The next contention raised by the Respondents to oppose the writ petitions is that unless an FIR is registered against them, no investigation can commence. Mr. S. K. Kapoor, learned Counsel appearing for the Respondent No. 12 and Mr. Bandyopadhyay, the learned Counsel appearing for the Respondent Nos.13, 15, 16, 17, 18 and 20, submitted that the Court cannot pass orders which would infringe the fundamental rights of the Respondents under Article 21 of the Constitution. They have submitted that the right to live with dignity is a fundamental right and their reputation cannot be besmirched by random allegations made by persons who profess they have the interest of public at large. They have also submitted that by initiating an investigation against the Respondents, their fundamental rights would be bound to be affected. Therefore, they urged that this Court should not initiate such a process.

34. The Constitution Bench of the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh* reported in (2014) 2 SCC 1 decided whether a police officer is bound to register a first information report upon receiving any information relating to commission of a cognizable offence under Section 154 of the Cr.P.C., or whether the police officer has the power to conduct a preliminary inquiry in order to test the veracity of such information before registering the same. After referring to several of its earlier judgments Chief Justice Sathasivam, speaking for the Bench, observed that in such a case a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. The Court then held that the mandatory registration of an FIR under Section 154 of the Cr.P.C. will not be in contravention of Article 21 of the Constitution of India. However, there were certain exceptions to this rule which the Supreme Court noted; one such instance being corruption cases and observed thus:

"117. In the context of offences relating to corruption, this Court in *P. Sirajuddin* (supra) expressed the need for a preliminary inquiry before proceeding against public servants.

118. Similarly, in *Tapan Kumar Singh* (supra), this Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence.

119. Therefore, in view of various counter claims regarding registration or non-

registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

(Emphasis supplied)

35. In summation the Supreme Court in Lalita Kumari (supra) said:

"120. In view of the aforesaid discussion, we hold:

120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months" delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

(Emphasis supplied)

36. Thus it is evident that since the issue before us is whether the Respondents have indulged in any corrupt practices or acts or whether they have demanded or received a bribe, it would be apposite that an inquiry is conducted. In view of the exceptions carved out by the Constitution Bench to the normal rule of mandatory registration of an FIR in case of a cognizable complaint, a preliminary inquiry may be conducted in cases of corruption. The scope of such an inquiry is not to verify the veracity of the information received, but to ascertain whether it reveals any cognizable offence. This is what in fact the Petitioners have prayed for in the present petitions. There is no prayer in the petitions that an FIR should be registered mandatorily. The Petitioners are only seeking an inquiry to be conducted into the genuineness of the telecast and further action in case the telecast and the surrounding circumstances indicate that a cognizable offence has been committed by the Respondents. Therefore the submission advanced on behalf of the State and the Respondents that no inquiry can be ordered by this Court because an FIR has not been registered is without merit and contrary to Lalita Kumari (supra).

Provisions of Cr.P.C. are sufficient

37. Another argument advanced by the learned Advocate General and the learned Counsel for the Respondents was that the provisions of the Cr.P.C. are sufficient to take care of any eventuality when a cognizable offence is committed. Therefore, according to the Respondents Section 154 to 156 and other provisions

of Chapter XII of the Cr.P.C. should have been invoked by the Petitioners rather than rushing to this Court by preferring the present public interest litigation.

