

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.602/2011 @
PETITION FOR SPECIAL LEAVE TO APPEAL(Crl.)No.5005/2010

ASHOK KUMAR TODI .. Appellant

Versus

KISHWAR JAHAN & ORS. .. Respondent(s)

With
C.A.Nos.2204-2209/2011 @ SLP(C)No.29951-29956/2010
Crl.A.Nos.603-608/2011 @ SLP(Crl.)No.7008-7013/2010

DATE : 01/03/2011 There matters were called on for
pronouncement of judgment today.

For Appellant(s) Mr. Rana Mukherjee,Adv.
M/s. Victor Moses & Associates

For Respondent(s) Mr. Kalyan Bandopadhyay,Sr.Adv.
Mr.Abhijit Sengupta,Adv.

Mr. Tara Chandra Sharma,Adv.

Mr. Dharam Bir Raj Vohra,Adv.

Mr. Arvind Kumar Sharma,Adv.

M/s. Victor Moses & Associates

Ms. Kiran Suri,Adv.

Mr. Goodwill Indeevar,Adv.

Mr. Abhay Kumar,Adv.

Ms. Soumya Chakraborty,Adv.

Mr. Praveen Agrawal,Adv.

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Mr. Suchit Mohanty,Adv.
Mr. G. Biswal,Adv.
Mr. Anupam Lal Das,Adv.

Hon'ble Mr. Justice P. Sathasivam pronounced the
judgment of the Bench comprising Hon'ble His Lordship
and Hon'ble Dr. Justice B.S. Chauhan.

Leave granted.

The appeals are disposed of in terms of the signed
reportable judgment.

[Madhu Bala]
Sr.PA

[Savita Sainani]
Court Master

[Signed reportable is judgment is placed on the file]

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 602 OF 2011
(Arising out of S.L.P. (Crl.) No. 5005 of 2010)

Ashok Kumar Todi

.... Appellant(s)

Versus

Kishwar Jahan & Ors.

.... Respondent(s)

WITH

CIVIL APPEAL NOS. 2204-2209 OF 2011
(Arising out of S.L.P. (C) Nos. 29951-29956 of 2010)

AND

CRIMINAL APPEAL NOS.603-608 OF 2011
(Arising out of S.L.P. (Crl.) No. 7008-7013 of 2010)

J U D G M E N T

P.Sathasivam,J.

- 1) Leave granted.
- 2) These appeals are directed against the common judgment and final order dated 18.05.2010 passed by the Division Bench of the High Court of Calcutta in M.A.T. Nos. 703, 895, 704, 713, 714 and 744 of 2008 whereby the CBI was directed to start investigation afresh in accordance with law treating the complaint dated

21.09.2007 filed by Rukbanur Rahman, brother of Rizwanur Rahman - the deceased, as F.I.R. and to register a case of murder.

3) Brief facts:

(a) One Rizwanur Rahman-the deceased, a Computer Graphics Engineer fell in love with a girl, namely, Priyanka Todi, daughter of Ashok

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Kumar Todi. On 18.08.2007, Rizwanur Rahman married Priyanka Todi under the Special Marriage Act, 1954 in the marriage registration office. On 31.08.2007, Priyanka Todi left her father's house and started living in her husband's home at Tiljala within the jurisdiction of Karaya Police Station, Kolkata. The couple informed the Police Commissioner, Deputy Commissioner of Police(South), the Superintendent of Police, 24 Parganas (S), the Officer-in-charge, Karaya Police Station and the Officer-in-charge, Bidhan Nagar Police Station about their marriage by a letter dated 31.08.2007 along with a copy of the Marriage Registration Certificate. On the same day, Priyanka Todi informed her father about her marriage with the deceased and also of the fact of her residing with her husband in her in-law's house. On the very same day, in the evening, around 6.30 p.m., Ashok Kumar Todi-Priyanka Todi's father, Anil Saraogi -maternal uncle of Priyanka Todi and Pradip Todi - brother of Ashok Kumar Todi went to the house of the deceased and persuaded him and his family members to send Priyanka Todi back to their house but Priyanka Todi did not agree to their request. On the same night, Ashok Kumar Todi lodged a complaint at Karaya Police Station and consequently two police officers went to the residence of the deceased to create mental pressure on him. On 01.09.2007, early in the morning, Ashok Kumar Todi and Anil Saraogi threatened the deceased that if Priyanka Todi did not return back to her parents' house, they would face the dire consequences. On the same day, Pradip Todi lodged a complaint with Deputy Commissioner of Police (Detective Department) alleging that Priyanka Todi has been taken away by the deceased by deceitful means with intent to marry her. On various dates, the Deputy Commissioner of Police (DD) called Priyanka Todi and her husband at his office and asked Priyanka Todi to go back to her parents' house, but she refused to accept the proposal. On 08.09.2007, Pradip Todi made another application to police that Priyanka Todi has been detained forcibly by the deceased. On the action of the complaint, the sub-Inspector went to

the residence of the deceased and summoned the couple to Police Headquarter, Lal Bazar, Kolkata and the custody of Priyanka Todi was handed over to her uncle Anil Saraogi with condition that she will return to her husband's house after one week.

