

(1988) 08 AHC CK 0001

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No's. 5664, 5939, 5940, 5977, 5985 and 6024 of 1988 & Criminal Miscellaneous Application No's. 5939, 5940, 5977, 5985, 5664 and 6024 of 1988

Ram Lal Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 102, 154, 155, 156, 157
Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 182, 302, 323, 34, 342
Police Act, 1861 — Section 23, 24, 25
Uttar Pradesh Police Regulations, 1948 — Regulation 104, 106, 108, 110, 111

Citation : (1988) 12 ACR 676

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Judgement

Palok Basu, J.—Being overawed by the unanimous verdict of five Hon"ble Judges in Prashant Gaur v. State, 1988 AWC 828 (for short the FBD). I must confess, on initial hesitation to write this order did develop in me, but by now, it stands completely removed by my judicial conscience. With sincere regrets, I feel duty bound to voice my humble disagreement with the answers and the reasons for the same as set out in the FBD after hearing arguments from learned Advocates which I am putting down in the following paragraphs as succinctly as I can, of course, alongwith my own thoughts here and there.

2. It so happened that in Criminal Misc. Application No. 5939 of 1988, Ram Lal Yadav v. State of U.P., challenge has been extended to the investigation emanating from a FIR lodged on 3-6-88 u/s 3/7 E.C. Act at P.S. Bhadohi, district Varanasi by the brick kiln owners saying that U.P. Coal Control Order was not applicable on them and as such no offence was disclosed even if the entire allegations in the FIR are taken as correct, hence the investigation including the threat of arrest of applicant should be quashed and prevented. When Sri N.D.

Shukla, Advocate, made his arguments, Sri P.S. Adhikari the learned AGA raised an objection to which I shall advert shortly hereafter. With this case, Criminal Misc. Application No. 5977 of 1988 Hubban v. State of U.P., Criminal Misc. Application No. 6024 of 1988 Sahdeo v. State, are already connected in view of orders of different Single Judges. Criminal Misc. Case No. 5940 of 1988 Radhoram Singh v. State and Criminal Misc. Application No. 5664 of 1988 Mahesh Chandra Goel v. State of U.P., being matters in which similar questions of law have been raised, were heard together. In Criminal Misc. Application No. 7967 of 1988 Raziuddin v. State of U.P., Mr. S.P. Singh Raghav, argued that when the admitted case in the FIR lodged u/s 406 IPC at PS Kotwali Nagar, district Bulandshahar by one partner was that another partner took away the truck, purchased by both in partnership, and the same was standing at the shop of the other who was not willing to return it, there was no question of any offence being disclosed and hence investigation including threat of arrest should be quashed and stopped.

3. As soon as this argument was advanced, Mr. P.S. Adhikari raised a preliminary objection after hearing which I had passed the following order in all these cases on the dates those came up before me:

In these cases a controversy of vital importance has arisen. While the learned Counsel for the applicant in each case has tried to argue that since no offence is made out from a perusal of the FIR even if the facts stated therein are admitted as they are, the question is can this Court interfere unless some investigation for "reasonable length of time" goes on and material is collected ? Mr. Adhikari appearing for the State relying upon the Full Bench Case of "Prasbant Gaur" vehemently argues that unless reasonable length of time elapses between the lodging of FIR and the accused's approaching this Court u/s 482 Code of Criminal Procedure or 226 of the Constitution (reliance is placed on the case of AIR 1945 18 (Privy Council) , and the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, no relief by interfering during investigation can be granted. (Necessary interim orders were passed on the order sheets and each case noted above has been directed by me to be put up on 26th September 1988).

4. To begin with, let us see the questions formulated by learned Single Judge, initially ordering:

Office is directed to place the papers before the Hon"ble the Acting Chief Justice, for constitution of a Bench of not less than 5 Judges for answering the reference.

and the answer given unanimously by the five Hon"ble Judges:

Question No. 1 Answer Whether u/s 482 Investigation into an offence is a statu- Code of Criminal Procedure the High Court has tory function of the police and the inherent powers to interfere superintendence thereof is vested in the with the investigation by State Government. It is only in the the police ? rarest of rare cases, and that too, when it is found by the Court that the FIR and the

investigation over a reasonable length of time, do not disclose the commission of a cognizable offence, or any offence of any kind, that the High Court may, u/s 482 of the Code interfere with the investigation."

