

**Reserved****Criminal Misc (Public Interest Litigation) Writ
Petition No 21847 of 2010**

Tabrez Ahmad Civil Judge (JD).....Petitioner

Versus

State of U.P and others.....Respondents

Hon. Imtiyaz Murtaza, J.**Hon. Shri Kant Tripathi, J.****(Delivered by Hon. Imtiyaz Murtaza, J.)**

Present matter has its genesis in the report dated 30th Nov 2010 scripted by the District Judge shortlisting the events leading to registration of FIR against the petitioner. The report of the Distt Judge is accompanied with various papers including the application of the Petitioner.

The entire papers including application of the petitioner were placed before Hon. the Chief justice on which the Bench consisting of Hon. the Chief Justice and Hon. Vineet Saran, J. took suo motu notice vide order dated 1.12.2010 and directed the matter to be treated as Public Interest Litigation. The learned Standing counsel was also directed to file counter affidavit in the matter and in the meanwhile criminal proceeding launched against the petitioner pursuant to FIR dated 16.11.2010 was stayed till further orders by this Court. In the said order, the District Magistrate and Supdt of Police Bijnor were also directed to file affidavit.

On administrative side, it would appear, Hon. the Chief Justice passed the order dated 24.11.2010 for posting of the case before the Bench dealing with Criminal P.I.L. It is in this backdrop that the case has come up before us.

We have heard Sri S.G Hasnain learned Additional Advocate General appearing for the District Magistrate and Supdt of Police and perused the materials on record.

From a scrutiny of the papers on record, the sequence of events are thus. On 16.11.2010, in an accident, two boys riding bicycle were hit by a speeding Tanker and were crushed to death under the wheels of the offending vehicle. According to the copy of the complaint addressed to Supdt of Police, Bijnor bearing thumb impression of one Sunil, father of the deceased boys, on the fateful day at about 5.30 pm, the offending Tanker bearing Registration No UP 12 C 0927, hit the deceased who were on bicycle, in front of Chaudhary Restaurant in village Bhaguwala and one of the boys died instantaneously while the other breathed last on way to hospital. It is further mentioned that the accident was witnessed by a number of people including Farman, Sukhveer, Bijendra, who noted down the registration number of tanker on the spot. It is further mentioned that after hitting the deceased, the tanker sped away from the place of occurrence. It is further mentioned that at about 10 pm the complainant accompanied with other village people reached the police station for lodging the report. It is further mentioned in the report that the complainant at that time was much distraught and taking advantage of his distraught condition, someone obtained his thumb impression on a typed paper

misrepresenting to him that it was a memorandum for handing over the bodies of the deceased to him. Thereafter, it is further mentioned, he got busy in the performance of funeral rites of the deceased and in that connection, he went to Haridwar. On return from Haridwar on 18.11.2010, when he went to the police station he was apprised that FIR had already been lodged. It is further mentioned that he had not given any written report at that time and he was giving the report now with the request that the police station concerned be directed to register the case forthwith on the basis of this written report. The complainant's report dated 18.11.2010 addressed to the Dy. Supdt of Police Najibabad was scribed by one Pankaj Kumar son of Jai Pal resident of village Shadipur. To the similar effect is the affidavit sworn in by Sunil addressed to the Superintendent of Police. The Distt Judge has also enclosed a copy of news report in which referring to the statement of C.O. Jairaj Singh, it is reported that the offending tanker involved in the accident was intercepted and that the Driver of Tanker namely Goldee had confessed to the accident in which two boys lost their lives.

The report submitted by the petitioner addressed to Registrar General of this Court mentions that in connection with a case in which the Distt Magistrate had showed disrespect to the Court, he had made a reference on 5.6.2010 to the High Court for initiating contempt proceeding against the Distt Magistrate. Citing second instance, it is mentioned that on 16.6.2010, one Hon Judge of Punjab and Haryana High Court had paid a visit to Najibabad and despite prior information, the District Administration Bijnor neither extended any protocol nor permitted the Supdt of Police Bijnor to make requisite

