

KEDAR NARAYAN PARIDA AND ORS.

v.

STATE OF ORISSA AND ANR.

(Special Leave Petition (c) No. 19947 of 2008)

SEPTEMBER 16, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Investigation/Inquiry – Intervention by Court – Scope – Held: When any illegality and/or mala fide action on part of Investigating Authorities, either on its own or at the behest of an interested party, is brought to the notice of High Courts, the High Courts in exercise of their inherent and plenary powers are entitled to intervene to set right the illegality and/or malafide action on the part of Investigating Authorities – Code of Criminal Procedure, 1973 – s.173 – Constitution of India, 1950 – Article 226.

The Petitioners allegedly attacked the husband of respondent no.2 with various weapons and killed him. 12 out of the 19 accused were taken out of the purview of the charge-sheet, allegedly at the behest of an MLA. Respondent no.2 filed writ petition, on which the High Court held that the filing of chargesheet against only 7 accused on the basis of the second test report of the IGP had no legal basis and allowed the writ petition with direction to the appropriate authorities to take action against all the accused, according to law. According to the High Court, the earlier Supervision Note of the Additional S.P., which was in consonance with Rule 47-A of the Orissa Police Manual and affirmed by the Inspector General of Police, C.I.D., as well as the Director General of Police, was sufficient for the purpose of filing a charge-sheet and there was no justification for the issuance of a further direction to the Inspector General

A of Police, Central Range, to issue a fresh "Test Report" and such direction was without any lawful authority.

Dismissing the Special Leave Petition, the Court

B HELD: 1.1. One is unable to accept the submission
C that the High Court could not have interfered with the
D directions given by the Director General of Police to the
E Inspector General of Police to submit a fresh Test Note
F despite the supervisory report which had been submitted
G by the Additional S.P. indicating that a case had been
H made out to go to trial as against all the 19 accused. When
any illegality and/or *mala fide* action on the part of the
Investigating Authorities, either on its own or at the
behest of an interested party, is brought to the notice of
the High Courts, the High Courts in exercise of their
inherent and plenary powers are entitled to intervene to
set right the illegality and/or *mala fide* action on the part
of the Investigating Authorities. [Para 25] [592-A-C]

1.2. In the instant case, although, the Supervisory
E Report submitted by the Additional SP, had been duly
accepted not only by the Inspector General of Police but
also by the Director General of Police, which was
sufficient for the Magistrate to frame a charge against all
the accused persons, a fresh direction was given to the
Inspector General of police to submit a Test Note. Such
F a direction given after the intervention of a MLA, who
went to the extent of providing an *alibi* for two of the
accused, claiming that they were present in his house
when the incident had occurred, not only exudes an
unpleasant flavour, but raises doubts about the
G bonafides of the police authorities at the highest level.
H [Para 26] [592-C-F]

1.3. In fact, it is on account of such intervention that
initially charge was filed only against 4 of the accused

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and, thereafter, 3 more. No steps were taken as far as the remaining 12 accused were concerned and it is only when the action of the said MLA was questioned before the High Court, that charge was also filed against the remaining 12 accused persons. [Para 27] [592-F-H]

1.4. The Courts, and in particular the High Courts, are the guardians of the life and liberty of the citizens and if there is any flavour of deliberate misuse of the authority vested in the Investigating Authority, the High Court or this Court may certainly step in to correct such injustice or failure of justice. [Para 28] [593-B-C]

1.5. In the peculiar facts and circumstances of this case, it was necessary for such a direction to be given by the High Court in order to prevent an injustice from being done on account of the intervention of influential persons, which not only had the effect of negating the Supervisory Report of the Additional SP, but also resulted in an attempt to shield some of the accused persons. [Para 29] [593-D-F]

Comptroller and Auditor-General of India v. K.S. Jagannathan (1986) 2 SCC 679 and *H.S. Bains v. The State (Union Territory of Chandigarh)* AIR 1980 SC 1883, relied on.