Question No. 2 Answer Whether the High Court u/s 482 of the Code, the High Court has powers to stay arrest Court, may not direct the stay of arrest during investigation ? during investigation except for a limited period in case of such exceptional nature as is referred in the preceding paragraphs. Question No. 3 Answer Whether the decision re- In view of our answer to question No. 1 ported in 1987 AWC 404 and 2 question No. 3 does not require lays down a correct proposition to be answered, and hence returned un- position of Law ? answered.

5. During the course of hearing many learned members which I shall take up one by one but before FBD and see what is emerging out of it. For a decision, I have tried to analyse the entire judgment as under:

SI. No. Paragraphs 1. Details of reference and the question etc. 1, 2 and 4 2. Objection to the reference itself by the Advocate General and the decision thereon. 8, 9, 54, 56, 57, 58, 59, 60, 65, 66, 67, 69 and 70. 3. Opinion of the Full Bench on the facts stated in the two FIR's of the two cases referred. 55

4. Puttan Singh's case discussed. 3, 5, 6, 7 and 50 5. History of Section 561 Old Code of Criminal Procedure and 482 of new Code of Criminal Procedure. 10, 11, 12, 13, 25, 26, 27 and 49.

6. Inherent powers of Allahabad High Court and inherent powers of High Courts in general. 34, 35, 36, 37, 38, 39, 40, 41, 42 and 53. 7. Articles 141 and 372 of the Constitution of India, Advocate General's objection that no question of law survives after the decision of the Privy Council and the Supreme Court. 14, 15, 16, 61, 62 and 63.

8. Article 226 is available to challenge investigation. 44, 45, 46 and 47.

9. Both Remedies-writ petition under Article 226 of the Constitution and quashing application u/s 482 Code of Criminal Procedure are available. 48

10. Reasons for coming to the answers. 64 11. Answers to the questions appreciation to the lawyers assistances to the Full Bench refusing leave to appeal etc etc. 67, 68, 71, 73, and 74. 12. Quotations from Privy Council and Supreme Court decisions (a) AIR 1945 18 (Privy Council) --charge sheet had not come. Investigation after lodging FIR was going on....17

(b) AIR 1945 94 (Privy Council) --No power to grant bail u/s 561A when leave to appeal granted by PC after conviction was recorded by HC....38

(c) R.P. Kapur Vs. The State of Punjab, --FIR was challenged but in the meantime charge sheet had come in magistrate's court. Offence disclosed--Non interference.... 18

(d) State of West Bengal Vs. S.N. Basak, --FIR quashed by High Court in exercise

of powers u/s 439/561(A) Code of Criminal Procedure Supreme Court sets aside that order. ...19 and 20

(e) S.N. Sharma Vs. Bipen Kumar Tiwari and Others, --Magistrate can't stop investigation u/s 159 Code of Criminal Procedure If Investigation mala fide, remedy under Article 226 of the Constitution available. ...21, 22 and 23

(f) Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc., --FIR was being investigated. Hence no interference with investigation....24

(g) Jehan Singh Vs. Delhi Administration, --No FIR quashing possible since investigation was going on and no complaint had been filed in court ...28

(h) Kurukshetra University and Another Vs. State of Haryana and Another, --No charge sheet or complaint in Court. High Court quashed, FIR. Supreme Court sets aside that order inherent power not to be used...29

(i) State of Bihar and Another Vs. J.A.C. Saldanha and Others, --Power of High Court to issue directions under Article 226 of the Constitution for using Section 173(8) was considered. High Court's order set aside.

(j) State of West Bengal and Others Vs. Swapan Kumar Guha and Others, --High Court's order quashing FIR and investigation in exercise of powers under Article 226 of the Constitution upheld because no offence was disclosed in FIR.

(k) State of West Bengal and Others Vs. Sampat Lal and Others, --Some directions given by the High Court under Article 226 of the Constitution regarding investigation, set on merits by the Supreme Court.