arrangement for the visiting Judge. Disgruntled with the arrangement, a communication was sent to Chief Secretary U.P by the Punjab and Haryana High Court. The third instance cited by the petitioner is that on the above counts, the District Magistrate was annoyed so much so that he directed Supdt of Police to withdraw security personnel provided to the petitioner. Lastly it is submitted that the Distt Magistrate was on the look out for an opportunity to give befitting reply to the petitioner and in furtherance of his intention he was also conniving with local politicians and the accident in which FIR has been lodged against him, came as a handy tool to the Distt Magistrate who contrived and managed to lodge the FIR naming the petitioner with the active connivance of the local BSP politicians. The officer has also referred to the news report published in news paper Dainik Jagran which is to the effect that two adolescent boys were crushed under the wheels of a speeding Tanker near a curve of village Baghuwala and leaving a dozen people injured. The news report dated 17th Nov 2010 substantiates the report of the complainant that two persons riding the cycle were hit by the speeding tanker out of which one expired on the spot while the other succumbed to injuries on way to hospital. It is further mentioned in the news report that the police had intercepted the tanker. At 3 pm on 8.12.2010, when the case was again called out, the learned Additional Advocate General brought on record the affidavits sworn in by the District Magistrate Bijnor and Supdt. of Police in compliance with the order dated 1.12.2010. The District Magistrate also appeared in court in compliance of the order of the Court. The Additional Advocate General tried to defend the respondents and he repudiated any role of the District Magistrate in the matter. In his affidavit, the District Magistrate has denied the

allegations that he had shown any disrespect to the Court and on this count he merely stated that he had replied to the show cause notice issued by the court at Najibabad. In connection with the allegation that requisite arrangement was not made on the visit of Hon. Alok Kumar Singh, Judge, Punjab and Haryana High Court, he stated that he had issued instructions to the Supdt of Police and also to the Sub Divisional Magistrate Najibabad. He further stated that upon being called upon to explain by the State Govt, he had called for explanation of the Sub Divisional Magistrate and the said Magistrate gave his explanation stating that Police Escort was provided which remained till the stay of his Lordship. He also enumerated other arrangements made in connection with the visit of Hon Judge as aforesaid. As regards withdrawal of security provided to the petitioner, it is stated that during Panchayat election, the security was withdrawn but it has been restored. He denied any role in the registration of the FIR. He merely stated that the FIR was lodged on the basis of report of one Sunil Kumar attended with the statement that he made a note that further action in the matter would be taken after appropriate permission from the District Judge. The deponent has also referred to the application and affidavit of one Babu in which he claimed himself to be one of the witnesses of occurrence. It is stated in the application that the petitioner was driving the Santro car and he hit the deceased as a result of which the deceased died on the spot. It would thus transpire that impliedly, the Distt Magistrate was propping up the case against the Judicial officer. It is also worth noticing at this stage that the aforesaid Babu claims himself to be an eye witness of the occurrence while the fact remains that in the application made by the complainant before the Supdt of Police, Babu has

not been mentioned as one of the ocular witnesses. Even in the C.D prepared by Local TV Channel 200, mention of which shall be made in the later part of this order, no person of the name of Babu came forward and claimed to have witnessed the occurrence. The affidavit filed by the Supdt of Police is reiteration of what is stated in the affidavit filed by the District Magistrate Bijnor. Another evidence on record of great significance is the C.D. This C.D is a recording of a local channel namely, "T.V. 200". This channel, it would appear, has recorded the version of local people at the site of accident. It brooks no dispute that the accident took place in front of Chaudhary Restaurant. One Kuljeet Singh son of Preetam Singh who claimed to be the owner of the said Restaurant, was the first person interviewed by the aforesaid Channel. He gave version to the aforesaid electronic media to the effect that at the time of accident, he was sitting at cash counter. He heard a loud noise upon which he was attracted to the site from where the noise emanated. He saw that a Tanker had crushed two cycle borne boys. While aforesaid Kuljeet Singh was being interviewed, he was seen flanked by a sub inspector. He also stated that a car with blue light affixed at the top was also seen by him standing at the other side of the road from which Driver alighted and he came to the restaurant and after purchasing two water bottle, the car left for onward journey. The Sub Inspector was heard saying that the channel should not record his video and saying this, the Sub Inspector site-stepped. Another person whom the Channel interviewed is one Farman Ahmad. This witness stated that at the time of accident, he was standing nearby and he saw that a tanker which was coming from the opposite side hit the cycle born boys who came under the wheel of the tanker. He immediately made a call to a

