IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

****

201

===============
VIRTUAL COURT
===============

CWP No. 17459 of 2019 (O&M)
Date of Decision :9.4.2021

Gurdeep Singh ...... Petitioner

Versus

State of Punjab and others ....Respondents

2. CWP No. 17460 of 2019 (O&M)

Rashpal Singh ...... Petitioner

Versus

State of Punjab and others ....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

***

Present : Mr. R. S. Cheema, Senior Advocate with
Mr. K. S. Nalwa, Advocate and
Mr. A. S. Cheema, Advocate and
Mr. Chakitan V. S. Papta, Advocate
for the petitioner in CWP-17459-2019.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. K. S. Nalwa, Advocate and
Mr. Chakitan V. S. Papta, Advocate
for the petitioner in CWP-17460-2019.

Mr. Sidharth Ludhra, Senior Advocate with
Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab;
Ms. Diya Sodhi, AAG, Punjab;
Mr. Karan Bharihoke, Advocate;
Ms. Anusha Nagarajan, Advocate;
Ms. Shubhangini Jain, Advocate and
Mr. Pankaj Singhal, Advocate for the State of Punjab.

Mr. R. S. Bains, Advocate and
Mr. M. S. Chauhan, Advocate for respondent No.5

Mr. Sumeet Goel, Advocate for respondent No.6-CBI.

***

::: Downloaded on - 23-04-2021 18:30:29 :::

RAJBIR SEHRAWAT :

This judgment/order shall dispose of the abovesaid two writ petitions.

At the outset, it deserves mention that three incidents of alleged sacrilege qua Guru Granth Sahib; the Holy Book of Sikhs; are stated to have taken place from June to October 2015 in district Faridkot in Punjab. Some protests were held against the alleged sacrilege. During the process of maintaining the law and order situation the police are stated to have fired upon the protestors at village Behbal Kalan under Police Station Bajakhana, District Fridkot; wherein two persons are alleged to have died, and also at Kotkapura; where some police persons were seriously injured and one protestor is alleged to have received grievous gun-shot injury on thigh and some other persons are alleged to have received minor injuries. For all those incidents; at least 7 FIRs have been registered. Some FIRs were from the side of Police and some were from the side of protestors. These FIRs are as under:-

(A) Alleged Sacrilege FIRs

(i) FIR No. 63 dated 2.6.2015, Police Station Bajakhana.

(ii) FIR No. 117 dated 25.9.2015 Police Station Bajakhana.

(iii) FIR No. 128 dated 12.10.2015 Police Station Bajakhana.

(B) FIRs qua alleged violence and firing at Behbal Kalan - Death of 2 Persons:-

(i) FIR No. 129 dated 14.10.2015 Police Station Bajakhana.

(ii) FIR No.130 Dated 21-10-2015 Police Station Bajakhana

(C) FIRs qua alleged violence and firing at Kotkapura – Injuries to the Police and the Protestors:-

(i) FIR No. 192 Dated 14.10.2015 Police Station City Kotkapura.

(ii) FIR No. 129 Dated 07.08.2018 Police Station City Kotkapura

::: Downloaded on - 23-04-2021 18:30:30 :::

In the present petitions the incidents and FIRs relating to alleged Sacrilege mentioned at (A) above; and the incident of violence and FIRs mentioned at (B) regarding death of 2 persons, **are not involved**. These petitions involve only the incident of violence and the consequent FIRs mentioned at (C) above, which pertain to injuries only; to the police, as well as, to the protesters. Therefore this court is not considering or deciding anything regarding the FIRs mentioned above at (A) relating to Sacrilege or regarding the FIRs mentioned at (B) relating to Deaths. This Court is considering the matter involving the incident of **Kotkapura** only, which involves only the FIRs mentioned at (C) above; and which relate only to injuries suffered or caused in the incident at Kotkapura. Any reference or observation qua the cases mentioned at (A) or (B) above; would only be incidental or for collateral purpose of decision of the present petition.

The identical prayers made in both the present petitions are as under:

(i) To issue a writ of certiorari for quashing FIR No. 129 dated 7.8.2018, under Sections 307, 326, 324, 323, 341, 201, 218, 120B and 34 IPC and Section 27 of the Arms Act, registered at Police Station City Kotkapura, District Faridkot (Annexure P-9) being illegal as FIR for the same transaction already stands registered bearing FIR No. 192 dated 14.10.2015 under Sections 307, 353, 332, 333, 323, 382, 435, 283, 120B, 148 and 149 IPC, Section 25 of Arms Act and Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984 (Annexure P-7) at Police Station City Kotkapura, District Faridkot.

(ii) To declare that the ongoing investigation in subsequent FIR No. 129 dated 7.8.2018 (Annexure P-9) by the SIT is illegal and impermissible and to quash the reports under

::: Downloaded on - 23-04-2021 18:30:30 :::

Section 173 Cr.P.C. dated 23.5.2019 (Annexure P-13) and dated 6.6.2019 (Annexure P-14), presented in the said FIR.

(iii) To issue a writ of mandamus directing the investigating agency to carry out investigation of FIR No. 192 dated 14.10.2015 (Annexure P-7) and respondent No.3-Kunwar Vijay Pratap Singh, IGP, who is the de-facto head and controller of investigation, being carried out in the name of SIT, be removed forthwith from investigation of FIR No. 129 dated 7.8.2018 (Annexure P-9) and other connected FIRs, in view of his partisan and unbecoming conduct as an investigator;

(iv) To direct respondent No.1 to transfer the investigation of FIR No. 192 dated 14.10.2015 and FIR No. 129 dated 7.8.2018 (Annexures P-7 and P-9) to the CBI.

(v) And to stay the investigation in FIR No. 129 dated 7.8.2019 (Annexure P-9), being conducted by respondent No.3, during the pendency of the present writ petition and subject to the final outcome of the present writ petition.

The main facts which are common in both these cases, which are being taken for reference from pleadings in CWP No. 17459 of 2019 are; that an incident of alleged sacrilege; due to some Saroops (Books) of Guru Granth Sahib (The holy book of Sikhs) going missing from a Gurudwara in the area of Police Station Bajakhana in District Faridkot had taken place on 1.6.2015. On account of that, FIR No. 63 dated 2.6.2015 was registered under Sections 295A and 380 IPC

::: Downloaded on - 23-04-2021 18:30:30 :::

at Police Station Bajakhana, District Faridkot. An SIT was constituted by the then government on 10.06.2015 to enquire into the said incident of sacrilege. On 29.9.2015, allegedly, two hand written posters containing some sacrilegious contents qua Guru Granth Sahib were found pasted near a Gurudwara. For the said incident, another FIR No. 117 dated 25.9.2015 was registered under Section 295A IPC at Police Station Bajakhana, District Faridkot. The third incident also took place on 12.10.2015 when some torn pages of Guru Granth Sahib were found in a street opposite Gurudwara at Bargari. On account of this alleged sacrilege act, another FIR No. 128 dated 12.10.2015 was registered under Sections 295 and 120B IPC; again at Police Station Bajakhana, District Faridkot. Since the above mentioned alleged incidents were protested against by some members of the society in the area affected and there was apprehension of breach of peace and threat to law and order, therefore, the District Magistrate, Faridkot, vide order dated 7.9.2015 imposed Section 144 Cr.P.C. in District Faridkot. Vide this order, the District Magistrate had prohibited:-

(a) gathering of 5 or more persons at a public place;
(b) raising slogans, holding procession, rallies and such protests at public places;
(c) holding of meetings at public places.

It was also specified in that order that in the event of exceptional circumstances, the religious procession can be conducted after getting a written permission from the concerned Sub-Divisional Magistrate. Still further, the orders said that this shall not be applicable on police, home guards, military, para-military forces and the procession regarding marriages etc. performed in peaceful manner. This order was to remain in force from 8.9.2015 till 5.11.2015. The Senior Superintendent of Police, Faridkot was directed to take necessary steps to implement this order.

::: Downloaded on - 23-04-2021 18:30:30 :::

After the above mentioned third alleged incident of sacrilege on 12.10.2015, there were mass protests at Kotkapura and Behbal Kalan between 12.10.2015 and 14.10.2015. These protests were being held despite the above said order passed by the District Magistrate prohibiting any such protests and gatherings. The protest at Kotkapura, which is the subject matter of the present writ petition, was held at a crossing/chowk, which connected the city of Kotkapura to several other cities. Thus, the public transport was severally affected. In view of the disturbance of the public transport and the fact that the protests were already prohibited by the order of the District Magistrate, the police initiated action to get the place of protests vacated from the protestors. Considering the sensitivity of the matter, the police and the law enforcement authorities acted with restraint in the first instance. Efforts were made to negotiate with the protestors and to make them understand. However, the said approach of the police was, allegedly, taken as a sign of weakness by the protestors. They refused to vacate the place. Therefore, on 14.10.2015, the police force from other districts of Bathinda Zone and their SSPs and other senior officers were deputed at Kotkapura. On 14.10.2015, the District Magistrate, Faridkot, the SSP, Faridkot, the SDM, Kotkapura along with their staff and police persons from 13th Battalion from Punjab Armed Police, Chandigarh were present at Battianwala Chowk, Kotkapura, where the alleged protest was being held since 12.10.2015. At that time, several Sikh Religious Organizations and their followers were there. They were, allegedly, armed with swords, spears and other deadly weapons. To end this protest, the District Administration held meetings with the leaders of the protestors and made every effort to peacefully disperse the protestors so as to ensure that the agitators did not cause inconvenience and disruption to the public and the traffic. However, the hyper elements amongst the protestors took advantage of the prevalent public anger and started provoking their followers on the spot by delivering instigating

::: Downloaded on - 23-04-2021 18:30:30 :::

hate speeches and by arousing the religious feelings. The said leaders were instigating the crowd to attack and kill the police personnel and to damage the police vehicles and public property. The leaders of the protestors had planned violence and, therefore, they were having a tractor-trolley parked near the site of protest filled with bricks, brick-bats stones and the sticks. To disperse the protestors, the police attempted to arrest some of the protestors and their leaders. For that purpose, the buses of PRTC were requisitioned by the police and District Administration Authorities. When the police tried to arrest the protestors, they resisted and started throwing brick-bats and stones upon the police. Hence, the protest started taking violent turn at about 5:30 a.m. on 14.10.2015.

The petitioner Gurdeep Singh was posted as SHO of Police Station City, Kotkapura whereas the petitioner H.C. Rashpal Singh (since retired on 31.10.2018) was serving in 13th Battalion, Punjab Armed Police, Chandigarh at that time. On 13.10.2015, the petitioner and other persons of this battalion were summoned for duty at Kotkapura in District Faridkot to control the protests, which were taking place at Kotkapura.

Since the petitioner Gurdeep Singh was posted as SHO of Police Station City Kotkapura and the incident was taking place in his area, therefore, he had been on active duty making efforts to control the situation in such a tense atmosphere. Since, as mentioned above; the protest had turned violent early in the morning on 14.10.2015, therefore, he had moved an application before the SDM, Kotkapura, who was present at the spot, for seeking permission to use tear gas and water cannons to disperse the protestors. The said application was allowed by the SDM after assessing the situation, which was happening in his presence. Accordingly, the police used tear gas shells and threw at the protestors water-jets from the water cannons. On use of this modality, the protestors got infuriated and started attacking the police itself. Then to control the situation the petitioner

::: Downloaded on - 23-04-2021 18:30:30 :::

moved another application before the SDM seeking permission to resort to lathi-charge for dispersing the protestors, who had gathered there in very large numbers. Keeping in view the large gathering of protestors and the fact that there was immense apprehension of destruction of public property and of police vehicles by resorting to violence by the protestors, the said application was also allowed by the SDM, who was present on the spot. When the police lathi-charged the protestors, they got furious and started damaging the public property and even burnt some private vehicles, besides attacking the police force and the police station, which is situated at about 200 yards from the spot. Even the use of lathi-charge could not bring the situation under control. Rather, the protestors attacked the police persons on duty in a very bold and determined manner, which had resulted into injuries to several police persons. Hence, the petitioner was constrained to move third application before the Magistrate, who was still present there, seeking permission to fire gun-shots for self-defense and for dispersal of the protestors. Keeping in view the gravity of the situation, the SDM granted the permission for firing gun-shots, as well. However, while granting permission, the SDM had ordered that gun-shot fire be made in the air. When the police were firing in the air, the situation went totally out of control and the mob resorted to large scale violence wherein more than 50 police officials received multiple injuries. The mob of protestors also snatched official SLR of HC Rashpal Singh, which was also used by the protesters to fire on police persons on duty. Some of the police persons suffered grievous injuries and Rashpal Singh was so badly and brutally injured that he was rendered permanently disabled. The medical examination of the injured police persons was conducted at Guru Gobind Singh Medical College, Faridkot. While under treatment at the Medical College, MLR of 15 injured police persons was prepared whereas statements of the other injured police persons were recorded by the Emergency Medical Officer at Civil Hospital, Kotkapura. Total 47 police

::: Downloaded on - 23-04-2021 18:30:30 :::

persons got injured at the hands of protestors. Some of the police persons did not even have their injuries recorded because these were suffered in large numbers.

On account of this incident, information was sent by the petitioner to the police Station; in his capacity as SHO; and on that information FIR No. 192 dated 14.10.2015 was registered under Sections 307, 353, 332, 333, 323, 382, 435, 283, 120B, 148 and 149 IPC, as well as, Section 25 of the Arms Act and Sections 3 and 4 of Prevention of Damage to the Public Property Act, 1984, at Police Station Kotkapura, in which one Panthpreet Singh and 14 others were named as the main accused; along with various other unknown persons. The FIR was registered for causing injuries to the police persons on duty and for causing damage to the public property and police vehicles i.e. Vazra, water cannon vehicle, 3 government PRTC buses and 2 private vehicles. Under this FIR, 9 persons were arrested on 14.10.2015 itself. However, since the investigation would have taken some time; and at that time, the petitioner as an investigating officer; could not immediately collect the evidence against those persons, therefore, they were released on 16.10.2015 on an application moved by the petitioners to the effect that till that date there was no evidence against them and that they would be investigated later on, if the need be. Since some persons from the public were also injured in the incident, therefore, the MLR of some of those, including that one of one Ajit Singh son of Avtar Singh was also obtained from the hospital for further investigation. The petitioner conducted the investigation of above said FIR No. 192 dated 14.10.2015 till about first week of December 2015; during which he had recorded statements under Section 161 Cr.P.C. of more than 60 injured police persons/state officials. Recoveries were effected during that investigation, including the recovery of large quantity of *kirpans* and other weapons from the place of occurrence. Empties of .12 bore gun and torn pieces of uniforms of the police officials were also recovered. Various official and private vehicles which were burnt and

::: Downloaded on - 23-04-2021 18:30:30 :::

destroyed by the protestors in the occurrence were also taken into police possession. The SLR, which was snatched by the mob from the police official, was also recovered from Nagar Council Park in Kotkapura. Thereafter, the investigation was handed over to ASI Balwant Singh, even though the petitioner remained posted as SHO, Police Station City Kotkapura till 24.4.2016.

On 14-10-2015 itself but later in time the protestors were holding the protest at another place also in District Faridkot, namely, at Behbal Kalan under Police Station Bajakhana. There also, the incident of firing by the police had happened in view of the protestors having gone violent. In the said firing, two persons lost their lives. The police registered an FIR No. 129 Dated 14.10.2015 under section 307 IPC and other sections at Police Station Bajakhana. (Note:- This is a different FIR than the FIR No.129 dated 7.8.2018 registered at Police Station Kotkapura which is involved in the present petition). The public sentiments got aroused and the issue was further aggravated by the religious leaders. Consequently, the SIT which was already constituted to enquire into the incident of alleged sacrilege recommended registration of FIR for the offence under 302 IPC qua the incident in which two persons had lost lives - saying that it was the sentiments of the people to get registered an FIR for the offence of murder. Accordingly another FIR No. 130 dated 21-10-2015 which relates to the alleged police firing in Behbal Kalan under Poilce Station Bajakhana was registered at that Police Station. Also; just after two days of the incident, the then State Government appointed a Commission of Inquiry on 16-10-2015 by appointing Justice (Retired) Zora Singh to enquire into the alleged incidents of sacrilege and also into the police firing on 14.10.2015 at Kotkapura and Behbal Kalan. The said Commission submitted its report on 29.6.2016. However, whether that report was accepted or not, is not clearly disclosed by the State Government anywhere.

::: Downloaded on - 23-04-2021 18:30:30 :::

In the meantime, keeping in view the public outcry for justice and to ensure a fair investigation, the then State Government had referred the above mentioned 3 FIRs; i.e.; FIR No. 63 dated 2.6.2015, FIR No. 117 dated 25.9.2015 and FIR No. 128 dated 12.10.2015, all registered at Police Station Bajakhana, District Faridkot; to CBI vide; notification dated 2.11.2015.

None of the present petitioners is concerned or connected with these above said FIRs or the incidents involved therein; in any manner.

In March 2017 the Assembly Elections were held in the State of Punjab and the new government formed by a different political party was sworn in on 16.3.2017. Asserting that the earlier report of Justice (Retired) Zora Singh Commission was inconclusive, the incoming State Government set-up another Commission of Inquiry into the incidents of sacrilege, as well as, into the police firing at Kotkapura and Behbal Kalan on 14.4.2017, by appointing Justice (Retired) Ranjit Singh to head the Commission. Although the report of Justice Ranjit Singh Commission (hereinafter referred to as the Second Inquiry Commission) does not form part of the record of these writ petitions, however, the facts as mentioned in the pleadings give an understanding that the second Commission had recommended registration of criminal cases against the police persons and some political functionaries. These recommendations were made because, interalia, one Ajit Singh son of Avtar Singh had filed an affidavit before the second Commission; stating therein that he had received gun-shot injury in his thigh in the firing at Kotkapura, which was duly supported with the MLR, and also in view of the fact that, allegedly, two persons had died in firing at another place; Bahabal Kalan. The said Second Inquiry Commission submitted its report on 30.6.2018. Thereafter, the DGP, Punjab had written a letter to SSP, Faridkot to get the statement of the above said Ajit Singh recorded and to register an FIR thereon, so that the matter can be referred to CBI for investigation, where the earlier 3 FIRs

::: Downloaded on - 23-04-2021 18:30:30 :::

relating to alleged sacrilege were already referred. As a result, the SSP, Faridkot directed the SHO, Police Station City Kotkapura, vide letter dated 7.8.2018, to call the above said Ajit Singh son of Avtar Singh and to record his statement. This letter also mentioned that after registration of the case, the file be sent to the SSP office for onward submission to the office of DGP, Punjab, in order to transfer the cases to CBI or for further investigation, in compliance of the Government decision. Accordingly, the FIR No. 129 dated 7.8.2018 was registered under Sections 307, 323, 341, 148 and 149 IPC and Section 27 of the Arms Act, at Police Station City Kotkapura. Broadly speaking, this FIR was registered against unknown persons in the first instance, though later on 7 police persons were added as accused, including the petitioner on account of above said incident which happened at Kotkapura on 14.10.2015 in the early morning. In this FIR, the complainant got recorded qua his injury alleging that on the orders of the "Badal Government", the police had surrounded the peaceful protestors and started firing upon them. In the said firing the complainant was injured. However, he had also stated that he had never approached the police for lodging his complaint before joining hearing before the Second Inquiry Commission.

