
(1981) 11 RAJ CK 0006

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 774

Mahendra Singh and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 13-11-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 161, 169, 426
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1982) RLW 319 : (1981) WLN 637

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanta Bhatnagar, J.—The seven petitioners along with a few others, out of whom five have already been arrested, are suspected miscreants of an incident said to have taken place in the intervening night of 17th and 18th September, 1981 at the "Durgah" of Nimba Nimbdi. On the basis of the information lodged by Abdul Kayum on September 18, 1981, case under Sections 147, 148, 307, 326 and 325 read with 149 Indian Penal Code was registered. Abdul Rahim, one of the injured, succumbed to the injuries sustained by him in the incident on September 21, 1981 and therefore, Section 302 Indian Penal Code was further added against the suspects. It is alleged that on Thursday the 17th September, 1981 the complainant and others had gone to Nimba Nimbdi "Durgah" and after "Namaz" were preparing for "Ibadat" when at about 11.00 P.M. about 20 or 25 persons, armed with axe, hammers, "burchis" and "halwanis", entered the "Durgah" uttering "Jai Bajrang Bali" and started beating those persons. The Muslims inside the "Durgah" tried to make good their escape but all of them could not succeed and the rioters, besides giving a beating to them, damaged the articles of the "Durgah" and broke down the religious pictures and threw them in the mud. Seven persons sustained injuries in that incident, one out of whom viz. Abdul Rahim became serious and expired on September 21, 1981 as stated above. Five suspects have been arrested.

2. The seven petitioners, not yet arrested, have filed an application u/s 438 read with Section 482 of the Code of Criminal Procedure in this Court, contending there in that no case is made out against them & the persons, who are said to have named them in their police statements, neither knew them before hand nor can identify them if a test identification parade is held. That, the investigation in the case is motivated by political influence and fabrication is writ large on the police record and therefore, the petitioners should be enlarged on anticipatory bail.

3. It has been further contended that the five accused, since arrested, had immediately after their arrest prayed the Chief Judicial Magistrate that they were not known to the witnesses and their identification parade should be conducted immediately. The prosecution contested that application and the Magistrate rejected the same. There after third degree methods were adopted by the police and they were shown to the witnesses prior to the identification parade. The petitioners apprehend the same fate. The petitioners therefore, have prayed for anticipatory bail and in the alternative submitted that they are prepared to surrender themselves before the Suprintendent, Central Jail or before any Magistrate and direction may be issued for holding the identification parade immediately before the petitioners are put in the custody. Request has also been made for direction for getting the test identification parade held even for the witnesses who have named the petitioners in their police statements.

4. On October 22, 1981, the Public Presecutor was directed to give in writing as to whether the Investigating Officer is willing to request the Magistrate to hold the identification parade of the accused petitioners even by the witnesses who are said to have named them in their statements u/s 161 of the Code of Criminal Procedure.

5. On October 26, 1981, the Circle Officer, Incharge of the investigation, in compliance to that order, submitted that naming the accused by the witnesses in their police statements, clearly indicates that they were knowing them before hand. That, the petitioners are absconding for a long time from their residence and despite efforts could not be arrested and therefore, proceedings under Sections 82 and 83 of the Code of Criminal Procedure have been initiated against them. That, some of the witnesses have not named the petitioners, rather have claimed to identify them on seeing them and therefore, identification parade for them was to be held. That, the weapons of offence are to be recovered from the petitioners. Stating about the gravity of the offence and the circumstances of the case, the Investigating Officer submitted that there is no propriety in getting the identification parade held at this stage for this witnesses who had named the accused.

6. On October 30, 1981 an application u/s 482 of the Code of Criminal Procedure has been filed on behalf of the petitioners stating there in that in view of the positive assertion by the petitioners that the prosecution witnesses do not know them by name nor can they identify them, this court may direct for holding the

identification parade immediately by the Magistrate without assistance of police and the petitioners are prepared to surrender or be arrested before any Magistrate ordered by this Court to secure ends of justice.

