



RESERVED

CRIMINAL MISC WRIT PETITION NO 24225 OF 2009

Amar Singh.....V.....State of U.P and others

Criminal Misc Writ Petition No 4909 of 2010

Shiv Kant Tripathi.....VState of U.P and others

Hon Imtiyaz Murtaza J

Hon. S.S. Tiwari, J

(Delivered by Hon Imtiyaz Murtaza, J)

In the writ petition preferred by petitioner Amar Singh has mounted onslaught on the FIR dated 15.10.2009 registered at case crime no 458 of 2009 under section 420, 467, 471, 120 B IP, sections 7/8/9/13 (1) (e) of the Prevention of Corruption Act, 1988 and section 3 and 4 of the Prevention of Money Laundering Act 2002 at police Station Babu Purwa Kanpur Nagar and sought quashing of the same by issuing a writ of certiorari.

In the second petition preferred by petitioner Shiv Kant Tripathi, the relief sought in this petition is for a writ of mandamus directing Enforcement Directorate arrayed as respondent no 4 to take up the investigation of case crime no 458 of 2009 registered at PS Babu Purwa Distt Kanpur Nagar and investigate the same in accordance with Law attended with further relief of a writ of mandamus directing the Special Cell Economic offences Wing as also the Enforcement Directorate to submit such periodical reports as may be deemed fit as to the stage, status and manner of investigation to this Court and also for direction to complete the investigation within such period as may be directed by the Court.

The allegations in the FIR under challenge in writ petition preferred by petitioner Amar Singh, pertain to the period when the petitioner was the Chairman of the U.P Development Council in the year 2003. The office of Chairman was said to be equal in rank to a Cabinet Minister. The first part of the allegations substantially is that the petitioner while holding the office of Chairman, misused his official position and awarded various Government contracts worth thousands of crores to companies owned and controlled by him and he also received kick-backs in the form of commission. The second part of the allegation is that the petitioner indulged in money laundering business by creating a web of shell companies. It is alleged that the major share holders of M/S Pankaja Arts and Credit Private Limited and M/S Sarvottam Caps Limited is the wife of the petitioner and close family associate namely Sri Amtabh Bachchan, a noted cine artist and former member of Parliament. It is further alleged that in all there are six companies which are under the control of the petitioner but at the same time, they are not involved in any active business and further that as many as 41 companies merged with M/S Pankaja Arts and Credit Private Limited and M/S Sarvottam Caps Limited by orders of Kolkata High Court dated 31.12.2003 and 31.1.2005. It is further alleged that the aforesaid 41 Companies were shell companies with little or no business. It is further alleged that amalgamation process was a deception and by this process the companies in which the petitioner had controlling shares, were enriched by wealth of around 400 crores. By this reckoning, it is alleged that the petitioner came in possession of wealth disproportionate to his known sources of income and it is further alleged that it would thus be eloquent that the petitioner misused his position by indulging in money laundering business and for this purpose he conspired with other Directors, officials and statutory authorities.

Sri Ram Jethmalani, learned Senior Advocate assisted by Sri Kunwar Sidharth Singh, appearing for petitioner Amar Singh, argued the matter at prolix length. On the other hand, Sri Gopal Chaturvedi, learned Senior Advocate, assisted by Sri Samit Gopal, appearing for Shiv Kant Tripathi, petitioner in Writ Petition No 4909 of 2010 advanced his submissions at elaborate length. We have also heard Additional Solicitor General, Government Advocate and other counsel assisting them. We have also been taken through the materials on record in the course of arguments.

