

(2025) 06 OHC CK 0938
In the Orissa High Court
Case No : CRLMC No. 201 Of 2025

**State Of Odisha, Represented Through Its Secretary, Home Department,
Bhubaneswar**

Date of Decision : 19-06-2025

Acts Referred:

Constitution of India, 1950 — Article 21, 32, 226
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 193(9), 528
Code of Criminal Procedure, 1973 — Section 173(2), 482
Indian Penal Code, 1860 — Section 34, 166A(d), 217, 408, 506
Information Technology Act, 2000 — Section 66C, 66D

Citation : (2025) 06 OHC CK 0938

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : Dr. Menaka Guruswamy, Tirth Kumar Sahu, Sarita Moharana, S.N. Biswal, D.P. Nanda, Biswajit Nayak

Final Decision : Disposed Of

Judgement

Savitri Ratho, J

1. This CRLMC has been filed with the following prayer:-

"Therefore, under the facts and circumstances as narrated above, this Hon'ble Court may graciously be pleased to issue notice to the Opposite Parties and after hearing the parties be pleased to quash the impugned Order dated 05.10.2024 passed by the Ld. S.D.J.M., Talcher in G.R. Case No. 1198 of 2024 and may transfer of investigation of the case bearing F.I.R. No. 641, dated 06.08.2024, registered at Talcher P.S., District - Angul, under Section 408, 506, 34 of the I.P.C. read with Section 66C, 66D of the I.T. Act, to Economic Offences Wing, Police Station, Bhubaneswar, District - Khordha, Odisha, to secure the ends of justice and to ensure fair, transparent and judicious investigation of the complaint made by the Complainant / Petitioner, and further be pleased to pass any other order or orders as deemed fit and proper; And for this act of kindness, the Petitioner shall be duty-bound and shall ever pray."

BRIEF FACTS

2. On 06.08.2024 the Petitioner filed an FIR against opposite party No. 5 - Akhil Prasad Mishra who was working as a computerist and accountant in his office had misappropriated a lot of money. On the basis of his complaint, Talcher P.S. Case No. 641 of 2024 Under Sections 408 / 506 / 34 of I.P.C. was registered against opposite party No.5 Akhil Prasad Mishra on 06.08.2024, the same day. This corresponds to G.R. Case No. 1198 of 2024 filed before the learned S.D.J.M., Talcher.

ALLEGATIONS IN THE FIR

3. The informant Krupasindhu Gahan is the Proprietor of Maa Santoshi Transporter. The accused was working as computerist and accountant in his Office since 2018. He used to receive cheques and withdraw money from office and used the software password, OTP, and server of the office. Using his personal laptop, he illegally transferred approximately Rs 1 crore from the four Federal Bank accounts of the informant bearing Account numbers -19300200001959, 2544, 717, and 3328, into his own accounts bearing Account numbers 20229300267, 5010033095, 20229300 and also to his wife's account bearing Account number 3784411444 in a phased manner. Akhil Prasad Mishra, his wife and 11-year-old son, had been staying in the house of the informant. On 04.08.2024, getting some information that his illegal activities had been discovered, he left with his family and returned alone to the office. He confessed his guilt that he did all those frauds and promised to repay the misappropriated amount gradually. But latter, opposite party No.6, his wife threatened the informant's wife, Jayanti Gahan, over phone stating that her husband would send them to jail. It was stated in the FIR that as Akhil Prasad Mishra had good knowledge about computers, he used his laptop and by surreptitiously utilized the password, server, LTI and Software of the office. If an enquiry is done, the total amount of money taken from the accounts of the informant and transferred to his accounts would be known. Both husband and wife have conjointly cheated and misappropriated the money and threatened to kill the informant and destroy the entire database of the computer. He has utilized the misappropriated money for purchasing land, flat and invested in online share market. He had taken a sum of Rs. 15,00,000/- in cash from wife of the informant over a period of time, under the pretext of being used for official expenses.

4. Aggrieved by the nature and pace of investigation, an application was filed by the petitioner – informant before the learned Magistrate to monitor the investigation of the case and direct the investigating officer to apprehend the absconding co-accused Tapaswini Mohapatra and to hold proper investigation by examining all the account holders who were not entitled to any amount, but had been paid money by the accused by misutilising his entrusted position as the accountant from the account of the informant and subsequently crediting the amount to the accounts of the accused as per Annexure No. A to D and to search the money trail in an expeditious manner and to ascertain the exact quantum of

misappropriation and in case of failure of the Investigating Officer to carry out such direction, make appropriate recommendation for disciplinary action against the erring police officials under Section 217 and 166-A(b) of the IPC.