Dinesh Dalmia v. C.B.I. AIR 2008 SC 78; *Abhinandan Jha & Ors. v. Dinesh Mishra*, 1967 (3) SCR 668; *State of Karnataka v. M. Devendrappa & Anr.* (2002) 3 SCC 89; *Union of India vs. Prakash P. Hinduja & Anr.* (2003) 6 SCC 195; *M.C. Abraham & Anr. v. State of Maharashtra & Ors.* (2003) 2 SCC 649; *M/s India Carat Pvt. Ltd. vs. State of Karnataka* AIR 1989 SC 885, referred to.

King Emperor vs. Khwaja Nazir Ahmad AIR 1945 PC 18, referred to.

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Case Law Reference:

AIR 2008 SC 78 referred to Para 13

1967 (3) SCR 668 referred to Para 15

B

(2002) 3 SCC 89 referred to Para 16

(2003) 6 SCC 195 referred to Para 17

AIR 1945 PC 18 referred to Para 17

(2003) 2 SCC 649 referred to Para 18

C

(1986) 2 SCC 679 relied on Para 20

AIR 1980 SC 1883 relied on Para 21

AIR 1989 SC 885 referred to Para 23

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CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 19947 of 2008.

From the Judgment & Order dated 24.4.2008 of the High Court of Orissa at Cuttack in WP(C) No. 12626 of 2007.

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Amit Sharma, Suchit Mohanty and Anupam Lal Das for the Petitioners.

Altaf Ahmad, Janaranjan Das, Shwetaketu Mishra, P.P. Nayak, Sibho Sankar Mishra, Raj Kumar Prashar for the

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Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. One Kabita Das, wife of late Bhaguni Das @ Bhagirathi Das of Village Izapur, District Jajpur in the State of Orissa, addressed a letter to the Orissa High Court stating that one Kedar Narayan Parida and 19 others, including his sons, attacked her husband and killed him in the night of 28.3.2007 at about 10.30 p.m. On the basis of a First Information Report, lodged with the Mangalpur Police Station,

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Mangalpur P.S. Case No.28 of 2007 was registered and on the basis of the said police case, G.R. Case No.468 of 2007 was registered in the Court of the Sub-Divisional Judicial Magistrate, Jajpur. In her said letter, Kabita Das, who has been made the Respondent No.2 in these proceedings, complained of the fact that though Kedar Narayan Parida was the main accused in the case, only 3 persons out of the 19 named accused persons, had been arrested and that the main accused and his sons were moving freely in the nearby areas and no steps were being taken by the police to apprehend them or to complete the investigation. In fact, in her said letter, Kabita Das prayed for a direction to the police authorities to arrest Kedar Narayan Parida and his sons and to take appropriate steps against them in accordance with law.

2. The letter written by Kabita Das was registered as Writ Petition (C) No.12626 of 2007 and on 4th October, 2007, the High Court, after recording the facts contained in the complaint, also took on record the detailed instructions which had been received by the Learned Additional Government Advocate from the Superintendent of Police, Jajpur.

In the order it was also recorded that the case was under the supervision of one Shri Niranjan Swain, OPS(I), Additional Superintendent of Police, Jajpur, who, after examining the witnesses named in the FIR, had come to the conclusion that a case had been made out against all the 19 accused persons. Even then the Investigating Officer arrested only 3 of the 19 accused persons, despite the fact that the polygraph tests performed on the witnesses confirmed the presence of all the 19 accused persons who had participated in the assault with different types of weapons. It was also recorded that out of the 19 accused persons, only 4, namely, Ajaya Kumar Ray @ Kunja, Jugal Kishore Ray, Nityananda Sahu and Kartika @ Jyotirajan Sahoo, were charge-sheeted. Charge-sheet had not been filed against the remaining 15 persons, though directions had been given by the Inspector General of Police, Central

A Range, Cuttack, to file charge-sheet against three more persons, namely, Sudhanidhi Sahoo @ Mangua, Ashish Kumar Ray and Pranaya Kumar Ray.