The learned counsel appearing for the petitioner namely, Amar Singh, while assailing the allegations in the FIR, has set out summary of own facts which are that the petitioner was born and had received his education at Calcutta and he set up his business in Calcutta as well. It is also stated that the petitioner has his dwelling place at Calcutta at 35 Rowland Road and he is also registered there for income Tax purposes. It is also stated that barring EDCL Limited and Ester India Chemicals Ltd, all other companies mentioned in the FIR in which the petitioner had shareholdings are registered at Kolkata at the address (1) Azimganj House Block 1, Ist Floor 7 Camac Street Kolkata. It is also stated that out of 6 companies alleged to be under control of the petitioner, only Ester India Chemicals Ltd is filing its income Tax Returns at New Delhi while other five companies as mentioned below are filing their Annual returns at Kolkata. (1) M/S EDCL Ltd, (2) M/S Pankaja Art and Credit Pvt Ltd, (c) M/S Sarvottam Caps Ltd , (d) M/S EDCL Power Projects Ltd and M/S EDCL infrastructure. It is also stated that the above fact would be borne out from the perusal of the documents filed by the informant alongwith the FIR. It is also stated that the first company in which the petitioner had shareholding was registered in the year 1984 which is known as M/S Ester India Chemicals Ltd. The other companies namely, M/S Pankaja Art and Credit Pvt Ltd and M/S

Sarvottam Caps Ltd and EDCL Ltd were all incorporated in the year 1992, 1995 and 1995 respectively. It is also stated that similarly M/S EDCL Power Projects Ltd was incorporated in the year 2002. It is thus submitted that all the aforesaid companies were incorporated before the formation of Samajwadi Party Government in the State of U.P which came into power on 29th August 2003. It is explained that only one company known as EDCL Infrastructure came to be incorporated after the formation of the Government in the year 2004. It is also stated that 41 companies which are stated to have merged in M/S Panakaja Arts and Credit Pvt Ltd and M/S Sarvottam Caps Ltd are the companies which are incorporated in Kolkata It is also stated that the 41 companies as aforesaid had applied for merger sometime in 2004 and Feb 2005 and for that purpose company petition was presented in the Kolkata High Court which was allowed vide order dated Sept 20th, 2004 and Sept 7th, 2005. By that order, the transferee companies were allowed to convene separate meetings of equity shareholders for the purposes of considering the proposed scheme of amalgamation and in consequence, the companies had issued notices and reports were submitted which amply manifested that the proposed scheme of amalgamation had been approved by the requisite majority of the equity share holders. It is also stated that the Central Govt through its Advocate had also indicated that it had no objection to the proposed scheme of amalgamation. After completion of the above process, the Kolkata High Court approved the proposed scheme of amalgamation and declared it to be binding with effect from 1.1.2004 and 31.1.2005 respectively. It is further mentioned that allotment of share to the share holders of the transferor company had been done strictly as approved by the Kolkata High Court.

Assailing the bonafide of the informant, the learned Counsel has stated that the informant had given fake address and mobile number. By this reckoning, the learned counsel submitted that the

FIR has not been lodged with any bonafide intention. The learned counsel also called in question the jurisdiction of PS Babu Purwa. The learned counsel also submitted that the U.P.D.C was constituted on 15.10.2003 to advise the Government on matters of economic policies and development and it was not given any power to award any Government contracts. Drawing attention to the allegations as contained in the FIR it is stated that no allegation has been made that the UPDC was conferred any power to award any govt contracts. It is also submitted that UPDC has not awarded any govt contract or other contract to any industrialist. He also submitted that the UPDC with all its members acted collectively and all resolution passed by UPDC were only recommendatory, general and policy related and further that Sri Atul Gupta who was secretary Industries Department in the said Government was the ex officio secretary of the UPDC and even the advisory opinions of the UPDC were routed to Govt through Sri Atul Gupta.

The learned counsel also submitted that after lodging of the FIR, the cabinet decision was widely aired that UP police had no jurisdiction to investigate the matter and the matter was transferred to Kolkata Police. The Kolkata Police after receipts of papers, returned the entire matter on 23.10.2009 observing that the matter was not worth registering. It is thereafter, the UP Police swung into action and commenced investigation. It is also alleged that Dinesh Tripathi who was till then under suspension was reinstated and he was given charge of PS Babu Purwa and the very next day Shivakant Tripathi author of the FIR got the FIR lodged at PS Babu Purwa. He also adverted attention to calls details of conversations between the complainant and the SHO Babu Purwa between Sept 10 and Oct 15, 2009. He also referred to calls details of conversation between the complainant and a top official of CM Secretariat. It is alleged that informant made 23 calls to Navneet Sehgal an official of CM Secretariat and the said bureaucrat called