In a related development; qua the firing incidents and death of 2 protestors at Behbal Kalan, another FIR No. 130 dated 21.10.2015 was registered at Police station Bajakhana at the instance of an SIT appointed by the then state government to enquire into that incident.

Vide notification dated 24.8.2018, the present Government of Punjab transferred the investigation of the above said FIR No. 129 dated 7.8.2018, in which the incident of Police Station City Kotkapura was involved and also the FIR No. 130 dated 21.10.2015 and FIR 129 dated 14.10.2015 of Police Station Bajakhana in which the firing and death of two persons at Behbal Kalan was involved, to the CBI, with which the investigations of 3 other FIRs relating to

::: Downloaded on - 23-04-2021 18:30:30 :::

sacrilege incident were already pending pursuant to the same having been referred to CBI by the outgoing State Government. Hence, these 6 FIRs became subject matter of CBI investigation.

However, since there was a resentment in political circles against handing over the investigation to the CBI, therefore, the State Government put up the matter before the State Legislative Assembly and the State Assembly passed a resolution dated 28.8.2018, i.e., just after 4 days of handing over of the investigation to the CBI, and the resolution of the State Legislative Assembly called upon the State Government to take back the investigation of all the FIRs from the CBI. As a result, vide 2 separate notifications dated 6.9.2018, the State Government withdrew the investigation of all the FIRs from the CBI for handing over the same to the Punjab Police.

After withdrawal of the investigation from the CBI, the State Government constituted a Special Investigation Team (SIT) through the orders of DGP, Punjab on 10.9.2018. This SIT consisted of 5 officers including Senior IPS Officers. Sh. Prabodh Kumar, Director, Bureau of Investigation, Punjab, was designated as head of the SIT. Beside him, it consisted of Sh. Arun Pal Singh, IPS, IG Crime, Punjab, Kunwar Vijay Pratap Singh, IPS, IG Crime, Punjab, Sh. Satinder Singh, SSP, Kapurthala and Sh. Bhupinder Singh, Commandant, PRTC, Jehan Khalan. This SIT was entrusted with investigation of 4 FIRs, including FIR No. 192 dated 14.10.2015, FIR No. 129 dated 7.8.2018, both registered at Police Station City Kotkapura and both related to the same incident which had taken place on 14.10.2015. However, allegedly, Sh. Kunwar Vijay Pratap Singh tried to exclusively take over the investigation by excluding the other members of the SIT. Hence, allegedly, they wrote letter to DGP raising their protest in this regard expressing their dissent qua the investigation being conducted by Sh. Vijay Pratap Singh. This aspect was widely reported in the press at that time. Since certain

::: Downloaded on - 23-04-2021 18:30:30 :::

averments have been made in the writ petition qua these officers and their reported dissent in investigation with the Kunwar Vijay Pratap Singh, and qua those assertions these officers were required to answer, therefore, all these officers have been impleaded in the present petition as respondent No.3 and the respondents No. 7 to 10.

In the meantime, since the police persons were being involved in the criminal cases on the basis of recommendations made by the second Inquiry Commission and they did not expect fair investigation by the State police because of the politics involved in the matter and the issue involved being based on religious sentiments, therefore, some of the police persons filed CWPs No. 23285, 25837, 25838, 27015 and 28001; all of 2018, in which various petitioners sought various reliefs. However, read cumulatively, these writ petitions were seeking quashing of the reports of the Commissions of Inquiry asserting that they have been named in the report without having been granting any opportunity of hearing and they were being subjected to criminal proceedings on the basis of those reports. Further challenge in these writ petitions was to the resolution of Vidhan Sabha whereby it had directed the state government to withdraw cases from CBI investigation; on the ground that State Legislative Assembly has no business to interfere in the investigations and/ or to direct the state executive to withdraw all the investigations from the CBI. Also; the notifications withdrawing the investigation from the CBI were under challenge in these writ petitions. Further, a prayer was made that the investigation be handed over to the CBI so as to ensure a fair investigation. A Coordinate Bench of this Court dismissed all above said writ petitions vide a common decision/judgment dated 25.1.2019 passed in CWP No. 23285 of 2018. Hence, the said Coordinate Bench upheld the withdrawal of the investigation from the CBI, held the recommendations of the Second Commission to be only recommendatory and further, refused to transfer the investigation of the

::: Downloaded on - 23-04-2021 18:30:30 :::

FIRs involved in that bunch of writ petitions to CBI. However, before parting with the judgment, the said Coordinate Bench had observed that it is expected that the SIT already constituted by the government would not be influenced by the recommendations of the Commission of Inquiry in the investigation of the alleged crime as the same are meant only to instruct and inform the mind of the government to decide further course of action. The SIT would conduct a fair, impartial and speedy investigation uninfluenced by the pressure, if any, external or internal. It was also observed that the investigating agency would insulate itself from every external pressure and would conduct the investigation professionally so as to restore faith. It was also observed that the laxity or latitude in such an issue of public importance would be against the right guaranteed under Article 21 of the Constitution of India. As has come on record; the LPA preferred against this judgment was dismissed by the Division Bench of this Court as non-maintainable since the case had a tinge of criminal case and no LPA was maintainable in criminal matter under the Letters Patent of the High Court, and further; the SLP preferred by the CBI was dismissed by the Supreme Court on the ground of delay while leaving the law point involved in the matter to be open.

Thereafter, as per the petitioners, the SIT started investigation of the cases including FIR No. 192 dated 14.10.2015 and FIR No. 129 dated 7.8.2018. The respondent No.3/Kunwar Vijay Pratap Singh tried to bulldoze the SIT and tried to be de-facto boss of the SIT, despite two IPS officers senior to him being there in the SIT. This effort of respondent No.3 was resented by the other members of the SIT. The said dissent of the members of the SIT was reported widely in the press with assertions that they had written to the authorities regarding their dissent qua the manner in which the respondent no.3 was conducting the investigation without their concurrence. Since the respondent No.3/Kunwar Vijay Pratap Singh was acting as per the preplanned agenda to further the political plans

::: Downloaded on - 23-04-2021 18:30:30 :::

of the current political dispensation, therefore; subsequently, he was made de-jure head of the SIT by the DGP, Punjab. Since the respondent No.3 was already working as de-facto head of the SIT, therefore, now he was made sole incharge of the SIT and of the investigation.

Since the respondent No.3 was working in furtherance of a political agenda, therefore, he did not carry out any investigation qua FIR No.192 dated 14.10.2015 which contained the first version of the incident recorded by the police. On the contrary; he exclusively conducted the investigation in FIR No. 129 dated 7.8.2018, registered at the instance of above said Ajit Singh against the police officials. In the said FIR; though not named by the complainant; the respondent No.3 included the name of the petitioner Gurdeep Singh as an accused on the allegations of being in conspiracy with higher police officials and the higher political functionaries; by asserting that the police resorted to unprovoked firing upon the peaceful protestors. Accordingly, the challan was prepared by the respondent No.3 against some police official; including the name of the petitioner. So far as the FIR No. 192 dated 14-10-2015 is concerned, none of the injured police persons was examined, nor was any heed paid to the investigation already conducted, statements already recorded and the recoveries already made. Under his design; the respondent No.3 made petitioner Gurdeep Singh as an accused in FIR No. 192 dated 14.10.2015 also, although the petitioner Gurdeep Singh was the complainant in that case. The basic allegation for making the petitioner as an accused in FIR No. 192 dated 14.10.2015 is that he has shown in record that some of the police persons fired upon the crowd at the time of police firing on 14.10.2015, whereas the said police persons made statements before the respondent No.3 that they had not made any firing on the said date. The further allegations against the petitioner is that he had shown recovery of 10 empties from the spot and stated to have deposited the same to MHC Malkhana. However, the said MHC

::: Downloaded on - 23-04-2021 18:30:30 :::

had made a statement that no such deposit was made by petitioner Gurdeep Singh. Incidentally, the empties claimed to have been recovered on the spot were stated to be of the fires made by the same police persons who were now denying of having fired the shots. It is further the assertion in the petition that since the respondent No.3 was working with a biased mind and in furtherance of the political agenda of the current political dispensation, heading the Government in the state, therefore, he even gave a politically motivated interview to a TV Channel on 18/19 March, 2019 about the ongoing investigation by the SIT and in that interview he made certain political comments involving the names of the politicians heading the outgoing Government. This interview was given by the respondent No.3 during a time when Modal Code of Conduct was in operation on account of Parliamentary Elections in the State of Punjab. As a result, Sh. Naresh Gujral, MP (Rajya Sabha) had sent a complaint to the Election Commission of India against respondent No.3-Kunwar Vijay Pratap Singh. The Election Commission vide its communication dated 05.04.2019 observed that the said conduct of respondent No.3 was found to be in clear violation of the Model Code of Conduct and the Election Commission, accordingly, decided that the respondent No.3 shall be immediately relieved from this post and that he shall not be given any duty relating to the conduct of elections. The Election Commission also directed that the action be initiated against respondent No.3 for above said lapses and violations. Against that order of the Election Commission, senior Congress leaders, including the State Congress President and a Cabinet Minister of Punjab made representation before the Election Commission for not taking any action against respondent No.3. Furthermore, instead of taking any action against respondent No.3 for removing him from the job of investigation in these cases, he was given more important posting like IGP Counter Intelligence and IGP Organized Crime Control Unit. Although the Model Code of Conduct came to end only on 26.5.2019, however, the respondent No.3

::: Downloaded on - 23-04-2021 18:30:30 :::

signed the first report under Section 173 Cr.P.C. on 23.5.2019 during the period when the Model Code of Conduct was still operating and also when there was an order of Election Commission removing him from that post. The above said report under Section 173 Cr.P.C. again named the politicians who headed the outgoing Government, just to create a political mileage for the political dispensation heading the State Government at present. The respondent No.3 was so adamant and in a hurry to involve the petitioner and others in the case and to further the political agenda that he himself filed the said report under his own signatures; without there being any concurrence of other members of the SIT. It is further the case of the petitioners that the respondent No.3 was pressurizing the petitioner Gurdeep Singh to turn approver and become a witness against the senior police officers and the politicians heading the outgoing government. When the petitioner refused to buzz in, then not only the petitioner has been made accused in FIR No. 192 dated 14.10.2015 and FIR No. 129 dated 7.8.2018, rather, he has also been falsely involved in the other FIR No. 130 dated 21-10-2015 which relates to the alleged police firing at altogether different place under another police station; with which the petitioner had no connection at all. The incident involved in the above said FIR No. 130 dated 21-10-2015 is stated to have happened at a different place and at a different time, where the petitioner is not even alleged to be present. Again he has been sought to be involved by alleging to be in conspiracy with higher officials. Accordingly, alleging that respondent No.3 is going in a biased manner, in furtherance of political agenda of a particular political party; and further; that he is not carrying out a fair investigation in the matter at all, the present petitions have been filed by the petitioners with the above said prayers for either transferring the investigation of the FIRs to the CBI or to any other independent agency or to issue a direction to the State to get the FIRs in question investigated by a Special Investigation Team (SIT) of which respondent No.3 should not be a member.

::: Downloaded on - 23-04-2021 18:30:30 :::

Before the start of the arguments on merits, counsel for the petitioners had submitted that he had no problem with any investigation conducted by any agency or investigation team, of which respondent No.3 is not a member. He is ready to face any fair investigation. The said issue was put-up to the counsel for the State and he had taken time to get the instructions as to whether the State would be willing to constitute a SIT minus the respondent No.3; to resolve the grievance of the petitioner qua fairness of investigation. However, the State had filed written response by submitting that the respondent No.3 is an intelligent officer of good integrity and he had conducted the investigation in a scientific manner. It was further asserted that changing the investigating officer would demoralize the investigating agency. Hence, it was not possible to get the case investigated by any SIT of which respondent No.3 is not a member. Hence, the Court proceeded with hearing of the arguments of the parties on merits.

While arguing the case on behalf of the petitioner the learned senior counsel for the petitioner has submitted that in view of the facts and circumstances of the case and in view of the documents on record of the case the following questions arise for consideration of the court:-

(a) Whether FIR No.129 dated 07.08.2018 could have been legally registered when already FIR No.192 dated 14.10.2015 stood registered regarding the same incident and the same transaction?

(b) Whether respondent No.3 could be trusted to be impartial in his work and conduct qua investigation of these cases in view of the documents placed on record as Annexure P-54 to Annexure P-55 and Annexure P-21, and his own written statement, which are a candid commentary upon the work and conduct of respondent No.3?

(c) Whether the SIT was reduced to one man show of respondent No.3, particularly from 18.04.2020 onward? Further, whether respondent

::: Downloaded on - 23-04-2021 18:30:30 :::

No.3 acted with a personal malice against the petitioner to cause prejudice to him by resorting to unfair and motivated investigation?

(d) Whether the investigation in FIR No.129 dated 07.08.2018 has been carried out with mala fide intentions to destroy the version of the police as recorded in FIR No.192 dated 14.10.2015; so as to dump FIR No.192 without any effective investigation?

Taking the arguments further the learned senior counsel for the petitioner has submitted that immediately after the incident happened on 14.10.2015 the FIR No.192 was got registered by the petitioner by giving detailed sequence of the events that happened on that day. The said FIR contained the description of an incident as it developed in all its stages. Even the issue of firing by the police forms part of FIR No.192. Since the above said Ajit Singh, on whose version the second FIR No. 129 dated 07-08-2018 has been registered regarding the same incident, claims to have got injured in the said firing incident, therefore the said aspect would have been a matter of investigation during the investigation of FIR No.192. No separate FIR could have been registered regarding the issues forming part of the same transaction. Hence, the second FIR No.129 dated 07.08.2018, could not have been legally registered and investigated. The learned counsel has relied upon the judgment of the Supreme Court rendered in the case of '**T.T. Anthony Vs. State of Kerela and another, 2001 (6) SCC, 181'** and in the case of **'Babu Bhai Vs. State of Gujarat, 2010 (12) SCC 254'**, to buttress his arguments. Clarifying further, the learned counsel for the petitioner has submitted that it is not the case of the police in FIR No.192 dated 14.10.2015 that no firing had taken place in the said incident. Therefore, even if the alleged injured Ajit Singh makes any statement during the investigation, the same has to be taken as a statement made under Section 161 Cr.P.C. as an injured witness; and the same could not have been converted into a second and separate FIR. The matter may

::: Downloaded on - 23-04-2021 18:30:30 :::

have been different; if the police had denied the incident of firing at all. Still further, the counsel for the petitioner has referred to the pleadings of the respondents and the report filed under section 173Cr.P.C. and has submitted that it is the stand of the respondents only that the FIR No.192 dated 14.10.2015 and FIR No. 129 dated 07.08.2018 are not mutually exclusive and independent, rather, they are intricately interconnected. The respondents have also taken a stand that the version recorded in the subsequent FIR No. 129 dated 07.08.2018 cannot be treated as a cross-case. In view of this stand of the respondents; the registration of the second FIR regarding a part of the same transaction is not warranted under the law. The second FIR has been registered only to destroy and dump the initial version in the first FIR, without any investigation, by creating a ground for filing separate report under section 173 Cr.P.C. by representing before the competent court that it pertains to a separate FIR.

While questioning the impartiality of the respondent No.3 and his capacity to work as a fair and independent investigator of a crime, the counsel for the petitioner has submitted that the same cannot be expected from respondent No.3, in the least. Through his conduct as on record; he has amply exhibited that he is working on an agenda of the political dispensation of the State heading the present Government. This is clear from the fact that during the previous Lok Sabha elections respondent No.3 gave an interview to a news channel regarding the investigation under progress and made certain comments against the rival political party and its leaders; asserting them to be the accused in these FIRs. However, neither it was appropriate on the part of respondent No.3 to indulge in such kind of interview during the election period nor was he factually correct in that interview because the political personalities of the rival party, mentioned in the interview, were not even arrayed as accused by respondent No.3 in anyone of these FIRs. Thus the entire theatrics of respondent No.3 was only to damage the prospects of

::: Downloaded on - 23-04-2021 18:30:30 :::

one political party in the election underway so as to benefit the other political dispensation heading the present Government. Taking note of this conduct of respondent No.3 even the Election Commission of India had directed; vide its letter dated 5.4.2019, to remove respondent No.3 from his present post and not to entrust him any other duty connected with the election at that time. However, the State Government did not remove respondent No.3 from the SIT investigating the FIRs qua which the interview was given by respondent No.3. Instead, he was rewarded by posting him on some other more important positions as well.