38. Reliance has been placed on *Kunga Nima Lepcha (supra)*, *All India Instituted of Medical Sciences Employees' Union v. Union of India* reported in (1996) 11 SCC 582, *M. C. Abraham & Anr v. State of Maharashtra & Ors* reported in (2003) 2 SCC 649, *Aleque Padamsee & Ors v. Union of India & Ors* reported in (2007) 6 SCC 171, *Lalita Kumari (supra)*, *Subrata Chatteraj v. Union of India & Ors* reported in (2014) 8 SCC 768 and *Ramdev Food Products Private Limited v. State of Gujarat* reported in (2015) 6 SCC 439 in support of the aforesaid submission. The common thread running through these judgments of the Supreme Court is that when the police officials fail to register an FIR in the event a cognizable offence is brought to their notice, the complainant must take recourse to the provisions of the Cr.P.C. These judgments, in my opinion, are not relevant to the facts before us. There is no doubt that when a cognizable offence has been made out, the police have to register an FIR. The provisions of the Cr.P.C. enable the Magistrate to direct the police to conduct an inquiry in case a complainant puts forth his contention before the Magistrate that an offence has been committed by another person which he feels is cognizable. Such an inquiry can be initiated on the directions of the Magistrate and the police are required to submit a report as to whether a cognizable case has been made out. On the basis of such a report being submitted by the police, a decision can be taken about the need to register an FIR. But the Petitioners today are demanding a probe into whether any offence at all has been committed by the Respondents. I cannot but over emphasise the fact that the Petitioners have drawn our attention to news telecasts which they had seen and newspaper reports on the basis of which they perceived that an offence had been committed and lodged a complaint with the Shyampukur Police Station on 15th March, 2016 and another complaint with the CBI on 16th March, 2016. It is true that the Petitioners, without waiting for any response from the police, rushed to this Court by filing the present PIL. However, in view of the impending assembly elections, I am able to understand the urgency with which they moved this Court. The pictures that they claim to have seen, if true, certainly have muddied the waters of electoral politics and caused grave prejudice to the electorate at large. Neither the State police nor the CBI have acted on these complaints. Their inertia and silence is glaring. To suggest, as the learned Advocate General has, that they were prevented from doing so because the petition was filed is nothing but a bogey raised. There was no order of the Court directing them not to investigate nor was any permission sought by these agencies to inquire into the incident. Therefore, in my opinion, the Petitioners cannot be castigated for rushing to this Court, rather than invoking the provisions of the Cr.P.C.

Whether High Court can direct investigation/inquiry

39. Mr. Bhattacharya the learned Counsel appearing for the Petitioners has urged us to direct the CBI to conduct an inquiry to ascertain whether any cognizable

offence has been committed by the Respondents. According to him, the powers of the High Court under Article 226 of the Constitution of India are ample and therefore it can always direct an inquiry or investigation into an alleged offence. He has relied on judgments to which I will presently refer.

40. Per contra, the learned Advocate General and the learned Counsel appearing for the Respondents argued that the Supreme Court has often frowned upon the High Court directing an investigation or inquiry into an alleged crime as sufficient powers are available with the Magistrate for conducting such an exercise. They also pointed out that investigation into a crime is the primary duty of the police which cannot be usurped by the High Court. They have placed reliance on judgments which I will refer to now.

41. The Constitution Bench in *Lalita Kumari*'s case (supra) has categorically held that a preliminary inquiry can be directed by the High Court and the scope of such an inquiry is not to verify the veracity of the information received but only to ascertain whether the information reveals any cognizable offence. In *Lalita Kumari* (supra) the Constitution Bench has taken into consideration several earlier judgments of the Supreme Court and has clarified and enunciated the law. As mentioned earlier in *Lalita Kumari* (supra) exceptions to the normal rule of immediate registration of an FIR in the case of a cognizable offence have been recognised. A preliminary inquiry may be directed when certain offences are alleged to have been committed, like matrimonial or family disputes, commercial offences, medical negligence cases, corruption cases, and where there is an abnormal delay/laches in initiating criminal prosecution without any satisfactory explanation for the delay. Since the present petitions before us deal with corruption, in my opinion, it is inevitable that at least a preliminary inquiry should be conducted.

42. Mr. Sengupta has urged that *Lalita Kumari* (supra) has to be read in consonance with the issues which arose before the Constitution Bench. He pointed out that Supreme court was interpreting Section 154 of the Cr.P.C. and incidentally considered Section 156 and 157 of the Code. Therefore according to the learned Counsel the observations in paragraphs 120.2 and 120.5 of the judgement (supra) cannot be construed as a declaration of the law. He urged that the observations do not empower the High Court to issue directions for the conduct of a CBI inquiry in public interest litigations. He has relied on *Rajpur Ruda Maha & Ors v. State of Gujarat* reported in AIR 1980 SC 1707 and *State of West Bengal & Ors v. The Committee for Protection of Democratic Rights, West Bengal (CPDR) & Ors* reported in (2010) 3 SCC 571. The submissions are untenable.