the informant 33 times within a span of 35 days. He also referred to criminal antecedents and criminal cases registered against the informant at PS Chakeri Kanpur. Lastly it is argued that the allegations made in the FIR are absurd and inherently improbable and there is no sufficient ground for proceeding against the petitioner and it is nothing but a desperate attempt to harass and humiliate the petitioner by making baseless allegations. He also alluded to political rivalries and the entire facts have been concocted to malign the petitioner and for settling political scores and therefore, it is submitted that the FIR is clearly an act of malice and fraud and it is liable to be quashed.

In support of the above submissions, the learned counsel relied upon following decisions.

- (i) State of Haryana v Bhajan Lal and others 1992 (Supp) 1 SCC 335.
- (ii) Mohd Ibrahim and others v State of Bihar (2009) 8 SCC 751
- (iii) State of Bihar v Murad Ali Khan (1988) 4 SCC 655
- (iv) MCD v Ram Kishan Rohatgi AIR 1983 SC 67
- (v) Moti Singh Gambhu Singh v State AIR 1961 Guj 177.

As stated supra, subsequent to the aforesaid petition, the informant Shiv Kant Tripathi also filed a writ petition in this Court which is docketed in this Court as Criminal Misc Writ Petition No 4909 of 2010. The relief sought in this petition is for a writ of mandamus directing Enforcement Directorate arrayed as respondent no 4 to take up the investigation of case crime no 458 of 2009 registered at PS Babu Purwa Distt Kanpur Nagar and investigate the same in accordance with Law attended with further relief of a writ of mandamus directing the Special Cell Economic offences Wing as also the Enforcement Directorate to submit such periodical reports as may be deemed fit as to the stage, status and manner of investigation to this Court and also for direction to

complete the investigation within such period as may be directed by the Court. In the aforesaid petition, the petitioner namely Sri Tripathi has cited certain instances which according to him, which generated doubts about shady dealings. The instances are:

(i) that Amar Singh formed a never ending chain through the web of companies with complex cross holdings coupled with amalgamations which helped in erasing the trail and by this reckoning, it was not only an attempt at converting black money into legitimate money but involved appropriating outlandish sums of money that could not have been legitimately earned by him through his known and admitted sources of income.

(ii) that in respect of M/S Energy Development Company Ltd a flagship company of Amar Singh, it is stated that on scrutiny it was found to be registered in Bangalore with Amar Singh as its Chairman cum Managing Director with his wife as one of the Directors . It is stated that aforesaid company for the first year i.e 2005-06 is shown to have earned Rs 2.49 crores during financial year 2005-06 and out of this amount, the company has shown to have expended only a sum of Rs 38.30 lacs under the head "Salary and Allowances. In the next financial year 2006-07, the company has shown to have spent Rs 97.28 lakhs on salary and allowances. It is stated that it is unbelievable that the company would be able to sustain experienced staff on such meagre salary and allowances. The aforesaid amount would not be sufficient to meet the salary and allowance of an experienced CEO not to speak of other experienced staff.

(iii) That for the financial year 2006-07 the company is shown to have earned contractual income to the tune of Rs 52.40 crores. It is stated that such a huge amount cannot be legitimately earned by the company with its limited resources.

(iv) That upon closely scrutinizing the share holding pattern in the above six companies it is noticeable that besides individuals the companies had in all 23 corporate share holders excluding 4. From further dissection it is stated it appeared that a majority of them were non existent companies

(v) That the petitioner reiterated that all the companies which were amalgamated were in fact shell companies with little or no business activities.

(vi) That from analysis of financial statements of the companies, bitter truth was discovered that most of these companies were either incurring losses or earning negligible income and yet the shares of these companies were subscribed at preposterous premiums.

(vii) It is also stated that amalgamation process was a mere deception inasmuch as it brooks no dispute that the transferee company stands to gain everything from the deal while the transferor company does not stand to benefit in any manner whatsoever and the same is the case with almost all the amalgamated companies.