The counsel further argued that although the State Government had communicated to the Election Commission of India vide its letter dated 8.4.2019 that in compliance of the orders of the Election Commission, respondent No.3 had been removed from his post, however, subsequently vide letter dated 25.7.2019 the Election Commission expressed its displeasure on the conduct of the State Government in making misrepresentation before the Election Commission of India qua removal of respondent No.3 from the post. It was clarified by Election Commission of India that its order was to remove respondent No.3 from membership of the SIT for investigation of FIRs qua which he had given the interview. However, instead of removing him from the SIT, the State Government resorted to obfuscation of the issue by misrepresenting to the commission qua posting of respondent No.3. Hence, there is clear-cut collusion between the present political dispensation heading the State Government and respondent No.3; who was working in collusion for a political party by instigating the religious feelings of the general public. Not only this, earlier also respondent No.3 was burdened with costs of 5000/- by a Division Bench of this court in CWP No.20199 of 2010 vide order dated 10.10.2013 for having misused his official authority in registration of a criminal case and then also for making attempt to overawe the court. In that case also respondent No.3 was alleged to have misused his police

::: Downloaded on - 23-04-2021 18:30:30 :::

powers during investigation and had attempted to convert a purely civil dispute into a criminal aspect and had violated the human rights of the petitioner therein. The Division Bench had called respondent No.3 for appearance before it. However, even while appearing before the Division Bench respondent No.3 had attempted to overawe the Bench and made absurd assertions. The said aspect has been duly recorded in the Division Bench order. Hence, respondent No.3 is habitual of misusing the authority and making attempt to overawe the judicial process. Proceeding further on the same aspect, the counsel for the petitioner has pointed out that even during the investigation of the present FIRs, the respondent No.3 had moved an application before the Chief Judicial Magistrate, Faridkot for obtaining remand of the petitioner for eight days. However, considering the nature of the case presented by the police before the CJM, that court was satisfied to grant the police remand for one day only. This was not digestible for respondent No.3. Hence, to create pressure on the judicial officers in District Faridkot and Kotkapura the respondent No.3 resorted to extraordinary step of writing a letter to the District and Sessions Judge on administrative side asking him not to allocate any case pertaining to the incidents of alleged sacrilege and firing, mentioned above, to the said CJM by alleging that he was relative of one of a close aide of Sh. Parkash Singh Badal, the outgoing Chief Minister. This entire exercise was pre-planned by respondent No.3. The said CJM was on duty only for a few days and the roster for the same had already been issued about one month back. However, respondent No.3 chose only that date for seeking remand of the petitioner, when the said judicial officer was on duty. This entire event was designed, again, to create a scope for maligning the political image of the rival party. As a result, on the next day the fact of making the complaint against the above said judicial officer by the respondent no.3 and withdrawal of those cases from that judicial officer; was widely reported in the press with the allegations that the said officer was related to

::: Downloaded on - 23-04-2021 18:30:30 :::

Sh. Parkash Singh Badal. The political purpose of respondent No.3; of vilification without taking any action; was again served.

Referring to the written statement filed by respondent No.3 the counsel has submitted that respondent No.3 is a rustic and arrogant and autocratic person; used to resort to theatrics even qua judicial proceedings and who considers himself as 'touch-me-not' but who does not mind leveling allegation and making comments against anybody else; whosoever does not fit in his designs or opposes his autocratic functioning. In written statement he has gone to the extent of leveling allegations of contemptuous arguments having been made by the counsel for the petitioner only because he argued the case against respondent No.3. He has made an absurd claim in written statement that he received appreciation from judges of High Court on Administrative side! In the end, it is submitted by the counsel for the petitioner that respondent No.3 himself has admitted in his written statement that he was acting at the instance and on the directions of the State Government. In the written statement filed in the present writ petition he has submitted that in the context of order of the Election Commission he had acted as per the directions of the Government and in the written statement filed in another writ petition, which is attached with the written statement filed in the present writ petition as well, he has specifically pleaded that on the direction of the state authorities he appeared before the CBI court in the matters of sacrilege cases as the investigating officer; although he was not even the investigating officer of those cases. Hence, it is more than clear that he has been working as a roving authority in these cases irrespective of the fact whether he was the investigating Officer of the case or not. Further, since he was working under the extraneous directions coming from the politicians, therefore, he cannot be trusted to be impartial in his functioning qua the instant investigation.

::: Downloaded on - 23-04-2021 18:30:30 :::

The counsel for the petitioner has also submitted that since respondent No.3 was working in direct coordination with and in furtherance of political agenda of the present Government, therefore, the authorities ensured that all the other members of the SIT are rendered redundant and the investigation of the cases involved in the present petition are brought under the exclusive control of respondent No.3. As a result, the SIT which was investigating these FIRs in question was reconstituted and was divided into sub-teams. Although, the other senior members of the SIT were not removed from the SIT by any order, however, their role was not specified in the reconstitution order issued by the Director of Bureau of Investigation vide his letter dated 18.04.2020**.** The only thing which was clarified in this letter was that FIR No.192 and FIR No.129 shall be exclusively investigated by the sub-team headed by respondent No.3 and consisting of four more members; who were from the same office of which respondent No.3 was the boss. Accordingly, from 18.04.2020 onward, respondent No.3 became totally uncontrolled and autocratic in his functioning qua the manner of investigation of the above said FIRs. From this stage onward he was made de-facto and de-jure controller and head of the investigation of these two FIRs. This reconstitution was done by the authorities on their own despite the fact that none of the other members of the earlier constituted SIT had opted to go out of the SIT. Despite the other members of the SIT being seniors to respondent No.3; they were pushed to oblivion qua the investigation of these cases and respondent No.3 was given the exclusive and over all charge of the investigation. Accordingly, respondent No.3 started acting with personal malice against the petitioner. He started threatening the petitioner to withdraw the writ petition filed by him and further; to become an approver so as to name the higher officers of the police and the political personalities heading the government at the time of incident as the accused in the case. However, the petitioner resisted the uncalled-for attempt of

::: Downloaded on - 23-04-2021 18:30:30 :::

respondent No.3. As a result, he was called in the office of IG Intelligence by issuing totally non-specific summon. Essentially, that summon was sent to join the petitioner as witness in the investigation, however, as it turned out to be; the actual plan was to harass him and humiliate him. Accordingly, the petitioner was followed, threatened and thrashed by men of respondent No.3 and he was told to fall in line, failing which he will be made accused in the cases, which respondent No.3 was investigating. Raising this issue the petitioner immediately made representation to the DGP, Punjab vide letter dated 05-06-2020 attached as Annexure P31/A and requested for protection from respondent No.3. However, no action was taken by the DGP, Punjab. When the petitioner did not relent, the petitioner was made an accused in FIR No.129 for being in alleged conspiracy with higher officials qua causing injuries to protestors. Thereafter, the petitioner was made accused in FIR No.192 dated 14.10.2015 as well, although he was a complainant in that case. The petitioner was in jail in these cases and had filed application for release on bail. Again the petitioner was conveyed the message to fall in line or he would be involved in another murder case as well. The bail application of the petitioner was fixed for 15.07.2020. However before that only, the name of the petitioner was got involved by respondent No.3 in FIR No.130 dated 16.10.2015, although the petitioner had no connection at all with the said incident. He is not even alleged to be present at the scene of occurrence involved in that FIR; nor has there been any allegation against him qua the said incident in the past 5 years despite the repeated inquiries and investigations. However, respondent No.3 involved the petitioner without there being any basis for the same, after a period of about five years. Hence, it is clear that the entire exercise of involvement of the petitioner in the cases being investigated by respondent No.3 is totally mala fide, intended to break down the petitioner and is not supported by any evidence connecting the petitioner to any criminal activity, as such. Therefore, the

::: Downloaded on - 23-04-2021 18:30:30 :::

investigation stands vitiated on account of mala fides of respondent No.3, as well as, on account of absurdity of investigation which mentions no evidence against the petitioner qua the crime alleged against him.

Another limb of the argument of counsel for the petitioner is that since respondent No.3 was working under a pre-planned design to carry forward a political agenda, therefore, his entire efforts have been to destroy FIR No.192 dated 14.10.2015 and to create and concoct the allegations in subsequently registered FIR No.129 dated 07.08.2018. As a result, respondent No.3 has gone to the extent of manufacturing the false evidence and while filing challan in FIR No.129 dated 07.08.2018, has declared that the police firing upon the protestors was unprovoked and was at the time when they were protesting peacefully. While declaring the alleged protestors to be peaceful and declaring the firing by the police to unprovoked, respondent No.3 had not recorded statement of even a single injured police official, whose injuries were duly supported by MLRs. Even the police and civil administration officials, who have been examined by respondent No.3 supported the version of the police as given in FIR No.192 dated 14.10.2015. However, that aspect has been totally suppressed and overlooked by respondent No.3. Nowhere has respondent No.3 dealt with in the investigation the aspect qua the civil district administrative authorities being present on the scene and issuing the necessary orders for the police, for using tear gas and water canon in the first instance, using lathi-charge in the second instance and then using gun-fire as a last resort. These official witnesses have owned the orders issued by them, pursuant to which the police have acted. Even the police officials; who were examined by respondent No.3 in FIR No. 129 dated 07-08-2018; have duly deposed about the violence perpetrated by the alleged protestors. Still the respondent No.3 declared them as peaceful. While investigating FIR No.192 dated 14-10-2015, although investigating for name only and only to implicate the petitioner and other police

::: Downloaded on - 23-04-2021 18:30:30 :::

officials in the same, respondent No.3 has again declared the protestors to be peaceful and the police firing to be unprovoked. This has been done even without recording statements of the injured police officials. One of the interesting aspect of this investigation is that some of the police officials, who are made witnesses and who have made statements under Section 161 Cr.P.C. in FIR No.129 dated 07.08.2018 have changed their version while making their statements under Section 161 Cr.P.C. FIR No.192 dated 14.10.2015. In these changed statements they have omitted that part of the version which would have inculpated the protesters named in the FIR as accused. This shows that just to destroy the case of the police and to implicate the police officers in false cases, the respondent No.3 has been recording statements of the witnesses as per his design which suites him in particular FIR. Otherwise there cannot be any justification for recording of different versions of the same incident in the statement of same witnesses under Section 161 Cr.P.C. in two different FIRs; particularly when the investigating officer in both the cases is the same and when both the FIRs involve the common facts. The factum of the same witnesses making different statements in FIR No.129 and FIR No.192, shows that respondent No.3 has been pressurizing the witnesses to make statements which suited the design of respondent No.3 to inculpate the innocent police officers and exculpate the protestors. Strangely enough; respondent No.3 has declared Bhai Panth Singh and other persons who are specifically named as accused FIR No.192 dated 14.10.2015 as the instigators and perpetrator of the violence involved in FIR No.192 dated 14.10.2015, as innocent, despite the fact that none of the injured police officials have been examined by respondent No.3 under section 161 Cr.P.C. to give their version qua the role of the abovesaid persons. Hence, it is submitted by the counsel that, by any means, the investigation being carried out by respondent No.3 can neither be said to be impartial nor can it be said the one being in compliance of the provisions of law. The entire exercise

::: Downloaded on - 23-04-2021 18:30:30 :::

has been carried out by respondent No.3 for a political agenda of implicating certain police officials and political entities.

Lastly, the counsel for the petitioner has submitted that the investigation is totally absurd. The same is nothing but the hypothesis created by respondent No.3 on the basis of his assumptions by resorting to presumptions of facts and of law. The job of the investigator is to collect the evidence and not to assume the things. Instead of doing that job respondent No.3 only groped randomly to somehow or the other to implicate the police officers and the political entities. In the process, he introduced Baba Ram Rahim in the investigation refereeing to an incident as old as of year 2012. He also tried to involve the film actor Akshay Kumar by invoking the timing of release of his film "Singh is Bling" and by alleging that Sukhbir Singh Badal met Baba Ram Rahim along with Akshay Kumar. All these aspects are totally irrelevant and reflect upon absurdity of the investigation claimed to have been conducted by respondent No.3.

While referring to the judgment dated 25.01.2019 passed by a Coordinate Bench of this Court (Justice Rajan Gupta) in CWP No.23285 of 2018 the counsel for the petitioner has submitted that the said judgment is not binding upon the petitioner because he was not a party in that judgment. Neither the said judgment constitutes a valid precedent on the point, nor is that judgment relevant for the purpose of the present petition. That judgment related to withdrawal of the consent granted by the State Government for investigation by the CBI in the cases which had already been referred to CBI; and qua the prayer of referring some other cases to the CBI. However, in the present case the prayer of the petitioner emerges from the fact that the investigation by respondent No.3 is totally vitiated and the same cannot be expected to be fair because of the external pressure of the political dispensation, which has already come on record. Therefore, there is nothing to prevent this court from referring the matter to CBI again, if the petitioner succeeds

::: Downloaded on - 23-04-2021 18:30:30 :::

in convincing that the investigation being conducted by the SIT is vindictive and not impartial. Hence, it is prayed that FIR No.129 dated 07.08.2018, consequent investigation and other consequential proceedings be quashed and the matter be got investigated afresh from an independent and impartial agency, preferably the CBI.

Replying to the arguments of the counsel for the petitioner, the learned senior counsel representing the State and the respondent No.3 has submitted that neither the petitioner; as an accused; has any right to choose investigation agency nor the court can interfere with investigation; because the manner of investigation is the sole prerogative and is within the absolute discretion of the Police. Counsel carried on contending that, at this stage, when the report under section 173 Cr.P.C. has already been filed in these cases; and the court has taken cognizance of the offences; this court is not to interfere in the matter. The petitioner; as an accused, has alternate remedies to defend him; which he can avail during the trial.

Qua the validity of registration of second FIR qua the same incident the counsel for the respondents has submitted that there is no illegality in registration of the second FIR No.129 dated 07.08.2018 despite there being an earlier FIR No.192 dated 14.10.2015 regarding the same incident. The second FIR has been registered on recommendation of the second Commission of Inquiry set-up by the government. The same contains a counter version to the version recorded by the police in FIR No.192 dated 14.10.2015, where the police themselves are the complainant. The second FIR has been registered on the statement of the injured witness Ajit Singh son of Avtar Singh. The counsel has submitted that the correctness of the judgment in the case of **T. T. Anthony** (supra) was reconsidered by the Hon'ble Supreme Court in case of '**Upkar Singh v. Ved Prakash & others, (2004) 13 SCC 292'**. In the said judgment it was clarified by the Supreme Court that there is no prohibition of registration of second FIR if the version contained in the second FIR is counter version. In the present case the second FIR

::: Downloaded on - 23-04-2021 18:30:30 :::

did contain a version which is altogether different than the version recorded by the police in earlier FIR No.192 dated 14.10.2015. The registration of the second FIR is prohibited only if the same is at the instance of the same person against the same accused. Otherwise; there is no prohibition of registration of second FIR if a cross or counter version comes up during the investigation, suggesting any different offence having been committed by a different accused / set of accused than of the originally registered FIR. The counsel has also relied upon the judgment of Supreme Court rendered in '**P. Sreekumar v. State of Kerala, (2018) 4 SCC 579'**, to buttress his argument. Hence, it is submitted by the counsel for the respondents that the second FIR was rightly registered. To counter the argument of the counsel for the petitioner on delay in registration of the second FIR, the counsel for the State has submitted that earlier the matter was being inquired into by two Commissions of Inquiry. It is only after the matter of injury to the complainant of the second FIR came on record before the second Commission of Inquiry that the Registration of second FIR was recommended by the Commission of Inquiry. It is further submitted that; otherwise also; there is no limitation for registration of the FIR. The crime never dies and the criminal has to be punished irrespective of lapse of time. The counsel has relied upon the judgment of Supreme Court rendered in '**Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394'**, and also on the judgment rendered in '**Sarah Mathew Vs. Institute of Cardio Vascular Diseases & Ors., 2014(2) SCC 62'**.

While refuting the allegations of mala fides, the counsel for the respondents have submitted that the allegations in this regard are not supported by any evidence. The allegations are easier to level but difficulty to prove. The counsel has further submitted that; otherwise also; the court has already taken cognizance of the offence after the police had filed the report under Section 173 Cr.P.C. Therefore, the mala fide, if any, lose significance altogether. Now it has

::: Downloaded on - 23-04-2021 18:30:30 :::

become an issue of assessment of documents on record by the court of law. The counsel has relied upon the judgment of the Supreme Court rendered in '**State of Haryana and other versus Vs. Ch. Bhajan Lal andd Ors, (1992) Supp. (1) SCC, 335**; **Mutha Associates Vs. State of Maharashtra, (2013) 14 SCC 304**; **Shiva Nath Prasad v. State of W.B, (2006) 2 SCC 757**; and in case of '**State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540'**.

Still further; the counsel for the State has submitted that even if there is any irregularity in the investigation that cannot be a ground for quashing of the same. Section 465 Cr.P.C. provides for condonation of irregularities in the proceedings. Hence, unless the petitioner shows a prejudice as having been caused to him, the investigation cannot be quashed only because of some irregularity or deficiency in conduct of the same. The counsel has relied upon the judgment of Supreme Court rendered in '**Rattiram and others v. State of M.P. through Inspector of Police, (2012) 4 SCC 516'** and '**Union Of India & Ors vs Ajit Singh, (2013) 4 SCC 186'.** It is also submitted by the counsel that the petitioner has not been able to show any failure of justice on account of any alleged deficiency or defect in the investigation carried out in these cases.

On the question of transfer of investigation of the cases to CBI, it is submitted by the counsel for the State that the issue of transfer of investigation to CBI has already been adjudicated by a Coordinate Bench of this court (Brother; Justice Rajan Gupta) vide judgment dated 25.01.2019 passed in CWP No.23285 of 2018, whereby withdrawal of consent by the State Government qua the investigation of FIRs relating to the incident of sacrilege (FIR No. 63 Dated 2.6.2015, FIR No. 117 Dated 25.9.2015 and FIR No.128 Dated 12.10.2015 - All of Police Station Bajakhana); and in the FIR No. 129 dated 7.8.2018, Police Station City Kotkapura and the FIR No. 130 dated 21.10.2015 of Police Station Bajakhana (in which the incident of firing at Kotkapura and Behbal Kalan

::: Downloaded on - 23-04-2021 18:30:30 :::

respectively are involved) from the CBI has been upheld by that Court. The court has held that there was no infirmity in the decision to withdraw the investigation from the CBI. Furthermore, the prayer for transfer of investigation to CBI in some other FIRs was held to be untenable in the light of the judgment of the Supreme Court in the case of '**Romila Thapar v. Union of India, 2018 SCC Online SC 1691'**. The petitioners in those writ petitions preferred LPA No. 329 of 2019 before the Division Bench of this Court. However, even the said LPA was dismissed by the Division Bench on 25.02.2020 as not being maintainable. Thereafter another co-accused filed review application in the above said CWP No.23285 of 2018. However, even that review application was dismissed by the said coordinate Bench. The matter even reached to the Supreme Court vides SLP (C) No.807 of 2020 filed by the CBI. However, even the Supreme Court dismissed the SLP filed by CBI, on 20.02.2020 on the ground of delay, though leaving the question of law to be open. Hence, the judgment passed in above said CWP No.23285 of 2018 has attained finality and the same is binding upon this court being a Bench of equal strength. The counsel has also submitted that the said judgment has been followed by another coordinate Bench (Brother Justice Amol Rattan Singh) as well; while dismissing CRM-M No.19785 of 2020 vide judgment dated 04.01.2021. Hence, there is no scope left for consideration on the issue of transferring the investigation of the cases to CBI.