IMPUGNED ORDER

5. The application was disposed of on 05.10.2024 by the learned S.D.J.M., Talcher observing and directing as follows:-

"In view of the above proposition of law and considering the above facts and circumstances, nature and gravity of the offences and the stage of investigation, as huge amount of money has been misappropriated in this case, though this court cannot instruct the investigating officer on how to carry out the investigation but this court can direct to the I.O. to conduct a fair and proper investigation which is required to ascertain the exact quantum of amount of misappropriation and whether any other persons are involved along with the accused Ambika Prasad Mishra. Consequently, this court is inclined to partly allow the prayer made by the petitioner on the petition. Accordingly, the I.O./I.I.C of Talcher P.S is directed to investigate the case in a fair and proper manner expeditiously without any delay in the interest of justice."

SUBMISSION

6. Dr. Menaka Guruswamy, learned Senior Counsel referring to the EOW Circular No.1 of 2019, submitted that in cases involving financial fraud, where the amount is more than one crore, the investigation can be taken up by the EOW. She also submitted that during hearing of the application for cancellation of bail of opposite party no.6-Tapaswini Mohapatra in the Supreme Court in SLP (Crl.) No. 2635 of 2025, the learned counsel for the State had filed a counter affidavit dated 17.03.2025 where it has been stated that the amount involved in the case is more than Two Crore. She submitted that inspite of the order of the learned Magistrate, the investigation is far from satisfactory as it is still not complete and the bank and demat accounts of the accused persons have not been frozen to secure the amount in their accounts which are the proceeds of the crime. She submitted that in view of the modus operandi of the crime and the nature of fraud committed and the amount involved in this is a fit case where investigation should be handed to EOW as it requires specialized investigation which the local police is not capable of doing. She also submits that the main accused Mr. Akhil Prasad Mishra - opposite party No. 5 is still in custody but may be released on bail at any moment. Once he is released on bail, he is likely to withdraw all amounts from his accounts , if not already done , for which it will become difficult to secure the money which he has dishonestly taken from the petitioner. In support of her submission that this was a fit case where investigation should be handed over to the EOW, she relied on:-

I) The CIRCULAR NO.1 OF 2012 and CIRCULAR NO.1 OF 2019 of the EOW; And the decisions of the Supreme Court in the cases of

II) K.V. Rajendran vs. The Superintendent of Police, CBCID South Zone, Chennai & Others reported in (2013) 12 SCC 480 ; and

III) Bharati Tamang vs. Union of India & Others reported in (2013) 15 SCC 578.

7. Mr. D.P. Nanda, learned Senior Counsel appearing for the opposite parties no. 5 and 6 submitted that the power of the Court to transfer the investigation, should not be exercised for the mere asking and should be done only in rare and exceptional cases as such an order will affect the morale of the Investigating Officer and the local police and have other adverse consequences. He also submitted that in the present case, investigation has been partially completed and preliminary charge sheet has been submitted. But further investigation was going on, so the prayer of the petitioner to hand over investigation to the EOW is liable to be rejected . He also relied on the decision of the Supreme Court in the case of –

i) K.V. Rajendran (supra) as well as on the decision of the High Court of Delhi in the case of ii) Renuka Kulkarni & Others vs. State reported in 2025 SCC OnLine Del 764.

8. Supplementing the submissions of the learned Senior Counsel, Mr. Biswajit Nayak, learned counsel appearing on behalf of opposite party nos. 5 and 6 submitted that in the preliminary charge sheet dated 05.10.2024, the amount involved has been stated to be approximately Rs.87 lakhs, which is less than one crore.

COUNTER AFFIDAVIT OF THE STATE GOVT. IN SLP (CRL.) 2635 OF 2025.

9. Perused the counter affidavit of the State filed in SLP (Crl.) No. 2635 of 2025. In paragraph 9 it has been mentioned as follows:-

“That the Investigation is not yet complete, supplementary chargesheet is yet to be filed and as per the Investigation the total amount misappropriated by the husband of Respondent is about Rs. 2 Crore.”