43. In *State of Bihar & Anr v. P. P Sharma, IAS & Anr* reported in 1992 Supp(1) 222 the Supreme Court has held that no Court should take cognizance of an offence against a public servant alleged to have been committed in discharge of his official duty except with previous sanction of the appropriate Government. It is observed that the nexus between the discharge of public duty and the

offending act or omission must be inseparable.

44. Our attention has also been drawn to the judgment of the Supreme Court in *Doliben Kantilal Patel v. State of Gujarat & Anr* reported in (2013) 9 SCC 447 where the Court considered its earlier decision in CPDR (supra) and observed that the High Court was justified in the peculiar facts and circumstances of the case to direct the appellant to take recourse to the remedy provided in the Cr.P.C. The Court reiterated the observations in CPDR (supra) to the effect that it is only in extraordinary circumstances and exceptional situations that the High Court should direct an investigation to be conducted.

45. In *State of U.P. v. Mohammad Naim* reported in AIR 1964 SC 703 the Supreme Court considered the manner in which the powers of the High Court under Article 226 are to be exercised vis a vis the provisions of the Cr.P.C. The Court held that the powers of the High Court under Article 226 are not diminished merely because of the existence of the provisions of the Cr.P.C.

46. In *Manoj Kumar Sharma & Ors v. State of Chhattisgarh & Anr* reported in (2016) 9 SCC 1, after considering the provisions of the Cr.P.C., the Court opined that generally the Court should not interfere with an investigation nor conduct an investigation itself. Where an FIR does not prima facie constitute any offence much less a cognizable offence, justifying investigation by the police, the Court should not embark upon an inquiry itself or direct an inquiry.

47. Thus the principle that emerges from the aforesaid judgements is that the inherent powers of the High Court under Article 226 of the Constitution to order an inquiry into whether a cognizable offence has been committed are not fettered by the provisions of the Cr.P.C. The High Court can, in exceptional cases direct the inquiry to be conducted by the investigating agency to ascertain whether a cognizable offence has been committed. Considering the factual situation in a particular case the High Court can always direct an inquiry instead of driving the Petitioner to invoke the provisions of the Cr.P.C. Exceptional circumstances exist in the cases before us. Television viewers have watched their elected representatives, who were seeking a fresh mandate from the people, polluting the public space by receiving cash for bestowing favours by misusing their powers conferred on them by dint of the high public office that they held. These images would have shocked the conscience of the public. In these circumstances an inquiry is certainly called for by an independent agency.

Whether High Court can direct CBI to inquire:

48. Mr. Asraf Ali, the learned Counsel appearing for the CBI, has submitted that it is always open for the High Court to direct the CBI to conduct an inquiry in terms of the CBI Manual. Chapter 9 of the Manual stipulates that when a complaint or information is received and verified in terms of the directions contained in the Manual, if it is found that there is a serious misconduct on the part of the public servant but not adequate enough to justify the registration of a regular case under the provision of Section 154 of the Cr.P.C., a preliminary inquiry may be

registered after obtaining approval of the competent authority. Therefore, the submission of the learned Counsel appearing for the Respondents that no preliminary inquiry can be directed to be conducted by the CBI is incorrect. It is well within the powers of the CBI which is empowered under the Delhi Police Establishment Act, 1946 to both investigate or inquire into an alleged offence and then to register an FIR. It is not mandatory that the inquiry or investigation should be preceded by the registration of an FIR. The judgments cited at the Bar, in my opinion, leave no manner of doubt that the CBI can be directed to inquire into whether an offence has been committed.

49. In *M. C. Mehta (Taj Corridor Scam) v. Union of India & Ors* reported in (2007) 1 SCC 110 it was observed that when the Supreme Court monitored CBI cases, it was concerned about ensuring proper and honest discharge of duty by the CBI and was not concerned with the merits of the accusation in the investigation; that was to be decided in a criminal trial.

50. In the case of *CPDR (supra)* the Constitution Bench of the Supreme Court has observed as follows:

"45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and

purpose with unsatisfactory investigations."

