

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

Transfer Petition (Crl.) No.225 of 2020

Rhea Chakraborty

Petitioner

Versus

State of Bihar & Ors.

Respondent(s)

JUDGMENT

Hrishikesh Roy, J.

1. This Transfer Petition is filed under section 406 of the Code of Criminal Procedure, 1973 (for short "CrPC") read with Order XXXIX of the Supreme Court Rules, 2013 with prayer for transfer of the FIR No. 241 of 2020 (dated 25.7.2020) under Sections 341, 342, 380, 406, 420, 306, 506 and 120B of the Indian Penal Code, 1860 (for short "IPC") registered at the Rajeev Nagar Police Station, Patna and all consequential proceedings, from the jurisdiction of the Additional Chief Judicial Magistrate III, Patna Sadar,

to the Additional Chief Metropolitan Magistrate, Bandra Mumbai. The matter relates to the unnatural death of the actor Sushant Singh Rajput on 14.6.2020, at his Bandra residence at Mumbai. The deceased resided within Bandra Police Station jurisdiction and there itself, the unnatural death under section 174 of CrPC was reported.

2. The petitioner is a friend of the deceased, and she too is in the acting field since last many years. As regards the allegations against the petitioner in the FIR, the petitioner claims that she has been falsely implicated in the Patna FIR, filed by Krishan Kishor Singh (respondent no. 2) - the father of the deceased actor. The petitioner and the deceased were in a live-in relationship but on 8.6.2020, a few days prior to the death of the actor, she had shifted to her own residence at Mumbai. According to the petitioner, the Mumbai Police is competent to undertake the investigation, even for the FIR lodged at Patna.

3. Heard Mr. Shyam Divan, learned Senior Counsel appearing for the petitioner, Mr. Maninder Singh,

learned Senior Counsel appearing on behalf of Respondent No. 1 (State of Bihar), Mr. Vikas Singh, learned Senior Counsel appearing on behalf of respondent No. 2 (Complainant), Dr. A.M. Singhvi and Mr. R. Basant, learned Senior Counsel appearing on behalf of respondent No. 3 (State of Maharashtra) and Mr. Tushar Mehta, learned Solicitor General of India appearing on behalf of respondent No. 4 (Union of India)

4. The petitioner contends that the incidents alleged in the Complaint lodged by the father of the deceased, have taken place entirely within the jurisdiction of State of Maharashtra and therefore, the Complaint as received, should have been forwarded to the jurisdictional police station at Bandra, Mumbai for conducting the investigation. However, despite want of jurisdiction, the Complaint was registered at Patna only because of political pressure brought upon the Bihar Police authorities. Mr Shyam Divan, the learned Senior Counsel for the Petitioner argues that the courts in Bihar do not exercise lawful jurisdiction in the subject matter of the Complaint and since the acts

alleged in the Complaint are relatable to Mumbai jurisdiction, the mere factum of Complainant being a resident of Patna, does not confer jurisdiction on the Bihar police to conduct the investigation. Adverting to the subsequent transfer of the investigation to the CBI, Mr. Divan argues that since the Bihar police lacked jurisdiction to investigate the allegations in the Complaint, the transfer of the investigation to the CBI on Bihar Government's consent, would not amount to a lawful consent of the State government, under Section 6 of the Delhi Special Police Act, 1946 (for short "DSPE Act"). The FIR according to the petitioner is contradictory and the Complaint fails to disclose how the alleged actions of the petitioner, led to the suicidal death of the actor. The petitioner projects that she has fully co-operated with the Mumbai Police in their inquiry but will have no objection if the investigation is conducted by the CBI. Mr. Shyam Divan the learned Senior Counsel submits that justice needs to be done in this case and powers under Article 142 of the Constitution can be invoked by the Court.