constable namely Ajeet Singh informing him about the accident. Thereafter, the channel showed the tanker standing bearing Registration No UP 12 C-0927. Complainant Sunil is also shown in the recording by the aforesaid T.V. Channel. He has reiterated his version as contained in the application referred to above which is to the effect that he was unlettered and after the accident, someone put forth before him a typed application misrepresenting that it was a memorandum for entrusting the bodies to him and he affixed his thumb impression without further asking about the contents of the typed letter. During interview, he prayed that the FIR be recorded afresh on the basis of the application which he has given. Be that as it may, the earlier Bench has already taken suo motu notice of the PIL. From the facts on record, it would transpire that the Santro car mentioned in the F I R which is stated to be involved in the accident has been disowned by the petitioner and it is stated that the said car is not even remotely connected with him and he had never used the said car for any purpose and he has also denied to have travelled in the car at all or to have been on the wheels of the said car at the time of accident. He has also denied to have known the owner of the car. From the news papers report, it is clearly indicated that it was tanker which was involved in the accident. The subsequent report of the complainant addressed to Superintendent of Police also substantiates the news report that it was tanker which was involved in the accident. The news report is also to the effect that Driver of the Tanker namely Goldee was taken into custody and he confessed to be driving the Tanker which hit the boys. It was also stated that the Tanker and the driver were taken into custody.

We have also considered the sequence of events mentioned by the petitioner leading to lodging of FIR nominating him as the offender in the accident and also the fact that the petitioner had already made reference against the District Magistrate for initiating contempt proceeding for showing disrespect to the dignity of the Court.

The disquieting aspect is that if the news reports and contents of CD are to be believed, the role played by the police particularly the Station officer is most hideous in initially taking into the custody the Tanker and also the Driver and subsequently, managing to lend a different colour to the entire matter. The Tanker with Registration number is shown in the TV Channel. In the news reports the name of the Driver has been given as Goldee. What happened to the Tanker and the Driver, if the accident is believed to have been caused by the Tanker, was a matter which in our considered view, required thorough investigation/enquiry and it was in this light that the Special Officer (Vigilance) of this Court, a Senior Higher Judicial Service officer of the rank of District Judge, was entrusted with the enquiry into the matter directing him to submit his report within 10 days to this Court. In the application of the petitioner dated 24.11.2010 which has been annexed by the District Judge Bijnor alongwith his letter referred to supra, it has been stated in para 1 that Mr A.B Rajmauli, the District Magistrate, has no respect for judiciary and he has committed contempt of the court for which a reference has been made to Hon High Court on 5.6.2010. Photo copy of reference has been annexed as Annexure 1 to the application. In Annexure-1, which is a letter addressed to Registrar General through District Judge Bijnor, it has been stated that on 18.5.2010 while the court was

busy hearing arguments in PA case no 07 of 2008 Prem Bala v Hari Ram, the proceeding of the court was disrupted and came to a halt on account of blaring of hooter fixed on the Ambassador Car of the Distt Magistrate Bijnor. It is further stated that plying of four wheelers through campus was prohibited due to campus being crowded with litigant public and lawyers. The above facts were noted by the officer in the order sheet of PA case No 7 of 2008. The aforesaid vehicle again passed through the campus of the court at 1.20 pm blaring hooter at its top and this misfeasance, it is reported, was repeated by the Distt Magistrate with intention to lower down the dignity of the courts in the estimation of public at large notwithstanding the fact that there was separate road which could be used by the District Magistrate for passage of the vehicle. It is further mentioned that a show cause notice was issued but he did not show cause. It is also mentioned that the hooter was used by the District Magistrate despite its prohibition as contained in the order of the Division Bench in W.P No 3648 (M/B) 2006 decided on 16th Dec 2006 and consequent GO issued by the Government vide GO No 1284/30.4.2007/35P/77 dated July 18, 2007.

A Judge or Magistrate has a duty to discharge his judicial functions in the interest of justice. The courts cannot be intimidated or run on dictate of any one except on the own conscience of the presiding officer. The power of the High Court of superintendence and control over the subordinate judiciary under Article 235 of the Constitution includes within its ambit the duty to protect members of the subordinate courts. On consideration of the above facts relating to the incident of blaring of hooter as mentioned above, we have given our

anxious considerations to the facts, it was held that it ex-facie crystallized that the ingredients of section 2 (C) of the Contempt of Courts Act, 1971 were disclosed. However, the contempt proceedings were separated from the P.I.L and the matter was referred to Hon Chief Justice for nominating appropriate Bench for the purpose.