7. At the commencement of the arguments, Mr. K.N. Joshi, learned Counsel for the petitioners no. 1, 2, 4, 5 and 7 submitted that as the identification parade is yet to be conducted, he does not press the application for anticipatory bail at this stage and shall confine his arguments to the petition u/s 482 of the Code of Criminal Procedure.

8. Mr. S.N. Deedwania and Mr. P.L. Choudhary, learned Counsel for the petitioners No. 3 and 6 respectively however submitted that in view of the stern attitude of the Investigating Officer not to get the identification parade held for the witnesses who have named the petitioners, they do press the prayer for the petitioner being enlarged on anticipatory bail.

9. I would therefore, first deal with the application u/s 438 of the Code of Criminal Procedure.

10. Who soever may be the perpetrator of the crime, the facts and circumstances of the case clearly indicate the gravity and seriousness of the offence. The allegation about the implication of the petitioners being motivated by political pressure does not require any consideration by this Court at this stage of the investigation. The order of anticipatory bail distinct from an ordinary order of bail means the grant of bail in anticipation of arrest and is, therefore, effective at the very moment of arrest. Certain witnesses have claimed to identify the accused only on seeing them and test identification parade for those witnesses is yet to be held.

11. In such circumstances, I do not consider it a fit case in which an order u/s 438 of the Code of Criminal Procedure should be passed. The petition for anticipatory bail is, therefore, rejected.

12. Coming to the petition u/s 482 of the Code of Criminal Procedure it has been vehemently argued by the learned Counsel for the petitioners that the inherent powers of the Court are to be exercised to prevent the abuse of the process of any Court and there cannot be a better case than the present one, for this Court to come to the rescue of the petitioners who are apprehending false implication in the case and harassment at the hands of the investigation agencies.

13. It has also been stressed that there cannot be any occasion for the witnesses, naming the petitioners, to know them before hand and therefore, the prosecution should not be hesitant to concede to this request of the accused. The learned Counsel for the petitioners emphatically argued that had the application of the five accused persons already under arrest not been rejected by the Chief Judicial Magistrate and third degree methods not been adopted by the police, the petitioners would not have approached this Court for interference and necessary directions.

14. In view of the serious controversy raised regarding the identification of the petitioners, the allegation regarding third degree methods being adopted by police against the five accused since arrested and the Magistrate refusing to pass proper order, I called the relevant file from the Court of Judicial Magistrate No. 4, Jodhpur.

15. An application on September 20, 1981 was filed by those accused for getting an identification parade by the injured persons as they were not knowing them before hand. The learned Chief Judicial Magistrate, before whom the application was filed, by his order dated September 22, 1981, observed that no direction can be issued to the Investigating Officer during the course of investigation for getting the parade held. Observing that the counsel for the accused could not substantiate his contention with any law, the application was rejected. On September 21, 1981 an application was filed for getting those petitioners medically examined because of third degree methods being adopted by the investigating agencies and serious injuries having been sustained by the accused at their hands. At the direction of the Court the accused were examined by the Medical Jurist, Jodhpur on September 24, 1981 who had examined them on September 20, 1981 also. The injury reports of both the dates of all the five accused do not substantiate the contention about the third degree methods being adopted and the accused sustaining serious injuries.

16. The learned Counsel for the petitioners next argued that on perusal of the police diary, the Sessions Judge while deciding the application of those accused u/s 439 of the Code of Criminal Procedure, and this Court also while deciding the application for bail under the same Section, filed by those accused have doubted the fairness of the investigation and therefore, this Court should come to the rescue of the present petitioners by issuing the directions prayed for.

17. The learned Public Prosecutor controverting these submissions vehemently contended that even in case of the five accused, the application u/s 439 of the Code of Criminal Procedure was rejected by the Sessions Judge as well as by this Court and no interference of any kind in the investigation was made. That the case of the present petitioners who have been absconding for a long time, hampering the progress of the investigation thereby, stands on a still weaker footing for any indulgence from this Court. The learned Public Prosecutor urged that even inherent powers do not envisage any interference in the investigation.