(b) On 21.09.2007, the dead body of Rizwanur Rahman was found on the railway tracks between Dum Dum and Bidhan Nagar Road Stations with injuries and the head smashed. On the same day, Rukbanur Rahman-the brother of the deceased, lodged a written complaint with Karaya Police Station suspecting the hands of Ashok Kumar Todi behind the unnatural death of his brother and the same was

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registered as UD Case No. 183 of 2007. The body of the deceased was sent for post mortem. The post mortem report revealed that the death was due to 10 injuries on the body and consistent with the injuries caused by train running at moderate speed. On 24.09.2007, the case was taken over by the Criminal Investigation Department (in short "the CID"). The CID carried out investigation and examined various witnesses including Ashok Kumar Todi and his family members.

(c) The mother and brother of the deceased filed Writ Petition No. 21563(W) of 2007 before the Calcutta High Court. The learned single Judge of the High Court, after hearing the parties, by an interim order dated 16.10.2007 directed the CBI to investigate into the cause of death of the deceased and to file a report in a sealed cover before the Court within two months. Pursuant to the abovesaid direction, the CBI registered case bearing No. RC.8(S)/2007-SIU-I/CBI/SCR.1/New Delhi under Section 120-B read with Sections 302 and 506 of the Indian Penal Code (in short "the IPC") against Ashok Kumar Todi and others. On 08.01.2008, the CBI filed report before the learned single Judge which indicates that the deceased committed suicide by laying before the train and sought permission to file charge sheet against Ashok Kumar Todi, his brother Pradeep Todi, Anil Sarogi, S.M. Mohiuddin @ Pappu, Ajoy Kumar, Sukanti Chakraborty and Krishnendu Das under Section 120-B read with Sections 306 and 506 IPC.

(d) After considering the case, the learned single Judge of the High Court, by final order dated 14.08.2008, granted liberty to the CBI to proceed in accordance with law for filing charge sheet before a competent court under Section 173(2) of the Code of Criminal Procedure (hereinafter referred to as "the Code"). Liberty was also

reserved to the CBI to conduct further investigation before it

actually files the charge sheet. Pursuant to that order, CBI

continued with the investigation and filed a charge sheet being No.

07/08 dated 20.09.2008 under Section 120-B read with Sections 306

and 506 IPC in the court of Chief Metropolitan Magistrate, Bank

Shell Court, Kolkata.

In the said charge sheet, Ashok Kumar Todi,

Pradeep Todi, Anil Saraogi, Sukanti Chakraborti and Krishnendu Das,

S.M. Mohiuddin @ Pappu, Ajoy Kumar were arrayed as accused.

Subsequent to the filing of the charge sheet, all the accused

persons surrendered before the Court of Metropolitan Magistrate and

were taken into custody, and subsequently, all the accused persons

were released on bail on different dates.

(e) Aggrieved by the judgment and order dated 14.08.2008 passed by

the learned single Judge, Ashok Kumar Todi and others filed their

respective appeals before the Division Bench of the High Court of

Calcutta. The Division Bench of the High Court heard all the

appeals together and by impugned judgment and order dated

18.05.2010 set aside the judgment and order dated 14.08.2008 passed

by the learned single Judge and directed the CBI to start

investigation afresh in accordance with law by treating the

complaint dated 21.09.2007 filed by the brother of the deceased as

F.I.R. and to register a case of murder and further directed to

complete the investigation preferably within a period of four months from the date of the order. Aggrieved by the impugned judgment and order dated 18.05.2010, Ashok Kumar Todi filed S.L.P.(Crl.) No. 5005 of 2010, the mother and brother of the deceased filed S.L.P.(C) Nos. 29951-29956 of 2010 and the C.B.I. filed S.L.P.(Crl.) Nos. 7008-7013 of 2010 before this Court. Hence these appeals by special leave.

3) Heard Mr. Gopal Subramaniam, learned Solicitor General for the CBI, Mr. U.U. Lalit, learned senior counsel for Ashok Kumar Todi, Mr. Kalyan Bandopadhyay, learned senior counsel for mother and brother of Rizwanur Rahman - the deceased and Mr. Tara Chand Sharma, learned counsel for the State of West Bengal. In addition, we also heard other counsel in respect of certain directions/observations about the departmental action to be initiated against the State Police Officers by the State Government.