The distillate of exhaustive enquiries with professional assistance as averred by petitioner Shiv Kant Tripathi in the petition is as under>

(a) The entire modus operandi is a racket which is very deep rooted in our economy. It had started long back and is prevalent till date. Parallel economy is a well known phenomenon in the country.

(b) the three amalgamations consisting of 55 companies has been

undertaken by Amar Singh from the year 2003 to 2008. In other words, Amar Singh got control management and economic benefit of this huge amount of money.

(c) that the amalgamations have been carried out with companies having no business relations or being connected with Amar Singh in any way.

(d) that Amar Singh in the entire operation has introduced his ill earned wealth either at the time of issue of share capital at a premium of amalgamating companies or at the time of amalgamation and this can be unravelled only through a thorough investigation.

(e) that Directors of the companies were either the operators of these companies or their close associates. In certain cases, income tax authorities found that the directors of these companies were either drivers or peons of the operators etc.

In this matter, it would appear that by means of the order dated 5.12.2009 the Division Bench headed by Hon Yatindra Singh J passed orders staying arrest of the petitioner till next date of listing or till submission of police report under section 173 (2) Cr.PC whichever is earlier attended with direction that the matter would be investigated by people having expertise in accounting and that the matter would be referred to the appropriate authority under the Money laundering Act or any other Central act for taking appropriate action.

In the writ petition filed by Shiv Kant Tripathi, the Court observed in its order dated 23.8.2010 that according to the averments in para 12 of the counter affidavit, papers and materials have been entrusted to Enforcement Directorate New Delhi. The Court taking notice of the statement made across the bar by the

Addl Solicitor General observed that papers have not yet been made available to Enforcement Directorate.

It is a settled principle that the High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal are of magnitude and cannot be seen in their true perspective without sufficient material. The power under Article 226 of the Constitution is a discretionary power and one of the grounds against the exercise of the discretion in such cases would be that the relief sought by the petitioner is not capable of being established in the summary proceeding under Article 226 because it requires a detailed examination of the evidence. The object of Art 226 is the enforcement and not the establishment of a right.

In **Divine Retreat Centre v State of Kerala and others AIR 2008 SC 1614**, the Apex Court held that the High Court in exercise of its power under Art. 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an Investigating Officer mala fide. That power is to be exercised in rarest of the rare cases where a clear case of abuse of power and non-compliance with the provisions falling under Chap. XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code. Even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Ss. 190, 200, Cr. P. C., but a Writ Petition in such a case is not to be entertained. (Paras 35, 36).

This Court by means of its order dated 5.12.2009, the Court issued following directions.

" We wish to clarify that it will be open to respondents no 1 to 3 to :

(1) get the matter investigated by special cell consisting of people who are expert in accounting.

(2) refer the matter to the appropriate authority under the Money Laundering Act or any other Central Act for taking appropriate action therein. In case any such reference is made, this order will not prevent the authorities to proceed to inquire, investigate, (including arrest of the petitioner) under those Acts."

In connected writ petition no 24225 of 2009, the Division Bench headed by Hon Amar Saran, J passed the order dated 23.8.2010 in which it was noted on the basis of statement made by Addl Solicitor General that according to his information, the Enforcement Directorate of the Central Government has not yet received any such papers attended with direction that State and Central Government may clarify the aforesaid matter about handing over papers to the Enforcement Directorate and about the progress of investigation on that date. Even at the time of reserving the order, the papers were said to have not been entrusted to the Enforcement Directorate.

As observed supra referring to the order passed by the earlier Bench of this Court, whereby liberty was given to the respondents 1 to 3 to have the matter investigated thoroughly by Special Cell consisting of people who are expert in accounting. The choice it would appear, fell on Enforcement Directorate which was

already arrayed as respondent no 3 in the connected writ petition. The matter ever-since then has been hanging in balance inasmuch as the matter is stuck at the level of handing over of papers to the said Agency.