Qua the argument of the counsel for the petitioner regarding making respondent No.3 as de-jure and de-facto head of the investigation team by changing the constitution of the SIT, the counsel for the respondents-State has submitted that it has been done from time to time as per the prevalent circumstances. The first SIT was created by the earlier government on 10.06.2015 qua the incidents of sacrilege. Thereafter, after the second Commission of Inquiry, when another FIR No.129 dated 07.08.2018 was registered, then the SIT was

::: Downloaded on - 23-04-2021 18:30:30 :::

reconstituted vide order dated 10-09-2018 by including senior IPS officers with the respondent No.3 as one of the members. However, subsequently one of the members proceeded on ex-India leave and could not return in time due to COVID-19 pandemic situation; and the other senior officer was transferred as DGP (Provision), therefore, after taking opinion from the Advocate General the sub-investigation team was constituted and was made to work under Director Bureau of Investigation. However, it is not denied that the sub-team is being headed by respondent No.3, as also; the other members of the sub-team being the officers working under his direct control. Accordingly, it is submitted by the counsel for the State that reconstitution of SIT was part of the normal routine and it was not done with any specific purpose.

Regarding the assertion of the counsel for the petitioner regarding illegally carrying on the investigation by respondent No.3 despite the receipt of communications from the Election Commission, the counsel for the State has submitted that nothing much can be read from the communications received from the Election Commission of India. The model code of conduct issued by the Election Commission of India during the election process is not having any statutory force. Therefore, the orders issued by the Election Commission of India, being non-statutory in nature, their violation would not invite any legal consequences. It is further submitted that the investigation of the FIRs in question was being conducted by the investigating team in performance of statutory duties. The same could not have been stopped only because of non-statutory provisions of model code of conduct and non-statutory directions issued by Election Commission of India. Doing so might have brought adverse statutory consequences qua investigation. Citing the example, the counsel has submitted that in case the report under Section 173 Cr.P.C. is not filed in time, because of any direction issued by the Election Commission of India regarding change of

::: Downloaded on - 23-04-2021 18:30:30 :::

investigating officer, then State would not be in a position to oppose the default bail which the accused may get even in serious case. Hence, there was nothing wrong if respondent N.3 had filed the report under Section 173 Cr.P.C. during the currency of the model code of conduct issued by the Election Commission of India.

The counsel for the State has also highlighted another aspect by submitting that although he petitioner is raising the issue of signing of the report under Section 173 Cr.P.C. by respondent No.3 alone, however, this issue was raised before the Court of Magistrate and the same was declined by the said Magistrate. The petitioner along with two other co-accused filed Criminal Revision No.20 of 2019 before the Court of Sessions Judge. In that revision petition identical ground was raised as is raised in the instant writ petition. However, later on the petitioner filed application on 17.09.2019 for deletion of his name from the array of petitioners in the above said revision petition. The said application was allowed by the Sessions Court without any liberty to raise the issue again. Hence, the petitioner abandoned his claim on this aspect. Hence, he cannot raise the same again in the present writ petition. The counsel has relied upon the judgment of Supreme Court rendered in Shree **Hanuman Cotton Mills v. Tata Air Craft Ltd., (1969) 3 SCC 522**. It is also submitted that Section 399 (3) Cr.P.C. prohibits any further proceedings after the revision. Hence, any more challenge on the same aspects by the petitioner is barred.

By way of brief rebuttal of argument of the counsel for the State, the learned counsel for the petitioner has submitted that last argument raised by the State qua abandonment of the claim on account of petitioner having withdrawn the criminal revision petition, is totally misconceived. The petitioner has not approached the High Court by the present petition after withdrawing the above said criminal revision. On the contrary, the writ petition filed by the petitioner was

::: Downloaded on - 23-04-2021 18:30:30 :::

already pending when the said criminal revision petition was filed on behalf of and withdrawn by the petitioner. The limited prayer of the petitioner before the Magistrate in that application was for calling of the *zimini* of the investigation. He had not raised any other issue regarding the report under section 173Cr.P.C. on the ground of signing of the investigation report by respondent No.3 only or on any other ground. Other two co-accused, in their separate applications filed before the magistrate had raised those other issues. However, the Magistrate had disposed of all the three applications moved by three different persons vide a common order. As a result, in the first instance, the petitioner was made a party in the revision petition against the order of the Magistrate. However, since the petitioner had no further grievance qua his limited prayer regarding calling of the zimini orders of the investigation, therefore, he had withdrawn from the revision petition, which was duly permitted by the Sessions Judge. It is further submitted that; otherwise also; none of the prayers made in the present writ petition could have been granted by the revisional court in that revision petition. Moreover, the prayer regarding the FIR No.192 dated 14.10.2015 was not even the concern of the said revision petition. Furthermore, while moving the said application before the Magistrate in that case, the petitioner had duly disclosed in the application itself that he had already moved the present writ petition before the High Court regarding his remaining grievances. Hence, mere withdrawal of the said criminal revision petition by the petitioner is of no consequence qua the continuation of the present writ petition on behalf of the petitioner. Regarding the transfer of the investigation or to get it conducted by an independency agency, the counsel has submitted that the accused has right of fair investigation. Even at the stage of charge, the courts; including the Hon'ble Supreme Court, have been quashing the investigation and also the charge; on the ground of unfairness of the investigation. The counsel has relied upon the judgment of the Supreme Court in case '**Rubabbuddin Sheikh v.**

::: Downloaded on - 23-04-2021 18:30:30 :::

State of Gujarat & Ors, 2010 (2) SCC 200'. The counsel has further submitted that the petitioner may not be having any right to ask for a specific investigating officer, however, there is no clog upon the power of the court to transfer the investigation if it finds the investigation to be partial and unfair. Moreover, the petitioner is not praying for any particular investigating officer, rather, he is praying only for exclusion of one person from the investigation; which may be conducted by any other person from any agency, including the Punjab Police. Refuting the arguments of the state counsel qua the judgment dated 25.01.2019 passed by a coordinate Bench of this Court in CWP No.23285 of 2018 the counsel for the petitioner has reiterated that the said judgment is not binding upon the petitioner because he was not a party in that judgment. Neither the said judgment constitutes a valid precedent on the points, nor is that judgment relevant for the purpose of the present petition. That judgment related to withdrawal of the consent granted by the State Government for investigation by the CBI in the cases which had already been referred to CBI; and qua the prayer of referring some other cases to the CBI. The counsel has further submitted that even in CWP No.23285 of 2018 the coordinate Bench had expressed its expectation that SIT would investigate the case properly. However, the same is not being done. Hence, the petitioner craves for indulgence for transfer of investigation to an independent agency. Therefore, in the present case the prayer of the petitioner emerges from belying of expectation expressed by the said co-ordinate bench by the respondent No.3 because the investigation by respondent No.3 is totally vitiated and the same cannot be expected to be fair because of the external pressure of the political dispensation, which has already come on record. Therefore, there is nothing to prevent this court from referring the matter to CBI again, if the petitioner succeeds in substantiating that the investigation being conducted by the SIT is vindictive and not impartial, which the petitioner has. Hence, it is prayed that FIR No.129 dated 07.08.2018,

::: Downloaded on - 23-04-2021 18:30:30 :::

consequent investigation and other consequential proceedings be quashed and the matter be got investigated afresh from an independent and impartial agency, preferably the CBI.

On the issue of the registration of the second FIR the counsel has pointed out to pleadings of the State to substantiate his argument that the State itself is saying that the second FIR is not a cross-case. Even in the final report filed under Section 173 Cr.P.C. the investigating agency has submitted that the second FIR cannot be treated to be a cross-case. Hence, the registration of the second FIR itself is bad. Accordingly, the FIR and the investigation pursuant thereto have to be set aside by the Court.

This Court has heard the counsel for the respective parties and perused the record. Since this case relates to the alleged violence by the protestors and alleged injuries caused to the protesters by the police; while making an attempt to maintain law and order situation, therefore, it would be relevant to recapitulate the legal prospective in this regard; in brief. The Constitution of India provides right of speech and expression, as well as, the right to peaceful assembly. However, these rights are not absolute rights and have been made subject to certain restrictions by the Constitution itself. Such 'Expression' and 'Assembly' has to be within the scope of law. As has been held by the Supreme Court in judgment dated 07.10.2020 passed in **Civil Appeal No.3282 of 2020, Amit Sahni v/s Commissioner of Police and other** (Shaheen Bagh Case), in exercise of rights to protest, the protesters can neither resort to violence nor can they occupy a public place permanently. Further, it has been held that the law enjoins a duty upon a civil and police administration to keep the law and order situation under control and they are required to take action to get vacated a place so occupied by the protestors; without waiting for any court directions in this regard. For the purpose of maintenance of law and order certain statutory powers have been conferred

::: Downloaded on - 23-04-2021 18:30:30 :::

upon these authorities. Under those statutory powers the authorities can very well prohibit the assembly at a particular place; or in general for a specified time period; or assembly without permission of the authorities. If despite prohibition some persons assemble claiming to protest on a particular aspect and exceed the legal limits to such an extent where the law and order problem is created, the administration may take appropriate action to control the situation. For controlling the problem in such a situation law permits even use of force by the authorities. However, there are established procedures and protocols for use of force by the authorities, including by the police. The protesters cannot claim to have any legitimate expectations that police would never evict them from the place; where they have assembled in violation of the directions of the authorities and created a law and order problem; and further; that the police would never use the force against them. Similarly, police also have to use the force within the authority prescribed for them and as per the procedures and protocols put in place for the same. While use of force by the police, if the same is within the authority and as per established procedures and protocols, may not bring any criminal consequences to the police merely because of the fact that some protester got injury of any kind during that use of force, yet, if there is deliberate excessive use of force by the police; in violation of authority and protocols; and there is ***mens rea*** on the part of a particular officer using the force; to cause injury to anybody; and there is a resultant injury caused by such officer, then such officer would also be liable to face the criminal consequences; at par with any other person who is accused of a similar crime. However, in absence of violation of authority and protocols; and in absence of accompanying ***mens rea;*** the injury caused by the police while lawfully using force to maintain law and order situation; cannot be treated at par with the similar injury caused by an ordinary criminal who causes such injury in violation of the law prohibiting causing such an injury, as such.

::: Downloaded on - 23-04-2021 18:30:30 :::

The very first argument of the counsel for the State is qua the maintainability of the present petitions and continuation thereof by raising the plea that accused has no right to choose the investigation agency. Relying upon the judgment of a Coordinate Bench of this Court rendered in CWP No. 23285 of 2018 decided on 25.1.2019, the counsel has submitted that this has been so held by the said Coordinate Bench of this Court in the above said judgment; which relates to this bunch of FIRs only; and the prayer for transfer of investigation to CBI has already been declined vides the above said judgment. In view of the arguments of the Counsel for the petitioner that the said judgment of coordinate bench is not relevant for the purpose of the present case because the present petitions have emerged only after the expectation expressed by that bench in that judgment were belied by the respondent, this court intended not to delve deep into that judgment. However, the counsel for respondents-state reiterated the said judgment to be binding upon this court submitting that everything has already been settled by that judgment. Since after carefully reading the said judgment, this Court had expressed some reservations qua the value of the said judgment as a valid precedent, therefore, the counsel for the State was requested to be specific whether he was relying upon the said judgment as a 'precedent' or as a final decision of a lis between the parties regarding the issues decided in that case. In response, the counsel for the State has submitted that he was relying upon the said judgment on both the counts. Counsel for the State has submitted that the said judgment dealt with FIR No. 129 dated 7.8.2018, registered at Police Station City Kotkapura, which is also the subject matter of the present petition, and has specifically upheld the withdrawal of investigation by the state from CBI. After considering the matter, the said bench has also declined the prayer for reference of the investigation to the CBI in some other cases relating to the sacrilege and similar violence. It has been also held in that case that the accused does not have a right of

::: Downloaded on - 23-04-2021 18:30:30 :::

choosing an investigation agency or an investigation officer. Moreover, the said judgment has become final after challenge right upto the Supreme Court. Further submission of counsel for the State in this regard is that the said judgment has already been followed by another Coordinate Bench of this Court (Brother Justice Amol Rattan Singh) while delivering the judgment on 4.1.2021 in CRM-M No. 19785 of 2020. Hence, the judgment is binding upon this Court as a precedent also. In view of the reiterating arguments of the counsel for the state-respondent; this court is constrained to consider the issue of the said judgment being a valid precedent as well. When questioned about reliance in the said judgment upon resolution of Vidhan Sabha; and consequent notification by state only on the basis of that resolution without any further application of mind, the counsel for the State has submitted that the said judgment has rightly relied upon the resolution passed by the State Legislative Assembly to uphold the withdrawal of the investigation from the CBI. The matter was put-up before the Vidhan Sabha with the report of the second Inquiry Commission along with action taken report and therefore, the Legislature was competent to have discussions on the report of the Commission and to pass the resolution.

Having heard the counsels and having perused the record, this Court does not find any substance in the argument of counsel for the State regarding non-maintainability of petition. The phrase "The accused has no right to choose the investigating agency" is a very catchy phrase but without any legal consequences in itself. The said phrase or similar or analogous language has been used in various judgments only as a part of judgment writing skills to highlight another preposition of law regarding interference by the courts at the stage of investigation and at the instance of an accused, and not to laid down this phrase as a preposition of law in itself. It is simply clear by the very fact that no accused/petitioner comes to the Court for seeking the transfer of the investigation from one agency to another

::: Downloaded on - 23-04-2021 18:30:30 :::

investigating agency or to another investigating officer by claiming the same to be a matter of right; like he comes in a civil suit. He comes only with a grievance that his right to life and liberty is being clogged upon by unfair or biased or absurd investigation or that the investigating officer was working with malice. Therefore, he craves for indulgence of the Constitutional Court to transfer the investigation; so as to ensure the fairness in the same. Ultimately, it is for the concerned Court to assess the grievance of the accused/petitioner in view of the facts and circumstances of a particular case and to arrive at a conclusion whether it is in the interest of justice or not; to transfer the investigation to any other investigating agency or any other investigating officer. This has been so held by the Supreme Court in numerous judgments, including the latest judgment rendered in the case of **Arnab Goswami v. Union of India and others, (2020) SCC (online) SC 462** (Writ Petition (Crl) No. 130 of 2020 decided on 19.05.2020), wherein the Supreme Court was considering the petition filed by the accused for transfer of investigation to CBI, alongwith prayer for quashing of the multiple FIRs for the same incident. In that case the Supreme Court did not dismiss the same on the ground that accused does not have a right to choose investigating agency. Though the Supreme Court declined to transfer the investigation in that case in view of the particular facts of the case; and by considering the petition on merits; yet the Supreme Court clarified the proposition of as under:

> 38. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to the CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power.

::: Downloaded on - 23-04-2021 18:30:30 :::

While holding so, the Supreme Court considered the Judgment in case of '**Romila Thaper v. Union of India, (2018) 10 SCC 753'** but reiterated the earlier judgments of the Constitution Bench of Supreme Court in case of **State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal, 2010(3) SCC 571,** which reads as under:-

> 70…despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled 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 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. 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."

Another judgment which the Supreme Court reiterated in this judgment is in case of '**K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai, (2013) 12 SCC 480'** which held as under:

> "13…This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court

::: Downloaded on - 23-04-2021 18:30:30 :::

> finds it necessary in order to do justice between the parties and to instill 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.
>
> 17…the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved or the accusation itself is against the top officials of the investigating agency; thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

Hence, the prayer for transfer of investigation from one investigating agency to another is not even an aspect of rights of the accused/petitioner. Rather this aspect is a subject matter of the discretion of the Court which is considering the issue. The petition filed by the accused/petitioner cannot be denied on the ground that such a petition is not maintainable or not tenable. Rather the same is required to be considered by a court, which may or may not grant such a prayer in its discretion; considering the facts and circumstances of a particular case. Needless to say, that such a Court would be required to exercise its discretion as per the judicially established principles, as delineated above in the judgments of the Supreme Court; and keeping in view the documents, the facts and the circumstances, as brought on record by such an accused/petitioner. Accordingly, though the court is not supposed to exercise the power to transfer the investigation only because it has the power to do so, and such power is to be exercised only sparingly and with caution, however, the petition of the accused cannot be thrown without even appreciation of his grievance qua the procedure being unjust and unreasonable or qua the

::: Downloaded on - 23-04-2021 18:30:30 :::

investigation being absurd, based on prima facie manufactured evidence and being vindictive resulting in grave prejudice to such petitioner /accused. The above said phrase or any other analogous phrase cannot be taken as a convenient means of avoiding consideration of or adjudication upon a grievance of the accused/petitioner. But the same appears to have been the case in the above said decision of the Coordinate Bench, wherein, the prayer regarding handing over the investigation to CBI has been dealt with only by the following paragraph :-

> "As regards the prayer for handing over the investigation to CBI, the same is not tenable at the behest of the accused in view of the law laid down in **Romila Thapar case** (supra), wherein, it has been held that this would amount to accused seeking investigation by agency of his choice, which he does not have. Besides, this Court feels that a separate investigation by two different investigating agencies would not be in the public interest, the incident being inextricably linked."