(l) Ratilal Bhanji's case AIR 1967 SC 1639--High Court's power u/s 561A to cancel bail in bailable offence case granted by Magistrate upheld....42

(m) Lilavati Bai Vs. The State of Bombay, --On principles of "ejusdem generis" where the word "otherwise" has been used in the statute. ...51 and 52

(n) Shri Bhagwan and Another Vs. Ram Chand and Another, --How single Judge should make reference, judicial decorum etc. ...57

(o) 1. Bhagwan Swarup's case If law has been interpreted by Privy 2.AIR 1965 SC 682 Council or Supreme Court, it cannot 3. Kishan Chand's case arise in High Court again. 62 AIR 1965 All (FB) 55 4. Director of Rationing's case, AIR 1960 SC 1355 (I may mention here that only one or two more decisions noted in the FBD is not being referred to by me here separately because they cover one or the other point summarised above and appear to be repetition only).

6. The aforesaid analysis makes it clear that though the reasons for coming to the answers are contained in paragraph 64, the major discussion relates to the history and development of Section 482 Code of Criminal Procedure. In some paragraphs the jurisdiction under Article 226 of the Constitution has also been discussed. It is however notable that while in paragraph 27, the Full Bench has observed:

We may take it, therefore, that the decision of the Privy Council and the Supreme Court had by the year 1973 become part of the law of land and it was this law which was granted legislative approval when Section 482 of the Code came into force.

and again, notwithstanding the aforesaid observation, adverting itself to the problem posed and retrained by itself in the following manner in para 49:

We have now to deal with the question as to whether the powers of High Court, u/s 561A of the Code of 1898 are restricted to matters which have come up before the courts or can be exercised even when the matter is under investigation by the police.

and after proceeding to interpret the words used in 482 Code of Criminal Procedure in para 53 saying:

In our view the words "or otherwise to secure the ends of justice" occurring u/s 482 of the Code has to be read as words of widest amplitude covering many contingencies which are not covered by the preceding clauses of the Section 561A in the Code of 1898 rules the contingencies in which the exercise of powers conferred may be required could not be defined exhaustively and leaving the matter to judicial discretion and determination.

and then ultimately answering:

It is only in the rarest of rare cases, and that too, when it is found by the Court that the First Information Report and the investigation over a reasonable length of time do not disclose....the commission of....any offence of any kind that the High Court may u/s 482 of the Code, interfere with the investigation.

7. The whole discussion, according to me, did not answer the main question which the Full Bench had posed before it. Needless to say, the "question and answer No. 2" is not detaining me here because its birth itself is dependant upon the facts bringing it to such exceptional nature as to be covered with question answer No 1.

8. Moreover, after extensively quoting from the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , the Full Bench preferred to interpret the proposition of the Hon"ble the Chief Justice, towards the end of para 32 in the following manner:

The Privy Council remarks were in the context of High Court's power to interfere with the investigation by the police into a cognizable offence. The limits of that power were circumscribed by their Lordship of the Privy Council but there is an indication, as pointed out by Hon"ble Chief Justice Chandrachud that in certain very special circumstances when the First Information Report not disclosing any cognizable offence, it was possible for the High Court to interfere, on the ground that the police had no jurisdiction to investigate into the offence. If the powers of the High Court could have been totally excluded in proceedings u/s 561A of the

Code of 1898 their Lordships of the Privy Council could have easily said so.

9. But in paragraph 33 the case of Sampat Lal AIR 1985 SC 185 was discussed whereafter it was observed:

It must be remembered that the case had been decided by the High Court under Article 226 of the Constitution and not Section 482 of the Code.

10. I only wish that the Full Bench had drawn the same distinction in Swapan Kumar's case which too was a matter arising out of proceedings under Article 226 of the Constitution of India and not 482 Code of Criminal Procedure.

11. At this place, I must re-emphasize the relevant passage from Nazir Ahmad's case:

The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved u/s 491, Code of Criminal Procedure, to give directions in the nature of habeas corpus. In such case as the present, however, the Court's function begins when a charge is preferred before it and not until then. It has some times been thought that Section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, 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 that Act. 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 for this reason Newsam, J. may well have decided rightly in AIR 1938 Mad 129. But that is not this case.

12. I think, I should point out that in the case reported in AIR 1938 Mad 129 a criminal complaint was already forwarded to the court of Sub-Divisional Magistrate, which had issued process against the accused. Then the accused filed an application before the said Magistrate challenging the issue of process on the ground that at best some civil dispute may be emerging from the complaint and under no circumstances can it be said that any criminal offence is disclosed. The Hon'ble Newsam, J. on those facts had held that no offence stood disclosed and thus proceeded to dismiss the complaint u/s 203 Code of Criminal Procedure. Therefore, as I see it, the Privy Council in Nazir Ahmad's case itself drew the line demarcating investigation into an offence, and, proceedings in the court.