10. As directed by the order dated 06.05.2025, Ms. Sarita Moharana, learned Additional Standing Counsel produces the instructions dated 07.05.2025 of the Superintendent of Police, Economic Offences Wing, Bhubaneswar as well as the instructions dated 07.05.2025 of the Inspector in Charge of Talcher Police Station.

INSTRUCTIONS OF THE S.P., E.O.W

11. The contents of the instructions of the S.P. EOW dated 07.05.2025 are as under: -

“In inviting a kind reference to the CRLMC cited above, instruction on behalf of Superintendent of Police, Economic Offences Wing, CID, Crime Branch, Bhubaneswar is as follows:

Economic Offences Wing, established in February-2012 by the State Govt., is a specialized investigating agency of the State to investigate into Economic

Offences cases. As per EOW Circular No.01/2012, EOW used to take cases involving Rs.1 Crore or more. Again, as per EOW Circular No.01/2019 the Economic Offence cases reported in the district involving more than 20 Lakhs or more will be treated as S.R.

However, the District Ss.P./Range DIGP/IGP can treat Economic Offences cases as SR depending upon the multitude and magnitude of the Economic Offences.

Thus, Economic offence case involving Rs.20 Lakhs or more but less than Rs.1 Crore will be investigated by the District Police by treating the case as S.R.

Further, Talcher PS Case No.641/2024 has not been taken charge by EOW, CID-CB, Bhubaneswar.

Copy of EOW Circular No.01/2012 and 01/2019 are enclosed herewith for kind reference.

In the above facts and circumstances, I am to request Your Goodself to kindly impress upon the Hon'ble Court accordingly."

INSTRUCTIONS OF THE IIC TALCHER POLICE STATION

12. The contents of the report dated 07.05.2025 of the IIC Talcher Police station are extracted below:

"With reference to the subject cited above, I beg to submit that on dated 06.08.2024 informant Krupasindhu Gahan (54), S/O- Lt. Mohan Charan Gahan of village Angarua, PS- Talcher, Dist- Angul reported in writing alleging therein that, he is the proprietor of Maa Santoshi transport. Since 2018 he had appointed one Akhila Prasad Mishra as accountant in his office. Akhila Prasad Mishra was engaged to supervise the company work like payment of employees, labour payment and other official work. As he was well known about computer and belongs to IT field, he had developed a data base software to run the business of the informant. The informant entrusted him with a good faith to use his account numbers as 19305600000717 (Federal Bank), 19300200003328 (Federal Bank), 19300200001959 (Federal Bank), 19300200002544 (Federal Bank) for the purpose of distributing money to his different organizations / Parties. However, the alleged accused misappropriated a cash of more than one corers to his account as well as his wife's account instead of distributing money to different business holders. When the informant came to know the fact and opposed Akhil Kumar Mishra, threatened him to kill in life. Hence the informant reported the matter at PS for taking legal action.

On the written report of Informant Talcher PS case No-641, Dt-06.08.2024, U/S-408/506/34 IPC was registered and entrusted SI Debabrata Nayak for its investigation. Subsequently as the case turned to U/S 408/506/34 IPC r/w section 66 (C)/66 (D) IT Act, IIC Talcher PS took up investigation of the case During investigation it came to light that this is a true case U/ S-408/420/465/468/471/120-B/506 IPC r/w Section 66 (C)/66 (D) IT Act.

During investigation, it was ascertained that Maa Santoshi Transport has Three accounts involved in this case vide A/C No-19305600000717, 19300200003328 and 19300200001959 of Federal Bank. The petitioner Akhil Prasad Mishra has three bank accounts involved in this case vide A/C No-20229300267 of SBI, A/C No-19300100047573 of Federal Bank and A/C No-50100330958999 of HDFC Bank.

Preliminary investigation revealed that an amount of Rs.87,79,231/- has been fraudulently transferred from the company (Maa Santoshi Transport) account to the accounts of accused Akhil Prasad Mishra and Tapaswini Mohapatra directly. During further investigation it came to light that the accused persons have cheated cash of Rs.1,45,36,171/- from the petitioner using other means.

