

(1999) 11 PAT CK 0025
In the Patna High Court
Case No : Cr.W.J.C. No. 244 of 1997

Dhruva Prasad Ojha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Constitution of India, 1950 — Article 166

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(3), 157, 173

Citation : (2000) 1 PLJR 823

Hon'ble Judges : S.N. Jha, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Ram Janam Ojha, Satya Prakash Tripathy, Poonam Singh and Mukesh Kumar, for the Appellant; Ganga Prasad Roy and Satish Kumar Sinha, for the Respondent

Judgement

S.N. Jha, J.—The petitioner is a member of the Indian Police Service (IPS), and head of the Investigation Bureau, Cabinet (Vigilance) Department, in the rank of Inspector General (now Additional Director General). He seeks quashing of certain provisions of the resolution/circular/notification etc. contained in Annexure 2 to 5 and a declaration that the Minister Incharge Cabinet (Vigilance) Department alone is competent to act as the Reporting Authority for the purpose of recording confidential reports with regard to Inspector General of Police (Vigilance) under Rule 2(e) of the All India Services (Confidential Rolls) Rules 1970. He further seeks quashing of a notice contained in Annexure 10 asking him to submit an explanation on the points mentioned therein. Annexure 2 contains copy of the resolution of the State Government dated 26.2.91 by which the existing Vigilance System was re-organised and a separate department with the Vigilance Commissioner-cum-Principal Secretary as its head was created. Annexure 3 contains copies of letter/office order dated 17.1.83 and 7.2.83, respectively regarding the scope of powers and functions of the Investigation Bureau and the manner in which the enquiry and investigation are to be made by it. Annexure 4 contains copy of a letter of the Home Department, Government of

Bihar dated 17.11.86 addressed to all Departmental heads and District Magistrates/Superintendent of Police communicating the details of the decision of the State Government regarding lodging of FIRs., arrest of Government servants and investigation of cases against them. Annexure 5 contains copy of notification dated 20.6.86 giving administrative control over the Investigation Bureau to the Vigilance Commissioner.

2. The sum and substance of the case of the petitioner is that the Investigation Bureau being an Investigating Agency has statutory power under the Code of Criminal Procedure, 1973 (Cr. P.C.) to make preliminary enquiry and register cases on its own and the State Government has no authority or jurisdiction to put any restriction on it by issuing executive instructions, circulars etc. Secondly, the decision to place the Investigation Bureau under the administrative control of the Vigilance Commissioner impinges upon the independence of the Bureau and is not in accordance with law.

3. The respondents have filed a detailed counter affidavit affirmed by Shri S.N. Biswas, Vigilance Commissioner, inter alia questioning the bona fide of the writ petition. In paragraph 26 it has been stated, "it is thus manifest that the application contains a clandestine motive for self aggrandisement". In paragraph 33, again, it has been stated, the petitioner has used the garb of the writ application in order to get an order determining his status vis-a-vis the Vigilance Commissioner". On merits, in paragraph 39, amongst other paragraphs, distinction is sought to be made between the general police stations and the Vigilance Police Station in the matter of institution of cases. It is said that while general police stations of the State are empowered to institute cases as per the provisions laid down in Section 154 Cr.P.C. but as the Vigilance Police station has been created specially for the Vigilance cases against public servants, permission of the Government for institution of the case is "mandatory in nature" and the same does not violate any provision of law. On the point of primacy, in paragraph 13 it has been stated that since Vigilance cases pertain to public servants, it is desirable that the Government reserves to itself the power to make an enquiry in the form of preliminary enquiry to be conducted by the functionaries of the Vigilance Department itself before formally instituting the cases in order to protect the public servants from unnecessary harassment. It may be mentioned here that the letter dated 17.1.83 and the office order dated 7.2.83 issued by the Chief Secretary, Government of Bihar (Annexure 3 to the petition) contain provisions to the effect that the Investigation Bureau shall not make enquiry with respect to the Non-Gazetted employees which shall be made by the concerned Administrative Department; and that with respect to Gazetted officers, the Bureau shall not be competent to either initiate any enquiry or close it on its own. This can be done only with the prior permission of the Vigilance Commissioner. As regards officers of the All India Services similar prior permission of the Chief Secretary both for initiating the inquiry as well as the closing the same will be necessary. The letter dated 17.11.86 contains a further clause to the effect that upon close of the enquiry, the bureau shall neither

finalise the charge sheet nor shall call for any explanation from the officer concerned.