B 3. It appears that despite the conclusion arrived at by the
C Additional Superintendent of Police, Jajpur, the Inspector
D General of Police, Central Range, Cuttack, intervened in the
E investigation and came to the conclusion that the case could
F be made out only against 7 persons and that the alleged
G involvement of the other 12 accused persons named in the FIR
H needed to be thoroughly investigated. Accordingly, at the
intervention of the said officer, filing of charge-sheet against the
other 12 accused persons was deferred. The matter was
directed to appear on 8.10.2007, on which date the Inspector
General of Police, CR, Cuttack, was directed to appear before
the Court to furnish an explanation as to why he had intervened
in the matter and virtually directed the charge-sheet to be filed
only against 7 persons and not against the remaining 12
accused persons.

E 4. The Inspector General of Police, Central Range, Cuttack,
F Shri Santosh Kumar Upadhyay, filed a Counter Affidavit stating
G that the case had been supervised by Shri Niranjana Swain,
H OPS-1, Additional Superintendent of Police, Jajpur, who had
found that the allegations against all the accused persons
appeared to be true, and in his supervision note to the
Investigating Officer instructed that after the absconding
accused persons had been traced he would verify the different
pleas and alibis taken by them. In his said affidavit, the Inspector
General of Police, Central Range, Cuttack, further indicated that
one Dr. Parameswar Sethi, Member of the Legislative
Assembly (M.L.A.), Jajpur, had made a request for transfer of
investigation of the case to the Crime Branch alleging that
persons who were innocent had been roped in. It was also
indicated that in that regard Dr. Sethi had met higher officials
which prompted him to direct Shri Santosh Kumar Upadhyay to
personally look into the case and to issue a "Test Note"

immediately. In the impugned judgment it has been recorded that the Inspector General of Police, Central Range, personally visited the spot on 4.7.2007 along with the Superintendent of Police, Jajpur, and examined the progress of investigation as also the supervision done by Shri Niranjan Swain. In his Test Note, the said officer was of the view that out of the 19 persons named in the FIR direct evidence existed only against Ajaya Kumar Ray, Jugal Kishore Ray, Nityananda Sahu, Pranab Kishore Ray, Sudhanidhi Sahu @ Mangua, Kartika Sahu and Ashish Ray. The said officer was also of the view that the involvement of the other 12 accused persons required thorough investigation.

5. From the aforesaid affidavit of the Inspector General of Police, Central Range, Cuttack, it also stands revealed that he had relied upon a letter dated 23rd June, 2007, addressed to him by the Inspector General of Police, CID, CB, Orissa, directing him to look into the matter personally and to issue a Test Note immediately. Accordingly, by an order dated 3rd January, 2008, the Inspector General of Police, CID, CB, Orissa, was called upon to file an affidavit to explain under what provision of law he had made the request for transfer of investigation on the request of Dr. Parameswar Sethi and as to how the handwritten note of alibi of the said MLA was passed on to the Investigating Agency for consideration. In response to the said direction, the said officer filed a counter affidavit stating that on 6th June, 2006, Dr. Parameswar Sethi had made a written request for transferring the investigation of the case to the Crime Branch. The very next day, the Director General of Police, Orissa, by a written order asked the Inspector General of Police, CID, CB, Orissa, to take over the investigation of the case immediately. The said officer, however, inquired into the matter and turned down the request of the MLA seeking transfer of investigation to the Crime Branch. In fact, in his affidavit, the said officer indicated that the view of the Additional S.P., Jajpur, who had supervised the investigation, was correct as far as all the 19 accused were

A concerned and that sufficient evidence existed against all the
accused persons of having committed the offence. It was also
mentioned that only 3 persons could be arrested out of the 19
accused persons and that since the remaining 16 were
absconding, the investigation of the case could not be
B completed.

6. From the impugned judgment it appears that the
Division Bench of the High Court called for the files relating to
the investigation and it was revealed therefrom that the
concerned MLA had met the Director General of Police on
C 22nd June, 2007, and had handed over a note on his printed
pad and in his own handwriting to the said Officer creating alibis
for some of the accused persons in the case and that the said
handwritten note was placed in the file by the Director General
of Police. It also appears that two draft letters were prepared
D by the Inspector General of Police, CID, CB, pursuant to the
directions of the Director General of Police, with a direction to
enclose a copy of the handwritten note of the MLA, which were,
thereafter, sent to the Inspector General of Police, Central
Range, for verification.