Hence, it is clear that in view of the law on the point having been expressly expounded by the Supreme Court; even after taking note of the judgment in case of **Romila Thaper** (Supra), the abovesaid judgment of the Coordinate Bench cannot be taken as a valid and binding precedent on the point. Although counsel for the State has also put reliance upon the judgment dated 4.1.2021 rendered by another Coordinate Bench of this Court in CRM-M No. 19785 of 2020; to argue that the said Coordinate Bench also followed the judgment rendered in CWP No. 23285 of 2018 as a precedent. However, a perusal of the judgment passed in CRM-M No. 19785 of 2020 shows that the said Coordinate Bench had followed the judgment rendered in CWP No. 23285 of 2018 only as a decision on a lis decided in that writ petition and not as a precedent. This would be clear by the following paragraph in the judgment rendered in the abovesaid CRM-M No. 19785 of 2020:-

> "Even though Mr. Ghai strenuously argued that the judgment of the Supreme Court in **Gurbir Singh** and **K. Chander Shekhar's cases** (supra) were not brought to the notice of the Bench hearing those

::: Downloaded on - 23-04-2021 18:30:30 :::

> petitions; that again would make no difference, in view of the fact that though no reference to any law laid down may render a particular judgment to be ***per incurium*** as regards the preposition of law itself that may have arisen in that particular case/set of cases yet, firstly, as regards the judgment itself qua the particular issue pertaining to a particular occurrence itself, it would be deemed to be a judgment in rem and would be stare decisis for the purpose of that particular occurrence."

Hence, it is clear that even the subsequent Coordinate Bench; while deciding the above said CRM-M No. 19785 of 2020; has expressed itself to consider the judgment by earlier Coordinate Bench in CWP No. 23285 of 2018 to be ***per incurium***, though followed the same as a decision on a lis involved in that writ petition.

Regarding reliance by the coordinate bench on resolution of Vidhan Sabha to uphold the decision to withdraw the investigation from CBI, although counsel for the State emphasized that the Legislature was considering the report of the second Inquiry Commission along with action taken report of the Government; and thus was within its authority to pass a resolution as conclusion of discussion, however, counsel could not take his argument any further than saying so. He could not proceed further to say that the Legislature has power to issue direction to the Executive to take a particular decision in a particular manner in day to day administration; and particularly regarding the interference in the process or modality of investigation of a crime. Acceptance of this argument of the state goes against the very basic Constitutional concept of "Separation of Powers"; which has been declared a basic feature of the Constitution of India. The counsel for the state has failed to cite any express provision from the Constitution of India which might have conferred any such powers on the State Legislative Assembly. Needless to say, that when the state executive had taken a voluntary decision in this regard in

::: Downloaded on - 23-04-2021 18:30:30 :::

the first instance by applying its own mind, it had referred the investigation to the CBI on 24.08.2018. However, subsequently; only by following the resolution of Vidhan Sabha dated 28.08.2018 which was passed in quick succession just after 4 days; and specifically citing the said resolution as the reason; the earlier decision was reversed and the notifications dated 06.09.2018 to withdraw the investigation from CBI were issued by the state executive. The resolution of Vidhan Sabha would not attach any extra sanctity or significance to such an executive decision nor shall any such resolution of Vidhan Sabha take the decision of executive out from the purview of Judicial Review. Such a decision has to be tested independently and cannot be upheld merely because it is based upon resolution of Vidhan Sabha. While testing the validity of the state action independently and vis-à-vis the statutory provisions, the issue seems to have been dealt with keeping in view the expediency; by citing delay in completion of investigation by CBI; and not by analyzing the scope of statutory provisions vis-à-vis the power of the State Govt. to cancel the consent already granted to the CBI investigation in a particular case, after the Union Government had already issued the statutory notification notifying the CBI to be the competent investigating agency. Even the issue of prospectively seems to have been interpreted inversely. Hence, while having all reverence qua the majesty of the judgment as a decision on the lis between the parties and qua the FIRs involved in that writ petition, this court finds itself unable to follow the same as a 'precedent' on any of the law point dealt with in that judgment.

The value of the above said judgment of the Coordinate Bench, as a precedent, is also diminished by a fact that although the Supreme Court has dismissed the SLP filed by the CBI against that judgment on the ground of delay, however, the law point involved in the matter was still kept open.

::: Downloaded on - 23-04-2021 18:30:30 :::

At the cost of repetition it deserves to be pointed out that the FIR No. 192 dated 4.10.2015 was neither the subject matter of the above said writ petition nor the same was dealt with by the Coordinate Bench in CWP No. 23285 of 2018. In the present case, the main grievance of the petitioner is that the entire effort of the respondent No.3 has been to destroy the FIR No. 192 dated 14.10.2015, which contained the version of the police qua the incident. Therefore, the said judgment of the Coordinate Bench is not relevant even as a decision on a lis between the parties qua FIR No. 192 dated 14.10.2015. Otherwise also, the judgment of the Coordinate Bench in CWP No. 23285 of 2018, although refused to refer investigation in some other cases to the CBI, however, had expressed its exceptions that the SIT would conduct the investigation in a fair, impartial and professional manner so as to instill confidence in public qua the process of investigation. However, the grievance of the petitioner is qua lack of that impartiality, fairness and professionalism of the respondent No.3 only; qua the conduct of the investigation in FIR No. 192 dated 14.10.2015 and FIR No. 129 Dated 7.8.2018. Hence, the present petition is based upon the events which happened after the judgment of the Coordinate Bench in that case. Therefore, if the petitioner otherwise makes out a case for transfer of the investigation as per the criteria laid down by the Supreme Court as mentioned above, then the earlier decision of the Coordinate Bench would not be an impediment in the way of this Court in referring the matter to any other investigating agency, including the CBI.

On the point of quashing of the investigation and the charge sheet, Learned Counsel for the State has submitted that the investigating agency has an absolute discretion to conduct the investigation deemed fit by it/him and the Court is not to interfere in the investigation at this stage, when the report under section 173 Cr.P.C. has already been filed. Still further, the counsel has submitted that the present stage is only the stage of investigation and the petitioners would be having

::: Downloaded on - 23-04-2021 18:30:30 :::

liberty to put up their case during the trial and they will be entitled to defend themselves against the investigation carried out by the respondent No.3. The petitioners can get acquitted if the investigation conducted by the respondent No. 3 is faulty. However, this Court does not find itself in agreement with the argument of the counsel for the respondents/State. Learned counsel for the petitioners has relied upon the judgments of the Supreme Court in case of **Committee for Protection of Democratic Rights, West Bengal** (supra) and in case of **K.V. Rajendran** (supra) to submit that if the investigation is found to be biased**,** lacking integrity, absurd or suffering from mala fides then the Court can quash the investigation, as well as, the consequent charge-sheet. This Court finds substance in the arguments of learned counsel for the petitioners. The Hon'ble Supreme Court has categorically held in case of **Rubabbudin Sheikh case** (supra) that if the investigation is found to be not fairly conducted, and also for instilling faith in the public qua the investigation, the Court can quash the investigation and report under Section 173 Cr.P.C. and transfer the investigation to other agency. In that case, the Supreme Court specifically framed a question for consideration as to whether the investigation can be transferred to another agency after the police have already filed the report under section 173 Cr.P.C. After considering all the previous judgments of the Supreme Court it was held in this case as under:

> "61. Keeping this discussion in mind, that is to say, in an appropriate case, the court is empowered to hand over the investigation to an independent agency like CBI even when the charge-sheet has been submitted."

Accordingly the Supreme Court itself had quashed investigation and report under Section 173 Cr.P.C. and had handed over the investigation to CBI. Not only this, learned Counsel for the State himself has relied upon the judgment passed by a Coordinate Bench of this Court in **CRM-M-19785 of 2020** in which the

::: Downloaded on - 23-04-2021 18:30:30 :::

investigation and the final report filed by the CBI qua the FIRs involved in the incidents of sacrilege have been quashed and the police has been permitted to carry out the investigation afresh. Therefore, having itself relied upon a judgment in which the investigation was quashed, it may not lie in the mouth of the State to raise this contention that the investigation and the report under Section 173 Cr.P.C. can be quashed.

So far as the submissions of the Learned Counsel for the State that the petitioners can avail their remedies during the trial and can cross examine the witnesses and prove their innocence by leading evidence in defense, is concerned, that is totally misconceived. It would be a poor consolation to a citizen, even if he happens to be an accused, to tell him that he should silently suffer undue attack upon his right to life and liberty for some time and then he can avail his remedies. There is no gainsaying that Constitution guarantees a right to life and liberty to every citizen. This right does not get abrogated only because the citizen happens to be an accused. This right to life and liberty is available to a person all the times and every moment. This right can be curtailed only through procedure established by law and such a procedure has to be just and reasonable; as has been held by the Supreme Court in the case of **Menka Gandhi vs. Union of India, AIR 1978 SC 597.** The first attack upon right to life and liberty of a citizen comes when the FIR is registered against him. This is so because mere registration of an FIR visits him with collateral consequences qua his right to life and liberty, besides subjecting him to the coercive process qua the matter involved in the FIR. The citizen has every right to defend against this attack; right from the day one. Therefore, the Courts have permitted the accused to come for quashing the FIR itself. Besides this, the procedure prescribed for investigation also contemplates various safeguards against arbitrariness in the investigation and to ensure that due and reasonable procedure is adopted by the investigating agency. Whatever lacuna was

::: Downloaded on - 23-04-2021 18:30:30 :::

left in this regard, that has been sought to be filled up by the directions issued by the Supreme Court from time to time against arbitrary and illegal arrest of a person and qua other procedures to be followed during investigation. Even the right of the accused to challenge the investigation and the consequent police report has also been recognized by the highest court of the Country, if the accused satisfies the Court on certain aspects which has been delineated by the Supreme Court. Therefore, it is clear that the right of a citizen against being subjected to undue process remains intact throughout the process of investigation and adjudication. It is a different matter that to protect that right there are certain statutory provisions under Cr.P.C. qua some aspects. Where the issue relates to the aspects which are not covered by the express provisions, the citizen is provided remedy under Article 32 and Article 226 of the Constitution of India and also under Section 482 of Cr.P.C. This right cannot be put under eclipse on the ground that such a citizen/accused would be having a right to save himself at the stage of framing of the charge or, through cross-examination of witnesses of prosecution or at the stage of leading his defense. Needless to say that scope of the rights available at the stage of framing of the charge, through cross-examination of witnesses and at the stage of leading defense evidence for proving one's innocence; at the fag end of the trial; are altogether of a different kinds and are circumscribed by various factors, as prescribed under the statutory law. These rights are not of the same type or of the same magnitude as a person seeks from a Constitutional Court. Those statutory remedies are not even of alternate nature. The trial court may not be even having the authority to grant the relief which the accused seeks from a Constitutional Court. Quashing of police charge-sheet and transfer of investigation is an aspect for which there is no alternate remedy before the trial court. Furthermore, the statutory rights during trial are available to an accused by virtue of the statutory provisions. The courts do not favour the accused by recognizing

::: Downloaded on - 23-04-2021 18:30:30 :::

such rights to him. Hence, it would be only an unsolicited legal advice to an accused if a court tells him that he has the alternate rights and remedies to defend himself during the trial. The accused, having a right to remain silent, may not even choose to invoke those rights or remedies; at that late stage; during the trial, if it suits him. Therefore mere availability of statutory rights to an accused during the trial is neither the alternate remedies nor does that stop him from approaching a Constitutional Court to get the investigation quashed or get the investigation transferred; if the investigation results in miscarriage of justice qua him, or on any other criteria recognized by the courts, though it would be within the judicially exercised discretion of the court to grant or not to grant the relief prayed for by the accused/petitioner. Therefore, this submission that the petitioners would be having opportunity to defend themselves at the later stage is totally irrelevant for the purpose of framing of an opinion by a constitutional court qua sustainability of the investigation.

Even the argument that the police have absolute power to investigate the matter in the manner they desire is only a half truth. If the Fundamental Rights guaranteed to citizen by the Constitution of India are not absolute, then there is no question of the Police possessing absolute powers on any aspect. Even every exercise of discretion by the police is liable to judicial review for certain purposes. The police have to comply with the statutory provisions and ensure the fairness and impartiality in investigation. In case of violation of either of these; not only the court has the power to intervene, rather the court would be failing in its duty if it does not interfere. The police have only a limited liberty to decide the mode of investigation and the nature of material it wants to collect to bring home the alleged guilt. They can also decide the question to be asked during investigation. This is made clear by reading of the judgment of the Supreme Court in the case of

::: Downloaded on - 23-04-2021 18:30:30 :::

P. Chidambaram v Directorate of Enforcement, (2019) 9 SCC 24, which has observations as follows:

> "66…there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. **It must be left to the discretion of the investigating agency to decide the course of investigation**. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. **It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused**."

On the issue of the validity of second FIR Learned counsel for the petitioners submitted that the second FIR No.129 dated 7.8.2018 qua the same occurrence, which is already the subject matter of the FIR No. 192 dated 14.10.2015, is bad in law and therefore, is liable to be quashed along with the consequent investigation. Learned Counsel for the State has rebutted this argument by submitting that since the accused in the second FIR is different, complainant is different, as well as, the allegations are different, therefore, the same would be a counter case. Hence, the second FIR on the same occurrence would be perfectly legal.

This Court finds the argument of the learned counsel for the petitioners having substance. FIR No. 192 dated 14.10.2015 recorded the first version of the incident which had happened on the same day. This FIR gives a detailed sequence of events and the offences involved in that incident. The FIR also contains the fact regarding the police having filed upon protestors. Hence, any injury consequent upon that police firing would only be a 'consequence' of that firing which is already the subject matter of FIR No. 192 dated 14.10.2015. An

::: Downloaded on - 23-04-2021 18:30:30 :::

incident and the consequences thereof have to be investigated together and at the same time in the first FIR itself. The mere fact that somebody from the other side was injured would not be a ground sufficient to lodge a separate FIR for the same. Otherwise also, learned counsel for the petitioners has rightly referred to the pleadings of the State in the written statement, as well as, in the charge sheet filed by the respondent No. 3, to contend that the State itself is not considering the version given in the second FIR as a cross-case. The stand of the State is that the first FIR No. 192 dated 14.10.2015 and the second FIR No. 129 dated 7.8.2018 are not mutually exclusive or independent, rather they are intricately intermingled and therefore these cannot be treated as cross cases. In view of this categorical stand of the State, no scope was left for registration of a separate FIR qua the consequences of the factum of firing mentioned in the first FIR. Hence, this Court finds the substance in a judgment relied upon by the learned counsel for the petitioners rendered by the Supreme Court in case of **T.T. Anthony** (Supra) and in case of **Babu Bhai** (supra) to be well placed. In the case of **Babu Bhai** (Supra) held as under:

> 21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.

::: Downloaded on - 23-04-2021 18:30:30 :::

Although Learned Counsel for the State rebutted the submissions of the Learned counsel for the petitioners by citing that the Supreme Court reconsidered the law laid down in **T.T. Anthony case** (supra) in **Upkar Singh Case** (supra) and it was held that there is not absolute bar of registration of a second FIR regarding the same incident because in case the version of the other side is not taken into account in the first version, then the second version can go totally unheard. However, The Supreme Court has again considered the judgments in all the above-mentioned cases i.e. **T.T. Anthony case** (supra), **Upkar Singh c**ase (Supra), in **Arnab Goswami** case (Supra) and while reiterating the judgment in case of **Babu Bhai** (Supra) has held as under:-

> "This Court held that the relevant enquiry is whether two or more FIRs relate to the same incident or relate to incidents which form part of the same transactions. If the Court were to conclude in the affirmative, the subsequent FIRs are liable to be quashed. However, where the subsequent FIR relates to different incidents or crimes or is in the form of a counter-claim, investigation may proceed."

In view of the above proposition the Supreme Court quashed all subsequent FIR against the petitioner in that case and permitted investigation in one FIR only.

Applying the above test to the present case this court is of the view that although the second FIR on the same incident could not have been legally registered by the police, however, this aspect has lost significance now in view of judgment in **Babu Bhai** Case (Supra), as reiterated in case of **Arnab Goswami** (Supra) and also in view of the peculiar facts and circumstances of the present case. Since the complainant in the second FIR has alleged a different offence, therefore the investigation has to be continued. Otherwise also, even if the second FIR was not registered, the version of the complainant in the second FIR was bound to be investigated, being the 'consequences' of the incident mentioned in the

::: Downloaded on - 23-04-2021 18:30:30 :::

first FIR. However, the investigation of both these versions, being inseparably interconnected, has to be conducted at the same time and not in a segregated manner. Such an investigation has to be carried out by the same investigating officer and in the sequences in which the incident is alleged to have happened.

This court does find substance in the argument of the counsel for the state that the crime never dies and therefore mere delay in registering the FIR is no ground to quash either the FIR or the investigation. However, the court does not find the argument of the counsel qua availability of protection of section 465 Cr.P.C. to an investigation even if the same is vitiated being actuated by malice, found to be absurd or malafide and resulting in miscarriage of justice. The purpose of section 465 is to protect only the bonafide irregularities, which do not cause any serious prejudice to the accused. The argument of the counsel in this regard is in the nature of claiming a right for the investigating officer to commit irregularity in investigation simply because there is a provision to protect some bonafide irregularities at a later stage of trial. Hence this argument is liable to be rejected. Still further, although the counsel for the state has raised the issue of the present petition being barred because the petitioner had earlier filed Criminal Revision before the Session Judge and had withdrawn the same without liberty to file fresh petition, however, this court does not find substance even in this submission of the counsel for the respondents. The present petition had already been filed and was pending at the time when the said Crl. Revision was filed and withdrawn by the petitioner. This fact was even disclosed by the petitioner in that original application moved by the petitioner from which that revision petition had arisen. Moreover, the relief claimed in the present petition is of such nature which could not even have been entertained or granted by the Magistrate or the Sessions court in revision. Otherwise also, there is no general rule of res-judicata in criminal law.