4. In course of hearing of the case a supplementary counter affidavit affirmed by Shri Girish Nandan Singh, Under Secretary, Cabinet (Vigilance) Department was filed on behalf of the respondents making certain clarifications on the points raised on behalf of the petitioner. A somewhat different stand has been taken therein. It is not clear as to whether the said affidavit has been filed with the approval of the Government or even the Chief Secretary or the Vigilance Commissioner who had affirmed the earlier counter affidavit. Without going into this aspect, I consider it proper to clarify certain issues notwithstanding the concession made in the supplementary counter affidavit.

5. There is no dispute, nor can there be any, that the investigation in criminal case in respect of cognizable offence is the prerogative of the Investigating Agency, be it the general police or some special wing of it, such as the Criminal Investigation Department (CID), or some other agency such as Central Bureau of Investigation (CBI). The Code of Criminal Procedure does not envisage or countenance any interference with the course of Investigation, not even by the courts except by the High Court in rarest of rare cases on the ground that the allegations which are subject matter of investigation do not make out any criminal case or on the ground of malafide. It is only after the investigation comes to an end with the submission of police report u/s 173 Cr.P.C. that the court gets jurisdiction to issue any direction.

6. The doubt which remains to be sorted out in the present case is whether at the stage of institution of the case, the Investigation Bureau is required to obtain prior permission of the Vigilance Commissioner or the Chief Secretary etc. Before discussing this issue I consider it proper to state a few facts regarding the creation of the Investigation Bureau as an investigating agency.

7. The investigation with respect to cases relating to corruption and bribery earlier used to be made by the Anti Corruption Wing of the State Police. The State Government decided to centralise the system of institution and investigation of such cases and with that object in view, by notification of the Home (Police) Department dated 6.6.73, created a police station called "Vigilance Police Station" for the whole of the State of Bihar at Patna. To be precise, the vigilance wing of the Cabinet (Vigilance) Department was declared as a police station within the meaning of Section 2(s) Cr. RC. The notification laid down that all such cases to be registered at the Vigilance Police Station would be investigated by the officers of the vigilance wing of the Department under the control of the Deputy Inspector General of Police, Cabinet (Vigilance) Department. It appears that two separate wings—one wing concerning general vigilance and the other wing concerning technical vigilance known as Technical Examiners' Cell (TEC) headed by an Engineer-in-Chief were already functioning in the Cabinet (Vigilance) Department. By resolution dated 26.2.81, Annexure-2, the State Government created a full-fledged Vigilance Department With the

Vigilance Commissioner-Cum-Principal Secretary as its head. The existing Vigilance Wing was re-named as investigation Bureau and made part of the Vigilance Department along with the Technical Examiners' Cell (TEC) and the Departmental Enquiries Commissioner. That is how the Investigation Bureau, so called, came into existence.

8. It would not be out of place to mention here that the petitioner was posted as Superintendent of Police (Vigilance) between November 1977 and April, 1980. He again joined the Vigilance Department as DIG on 17.5.86 and continued as such upto June, 1987. After gap of three years he again joined the Vigilance Department as DIG on 15.5.90 and has continued there ever since. During the intervening period, he was promoted as IG of police on 1.12.91 and Additional Director General-cum-Inspector General of Police on 9.5.97.