The first and foremost argument advanced across the bar is that all the companies being registered at Kolkata, and carrying on their venture in Kolkata, the FIR lodged at Babu Ka Purwa Police station cannot be acted upon or investigated by the U.P Police. It is further argued that after registration of the case at PS Babu Ka Purwa Kanpur Nagar, it was realized that the cognizance of the matter cannot be taken in U.P and hence the Cabinet took a decision of transferring the matter to Kolkata Police. He also argued that Kolkata Police after receipts of papers, returned the entire matter on 23.10.2009 observing that the matter was not worth registering and it is only thereafter that the U.P Police again galvanized into action. In this connection, the learned counsel also argued that it is now not open for the U.P police to embark upon investigation in the matter as the companies in question are registered in Kolkata and are doing business from there. The learned counsel also argued that all mergers of companies took place in Kolkata and on this count also, the jurisdiction does not lie in the State of U.P. It is further argued that merger is a judicial proceeding and the same cannot be construed to be an offence. The learned Government Advocate denied that any decision as alleged by taken to transfer the papers to Kolkata Police. In para 20 it is averred that the decision to transfer the investigation to Kolkata was taken by Smt Neera Rawat Deputy Inspector General of Police/Senior Supdt of Police Kanpur Nagar for which she wrote a letter to the Commissioner of Police Kolkata on 17.10.2009 to take up the investigation. However, the papers were returned to the said police officer by Kolkata police on 22.10.2009 and it was thereafter that the matter was referred to the State Government to entrust

the matter to any competent agency whereupon the investigation was entrusted by the State Govt to the Economic offences Wing C.I.D UP. However, in the counter affidavit, the deponent refused to comment upon press report to which learned Counsel appearing for petitioner Amar Singh copiously referred. In the rejoinder affidavit, this fact is much highlighted that there was no averment that Amar Singh as Chairman awarded any contracts and hence no offence under Prevention of Corruption Act is ex facie made out.

There is no gainsaying of the fact that the genesis of the allegations relate to the period when Amar Singh held the office of Chairman U.P. Development council in the year 2003 and the brunt of allegations is that he misused the office and laundered the money through web of companies created by him by abusing his official position. In the light of the facts on record, it would suffice to say that the genesis of the entire matter is in the State of U.P.

Yet another aspect which lends cogency to the fact that the matter can be investigated by the police of State of U.P is that the FIR lodged includes section 120 B IPC covered with section 120 A IPC. The allegations are against the petitioner namely Amar Singh that as a Chairman UPSIDC, he committed all the overt and covert acts covered by section 120 A IPC.

In connection with the contention pertaining to jurisdictions we would like to refer to a decision of Apex Court in *Satvinder Kaur V State of (Govt of NCT of Delhi)* (AIR 1999 SC 3596 in which the Apex Court substantially observed as under:

"F.I.R cannot be quashed by High Court under S. 482 on ground that police station officer of particular police station (Delhi in instant case) was not having territorial jurisdiction to entertain and investigate the F.I.R. lodged by the appellant because the alleged dowry items were entrusted to the respondent at Patiala and

that the alleged cause of action for the offence punishable under S. 498-A, I.P.C. arose at Patiala. The appreciation of the evidence is the function of the Courts when seized of the matter. At the stage of investigation, the material collected by an Investigating Officer cannot be judicially scrutinized for arriving at a conclusion that police station officer of particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of S. 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be inquired into or tried by a Court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that S.H.O., Police Station, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, S. 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate."

It would thus transpire that merely on the ground that all the companies were registered at Kolkota and that merger of the companies was also allowed judicially by Kolkata High Court, would not divest the courts from taking cognizance of the matter or the police of State of U.P from investigating into the matter.

The next submission of the learned counsel revolves round the relief for quashing of the entire proceeding pursuant to the FIR lodged at police Station Babu Ka Purwa Kanpur Nagar on various grounds which included assailing of bonafide of the informant urging that the informant had given fake address and mobile number attended with submission that the FIR had not been lodged with any bonafide intention again followed by submissions that the allegations made in the FIR were absurd and inherently improbable and there was no sufficient ground for proceeding against the petitioner and it is nothing but a desperate attempt to harass and humiliate the petitioner by making baseless allegations. The learned counsel also alluded to political rivalries and that the entire facts have been concocted to malign the petitioner and it is for

settling political scores that the FIR was lodged and it was clearly an act of malice and fraud and it is liable to be quashed. As stated supra, in the connected writ petition, the petitioner gave substance of exhaustive enquiries with professional assistance has been cited as under>

(a) The entire modus operandi is a racket which is very deep rooted in our economy. It had started long back and is prevalent till date. Parallel economy is a well known phenomenon in the country.