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7. On the basis of the aforesaid facts revealed in the
affidavit affirmed by the Inspector General of Police, CID, CB,
a notice was issued to the MLA, Dr. Parameswar Sethi, asking
him to show cause as to under what authority he was present
F during the investigation and had suggested the alibi of the
accused persons. In his affidavit, Dr. Parameswar Sethi, tried
to justify his conduct on the ground that he did not want innocent
persons to suffer and that he was also not present at the time
of investigation conducted by the Inspector General of Police,
G Central Range, and that only on one occasion on being asked
by the said officer, he had gone to his office and had informed
him that Jyoti Parida and Shakti Parida were present at
Bhubaneswar in his quarters at the time of the incident. By a
further affidavit directed to be filed, Dr. Parameswar Sethi
H indicated that in order to explain the entire matter properly, he

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had jotted down the names of the persons who are alleged to have been involved in the murder case for his own personal reference and that the same was not meant to be used for the purpose of the investigation.

8. The submissions of the learned Amicus Curiae before the High Court, Shri Debasis Panda, who had appeared for the writ petitioner, Kabita Das, were recorded by the High Court in its judgment and it appears that on 15th May, 2007, a prayer had been made to the Sub-Divisional Judicial Magistrate, (S.D.J.M.), Jajpur, to record the statements of Jaladhar Parida and Pramod Mahalik, who were said to have witnessed the incident, under Section 164 Cr.P.C. On 18th May, 2007, a similar prayer was made to the S.D.J.M. for recording the statements of Krushna Chandra Sahu under Section 164 Cr.P.C. On 1st June, 2007, a similar prayer was made for recording the statements of two other eye-witnesses, Prahllad Mahalik and Bholanath Behera. It was only at this stage that on 6th June, 2007, Dr. Parameswar Sethi, MLA, Jajpur, wrote to the Director General of Police, to transfer the investigation of the case to the Crime Branch, as indicated hereinbefore. By his order dated 7th June, 2007, the Inspector General of Police, CID, CB, turned down the request of the MLA for transfer of the investigation to the Crime Branch and on 18th June, 2007, the Investigating Officer requested the Criminal Court to issue non-bailable warrants and proclamation under Section 82 Cr.P.C. against Kedar Parida and his sons. As soon as such prayer was made, Dr. Parameswar Sethi met the Director General of Police, followed by an order issued to the Inspector General of Police, Central Range, directing him to issue his "Test Note". It appears that as pointed out by learned counsel appearing for the Respondent No.2, polygraph tests were conducted by the Inspector General of Police, Central Range, on all the witnesses from whose response nothing deceptive could be found and there was, therefore, no reason for the said officer to doubt their statements.

A 9. In his Test Note the Inspector General of Police, Central
Range, categorically indicated that in the course of his
discussions with Dr. Parameswar Sethi, he was informed by
the MLA that Shakti Parida, who was alleged to have been
present at the time of the incident, was, in fact, in Bhubaneswar
B the whole day.

10. The Division Bench noted Mr. Parida's submission
that the statements made in the affidavits filed by the Inspector
General of Police, Central Range, clearly established the fact
C that Dr. Parameswar Sethi was directly involved in the
investigation process right from 28th March, 2007. The learned
Judges also referred to the affidavit filed by Dr. Parameswar
Sethi, wherein he had asserted that Jyoti Parida and Shakti
Parida were present in his quarters at the time of the incident,
D although, before the Inspector General of Police, Central Range,
Cuttack, he had stated that Shakti Parida had telephonically
informed him of the events in Bhubaneswar and that he and
Jyoti Parida were present around Bhubaneswar on that date.
The Division Bench also took note of Mr. Panda's submissions
E that the second Test Note was without sanction of law and that
it had materialized on account of Dr. Parameswar Sethi's
interference.