18. For deciding the petition u/s 482 of the Code of Criminal Procedure following serious questions of law emerge for decision:

(1) Whether this Court in exercise of inherent powers can direct the accused to surrender before the particular authority and may issue a further direction to that authority to proceed in a particular way.

(2) Whether the accused can as of right claim for test identification parade and in case the prayer is refused what would be the consequences.

(3) Whether this Court in exercise of its inherent powers can and should direct the investigating agency to get the test identification parade of the accused held even from the witnesses who have named them in their statements u/s 161 of the Code of Criminal Procedure.

19. The learned Counsel for the petitioners could not point out any provision, nor is there any in my knowledge, for directing the accused to surrender before a particular Magistrate or any other authority. When an accused person surrenders before a Court, it is the discretion of that Court either to entrust him to police custody for investigation or to send him to judicial custody or to release him on bail. In case this Court directs the authority concerned before whom the petitioners propose to surrender to proceed in a particular way, that is to say, to held a test indentification parade immediately and then send them to judicial custody it would amount to mark a particular line to be followed by the concerned Magistrate, which in my opinion would not the proper for this Court.

20. The argument of the learned Counsel for the petitioners is, that the petitioners have managed to remain away from the clutches of the investigating agency, apprehending the same treatment at their hands which was given to the five accused. As the fact of their absconding may prejudice the Court at the time of their surrender, they have approached this Court. Whether there is any justification or not for the petitioners in not allowing the police to arrest them is not for this Court to hold while deciding this petition nor any direction to any Court is called for. The reason is that unless the petitioners surrender before the Court and place all the material before it, that Court cannot find out the appropriate step to be taken in the given circumstances of the case brought to its notice.

21. At the very outset, I may observe that the importance and value of a test investigation parade before the accused are put to trial cannot be over emphasized. The pertinent question is, whether the investigating agency is under an obligation to get the identification parade held even from the witnesses who have named the accused in their police statements. The purpose underlying an identification parade is that the Investigating Officer may form an opinion as to whether there is any material to connect the suspects with the commission of the crime.

22. In criminal trial much weight is given to the test identification parade for the reason that identification by the witness at the trial often looses its importance because even if he does not know the accused previously, it is not much difficult to point out a man in the dock to be the culprit.

23. The question about the prayer of the accused for being put in test identification parade even for the witnesses claiming to know them beforehand, the direction by the Court to that effect and the consequences of the rejecting the prayer came for consideration in a number of cases before the various High Courts and the Highest Court of the country. A number of authorities have been

cited from both the sides which I would just discuss.

24. In the case of *Amarsingh v. Emperor* AIR 1943 Lah 303 it has been held as under:

Whenever an accused person disputes the ability of the prosecution witnesses to identify him, the Court should direct an identification parade to be held save in the most exception circumstances.

25. In the case of *Sojjan Singh v. Emperor* AIR 1945 Lahore 48, while observing that it would be only a waste of time to hold an identification parade of the accused, well known to the witnesses, their Lordships have enunciated the principal, that if the witness claims to have known the accused previously while the accused denies this, the claim made by the witness cannot be used as a reason for refusing to allow his claim to be put to the only practical test of an identification parade. Their Lordships further observed that even if the denial of the accused is false, no harm is done, and the value of the evidence given by the witnesses may be increased. After discussing the possibilities of change of the accused in his appearance or weakness of memory of the witnesses, on account of the lapse of time because of the accused absconding for a long time, their Lordships further observed as under:

When the request of the accused for holding an identification parade is refused an acquittal is not an unlikely event, should any serious question of identity arise during course of the trial; for the witnesses, claim to identify the accused will remain subject to a doubt which might easily have been removed if their ability had been put to the test before the trial.

26. In the case of *Awadh Singh and Ors. v. The State* AIR 1954 Patna 483 the question about the legal right of the accused for test identification arose and following observations were made by the Courts:

The accused persons may or may not have legal right to claim for test identification and the holding of test identification may or may not be a rule of law, but it is a rule of prudence. Test identification parade should be held especially when the accused persons definitely assert that they were unknown to the prosecution witnesses either by name or by face and they requested the authorities concerned to have the test identification parade held. The non-holding of a test identification parade, though may not be a ground to vitiate the trial" is undoubtedly a very important feature in considering the credibility of the witnesses on the point of identification.