(b) The three amalgamations consisting of 55 companies has been undertaken by Amar Singh from the year 2003 to 2008. In other words, Amar Singh got control management and economic benefit of this huge amount of money.

(c) that the amalgamations have been carried out with companies having no business relations or being connected with Amar Singh in any way.

(d) That Amar Singh in the entire operation has introduced his ill earned wealth either at the time of issue of share capital at a premium of amalgamating companies or at the time of amalgamation and this can be unravelled only through a thorough investigation.

(e) That Directors of the companies were either the operators of these companies or their close associates. In certain cases, income tax authorities found that the directors of these companies were either drivers or peons of the operators etc.

The allegations made are serious and it cannot be said that ex facie the allegations do not make out any case for investigation. Rather, from a close scrutiny of the materials on record, we are of

the opinion that the entire matter requires thorough probe in order to get at the truth of the matter.

In connection with the above contentions, we would like to refer to the two decisions of the Apex Court in **T. Vengama Naidu v T. Doraswamy Naidu (2007) 12 SCC 93**.

In T. VengamaNaidu (supra), the Apex Court observed as under:

"7. It cannot be disputed that a private complaint was filed before the learned Magistrate who had made over the said complaint for investigation under Section 156(3) Cr.P.C. That order of the Magistrate has not been challenged. On the basis of that order the police registered a crime probably treating the complaint as the FIR. It is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same. The law in this respect is settled that the said FIR has to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of. There was no question of considering the merits of the allegations contained in the FIR at that stage or testing the veracity of allegations. In this case, admittedly, the investigation was in progress. The police had also not reported back to the Magistrate the result of their investigation. Under such circumstances, the FIR could have been quashed only and only if there appeared to be no offence spelt out therein. A glance at the FIR suggests that there were serious allegations against both the accused, respondents 1 and 2 herein inasmuch as it was specifically alleged that in spite of the revocation of the General Power of Attorney and in spite of a specific notice to that effect by the complainant to the first respondent, the first respondent went on dishonestly to execute the sale deed in favour of his own daughter on the basis of the said revoked General Power of Attorney. It is alleged against the first respondent that he had no right over the property and yet he had executed a document in favour of the second respondent without any authority with an intention to cause loss to the complainant and to cheat him. It was alleged against the second respondent that she was well aware that the first

respondent was not competent to sell the property so as to defraud and cheat the complainant and, therefore, she also was liable to be punished under Sections 464, 423, 420 read with Section 34 IPC. It was not for the learned Judge at the stage of investigation to examine the nature of the transaction and further to examine as to whether any offence was actually committed by the accused persons or not. At that stage the only inquiry which could have been made was as to whether the complaint or the FIR did contain allegations of any offence. Whether those offences were made out, even prima facie, could not have been examined at that stage as the investigation was pending then. We, therefore, do not agree with the learned Single Judge that the FIR was liable to be quashed. We also do not agree with the learned Judge that there are no ingredients of the offences complained of in the FIR and this was a civil dispute. However, we do not wish to go deeper into that question. Our prima facie examination satisfies us that there were ingredients of offences complained of and, therefore, at that stage the High Court could not have quashed the FIR as well as the investigation. The appeal, therefore, has to be allowed, setting aside the order of the learned Single Judge." (Emphasis supplied)

In view of what has been ruled in the aforesaid decision by the Apex Court, we find no substance in the submissions of the learned counsel that FIR does not ex facie disclose an offence.

The next submission revolves round mala-fide and political rivalries. It is stated that the informant has been set up out of political vendetta. The ex -catehdra decision on this point is State of Haryana V Bhajan Lal AIR 1992 SC 604. Para 114 of the said decision being relevant is quoted below.