(Emphasis supplied)

51. Mr. Bandopadhyay has relied on *Harendra Sarkar v. State of Assam* reported in (2008) 9 SCC 204, to submit that even assuming certain offences have been committed by the Respondents, the Court should not presume that the State Police would be inept in discharging their duty and bringing home the charge against the culprits. He has relied on the observations of S. B. Sinha, J., where the learned Judge decries any presumption being raised against the investigating authorities in a case on the basis of insufficient material; in a criminal case the presumption sought to be raised must have its origin in a statute. The two learned Judges of the Supreme Court differed in the aforesaid case due to which the Registry was directed to seek appropriate orders from the Hon'ble Chief Justice of India for assigning the matter to a larger Bench. Therefore this observation of Sinha, J. cannot be considered as the ratio in *Harendranath Sarkar* (supra).

52. In *Subrata Chatteraj* (supra), a chit fund scam involving crores of rupees invested mainly by the poorer sections of society was sought to be investigated. The investigation carried out by the State Police was slothful and therefore the Supreme Court directed that the CBI should investigate the scam which had its ramifications in several States in India. While doing so the Court observed, after referring several of its earlier judgments including in *CPDR* (supra) that, the Supreme Court often exercised its power to transfer an investigation from the State Police to the CBI in order to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involved national or international ramifications or where people holding high positions of power and influence or political clout are involved. The Court held that what was important was that while the power to transfer is to be exercised sparingly and with utmost care and circumspection the Court has more often than not directed transfer of cases where the fact situation so demanded.

53. The learned Advocate General relied on the judgment in the case of *Secretary, Minor Irrigation & Rural Engineering Services, U.P. & Ors v. Sahngoo Ram Arya & Anr* reported in (2002) 5 SCC 521 where the Supreme Court observed that though there was no dispute that the High Court under Article 226 could direct an inquiry by the CBI, such power should be exercised only in cases where there was sufficient material to come to a prima facie conclusion that there was need for such an inquiry. The Court observed that the High Court ought not to have proceeded on the basis of averments made in the petition without taking into consideration, the reply filed and without expressing its prima facie opinion in regard to the allegations. It is only if, after considering both the pleadings in the petition as well as the reply, the Court still thinks that the allegations require further investigation by the CBI, then it may direct so, after recording a prima facie finding which would be limited for the purpose of directing an inquiry.

54. A learned Single Judge of this Court in *Binod Kumar Kabra v. State of West Bengal* reported in (2015) 2 C.Cr.LR (Cal) 693 observed that since the Delhi Special Police Establishment Act, 1946 was a special law, the Superintendent of Police, CBI, is also empowered to register the First Information Report. This judgment was pointed out by Mr. Asraf Ali and Mr. Bhattacharya to counter the argument advanced by the Respondents and the State that without a First Information Report being registered, no CBI inquiry can be conducted. 55. Taking a conspectus of the decisions cited on this issue I am of the opinion that not only does this Court have the power under Article 226 of the Constitution to direct that a preliminary inquiry be conducted, but that the Court can also direct the CBI should conduct it. Such a power has to be used cautiously and sparingly and only in exceptional circumstances. Considering the facts in this case and the involvement of the persons concerned I have no hesitation in directing the CBI to conduct a preliminary inquiry. The allegations made in the petition are serious and are of corruption allegedly indulged in by those who hold high public offices. The persons involved are ministers of the government of West Bengal, members of parliament or the state assembly. One of the Respondents is a Superintendent of Police. It is very difficult to believe that a fair and impartial inquiry or investigation will be conducted by the State Police against their masters in government or their own high ranked officer. It is true that presumptions cannot be drawn unless there is material on record to do so. At the same time I cannot turn a blind eye to the fact that it would be impracticable if not impossible to expect a State Police officer to conduct an impartial investigation. Moreover it is not possible to accept the argument advanced on behalf of the State that the Police were not given sufficient time to conduct an inquiry after the complaint was submitted. The complaint was filed with the Police on 15th March 2016, a day after the telecast. Though the petitions were filed on 16th March 2016 the first order was passed by this Court on 18th March 2016. The Police thus had more than 72 hours to take the necessary action. I am not convinced that no action was taken because the writ petitions were served on the Police. I have noticed that when a complaint was filed by the wife of Respondent No.20, the State Police swung into action with lightning speed, despite the pendency of this petition. Therefore it is apparent that had the State Police wanted to take action against the Respondents they would have done so immediately. They possibly thought that the complaint was unimportant or they had been told by their political bosses not to act on any such complaint. In fact on seeing the telecast the Police could have taken action suo motu without waiting for a complaint.