9. I have adverted to the tenure of posting of the petitioner in order to point out that although the impugned resolution/notification/circular etc. relate to the period between 1981 and 1986, he has approached this court seeking their quashing and declaration regarding the independent status of the Investigation Bureau only after he was served show cause notice as contained in Annexure 10 on 14.2.97. That may have some reflection on his intentions. As a matter of fact, as noted above, the respondents have questioned the bonafide of the petitioner. However, one or two issues raised for consideration being of public importance, it is only appropriate to discuss them without going into the intentions and motives of the petitioner.

10. The main issue for consideration is whether the Investigation Bureau is required to obtain any clearance or permission from the Vigilance Commissioner or the Chief Secretary etc. before commencing any preliminary enquiry or instituting a criminal case. It is an undisputed and agreed position that once the case is formally instituted, no interference is to be made. An ancillary issue is whether in view of paragraph 4(3) of the letter of the Chief Secretary dated 17.1.83 (supra) similar clearance or sanction is required to be obtained before finalising/submitting the charge sheet. In the supplementary counter affidavit, it has been stated that paragraph 4(3) of the aforesaid letter relates to "preparation of charge-sheet only for initiation of the departmental proceeding. It has nothing to do with the criminal cases." In other words, the respondents agree, and it was stated so in unequivocal terms by Shri Ganga Prasad Roy, learned Addl. Advocate General, that on completion of the investigation, there would be no fetter on the power of Investigation Bureau to finalise and submit the charge sheet in the designated court u/s 173 Cr.P.C.

11. In paragraph 5 of the supplementary counter affidavit it has further been stated that "Vigilance Bureau" is fully empowered to institute cases suggesting, as was submitted by Shri Ganga Prasad Roy, that there is no fetter or restriction at the stage of institution of the case too. This in my view is the correct legal position. This is amply borne out by the provisions of Sections 154, 156 and 157 Cr.P.C. the relevant parts of which read as follows:-

Section 154. Information in cognizable cases.?(1) Every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) A person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send this substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police station in relation to that offence.

156. Police officer's power to investigate cognizable case.?(1) Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above mentioned.

157. Procedure for investigation.? (1) If, from information received or otherwise, an officer-in-charge of police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf to proceed to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

....

....

It is clear from the aforementioned provisions that on receipt of information relating to commission of cognizable offence, or otherwise directed by the

Magistrate u/s 156(3), the officer-in-charge of a police station is duty bound to register the case and to investigate the same either himself or by any other police officer subordinate to him. Any attempt to truncate the power and put any restriction on the exercise of such power would be contrary to the mandate of law and liable to be struck down. The term "investigation" has been defined in Section 2(h) Cr. P.C. to include "all the proceedings under this Code for collection of evidence conducted by Police Officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf".

12. In the case of P. Sirajuddin, etc. Vs. State of Madras, etc., , the Apex Court highlighted the importance of making preliminary enquiry before institution of cases against public servants. It would be useful to quote the following observations:

Before a public servant whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanor and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department.

13. It should be kept in mind that the cases coming under the jurisdiction of the Vigilance Police Station i.e. the Investigation Bureau of the Vigilance Department are cases relating to public servants. Therefore, it is only in the fitness of things that preliminary enquiry is made by the Investigation Bureau. This has also been highlighted by the respondents in the counter affidavit. The question is whether on completion of such preliminary enquiry, the Bureau is required to obtain a nod from the Vigilance Commissioner or the Chief Secretary, as the case may be, before formally instituting the case? The answer has to be in the negative. Requiring the Bureau to take any such permission would amount to impinging upon the jurisdiction of the Investigating Agency under Sections 154 / 156 / 157 Cr.P.C. and would be at a tangent with the provisions contained therein. It is another matter that such enquiry should be fair and reasonable, as emphasised by the Supreme Court in the P. Sirajuddin's case as well as in the respondents' counter affidavit. According to me, however, on the specious ground of ensuring a fair and reasonable preliminary enquiry, the statutory provisions of the Cr.P.C. cannot be given go by. If the enquiry is not done in a fair reasonable manner and FIR is lodged, it is open to the person aggrieved to approach the court seeking appropriate direction on the ground of mala fide or some such ground as the law may permit. On the other hand, if the authority to grant such permission is conceded to the State Government, through the Vigilance Commissioner or the Chief Secretary, as the case may be, and the permission is not granted or

