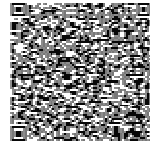




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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRWP-10536-2021 (O&M)

Reserved on : 05.04.2025

Pronounced on : 03.06.2025

Dr. Rosy Arora @ Dr. Rosy Dhawan

...Petitioner

Versus

Union Territory, Chandigarh

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Siddhartha Dave, Senior Advocate
(Through video conferencing facility)
with Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Rajiv Anand, Additional Public Prosecutor,
U. T., Chandigarh.

Mr. Ravi Kamal Gupta, Advocate
for CBI/proposed respondent.

MANISHA BATRA, J.

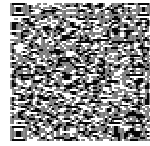
1. The instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking issuance of writs in the nature of Habeas Corpus, Mandamus and Certiorari making different prayers in case arising out of FIR No. 0075 dated 21.09.2020, registered under Sections 419 and 420 of IPC (Section 66D of the Information Technology Act added later) at Police Station Sector 19, Chandigarh. However, at the time of initiating arguments, learned Senior counsel for the petitioner submitted that the petitioner restricted her claim only with regard to relief, whereby transfer of investigation



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of the above mentioned FIR to Central Bureau of Investigation (*for short 'CBI'*), has been made.

2. The aforementioned FIR has been registered on the basis of a complaint filed by a Kenyan resident namely Enid Nayabunbdi alleging therein that she was looking for a dentist and had gone to an online portal called www.whatclinic.com, wherein she came across the name of Advanced Dental Clinic, Chandigarh run by the co-accused Dr. Mohit Dhawan, who is husband of the present petitioner. She had contacted the clinic and was offered a medical tourism package, which included her dentistry work as well as accommodation and air fare. An estimate was sent to her which appeared to be convincing to her. On being satisfied with the offer made by the husband of the petitioner, the complainant made advance payment and visited India on 15.12.2017 and then on 14.06.2018. She alleged that neither proper accommodation was provided to her nor the dentistry work, done by co-accused Dr. Mohit Dhawan, was as per the promise. The dentures got prepared by him do not fit her gums, thereby causing discomfort and pain to her. She was also made to wait for long and had to incur extra money during the course of her treatment. She had to incur more money in her own country to get her dentures adjusted. By alleging that co-accused Dr. Mohit Dhawan had cheated her by making false assurances and had caused wrongful loss to the tune of 4226 Dollars, she prayed for taking action in the matter. Initially, the husband of the petitioner was nominated as an accused. Subsequently, offences under Sections 66D of the Information Technology Act and 120-B of IPC were added. The present petitioner was also nominated as accused on the allegations that by hatching a conspiracy with her husband and by sending emails to the complainant under the name of Aarti, she had induced



her (the complainant) to accept offer of getting dentistry work done and thereby cheated her and caused wrongful loss to her. She was arrested on 28.10.2021 and was subsequently released on bail. Investigation now stands completed and *challan* has been presented before the Court of the jurisdictional Magistrate.

3. Prayer for transfer of investigation to CBI has been made by the petitioner by submitting that she has been falsely implicated in this case. In fact, there was a dispute between the complainant and co-accused Dr. Mohit Dhawan, i.e. her husband, and she had nothing to do with the same. She is a renowned doctor and is a Conservative Dentist & Endodontist by profession. However, she had nothing to do with the treatment provided to the complainant. Neither the ingredients for commission of offences punishable under Sections 420 and 120-B of IPC nor that of Section 66D of the Information Technology Act are attracted qua her. After her arrest, she was illegally taken to Delhi and was kept in police custody for three days due to the reason that some police officers were having grudges against her husband. She has been implicated only to wreak vengeance upon her husband. The acts of the police officers/officials are highly scandalous. The complaint was filed on 27.09.2018 but FIR was registered only on 21.09.2020. She was implicated in this case only on 28.10.2021, when her husband had filed a petition against the police officers/officials. No allegation whatsoever had been made against her by the complainant. Advanced Dental Clinic, Chandigarh, is run by her husband and is sole proprietary concern of her husband. As such she could neither be connected with the said clinic nor was there any allegation to this effect. It is further argued that as police officers of high ranks are involved in the matter, therefore, a tainted investigation has been conducted. She is entitled to seek transfer of



investigation to some independent agency even after filing of *challan* report. With these broad submissions, it is urged that the prayer made by deserves to be accepted. To buttress his arguments, learned counsel for the petitioner has relied upon the authorities cited as ***State of West Bengal vs. Committee for Protection of Democratic Rights, (2010) 3 SCC 571, Rubabbuddin Sheikh vs. State of Gujarat, (2010) 2 SCC 200, K. V. Rajendran vs. Superintendent of Police, CB CID South Zone, (2013) 12 SCC 480, Mithilesh Kumar Singh vs. State of Rajasthan, (2015) 9 SCC 795, Bimal Gurung vs. Union of India, (2018) 15 SCC 480, Awungshi Chirmayo vs. Govt. of NCT Delhi, (2024) 10 SCC 568 and Kabir Shankar Bose vs. State of West Bengal, 2024 SCC Online SC 3592.***