4) Mrs. Kiswar Jahan and Rukbanur Rahman-mother and brother of the deceased filed Writ Petition No. 21563 of 2007 before the High Court at Calcutta praying for directions against the State of West Bengal and their officers that the investigation in connection with the unnatural death of Rizwanur Rahman being UD Case No. 183 of 2007 be handed over to CBI and that the CBI should submit a report on such investigation before the High Court and upon such investigation

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appropriate orders be passed. Apart from the above relief, they also prayed for certain directions for taking action against the officers of the State Police Department. Before considering the final order in the said writ petition, it is useful to refer to the interim direction of the learned single Judge dated 16.10.2007. By pointing out mandates of Sections 154(3) and 156(1) of the Code and the Police Regulations of Calcutta, it was submitted before the learned single Judge that the authorities, particularly, the Deputy Commissioner of Police, Detective Department was interested in protraction of the case and not in its investigation. It was also highlighted that several other officers had unauthorisedly

intervened in the matter. It was the grievance of the writ petitioners that in spite of the fact that Rizwanur Rahman and Priyanka Todi married voluntarily and by their free will on 18.08.2007, under the Special Marriage Act, 1954, in the Marriage Registration Office, because of the influence of Ashok Kumar Todi- father of Priyanka Todi, higher authorities in the police department without following the judgment of this Court which directs the administration/authorities to see that spouses of inter-religious marriages are not harassed or subjected to threats, instead of allowing investigation to take its course in accordance with the provisions of law, the Commissioner of Police had made comments, widely reported, that the reaction of the parents to the marriage was natural and death was due to suicide. It was also projected

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before the learned single Judge that the police authorities were beneficiaries of undue favours at the instance of Ashok Kumar Todi. It was asserted that no fair investigation by the CID is possible in a manner where the allegation is against the highest brass of the Calcutta Police. In those circumstances and by placing reliance on various materials/instances about the interference by the police authorities on various occasions in the marital life of Rizwanur Rahman and Priyanka Todi, the writ petitioners prayed for a fair investigation by the CBI under the directions of the High Court.

5) Learned Advocate General who appeared for the State of West Bengal before the High Court resisted the prayer in the writ petition and contended that the writ petition is not maintainable and further argued that mere allegations of threat is not a cognizable offence and there was no complaint before the police except the letter dated 18.09.2007 by one Sadiq Hussain which did not mature. It was further argued that the provisions of Section 154(1) of the Code are not attracted. It was pointed out by learned

Advocate General that the appropriate remedy under the statute would have been a complaint before the Magistrate and not a petition under Article 226 of the Constitution before the High Court since the petitioners must demonstrate that they have legal and personal right which has been violated. Moreover, it was pointed out that the CID is carrying on an enquiry though not an investigation into the cause of unnatural death. Further, there is no violation of fundamental

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rights of the writ petitioners under Articles 19 and 21 of the Constitution.

6) After recording the finding that the deceased can no longer seek redressal for any injury caused to him and it is only his near relatives, who are mother and brother, can make a prayer by filing the petition under Article 226 of the Constitution, after adverting to the marriage on 18.08.2007 and various instances on which the police officers intervened in their personal life, threatened them and after satisfying that prima facie the investigation carried out by the State CID is not in accordance with the provisions of the Code, the learned single Judge of the High Court passed an interim order directing the CBI to investigate into the cause of unnatural death of Rizwanur Rahman and to file a report in a sealed cover within a period of two months from the date of service of the copy of the said order.

7) Pursuant to the interim direction dated 16.10.2007, an FIR was registered on 19.10.2007. In the said FIR, apart from the required details, various directions given in the order of the High Court dated 16.10.2007 were incorporated. The Superintendent of Police, CBI after finding that the facts stated in the complaint coupled with the directions of the High Court vide its order dated 16.10.2007, prima facie disclosed commission of offence punishable under Section 120-B IPC read with Sections 302 and 506 IPC and

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substantive offences thereof against Ashok Kumar Todi and others,

registered a regular case and started investigation.

8) Pursuant to the interim direction of the High Court, the CBI filed its report and prayed for leave of the Court to file charge-sheet before the competent Court having jurisdiction. Based on the said report as well as the leave sought for in the writ petition, after hearing the arguments of either side, the learned single Judge framed the following issues for determination:

(i) Should the writ petition fail owing to the petitioners not taking recourse to efficacious alternative remedy provided by the Code?