11. The Division Bench also considered the submissions
made by Mr. Kanungo, learned counsel appearing for Dr.
F Parameswar Sethi, that being a public representative, the MLA
had written a letter on his own pad on 22.6.2007 to the Director
General of Police, indicating therein that innocent persons
should not be made to suffer and that the investigation should
be entrusted to the Crime Branch. The Division Bench also
G took note of the other submission made by Mr. Kanungo that
Dr. Parameswar Sethi had visited the office of the Inspector
General of Police, Central Range, Cuttack, only once, on being
asked to verify certain facts and in response thereto he had
stated that two of the accused persons, Jyoti Parida and Shakti
H Parida were present in his quarters at the time of the incident

and that the hand-written note given by him on his own pad was not for the purpose of creation of an alibi, but was simply a note for his personal reference.

12. Upon examination of the materials before it, the Division Bench of the High Court ultimately framed the following questions for the purpose of deciding the writ petition :-

- (a) Whether there is any scope for a second "Supervision Test Report", even after the original supervision of the Addl. S.P., Jajpur had been affirmed by all the superior officers, i.e. up to the rank of D.G. of Police?
- (b) Veracity of the Test Report issued by the I.G. of Police, Central Range based upon views and facts that emanate out of apparent interference by Dr. Parameswar Sethi, MLA, Jajpur.

13. While answering the said questions, the Division Bench after considering the provisions of Section 173 Cr.P.C. came to the conclusion that the filing of charge-sheet against only seven of the accused persons on the basis of the second Test Report of the Inspector General of Police, Central Range, could not be supported since the said Test Report had no legal basis. According to the Division Bench of the High Court, the earlier Supervision Note of the Additional S.P., Jajpur, which was in consonance with Rule 47-A of the Orissa Police Manual and affirmed by the Inspector General of Police, C.I.D., C.B., as well as the Director General of Police, was sufficient for the purpose of filing a charge-sheet and there was no justification for the issuance of a further direction to the Inspector General of Police, Central Range, to issue a fresh "Test Report" and such direction was without any lawful authority. In fact, the Division Bench went on further to observe that it was apparent that even in the face of clear prima facie evidence, as stated by witnesses, 12 accused persons were taken out of the purview of the charge-sheet, at the behest of the MLA, who

A allegedly provided alibis for them. It was also observed that the
 fact that 12 accused persons had not been examined, went to
 prove the clever twist given in the investigation of the case by
 the Inspector General of Police, Central Range, to exclude them
 from the charge-sheet. The Division Bench, therefore, allowed
 B the writ petition with a direction to the appropriate authorities
 to take action against all the accused persons, according to
 law, based upon the Supervision Note issued by the Additional
 S.P., Jajpur. Consequently, all actions taken on the basis of the
 C Test Report of the Inspector General of Police, Central Range,
 were quashed. Further directions were given to the Investigating
 Authority to act in accordance with the decision of this Court
 in the case of *Dinesh Dalmia vs. C.B.I.* [AIR 2008 SC 78]
 regarding filing of charge-sheet even if the accused persons
 had not been arrested. The role played by Dr. Parameswar
 D Sethi in trying to deflect the course of investigation was strongly
 disapproved by the Division Bench which held that the same
 amounted to interference with the course of justice.

14. Appearing in support of the Special Leave Petition,
 learned counsel, Mr. Amit Sharma, submitted that this Court
 E could be required to consider as to whether the Investigating
 Authorities in a case could be compelled by the Court to
 investigate an offence in a particular manner as indicated by
 the Court and also whether the Court could go into the merits
 of the case even before the trial had begun at a stage when
 F investigation was yet to be concluded. Mr. Sharma also
 questioned the correctness of the filing of an additional charge-
 sheet at the behest of the Court.