As stated supra, in this matter, a vigilance probe was ordered by the Court vide order of the Court dated 9.12.2010. Sri V.P.Pathak, Special Officer (Vigilance) of this Court who was actively assisted by Sri Mohd Salim, Joint Registrar of this Court took over the probe and submitted the report dated 3.1.2011 to this Court in sealed cover on 5.1.2011. A copy of the vigilance report was ordered to be supplied to Sri U.N.Sharma Advocate appearing for the District Magistrate Bijnor besides making available a copy of the report to the Government Advocate. The counsel appearing for both sides were heard at prolix length on various dates and ultimately, the judgment in the case was reserved on 25.1.2011.

The Special Officer (Vigilance) examined in all 22 persons which are EW 1 Sri Kuljeet Singh Proprietor of Chaudhary Rstaurant situated at Bhaguwala Police Station Mandawali District Bijnor, E.W 2 Sri Farman Ahmad, Co-proprietor of Chaudhary Restaurant as aforesaid, E.W 3 Smt Prabha , mother of the deceased Nitin, E.W 4, Smt Parwati, mother of the deceased Vikas, E.W 5, Sri Rajiv Kumar, Process Server posted in outlying Court Najibabad, District Bijnor, E.W 6 Sri Idramani Verma, Station officer PS Mandawali Dsitric Bijnor, E.W 7 Sri Yashovardhan Misra, Advocate, President Bar Association, Najibabad, District Bijnor, E.W 8 Sri Dharmendra

Yadav, Advocate Secretary Bar Association Najibabad District Bijnor, E.W 9, Sri Arun Kumar Sharma, Advocate practising at Najibabad District Bijnor, E.W 10 Sri Abrar Alam, aDvocate practising at Najibabad District Bijnor and a native of Bhaguwala village PS Mandawali District Bijnor, E.W 11, Sri Sunil, the complainant and father of the deceased Nitin, E.W 12 Sri Tirath Ram Singh, Reader posted in the court of Civil Judge (J.D) Najibabad District Bijnor, EW 13 Sri Pramod Kumar, Orderly, posted in the outlying court, E.W 14, Sri Manoj Kumar office Peon posted in the outlying court, E.W 15 Sri Shivanand Rai, Press Reporter of Dainik Jagran News paper, E.W 16, Sri Aijaz Ahmad, Press reporter of Amar Ujala Daily News Paper, E.W 17, Sri Neeraj Sharma Press Reporter of Daily Hindustan News paper, EW 18, Sri Altaf Husain, Press Reporter of Local TV Channel TV-100, EW 19 Sri Ajit Singh constable posted at police outpost Bhaguwala PS Mandawali District Bijnor, E.W 20 Sri Sonu Uncle of deceased Nitin and Vikas, EW 21, Sri Babu father of deceased Vikas and EW 22 Sri Peetam Singh Advocate a native of Mandawali Distt Bijnor.

EW 1 Kuljeet Singh, proprietor of the Restaurant in front of which the accident took place stuck to his version that it was tanker which caused the accident resulting in death of two minor boys. He also stated that after hitting the cycle on which the boys were riding the driver of the tanker took the vehicle in reverse gear and then sped away. He also stated that Santro Car displaying blinking light tried to chase the tanker but could not do so.

EW 2 Farman Ahmad co-proprietory of Chaudhary Restaurant substantiated the version of EW 1.

EW 3, Smt Prabha mother of the deceased Nitin stated that it was a car fitted with blue light which caused the accident. She also stated that at that time, she was on foot alongwith her sister in law and saw the accident.

EW 4 Smt Parwati mother of deceased Vikas stated that on that day she alongwith Prabha her sister in law was coming on a tempo after making purchases from the market. By the time she reached the scene of occurrence, the accident had already taken place. She was informed by the gathering there that the accident was caused by a Santro car which belonged to a Judge.