During verification of trading accounts transaction, it came to light that the accused persons have invested sum of Rs. 3,61,26,411/- in share trading Companies like 1- Money Licious Securities Pvt. Ltd, 2- Zerodha Broking, 3-Fyer Securities, 4- Mirae Asset Capital, 5-Finvasia Securities, 6- South Asian Stocks and 7-5 Paisa Capital using different Demat accounts linked with their bank accounts and also withdrawn cash of Rs. 1,93,14,548/- from the said trading accounts.

During verification it was found that an amount of cash of Rs. 6,05,86,660/- has been credited in the bank accounts of accused Akhil Prasad Mishra from the Year-2018 to 2024. Details are given below:-Total credit in SBI A/c vide

A/c No. 20229300267 is Rs. 1,08,95,068/-

Total credit in HDFC A/c

vide A/c No. 50100330958999 is Rs. 4,23,54,559/-

Total credit in Federal A/c-19300100047573

Rs. 73,37,033/-

Total cash of Rs.6,05,86,660/-

And an amount of cash of Rs. 1,14,26,321/- has been credited in the bank accounts of accused Akhil Prasad Mishra from the Year-2018 to 2024. Details are given below:-

Total credit in SBI A/C vide

A/C No-37844114448 is Rs. 1,04,07,897/-

Total credit in HDFC

A/c vide A/c No.50100398329312 is Rs. 10,18,424/-

Total cash of Rs. 1,14,26,321/-

Total amount of Rs.7,20,12,981/- has been credited in the bank accounts of accused persons namely Akhil Prasad Mishra and Tapaswini Mohapatra whereas the accused Akhila Prasad Mishra has been received cash of Rs. 16,28.000/- only as Salary from Maa Santoshi Transport with effect from dt.01.07.2018 to 09.06.2024.

So far it is ascertained that more that cash of Rs. 1,45,36,171/- has been involved in this case and cheated by the accused persons. However, to ascertain the exact amount involved in this case, investigation on investment in online trading and share marketing is under process.

During investigation, Final form has been submitted against the accused Akhil Prasad Mishra vide Talcher PS C.S No-647, Dt. 05.10.2024, U/S 408/506 IPC / r.w Sec 66 (C)/66 (D) I.T Act keeping investigation open for further investigation. Another accused Tapaswini Mohapatra has been arrested and forwarded in the Honours Court. Investigation regarding investment in online trading and stock/ share market is under progress.

This is for favour of kind information.”

(emphasis supplied)

13. On 08.05.2025, when the matter had been listed, the counsel had been heard and the hearing had been closed, and the case had been posted to 15.05.2025 for producing the case diary and instructions regarding steps taken to freeze the bank accounts and demat accounts of the opposite parties No. 5 and 6.

14. On 15.05.2025, the IIC of Talcher Police Station, appeared on virtual mode and the learned State Counsel produced the case diary. On instructions Ms. Sarita Moharana learned Additional Standing Counsel, pointed out from the case diary that on 17.08.2024, i) the Federal Bank Account No. 193001000047573 of accused Akhila Prasad Mishra, ii) the HDFC Bank Account No. 50100330958999 of accused Akhila Prasad Mishra and iii) HDFC Account No. 50100398329312 of Tapaswini Mohapatra has been frozen. Pursuant to requisition of the S.I. of Talcher Police Station,

i) Account No. 20229300267 of Akhila Prasad Mishra of SBI, Dhenkanal Bazar Branch and ii) Account No. 37844114448 of Akhila Prasad Mishra of SBI, Bairi Branch has been frozen on 31.08.2024, pursuant to requisition.

Ms. Moharana, learned Additional Standing Counsel as per instruction received from the I.I.C., Talcher Police Station. submitted on 15.05.2025 that the demat accounts of the accused persons had not been frozen.

15. In spite of order passed on 08.05.2025 for freezing the bank accounts and demat accounts of Opposite Party No.5 Akhil Prasad Mishra and his wife Opposite Party No.6 Tapaswini Mohapatra, as the demat accounts of the two accused

persons had not been frozen, on 15.05.2025, the S.P. Talcher had been directed to take action as per law against the IIC Talcher.

16. On 18.06.2025, when the case was posted for judgment, some documents alongwith a MEMO were submitted by Mr. Biswal, learned Additional Standing Counsel alongwith the following documents:-

i) Letter No. I941/Talcher P.S, Angul, Dated 29.05.2025 addressed to the Compliance Officer, Moneylicious, Securities Private Limited, 302, The Western Edge I, Off Western Express Highway, Borivali East, Mumbai - 400066, Maharashtra, India requesting for Freezing Demat Account No. 120834000854154.