27. In the case of *Lajja Ram Vs. The State*, the following principle has been laid in a case when the prosecution refused the request of the accused for an identification parade:

Although the accused has no right to claim identification, if the prosecution turns down his request for identification it runs the risk of the veracity of the eye-witnesses being challenged on that ground. The prosecution will be exposing the

claim of such witnesses to the criticism, that the test of identification was shirked because the witnesses would not have been able to stand that test. Unless, therefore, the prosecution can nullify that criticism, there would be an element of doubt attaching to the testimony of those witnesses of which the benefit should go to the accused.

28. In the case of *The State Vs. Dhanpat Chamara and Others*, his Lordship observed as under:

If the witnesses do not give the name of any accused, it is necessary to hold a test identification of an accused as one whom he has identified, ordinarily no test identification parade is necessary. But if any accused holds out a challenge and says that he will not be identified by the witnesses, or makes a prayer that he should be put upon a test identification, such a parade, must always be held in order to meet the challenge.

29. In the case of *Asharfi and Another Vs. The State*, their Lordships, while holding that the identification of an accused who is already known the identifier is futile, observed that if the Court reasonably comes to the conclusion that there may be force in the prayer of the accused for test identification, it should direct the holding of a regular test identification in order that the witness' veracity may be tested. According to their Lordships the Court has ample power u/s 540 of the Code of Criminal Procedure to secure this evidence.

30. In the case of *Tek Chand and Others Vs. The State*, their Lordships were pleased to propound the following proposition of law:

The accused cannot compel the prosecution to hold their identification during the investigation, and there is no law or procedure under which the Magistrate could pass such an order. But if such a prayer is made by the accused and the prosecution opposes such a request, by so doing it exposes the witnesses of identification to a genuine criticism that they would probably not be able to identify the offenders correctly if the parade was held. Under such circumstances therefore, it is desirable that the identification parade of the culprits should be held if so desired by the offenders.

31. In the case of *Jadunath Singh and Another Vs. The State of U.P.*, their Lordships did not consider the trial to be vitiated by the denial of the test identification of the accused on the facts of that case, but at the same time were pleased to hold, that there is no provision in the Code of Criminal Procedure enabling accused to insist on identification parade is not material. Their Lordships also opined that if the accused is well known to the prosecution witnesses it would be waste of time to put him up for identification. If however, there is any doubt in the matter, the prosecution should hold identification parade. According to their Lordships there being no provisions for the accused to insist on an identification parade, still if he makes an application to that effect and that application is turned down and it transpires during the course of the trial that the witnesses did not know the accused previously, the prosecution will, unless there

is some other evidence, run the risk of losing the case on this point.

32. In the case of Mst. Dalbir Kaur and Others Vs. State of Punjab, an identification parade at the request of the accused was refused and it was held that in order to remove doubts accused should be identified even by such witnesses who claim to have known him earlier and had, therefore, recognised him at the scene of occurrence.

33. In all these cases cases emphasis is on the removal of all doubts regarding identification of the accused. Consequences of refusing the prayer of the accused in certain cases have also been pointed.

34. The learned Public Prosecutor does not dispute this position of law, but his contention is that holding an identification parade is only a step in the investigation and the Investigating Officer is of course required to be vigilant to see that the investigation is fair and straight forward, but it is not the concern of the Court to issue direction to the Investing Officer to pursue a particular line of investigation.

35. The learned Counsel for the petitioners have stated that the Court should interfere in such matters because by refusing such a prayer the accused will be deprived of a valuable defence. Reliance has been placed on the case of Joginder Singh Virk and Others Vs. The State of Punjab and Others, where in the accused had challenged his identity at the hands of the witnesses who claimed to know him before hand. His lordship was of the opinion that the denial of the right of the accused to claim identification parade tantamounts to stopping the accused from setting up a defence and against the elementary principles of criminal law.