::: Downloaded on - 23-04-2021 18:30:30 :::

To bring his case within the scope of parameters laid down by the Supreme Court warranting interference by the court at the stage of investigation, learned counsel for the petitioners has argued that the respondent No.3 could not be expected to act reasonably and impartially in investigation, respondent No.3 has actually not acted impartially, he acted with malice and under a predetermined political agenda to misdirect the investigation so as to dump and spoil the FIR No. 192 dated 14.10.2015 registered at the instance and containing the version of police, and by his biased, absurd and malicious investigation he actually dumped the FIR No.192 dated 14.10.2015 without investigation and falsely implicated petitioner in FIR No.129 dated 7.8.2018 even by going to the extent of manufacturing and concocting the statements/evidence to suit his design of implicating some person and to declare some other as innocent. To substantiate all these aspects the counsel has vehemently argued that the respondent No. 3 could not be trusted as impartial in investigation in view of the documents placed on record as Annexures P-54 and P-55, which are orders of Election Commission of India, as well as, Annexure P-21, which is the order passed by a Division Bench of this Court and which is commentary upon the credentials of the respondent No. 3. Although counsel for the respondents/State has submitted that the credentials of an investigating officer are totally immaterial for the purposes of process of investigation, however, this Court does not find itself in agreement with this wild assertion. The allegations against the respondent No. 3 in the present cases are qua him having acted with mala fides. If an investigating officer is alleged to be acting with personal malice and with mala fide intention to destroy the investigation or to conduct the investigation in a non-impartial manner, then the credentials of the investigating officer can very well be looked into by the Court to ascertain whether the allegations of personal malice, mala fides and of misuse of power by such an investigating officer are correct. There is no gainsaying that there cannot be a

::: Downloaded on - 23-04-2021 18:30:30 :::

direct evidence of working with mala fide intention. It is to be gathered from attending circumstances, likelihood of the persons complained against of indulging in such behavior which lends credence to the allegations of mala fide functioning in ordinary course, as well as, from the documents placed on record which should directly reflect upon the malice and malafide functioning of the person complained against. The documents which have been placed on record by the petitioner; as mentioned above; amply show that the respondent No. 3 does have a tendency of misusing his official position and authority in performance of his duties. As per the documents he has also accepted his conduct to bulldoze and to deviate the process, as well as, to make an attempt to over awe the judicial process. A perusal of the judgment Annexure P-21 passed by a Division Bench of this Court in CWP No.20199 of 2010 shows that in that case although the issue involved was purely civil in nature, however, by misusing his official authority, the respondent No. 3 converted it into a criminal matter in three matters so as to pressurize the victims. In the process, he even went to the extent of violation of human rights of the petitioners in that case. The court had taken a serious note of that. The respondent No.3 appeared in person and presented his case, though his counsel was also there. At that time even before the Division Bench, he exhibited a conduct which was found by the Division Bench to be totally objectionable and aggravating. A perusal of the order also shows that although on advice from his then counsel he had tendered an apology to the Bench, however, the conduct of the respondent No. 3 of such type that the Division Bench of this Court could not accept the said apology without imposing cost upon the respondent No.3 herein. Hence, the Division Bench of this Court though accepted the apology of the respondent No.3 herein, however, he was burdened with Rs.5000/-as costs in that matter. Still further, it has come on record that during the present investigation, the respondent No. 3 had moved an application before the Chief Judicial Magistrate on 25.06.2020 seeking

::: Downloaded on - 23-04-2021 18:30:30 :::

remand of the petitioners for 8 days. However, considering the facts and circumstances of the matter and interest of custodial interrogation, the Chief Judicial Magistrate permitted the police remand of one day only. The respondent No. 3 felt enraged over the order passed by the Chief Judicial Magistrate in granting remand for one day only since it was not to his liking. Therefore, the respondent No. 3, strangely, wrote a letter to the District and Sessions Judge, Faridkot, on 'administrative side' for an order by the Sessions Judge that in future no case pertaining to the sacrilege and the police firing incidents should be listed before the then Chief Judicial Magistrate, Faridkot. This was despite the fact that he was not even the investigating officer in several of those cases. The allegations leveled in that letter were that the then Chief Judicial Magistrate had a close family linkage with Prakash Singh Badal, the outgoing Chief Minister of the State of Punjab, therefore he should not be a judge in his own case! Not even details of any connection were mentioned in that letter. Although in that letter the respondent No.3 has written that Prakash Singh badal had been made accused, however the record shows that even till today no challan has been filed against Prakash Singh Badal in the present FIRs. Although the respondent No. 3, as an investigating officer, had every right to move an application in the cases which he was investigating, on judicial side before any Court, as permitted by the law during investigation, however, he could not have written any letter on 'administrative side' raising a complaint against the Chief Judicial Magistrate. This mischief was done by the respondent No. 3 only to pressurize the Courts at Faridkot and to overawe the judicial process. Otherwise as has come on record, the said Chief Judicial Magistrate was not regularly having the cases of the said police station with him. As per the roster published about a month back on 31.05.2020, the Chief Judicial Magistrate was to hear the cases as a Duty Magistrate only from 23.06.2020 to 26.06.2020. This Court finds substance in the submission of the

::: Downloaded on - 23-04-2021 18:30:30 :::

learned counsel for the petitioners that the remand application was deliberately moved by the respondent No. 3 on the said date before the Chief Judicial Magistrate so as to concoct a story of Prakash Singh Badal and his family making attempt to influence the judicial process. The design the respondent No. 3 had the desired result because on the next day itself, the issue was widely reported in the press highlighting the names of the politicians mentioned above, their alleged involvement in the crime mentioned in the FIR, as well as, their possible interference in the judicial process. The other desired result; which the respondent No. 3 intended and he got after this letter; was that thereafter none of the judicial officers rejected application for remand moved by the respondent No. 3. Rather the judicial officers granted remand in the applications moved by the respondent No. 3 either on the same grounds on which earlier remand was obtained or even on the grounds; as written in the applications moved by the respondent No. 3; but which did not make any sense even linguistically. It is a different matter that even the other Magistrates hearing the remand applications moved by the respondent No. 3 did not grant the police remand for more than two days, whereas, the Chief Judicial Magistrate had granted the remand for one day and had not dismissed the application moved by the respondent No. 3. The then District and Sessions Judge also owe an explanation as to how he entertained a letter written on administrative side on this aspect. Still further, the documents Annexure P-54 and P-55, placed on record by the petitioners shows that the respondent No. 3 does not hesitate in using his position and capacity even for the purposes motivated politically. The respondent No. 3 was working as an investigating officer in April 2019 when the Parliamentary Elections were taking place. The respondent No. 3 gave interview to a TV Channel, in his capacity as an investigating officer, and named certain political leaders of the party rival to the political dispensation heading the current government. Allegations qua their role in the incident of sacrilege and police

::: Downloaded on - 23-04-2021 18:30:30 :::

firing were highlighted by the respondent No. 3 knowing fully well that such an interview at such a juncture would enhance the political prospects for one political party and would damage the political prospects of another political party. Accordingly, the Election Commission of India also took note of this objectionable conduct of the respondent No. 3 on a complaint made by Sh. Naresh Gujral, MP (Rajya Sabha) from Punjab. After assessing the conduct of the respondent No.3 in that regard, the Election Commission passed the order for removal of the respondent No. 3 from the present post and to debar him from being posted on any post in relation to election duty during that election. The respondent No. 3 did not stop here. As has come on record, the respondent No. 3 prepared the challan under his signatures on 23.5.2019, when the model code of conduct was still in operation. This was done by the respondent No. 3 despite the fact that there was an order from the Election Commission to remove him from SIT, as has been clarified by the Election Commission of India. This Court also finds substance in the argument of the learned counsel for the petitioners that this was being done by the respondent No. 3 under political patronage and / or for a political purpose because it has also come on record that the State Government did not remove the respondent No. 3 from the investigation in question despite the orders of the Election Commission. However, this aspect would be dealt separately in the coming paragraphs of the judgment. The respondent No.3 has also made a totally unsubstantiated and awkward claim in his written statement that his functioning has been appreciated by two judges of this court on Administrative Side. There is nothing on record as to who were the judges who appreciated the functioning of the respondent No.3 and what was the administrative purpose for which the said judges contacted him on administrative side. Another scandalous statement made in his written statement is that he was not bringing something on the record of the case because two of the counsels who dealt with the sacrilege case have been

::: Downloaded on - 23-04-2021 18:30:30 :::

elevated as Judges of this Court. This court does not see any relevance of this statement except its inherent absurdity and the theatrics underlying it. Not only this, to browbeat the counsel for the petitioners; the respondent No.3; in his written statement; has also made absurd comments against the senior counsel for the petitioners only for performance of his duty of arguing the case of the petitioners. Hence, this Court finds that the respondent No.3 is a person who indulges in misuse of his official position to further his designs; makes attempt to over-awe the processes and the authority and who indulges in theatrics and political maneuvering to draw mileage out of it. The apprehension of the petitioner(s) that the respondent No.3 cannot be expected to act fairly and impartially in the conduct of investigation; is found to be reasonable one even as per the standards of an ordinary person of ordinary prudence. Hence, the petitioners are right in arguing that the respondent No. 3 cannot be trusted to be impartial and unbiased in performance of his duties as an investigating officer.

Another limb of the argument of learned counsel for the petitioners is that in furtherance of a political design to falsely rope in some persons in the cases through the misadventures of respondent No.3, the SIT already constituted was reduced to one man show from 18.4.2020 onwards, although the respondent No. 3 was a de-facto sole controller of the investigation even earlier. It is the further submissions of Learned counsel for the petitioners that the respondent No.3 acted with personal malice against the petitioners so as to pressurize the petitioners to withdraw the present writ petitions which they had already filed before the High Court and also to coerce the petitioners to become approver and a witnesses against other senior police officers and against some of the political functionaries of the State. All this was being done at the instance and in collusion with the political dispensation having the present government in the State. The counsel has again referred to the complaints made to the Election Commission and the orders passed

::: Downloaded on - 23-04-2021 18:30:30 :::

by the Election Commission thereon, as well as, certain parts of the process of investigation to highlight the political agenda being pursued in the investigation. Counsel also referred certain orders passed by the authorities to change the SIT and certain incidents which had happened to him after the change of the SIT. Qua the allegations of the political agenda being pushed through the investigation and qua the orders of the Election Commission, Learned Counsel for the State has submitted that there was no political interference in the entire investigation. Moreover, model code of conduct is not a statutory provision, therefore, neither the same was binding upon the State authorities nor that can be interpreted to mean that the statutory functions like investigations and the trial by the prosecution has to be brought to a halt. However, this Court does not find any substance in the argument of counsel for the respondents/State. Of course, the model code of conduct is not a statutory provision, but this submission is totally irrelevant. The petitioners are not claiming anything by submitting that the model code of conduct is statutory in nature. Rather, they are only highlighting the aspect where a State Government had gone to the extent of not complying with the orders of the Election Commission of India also; just to continue the respondent No.3 as main investigator of the cases. This approach had been adopted by the State Government despite the fact that the respondent No.3 had given such an interview to a TV Channel which had political connotations and which was not the part of the job of an investigating officer, by any means. Seeing this conduct of the respondent No.3 one may harbor an idea that the respondent No.3 may be indulging in these political theatrics to fulfill his own political purpose of creating post-retirement greener political pastures for himself so as to enter the political field; as several retired officers have done, after demitting office. However, the political backing of the respondent No.3 becomes clear from the fact that not only the State Government did not remove the respondent No. 3 from the job of investigation of

::: Downloaded on - 23-04-2021 18:30:30 :::

the FIR in questions, qua which the Election Commission had found the conduct of the respondent No. 3 to be objectionable, but also the top functionaries of the political party heading the present government, as well as, its Cabinet Ministers wrote letters to the Election Commission of India for revoking the order passed against the respondent No.3. This shows the close nexus between the politics, the respondent No.3 and the investigation being carried out by him. In his written statement, the respondent No.3 has specifically written that the order of the Election Commission of India was ultra vires the constitution of India and that in context of the orders of the Election Commission, he was working only as per the directions of the Government. Therefore, he has himself stated the Government to be participant in what happened during that period. Not only this, the Election Commission has referred to a D.O. Letter written by the Chief Minister of the State requesting the Election Commission to recall its orders passed against the respondent No.3 by asserting that the respondent No. 3 was a competent officer. In view of this letter, the nexus between the respondent No.3, the politics and the investigation in the cases in question; is anybody's guess.

Although Learned Counsel for the State had submitted that since model code of conduct is not statutory in nature, therefore, it could not have prevented the other statutory proceedings like filing of the challan or grant of default bail by the Courts in case of non-filing of the challan due to model code of conduct. However, this argument is totally hypothetical. In the present case, neither there was any specific urgency for filing of the challan nor was there any issue of grant of default bail to anybody. Therefore, the respondent No.3 could have very well avoided giving interview or preparing challan till the elections were over. The challan was, otherwise also, filed on 25.07.2019 after the election was over. This argument of Learned Counsel for the State is shown to be totally hollow otherwise also. If the filing of the report under Section 173 Cr.P.C. was mandatory

::: Downloaded on - 23-04-2021 18:30:30 :::

before the expiry of the model code of conduct, the same could have been done by the another investigating officer as well; and in case any question of grant of default bail on account of non-filing of challan was there, the investigating officer could have moved the application before the concerned Court for extension of time for completion of investigation. However, instead of following these legal procedures, the respondent No.3 hurriedly prepared the report under Section 173 Cr.P.C. during the process of elections to highlight the names of certain politicians rival to the political party heading the present government, although no challan was being filed against them. In any case, no law required the respondent No. 3 to go to media and to give such interview which had political overtones; qua the investigation and during the election time.

This Court also finds substance in the submission made by Learned counsel for the petitioners that to make the respondent No.3 as sole incharge of the investigation; so that he could bulldoze the entire process of the investigation; the composition of the SIT was changed by making the respondent No.3 as head of a sub-team investigating these FIRs; with the other team members being the immediate subordinates of the respondent No.3. Although learned Counsel for the State has tried to justify the change of the composition of the SIT by submitting that one of the earlier members of the SIT had gone on ex-India leave and was not likely to return in near future on account of COVID-19 pandemic situation and the other senior members of the team was transferred from his present place of posting, however, this explanation is not justified by the facts on record. The earlier SIT was constituted under the Chairmanship of a senior IPS Officer Prabodh Kumar, who was much senior to the respondent No.3. There was other senior IPS officer as well, in that SIT. There is nothing on record to show that Sh. Prabodh Kumar ever refused to continue to head the SIT or that the other senior IPS Officer made any request to recues himself from the SIT. The transfer of

::: Downloaded on - 23-04-2021 18:30:30 :::

Prabodh Kumar cannot be justifiably cited by the State as a reason for change of the composition of the SIT because the members of the SIT were earlier nominated by name and not by their official designations. Moreover, the petitioners have asserted in the writ petitions that those senior members of the SIT had clearly expressed their resentment against the autocratic and arbitrary functioning of the respondent No. 3 by writing to the State Government and authorities to this effect and the said matter was widely reported in the press. The said senior members of the SIT have been made party to the present petitions. However, they have chosen not to rebut the assertions made in the writ petitions by filing any written statement. Therefore, an adverse inference has to be drawn on the issue and it has to be taken as correct that the said members of the SIT were not agreeing with the functioning of the respondent No. 3 because of his autocratic style and bulldozing manner in functioning. This fact is further substantiated by the fact that even the challan filed in the present FIRs, so far, has been signed only by the respondent No. 3 and not by any other member of the SIT. This is despite the fact that Prabodh Kumar or Arun Kumar has not been removed from the SIT by any specific order. There is nothing in challan or otherwise on record to show that the other members of SIT had ever approved the said challan before being filed or they had ever authorized the respondent No.3 to file the same on behalf of the SIT. The record also does not show that even before the change of the composition of the SIT, the other members had ever concurred to the investigation carried out by the respondent No.3. This is clear from two facts, Firstly, the respondent No.3 has filed his written statement in these petitions and although in the said written statement he has asserted that investigation was being carried out by him in cooperation and consultation with the other members of the SIT, however, he has stopped short-of asserting that investigation was being carried out by him with '**concurrence**' of the other members of the SIT or that they ever agreed to the

::: Downloaded on - 23-04-2021 18:30:30 :::

investigation being carried out by the respondent No. 3. Secondly, the State has failed to suitably rebut the assertions of the petitioners that the other members of the SIT never signed even the *zimnies* during the investigation; as a mark of agreeing with the investigation being carried out by the respondent No. 3. The State has not placed on record anything to show that all the other members were also the signatories to the proceedings of the investigation carried out by the respondent No.3. Although during the arguments, Learned Counsel for the State has submitted that there were some entries which were signed by the other members of the SIT as well, along with the respondent No.3, however, he could refer to only some of the *zimnies* and even those were signed, statedly, only by two members. It is also not clear from anywhere whether other member who signed the *zimnies* alongwith the respondent No.3 were not the police officials working under direct control of and as subordinate to the respondent No.3 in his office. Therefore, this has to be taken by this Court to have been established by the petitioners that the respondent No.3 was made the ***de jure*** head of the SIT by the State authorities to avoid the participation of the other senior members of the SIT into investigation and to make the respondent No. 3 as sole and exclusive incharge of the investigation of the FIR in question; so as to enable him to carry out his design through autocratic functioning and bulldozing style.