EW 6 is Indramani Verma, station officer PS Mandawali. He stated before the Special Officer (Vigilance) that immediately after information, he rushed to the scene of occurrence and when he reached, he was informed by the gathering that the boys were hit by a tanker. Thereafter, crowd swelled and people began naming Tabrez Ahmad who had caused the accident. He also stated that he was handed over a typed report which he clearly stated was got typed from outside. He also stated that the crowd was exerting pressure to register the case against Sri Tabrez Ahmad. Since he was not present at the station, he instructed SI present there to register the case on the basis of written report.

EW 7 is President of the Local Bar Association. His statement is based on hearsay. What he stated is that he heard from people that the accident was caused by Santro Car displaying blue light. He spoke about intimate friendship

between Abrar Ahmad and Tabrez Ahmad. He also stated that Tabrez Ahmad did not enjoy good reputation.

EW 8, is Sri Dharmendra Yadav Advocate, Secretary Local Bar Association. He stated that he happened to be at the place of occurrence on being called by Advocate Mohd Hanif who was present at the police station in connection with loss of his purse containing Rs 22000/- which it is further stated, he had inadvertently left in a truck from which he alighted near Police Station Mandwali. He also stated that when reached police station Mandwali with Arun Sharma Advocate, he saw assemblage of 100-150 people and at that time local MLA Sri Sheeshram Singh was also present. These persons were exerting pressure on the Station officer to lodge the FIR naming Tabrez Ahmad. He also stated that at that time, the Station officer was telling them that the Tanker which had caused the accident had been taken into custody and was standing and how could he register the case naming a judicial officer. He also stated that in the meanwhile the district authorities also came at the police station and directed the station officer to register the case naming the judicial officer.

EW 9 Arun Kumar Sharma also supported the version of EW 8 stating that the FIR naming Tabrez Ahmad had been lodged under pressure from District Authorities.

EW 10 Abrar Alam stated that he had come back from Dehradun at 11 pm and next day he received a call from circle officer Najibabad who informed him about the accident. This witness narrated details about his enmity with Local MLA and Asif. He also stated that the entire fuss was created by Asif who

beguiled the gathering that the accident had been caused by the Santro car displaying blue light.

EW 11 is Sunil father of deceased Nitin. According to him when he reached at the scene of occurrence, he was told by the persons present there that the accident crushing the two children was caused by Santro car displaying blue light. He stated that he did not see any tanker detained at the police station. He however stated that a person said to be driver of the Tanker was lodged in the police lock up. He detracted from his earlier version given before the TV Channel and also from the contents of the affidavit filed by him stating that he gave the said statement before local TV channel under duress from certain lawyers.

EW 12 Tirath Ram Singh who was posted as Reader in the outlying Court stated that on that day, Sri Tabrez was present in Chamber upto 5.30 pm and he had left for his home town after 5.30 pm to celebrate Festival of Idul Zuha.

EW 13 is Pramod Kumar who was serving as orderly to Sri Tabrez Ahmad. He stated that the officer owned Alto Car bearing registration no 3355. He denied any proximity of Abrar Ahmad with Tabrez. He also stated that Sri Tabrez left for his home town namely village Sultanpur in district Haridwar on 16.11.2010 at about 5.30 pm. He denied that the officer owned any other car.

EW 14 is Manoj Kumar who was the office peon. He also supported the version of EW 13. He too denied any proximity of the officer/petitioner with any of the lawyers.

EW 15 is Sivanand Rai Press reporter of Dainik Jagran. He produced the news item published in news paper dated 17.11.2010 and 18.11.2010. He substantiated the news published in the newspapers which was to the effect that it was the Tanker which crushed the two boys and that the Tanker was seized by the police. He stated that the news was published on the basis of feed back supplied by the local correspondent and through the police. He also stated that according to the report received by him the bodies of the deceased could not be identified upto 8.30 pm on 16.11.2010. He also stated that the accident was caused by tanker which was chased and taken into custody by the police and was detained at the police station. He also stated that according to the report received by him, the cleaner had confessed to accident. He also stated that the news was published independently without any pressure.

EW 16 is Aijaz Ahmad press reporter of Amar Ujala. He stated that according to the report received by him the accident was caused by Tanker and the Tanker was seized and Driver of the tanker was also arrested by the police. This news report was published on the basis of statement of Circle officer. He also attested to the news report that the two children who were killed in the accident could not be identified till the last report. He also stated that police sent information to various nearby villages for identification of children but identification could not be done till then.