(ii) E-mail dated 30.05.2025, from Team-Compliance Moneylicious Securities Private Limited, stating about freezing Demat Account no-120834000854154 for both debit and credit with the information that the client does not have any ledger balance or securities in his account.

(iii) Copy of Letter No. 1958 / Talcher P.S., Angul, Dated 31.05.2025 addressed to the Chief Executive Officer, FINVASIA CENTRE, D 179, Phase 8 B (Sector 74), Mohali, Punjab 160055 requesting for Freezing Demat Account No. 1208430001054196.

(iv) Copy of E-mail dated 03.06.2025 from one Yogesh Singh of Firvasia which is incomplete but encloses a form containing details of the account.

(v) Copy of Letter No. 1961/Talcher P.S., Angul, Dated 31.05.2025 addressed to the Chief Executive Officer, FYERS Securities Private Limited, 901 and 902, 9th Floor, A Wing, Brigade Magnum, Amruthahalli, Kodigehalli Gate, Hebbal, Bangalore - 560092 requesting for Freezing Demat Account No-1208940001718168.

(vi) Copy of E-mail dated 03.06.2025, from Fyers, informing about freezing Demat Account No. 1208940001718168 and attaching holding and transaction statement in proof.

(vii) Copy of Letter No. 1964/Talcher P.S., Angul, dated 31.05.2025 addressed to the Head of Compliance, Zerodha Broking Limited's, #153/154, 4th Cross, Dollars Colony, Opposite Clarence School, J.P. Nagar 4th Phase, Bangalore - 560078 requesting for Freezing Demat Account No-1208160001299976.

(viii) Copy of E-mail dated 03.06.2025 from Zerodha regarding freezing of Demat Account No.-1208160001299976

(ix) Copy of Letter dated 06.06.2025 of the Superintendent of Police, Angul asking the IIC Angul, to submit an explanation for not complying with the order dated 08.05.2025 of the High Court to freeze the demat accounts.

17. No efforts were made to freeze the demat accounts during investigation or even after order dated 08.05.2025 was passed by this Court. On 15.05.2025,

this Court directed the S.P. Angul to take steps as deemed fit for non compliance of this Courts order and thereafter steps have been taken for freezing the demat accounts. But it appears that by the time the barn door was locked, the horses had left. One email states that there is no balance in the account. The status of the other accounts are not available.

18. It appears that request was made to freeze the demat accounts Nos. (i)1208160001299976 (ii) 1208400001054196 (iii) 120834000854154 and (iv) 1208940001718168, after order was passed by this Court on 08.05.2025. But one account, namely 120834000854154 has no funds and no information regarding funds in the other three accounts have been provided. In other words the horses had left the stable by the time the account were frozen.

19. It is stated at the bar that while opposite party No. 6 Tapaswini Mohapatra had been granted bail by this Court in BLAPL No. 11875 of 2024 on 05.12.2024. Application filed by the petitioner in the Supreme Court, for cancellation of her bail has been rejected on 05.05.2025. This Court has allowed the prayer for bail of opposite party No.5 Akhil Prasad Mishra on 13.05.2025 in BLAPL No.234 of 2025.

CASE DIARY

20. Pursuant to the direction on 08.05.2025 to submit the case diary, the learned State Counsel submitted it on 15.05.2025. The forwarding letter with the case diary is extracted below:-

"DR No-119/Talcher PS, Dt. 12.01.2025.

To

THE ADVOCATE GENERAL, ODISHA, CUTTACK,

Ref: BLAPL Case No-234/2025 filed by Akhila Prasad Mishra (43), S/o-Krushna Chandra Mishra, Vill-Deogaon, PS-Gondia, Dist-Dhenkanal & Other Vrs. State of Odisha.

Sub: Submission of up to date carbon copy of CDs along with other connected papers & C/A in Talcher PS Case No-641 dt.06.08.2024 U/S-408/506/34 IPC turned to U/s 408/506 IPC/66 (C)/66 (D) IT Act.

Sir,

With reference to the case and subject cited above, I have the honour this is to submit that up to date carbon copy CDs along with other connected papers for kind perusal of the Hon'ble Court.

1.

F.F

:

06 sheets

Page No. 01 to Page No.06

2.

F.I.R.