Delay

56. The learned Counsel for the Respondents have pointed out that although the so called sting operation was conducted in 2014, it was televised only in 2016, around the time that the Assembly Elections were declared in the State of West Bengal. They contended therefore that there has been a delay in the telecast which would cast a shadow of doubt on the criminal proceedings which may be launched against the Respondents. According to them any delay in lodging an

FIR would detract from the authenticity of the recording. To support this argument the learned counsel have relied on *Sahib Singh v. State of Haryana* reported in (1997) 7 SCC 231 where the Supreme Court observed that the FIR had been lodged in that case after an unreasonable delay which was deliberate and would therefore affect the prosecution. Reliance has also been placed on the judgment in *Manoj Kumar (supra)* where the Supreme Court observed that where there is a delay in lodging of the FIR, it often results in embellishments which are creatures of an afterthought. Similarly in the case of *Kishan Singh v. Gurpal Singh & Ors* reported in (2010) 8 SCC 775 the Supreme Court observed that if there is a delay in filing the FIR, the complainant must give an explanation for the same. That explanation has to be plausible in the absence of which the delay may be fatal to the prosecution.

57. These judgments, in my opinion, have no application to the present cases. There was no delay in filing the complaint after the telecast. The delay, if any, was perhaps between the actual recording of the sting operation and the telecast which Mathew Samuel has explained in his affidavit. The delay has occurred because the magazine *Tehelka*, which commissioned him to conduct the sting operation, refused to publish it as its owner, was a member of the TMC. Respondent No.10 then published the recording on YouTube. Thus though the recording has been and continues to be in public domain it caught the imagination of the public when the recording was telecast on 14th May 2016.

58. In any event the submission that the delay in filing an FIR would be fatal to the prosecution is a defence which the Respondents are entitled to raise when the prosecution is launched against them. The argument is premature and largely a red herring at this stage.

Sting Operations

59. The next prong of attack of the Learned Counsel appearing for the Respondents is that the credentials of Mathew Samuel need to be examined before any further steps are taken in the writ petitions. We have been informed that Ratna Chatterjee, wife of Respondent No. 20, filed a complaint on 18th June, 2016. The allegation in the complaint is, "sometimes before the West Bengal Assembly Election, 2016, the accused persons had entered into a criminal conspiracy and in pursuant thereof caused fear or alarm to the public and thereby induced to commit an offence against the public tranquillity and made false statement with intent to affect the result of the elections (W.B. Assembly Elections, 2016). Thus accused defamation of reputation of the complainant's husband and family, thereby committed offence U/S 120B/469/505(1) (b)/171G/500 IPC.

During investigation it is learnt that some audio-visual clippings as alleged were flashed in a website www.naradanews.com and the particulars of the owner/registrant of the said website is required to be obtained for the purpose further investigation." This complaint was registered as an FIR under Section 120B, 469,

505(1)(b) and 171G and 500 of the IPC on the same day.

60. All the Counsel for the Respondents have submitted that Mathew Samuel has not obeyed the orders of the Court at all. He has not disclosed the particulars which this Court had directed and therefore no credence could be placed on the statements in his affidavit or on the so called sting operation. They have all argued that Mathew Samuel is guilty of committing an offence and therefore he should not be spared.

61. Mr. Arunava Ghosh, the learned Counsel for Respondent No.10 submitted that the analysis of the audio-video by the CFSL has disclosed that it is untampered and therefore prima facie a cognizable offence has been committed by the Respondents. He urged that the Respondents need to explain their presence in the video footage and their involvement in the illegal activities which have been filmed. To fortify his submission Mr. Ghosh has placed reliance on Sri Yerneni Raja Ramchander @ Rajababu v. State of A.P. & Ors. reported in (2009) 15 SCC 604, Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors. reported in (2007) 3 SCC 184 and Pooran Mal v. Director of Inspection (Investigation) of Income-tax, New Delhi & Ors. reported in AIR 1974 SC 348.