EW 17 is Niraj Sharma news reporter of Hindustan Daily Newspaper. According to the witness, the news report was based on the basis of GD entry. The news also mentioned that

driver of the Tanker was also taken into custody after finding him responsible for the accident.

EW 18 Altaf Husain is news reporter of Local TV Channel TV 100. He stated that the accident was caused by Tanker on 16.11.2010 and he prepared the Video recording and news without any extrinsic pressure. The news channel showed clips of offending Tanker and also of jeep of Circle officer standing in the premises of the police station. He also showed ocular account of witnesses present at the site of accident including the proprietor of Chaudhary Restaurant where the accident took place.

The Special Officer (Vigilance) sought information about the Car bearing registration No UA 08K-0749 which is alleged to be a Santro Car belonging to Sri Tabrez Ahmad. From the information received from the ARTO (Administration) Bijnor, the said vehicle was a Tata S a goods carrier vehicle and it was owned by Rajveer son of Sri Mangat Singh resident of village Khedli Post Bahadarabad District Haridwar.

The conclusions drawn by the Special Officer (Vigilance) are excerpted below.

1. That the complainant Sri Sunil , his brother Babu and Sonu and their Ladies Smt Prabha and Smt Parwati were not present on the spot at the time of accident, though they have claimed to be the eye witnesses.
2. That the accident was caused by the Tanker No UP 12 C 0927, which was also detained by the police immediately after the accident and was kept standing at the police station Mandawali for ten days and it was released on 26.11.2010 to Sri Pawan Kumar and Onkar after technical inspection by HCMT on 26.11.2010. The Driver/Cleaner Goldi Kumar was also arrested and detained at the police station Mandawali and was

interrogated but his interrogation is not recorded in writing by the Station officer.

3. That the presence of Sri Tabrez Ahmad, Civil Judge (Jr Div) Najibabad is found on the spot and his car was standing there. He has also informed the Station officer, Mandawali, Sri Indramani Verma on telephone that the accident was caused by the Tanker and two boys were crushed. It is not found that the accident was caused by his car.

4. That the FIR was not got typed by the complainant, Sri Sunil and was got typed by some other persons and only his thumb impression was taken on the said FIR. According to the complainant, Sri Sunil, his FIR was lodged at 3.00 pm on the next day i.e 17.11.2010, whereas, the FIR has been shown to have been registered at the police station, Mandawali on 16.11.2010 at 8.10 pm. According to the Station officer, Sri Indramani Verma, the inquest was started at 18.10 (6.10 pm) on 16.11.2010 whereas according to Police record, the F.I.R itself has been lodged at 8.10 p.m. The mentioning of crime number and sections on the inquest reports shows that there was a great manipulation in the Police papers and in lodging the FIR.

5. That the presence of Administrative Officers including A.D.M Additional Superintendent of Police, Bijnor and the local M.L.A Sri Sheeshram Singh etc is found at the police Station, Mandawali. Therefore, lodging of FIR out of pressure of District Administration and Local Politicians cannot be ruled out.

6. That according to the report of A.R.T.O (Administration), Bijnor, the number of vehicle shown in the FIR UA 08 K-0749 was found to be the registration number of a vehicle Tata-S which is a mini goods vehicle. The said number is not found to be the number of a car.

7. That contents of Cassette (CD) available on record, have been proved by Sri Altaf Husain, EW 18, the reporter of TV Channel TV 100. According to the said recording also, it is found that the said accident was caused by Tanker No UP 12-C, 0927 which was standing at Police Station, Mandawali.

Now the question arises whether we should act upon the vigilance report submitted in pursuance of the order of this Court or we should direct for further probe by an independent

agency or by the local police.