114. No doubt, there was no love lost between Ch. Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr. K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceeding. As it has been

repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is, on 21-11-1987. The evidence has to be gathered after a thorough investigation and placed before the Court on the basis of which alone the Court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, CJ in Sheonandan Paswan v. State of Bihar (1987) 1 SCC 288 at page 318: (AIR 1987 SC 877 at p. 891) may be referred to

"It is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant." (Emphasis supplied)

In view of the above discussion, we find no substance in the submissions that the proceeding is liable to be quashed on grounds of malafide and political rivalries.

Coming to the decisions cited across the bar by learned counsel appearing for the petitioner, it would suffice to say that we have studied the ratio flowing from the decisions very scrupulously. The ratio flowing from the said decisions, we must say with all humility, cannot be imported for application in the context of the dispute as involved in these two petitions.

In the above conspectus, the writ petition filed by the petitioner namely Amar Singh for the relief of quashing the F.I.R registered at case crime No 458 of 2009 under section 420, 467, 471, 120 B IP, sections 7/8/9/13 (1) (e) of the Prevention of Corruption Act, 1988 and section 3 and 4 of the Prevention of Money Laundering Act 2002 at Police Station Babu Ka Purwa Kanpur Nagar fails and is accordingly dismissed.

Now the question that crops up for consideration is whether it is a fit case constituting special reasons for being referred for investigating to Special Cell. It is well enunciated by a stream of decisions of the Apex Court that the High Court can direct an investigation by the Special Cell without the consent of the State concerned when matters related to corruption in public administration, misconduct by the bureaucracy, fabrication of official records and misappropriation of public funds.

In **Secretary M.I and R.E Services U.P v Sahngoo Ram Arya AIR 2002 SC 2225**, the Apex Court observed that while none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause. The Apex Court also referred to the judgment of the Apex Court in AIR 1999 SC 2979 which in paragraph 174 it has held thus:

"The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for

investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21".

In *State of West Bengal v Committee for Protection of Democratic Rights* (2910 2SCC (Cri)), the Apex Court in para 70 observed as under:

"Before parting with the case, we deem it necessary to emphasize 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 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 extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill 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, 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."

In para 71 of the aforesaid decision, the Apex Court concurred with the view taken in *Minor Irrigation & Rural Engg.*

Services, U.P v. Sahngoo Ram Arya (Supra). Para 71 being also relevant is excerpted below.

"In Minor Irrigation & Rural Engg. Services, U.P v. Sahngoo Ram Arya this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."

Amongst the allegations are the allegations of money laundering as well. the petitioner in the second petition has termed the companies as **shell companies**. Shell companies mean those companies which disguise the true owner of money. The methods by which money may be laundered are varied and can range in sophistication from simple to complex. The proceeds of crime are made to appear legitimate. According to one estimate, the money laundered each year is in billions and poses a significant policy concern. Money laundering often occurs in three steps: first, cash is introduced into the financial system by some means, the second involves carrying out complex financial transactions in order to camouflage the illegal source and the final steps entails acquiring wealth generated from the transactions of the illicit funds. Money laundering poses a serious threat to financial system integrity. It may emerge as a parallel economic system within a nation controlled by a few. This may destabilize and perish a sound economy. Section 3 of the Act envisages; "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

In the above perspective we are of the view that regard being had to the various materials on record and also considering

the averments made in the writ petitions and also in counter and rejoinder affidavits, we are of the firm view that it is a pre-eminently fit case for exercise of extra-ordinary power and the matter needs thorough probe by Special Cell as the matter of has national ramifications. Regard being had to the fact that the companies which are alleged to be shell companies are registered in various States and therefore, the Enforcement Directorate being Central Agency shall be the appropriate Cell capable of carrying out thorough probe. It is therefore directed that the entire papers relating to this matter shall be entrusted to the Enforcement Directorate within 2 weeks and immediately after receipt of the papers the Enforcement Director shall commence investigation. The First Status report shall be submitted by the Enforcement Directorate within one month after receipt of papers.

List this matter in the first week of July 2011 on which date the authorities that be shall appear in person and shall submit the first status report.

MH

May 20, 2011