:

03 sheets

Page No. 07 to Page No.09

3.

CD No.I to CD No. XVII

:

19 sheets

Page No. 10 to Page No.28

4.

Crime Details Form with Spot Map

:

02 sheets

Page No. 29 to Page No.30

5.

Statements U/S- 161 Cr.P.C.

:

10 sheets

Page No. 31 to Page No.40

6.

Property Seizure Memo

:

04 sheets

Page No. 41 to Page No.44

7.

Account details

:

04 sheets

Page No. 45 to Page No.48

Total

48 sheets

Verified the C/A of accused person Akhila Prasad Mishra (43), S/o-Krushna Chandra Mishra, Vill-Deogaon, PS-Gondia, Dist-Dhenkanal from the available PS records as well as CCTNS data base found nothing adverse against him Except this case.

Yours faithfully

Sd/-

IIC, Talcher P.S.

21. The case diary contains entries upto 13th January 2025. On that day the diary was closed for further investigation, but what investigation was carried out after that date is not apparent from the case diary provided by the learned State Counsel.

22. From this it appears that although preliminary chargesheet had been submitted on 06.08.2024 and the further investigation had been kept open, no investigation has been done after January 2025 or the IIC Talcher and the learned State Counsel thought that it is not necessary to submit the upto date case diary for perusal of the Court to the court. This casual attitude is not appreciated.

JUDICIAL PRONOUNCEMENTS

22.1 In the case of K.V. Rajendran (supra), the Supreme Court has held as

"6. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: Gudalure M.J. Cherian & Ors. v. Union of India & Ors., (1992) 1 SCC 397; R.S. Sodhi v. State of U.P. &

Ors., AIR 1994 SC 38; Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors., AIR 1994 SC 1023; Vineet Narain & Ors., v. Union of India & Anr., AIR 1996 SC 3386; Union of India & Ors. v Sushil Kumar Modi & Ors., AIR 1997 SC 314; Disha v. State of Gujarat & Ors., AIR 2011 SC 3168; Rajender Singh Pathania & Ors. v. State (NCT of Delhi) & Ors., (2011) 13 SCC 329; and State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc., AIR 2012 SC 364).”

13. The High Court has further taken note of the earlier judgment of this Court dated 2.9.2008 wherein this Court had given liberty to the appellant to move a fresh application under Section 482 Cr.P.C., if it is so required in view of the “subsequent events having been taken place”. The relevant part of the order of this Court reads as under:

“We make it clear once again that if a fresh criminal petition under Section 482 of the Code is filed by the respondent for transferring the investigation from State Police authorities to CBI after bringing certain subsequent events that had taken place after the disposal of the original criminal petition if there be any, it would be open for the High Court to entertain such application if it is warranted and decide the same in accordance with law for which we express no opinion on merit.”

14. In sum and substance, firstly, the facts and circumstances of the instant case do not present special features warranting transfer of investigation to CBI, and that too, at such a belated stage where the final report under Section 173(2) Cr.P.C. has already been submitted before the competent criminal court. The allegations are only against the then RDO who might have been transferred to various districts during these past 15 years. Similarly various other police officials might have investigated the case and it is difficult to assume that every police official was under his influence and all of them acted with malafide intention. In view of the earlier order of this Court dated 2.9.2008, no subsequent development has been brought to the notice of the court which could warrant interference by superior courts and transfer the investigation to CBI.”

22.2 In the case of Bharati Tamang (supra), the Supreme Court has held

“37. From the various decisions relied upon by the petitioner counsel as well as by respondents counsel, the following principles can be culled out.

- a) The test of admissibility of evidence lies in its relevancy.
- b) Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.
- c) If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

d) It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

e) In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution

f) While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

g) In appropriate cases even if the chargesheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

h) In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if" considers necessary may direct for investigation de novo.

22.3 In the case of Renuka Kulkarni (supra), the Delhi High Court after referring to a number of decisions of the supreme Court has held as follows:-

"8. Applying the parameters laid down by the Apex Court, the investigation is transferred only when the Court finds that a fair, honest and complete investigation is not being carried out. Transfer of investigation to another agency is only done in rare and exceptional cases such as cases where high officials of State authorities are involved. Accusations against an investigating officer alone is not sufficient to transfer investigation unless there is sufficient material to show that the investigating officer is mixed up with the accused. Bald allegations are not sufficient for transfer of investigation. In fact, transfer of investigation from the investigating agency hits at the morale of the Police which must be avoided at all costs. In the absence of any material placed before this Court as to why the investigating agency has been lax and just because investigating agency is not acting under the dictates of the Complainants or the Complainants are not satisfied alone cannot be the factor for transfer of investigation."