4. Reply has been filed by the respondent-U.T., Chandigarh. It is submitted by learned Additional Public Prosecutor, Chandigarh that the husband of the petitioner had previously filed a petition for transfer of investigation of the same FIR, which is the subject matter of this case, to some independent agency. The said petition had been dismissed by this Court. Letters Patent Appeal filed by him against the said order was also dismissed as withdrawn. The petitioner and her husband have been abusing the process of law by filing multiple applications/complaints with intent to delay/prolong the proceedings. Thorough investigation has been conducted in the matter and the same already stands concluded. Even *challan* has been presented. No ground for conducting fresh/re-investigation by way of transferring the same to CBI is made out. It is only in exceptional circumstances that re-investigation/further investigation is to be ordered and no such circumstance has been made out in this case. There are specific and serious allegations against the petitioner as during the course of investigation, it has been revealed that in fact the petitioner is the proprietor of



Advanced Dental Clinic and by hatching conspiracy with her husband, she had impersonated herself as one Aarti by representing that she was an employee of the said clinic and had induced the complainant to spend money for the purpose of taking dentistry treatment from the clinic of the petitioner. Her complicity in commission of subject offences is *prima facie* established. No case for sending the matter to CBI has been made out. The prayer made by the petitioner for impleading CBI as party to the petition is also of no substance. It is, therefore, argued that the petition is liable to be dismissed. To fortify his arguments, learned counsel has placed reliance upon the authorities cited as ***Vinay Tyagi vs. Irshad Ali @ Deepak and others, 2013 (5) SCC 762, Gudalure M. J. Cherian vs. Union of India, (1992) 1 SCC 397 and K. Saravanan Karuppasamy and another vs. State of Tamilnadu, 2014 (10) SCC 406.***

5. It will be relevant to mention here that an application has been filed by the petitioner for impleading CBI as a respondent in the main petition. Reply to the said application has been filed by CBI. It is argued by its counsel that there is no need to implead it as party to the petition since the allegations levelled by the petitioner do not involve any inter-State or international ramification warranting investigation by CBI. It is further argued that even otherwise, the petitioner, being an accused, has no right to insist the offences alleged against her to be investigated by a particular agency, especially when the investigation is already over.

6. This Court has heard learned counsel for the parties at considerable length and has also gone through the material placed on record carefully.

7. At the outset, it is to be considered as to whether this Court can issue direction for conducting investigation by CBI even after filing of



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challan/chargesheet as in this case? In this context, reference can be made to the authority cited as ***Ram Jethmalani v. Union of India (2011) 8 SCC 1***, wherein Hon'ble Supreme Court observed that in appropriate cases, even if chargesheet is filed, it is open for the High Court or Supreme Court to direct investigation of the cases to be handed over to CBI or to any other independent agency in order to do complete justice. Similar observations were made by Hon'ble Supreme Court in ***Bharati Tamang vs. Union of India and Ors., (2013) 15 SCC 578***, ***Dharam Pal vs. State of Haryana and Ors., (2016) 4 SCC 160***, ***Rubabbuddin Sheikh's case (supra)***, ***Mithilesh Kumar Singh's case (supra)***, ***K. V. Rajendran's case (supra)*** and ***Iqbal Singh vs. State of Punjab : 2006 (2) RCR (Criminal) 836***. The ratio of law laid down in these cases is that the power to order fresh, de novo or re-investigation, being vested with constitutional Courts, the commencement of trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power, which is meant to ensure a fair and just investigation. If a grave suspicion arises with regard to the investigation, a constitutional Court should not close its hands and accept the proposition that as the trial has commenced, the matter is beyond it. To do the complete justice and furtherance of fair investigation and fair trial, the constitutional Courts may order further investigation/re-investigation/de novo investigation even if the chargesheet is filed and charges are framed, otherwise, it would lead to travesty of justice. If investigation by the local police is not satisfactory, a further investigation is not precluded, though accused has no right as to which investigation agency should conduct investigation into the allegations.



8. In view of the above, it is evident that a Constitutional Court can direct CBI to investigate into a case even after chargesheet has been filed, charges have been framed or some evidence before the trial Court as been recorded. However, simultaneously, it is also well established that such power can be exercised in exceptional circumstances when after examining the allegations in the complaint, the Court reaches a conclusion that the complainant could make out a *prima facie* case with regard to relief sought by him/her and only when it is satisfied that the investigation has not proceeded in a proper direction or had been conducted in a biased manner. Reference in this context can be made to some judicial pronouncements of Hon'ble Supreme Court cited as ***CBI vs. Rajesh Gandhi : 1997 Cri LJ 63***, wherein it was observed that no one can insist that an offence be investigated by a particular agency. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice; ***Secretary, Minor Irrigation & Rural Engineering Services, U.P. vs. Sahngoo Ram Arya, (2002) 5 SCC 521***, wherein it was observed that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a *prima facie* case calling for an investigation by the CBI or any other similar agency; and to ***State of West Bengal's*** case (supra), wherein it was observed that although no inflexible guidelines can be laid down to decide whether or not powers for issuing directions to conduct investigation by CBI should be exercised or not but 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 instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise 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.