13. With profoundest respect to the FBD, I must state that the first answer is in direct conflict with the Privy Council decision in Nazir Ahmad's case and that of the Supreme Court in R.P. Kapur's case. It is difficult to understand how can police have authority to investigate a "First Information Report" over a

"reasonable length of time" if no offence stands disclosed from the said First Information Report ?

14. The aforesaid discussion reverts me to the beginning of the controversy in my Court. Though Sri. Adhikari initially argued that no relief can be granted unless reasonable time has elapsed between the lodging of the First Information Report and the applicant's approaching this Court u/s 482 Code of Criminal Procedure or Article 226 of the Constitution of India, towards the end of his argument he said that the FBD is only "Explanatory, complementary and supplementary" to the aforesaid Supreme Court and Privy Council decisions. He argues that the word "and" between the words "report" and "the" has to be read disjunctively. And as such I did not hesitate to hear even those Advocates who were not directly involved in the aforesaid petitions but the experience, reputation and legal acumen of some of whom are an asset to this High Court. I am grateful to all of them.

15. Sri. Jagdish Swaroop, Senior Advocate, argued that in the context in which the answer has been given the said word "and" can not be read as "or". His further argument was that if "and" is read as "or" the meaning then flowing from the answer will be propostrous.

16. I have in the paragraphs following taken up some examples when serious complication can arise if the word "and" is interpreted as "or". I am agreeable to accept this argument of Sri. Jagdish Swaroop that the word "and" has to be read conjunctively and Not DISJUNCTIVELY.

17. Sri. P.C. Chaturvedi, Senior Advocate, argued that the answer No. 1 in the FBD can not be read so as to entitling a citizen to approach High Court u/s 482 Code of Criminal Procedure unless all the three contingencies co-exist, i. e. it must be rarest of rare case, the First Information Report should not disclose an offence, and, no material should emerge during investigation for a "reasonable length of time. Sri. Chaturvedi argued further that the Full Bench was not called upon to go into issue of declaring that two remedies are open to a citizen against lodging of an FIR, and consequent investigation. He cited and relied upon Nazir Ahmad's case to stress again that writ remedy may be available so long as no charge-sheet has been forwarded and that 482 may be availed after cognizance is taken on the charge-sheet and proceedings commence in court. According to him, the line of distinction drawn in those cases should and has to be maintained and followed by me and if the FBD holds otherwise, the matter may have to be sent to a larger Bench. I do not see any reason, not to accept these arguments of Sri. Chaturvedi.

18. Sri. S.D.N. Singh, Advocate, argued that the FBD has declared the law on the facts of the two First Information Reports sent for consideration by the learned Single Judge and, therefore, its scope should be confined to those facts or those types of facts in different cases. I do not find much force in this argument.

19. Shri S.P. Singh Raghav, Advocate, further argued that the word "and"

existing between the words "report" and "the" has to be read as "and". He said that the "reasonable length of time" and "rarest of rare case" having not been defined, High Court may have to interfere in a case where even clear cut offence is disclosed in the First Information Report yet for some reason much relevant material could not be collected by the Investigating Officer within a period which the High Court interprets as "Reasonable". This according to Mr. Raghav, will be nullifying powers of the Investigating Officer to investigate the matter for what is reasonable period according to the I.O. and the circumstances of the case. He further argued that two forums have been left open to a litigant and, therefore, to quote his words, "Open Choice To Gamble" is now available to an unscrupulous litigant who might misuse the same (another limb of this later argument I will take up towards the end). He has further argued, and rightly according to me, that "reasonable length of time" can and should refer to the final making up of mind of the Investigating Officer whether he is going to file a charge-sheet or a Final Report. It is only the I.O. who has to decide what view has to be taken regarding a material/circumstance/evidence which is present today, gets erased/improbabilised tomorrow, and, by still further material/circumstance/evidence gets re-created or re-established day-after. Time and material has got to be decided and fixed primarily by the I.O. Therefore, Mr. Raghav argues that the material has to be the Final Material which Finally comes to the I.O. On the basis of which he finally makes up his mind. Before that stage comes, reasonable length of time can not be determined by the Court. The motivating factors for taking one action or the other can never be the same as any Court may try to impose by its substituted-thinking. On examining the provisions of law as interpreted by the decisions referred to above, I am persuaded to accept these arguments.