(ii) Should the writ petition fail because it does not disclose any cause of action, because adjudication of the issues would involve resolving hotly disputed facts and because of defective verification of pleadings, as contended by Mr. Pal?

(iii) Whether 'Kolkata Police's inaction' vis-à-vis the complaint lodged by the couple and 'Kolkata Police in action' vis-à-vis complaints of Pradeep Todi impugned herein justified? Is respondent no. 3 responsible in any manner?

(iv) Did any of the city police officers (respondent Nos. 5,7,8 & 9) act ultra vires in discharge of official duties?

(v) Whether investigation conducted by the State Police agencies was in accordance with law?

(vi) Whether the facts and circumstances presented before the Court called for entrusting the CBI with investigation of cause of death of Rizwanur Rahman?

(vii) Whether the CBI acted ultra vires in registering an FIR for alleged offence of murder and conducted investigation on the basis thereof in a manner not authorized by law?

(viii) Are the parties entitled to have a copy of the report of the CBI filed in Court?

(ix) Is the CBI justified in expressing views in relation to recommending to the State initiation of disciplinary proceedings for

major penalty against some of the respondents.

(x) Whether the CBI should be allowed to proceed further on the basis of materials collected by it in course of investigation?

(xi) To what relief, if any, are the petitioners entitled?

9) After analysis and having full-fledged hearing, the learned single Judge arrived at the following conclusion:

(i) When an individual perceives a threat to his life and limb and seeks enforcement of his right to life, interference of the writ court may be more intrusive but to lay down as a matter of rule that a writ petition must be entertained whenever right guaranteed by Article 21 is sought to be enforced despite availability of an alternative remedy would itself result in impinging on exercise of judicial description by the writ court.

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(ii) A man is born free and has the right to stay free unless he indulges in unlawful activities which, if proved, may result in penal consequences depriving him of such right. The Constitution guaranteed this right to Rizwanur Rahman. By marrying Priyanka Todi, he did not commit any crime. Evidence on record is considered sufficient to demolish the allegation leveled against him by Pradeep Todi. He had, therefore, the absolute right to live a life which is decent, complete, fulfilling and worth living. The objection that hotly disputed facts are involved which necessarily cannot be adjudicated by the Writ Court is equally unmeritorious.

(iii) The third respondent therein - Commissioner of Police, Kolkata, acted irresponsibly and instead of diffusing tension, he added fuel to fire.

(iv) By summoning Rizwanur Rahman without registering any cognizable case against him on the basis of the complaints of Pradeep Todi and/or by invading Rizwanur's previous right to life despite being well and truly aware that

Priyanka Todi had married him on her own without pressure exerted from any quarter, respondents 5, 7, 8 and 9 therein jointly and severally are guilty of exceeding police powers conferred on them and thereby have acted ultra vires the Constitution.

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- (v) (vi) While passing the interim order on 16.10.2007, the learned single Judge duly considered the materials presented and on finding that the investigation by the State CID was not proper, therefore, the CBI was directed to investigate the cause of death of Rizwanur Rahman.
- (vii) In the facts and circumstances which fall for consideration on 16.10.2007, the Court is of the considered view that entrusting the CBI with investigation of cause of unnatural death of Rizwanur Rahman cannot be said to be improper or unwarranted and the Court was justified in directing CBI investigation. The CBI was justified in recording an FIR before it proceeded to conduct investigation.
- (viii) So long as the investigation is not closed by way of filing of a Final report under Section 173(2) of the Code, persons who might be shown as accused in the FIR have no right to claim copy of the report containing materials which have been collected against them and, particularly, in view of the fact that report filed before the High Court is not a final report but is one in aid of the final report.
- (ix) On the basis of the materials collected, it was beyond the jurisdiction of the CBI to make a recommendation for initiation of major penalty proceedings against some of the police officers without obtaining leave from the Court.
- (x) There is no reason as to why CBI should not be allowed to

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proceed further.

(xi) Interest of justice would be best served if liberty is reserved unto the State to proceed in accordance with law. Accordingly, it is observed that the State may initiate such action as it deems fit and proper against any of or all the respondents in accordance with law.

10) The abovesaid order of the learned single Judge was taken up by way of appeal before the Division Bench by Ashok Kumar Todi, Pradip Todi, Anil Saraogi, Kishwar Jahan and others and State of West Bengal. The Division Bench, after going through the order of the learned single Judge as well as the rival contentions of all the parties, determined the following questions namely, :

(a) Whether, the learned single Judge was justified in passing the order impugned?

(b) Whether in addition to the order impugned, the Court should have passed direction for indicting the two police officers in the criminal proceedings on the basis of the allegations made in the writ application?