9. Reliance can further be placed upon ***K. V. Rajendran***'s case (supra), wherein it was observed by Hon'ble Supreme Court that the power of transferring investigation from State investigating agency to any other independent investigating agency like CBI must be exercised in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. In ***Vinay Tyagi***'s case (supra), the Hon'ble Supreme Court had observed that the cases where direction to conduct a de novo investigation can be issued is few and far between. Such direction is to be based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. Where the investigation *ex-facie* is unfair, tainted, *mala fide* and smacks foul play, the Courts would set aside such investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating



agency. This power is of wide plenitude and has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. It was observed that unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a fresh investigation. Reliance can also be placed upon ***Gudalure M. J. Cherian***'s case (supra), wherein the Hon'ble Supreme Court observed that in cases where the chargesheets have been filed after completion of investigation and the request is made belatedly to reopen the investigation, such investigation being entrusted to a specialized agency would, normally be declined by the Court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instill confidence in public mind, it may become necessary to pass such orders. Reliance can further be placed upon ***Vishal Thakur vs. Union of India : AIR 2024 Supreme Court 414***, wherein it was observed by Hon'ble Supreme Court that such powers must not be exercised by the Court in the absence of cogent justification indicative of a likely failure of justice in the absence of exercise of power to transfer the investigation. The petitioner must place on record strong evidence indicating that the investigating agency has portrayed inadequacy in the investigation or prima facie appears to be biased.

10. In view of the above, the law can be summarised to the effect that this Court can exercise its constitutional powers in transferring investigation from State investigating agency to any other investigating agency including CBI only in rare and exceptional cases when it is revealed that the investigation is prima facie tainted/biased and investigation has been influenced. Before directing CBI to investigate a case, the Court must reach a conclusion on the



basis of the pleadings and material available on record that a prima facie case is made out or not against the accused. However, the investigation by CBI is to be granted only in exceptional circumstances, where the Court is of the view that accusation is against a person who by virtue of his post could influence the investigation and may cause prejudice to the cause of the complainant.

11. On applying the above discussed principles of law to the peculiar facts and circumstances of the present case, it is to be seen as to whether the petition deserves to be allowed? The case of the petitioner is that she has been implicated as an accused in the subject FIR by the investigating agency in order to wreak vengeance upon her husband against whom this FIR was initially registered and who has filed certain petitions/complaints against some high rank police officers. However, neither the name(s) of any such officer(s)/officials(s) who are allegedly offended with the husband of the petitioner nor the details as to why such police officer(s) is/are so offended have been mentioned in the petition. No doubt, it is revealed from the material placed on record that some other FIRs have also been registered against the husband of the petitioner, however, at this stage, nothing is reflected to show that the petitioner had been implicated due to that reason. As per the allegations, it was she, who was in fact the proprietor of the Advanced Dental Clinic and in connivance with co-accused Dr. Mohit Dhawan, she had induced the complainant to get treatment of dentistry in her clinic by offering medical-cum-tourism package. She is also alleged to have represented herself as one Aarti, an employee of the said clinic and had correspondence with the complainant through emails under the said name. Though, it is a debatable question as to whether because of that exchange of emails, she had committed any offence of cheating, however, that question



has to be decided by the trial Court after thorough assessment and evaluation of the evidence to be produced during trial. The claim of the petitioner that she is not the proprietor of the Advanced Dental Clinic *prima facie* appears to be false in view of the fact that a complaint under Section 138 of the Negotiable Instruments Act, 1881 had been filed by one Anil against her alleging that she was proprietor of the Advanced Dental Clinic and she was held guilty in the said complaint. Annexure R-7 is copy of judgment dated 05.01.2019, passed in the said complaint, which affirms this fact. The appeal filed against the said judgment of conviction is shown to have been allowed in view of a compromise having been arrived at between the petitioner and the complainant of that case but there is nothing on record to show that the petitioner in those proceedings had denied that she was proprietor of the said clinic. As such, at this stage, it cannot be stated that she had no concern with the said clinic and had no hand in inducing the complainant to accept the offer for getting treatment in the said clinic.

12. In view of the above discussed facts, this Court is of the considered opinion that no rare and exceptional case to show that the investigation is tainted, has been made out. As such, it cannot be stated that the investigating agency had conducted a tainted or biased investigation at the behest of some high rank police officers/officials, thereby causing failure of justice. Thus, no case has been made out warranting interference by this Court and accepting the prayer made by the petitioner for conducting of investigation by CBI. As a consequence, the petition does not deserve to be allowed and is hereby dismissed.



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13. However, it is clarified that the detailed discussion as made above shall not be treated as a finding on the merits of the case and learned trial Court shall continue with trial in accordance with law and will not be influenced by the findings given in this order.

14. Since the main petition stands dismissed, the application bearing number *CRM-W-1489-2024*, filed by the petitioner seeking impleadment of CBI as party-respondent to the main petition, also stands dismissed, being infructuous.

03.06.2025

*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*