62. In Rajat Prasad v. C.B.I. reported in (2014) 6 SCC 495 the Supreme Court has spoken about sting operations thus:

"Being essentially a deceptive operation, though designed to nab a criminal, a sting operation raises certain moral and ethical questions. The victim, who is otherwise innocent, is lured into committing a crime on the assurance of absolute secrecy and confidentiality of the circumstances raising the potential question as to how such a victim can be held responsible for the crime which he would not have committed but for the enticement. Another issue that arises from such an operation is the fact that the means deployed to establish the commission of the crime itself involves a culpable act....

A crime does not stand obliterated or extinguished merely because its commission is claimed to be in public interest. Any such principle would be abhorrent to our criminal jurisprudence. At the same time the criminal intent behind the commission of the act which is alleged to have occasioned the crime will have to be established before the liability of the person charged with the commission of crime can be adjudged. The doctrine of mens rea, though a salient feature of the Indian criminal justice system, finds expression in different statutory provisions requiring proof of either intention or knowledge on the part of the accused. Such proof is to be gathered from the surrounding facts established by the evidence and materials before the court and not by a process of probe of the mental state of the accused which the law does not contemplate. The offence of abetment defined by Section 107 IPC or the offence of criminal conspiracy under Section 120-A IPC would, thus, require criminal intent on the part of the offender like any other offence. Both the offences would require existence of a culpable mental state which is a matter of proof from the

surrounding facts established by the materials on record. Therefore, whether the commission of an offence under Section 12 of the PC Act read with Section 120-B IPC had been occasioned by the acts attributed to the appellant-accused or not, ideally, is a matter that can be determined only after the evidence in the case is recorded.

An issue has been raised on behalf of the appellants that any finding with regard to the culpability of the accused, even *prima facie*, would be detrimental to the public interest inasmuch as any such opinion of the Court would act as an inhibition for enterprising and conscious journalists and citizens from carrying out sting operations to expose corruption and other illegal acts in high places. The matter can be viewed differently. A journalist or any other citizen who has no connection, even remotely, with the favour that is allegedly sought in exchange for the bribe offered, cannot be imputed with the necessary intent to commit the offence of abetment under Section 12 or that of conspiracy under Section 120-B IPC. Non-applicability of the aforesaid provisions of law in such situations, therefore, may be *ex facie* apparent. The cause of journalism and its role and responsibility in spreading information and awareness will stand sub-served. It is only in cases where the question reasonably arises whether the sting operator had a stake in the favours that were allegedly sought in return for the bribe that the issue will require determination in the course of a full-fledged trial. The above is certainly not exhaustive of the situations where such further questions may arise requiring a deeper probe. As such situations are myriad, if not infinite, any attempt at illustration must be avoided."

63. The Respondents have argued that Mathew Samuel is a yellow journalist or a blackguard. But that is not an issue which requires attention in the present petitions. I am only concerned with whether an inquiry should be ordered with respect to the audio-visuals beamed across the State and indeed the country, featuring the Respondents accepting cash for bestowing favours in their official capacities. Therefore the judgment in Rajat Prasad (*supra*) does not aid the Respondents in the present case.

64. After considering the facts and the law, I am convinced that the petitions are maintainable. The Petitioners do have *locus standi* to file the petitions. They are neither chagrined nor frustrated litigants. I do not find that they have been motivated by personal and political interest in presenting the petitions. The interest of public at large and the desire to see that persons responsible for governance have impeccable integrity and unblemished reputations are the reasons that have motivated the Petitioners to file the petitions. I do not find that the petitions are frivolous or have been filed without a factual foundation. It is true that the Petitioners have not given details of the manner in which the recordings were collected and telecast on the news channels. But that is because the Petitioners played no part in recording the same. The news telecasts claimed that Respondent No.10, www.naradanews.com had recorded the sting operation. The Managing Director of www.naradanews.com, Mathew Samuel, has filed