11) The Division Bench, after finding that a direction for investigation by the CBI should not be granted on mere asking for, in the absence of any prohibitory or injunction order, preventing

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the State CID from further investigation commented on the conduct of the State police in not perusing the investigation, concluded that:

(i) Interim order dated 16.10.2007 of the learned single Judge did not authorize the CBI to investigate in terms of Chapter XII of the Code in place of the State CID.

(ii) The order of the learned single Judge directing investigation and, consequently, the report submitted by the CBI and permitting the CBI to submit such report in the form of charge-sheet in the Court are quashed.

(iii) The investigation conducted by the CBI cannot be treated to be an investigation within the meaning of the Code.

Recommendation of the CBI to take disciplinary measures against the Police Officers by virtue of the interim order of the learned single Judge are quashed.

(iv) For violation of Article 21, a writ Court cannot conclusively decide, whether violation amounts to penal laws, ignoring the provisions of the Code for trial of such offences.

The Court can give special protection to the accused in such trial and the procedure of such trial is different from the one provided for the disposal of a writ application. In view of the same, the aggrieved person is not entitled to file an application under Article 226 of the Constitution asking the High Court to decide the issue.

12) After observing and arriving at such ¹⁷ conclusion, ultimately, the Division Bench, by the impugned order, set aside the order of the learned single Judge and on the basis of its own finding recorded that it is a fit case for investigation by the CBI, directed the CBI to start investigation afresh in accordance with law treating the complaint dated 21.09.2007 filed by writ petitioner No. 2 (Rukbanur Rahman) as an FIR and to register a case of murder.

13) On analysis of the orders of the learned single Judge and the Division Bench as well as the issues raised and various contentions by the counsel for either side, following points arose for determination in these appeals:

i) whether the order of the learned single Judge appointing CBI to enquire into the unnatural death of Rizwanur Rahman and further direction giving liberty to the CBI to proceed in accordance with law for filing charge sheet before the competent court under Section 173(2) of the Code and to take further investigation before it actually files the charge-sheet on any point it may consider necessary in the interest of justice is acceptable and sustainable? or;

ii) whether the decision of the Division Bench, setting aside the

order of the learned single Judge, directing the CBI to start investigation afresh by treating the complaint of the writ

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petitioner No. 2 therein-Rukbanur Rahman dated 21.09.2007 as FIR and to register a case of murder is sustainable?

14) Since the mother and brother of the deceased-Rizwanur Rahman had a doubt about his unnatural death and they were not satisfied with the investigation by the State CID as well as due to mounting pressure by higher officials of the State Police Department, they prayed for an appropriate direction at the hands of the High Court for investigation by the CBI. In State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571, the issue which was referred for the opinion of the Constitution Bench was whether the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can direct the CBI established under the Delhi Special Police Establishment Act, 1946 (for short "the Special Police Act") to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without the consent of the State Government. The Constitution Bench, after adverting to the required factual details, rival contentions and the relevant constitutional provisions has concluded:-

"69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of

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the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly."

After saying so, the Constitution Bench has clarified that this

extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

15) In view of the above judgment, it is unnecessary to delve into the issue further about appointment of special agency like CBI for investigation under the orders of the High Court. In fact, in view of the above decision, almost all the counsel appearing on either side have no quarrel about the issue and their present grievance is whether the order of the learned single Judge is to be implemented or the impugned order of the Division Bench is to be applied?

16) On the legality of the order of the learned single Judge in directing CBI to investigate and submit a report instead of the State CID, we are of the view that the learned single Judge assigned acceptable reasons. It was highlighted by learned senior counsel for the mother and brother of the deceased that in spite of Sections 154(3) and 156(1) of the Code and the Police Regulations of Calcutta, the authorities, particularly, the Deputy Commissioner of Police, Detective Department was interested in protraction of the case and was not taking any interest in its investigation. 20

The Deputy Commissioner of Police, Detective Department, and Addl. Dy. Commissioner, Headquarters had unauthorisedly intervened in the matter. Since there was no allegation of abduction against the deceased, the said officers made several attempts to mediate between the deceased and his in-laws. Relevant materials were shown that the officer-in-charge of the Karaya Police Station had visited the residence of the deceased, the intervention by Deputy Commissioner of Police, Detective Department, in the conjugal life of the deceased was uncalled for. It was also highlighted that without taking into account the earlier decisions of this Court directing the administration/authorities to see that spouses of inter-religious marriages are not harassed or subjected to threats, the

Commissioner of Police had made comments, widely reported, that the reaction of the parents to the marriage was natural and death was due to suicide. The learned senior counsel has also highlighted unholy nexus between the top brass of the Police with father-in-law of the deceased. By placing such acceptable materials, the writ petitioners expressed doubt about fair investigation under the CID and demonstrated that investigation by the CBI under the orders of the court is necessary, since justice should not only be done but seen to be done. Inasmuch as the grievance of the mother and brother of the deceased are acceptable, the learned single Judge, by interim order dated 16.10.2007, directed the CBI to investigate into

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the cause of unnatural death of Rizwanur Rahman and file a report before it.