15. In this regard, Mr. Sharma referred to the decision of
 this Court in the case of *Abhinandan Jha & Ors. vs. Dinesh*
 G *Mishra*, [1967 (3) SCR 668], wherein the provisions of
 Sections 169, 170, 173 and 190(1) of the Code of Criminal
 Procedure, 1898, were under consideration and it was held
 that once the Investigating Authorities had submitted report of
 the action taken under Section 169 Cr.P.C. that there is no
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case made out for sending up the accused for trial, there is no power conferred on a Magistrate, either expressly or by implication to direct the police to submit a charge-sheet. Incidentally, the aforesaid provisions of the old Code are the same as those contained in the Code of Criminal Procedure, 1973. This Court made a distinction between the power of the Magistrate to direct the filing of a charge-sheet on the facts disclosed in a report under Section 169 and the power of the Magistrate to disagree with such report and to conduct an investigation on his own. It was held that in case of disagreement with the Police Report under Section 169, the Magistrate was within his jurisdiction to direct the police to conduct a further investigation under Section 156(3) Cr.P.C. However, the Magistrate could not direct the police to submit a charge-sheet because the submission of the report depended entirely upon the opinion formed by the police and not on the opinion of the Magistrate. Mr. Sharma submitted that the direction given by the learned Magistrate to file an additional charge-sheet was contrary to the provisions of law and could not, therefore, be sustained.

16. Mr. Sharma also referred to a three Judge Bench decision of this Court in *State of Karnataka vs. M. Devendrappa & Anr.* [(2002) 3 SCC 89], wherein, it was observed that while exercising powers under Section 482 Cr.P.C., the court does not function as a court of appeal or revision. Such power is to be exercised sparingly and *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. It was further observed that the authority of the court exists for the advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. Mr. Sharma urged that the same was the situation *in the instant* case where, although, on the basis of the second Test Note it was found by the Inspector General of Police, Central Range,

A Cuttack, that a case had been made out only against seven
 accused, the High Court observed that the materials contained
 in the earlier supervision note of the Additional S.P., Jajpur,
 which was in consonance with Rule 42A of the Orissa Police
 Manual and affirmed by the Inspector General of Police, CID,
 B CB, as well as the Director General of Police, was sufficient
 for the purpose of filing a charge-sheet against all the accused
 persons. Mr. Sharma urged that there was no bar on receipt
 of fresh materials for the Investigating Authorities to hold a
 further inquiry into the allegations made in the First Information
 C Report.

17. Mr. Sharma lastly referred to another decision of this
 Court in *Union of India vs. Prakash P. Hinduja & Anr.* [(2003)
 6 SCC 195], wherein, while considering amongst other issues
 the manner and scope of the expression "investigation" defined
 D in Section 2(h) Cr.P.C., this Court held that the Magistrate could
 not interfere with the investigation and by virtue of Chapter XII
 of the Code, the manner and method of conducting
 investigation has been left entirely to the Police Authorities. It
 was also held that formation of opinion whether there is sufficient
 E evidence or reasonable ground of suspicion to justify the
 forwarding of the case to the Magistrate or not as contemplated
 by Sections 169 and 170 Cr.P.C. is to be that of the officer in
 charge of the police station and a Magistrate has absolutely
 no role to play at this stage. In the said case reference was
 F made to the decision in *Abhinandan Jha's case* (supra),
 wherein, after examining the scheme of the Code and the
 decision of the Privy Council in *King Emperor vs. Khwaja Nazir
 Ahmad* [AIR 1945 PC 18] and other decisions of this Court, it
 was, *inter alia*, held that the investigation under the Code takes
 G in several aspects and several stages ultimately resulting in the
 formation of opinion by the police and such formation of opinion
 was the final step in the investigation which could only be taken
 by the police and by no other authority.

H 18. Mr. Sharma contended that the second Test Note filed

by the Inspector General of Police, Central Range, Cuttack, was prepared after the charge-sheet had been filed and not during the investigation on the basis of orders passed on a writ petition. In support of his submission, Mr. Sharma then referred to the decision of this Court in *M.C. Abraham & Anr. vs. State of Maharashtra & Ors.* [(2003) 2 SCC 649], which were criminal appeals heard along with other criminal appeals involving the same question as to the extent to which there could be judicial interference with the discretionary power of the investigating agency. Mr. Sharma pointed out that this Court held that judicial interference with the discretion of the Investigating Authority to arrest or not to arrest an accused should not be exercised mechanically but with caution and when the Investigating Officer, having regard to the facts, considered arrest of certain persons in a case unnecessary, the High Court under Article 226 had no jurisdiction to direct the State to arrest those persons even though the case was still at the stage of investigation, as that would amount to unjustified interference with the investigation.