36. In this connection the learned Public Prosecutor has placed reliance on the principle enunciated in the In re Sangiah's case, AIR 1948 Madras 118 wherein following observations were made:

Identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy investigating officers of the bonafides of the prosecution witnesses.

37. In the case of Ali Jan Iman Ali and Another Vs. The State, similar question arose and following observation was made:

It is not the right of an accused to claim identification and duty of the court to direct one if the same is claimed before the Court begins to record the prosecution evidence.

38. It was further observed that identification proceedings are held only during the course of investigation for the investigating agency to satisfy itself as to whether a certain witness had at all seen the suspects put up for identification before him and whether he will be in a position to support the prosecution case against the suspect in Court.

39. A study on the various authorities on the point shows that as of right accused

cannot claim for identification parade. The Investigating agencies are expected to be vigilant to see that no doubt remains regarding the veracity of the witnesses for identification. This is certain that in refusing to accept such a prayer in appropriate cases, the prosecution runs the risk of losing the case. But it is noteworthy that it is ordinarily when the case reached the court and before the trial begins, that the Court considers this prayer. Interference of the Court during the course of investigation is ordinarily not appreciated unless there are compelling circumstances to do so. There is no statutory right to the accused to claim identification parade, it is only by way of prudence that Investigating Officer is expected to concede to the prayer of the accused so that a correct picture may come before the Court.

40. In the case of *Abhinandan Jha and Others Vs. Dinesh Mishra*, a question arose as to whether the Magistrate can direct the police to file a charge sheet when they have sent a Final Report u/s 169 of the Code of Criminal Procedure, and their Lordships of the Supreme Court had an occasion to discuss the function of the Magistrate and the Police and were pleased to observe as under:

The functions of the Magistrate and the police are entirely different, and though the Magistrate may or may not accept the report and take suitable action, according to law, he cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion.

41. In view of the position that investigation under the Code, takes in several aspects and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial and the submission of either a charge sheet, or a final report, is dependent on the nature of the opinion, so formed, their Lordships were pleased to hold that the said opinion by the Police, is the final step in the investigation, and that final step is to be taken only by the Police and by no other authority.

42. In the case of *The State Vs. Raghuraj Singh*, it was observed that, test identification parade is not the substantive piece of evidence and consequently identification proceedings are not subject to directions by a Court.

43. From the various authorities on the point it is evident that interference by the Court in investigation and direction in that regard, are ordinarily not appreciated when the consensus of opinion is that Courts should refrain from setting up the line of investigation, this Court, in my humble opinion, should be reluctant to issue direction to the Magistrate to adopt a particular procedure and control or supervise the investigation, in case the petitioners surrender before that Court.

44. Now I will discuss the pertinent question in the case as to whether this Court, in exercise of its inherent jurisdiction u/s 482 of the Code of Criminal Procedure can and should direct the Investigating Officer to follow a particular line of action in case the petitioners surrender and are entrusted to the Police.

45. In order to arrive at a decision on the point, various authorities referred to, from both the sides throwing light on the scope of inherent powers of the Court requires discussion.

46. The learned Counsel for the petitioners submitted that the general proposition of law relating to the inherent jurisdiction of High Court should be kept in view in all matters where the inherent jurisdiction is invoked. Reliance is placed on the principle laid down in the case of Pampapathy Vs. State of Mysore, The question was whether in the absence of any specific provision for cancellation of bail granted u/s 426 of the Code of Criminal Procedure (old) the provisions of Section 561-A of the Code of Criminal Procedure (old) can be pressed into service. Their Lordships replied the question in affirmative.

47. The prayer in the case on hand is of peculiar type. Here the interference is sought for, for directing the Investigation Officer to follow a particular line of investigation and therefore, the authorities dealing with the jurisdiction of the Court to have a say at the investigation stage require attention and consideration.