affidavits disclosing the details about the manner in which he personally recorded the visuals which were telecast on the news channels. Most of the Respondents have filed affidavits merely denying the statements in the petition and taking exception to the CFSL reports. They have questioned the reliability of the digital audio video recordings. However, I do not find that any of the Respondents have denied that the recording had been displayed on the news channels. Besides doubting the authenticity of the video footage, the Respondents have cast aspersions on the motives of the Petitioners and Mathew Samuel in recording and displaying the audio-video footage. There could be myriad reasons which motivated Mathew Samuel to record the actions of the Respondents. However that cannot reflect adversely on the footage which has already been certified by two laboratories to be genuine and untampered. Apart from this, as mentioned by Mr. Dutta, the learned counsel for Respondent No. 22, this video footage is still available for viewing on YouTube. I am surprised that the Respondents have been so blasé and nonchalant about this. They have not pleaded that they have taken any steps to have the video footage removed from YouTube.

65. The contention of the Respondents has all along been that they have not committed any cognizable offence much less any offence under the Prevention of Money Laundering Act or the Prevention of Corruption Act or under any of the provisions of the IPC. Considering the CFSL reports from Hyderabad as well as Chandigarh, it is apparent that the video footage is not tampered and is genuine. The Respondents have not denied being featured in the audio-video footage which was shown in the news telecast where they were seen accepting money for favours to be accorded. These circumstances, prima facie lead me to believe that a cognizable offence has been committed.

66. After gleaning through the records, prima facie, it seems to me that serious offences have been committed by the Respondents. Foundational facts are available on which it is necessary that a preliminary inquiry should be conducted by the CBI to ascertain whether the Respondent Nos.11 to 22 have been involved in corrupt practices and have used the high public offices that they occupied, and continue to hold today, to promise favours to the persons from whom they had accepted money. I do not therefore have hesitation in concluding that the Court's extraordinary writ jurisdiction must be exercised in the present case by directing the CBI to conduct an inquiry.

67. The antecedents of Mathew Samuel may or may not be blameworthy. However, that by itself will not absolve the Respondents from their duty to maintain probity in the political arena and in the public space occupied by them in our democracy. The conduct of persons holding high public offices must be beyond reproach. I cannot ignore the fact that the Respondents are all holding high public offices and are able to wield power, influence and political clout in the State of West Bengal. It is in these circumstances that I feel that this is an apt case where the jurisdiction of the High Court under Article 226 of the Constitution of India must be exercised by ordering an inquiry by the CBI into

the entire episode. The State Police are at best, unfortunately, puppets on a string, the end of which is with the Respondents. Therefore, it is of utmost importance that the preliminary inquiry should be conducted by a neutral and independent investigating agency. There is no other investigating agency besides the CBI which is "independent" and therefore, it is essential that the preliminary inquiry should be conducted by that agency. It surprises me that the State in this case, rather than acting independently has supported the Respondents with all the vehemence at its command. Judges are expected to act as "sentinels on qui vive" and safeguard the rule of law, and I would be failing in my duty if I hesitate to do so.

68. I direct the CBI to conduct a preliminary inquiry without any delay and in execution thereof, to take custody of the devices and the CFSL reports which are maintained by the Special Committee in a bank locker, within 24 hours. The inquiry shall be concluded within 72 hours thereafter. Depending on the result of the inquiry, the CBI shall forthwith register an FIR, in respect of the alleged crimes and proceed to investigate the same, in accordance with law. The CBI must act promptly since persons with doubtful integrity and who commit crimes affecting the society at large, must be brought to book swiftly.

69. I direct the State to initiate disciplinary proceedings against Respondent No.22 within a week from today and to consider suspending him, in consonance with the service rules governing his employment as a Superintendent of Police.

70. The petitions are accordingly allowed. The applications being CAN 11807 of 2016 and CAN 114 of 2017 filed in connection with W.P.No.5243(W) of 2016 and CAN 10500 of 2016 filed in connection with W.P. No.5224(W) of 2016 have become infructuous and the same are dismissed accordingly.

Tapabrata Chakraborty, J. - 71. I have gone through the well-reasoned judgment of Her Ladyship and I entirely agree with the same. Expressing my concurrence with the reasoning given in the said judgment, I may add a few words, mainly by way of emphasis.

72. The common thread of arguments advanced on behalf of the State authorities and the private Respondents is that on the basis of the pleadings on record no prima facie opinion can be formed as to whether any cognizable offence has been committed and that a complete examination and appreciation of facts and materials on record does not lead to any conclusion to that effect and as such the writ petitions are not maintainable.