In *Delhi Judicial Service Ass, V State of Gujarat* (1991) 4 SCC, the Apex Court observed that the Chief Judicial Magistrate is head of the Magistracy in the district who administers justice to ensure, protect and safeguard the rights of citizens. The subordinate courts at the district level cater to the need of the masses in administering justice at the base level. By and large the majority of the people get their disputes adjudicated in subordinate courts, it is, in the general interest of the community that the authority of subordinate courts is protected. If the CJM is led into trap by unscrupulous police officers and if he is assaulted, handcuffed and roped the public is found to lose faith in courts, which would be destructive of basic structure of an ordered society. If this is permitted Rule of Law shall be supplanted by Police Raj. the Apex Court further observed that viewed in this perspective the incident is not a case of physical assault on an individual judicial officer instead it is an onslaught on the institution of the judiciary itself. The incident is a clear interference with the administration of justice, lowering its judicial authority. Its effect was not confined to one district or State, it had a tendency to effect the entire judiciary in the country. The incident highlights a dangerous trend that if the police is annoyed with the orders of a presiding officer of a court, he would be arrested on flimsy manufactured charges, to humiliate him publicly as has been done in the instant case....."

In the instant case, as stated supra, it would crystallize that the District Magistrate was annoyed with the petitioner as he had made a reference to the High Court to initiate contempt

proceedings. The District Magistrate had also faced departmental rebuff for ignoring the protocol of a visiting dignitary i.e Judge of Punjab and Haryana High Court and the Punjab and Haryana High Court having viewed the matter seriously, took serious objection to the conduct of the District Magistrate and had sought clarifications from the State Chief Secretary.

From the finding of the Special Officer (Vigilance), it leaves no manner of doubt that the Car number disclosed in the FIR was the registration number of a mini truck and that the officer did not own any Santro Car and that he had an Altro Car bearing different registration number. The other conclusions drawn by the Special Officer (Vigilance) are (1) The presence of Tanker at the Police Station after it was seized for causing the accident, (2) own admission of the SHO and Circle officer that Tanker was involved and Driver of the Tanker had been taken into custody, (3) the own admission of the complainant itself that he had seen the Driver in the lock up and also the tanker standing at the police station, (4) the presence of Tanker at the Police Station as shown by the Local Channel and various news reports, (5) the presence of district authorities at the police station with local MLA and (6) also the circumstance of typed report being submitted at the police station for lodging the FIR and also taking into reckoning the two instances cited by the Special Officer (Vigilance) as discussed above, did indicate that a false case has been foisted upon the Judicial officer at the behest of the District Administration.

In the case involving Chief Judicial Magistrate Nadiad in

Gujarat the Apex Court had instituted enquiry which was conducted by a sitting High Court Judge and on that basis, the Apex Court quashed the criminal proceeding initiated against the Judicial Officer followed by initiation of contempt proceeding against the erring police officers.

In the light of the above facts and circumstances, and also considering the finding recorded by the Special Officer (Vigilance), we are of the view that the FIR lodged vide case crime No 220 of 2010 at the police station Mandawali, District Bijnor against the petitioner, being a sheer concoction based on malafides, cannot be sustained and is accordingly quashed.

Now it remains to be seen whether the case should be given quietus or it should be allowed to be investigated afresh on the basis of facts disclosed in the complainant's report dated 18.11.2010 given to Dy. S.P. Najibabad and also on the basis of the facts found by the Special officer Vigilance. The conclusion drawn by the Special officer Vigilance is that the accident was caused by Tanker and it was seized and that its driver was also arrested. From the various reports like statements of the witnesses and also news reports and also the statement of the SHO and the Circle officer Police, the finding of the Special Officer (Vigilance) receives reinforcement that the judicial officer or its car was not involved in the accident. Therefore, the further investigation should be in the light of the complainant's report dated 18.11.2010 and the conclusions drawn by the Special Officer (Vigilance).

At this stage, we have to consider whether the investigation should be allowed to be conducted by the local

police or it should be entrusted to CBI. For entrusting investigation to the CBI, there should be exceptional circumstances.

Therefore, we have to see as to whether this case constitutes exceptional circumstances warranting further probe to the extent of unfolding the role played by the District Administration in falsely involving the Judicial officer particularly the role of the District Magistrate Bijnor against whom serious allegations have been made by the petitioner. In this connection, what is the view articulated by the Apex Court in its various decisions. On this question, our attention falls on the ex-cathedra decision of the Apex Court in *State of West Bengal v Committee for Protection of Democratic Rights (2010) 3 SCC 571*. The para 70 of the said decision being germane, is excerpted below.

"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 the light of the above decision, we have to see whether the case furnishes exceptional situation warranting action for entrusting the enquiry to CBI.

We have again delved into the report attended with other allied circumstances whether fair investigation can be done by the local police.