48. The basic authority on the point on which the learned Public Prosecutor mainly and the learned Counsel for the petitioners to some extent, have placed reliance is the case of AIR 1945 18 (Privy Council) Their Lordships of the Privy Council were pleased to make the following observations:

It is not correct to say that Section 561-A has given increased powers to the Court which it did not possess before that section was enacted, the section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Criminal Procedure Code.

49. In that case while discussing the implications as the statutory rights of the Investigating Officer u/s 154 and 156 of the Code of Criminal Procedure, their Lordships laid down a guide line for the exercise of the inherent powers u/s 561-A of the Code of Criminal Procedure (old) (analogous to the present Section 482). The principle enunciated in the case, on which the learned Counsel for the petitioners have placed reliance is as under:

No doubt if no cognizable offence is disclosed and still more if no offence of any kind is disclosed the police would have no authority to undertake an investigation and if they do so the High Court may interfere u/s 561-A.

50. These observations justify the interference by the High Court only in extreme type of cases.

51. In almost all the subsequent cases on the point decided by the High Courts and the Supreme Court, the principles enunciated by the Privy Council relating to the exercise of inherent powers at the stage of investigation were consistently followed.

52. In the case of R.P. Kapur v. State of Punjab AIR 1963 SC 866 their Lordships propounded the following principle:

The inherent power of High Court u/s 561-A Criminal P.C. cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

53. Their Lordships of the Supreme Court in the case of State of West Bengal Vs. S.N. Basak, did not appreciate an idea of interference by the Court when no case was pending before it and were pleased to lay down the following principle:

Section 154 deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power u/s 439 Or under the inherent power of the Court u/s 561-A when there was no case pending at the time excepting that the person against whom the investigation has started had appeared before the Court, had surrendered and had been admitted to bail.

54. The Privy Council authority was also relied in the case of M. Sejappa Madimallappa v. State of Mysore and Anr. AIR 1966 Mys. 152 In that case during the progress of the investigation the petition was filed for an order stopping the investigation and forbidding its continuance. According to their Lordships the exercise of inherent powers by the High Court to secure the ends of justice would be necessary only when there is a commencement of an investigation without the requisite authority.

55. In the case of Kurukshetra University and Another Vs. State of Haryana and Another, a question of quashing of the F.I.R. in exercise of the inherent powers u/s 482 came for consideration before their Lordships and in view of the facts and circumstances of the case reversing the judgment of the Punjab and Haryana High Court, their Lordships were pleased to hold as under:

Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Thus, the High Court in exercise of inherent powers u/s 482 Cr.P.C. cannot quash a first information report, more so when the police had not even commenced the investigation and no proceeding at all is pending in any Court in pursuance of the said F.I.R..

56. The question about the interference at the investigation stage came up for consideration before this Court in the case of Jiwat Ram and Another Vs. The State of Rajasthan and Another, His Lordship placing reliance on the various authorities on the point did not approve the idea of interference by the High Court when the matter was under investigation by the Police. In view of the facts and circumstances of that case, his Lordships refused to interfere with the investigation and considered the application u/s 482 of the Code of Criminal Procedure as premature and incompetent.

57. The learned Counsel for the petitioners have placed reliance on the following observations in that case to substantiate the arguments that this Court has expressed the opinion that such an interference may be justified in certain cases. The relevant portion referred to is as under:

However, the Court possesses adequate powers to see that no vexatious or false criminal proceedings are launched against any individual. The Court under such circumstances shall not hesitate to exercise its inherent powers if such facts are brought to the notice of the Court at a proper stage. Prosecution of an individual cannot be permitted in false and vexatious cases, and especially at the instance of the persons who are entrusted with the task of investigation under the statute.

58. There cannot be two opinions on the point that if the investigating agencies do not act according to the statutory provisions or in the very nature of things it is evident that the investigation is launched simply to harass the suspects in vexatious proceedings, the hands of the courts are not tight and the inherent powers of the Court can and should be invoked and relief be given to the innocent person. At the same time it is also to be kept in view that there cannot be any hard and fast rule to be followed in every case. What the Court should find out is whether, in the given circumstances of the case, *ex facie* no cognizable offence is made out and there is abuse of the process of law by the investigating agency, creating an unsafe position for the suspects. If it is so, then the Court should not hesitate to come to the rescue of the petitioners by pressing into service the inherent powers. With this principle in mind, I now turn to the available facts and circumstances of the case on hand to see whether any interference by this Court at the investigation stage is warranted.