73. It is not a case that even if taken at face value and correct in their entirety, the allegations do not disclose any cognizable offence. In fact upon a forensic examination no tampering/editing has been found in the video uploaded in the print media. The exhibits analysed contain audio conversation of about 428 minutes (approximately 7 hours). The said transcript of disputed conversation is an identification data which in course of inquiry can be compared with the voice sample of the accused persons. Collection of such voice sample of inculpatory

material for spectrographic examination is neither unreasonable nor unfair and it does not constitute violation of any fundamental right. The sordid facts in the instant case reveal that the investigating agency has been paralyzed due to the involvement of superior police officer and politician in the alleged incident.

74. Corruption is a reprehensible crime in a society and it is an assault on the faith of the common people upon officers and Ministers and people's representatives. It defiles and degrades and shakes the confidence of the people at large upon the Government. It causes psychological harm to the society at large leaving upon it indelible marks.

75. Administering criminal justice is a two-pronged process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the Court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive role of the authorities to investigate a cognizable offence has to be struck by Court. The word "cognizance" has a very wide connotation and not merely confined to the stage of taking cognizance of the offence. It has two stages, namely, precognizance stage and post-cognizance stage. Such stages are not impinged by any fetters. A discrete verification is one of the essentials of criminal justice system and an integral facet of rule of law. The expression "Cognizance" has not been defined in the Code. It has no esoteric or mystic significance in criminal law. It merely means "become aware of".

76. Article 226 of the Constitution of India is couched in wide language so that the authority of the Writ Court is not confined only to issue prerogative writs. Such wide language is used to enable the Writ Court "to reach injustice wherever it is found". The jurisdiction under Article 226 of the Constitution is expansive and extraordinary and the same does not stand fettered by the rules of Criminal Procedure.

77. The expression public interest litigation means a legal action which is initiated before the Court of law for the purpose of enforcement of general interest of public. The technical mis-descriptions and deficiencies in drafting pleadings and setting out of the cause title cannot be a secret weapon to non-suit a party. Where foul play is absent and fairness is not faulted latitude is a grace of processual justice.

78. Applying such proposition of law to the facts of the case which involves allegations of bribery and corruption, scrutiny of records and interrogation of persons would be necessary and such direction for preliminary enquiry cannot prejudice and/or affect any fundamental right of the persons accused.

79. Fair investigation is a fundamental right of every individual. Criminal justice system is based on bulwark of a fair and impartial investigation at the behest of the investigating agency. In the event, there is an infraction of such basic duty by the State it results in complete eclipse of rule of law. Records reveal that the

police authorities registered the complaint lodged by the wife of the Respondent no.20 as FIR No.248 on the very day the complaint was lodged. On the basis of such complaint Mathew was issued notice under section 41A of the Code and thereafter the Court had to intervene to stop such investigation. Such promptness was surprisingly absent in respect of the complaint lodged by the Petitioners. Such action of the authorities coupled with the gravity of the offences alleged and considering the involvement of very influential persons including the Ministers and State police authorities has given rise to a surcharged atmosphere, indicating some proof of inability of holding fair and impartial investigation by the State police authorities and we cannot shut our eyes to such circumstances and direct the State police authorities to investigate.

80. If history and realities of life provide any guide it would be axiomatic to say that human ingenuity has no limits in finding out the ways of avoiding and circumventing the provisions of law much more in cases where confidence of the people at large rests upon the government. The society at large has a stake in proper investigation into the alleged offences which involves Ministers and high placed government officials. The allegations in the instant case are neither skirmishes nor bald, but speak of overt acts indicating complicity among the Members of Parliament, Ministers and high placed government officials.

81. With these observations in elucidation of the conclusion arrived at by Her Ladyship, I agree with the directions issued.

Later:

82. After pronouncing the judgment in open Court, the learned Advocates appearing respectively on behalf of the State, the Respondent Nos.12, 13, 14, 15, 16, 17, 18, 19, 21 and 22 have prayed for stay of the same.

83. The prayer for stay is considered and refused for the reasons mentioned in our judgment and order.