Interference by the police in conjugal life

17) In the earlier paragraphs, we have already adverted to certain factual details about the marriage of Rizwanur Rahman with Priyanka Todi. They themselves highlighted how they married and informed the same to the authorities concerned. The materials placed show that

Rizwanur Rahman fell in love with Priyanka Todi, the daughter of Ashok Kumar Todi, and married her on 18.08.2007 under the Special Marriage Act, 1954. They also registered their marriage before the

notified authority and obtained the certificate for the same.

Pursuant to the same, Priyanka Todi left her father's house on 31.08.2007 and went to live in her husband's house at Tijala Lane within the jurisdiction of Karaya Police Station, Kolkata. She

informed her father about their marriage and also informed the Police Commissioner as well as Dy. Commissioner of Police (South), Superintendent of Police, 24 Parganas (S), the Officer-in-charge, Karaya Police Station and the Officer-in-charge, Bidhan Nagar Police Station. On a complaint made by Pradip Todi, Priyanka Todi and

Rizwanur Rahman were summoned to Police HQ., Lalbazar, Kolkata on 08.09.2007 and the custody of Priyanka Todi was handed over to Anil Saraogi - her maternal uncle with condition that she will return to

her husband after one week.

Thereafter, the dead body of Rizwanur

Rahman was found on 21.09.2007 on the railway tracks between Dum Dum

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and Bidhan Nagar Road Stations with injuries and his head smashed.

We have also noted the details furnished by the mother and brother

of the deceased about the interference by the various police officers in their marital efforts. In this regard, it is useful to

refer to the law laid down by this Court in practice and procedure

in a matter involving freedom of conscience and expression in terms

of right to marry person of one's choice outside one's caste.

The

following observation and direction in Lata Singh vs. State of U.P.

& Anr., (2006) 5 SCC 475 is relevant:

"17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police

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against such persons and further stern action is taken against such persons as provided by law. "

Even as early as in 1990, this Court has held that every one

associated with enforcement of law is expected to follow the

directions and failure shall be seriously viewed and drastically

dealt with. We also reiterate that the directions of this Court are not intended to be brushed aside and overlooked or ignored.

Meticulous compliance is the only way to respond to directions of this Court. In the light of the direction in Lata Singh's case (supra), it is the duty of all persons in the administration/police authorities throughout the country that if any boy or girl who is major undergoes inter-caste or inter-religious marriage, their marital life should not be disturbed or harassed and if anyone gives such threat or commits acts of violence or instigates, it is the responsibility of the officers concerned to take stern action against such persons as provided by law.

18) In the light of the directions of this Court, it is unfortunate and of the fact that both Rizwanur Rahman and Priyanka Todi married on their own will, who were majors, and the marriage was duly registered under the notified authority, the police officials have no role in their conjugal affairs and the law enforcing authorities have no right to interfere with their married life and, in fact, they are duty bound to prevent others who interfere in their married life.

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19) As rightly observed by the learned Single Judge, the officers of the Police Department were not justified in interfering with the married life of Rizwanur Rahman and Priyanka Todi. The learned single Judge, by giving adequate reasons, directed the investigation by the CBI which we concur.

The reasonings of the Division Bench

20) The Division Bench, after analyzing the case has correctly determined the following question for consideration:

The question involved in the writ application was whether it had been established from the materials on record that there was genuine apprehension in the mind of the writ petitioners

that there might not be fair investigation at the instance of the CID in respect of the unnatural death of Rizwanur Rahman because of the alleged involvement of the high police officials of the Kolkata Police in the post marital dispute between Todis and the deceased on the one hand and with his wife on the other, justifying investigation by the CBI.

21) While answering those issues, the Division Bench of the High Court committed several infirmities which we point out hereunder.