19. Appearing for Kabita Das, the writ petitioner (Respondent No.2 herein), Mr. Altaf Ahmad, learned senior counsel, opposed the submissions made on behalf of the petitioner and reiterated the stand taken before the High Court that an attempt had been made by the investigating authorities to derail the investigation at the instance of Dr. Parameswar Sethi, the local M.L.A. Mr. Ahmad reiterated that when the previous note of the Additional S.P., Jajpur, had been affirmed by the Inspector General of Police, C.I.D., C.B., as also the Director General of Police, there was absolutely no reason for a further Test Report to be prepared and that too at the instance of the local M.L.A., who had not only tried to influence the investigation, but had also prevailed upon the Inspector General of Police, Central Range, Cuttack, to file a fresh Test Report giving a clean chit to those accused for whom Dr. Parameswar Sethi had provided an alibi.

A 20. Countering Mr. Amit Sharma's submissions that the
Courts do not ordinarily interfere with the police investigation
which is in the domain of the police authorities, Mr. Altaf Ahmad
submitted that the High Courts exercising powers under Article
226 of the Constitution can direct a non-functioning public
B authority to perform its functions in a particular manner. In
support of his submissions, Mr. Altaf Ahmad referred to and
relied upon the oft-repeated decision of this Court in
Comptroller and Auditor-General of India vs. K.S.
Jagannathan [(1986) 2 SCC 679], wherein it was held in
C unambiguous terms that the High Courts have the power to
issue a writ of Mandamus or a writ in the nature of Mandamus
or to pass orders and give necessary directions where the
Government or the public authority has failed to exercise or has
wrongly exercised the discretion conferred upon it by a statute
D or a policy decision of the Government or has exercised such
discretion mala fide or on irrelevant considerations or by
ignoring the relevant considerations and materials or in such a
manner as to frustrate the object of conferring such discretion
or the policy for implementing which such discretion has been
E conferred. Their Lordships went on to observe that in all such
cases and in any other fit and proper case a High Court can
compel the performance in a proper and lawful manner of the
discretion conferred upon the Government or a public authority,
and in a proper case, in order to prevent injustice resulting to
the concerned parties, the court may itself pass an order or give
F directions which the Government or the public authority should
have passed or given had it properly and lawfully exercised its
discretion.

G 21. Mr. Altaf Ahmad also submitted that a Magistrate, while
considering a police report made under Section 173(2) Cr.P.C.,
was not bound to accept the same and could himself take
cognizance and issue process. Mr. Ahmad submitted that the
Magistrate was not bound to accept the Test Report submitted
by the Inspector General of Police, Central Range, Cuttack, and
H was entitled to take cognizance of the offences on the basis of

the earlier report, according to his discretion. Mr. Ahmad referred to the decision of this Court in *H.S. Bains vs. The State (Union Territory of Chandigarh)* [AIR 1980 SC 1883], in support of his said submission which was rendered on the basis of a report submitted pursuant to an investigation ordered under Section 156(3) Cr.P.C., indicating that no case had been made out. Despite the above, this Court held that the Magistrate could still take cognizance and issue process if he was satisfied from the materials on record, including the inquiry report, that a prima facie case existed against the accused persons.

22. Mr. Altaf Ahmad submitted that there was absolutely no ground for interference with the order of the High Court, particularly in the facts of the instant case.