20. Sri. N.D. Shukla, Sri. S.G. Husnain, Sri. P.N. Tripathi and Sri. G.K. Khanna, Advocates, appearing in one or the other case, have adopted and supplemented these arguments.

21. Sri. Keshav Sahai, Advocate has also argued that "and" cannot be read as "or" hence he says that he is at a loss to understand the true impact of the FBD.

22. Sri. V.P. Goel, Advocate, argued that normally a Single Judge is bound by the Full Bench Decision but since the answers appear contrary to the Privy Council and Supreme Court Decisions, the FBD thus is not declaring "law" hence it may be treated as "obiter-dictum", not binding upon this Court.

23. Sri. V.C. Tewari, Advocate, initially tried to draw a distinction between two types of First Information Reports: (1) Wholesome, and, (2) Perfunctory. Though he pursued his argument for some time, but on a closer examination of the relevant provision of the law and regulations, he ultimately rullied round the only point that if and when any (FIR) i.e. First Information Report discloses an offence (for the purposes of our discussion we are omitting the distinction between cognizable and non-cognizable offence for the time being), it is statutoy duty of the police to investigate the matter in accordance with the provisions contained

in Chapter XII of the Code of Criminal Procedure beginning with Section 154 and ending with Section 176.

24. Sri. Jagdish Singh Sengar Advocate, who had argued the matter before the Full Bench argued before me that firstly, answers of the Full Bench should be read in the "Common and practical sense" so much so that where necessary "and" should be read as "and" and where necessary "and" should be read as "or", and once this interpretation was accepted the entire decision of the Full Bench is in accord with all the earlier decisions of the Privy Council and the Supreme Court; and secondly, if the aforesaid method of interpreting the first answer was or could not be accepted, then the words "First Information Report" should be interpreted "loosely" because, according to Sri. Sengar, the said word has been used in the first answer of the FBD itself in the "loose sense". The argument of Sri. Sengar, to me, does not appear to be a logical one and lacks merits. Further discussions on this aspect will reappear soon hereafter.

25. Sri. Adhikari elaborated his argument with reference to paragraphs in the FBD. Sri. T.N. Sinha, learned Addl. Government Advocate, frankly stated before the Court that since his capacity while appearing before the Full Bench has changed and now he is to defend the State, he may be excused from assisting the Court. His embarrassment was indeed appreciable. Sri. Jitendra Kumar, learned Government Advocate, took the stand taken by Sri. Adhikari and went further to argue that in view of the FBD, it is not possible to interfere just because no offence is disclosed from the FIR. He also relied upon the case of Nazir Ahmad, R.K. Kapur and Jahan Singh in order to substantiate his submissions that the FBD is not correctly decided.

26. It may be relevant to mention here that under the law there can not be two kinds of FIR. A report u/s 154 Code of Criminal Procedure has to be an FIR. Once a report is registered as a First Information Report, and an offence is disclosed, the Code of Criminal Procedure confers statutory right upon the police to investigate. If such a report is taken down and no offence is disclosed, the right to investigate does not flow to the police. What "investigation" is stand concluded by Supreme Court's decision in H.N. Rishbud and Inder Singh Vs. The State of Delhi, and it also stands settled that there can be "pre-investigation enquiry" by police vide Bhagwat Kishore's case AIR 1970 SC 221.

27. If a look is had at Regulations 104 to 123 of the U.P. Police Regulations, the duties of an investigating officer which he has to perform in accordance with mandate contained in Section 154 to 176 Code of Criminal Procedure are more than clear. Then, there is a register to be maintained at every police station known as "General Diary" of the said police station. Reference to the General Diary and their maintenance may be found in Chapter 22 of the U.P. Police Regulations. Regulation No. 294 and 295 indicate as to what are to be necessarily included or entered in the General Diary. A close scrutiny of the various Clauses of Regulation 295 itself shows that Clause 13 refers to report of offences while Clause 14 refers to reports of all occurrences. I must hasten to

add at this very place that what is an offence is obviously an occurrence but all occurrences may not be offences. And, once this distinction is borne in mind there is no question of confusing as to what is a "First Information Report" i.e. report about an offence and what is report i.e. information about an occurrence. In this background, when " First Information Report " is referred to in the first answer by the Full Bench, I can not and shall not read it as referring to an information about an occurrence, for the simple reason that right of investigation will flow only when a First Information Report is lodged disclosing an offence and not otherwise.