With regard to the interim order dated 16.10.2007 passed by the learned single Judge appointing the CBI to investigate and report, the Division Bench has observed that the learned single Judge has not injuncted or restrained the State CID from proceeding with the investigation in accordance with the Code. The Division Bench has

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also commented that in the absence of any direction by the learned single Judge for handing over the papers relating to the investigation done so far by the CID to the CBI, the CID ought to have completed the investigation on its own. We are unable to

accept this conclusion. When the learned single Judge on satisfying himself based on the materials, particularly, the conduct of the State Police and the apprehension of the mother and brother of the deceased about getting fair justice at the hands of the State CID directed investigation by the CBI, there cannot be any parallel investigation by the State CID. In the same way, we are unable to

accept the conclusion of the Division Bench that the learned single Judge simply appointed the CBI as His Lordships "Special Officer" to investigate into the cause of unnatural death of the deceased and to submit a report in a sealed cover. The said finding of the High

Court is not borne out of the records of the case including the order dated 16.10.2007 passed by the learned single Judge. Neither

the Code authorizes the appointment of CBI officers as "Special Officer" nor the prayers made in the writ petition prayed for appointment of the CBI to act as "Special Officer" of the Court. As

a matter of fact, the order dated 16.10.2007 of the learned single

Judge does not mention that the CBI was being appointed as "Special Officer" of the Court. In the interim order, the learned single Judge decided the question whether investigation by the CID was just, fair and proper or whether such investigation should be conducted by the CBI. Merely because no injunction was passed against the CID from continuing with the investigation in the matter or no order was passed directing the CID to handover all the papers relating to investigation conducted by them to the CBI, does not mean that CID was free to continue with their investigation. On the other hand, the order dated 16.10.2007 makes it clear that the learned single Judge was prima facie satisfied that the case in question necessitated investigation by the CBI. Thus, the finding of the Division Bench that the learned single Judge appointed CBI as its "Special Officer" is patently against all canons of justice, equity and fair play in action.

22) The Division Bench of the High Court also committed an error in holding the order appointing CBI to investigate for the purpose of submitting report to the learned single Judge and not to investigate for the alleged offence in accordance with law in place of State CID and hence conclusion of such investigation by the CBI cannot form the basis of charge-sheet in the criminal trial. The Division Bench has also not considered the judgment dated 14.08.2008 passed by the learned single Judge in terms whereof, the Court permitted the CBI to proceed in accordance with law for filing charge sheet before the competent Court under Section 173(2) of the Code and was also granted liberty to conduct further investigation before it actually files the charge sheet at any point it may consider necessary in the interest of justice. Neither the learned single

Judge directed the CBI to submit the report as charge sheet, as has been held erroneously by the learned Division Bench nor the CBI was stopped from conducting further investigation in the matter before

it actually filed the charge sheet at any point it may consider

necessary in the interest of justice.

It is evident that CBI at

interim order stage was directed to investigate the case and at the

final order stage was directed to submit charge sheet after making

further investigation.

23) Section 2(h) of the Code defines investigation which reads as

under:

"(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf"

Under the scheme of the Code, investigation commences with lodgment

of information relating to the commission of an offence. If it is a

cognizable offence, the officer-in-charge of the police station, to

whom the information is supplied orally has a statutory duty to

reduce it to writing and get the signature of the informant. He

shall enter the substance of the information, whether given in

writing or reduced to writing as aforesaid, in a book prescribed by

the State in that behalf. The officer-in-charge has no escape from

doing so if the offence mentioned therein is a cognizable offence

and whether or not such offence was committed within the limits of

that police station. But when the offence is non-cognizable, the

officer-in-charge of the police station has no obligation to record

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it if the offence was not committed within the limits of his police

station. Investigation thereafter would commence and th

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investigating officer has to go step by step. The Co

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contemplates the following steps to be carried out during suc

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investigation:

(1) Proceeding to the spot; (2) ascertainment of the facts and circumstances of the case; (3) discovery and arrest of the suspected offender; (4) collection of evidence relating to the commission of the offence which may consist of -- (a) the examination of various

persons (including the accused) and the reduction of the
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statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and, if so, to take necessary steps for the same by the filing of a charge-sheet under Section 173. [Vide H.N. Rishbud & Anr. v. State of Delhi, AIR 1955 SC 196, State of M.P. v. Mubarak Ali, AIR 1959 SC 707 and Navinchandra N. Majithia vs. State of Meghalaya and Ors., (2000) 8 SCC 323]

24) When the final report is laid after conclusion of the investigation, the Court has the power to consider the same and issue notice to the complainant to be heard in case the conclusions in the final report are not in concurrence with the allegations made

29 by them. Though the investigation was conducted by the CBI, the provisions under Chapter XII of the Code would apply to such investigation. The police referred to in the Chapter, for the purpose of investigation, would apply to the officer/officers of the Delhi Police Establishment Act. On completion of the investigation, the report has to be filed by the CBI in the manner provided in Section 173(2) of the Code. [Vide Hemant Dhasmana vs. Central Bureau of Investigation and Another, (2001) 7 SCC 536]

25) In view of the same, the Division Bench failed to appreciate the order dated 16.10.2007 passed by the learned single Judge directing the CBI to investigate into cause of unnatural death of Rizwanur Rehman. We have already noted that as per Section 2(h) of the Code investigation includes all the proceedings under this Code for collection of evidence conducted by a police officer. The direction to conduct investigation requires registration of an FIR preceding investigation and, therefore had to be treated as casting an obligation on the CBI to first register an FIR and thereafter

proceed to find out the cause of death, whether suicidal or homicidal. In order to find out whether the death of Rizwanur Rahman was suicidal or homicidal, investigation could have been done only after registration of an FIR. Therefore, CBI was justified in recording FIR on 19.10.2007 in terms of the order dated 16.10.2007 passed by the learned Single Judge.