5. Representing the State of Bihar, Mr. Maninder Singh, the learned Senior Counsel submits that the Complaint disclosed a cognizable offence and therefore, it was incumbent for the Patna Police to register the FIR and proceed with the investigation. Since allegations of criminal breach of trust, Cheating and defalcation of money from the account of the deceased are alleged, the consequences of the offence are projected to be within the jurisdiction of the State of Bihar. The Senior Counsel highlights that the Mumbai Police was conducting the enquiry into the unnatural death of the actor u/s 174, 175 CrPC and such proceeding being limited to ascertaining the cause of death, does not empower Mumbai Police to undertake any investigation, on the allegations in the Complaint of the Respondent No 2, without registration of an FIR at Mumbai. Referring to the non-cooperation and obstruction of the Maharashtra authorities to the SIT of Bihar Police which reached Mumbai on 27.07.2020 and the quarantined detention of the Superintendent of Police, Patna who had reached Mumbai on 02.08.2020, senior counsel argues that the Mumbai Police was trying to suppress the real

facts and were not conducting a fair and professional inquiry. Since no investigation relatable to the allegations in the complaint was being conducted and FIR was not registered by the Mumbai Police, the action of the Bihar Police in registering the Complaint, is contended to be legally justified. On that basis, the Bihar Government's consent for entrustment of the investigation to the CBI is submitted to satisfy the requirement of Section 6 of the DSPE Act. Besides, as the petitioner herself has called for a CBI investigation and as the CBI has since registered a case and commenced their investigation, (on the request of the State of Bihar), the Senior Counsel submits that this transfer petition is infructuous.

6. Projecting the agony of the deceased's father, Mr. Vikas Singh, the learned Senior Counsel submits that the Complainant has lost his only son under suspicious circumstances and was naturally interested in a fair investigation to unravel the truth. The inquiry by the Mumbai Police under section 174 of the CrPC is not an investigation of the complainant's allegations and therefore the registration of the case and

investigation into those allegations by the Bihar Police is contended to be justified. Since only an investigation (not a case or appeal) is pending at Patna, and a legally competent investigation has commenced, invocation of Section 406 power by this Court to transfer the investigation, is projected to be not merited. When misappropriation and criminal breach of trust is alleged in respect of the assets of the deceased actor and the concerned property relatable to the alleged offence, will have to be accounted eventually to the Complainant (as a Class I legal heir of the deceased), the action of the Patna Police is contended to be within jurisdiction, under Section 179 read with Section 181(4) of the CrPC which speaks of consequences ensuing at another place, as a result of the alleged crime.

7. Representing the State of Maharashtra, Dr. Abhishek Manu Singhvi, the learned Senior Counsel submits that following the unnatural death of Sushant Singh Rajput on 14.06.2020 at his Bandra residence, the Mumbai Police registered an Accidental Death Report (ADR) and commenced inquiry under Section 174 of the CrPC to

ascertain the cause of death and also to determine whether the death was the result of some criminal act committed by some other persons. In course of the inquiry, the statements of 56 persons were recorded and other evidence such as the Post Mortem report, Forensic report etc have been collected. If the inquiry discloses commission of a cognizable offence, the Mumbai police will register a FIR. According to Dr. Singhvi, there can be no outer time limit for conclusion of Section 174 or Section 175 CrPC proceedings. The State of Maharashtra Counsel argues that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction, the offence was committed and on that basis, Dr Singhvi submits, that the Bihar police should have transferred the Complaint to the Mumbai Police authorities. Alternately, they could have registered a "zero FIR" and then should have transferred the case for investigation to Mumbai police. Pointing towards potential misuse, Dr. Singhvi submits that if registration of Complaint in another state is permitted, it will enable a person to choose the

investigating authority and will obstruct exercise of lawful jurisdiction by the local police. This will impact the country's federal structure. The Senior Counsel refers to media reports to project that the Bihar Police were hesitant to register the Complaint of Respondent No 2 but they were prevailed upon by political pressure. The Maharashtra counsel submits that the father and other family members of the deceased in their statements to the Mumbai Police, never mentioned about the allegations in the Complaint and those are projected to be afterthoughts and improvements. Under the constitutional scheme, the States have exclusive power to investigate a crime and the Senior Counsel accordingly argues that crime investigation cannot be routinely transferred to the Central Agency. Referring to the reasons (a) *sensitivity* and (b) *Inter-state ramifications*, given by the Bihar Police for entrusting the investigation to the CBI, Dr. Singhvi argues that the reasons are neither germane nor bona fide. He submits that ordinarily, the local police should conduct investigation into any reported crime and entrustment

of the investigation to the CBI must be an exception to meet extraordinary exigencies, but here consent was given by Bihar government, for political exigencies.