28. The U.P. Police Regulations has regulatory effect on the entire police force in the State whose regulations as well as the provisions contained in the Code of Criminal Procedure regulate the manner of investigation. In this connection, I must refer to another aspect what should happen when only an occurrence is reported at Police Station? Obviously an entry is made in the General Diary. Thereafter, according to the argument of Sri. P.C. Chaturvedi, inquiry is conducted which is known in the police parlance as " Dariyaft Hal". Though he did not point out any statutory provision for such an action, I may refer incidently to the "Police Act 1861" Section 23 of the said Act provides as under:

23, Duties of Police Officer--It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace to prevent the commission of offence; and public nuisance; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned in this section without a warrant, to enter and inspect any drinking shop gaming house or other place of resort of loose and disorderly characters.

29. The said section if read alongwith Sections 24, 25 and the other allied provisions, make it amply clear that "power of inquiry" is vested in the police force by law, if such a situation arises even though no FIR disclosing any offence has come to be lodged. Needless to say, after material is collected indicating commission of the offence, an entry to that effect shall be made in the "Chik-Register" of the case and the investigation will then commence.

30. Reverting back once again to the original controversy I must add at once that Section 482 Code of Criminal Procedure itself indicates one thing very explicitly. The section begins with the words "notwithstanding" anything in this Code; the question is:

1. When will the Code come into play ?
2. To whom will the Code apply ?

31. We have to be very clear on these two aspects before we go to study the occasions or situations when the " saving powers " contained in Section 482

Code of Criminal Procedure may be applicable and are invoked. There has got to be a starting point for the Code to apply to the citizen, the accused, the informant, the investigating agency, the Magistracy, the Sessions Judge, the High Court, the Supreme Court. The said " Code " remains a closed book for the investigating agency until and unless requirements of 154, 156, 157, of Code of Criminal Procedure are fulfilled. Therefore, how can any matter emerging from a supposed action under the Code, even though the Code remains a closed book be agitated u/s 482 Code of Criminal Procedure when the Code never opened up. Lodging of a First Information Report not disclosing any offence may itself amount to an illegal action and the individual right of liberty of a citizen may stand affected and, therefore, in Nazir Ahmad's case it was emphasized that it is only 491 Code of Criminal Procedure of 1898 that may be invoked in such a case for suitable redressal of the grievances. Clause (A) of Sub-section (1) of Section 491 of Code of Criminal Procedure of 1898 provided that any High Court may, direct that a person within the limits of its appellate Criminal Jurisdiction be brought up before the Court to be dealt with according to law while Clauses B to F provide for release etc. of a person in custody or detention. In other words, if any person was under the immediate threat of arrest because of illegal investigation into a First Information Report not disclosing any offence, he could be given a suitable relief u/s 491 of the Old Code. Much can be found out and said about the history of Section 491 Code of Criminal Procedure etc. but for the time being I am resisting my temptations to go into those issues. In any case, in my humble opinion, Section 482 Code of Criminal Procedure is not available to thwart investigation in view of the law laid down by Privy Council in Nazir Ahmad's case.

32. I must further write that two other decisions of the Hon"ble Supreme Court, one of which had come in existence much before the judgment in F.B.D." was pronounced on 21-5-1988, and the other one delivered later, have gone unnoticed in the F.B.D. Those are:

1. 1987 SCC (Supp) 89, State of Punjab v. Dharam Singh:

The Punjab High Court had quashed a First Information Report and all proceedings emanating therefrom exercising the powers u/s 482 Code of Criminal Procedure. The Supreme Court held as under:

The order of the High Court cannot be sustained because the police authorities are enjoined by law to register a case and conduct investigation whenever information is laid regarding the commission of cognizable offence. As such the quashing of a First Information Report will amount to restraining the police from performing the duties enjoined upon them by law.

The additional criticism of the Supreme Court was that even if the High Court had written in the judgment that it was not unaware of " this position " yet ":

What the High Court has done is to go far beyond the contents of First Information Report and enter into a discussion on the merits of the case before

the investigation agency had conducted investigation and collected evidence

Ultimately the Supreme Court directed the restoration of the First Information Report to the file and further investigation thereon in accordance with law.