The assertion of the petitioners that the respondent No. 3 worked with personal malice against the petitioners is also amply clarified by the fact that after having been made the sole incharge of the investigation, the respondent No. 3 swiftly involved the petitioner Gurdeep Singh in one case after the other, including in one case which is of another police station. Although Learned Counsel for the State has submitted that the petitioner has been involved in all the cases only after finding evidence against him and nothing much can be read in implication of the petitioner in three cases in a short duration, however, the manner in which the

::: Downloaded on - 23-04-2021 18:30:30 :::

petitioner is stated to have been involved in these cases; and the proceedings thereof; leave much to be desired. The respondents have not denied the assertions of the petitioners that he was called by the respondent No.3 to an office where neither the investigation was being carried out nor was the petitioner posted. The summons was also vague, not specifying any offence or case. Ostensibly; the summons were sent to join investigation as witnesses. However, on reaching at that place, the petitioners claims to have been harassed and humiliated by the persons; who were subordinates to the respondent No.3. The petitioners had made a representation to the Director General of Police, Punjab, immediately; however, no appropriate response was reflected by the DGP. The respondent No.3 obtained repeated remand of the petitioner, even by citing grounds which were vague and which linguistically also did not make any sense. The respondent No.3 is shown to have involved the petitioner in FIR No. 192 dated 14.10.2015 as accused by making a telephonic call to the concerned police station; even without telling that police station as to what was the role attributed to or the allegations against the petitioner. Moreover, when the bail application of the petitioners in FIR No. 192 dated 14.10.2015 was pending before the Court, the respondent No.3 is stated to have made another telephonic call to another police station, and this is also so recorded in the zimni/daily diary of that police station, to inform that police station that the petitioner was to be arrayed as accused in a pending murder case of that police station also. This appears to have been done to ensure that the petitioner does not come out of custody and he remains in continuous custody being arrayed as an accused in a serious case. All these incidents lend credence to the submission of the petitioner that the respondent No.3 was pressurizing him to withdraw the writ petition and to become a witness to implicate the other senior officers of the Police Department and some top political functionaries of the rival political party. Therefore, the petitioners have amply substantiated that the

::: Downloaded on - 23-04-2021 18:30:30 :::

respondent No.3 was acting with personal malice and mala fide intention, in furtherance of an extraneous agenda. Although Learned Counsel for the State has submitted that the allegations of mala fide are irrelevant in case of investigation particularly when the report under Section 173 Cr.P.C. has been filed before the Court and the Court has taken cognizance of the same; and has relied upon the judgment in case **Bhajan Lal** (Supra), in case of **Mutha Associates** (Supra), in case of **Shiv Nath Prasad** (Supra) and in case of **Saroj Kumar Sahoo** (Supra), to buttress the argument, however, this Court finds that in the judgment rendered in case of **Bhajan Lal** (Supra) the Supreme Court itself has laid down that the FIR and the proceedings being vitiated by 'mala fides' shall be one of the grounds to quash the proceedings against the accused. Though there can be no dispute qua the proposition expounded by the court in other judgments relied upon by the counsel, however those judgments are totally distinguishable on the particular facts of those cases vis-à-vis the facts involved in the present cases. This court finds the case of the petitioners to be covered by the judgment of the Supreme Court in case of **Rubabbuddin Sheikh v. State of Gujrat and others, (2010) 2 SCC 200**. Even in case of **Babu Bhaib** (Supra) the proposition on this aspect has been amply clarified by the Supreme Court wherein it has been laid down that if there is a miscarriage of justice on account of personal malice or mala fide functioning of the investigating officer, then investigation can be quashed by the court. Hence it is clear that it is the 'effect' of the malice and mala fide functioning of the investigating officer which is the clinching factor and not the fact that challan has already been filed by such investigating officer. Therefore, the allegations of mala-fide do not lose their sting simply because the investigating officer has filed the challan, may be even with concocted and manufactured alleged material. The accused can very well show the miscarriage of justice caused qua him on account of mala fide investigation of the case. In the present cases, the entire submission of

::: Downloaded on - 23-04-2021 18:30:30 :::

the petitioners is that the mala fide intention of the respondent No. 3 was directed to seriously prejudice the petitioners by falsely involving them in criminal cases even by going to the extent of manipulating and recording the false statements of the alleged witnesses. Therefore, the argument of Learned Counsel for the State is liable to be noted only to be rejected.

Next comes the assertion of the petitioners that the respondent No.3 was carrying out the investigation in furtherance of a pre-planned design and in furtherance of political agenda to destroy the FIR No.192 dated 14.10.2015, which contained the police version of the incident, even without investigation of the same; and also by attaching the political connotation to the investigation through highlighting the alleged role of higher police officers and of the senior political functionaries of the outgoing political party. To buttress his argument in this regard, learned counsel for the petitioners has referred to some part of the alleged material collected during the investigation by the respondent No. 3, as well as, to the manner in which the investigation has been conducted by him. Although; in the opinion of this Court; it would not be appropriate for this Court to express its detailed opinion on merits or on the quality of the alleged evidence; stated to have been collected by the respondent No.3 to file charge-sheet against the petitioners; or qua the alleged involvement of other persons in the crime, however, since the impartiality, integrity and incomprehensibility of the investigation and the report under Section 173 Cr.P.C. has been questioned by the petitioners and they have referred to certain aspects of the report under Section 173 Cr.P.C. filed against the petitioners, therefore, some reference to some parts of the report under Section 173 Cr.P.C. filed by the respondent No.3, as well as, to the alleged material collected by him; has become imperative to test the version of the petitioners. This Court would restrict itself only to that extent in considering the report and the alleged

::: Downloaded on - 23-04-2021 18:30:30 :::

material claimed by the respondent No.3, lest any prejudice should be caused either to the case of the prosecution or to the case of the petitioners.

Having considered the material on record of these petitions and arguments of the counsels, this Court finds that the respondent No.3 has conducted the investigation in a perfunctory manner. The report under Section 173 Cr.P.C. filed by him is more in the nature of a hypothesis proposed by the respondent No.3 based on his assumptions and fantasies than being based on material or evidence. The respondent No.3 conducted the investigation by starting the same in FIR No. 129 dated 7.8.2018, which was subsequent in time and which was relating only to the consequences of the incident mentioned in the first FIR, i.e. FIR No. 192 dated 14.10.2015. In this investigation, the respondent No.3 has not examined any one of the injured police persons so as to assess the respective assertions of the parties in the FIRs. He has examined the alleged injured persons from amongst the alleged protestors and filed a report under Section 173 Cr.P.C. in FIR No. 129 dated 7.8.2018; starting with a conclusion that the police resorted to unprovoked firing upon the peaceful protestors. The relevant para of the report Section 173 Cr.P.C. in FIR No. 129 dated 7.8.2018 in this regard reads as under:

> "**Case Summary** This case is related with unprovoked and unwarranted police firing on the people sitting on dharna in the early morning of 14.10.2015 at Kotkapura chowk where people gathered in protest of a series of incidents of sacrilege of Sri Guru Granth Sahib Ji which occurred at village Bargari and Burj Jawahar Singhwala. In this firing many persons received serious injuries while they were sitting on dharna peacefully and observing holy prayers (nitnem-path).
>
> At that time, the police of City Kotkapura did not take any action on this incident knowingly, intentionally and in deep conspiracy under influence of and in connivance of higher rank police officers and political bosses at that time. This FIR could only got registered on the recommendations of a Judicial Commission of

::: Downloaded on - 23-04-2021 18:30:30 :::

Inquiry; commonly known as “Justice Ranjit Singh Commission of Inquiry” (herein after referred as “Inquiry Commisson”).

The investigation of this case (FIR No.129 dated 07.08.2018) was entrusted to a Special Investigation Team (SIT) to investigate four cases related with police firing vide order No.5501-08/CR-IN-II dated 10.09.2018 (Copy enclosed).

During the investigation by the SIT, it has been established that several persons were injured during this police action but they were not shown injured in the police record and no action was taken by the local police and material evidence has been intentionally disappeared under the influence of senior officers and higher authorities.”

This approach is totally uncalled for and unsustainable. Even before starting the investigation in the FIR No.192 dated 14.10.2015; which contained the police version and wherein they had asserted violence on the part of the protestors and the police firing being only consequential, the respondent No.3 had declared the firing by the police to be totally ‘unprovoked’ and the protestors to be totally ‘peaceful’. Furthermore, although the respondent No. 3 examined some of the police persons who were present on the scene of occurrence on that day and recorded their statements, however, those statements of these witnesses were in direct contravention of their earlier affidavits sworn and filed by them voluntarily before the Inquiry Commissions. Needless to say, that the second Inquiry Commission was constituted only by the present political dispensation and therefore, the said police officials could not assert that they were under pressure to file affidavits which they had filed before, at least, the second Inquiry Commission. Moreover, they never raised any complaint regarding being pressurized to swear and submit false affidavits before the Inquiry Commissions. However, this aspect has totally been obliterated in the investigation carried out by the respondent No.3. Although the respondent No.3 may contend that the affidavits submitted by those police officers before Inquiry Commissions may not be relevant for the purpose of

::: Downloaded on - 23-04-2021 18:30:30 :::

judicial proceeding because the prosecution is to proceed only on the basis of material collected during the investigation, however, the respondent No.3 himself has heavily relied upon the parts of the report of the Inquiry Commission to assert the commission of crime by police officers and the political functionaries. Moreover, even the FIR No. 129 dated 7.8.2018 is, admittedly, recorded on the basis of affidavits submitted by the witnesses before the Second Inquiry Commission.

Another aspect to highlight a hypothetical approach of the respondent No.3 during the investigation and to further the political agenda is clarified by the fact that he has claimed conspiracy between the then Chief Minister, the then Deputy Chief Minister, the then senior police officers and the petitioners on the basis of the call record showing the Chief Minister talking to the DGP and the District Administration, as well as, to his political representative in the area. In the same manner, he relies upon the call details which show the then DGP, Punjab talking to the District Administration or to the MLA who was the political representative of the area around the time of incident. However, in the considered opinion of this Court mere factum of a Chief Minister talking to the District Administration or to the DGP of the State in the times of a situation where the law and order is disturbed, in itself, would not be sufficient to infer his conspiracy to kill or injure anybody through firing by the police upon the protestors, unless there is some other material collected by the investigating officer to establish prior meeting of minds for conspiracy and then directly linking the Chief Minister to such conspiracy. If mere talking of the Chief Minister, or for that matter by a minister with his DGP or the District Administration, is taken as a criminal conspiracy then any Chief Minister can be held criminally liable every day for any wrong-doing resulting from wrong functioning of district officials. The fact that the then Chief Minister was in contact with the district officials, rather, shows that

::: Downloaded on - 23-04-2021 18:30:30 :::

he was alive to the situation and to his responsibility as a Chief Minister; even in the odd hours. Had the then Chief Minister not been in contact with the District Administration and his DGP in such a critical situation, then he would have run the risk of being branded as another Nero who played fiddle when the Rome was burning. However, there is not any material collected by the respondent No.3 to even remotely suggest direct linkage of the Chief Minister to any conspiracy except the call records. The respondent No. 3 claimed that the then Chief Minister talked through the phones of his Principal Secretary and his OSD. However, version of none of them has been taken on record by the respondent No. 3 to substantiate the nature of conversation. None of the other witnesses is stated to have even remotely suggested that the then Chief Minister conspired to kill the protestors by police firing. The other hypothetical preposition proposed in the report prepared by the respondent No. 3 is that since the police officials, who were not regularly posted in District Faridkot, were deputed to control the protestors; therefore, it would show the criminal conspiracy. However, it has come on record that these officers were deputed because of the fact that they had remained posted in Faridkot District immediately before the incident; and the post of IG Bathinda Zone had not been occupied by any person at that time. Moreover, the said officers were not the only police officers who were deputed there at that time. Even the Punjab Armed Police was requisitioned and the personnel from 13th Battalion of the same were also present there. In fact, the petitioner-HC Rashpal Singh, who claims to have been seriously injured in violence by the protestors was posted there only as member of this 13th Battalion. Mustering of police force from various sources of state to control the law and order situation is nothing uncommon. On the contrary the authorities are supposed to employ all possible and appropriate resources to maintain law and order in the state. Although the respondent No.3 would have been free to collect the material and evidence to substantiate the

::: Downloaded on - 23-04-2021 18:30:30 :::

conspiracy claimed by him, instead, he has chosen to rely upon the subsequent conduct of the police officers and then to draw the presumption qua conspiracy by invoking the admissibility of subsequent conduct in evidence. Even if the alleged subsequent conduct of the said police officers is to be taken as it is, that hardly would be any evidence to prove the factum of conspiracy which involves prior meeting of minds. However, collecting material qua prior meeting of mind would be a subject matter of free and fair investigation, if the investigating officer can find one.

As per the report under Section 173 Cr.P.C., filed by the respondent No. 3 in FIR No.129 dated 07.08.2018, and which is placed on record of this case, the respondent No.3 has gone to the height of his fantasy when he has brought in film actor Akshay Kumar into the picture to claim as part of a conspiracy because he produced a film called "Singh is Bling" and tried to exhibit the same in the State of Punjab. Even an old incident of the year 2012, qua which the FIR also stood cancelled several years back; has been sought to be invoked by the respondent No.3 to allege conspiracy by the political functionary of the opposite party namely; Sukhbir Singh Badal. However, the respondent No. 3 failed to collect any material to reasonably connect that incident in any manner to the allegations of conspiracy proposed in this case. Even a religious act of alleged pardon of Dera Sacha Sauda, Sirsa has been brought into picture by the respondent No.3 only to strengthen his hypotheses of conspiracy against Prakash Singh Badal and Sukhbir Singh Badal. Even on this count, he could not collect any material because the *Granthi*, whom the respondent No.3 claimed to have examined, has stated that the said pardon was rightly granted, although it should not have been granted in a hurried manner. This Court fails to understand as to how and why a purely religious issue, which was dealt with by the top religious leaders of Sikhs, has been brought into picture by respondent No. 3. Surprising thing is; that even after making effort to find out and

::: Downloaded on - 23-04-2021 18:30:30 :::

establish the allegation of conspiracy against Prakash Singh Badal and Sukhbir Singh Badal; and despite mentioning their names in the charge sheet and recording therein that their conspiracy is established, the respondent No. 3 did not array them as accused by filing any charge sheet against them in these two FIRs, so far. This is despite the fact that the charge sheet; in which the alleged role of Prakash Singh Badal and Sukhbir Singh Badal has been mentioned by the respondent No.3 was prepared way-back on 23.5.2019. Despite passage of about two more years, no charge sheet has been filed against above mentioned two political entities. This omission on the part of the respondent No.3 to file report under Section 173 Cr.P.C. against above said two politicians; despite the fact that he has been repeatedly highlighting their participation in the conspiracy and in influencing outcome of the investigation, and the fact that the respondent No.3 went to the extent of giving an interview to a TV Channel during high time of election process, shows only one thing that the present investigation has been kept by the respondent No.3 as political horse to be flogged only at an opportune time, whenever the elections are around the corner or when it otherwise suits him. Except this there is no justification for not filing challan against them despite having recorded in the earlier charge sheet that the allegations of conspiracy against the above said two political entities stand established. The only possible fact which prevents filing charge-sheet against these two leaders can be that there is no evidence against both of them. Hence, the conduct of the respondent No.3 and methodology adopted for carrying out the investigation by him goes to substantiate the allegations made by the petitioners that the respondent No.3 was acting with an intention to further the political agenda and was not carrying out a comprehensive and impartial investigation.

Next, it would be appropriate to test the assertions of the petitioners that a serious prejudice has been caused to them by mala fide investigation of the

::: Downloaded on - 23-04-2021 18:30:30 :::

respondent No.3, who was bent upon destroying the FIR No. 192 dated 14.10.2015 and falsely roping in the police officers and the political functionaries in FIR No. 129 dated 7.8.2018. In this regard; after referring to the charge sheet filed by the respondent No. 3 in FIR No. 129 dated 7.8.2018 and FIR No. 192 dated 14.10.2015, the petitioners have rightly pointed out that the respondent No.3 has recorded the statements of some of the witnesses who have deposed in their statements under Section 161 Cr.P.C. in FIR No. 129 dated 7.8.2018 directly contrary to what they had deposed before the Inquiry Commission and what they deposed during the partial investigation in FIR No. 192 dated 14.10.2015. This has not happened qua one or two stray witnesses. Rather several police officials have changed their statements to further the allegations made in FIR No. 129 dated 7.8.2018 by going totally contrary to the record and in contravention of their earlier statements. Seen in context of the allegations of the petitioners that they were pressurized to become approver/witnesses in FIR No. 129 dated 7.8.2018, and to withdraw their writ petitions under a threat of false implication in these two criminal cases, the possibility of same thing happening to these turn-coat police officials, cannot be ruled out. This aspect is further amplified by the fact that the same very witnesses while making statements under Section 161 Cr.P.C. in FIR No. 192 dated 14.10.2015 have selectively changed their version and omitted from their statements made in FIR No. 129 dated 7.8.2018 that part of their statements which would have inculpated the protestors in the crime in FIR No. 192 dated 14.10.2015. This is clear from the statements of the witnesses SI Balwant Singh, HC Jang Singh, HC Gurvinder Singh ASI Jagjit Singh and Contable Gurpreet Singh recorded by the respondent No.3. This leads to a conclusion that the respondent No. 3 has been manipulating the statements as it suits him in a particular case despite the witnesses being the same and the incident being the same. Statements of the above said witnesses as recorded in FIR No. 129 dated

::: Downloaded on - 23-04-2021 18:30:30 :::

7.8.2018 and FIR No. 192 dated 14.10.2015 have been placed on record by the petitioners and these statement do substantiate their selective omissions which tends to save the protestors from the crime. Hence, the integrity of the investigation totally stands demolished because of this manipulation on the part of the respondent No.3 while recording the selective statements of alleged witnesses. This also establishes that the respondent No.3 was conducting only manipulative exercise in the name of investigation; to declare some persons as innocent and to make some persons accused at his whims; instead of collecting any evidence sufficient to ensure conviction of anyone of them.

Still another aspect which deserves to be noticed is that the petitioners are the complainant in FIR No. 192 dated 14.10.2015. That FIR contains the details of incident including the orders passed by the Civil District Administration for handling the law and order situation and large number of police persons are stated to have been injured, including the petitioner-HC Rashpal Singh who was seriously injured in the incident, which is duly supported by several MLRs of police persons. However, the respondent No. 3 has not bothered to investigate the version of the police as contained in the FIR No. 192 dated 14.10.2015 by taking into account the relevant material; as mentioned in the FIR; and by recording the statements of the Civil Administrative Authorities. None of the injured police witnesses has been examined by the respondent No.3 to ascertain the veracity of the version of the police, as recorded in the FIR No. 192 dated 14.10.2015. When confronted with the situation, learned Counsel for the State has taken shelter under his often repeated submission that the investigation is still under process. Despite the investigation of the FIR No. 192 dated 14.10.2015 being under process; as submitted by the state counsel, by alleging against him fabrication of record and embezzlement of empties of the police fired rounds, the petitioner has been made accused, and charge sheet has been filed against him. In that charge-sheet, again, the respondent No. 3 has written that the police resorted to unprovoked firing upon the peaceful protestors. That part of the report is as under:

::: Downloaded on - 23-04-2021 18:30:30 :::

The instant FIR No.192/2015 was registered by the then SHO Gurdeep Singh (now accused in this case) against Bhai Panthpreet Singh Khalsa and other persons on the allegations of instigating the protestors and causing obstruction to the general public apart from other allegations. The background of the case is that on 14.10.2015, people were sitting on a peaceful dharna, at Kotkapura Chowk, in protest of a series of incidents of sacrilege of Sri Guru Granth Sahib Ji, which occurred at village Bargari and Burj Jawaharsinghwala and also in the other parts of the State of Punjab. They were observing holy prayers while sitting on peaceful dharna, force was used by the police. Investigation suggests that with a view to justify the unlawful police action, an FIR No.192 dated 14.10.2015 under Sections 307, 353, 332, 323, 382, 435, 283, 120-B, 149, 149 IPC, 25 Arms Act and 3, 4 of Prevention of damage to Public Property Act, 1984, was registered at Police Station City Kotkapura, Faridkot against Bhai Panthpreet Singh Khalsa and others by the police.