8. Mr Tushar Mehta, the learned Solicitor General of India, appears for the Union of India and the CBI. He projects that the Maharashtra Police is yet to register any FIR but is conducting only a limited inquiry under section 174 of the CrPC, into the unnatural death of the actor. In the absence of any FIR by the Mumbai Police following the death of the actor on 14.06.2020, the FIR registered at Patna at the instance of the deceased's father is projected to be the only one pending. He therefore contends that the present matter does not relate to two cases pending in two different states. Referring to the contradictory stand and the parallel allegation of state's Police being influenced by external factors in both states, Mr. Mehta submits that this itself justifies entrustment of the investigation to an independent Central Agency. The learned Solicitor General then points out that by acceding to the request made by the State of Bihar, the CBI has registered the FIR and commenced investigation.

Besides the Directorate of Enforcement, a central agency, is also acting under the Prevention of Money Laundering Act, 2002. He therefore argues that a fair and impartial inquiry can be ensured if the police of either state are kept away from investigating the alleged crime, relating to the suspicious death of the film actor. Adverting to the affidavit of the Maharashtra Police that they have recorded the statements of 56 persons in the section 174 proceedings, the Solicitor General submits that since FIR is not yet registered and the Mumbai Police is discharging limited functions under section 174 of the CrPC, the investigation of any alleged crime following registration of FIR is yet to legally commence in Mumbai and as such, there is no case pending in the State of Maharashtra which can justify the invocation of powers under section 406 of the CrPC.

9. Under the federal design envisaged by the Constitution, Police is a state subject under List II of Seventh Schedule of the Constitution. Therefore, investigation of a crime should normally be undertaken by the concerned state's police, where the case is

registered. There can be situations where a particular crime by virtue of its nature and ramification, is legally capable of being investigated by police from different states or even by other agencies. The entrustment of investigation to the CBI is permitted either with consent of the concerned state or on orders of the constitutional court. However, investigation of a crime by multiple authorities transgressing into the others domain, is avoidable.

10. In the instant case, the petitioner repose confidence on Mumbai police. The records of the case produced before this Court, does not prima facie suggest any wrong doing by the Mumbai Police. However, their obstruction to the Bihar police team at Mumbai could have been avoided since it gave rise to suspicion on the bonafide of their inquiry. The Police at Mumbai were conducting only a limited inquiry into the cause of unnatural death, under Section 174 CrPC and therefore, it cannot be said with certainty at this stage that they will not undertake an investigation on the other aspects of the unnatural death, by registering a FIR.

11. Uncertain about the future contingency at Mumbai, the father of the deceased has filed the Complaint at Patna, levelling serious allegations against the petitioner following which, the FIR is registered and the Bihar Police has started their investigation. The case is now taken over by the CBI at the request of the Bihar government. The petitioner has no objection for investigation by the CBI, but is sceptical about the bonafide of the steps taken by the Bihar government and the Patna police.

12. On the other hand, the projection from the side of the Complainant and the Bihar government is that the Mumbai Police even during the limited inquiry under Section 174 CrPC, are attempting to shield the real culprits under political pressure. This is however, stoutly refuted by the State of Maharashtra whose stand is that the Bihar police has no jurisdiction to investigate the crime where, the incident and criminal acts if any, have occurred within the State of Maharashtra.

13. Transfer of investigation to the CBI cannot be a routine occurrence but should be in exceptional circumstances. One factor which however is considered relevant for induction of the Central Agency is to retain "public confidence in the impartial working of the State agencies", as was recently reiterated for the Bench by Justice Dhananjaya Y Chandrachud, in *Arnab Ranjan Goswami vs. Union of India* 2020 SCC Online SC 462. It is also the consistent view of the Court that it is not for the accused to choose the investigating agency. In the instant case, political interference against both states is alleged which has the potential of discrediting the investigation. The legal process must therefore be focused upon revelation of the correct facts through credible and legally acceptable investigation. It must be determined whether the unnatural death was the result of some criminal acts. In order to lend credibility to the investigation and its conclusion, it would be desirable in my view, to specify the authority, which should conduct the investigation in this matter.