2. Kashmeri Devi Vs. Delhi Administration and Another, .

Kashmiri's husband Gopiram and Sudesh Kumar were beaten by the police people on 22/23-8-86. Gopiram died at the Police Station. Many people including Shankar, brother of Gopiram, surrounded the police station on 23-8-86. Shankar and some others were arrested for rioting, etc. Sudesh Kumar filed a complaint with police station Patel Nagar, alleging that Gopiram died as a result of beating by police. Several other allegations were made in the report which was registered u/s 302/342 IPC later converted into 304 IPC. Kashmiri Devi filed a writ petition under Article 226 of the Constitution before Delhi High Court for transferring investigation of the case to Central Bureau of investigation. The writ was dismissed hence the said appeal before the Supreme Court. At the time of hearing of this appeal (which according to me was continuation of the writ petition) it was brought to the notice that a charge-sheet has been filed in the meantime u/s 323/34 IPC. The Supreme Court was of the view that in the said case it was necessary to get a fresh investigation made through an independent authority and observed ultimately:

We direct the trial court before whom the chargesheet has been submitted to exercise its powers u/s 173(8) Code of Criminal Procedure to direct the Central Bureau of Investigation for proper and thorough investigation of the cases.

33. The important point, therefore, is that the Hon''ble Supreme Court did not like to continue the writ proceedings any further after the submission of the chargesheet but commanded the trial court to proceed according to its powers u/s 173(8). Thus, this case is again an authority for the proposition that even though writ proceedings may have been appropriately invoked before the chargesheet had come, it should normally cease to operate when the charge sheet''is filed in the competent Court thus invoking the provisions of the Criminal Procedure Code.

34. Before I reach the end of this order, two further points require mention.

35. The first point is that in the case of Kurukshetra University (supra), Hon''ble Mr. Justice Chandrachud (as his Lordship then was) used the expression ''rarest of rare cases'' while laying down the contingencies necessitating exercise of powers u/s 482 Code of Criminal Procedure. Shri Jitendra Kumar has rightly argued that the Hon''ble Judge had first disapproved the quashing of the FIR u/s 482 Code of Criminal Procedure in the given facts of that case and then proceeded to lay down the condition of ''rarest of rare cases'' to be followed in exercising the said power. Shri Jitendra Kumar has rightly interpreted the said Ruling, I agree with him. He has further drawn my attention to the case reported in 1988 AWC page 938 in which Hon''ble Girdhar Malviya J. has interpreted the

FBD as if first part of the first answer in the FBD can be read disjunctively. It has been argued that on the correct reading of the answer, disjunctive reading of the three contingencies is not permissible. For the reasons given above and my view that in the answer the word "and" cannot be read as "or", I genuinely regret, I can not accept the view of Hon"ble Malviya, J.

36. Left to myself, I would like to deduce only one guideline from the decisions of the Privy Council and the Supreme Court referred to above. Their Lordships never posed consciously the direct query "whether High Courts have inherent powers u/s 482 Code of Criminal Procedure to quash FIR or interfere with investigation thereof. Rather, their Lordships have always observed "High Courts should not in the exercise of inherent powers stop or interfere with the statutory rights of the police to investigate an offence". I would not hazard putting down reasons why this course has been adopted by their Lordships, because with great respect, I find more than enough wisdom behind it. "Thus, in view of the aforesaid "law" laid down by their Lordships I would refrain myself from being inquisitive about the extent of the powers u/s 482 when it is more than known that the said power would normally, ordinarily and generally not be exercised to thwart investigation into an offence.

37. An additional argument of Shri S.P.S Raghav, which has appealed to me, may be noted here. He says that when the admitted legal position is that after filing of chargesheet accused can come u/s 482 for its quashing, then how is it that before filing of the chargesheet he has two remedies in the same High Court, one for quashing u/s 482 and another under Article 226 of the Constitution of India ? According to him simultaneous remedies are not open in view of the observations of the Privy Council in Khwaja Nazir Ahmad's case.

38. If 561(A) Code of Criminal Procedure 1898 is taken to be an amendment bringing in remedial measures, it may be beneficial to quote a para from "Remedial Statutes" from American Jurisprudence 2nd Edition-Vol. 73 (1974 Pub.) Paragraph 279 (last para):

Every portion of a remedial act should be given its proper effect. It is particularly true of procedural statutes that they should be construed, if possible, so as to preserve the essentials of harmony and consistency in the judicial system, and at the same time do away with anachronistic rules which give rise to the need of the new statute.