delayed, the whole purpose of lodging the criminal case may be defeated and there may be miscarriage of justice. The offender may escape even investigation, not to speak about his prosecution and ultimate conviction. So far as giving protection to honest public servants from prosecution on charges which the Government thinks to be unfounded and frivolous, both Cr.P.C. and the Prevention of Corruption Act, 1988 contain specific provisions for sanction vide Section 197 and Section 19 respectively. These two sections prohibit the court from taking cognizance except with previous sanction of the concerned Government/Authority.

14. In Vineet Narain and Others Vs. Union of India (UOI) and Another, , considering a similar situation, it has been observed by the Supreme Court (at page 262 of the report).

Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification u/s 3 of the Act, (The Delhi Special Police Establishment Act, 1946) the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued u/s 4(1) thereof. This result follows from the fact that conferment of jurisdiction is u/s 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control.

There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a prerequisite for the court to take cognizance of the offence. In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification u/s 3 of the Act.

The court clarified (at page 262) that the term "superintendence" occurring in Section 4(1) of the Delhi Special Police Establishment Act (which expression also occurs in Section 3 of the Police Act, 1861) has to be construed in a manner consistent with other provisions of the Act and general statutory powers of investigation.

15. In the above premises, it must be held that the Investigation Bureau is competent to hold preliminary enquiry on its own and at the end of such enquiry if it bona fide comes to the conclusion that a prima facie case disclosing the commission of cognizable offence is made out against an officer, to lodge first information report against him and proceed with the investigation without taking any prior permission for doing so from the Vigilance Commissioner or Chief Secretary or any other authority. Any provision to the contrary contained in impugned resolution/notification/circular etc. either expressly or by implication

must be held to be ultra vires Sections 154 / 156 / 157 Cr.P.C.

16. Next issue which I wish to discuss relates to declaring the Minister In-charge Cabinet (Vigilance) Department as the Reporting Authority for the purposes of the All India Services (Confidential Rolls) Rules. The foundation of the petitioner's case in this regard is the decision of the Supreme Court in State of Haryana vs. P.C. Wadhwa, AIR 1987 Supreme Court 1201 and the provisions of Sections 3 and 4 of the Police Act, 1861. It would be apt to first refer to the said provisions of the Police Act which were noticed also by the Supreme Court in P.C. Wadhwa's case. They are as follows:-

Section 3. The superintendence of the police throughout a general police-district shall vest in and shall be exercised by the State Government to which such district is subordinate; and except as authorised under the provisions of this Act, no person, officer, or Court shall be empowered by the State Government to supersede, or control any police functionary.

Section 4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the State Government shall seem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendent as the State Government shall consider necessary.

It would appear from bare reading of the aforesaid provisions that even section 4 contemplates control over District Superintendent of Police etc. by the Magistrate of the District i.e. the District Magistrate even though the Superintendent of police is part of the investigation being done by his subordinates. Further, from Section 3 it is obvious that the power of overall superintendence of the police is vested in the State Government.