14. At this stage, having regard to the respective stand of the parties, following core issues arise for consideration in this case:

(a) Whether this Court has power to transfer investigation (not case or appeal) under Section 406 of the CrPC;

(b) Whether the proceeding under Section 174 CrPC conducted by the Mumbai Police to inquire into the unnatural death, can be termed as an investigation;

(c) Whether it was within the jurisdiction of the Patna Police to register the FIR and commence investigation of the alleged incidents which took place in Mumbai? As a corollary, what is the status of the investigation by the CBI on the consent given by the Bihar government; and

(d) What is the scope of the power of a single judge exercising jurisdiction under section 406 of the CrPC and whether this Court can issue direction for doing complete justice, in exercise of plenary power.

TRANSFER POWER UNDER SECTION 406 CRPC

15. Section 406 CrPC empowers the Supreme Court to transfer cases and appeals. The scope of exercise of

this power is for securing the ends of justice. The precedents suggest that transfer plea under Section 406 CrPC were granted in cases where the Court believed that the trial may be prejudiced and fair and impartial proceedings cannot be carried on, if the trial continues. However, transfer of investigation on the other hand was negated by this Court in the case of *Ram Chander Singh Sagar and Anr. vs. State of Tamil Nadu*, (1978) 2 SCC 35. Writing the judgment Justice V R Krishna Iyer, declared that:-

"The Code of Criminal Procedure clothes this Court with power under Section 406 to transfer a case or appeal from one High Court or a Court subordinate to one High Court to another High Court or to a Court subordinate thereto. But, it does not clothe this Court with the power to transfer investigations from one police station to another in the country simply because the first information or a remand report is for warded to a Court. The application before us stems from a misconception about the scope of Section 406. There is as yet no case pending before any Court as has been made clear in the counter affidavit of the State of Tamil Nadu. In the light of this counter affidavit, nothing can be done except to dismiss this petition.

" 2. If the petitioners are being directed to appear in a far-off court during investigatory stage it is for them to move that court for appropriate orders so that they may not be tormented by long travel or otherwise teased by judicial process. If justice is denied there are other redresses, not under Section 406, though it

is unfortunate that the petitioners have not chosen to move that court to be absolved from appearance until necessitated by the circumstances or the progress of the investigation. To come to this Court directly seeking an order of transfer is travelling along the wrong street. We are sure that if the second petitioner is ailing, as is represented, and this fact is brought to the notice of the Court which has directed her appearance, just orders will be passed in case there is veracity behind the representation. We need hardly say courts should use their processes to the purpose of advancing justice, not to harass parties. Anyway, so far as the petition for transfer is concerned. there is no merit we can see and so we dismiss it."

16. The contrary references cited by the Petitioner where transfer of investigation was allowed, do not in any manner, refer to a determination on the question of competence to transfer investigation under Section 406. In the cited cases, relief was granted without any discussion of the law, ignoring the long standing ratio laid down in *Ram Chander Singh Sagar* (Supra).

17. Having considered the contour of the power under section 406 CrPC, it must be concluded that only cases and appeals (not investigation) can be transferred. The ratio in *Ram Chander Singh Sagar and Anr.* (Supra) in my view, is clearly applicable in the present matter.

SCOPE OF SECTION 174 CRPC PROCEEDING

18. The proceeding under Section 174 CrPC is limited to the inquiry carried out by the police to find out the apparent cause of unnatural death. These are not in the nature of investigation, undertaken after filing of FIR under Section 154 CrPC. In the instant case, in Mumbai, no FIR has been registered as yet. The Mumbai Police has neither considered the matter under Section 175 (2) CrPC, suspecting commission of a cognizable offence nor proceeded for registration of FIR under Section 154 or referred the matter under Section 157 CrPC, to the nearest magistrate having jurisdiction.

19. On the above aspect, the ratio in *Manoj K Sharma vs. State of Chhatisgarh* (2016) 9 SCC 1 will bear scrutiny. This was a case of suicide by hanging and Justice M B Lokur, speaking for the Bench held as follows:-

"19. The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the

deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short.....

20. Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of "inquiries" in cases of accidental or suspicious deaths and are entirely distinct from the "investigation" under Section 157 of the Code....

22. In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence...."

20. In the present case, the Mumbai Police has attempted to stretch the purview of Section 174 without drawing up any FIR and therefore, as it appears, no investigation pursuant to commission of a cognizable offence is being carried out by the Mumbai police.

They are yet to register a FIR. Nor they have made a suitable determination, in terms of Section 175(2) CrPC. Therefore, it is pre-emptive and premature to hold that a parallel investigation is being carried out by the Mumbai Police. In case of a future possibility of cognizance being taken by two courts in different jurisdictions, the issue could be resolved under Section 186 CrPC and other applicable laws. No opinion is therefore expressed on a future contingency and the issue is left open to be decided, if needed, in accordance with law.

21. Following the above, it is declared that the inquiry conducted under Section 174 CrPC by the Mumbai police is limited for a definite purpose but is not an investigation of a crime under Section 157 of the CrPC.

JURISDICTION OF PATNA POLICE TO REGISTER COMPLAINT

22. The Respondent no 2 in his Complaint alleged commission of a cognizable offence and therefore, it was incumbent for the police to register the FIR and commence the investigation. According to the Complainant, his attempt from Patna to talk to his son

on telephone was thwarted by the accused persons and the possibility of saving the life of his son through father son engagement, was missed out. In consequence, the Complainant lost his only son who at the appropriate time, as the learned counsel has vividly submitted, was expected to light the funeral pyre of the father.

23. Registration of FIR is mandated when information on cognizable offence is received by the police. Precedents suggest that at the stage of investigation, it cannot be said that the concerned police station does not have territorial jurisdiction to investigate the case. On this aspect the ratio in *Lalita Kumari Vs. Govt. of UP* (2014) 2 SCC 1 is relevant where on behalf of the Constitution Bench, Chief Justice P Sathasivam, pronounced as under:-

"120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not."

24. The interpretation of Sections 177 and 178 of the CrPC would be relevant on the issue. In *Satvinder Kaur Vs. State* (Govt of NCT of Delhi) (1999) 8 SCC 728 for the Division Bench, Justice M B Shah wrote as under:-

"12. A reading of the aforesaid sections would make it clear that Section 177 provides for "ordinary" place of enquiry or trial. Section 178, *inter alia*, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime."

25. Likewise, Justice Arijit Pasayat, in *Y Abraham Ajith vs. Inspector of Police, Chennai & Anr.* (2004) 8 SCC 100, writing for the Division Bench pronounced as follows:-

"12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.

14. It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise."

26. When allegation of Criminal Bench of Trust and Misappropriation is made, on the jurisdictional aspect, this Court in *Asit Bhattacharjee Vs. Hanuman Prasad Ojha* (2007) 5 SCC 786, in the judgment written by Justice S B Sinha, observed as under:-

"21. Section 181 provides for place of trial in case of certain offences. Sub-section (4) of Section 181 was introduced in the Code of Criminal Procedure in 1973 as there existed conflict in the decisions of various High Courts as regards commission of offence of criminal misappropriation and criminal breach of trust and with that end in view, it was provided that such an offence may be inquired into or tried by the court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation.

22. The provisions referred to hereinbefore clearly suggest that even if a part of cause of action has arisen, the police station concerned situate within the jurisdiction of the Magistrate empowered to take cognizance under Section 190(1) of the Code of Criminal Procedure will have the jurisdiction to make investigation."

27. In the later judgment of *Naresh Kavarchand Khatri Vs. State of Gujarat* (2008) 8 SCC 300, this Court reiterated the ratio in *Satvinder Kaur*(supra) and *Asit Bhattacharjee* (Supra).

28. Once again, in *Rasiklala Dalpatram Thakkar Vs. State of Gujarat* (2010) 1 SCC 1, while approving the earlier decisions in *Satvinder Kaur*(supra) in the judgment rendered by Justice Altamas Kabir as he was then, the Supreme Court made it very clear that a police officer cannot refrain from investigating a matter on territorial ground and the issue can be decided after conclusion of the investigation. It was thus held:-

"27. In our view, both the trial court as well as the Bombay High Court had correctly interpreted the provisions of Section 156 CrPC to hold that it was not within the jurisdiction of the investigating agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction."