39. The other point is that I must refer to Vinod Kumar Sethi and Others Vs. State of Punjab and Another, . Hon"ble Sandhwalia C.J. delivering the judgment held that an FIR and investigations therein can be quashed in any of the four contingencies (i). No suspicion of offence is disclosed from the FIR (ii). Materials collected during investigation do not disclose offence (iii). Police abuses powers during investigation and (iv). FIR or investigation raise suspicion of offence but investigation is malafide. (See para 20). Thus crossing the "procedural hurdle", Hon"ble Sandhwalia C.J. proceeded to discuss the merits of the case and

quashed the FIR on facts. (See para 64). While reading para 18 of the said judgment I find that the prohibitory-guidelines in S.N. Sbarma's case (supra) have been noted. But in the same para, the effect of those observations have been as if negative by the Supreme Court's observations in Munnu- swamy's case (reported in State of Karnataka Vs. L. Muniswamy and Others, . In fact, the reality is just the other way round. In Munnuswamy's case, the accused were trying to claim discharge after passing of a committal order by a Magistrate. Under those circumstances the use of inherent powers to the accused's benefit was suggested so that interests of justice was safeguarded. Thus, with great respect, none of the observations of the Supreme Court were means to apply in Vinod Kumar's case. However, in another case from Punjab and Haryana, reported in Pratibha Rani Vs. Suraj Kumar and Another, , the Supreme Court has overruled Vinod Kumar's case in so far as it related to the merits of the case resulting in quashing of the FIR (See para 39). Pratibha Rani's appeal was accepted, the High Court's judgment quashing the complaint of Pratibha Rani was set aside and the Magistrate was directed to proceed with the complaint. Unfortunately, these three decisions were also not apparently placed before the Full Bench.

40. According to my understanding of the situation, Vinod Kumar's case stands overruled on facts as well as on the questions of law if we make a combined reading of the two cases decided by the Supreme Court i.e. Dharam Singh's case (supra) and Pratibha Rani's case (supra).

41. Incidentally I might mention that inspite of my best search, I have not been able to lay my hands upon any reported decision (before the year 1982-83) either of the Supreme Court or of any High Court when FIR may have been quashed or investigation may have been interfered with by any High Court in exercise of the powers u/s 561A of Code of Criminal Procedure 1898 or 482 Code of Criminal Procedure of 1973.

42. As to what can be "reasonable time" for finding material after investigation has commenced, Shri S.K. Agarwala and Shri Rajul Bhargava, advocates have relied upon the time limits prescribed for different actions as provided in Sections 54, 102 and 167 Code of Criminal Procedure. Those sections and provisions have no connection with the problem we are facing and hence no assistance can be had from those provisions. I have found no provision within which an investigating officer may be required to file his report whether chargesheet or final report. As our experience goes, we have seen chargesheet coming years after the beginning of the investigation at the lodging of the FIR.

43. Another argument raised was that if an application u/s 482 Code of Criminal Procedure is quashed on the ground stated in the Full Bench, can a prosecution u/s 182 IPC be initiated against the informant ? I would have loved to go into this question but for the purposes of the present order it does not appear necessary.

44. In view of the aforesaid discussions and the reasons given above, I submit

with prodoundest respect that the FBD in Prashant Gaur's case requires reconsideration. I, therefore, venture to refer the following three questions for consideration by a larger Bench which of course, shall be at liberty to reframe the questions or the question if it so desires:

1. Are the answers to the questions Nos. 1 and 2 given by the Full Bench and the reasons for recording those answers, in accord with the law laid down by the Hon"ble Supreme Court and the Privy Council ?

2. If the answer to the above question is in the affirmative, then what is the correct answer to the questions posed before the FBD ?

3. If no answer is thought necessary for any reason to the question No. 2, above, then the correct legal position with reference to Puttan Singh's case may be laid down. (Reported in 1987 AWC 404)

45. The office will place the papers of these cases before the Hon"ble the Chief Justice for suitable orders. I may invite the attention of the Hon"ble the Chief Justice that the matter is of utmost importance and urgency and, if possible, the decision on this reference order may be obtained as expeditiously as possible.