… It is also submitted that no evidence has come on the file during the investigation against Bhai Panthpreet Singh Khalsa and 8 others (as per column No.2; List attached) who were arrested on 14.10.2015 and released on 16.10.2015 by the court of Illaqa Magistrate, Faridkot. As such they have been found innocent in this case.

Hence a conclusion qua the allegations in FIR No. 192 dated 14.10.2015 has been recorded by the respondent No.3 despite the fact that not even the relevant witnesses have been examined by him in FIR No. 192 dated 14.10.2015. Not only this, the respondent No.3 has also declared all those the protestors; who were mentioned in FIR No. 192 dated 14.10.2015 by name as accused of instigating violence and indulging in damaging of the public and private property besides attacking on the police, as innocent; despite the fact that not even a single injured police witness has been examined by him in FIR No. 192 dated 14.10.2015. This is the height of the arbitrariness in investigation on the part of the respondent No.3. The respondent No.3 is repeatedly declaring that the police resorted to 'unprovoked firing' on 'peaceful protestors'; despite the fact that the

::: Downloaded on - 23-04-2021 18:30:30 :::

magistrate present on the spot had assessed the situation that had arisen on the spot and had granted permission to use tear gas in the first instance, *lathi* charge thereafter, and the gun firing at the third stage. As per record, this permission was granted on the basis that the protestors were resorting to large scale violence and destruction of property; and that because of this the situation had gone out of control. The police were acting only under the orders of the civil authorities, including the SDM. However, none of the civil authorities or the SDM has been made an accused in this case, nor their version recorded anywhere says that the firing was unprovoked or that the protestors were peaceful. Rather their statement recorded in other FIR supports the version of police, despite a bit convenient addition to their statement as an afterthought. The petitioner, who is the complainant in FIR No. 192 dated 14.10.2015; has been made an accused in that FIR for embezzlement of empties of ten fired shots; allegedly fired by the police official on protestors; by asserting that he had shown deposited these 10 empties with MHC of Police station but the MHC had denied the receipt of such empties. The reason for involvement of the petitioners in FIR No. 192 dated 14.10.2015 as an accused for embezzlement of empties of fired shot is also awkward one. On the one hand, the respondent No.3 has written in the report that the police persons; whom the petitioner claimed to have fired those shots during police firing; have denied having fired any such shots; on the other hand the respondent No.3 is accusing the petitioner to have embezzled empties of those fired-shots. If the shots were not fired as per the respondent No.3 and as per those police officials, then there is no question of there being empties of the same and consequently, there cannot be any embezzlement of the same by the petitioner. Therefore, illogical nature of the attempt by the respondent No.3 to involve the petitioner also shows his insistence to rope in the petitioner by hook or crook.

::: Downloaded on - 23-04-2021 18:30:30 :::

The respondent No.3 in his report under Section 173 Cr.P.C. in both FIR No. 129 dated 7.8.2018 and FIR No. 192 dated 14.10.2015 has recorded that the police resorted to unprovoked firing upon peaceful protestors resulting into injuries to the protestors. However, the material brought on record and relied upon by the respondent No. 3 only; suggests otherwise, of course, subject to any fair investigation. The respondent No.3 has recorded the statements of some of the official witnesses in FIR No. 129 dated 7.8.2018. All these witnesses have mainly deposed regarding the violence by the protestors. However, this aspect of their statements has totally been obliterated by the respondent No.3. Further, although the report of the Inquiry Commission is not on record of this case, however, the respondent No.3 has reproduced some portion of the report of the second Inquiry Commission in the charge-sheet; wherein the video recording of the incident is described. Although the video recording can be a deceptive material because of its susceptibility to manipulation post-recording and because of the fact that video recording is always a function of place and angle of recording; and is also dependent upon the intention of the person recording the same, yet in this case the respondent No.3, in his own wisdom, has relied upon the same and made it a part of the report under section 173 Cr.P.C. in FIR No. 129 Dated 07.08.2018. That description, as given in the report of Inquiry Commission and as made part of the report under section 173 Cr.P.C. in FIR No. 129 dated 07.08.2018, itself suggests contrary to the assertion that the protestors were 'peaceful' or the firing was 'unprovoked'. Rather, this recording suggests that the events in that occurrence happened in the sequence and in the manner as is recorded by the police in FIR No. 192 dated 14.10.2015. The relevant description; as is relied upon the in the report; is reproduced herein below:

(L) The file "OK" contains CCTV footage of 21.19 minutes regarding incidents of police action at Kotkapura Chowk. The

::: Downloaded on - 23-04-2021 18:30:30 :::

description of this video is more or less similar to the description given in the "Inquiry Commission's Report" on page 57 to 60. The same is reproduced as under and a copy of the page 57-60 is also enclosed herein with as Annexure K(I).

"The relevant detail in this regard would show that the day light had appeared at about 6.18 AM when the pictures on the cameras turned to coloured one from black and white. SSP Faridkot along with his Gunman carrying assault rifles is also seen at 6.24 AM but otherwise all is quite till 6.28 AM. At about 6.24 a.m., police is seen encircling the protesters who are busy with their routine quietly.

At 6.28.11 AM, police is seen closing in. At this movement, DIG Mr. Khatra is seeing talking to DIS AS Chahal and then both proceed to the place where the protesters are sitting. SSP, Faridkot, SSP Mansa, SSP Moga and DSP Kotkapura had accompanied both the DIGs when they went to the protesters. DIG Khattra and DIG Mr. Chahal along with SSP Faridkot are seen reaching the protesters. At 6.30.19 AM, DIG Mr. Khattra is seen talking to the protesters like Bhai Panth Preet Singh. Mr. Chahal is standing behind wearing a civil dress. DSP Kotkapura is also seen nearby. On the other side, police is also seen closing in further at 6.31.30 AM. DIR Mr. Khattra is seen sitting down and talking to Bhai Panth Pree Singh while DSP Kotkapura is noticed standing. This is at 6.32 AM. Simultaneously, Mr. Chahal is seen saying something while waving his hand at 6.33.06 a.m. DIG Mr. Khattra is seen getting up at 6.34.10 AM and all the officers are seen returning back to Mr. Umranangal standing on Moga road side. Police is seen further closing in at 6.35 AM. DIG Mr. Khattra, DIG A.S. Chahal and other officers who had gone to exchange talk with the protesters are seen reporting back to Mr. Umranangal at 6.35.07 AM. Discussion amongst the officers with Mr. Umranangal then continues up to 6.37.09 a.m. Mr. Umranangal is continuously seek talking on the phone even up to 6.38.50 a.m.

::: Downloaded on - 23-04-2021 18:30:30 :::

At 6.40.40 a.m., but is seen entering the chowk while being reversed. Vajra vehicle is also seen standing nearby at that time. Bus is brought very near to the crowd at 6.42 a.m. while the officers are seen engaged in intensive talks. At 6.42.45 a.m. Police is seen coming forward towards the crowd almost in a charging position. From the Jaito road side camera, Mr. Umranangal is seen directing the police official to proceed further towards the protesters at 6.42.44 a.m. Commotion amongst the protesters is also seen from this side at 6.43.10 a.m. Some protesters are seen being assaulted and pushed towards PRTC Bus side at about 6.44.10 a.m. and a group of protesters are seen coming out of the pandal and are taken to the stationed buses at 6.44.20 am. At 6.44.11 a.m., police is seen catching Bhai Panthpreet Singh and others. Some of the protesters get up perhaps to see what is happening. Police is also seen start using lath charge. Soon thereafter at 6.44.49 a.m. use of water cannon starts. The crowd gets dispersed from the chowk with the force of water. At 6.45.40 a.m. police then is seen beating the crowd. At 6.46 a.m., some police personnel are seen beating the protesters while SSP Sharma is also seen using stick from camera fixed on Faridkot road side. Police is seen attacking Bhai Panthpreet Singh at 6.46.08 a.m. Soon thereafter, police is seen lifting Bhai Pantpreet Singh. With the force of water thrown from water cannon vehicle, tent pitched by the protesters is seen partially uprooted. At 6.45.30 a.m. Riot control Vajra vehicle is seen appearing on the scene. The police is also seen dragging Bhai Panthpreet Singh when some protesters lied over him. With the use of water cannon, the police is also seen running from the chowk. At about 6.47.20 a.m., the protesters are seen returning to the chowk when the water cannon vehicle is seen losing its direction. The protesters are seen using stones. Some of the protesters are also seen with swords in their hands. At 6.48 a.m., one person is seen being evacuated by the protesters, who apparently is seriously injured. At 6.48.40 a.m. smoke is seen. The protesters are seen returning to the chowk. During this time the protesters are also seen

::: Downloaded on - 23-04-2021 18:30:30 :::

attacking the water cannon vehicle as well as the Vajra. The police had disappeared from the chowk when the protesters are seen in the chowk. Suddenly, lightening with fire is seen and at 6.49.10 a.m., protesters start running towards Muktsar road side while being chased by the police. The chowk is cleared of the protesters at 6.49.35 a.m. Police is entering the chowk at 6.49.50 a.m. First officer seen is SSP Faridkot with his gunman. His gunman is firing in the air. At 6.50.20 a.m., only police officials are seen in chowk. Some of the constables are seen throwing stones on the protesters. More police officials are seen entering the chowk. Police is also seen catching hold and beating one protester in the chowk mercilessly. At 6.51 to 6.52 a.m., Vajra vehicle and tear gas vehicles are seen in the chowk. The Tear Gas vehicle is seen aimlessly firing tear gas shells without any purpose. At 6.49.27 a.m., one constable is also seen firing from SLR aimed and firing directly. At 6.52.27 a.m, Charanjit Sharma is seen in the chowk with his Gunman. His Gunman is seen firing in the air. At 6.53.20 a.m., the police is seen uprooting the tent and thereafter police is seen roaming around in the chowk aimlessly beating one protester with danda and rod. all the senior officers like SSP Hardyal Singh Mann, Mr. Umranangal, Mr. Chahal, Mr. Charanjit Sharma are seen appearing on the scene. Mr. A.S. Chahal and Mr. Khattra are seen giving direction to the police officials. In one of the camera, Charanjit Sharma is seen with a assault rifle in his hand and is also seen empting the rifle and then handing it over to his Gunman. In one camera Mr. A.S. Chahal, DIG, is seen with a revolver in his hand while one policeman (probably his gunman) with revolver facing upward in his hand is following Mr. Amar Singh Chahal wherever he goes. Mr. Amar Singh Chahal is also seen handing over his revolver to one person. Charanjit Sharma and other officials are seen indicating with their hand to someone present on the building top to come down. It can be noticed that persons who came down on indication are being given beating. This alls has happened between 6.52 to 7.00 a.m. Thereafter, no footage is available.

::: Downloaded on - 23-04-2021 18:30:30 :::

Between 6.48.35 a.m. to 6.50 a.m., lot of lightening is seen apparently with firing. When the crowd had returned to Kotkapura chowk after initial dispersal, some protesters are seen setting the Vajra vehicle on fire. Except for Driver of the Vajra vehicle, no police officer is seen being attacked by the protesters. In fact, as soon as the use of water cannon commenced, the police force is seen running away from the chowk for some undisclosed reasons and had appeared only while firing which is more noticeable on the CCTV footage from camera on Moga road side. From this side, the firing and lightening is seen intermediately from 6.49.16 a.m. to 6.52.48 a.m. The lathi charge which the policed had initially done is also seen from Muktsar road side. When the police had returned to the chowk while firing, protesters are seen running helter skelter from the camera on Muktsar road side. In this manner, the chowk was cleared within 3 minutes. The action of the police in destroying/damaging the sound system lying in a white small tempo is clearly seen at 6.53.46 a.m. The police is seen putting this tempo on fire 6.58.45 a.m. This all is happening in the very presence of senior officers namely DIG A.S. Chahal, IG P.S. Umranangal. The police constables are seen destroying the music system by repeatedly hitting the same with force on ground."

Needless to say, that the firing is stated to have taken place at the third stage, after the third order passed by the civil authorities and not in the first instance. However, before that; in the above description itself; the protestors are recorded to have chased and attacked the police, including with the swords. Therefore the conclusion that the protestors were sitting peacefully when the police started firing; and also the conclusion that firing by the police was unprovoked; is against the record even on this count.

Accordingly, this court finds that the investigation carried out by the respondent No.3 is not free from blemish. His personal malice and malafide

::: Downloaded on - 23-04-2021 18:30:30 :::

functioning by totally usurping the powers of SIT constituted in the first instance, has been duly demonstrated on record. The petitioners have also been successful in showing that the respondent No.3 has gone to the extent of manufacturing the statements of witnesses to suit his designs, by recording differing statements of same witnesses in these two FIRs; with convenient omissions in their statements recorded under section 161 Cr.P.C. in police FIR No.192 dated 14.10.2015 qua the violence by the protestors; whereas that finds mentioned in their statements recorded in FIR 129 Dated 07.08.2018. The record also shows that the respondent No.3 has declared the accused mentioned in the FIR No.192 dated 14.10.2015 as innocent even without recording statement of a single injured police witness. Also the conclusions drawn by the respondent No.3 are found to be against the statement of witnesses recorded and the material collected by him only. Moreover, the political interest of the current dispensation in the state qua the investigation; and the political theatrics of respondent No.3 during the instant investigation; by going to media and by repeatedly highlighting allegations against the outgoing politicians without filing challan against them; intended to create a narrative in favour of one political party and against the other party during the election process; has duly been established as per the record. Public pressure to get the alleged erring police officials convicted also appears to have adversely affected the fairness of the investigation. As a result the fairness of investigation stands vitiated. The investigation conducted by the respondent No.3 also suffers from malice, irrationality and absurdity. Hence, this court is of the considered opinion that this is one of the rare cases where the court is under duty to step-in to prevent miscarriage of justice, instill confidence in the investigation and also to pre-empt the misuse of the process of the court; by quashing the investigation and the consequent report under section 173 Cr.P.C. filed in these two cases, while leaving state to fairly investigate these two cases again.

::: Downloaded on - 23-04-2021 18:30:30 :::

In view of the above, the investigation conducted by the respondent No. 3 in FIR No. 129 dated 7.8.2018 and FIR No. 192 dated 14.10.2015, both of Police Station City Kotkapura and the consequent charge-sheet filed by him, are liable to be quashed. Ordered accordingly.

This court finds that what could have been a simple investigation of a crime committed either by the protestors or by the police or by both, have been made to fester and convert itself to a quagmire wherein every concerned person finds himself entrapped. This has resulted from a dangerous mixing of religion, politics and the police administration; because of which the aggrieved persons; whether it be the police persons or the injured from the protestors; must be finding themselves to be cheated and endlessly waiting for real justice. But the process seems to be influenced by what some hyper-charged section of society pressed for, as is clear from even registration of one FIR No.130 dated 21.10.2015, which though is not the subject matter of the present petition; but which was registered under section 302 IPC by specifically saying that it was being so registered because it was the sentiments of people that FIR under section 302 IPC should be registered. Howsoever justified and whatever be the sentiments of the public; that cannot be any substitute for law. The same cannot be permitted to permeate and influence the investigation and adjudication. The investigation has to be totally fair, impartial, rational and comprehensive which has to be conducted while following the statutory provisions and a just and fair procedure. To ensure fairness and impartiality; the investigation deserves to be conducted by an independent team of senior police officers; by being totally free from all kinds of internal or external extraneous pressures and interference. Accordingly, the investigation of the cases involved in the present petitions, is ordered to be conducted by a Special Investigating Team of senior police officers; which is hereby conferred a status of

::: Downloaded on - 23-04-2021 18:30:30 :::

senior-most rank for the purpose of section 36 of Cr.P.C. and which is ordered to be constituted by the State with the following directions:

(i) The State Government shall constitute a Special Investigation Team (SIT) of three senior IPS officers from the State of Punjab, which shall not include the respondent No.3, and which shall include at least one officer senior to the respondent No.3 in rank and designation, to conduct the investigation in the FIR involved in the present petitions, i.e.; FIR No. 192 dated 14.10.2015 and FIR No. 129 dated 07.08.2018;

(ii) There shall be no interference from any quarter; internal or external; with this SIT qua the investigation. This SIT shall not report to any State executive or police authority qua the investigation in question. It shall report only to the concerned Magistrate, in accordance with law;

(iii) The SIT so constituted by the State Government shall work jointly. All the members of the SIT shall put their signatures on all the proceedings of the investigation as a mark of the fact that they have agreed to the said investigation;

(iv) Once constituted, that SIT shall not be changed by the State Government except in case of retirement, incapacity or death of the officer concerned;

(v) The final report of investigation shall be filed jointly as a team; under signatures of all the members of the SIT, who shall also be cited as witnesses in the list as the investigating officers;

(vi) The members of SIT shall not leak any part of the investigation, before filing the final report before the concerned magistrate. They shall not interact with media qua any aspect of investigation. Further, they shall not respond, directly or indirectly, to any doubt or opinion

::: Downloaded on - 23-04-2021 18:30:30 :::

expressed by anyone from the public or the religious or the political establishments;

(vii) The investigation of these FIRs shall be concluded as expeditiously as possible, preferably within a period of six months from the date of the constitution of SIT.

Before parting with the judgment, this court expresses its hope that the new SIT shall function in a totally fair and impartial manner so that the expectations of affected persons are not belied again.

All the pending applications are disposed of accordingly.

(RAJBIR SEHRAWAT)
JUDGE

09.04.2021
Ashwani/Sarita/Raj Kumar

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*

::: Downloaded on - 23-04-2021 18:30:30 :::