23. Mr. Sibo Sankar Mishra, learned counsel for the State of Orissa, submitted that the investigating authorities had conducted the investigation with due diligence and although cognizance had initially been taken against only 4 of the 19 accused persons, subsequently, cognizance was also taken against the remaining 15 accused on 2nd July, 2008. Mr. Mishra also submitted that during the course of investigation, the statements of the eye-witnesses had been duly recorded under Section 164 Cr.P.C. and on 9th July, 2007, polygraph tests were also conducted in respect of the three witnesses whose statements had been recorded under Section 164 Cr.P.C. in order to test their veracity. Learned counsel urged that it was not as if the investigating authorities had remained inactive but had pursued the matter with due diligence ultimately resulting in process being issued against all the 19 accused. Mr. Mishra also referred to a three-Judge Bench decision of this Court in *M/s India Carat Pvt. Ltd. vs. State of Karnataka* [AIR 1989 SC 885], which was also on the same lines.

24. We have carefully considered the submissions made on behalf of the respective parties and we are satisfied that no interference is called for with the order of the High Court impugned in this Special Leave Petition.

A 25. We are unable to accept Mr. Sharma's submissions
 that the High Court could not have interfered with the directions
 given by the Director General of Police to the Inspector General
 of Police, Central Range, Cuttack, to submit a fresh Test Note
 despite the supervisory report which had been submitted by the
 B Additional S.P., Jajpur, indicating that a case had been made
 out to go to trial as against all the 19 accused. When any
 illegality and/or *mala fide* action on the part of the Investigating
 Authorities, either on its own or at the behest of an interested
 party, is brought to the notice of the High Courts, the High Courts
 C in exercise of their inherent and plenary powers are entitled to
 intervene to set right the illegality and/or *mala fide* action on the
 part of the Investigating Authorities. The decision in *H.S. Bains's*
 case (supra) clearly reiterates such proposition.

D 26. In the instant case, although, the Supervisory Report
 submitted by the Additional SP, Jajpur, had been duly accepted
 not only by the Inspector General of Police, Central Range,
 Cuttack, but also by the Director General of Police, which was
 sufficient for the Magistrate to frame a charge against all the
 accused persons, a fresh direction was given to the Inspector
 E General of police, Central Range, Cuttack, to submit a Test
 Note. Such a direction given after the intervention of Dr.
 Parameswar Sethi, who has gone to the extent of providing an
 alibi for two of the accused, Jyoti Parida and Shakti Parida, in
 claiming that they were present in his house when the incident
 F had occurred, not only exudes an unpleasant flavour, but raises
 doubts about the bonafides of the police authorities at the
 highest level.

G 27. In fact, it is on account of such intervention that initially
 charge was filed only against 4 of the accused and, thereafter, OS
 3 more. No steps were taken as far as the remaining 12
 accused were concerned and it is only when the action of Dr.
 Parameswar Sethi was questioned before the High Court, that
 charge was also filed against the remaining 12 accused
 H persons.

28. We have considered the judgment of this Court in *Abhinandan Jha's* case (supra) and the other cases cited by Mr. Sharma. While indicating that the courts should not intervene in matters of investigation, which, under the scheme of the Code of Criminal Procedure, has been vested in the Police Authorities, an exception has also been made that in certain circumstances the court could intervene in order to do justice to the parties. As we have observed in other cases, the courts, and in particular the High Courts, are the guardians of the life and liberty of the citizens and if there is any flavour of deliberate misuse of the authority vested in the Investigating Authority, the High Court or this Court may certainly step in to correct such injustice or failure of justice. Such a view was indicated in the case of *Comptroller and Auditor-General of India's* case (supra) as far back in 1986 when on the failure of the administrative machinery a Mandamus had to be issued by this Court to grant relief to the petitioner to which he was entitled from the said authorities, and also in *H.S. Bains's* case referred to hereinbefore.

29. We are inclined to agree with Mr. Altaf Ahmad that in the peculiar facts and circumstances of this case, it was necessary for such a direction to be given by the High Court in order to prevent an injustice from being done on account of the intervention of influential persons, which not only had the effect of negating the Supervisory Report of the Additional SP, Jajpur, but also resulted in an attempt to shield some of the accused persons.

30. The judgment of the High Court, in our view, does not warrant any interference and the Special Leave Petition is, accordingly, dismissed.

31. There shall be no order as to costs.

B.B.B.

Special Leave Petition dismissed.