17. In P.C. Wadhwa's case the Home Secretary had made certain adverse remarks against the petitioner who was the Inspector-General of Police during the relevant period. The remarks were duly accepted by the competent authority and later communicated to him. He challenged the authority of the Home Secretary to write confidential report. A Bench of the Punjab and Haryana High Court overruling the decision of the Single Judge accepted the contention and held that the Home Secretary had no authority to submit any report against the performance of the petitioner for the period during which he was the IG of Police. The Supreme Court in appeal by the State of Haryana observed that the Police Department had been placed under the Home Department at the Secretariat level in terms of the Rules of Executive Business framed under Article 166 of the Constitution and like any other departmental Secretary, the Home Secretary was thus head of the Home Department but it does not mean that he also becomes the head of the Police Department merely because the Police Department has

been placed under the Home Department at the Secretariat level to facilitate transaction of business of the Government in terms of the Rules of Business. Observing further that the Inspector General of Police is the head of the Police Department in view of the provisions of Sections 3 and 4 of the Police Act read with the relevant rules of the Punjab Police Rules, the Supreme Court held that the Home Secretary was not competent to write the confidential rolls as the Reporting Authority under Rule 2(e) of the All India Service (Confidential Rolls) Rules. In this connection, the Supreme Court noted that in the State of Haryana character rolls of all the Secretaries were written by the Minister In-charge. In the case of the Inspector-General of Police also, both before the Independence and even after Independence this was the arrangement until 3.5.1974 when the State Government passed an order empowering the Home Secretary to act as the Reporting Authority under rule 2(e) of the said Rules. It was in these facts that the Supreme Court held that the immediate authority superior to the Inspector-General of Police being the Minister Incharge, the only authority which could be empowered as the Reporting Authority under Rule 2(e) of the Rules, should be the Minister Incharge and the Chief Minister being superior to the Minister Incharge may be Reviewing Authority under Rule 2(f).

18. We have not been told about the practice being followed in the State of Bihar as to whether the confidential rolls of the Secretary rank officers or other Departmental Heads are written by the Minister Incharge, or the Chief Secretary, as the Reporting Authority under Rule 2(e) of the said Rules. That apart, the status of the Inspector-General of Police is different. It is well known that although the Police Act or the Rules contained in the Police Manual contemplate only one officer as the Inspector-General of Police, these days there are several officers not only in the rank of Inspector-General of Police but also in the still higher ranks called Director General or Additional Director General. Only one of them however, is vested with the powers of the Inspector-General of Police under the Police Act and Police Manual. He alone is to be treated as the Inspector-General of Police within the meaning of the Police Act or the Police Manual. It is he who is the head of the State Police Force and, as such head of the Police Department, which post was the subject-matter of consideration in P.C. Wadhwa's case. IG (Vigilance) is only head of the Investigation Bureau which was just a police station within the meaning of Section 2 (s) Cr.P.C. by virtue of notification dated 6.6.73. It still continues to be a police station but in a glorified form. Although comparison with police officers of equivalent rank may not be very appropriate, if the plea that the Minister Incharge Cabinet (Vigilance) Department should be treated as Reporting Authority is accepted, it would mean that Reporting Authority in respect of other IG rank police officers doing investigation work, like IG (CID) should be the Minister Incharge Home (Police) Department and not the Director-General and IG Police, Bihar. The plea of the petitioner, in this regard therefore, cannot be accepted.

19. The respondents have referred to the provisions of Central Vigilance Manual and submitted that even the premier investigation agency of the Country,

namely, Central Bureau of Investigation (CBI), functions under the administrative control of the Department of Personnel and Administrative Reforms (we have been told that the control now is with the Home Ministry). The analogy in my opinion, is quite apt. Several judicial Officers of different ranks are posted in the Government Departments and elsewhere where they function under the administrative control of the concerned authority of that Department, and it is he who writes their confidential rolls during the period for which they are in service there. Therefore, so long the petitioner is posted in the Vigilance Department as the Head of the Investigation Bureau, which is part of the Vigilance Department, he cannot make any grievance of the vesting of the administrative control in the Vigilance Commissioner who has been declared to be head of the Vigilance Department under the Rules of the Executive Business. Such arrangement cannot be said to be in conflict with the provisions of either Cr.P.C. or the Police Act or Bihar Police Manual, 1978. The issue is accordingly answered in the negative, that is to say, in favour of the respondents.