59. In order to establish that this is a case calling for an interference by this Court in the investigation, in exercise of its inherent powers, the learned Counsel for the petitioners have made up two grounds. Firstly, the alleged ill treatment, suffered by the five accused at the hands of the investigating agency after their arrest, and, secondly, the failure of the Investigating Officer to discharge his duty in a fair, impartial and straight forward way.

60. So far as the first ground is concerned, I have entered into an elaborate discussion and arrived at a conclusion that record does not indicate any undesirable behaviour of the Investigating Officer with the five accused. Regarding the second point, the learned Counsel for the petitioners referred to

the principle enunciated in the case of Jamuna Chaudhary and Others Vs. State of Bihar, where in their Lordships were pleased to enunciate the following principle:

The duty of the Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real untarnished truth.

61. There cannot be two opinions on the point that investigation should be fair to the accused so that innocent persons may not be involved in a false case and suffer a vexatious trial. Reference has also been made by the learned Counsel for the petitioners to the observations of the learned Sessions Judge and the learned Judge of this Court while deciding the bail applications filed by the five accused u/s 439 of the Code of Criminal Procedure. Some irregularities in the maintenance of the police diary have of course been pointed by the learned Judge of this Court, but despite that his Lordship was reluctant to interfere in investigation by setting those accused at liberty.

62. If irregularities are committed by the Investigating Officer, the accused may legitimately claim the benefit of appropriate time but this is not the stage for this Court to take a serious note of those irregularities if they do not cut at the root of the matter. It is also to be observed that if the Investigating Officer fails in his duty to be vigilant to bring the relevant material on record, prosecution is bound to face the consequences and may lose the case. But in case the Investigating Officer does not desire to follow a particular line of action as desired by the accused, then there is no illegality in the matter and as such this Court should not act as a supervisory body on the pretext of protecting a person from illegal and vexatious trial. The argument of the learned Counsel for the petitioners is that the refusal of the Investigating Officer to get the test identification parade held for the witnesses who had named the petitioners will cut at the root of the case, because, in case this request of the accused is conceded and those witnesses fail to identify them at the test identification parade, there would remain no case against them and they would be saved from a vexatious trial causing harassment to them. The argument though attractive is not appealing. The reason is that apart from the witnesses who had named the petitioners there are others also claiming to identify the rioters, on seeing them, and the learned Public Prosecutor has submitted that identification parade would of course be held for those witnesses. It is also pertinent to note that the Investigating Officer in his written reply has not totally denied to hold any such test identification parade for all the injured persons rather has objected the same at this stage. The learned Public Prosecutor has stated that it will all depend on the investigation from the accused after their arrest and the position at that time cannot be anticipated. Be it as it may, this is not a case where no cognizable offence is disclosed and the efforts of the police to arrest the petitioners are merely on account of the whim and caprice of the Investigating Officer. In the authorities on the point cited above, the interference by the High Court in exercise of its

inherent powers was considered necessary and held justiciable only in cases where ex facie there was reason to hold that without there being any material for holding that a cognizable offence has been committed in the way prosecution alleges, accused were going to be harassed.

63. In the facts and circumstances of the case, the police having a statutory right under Sections 154 and 156 to investigate the mere apprehension of the petitioners that they would not be placed for identification at a parade by all the witnesses which according to them would prejudice their case, does not amount to a compelling circumstance to warrant interference by this Court at this stage. But I hope the Investigating Officer shall keep in view the principles enunciated, and observations made, in the various cases referred to above and will not give any occasion to the accused petitioners to doubt or challenge the fairness of the investigation, or run the risk of damage to the prosecution case, by refusing any reasonable prayer made by the petitioners at appropriate time.

64. As a result of above discussion, the petition under Sections 438 and 482 of the Code of Criminal Procedure is dismissed.