29. Moreover, the allegation relating to criminal breach of trust and misappropriation of money which were to be eventually accounted for in Patna (where the Complainant resides), could prima facie indicate the lawful jurisdiction of the Patna police. This aspect was dealt succinctly by Justice J S Khehar, as a member of the Division Bench in *Lee Kun Hee, President, Samsung Corporation, South Korea and Others Vs. State of Uttar Pradesh and Ors.* (2012) 3 SCC 132 and it was held as under:-

"38 *****

181. *Place of trial in case of certain offences.*-(1)-(3) * * *

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

A perusal of the aforesaid provision leaves no room for any doubt, that in offences of the nature as are subject-matter of consideration in the present controversy, the court within whose local jurisdiction, the whole or a part of the consideration

"... were required to be returned or accounted for..." would have jurisdiction in the matter."

30. Having regard to the law enunciated by this Court as noted above, it must be held that the Patna police committed no illegality in registering the Complaint. Looking at the nature of the allegations in the Complaint which also relate to misappropriation and breach of trust, the exercise of jurisdiction by the Bihar Police appears to be in order. At the stage of investigation, they were not required to transfer the FIR to Mumbai police. For the same reason, the Bihar government was competent to give consent for entrustment of investigation to the CBI and as such the ongoing investigation by the CBI is held to be lawful.

OPTIONS BEFORE MUMBAI POLICE

31. The Patna police although found to be competent to investigate the allegation in the Complaint, the FIR suggests that most of the transactions/incidents alleged in the Complaint occurred within the territorial jurisdiction of the State of Maharashtra. The Mumbai Police was inquiring into the unnatural

death of the complainant's son under section 174 of the CrPC. So far, their inquiry has not resulted in any FIR suggesting commencement of investigation on the criminal aspects, if any. However, the incidents referred to in the Complaint does indicate that the Mumbai police also possess the jurisdiction to undertake investigation on those circumstances. Therefore, in the event of a case being registered also at Mumbai, the consent for the investigation by the CBI under Section 6 of the DSPE Act can be competently given by Maharashtra Government.

INVESTIGATION ENTRUSTMENT TO CBI

32. While the CBI cannot conduct any investigation without the consent of the concerned state as mandated under section 6, the powers of the Constitutional Courts are not fettered by the statutory restriction of the DSPE Act. For this proposition, one can usefully refer to *State of West Bengal Vs. Sampat Lal* (1985) 1 SCC 317 where Justice Ranganath Mishra in his judgment for the 3 judges Bench, held that:-

"13.It is certainly not for this Court at the present stage to examine and come to a conclusion as to whether this was a case of suicide or murder. If as a result of investigation, evidence is

gathered and a trial takes place the Sessions Judge will decide that controversy and it may be that in due course such controversy may be canvassed before this Court in some form or the other. It would, therefore, be wholly inappropriate at this stage to enter into such a question.....In our considered opinion, Section 6 of the Act does not apply when the Court gives a direction to the CBI to conduct an investigation and counsel for the parties rightly did not dispute this position....."

33. Similarly, the Constitution Bench in the judgment authored by Justice D K Jain in *State of W B Vs. Committee for Protection of Democratic Rights (2010) 3 SCC 571* pronounced as follows:-

"68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure."

34. As noted earlier, the FIR at Patna was subsequently transferred to the CBI with consent of the Bihar government during pendency of this Transfer Petition. However, in future, if commission of cognizable offence under section 175(2) CrPC is determined, the possibility of parallel investigation by the Mumbai Police cannot be ruled out. Section 6 of the DSPE Act, 1946 read with Section 5 prescribe the requirement of consent from the State government, before entrustment of investigation to the CBI. As the CBI has already registered a case and commenced investigation at the

instance of the Bihar government, uncertainty and confusion must be avoided in the event of Mumbai Police also deciding to simultaneously investigate the cognizable offence, based on their finding in the inquiry proceeding. Therefore, it would be appropriate to decide at this stage itself as to who should conduct the investigation on all the attending circumstances relating to the death of the actor Sushant Singh Rajput. This issue becomes relevant only if another FIR is registered on the same issue, at Mumbai. A decision by this Court on the point would confer legitimacy to the investigation.