20. The only issue which remains to be discussed is the validity of the show cause notice contained in Annexure 10 dated 13.2.97. The respondents have referred to the provisions of All India Services (Conduct) Rules, 1968 as well as Bihar Government Servants (Conduct) Rules, 1966 (sic?1976 ?), in support of their contention that certain correspondences made by the petitioner being stigmatic and critical of the State Government constitute misconduct for which the petitioner is liable to be departmentally proceeded against. I do not wish to go into that question. It is a well-settled practice of the writ court, if I may say so, not to entertain writ petition where alternative remedy is available to the person aggrieved. Filing of show cause pursuant to a notice is certainly a remedy available to him, which cannot be said to be not adequate or expedient or efficacious. And unless such remedy is exhausted the writ court may decline to interfere with the same, except in cases where the very notice is without jurisdiction, that is to say, the authority which has issued the notice had no jurisdiction to do so. In a case where such notice is issued by or on behalf of the State Government, as in the present case, the question of absence of jurisdiction does not arise. As a matter of fact, in the present case, it appears that the petitioner has already filed his show cause/explanation. Unless some adverse decision is taken on the show cause/explanation there may not be any occasion to interfere with the same. It is obvious that if the show cause/explanation is accepted the whole grievance of the petitioner in this regard may disappear. The petitioner therefore, has to await the decision to be taken at the Government level whereafter he will be at liberty to approach the court for appropriate relief in accordance with law, if such occasion arises in future.

21. Before I conclude, I must mention that a major part of the arguments made on behalf of the petitioner was academic in nature. While deciding a case it is not the function of the court to enter into academic discussion, the court is merely required to decide the issues or the disputes as may arise in the case.

22. In fairness to the counsel for the petitioner, however, I must refer to the decisions relied upon by him in course of hearing of the case, namely, State of Punjab Vs. Balbir Singh, , N. Venkateswara Rao and Others Vs. S.T.A. and Others, , Madhu Bala Vs. Suresh Kumar and others, , Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, , and State of Assam vs. P.C. Mishra, IAS and ors., 1995 Supp. (4) SCC 139 (paras 8, 11 and 12), apart from Vineet Narain and Others Vs. Union of India (UOI) and Another, , P. Sirajuddin, etc. Vs. State of Madras, etc., and State of Haryana Vs. P.C. Wadhwa, IPS, Inspector General of Police and Another, , already referred to above. In Balbir Singh's case the point for consideration was the interpretation of the expression "or otherwise dealt with" occurring in Section 4 Cr.P.C. in the context of a case under the Narcotic Drugs and Psychotropic Substances (NDPS) Act. Venkateshwar Rao's case was cited to point out that certain observations of H.W.R. Wade in his Book "Administrative Law" found judicial approval by the Apex Court. In Madhu Bala's case the point was whether the Magistrate can direct registration of case u/s 156 Cr.P.C. In that connection certain observations were made regarding the scope of the provisions of Sections 154, 156 and 157 Cr.P.C. The observations are general in nature and it is not necessary to refer to the same. Mansukhlal Chauhan's case was a case in which the Government had granted sanction for prosecution pursuant to the direction of the High Court which was deprecated by the Supreme Court. P.C. Mishra's case was a case of expunction of adverse remarks. None of the above decisions has any direct or special bearing on the issues in the present case and therefore, it is not necessary to refer to the facts involved in those cases or the observations made therein.

23. To conclude, the respondents are directed to modify the impugned resolution/ notification/circular etc. contained in Annexures 3, 4 and 5 in the light of this judgement giving due primacy to the Investigation Bureau in the matter of making preliminary enquiry, lodging of criminal cases and submission of police report u/s 173 Cr.P.C. The writ petition is thus allowed in part in the manner and to the extent mentioned above. There will be no order as to costs.

Gurusharan Sharma, J.

I agree.