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26) The inquiry/investigation under Section 174 read with Section 175 of the Code may continue till the outcome of the cause of the death. Depending upon the cause of death, police has to either close the matter or register an FIR. In the case on hand, as per the post mortem report dated 22.09.2007, the cause of death of Rizwanur Rahman was due to the effect of ten injuries on the body and which were anti mortem in nature. In such circumstances, the proceedings under Section 174 of the Code were not permissible beyond 22.09.2007 and registration of an FIR was natural outcome to ascertain whether the death was homicidal or suicidal. Accordingly, in terms of order dated 16.10.2007, CBI registered an FIR on 19.10.2007 under Section 120-B read with Sections 302 and 506 IPC. The contrary observations made about the orders of the learned single Judge cannot be sustained. Inasmuch as the direction of the learned single Judge is in accordance with law and the CBI investigated the case in terms of the said order and submitted report based on which it was permitted to file a report before an appropriate Court and also adduced liberty to reinvestigate the issue if not arise, the Division Bench has erred in directing the CBI to start investigation afresh in accordance with law by treating the complaint of Rukbanur Rahman-brother of the deceased dated 21.09.2007 as FIR and to register a case of murder. As rightly

pointed out by the learned Solicitor General, all this had already been done by CBI three years back.

There is no need to register

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another FIR when in respect of the same offence an FIR had already been registered. Once an FIR had been registered lawfully and investigation had been conducted leading to filing of charge sheet before the competent court of law for the trial of accused persons, absolutely, there was no justifiable reason for the Division Bench to direct re-registration of the same by lodging another FIR after three years and proceed with the investigation which had already been concluded by the CBI.

27) The Division Bench of the High Court has failed to note that the fresh investigation into the same allegation would be a futile exercise and no purpose would be served by investigating the case afresh, more particularly, when there is no adverse comment on the investigation carried out by the CBI. The de novo investigation by lodging another FIR would result in delay of justice since the Division Bench has ordered to conduct the same investigation under the same sections started three years back by the same agency, namely, the CBI. For all these reasons, we are unable to sustain the reasonings of the Division Bench for a fresh investigation by the CBI.

28) Coming to the directions passed by the High Court about the conduct of the officers and taking action against them on the departmental side, we clarify that the concerned department is free to take appropriate action in accordance with the statute/rules/various orders applicable to them, after affording

reasonable opportunity of hearing. It should not be taken as neither the High Court nor this Court concluded the issue about the allegations made against them. However, we agree with the observation of the learned single Judge in respect of the conduct of the officers in interfering with the conjugal affairs of the couple

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as

even without any formal complaint against any one of them.

29) In the light of the above discussion, we conclude:

i) The learned single Judge of the High Court is fully justified in passing interim order on 16.10.2007 appointing the CBI to investigate into the unnatural death of Rizwanur Rahman and submit a report;

ii) The learned single Judge's final order dated 14.08.2008 accepting the report and granting opportunity to the CBI to proceed in accordance with law for filing charge sheet before the Competent Court under Section 173(2) of the Code is accepted.

iii) All the reasonings recorded by the Division Bench of the High Court in the order dated 18.05.2010 are unacceptable and hereby set aside;

iv) Pursuant to the orders of the learned single Judge, after investigation, CBI has filed charge sheet on 20.09.2008 under Section 120-B read with Sections 306 and 506 IPC. In view of the same and as per the statement of Mr. Lalit, Ashok Kumar Todi was in custody for 45 days and on the orders of this

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Court, he was ordered to be released and also of the fact that

all other accused were enlarged, no further custody is

required. However, we make it clear that CBI is free to move

an application before the court concerned for appropriate

direction, if their presence is required;

v) Any action against the officers of the State Police Department,

as suggested by the learned single Judge, shall be in

accordance with law and service conditions applicable to them and after affording opportunity to them.

30) All the appeals are disposed of on the above terms.

(P. SATHASIVAM)

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(DR. B.S. CHAUHAN)

J.

NEW DELHI ;
MARCH 1, 2011.