DIRECTION ON INVESTIGATION

35. The conflict between the two State governments on, who amongst the two is competent to investigate the case, is apparent here. In *K.V. Rajendran Vs. Superintendent of Police, CBCID, Chennai & Ors. (2013) 12 SCC 480*, the 3 judges Bench in the judgment authored by Justice Dr B S Chauhan held that transfer of investigation must be in rare and exceptional cases in order to do complete justice between the parties and to instil straight confidence in the public mind.

While the steps taken by the Mumbai police in the limited inquiry under Section 174 CrPC may not be faulted on the material available before this Court, considering the apprehension voiced by the stakeholders of unfair investigation, this Court must strive to ensure that search for the truth is undertaken by an independent agency, not controlled by either of the two state governments. Most importantly, the credibility of the investigation and the investigating authority, must be protected.

36. The ongoing investigation by the CBI is held to be lawful. In the event a new case is registered at Mumbai on the same issue, in the fitness of things, it would be appropriate if the latter case too gets investigated by the same agency, on the strength of this Court's order. Such enabling order will make it possible for the CBI to investigate the new case, avoiding the rigors of Section 6 of the DSPE Act, requiring consent from the State of Maharashtra.

37. In *Monica Kumar (Dr.) and Anr. Vs. State of Uttar Pradesh and Others* (2008) 8 SCC 781, Justice L.S. Panta

in his judgment, referred to the inherent power conferred on this Court and stated the following:-

"45. Under Article 142 of the Constitution this Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any "cause" or "matter" pending before it. The expression "cause" or "matter" would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal.This Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do "complete justice" in the matter."

38. The above ratio makes it amply clear that the Supreme Court in a deserving case, can invoke Article 142 powers to render justice. The peculiar circumstances in this case require that complete justice is done in this matter. How this is to be achieved must now be decided.

39. As noted earlier, as because both states are making acrimonious allegations of political interference against each other, the legitimacy of the investigation has come under a cloud. Accusing fingers are being pointed and people have taken the liberty to put out their own conjectures and theories. Such comments, responsible or otherwise, have led to speculative public discourse which have hogged media limelight. These developments unfortunately have the propensity to delay and misdirect the investigation. In such situation, there is reasonable apprehension of truth being a casualty and justice becoming a victim.

40. The actor Sushant Singh Rajput was a talented actor in the Mumbai film world and died well before his full potential could be realised. His family, friends and admirers are keenly waiting the outcome of the investigation so that all the speculations floating around can be put to rest. Therefore a fair, competent and impartial investigation is the need of the hour. The expected outcome then would be, a measure of justice for the Complainant, who lost his only son.

For the petitioner too, it will be the desired justice as she herself called for a CBI investigation. The dissemination of the real facts through unbiased investigation would certainly result in justice for the innocents, who might be the target of vilification campaign. Equally importantly, when integrity and credibility of the investigation is discernible, the trust, faith and confidence of the common man in the judicial process will resonate. When truth meets sunshine, justice will not prevail on the living alone but after Life's fitful fever, now the departed will also sleep well. Satyameva Jayate.

41. In such backdrop, to ensure public confidence in the investigation and to do complete justice in the matter, this Court considers it appropriate to invoke the powers conferred by Article 142 of the Constitution. As a Court exercising lawful jurisdiction for the assigned roster, no impediment is seen for exercise of plenary power in the present matter. Therefore while according approval for the ongoing CBI investigation, if any other case is registered on the death of the actor Sushant Singh Rajput and the

surrounding circumstances of his unnatural death, the CBI is directed to investigate the new case as well. It is ordered accordingly.

42. Before parting, it is made clear that the conclusion and observations in this order is only for disposal of this petition and should have no bearing for any other purpose.

43. The Transfer Petition is disposed of with the above order.

.....J.
[HRISHIKESH ROY]

NEW DELHI
AUGUST 19, 2020