The Special Officer (Vigilance) cited two instances generating doubts in the mind of the officer about the impartiality of the district administration in facilitating fair enquiry during their visit to the place for enquiry. The instances are mentioned at page 34 and 35 of the report and being relevant are quoted below.

"This is also relevant to mention here that we did not disclose our programme to visit the spot to anyone on 15.11.2010. As the witnesses Sunil, Babu and Sonu did not appear on 15.11.2010, so we suddenly made a programme to visit and see the spot in the noon. We took an official from the office of Chief Judicial Magistrate, Bijnor and Process Server, Rajiv Kumar with us. Our official car was being escorted by a Police Jeep to reach the spot. But suddenly we observed that the Police Gypsy after 10 to 15 Kms started to become slow. On enquiry, it was told by the Police personnels that their vehicle is making trouble then after, the Escort started to move slowly and after a distance of hardly one Km, the said Police Vehicle was stopped and it was informed that it has become out of order. Thereafter, we decided to proceed towards the spot without escort and we reached on the spot with the help of the official, posted in the office of the Chief Judicial Magistrate, Bijnor. We found that some 15 to 20 persons were already present on the spot and thereafter, the number of people was increased to 50 to 60. It appears that our vehicle was stopped or delayed just to make the

presence of the persons on the spot. Then we made the inspection of the spot and prepared the site plan at the pointing out of Kuljeet Singh and other persons present....."

Another instance cited by the Special Officer (Vigilance) mentioned at page 35 is also quoted below.

"On 17.12.2010 when we were recording evidence of Sri Babu EW 21, a large number of people came at the PWD Inspection House, Bijnor in the form of a mob, raising noises. Feeling disturbed, we enquired about them. Some of them forcibly entered in the room, where statement was being recorded during enquiry. A person in front of the people said that he belongs to Vyapar Mandal and wants to give memorandum and to say something and other persons also said to give some applications and affidavits. Then we politely persuaded them to hand over the memorandum and affidavit to our staff. One of them, Sri Peetam Singh, advocate pressed that his statement should be recorded. The we recored his statement as EW 22 and kept his affidavit on record. The other persons have handed over their affidavits and applications to our staff and did not ask to record their statements...."

From the above discussion, it would transpire that the allegations made by the judicial officer in his report to this Court has some substance that a false case has been foisted upon him with active connivance of district administration.

We may also advert to the statements referred to in the report of the Special Officer (Vigilance) firstly of the Circle officer and secondly of the Station House officer. From the various news reports discussed by the Special Officer (Vigilance) and also from the own statements of the police officers, it would transpire that they were clearly convinced that the accident was caused by the Tanker and not by the Car owned by the Judicial officer and Tanker had also been seized.

It is also admitted by the SHO that typed written report was received by him where such facility of computer typing was not available at the Station or around the police station. The Special Officer (Vigilance) has also referred to presence of officials of District Administrations including Additional Supdt of Police and Addl District Magistrate at the police station. There is thus ample evidence on record that pressure was mounted on the police to act on dotted lines. We are constrained to observe that it is indeed a serious matter that even a judicial officer has not been spared and every effort has been made to browbeat him by the administration.

It would thus transpire that the police would not be able to conduct fair investigation in the matter and in the circumstances, we are of the view that this case clearly furnishes exceptional situation where this Court should intervene and direct the investigation to be entrusted to the CBI.

In view of the above, it is directed that the CBI shall conduct the investigation and submit its interim report within 3 months before the Court. Office is directed to provide a copy of the order to the counsel for CBI within seven days. The Government Advocate will ensure that all papers are handed over to CBI forthwith.

In the meanwhile, it is directed that the State Government shall transfer (1) District Magistrate Bijnor, (2) Supdt of Police Bijnor and (3) Station House officer PS Mandawali immediately if not already transferred in order to ensure that there be no impediment in the fair and smooth

investigation by the CBI. This Court is informed that Sri Tabrez Ahmad Civil Judge (JD) Najibabad Bijnor has already been transferred from Bijnor.

The office is directed to make available a copy of this Judgment to learned counsel for CBI and also to learned Government Advocate within 3 days positively.

The matter shall be listed immediately after 3 months on which date the CBI shall submit progress/status report for perusal of the Court.

MH

May 17, 2011