22.4 In the case of State of West Bengal vs. the Committee for Protection of Democratic Rights (2010) 2 SCR 979, the Supreme Court in held that direction of the High Court to the CBI to investigate offence committed within jurisdiction of State of West Bengal does not violate federal structure of the Constitution. The Supreme Court has held as follows : -

45 .In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been

committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

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

DISCUSSION AND ANALYSIS

23. “Something is rotten in Denmark” said Marcellus in the play “Hamlet” written by Shakespeare. This reflects the nature of investigation in the present case.

24. The Opposite party No.5 was arrested on 08.08.2024. Letter was issued to different Banks on for freezing the accounts of the accused persons. his accounts on 17.08.2024 and 31.08.2024.

25. Preliminary chargesheet was submitted on 06.08.2024 against the opposite parties No.5 for commission of offences under Sections 408, 506 of IPC read with Sections 66(C)(D) of I.T. Act, keeping investigation open under Section 193(9) of the BNSS. But what investigation was conducted after 13th January 2025 is not apparent from the case diary.

26. The IIC has submitted in his report and it is also apparent from a perusal of the case diary that when the I.O., the S.I. of Talcher Police Station interrogated the opposite party No 5 on 22.08.2024, he had stated that he had used four brokerage sites connected to his demat Accounts. He had also stated that he had used the misappropriated money to purchase gold, vehicles and invested it online in the share market by option trading method. But inspite of knowledge

that the demat accounts were being operated by the accused persons, the I.O. did not freeze the same immediately, although he had taken steps for freezing the bank accounts.

27. As no steps were taken to freeze the demat accounts even after dated 08.05.2025 was passed by this Court. On 15.05.2025, this Court directed the S.P. Angul to take steps as deemed fit for non compliance of this Courts order and thereafter steps have been taken for freezing the demat accounts which is almost three weeks thereafter. One email in response to the letter to freeze demat account No1208340000854154, states that there is no balance in the account. The status of the other accounts are not available.

28. There is also no entry in the case diary nor any mention in the report that any vehicle or gold belonging to the accused persons have been seized during investigation.

29. The apprehension of the petitioner that the officers of Talcher Police Station (local police) lack the requisite expertise to effectively investigate a case of this nature and involving such a large sum of money therefore appears to be justified.

30. The learned SDJM on 05.10.2024 had directed that the I.O. to conduct a fair and proper investigation to ascertain the exact quantum of misappropriation. It is apparent that this order has not been complied in its true spirit in view of the above discussion.

31. The EOW is better equipped to investigate into such cases. As it is the admitted case that the amount involved in this case is exceeds rupees one crore and as per Circular No of the EOW, cases involving transactions / misappropriations above Rs One crore can be investigated into by the EOW, investigation can be transferred to the EOW.

32. There is no question that such direction for transfer of investigation will affect the moral of the local police, as the EOW is part of the State Police.

33. There was no prayer in the application made before the learned SDJM to hand over investigation to any other agency or to seize the bank accounts or demat accounts of the accused persons.

34. The prayer seeking to arrest the two accused persons has been rendered infructuous as they have been arrested in the meanwhile and granted bail on 05.12.2024 & 13.05.2025

35. But in view of the fact that investigation has still not been completed and the circumstances discussed above, I am satisfied that it would be in the interest of justice, if investigation is handed over to the EOW.

36. Nothing in this order shall be taken as final opinion as to the complicity of the accused persons.

37. This Court does not think it proper to direct how the investigation should be

conducted, as that is the duty and lookout of the EOW.

38. But this Court thinks it necessary to state that the EOW should take steps to examine and record the statements of the witnesses and ensure that the money which belonging to the petitioner and which has been transferred from his account is secured.

CONCLUSION

39. In view of the above discussion, I am satisfied that the investigation should be handed over to the EOW.

40. The case diary and other relevant records be handed over to the S.P. EOW, within a period of ten days for assigning the investigation to a Competent Officer.

41. The CRLMC is accordingly disposed of.

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