

investigation to the CBI.

The aforesaid contention was opposed by the learned counsel Ms. Kamini Jaiswal, representing the parents of the deceased victims of the alleged fake encounter who submitted that the High Court was perfectly justified in handing over the matter to the CBI. Justifying the order she has drawn the attention of this Court to the findings and reasonings assigned by the High Court in the impugned order which we need not incorporate herein as they are already part of the High Court's judgment and order.

The only question that is to be addressed by this Court is as to whether we find any substance in the submissions of the learned counsel for the petitioner, Sh. Naphade as to whether the High Court was justified in handing over the matter to the CBI. In fact, Ms. Jaiswal, learned counsel representing the respondents has also drawn attention of this Court to the fact that this special leave petition along with application seeking permission to file the special leave petition assailing the judgment and order of the High Court has been filed with a delay of 467 days from the date of the order which was passed way back on 01.12.2011 and therefore, this special leave petition is not fit to be entertained on the ground of unusual and unexplained delay even if this Court thought it appropriate to allow the application of the petitioner granting permission to file the special leave petition. This we have noted in addition to the submission of Ms. Jaiswal incorporated hereinbefore.

The question which now remains to be addressed is whether the petitioner can be held to be justified in questioning the order of the High Court transferring the investigation to the CBI. On that count we do not find substance in the plea of Mr. Naphade, learned senior counsel for the petitioner as on the one hand the petitioner although had been named in the second FIR which was registered, he did not get himself impleaded as a party in the writ petition which had been filed by the respondents-parents of the victims before the High Court and besides this he did not even consider it appropriate to contest the writ petition filed by the respondents where a specific prayer had been made for handing over the matter to the CBI for investigation. Apart from this, the question also arises as to how the petitioner can be permitted to challenge the order handing over the investigation to the CBI as it is not uncommon or unknown to law where the High Court has full authority and jurisdiction to hand over the investigation of a particular case to the CBI if, in its opinion, the facts of the case justifies such order. It is common knowledge and in our experience it is not unknown that if any party affected with the alleged shoddy investigation of a State police considers it appropriate, may file a petition before the High Court for handing over the investigation to the CBI. In fact, we are reminded of a matter commonly known as 'Nithari Case' where a large number of children had been killed by the accused and after the matter was investigated by the State police, it was considered appropriate to hand over the investigation to the CBI and a fresh FIR too was registered. There are cases too numerous to mention where the High Court, in appropriate cases and circumstances, has thought it appropriate to hand over the investigation to the CBI for arriving at the just conclusion. In that view of the matter, if the High Court has thought it appropriate to hand over the investigation to the CBI, we do not think it is appropriate for the petitioner, who is accused in the matter, to question the order of the High Court as to whether the matter was fit to be investigated by the CBI or not.

We make it clear that we have not entered into the correctness or otherwise of the order passed by the High Court as to whether the subsequent charge sheet which has been filed after investigation is fit to be quashed or not; nor we have expressed any opinion regarding the justification of the second FIR. What we are addressing at this stage is only as to whether the investigation should have been handed over to the CBI and on this we are of the considered view that there is no valid and legal justification to contend that the matter should not have been handed over to the CBI.

In that view of the matter, we find no substance in this petition

(NAVEEN KUMAR)
COURT MASTER

(S.S.R. KRISHNA)
COURT MASTER

(Signed order is placed on the file)