

Shantanu Kumar and Others Vs. Uoi and Others

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : May-09-2013

Judge : THE HONOURABLE MR. G.P. MITTAL

Appeal No. : W.P. (CRL) Nos. 15, 5 of 2013

Appellant : Shantanu Kumar and Others

Respondent : Uoi and Others

Judgement :

G.P. Mittal, J.

1. These two writ petitions relate to the demonstration held at India Gate as a consequence of the brutal rape of a 23 year old paramedico student by six persons on 16.12.2012 and her subsequent death on account of the serious injuries inflicted on her person. A large number of persons from all walks of life joined the protest on 21.12.2012. Prohibitory orders under Section 144 of the Code of Criminal Procedure, 1973 (Cr.P.C.) were issued on 23.12.2012 at India Gate and Rajpath. Some of the protestors were so much enraged with the aforesaid incident that they indulged in rioting, pelting stones and causing injuries to police personnel and damaging public property. It was a hayday for some anti social elements who on the pretext of the protest against the apathy of the security agency indulged in instigating violence, arson, damaging of the public property and injury to public servants who were deployed for the safety and security of the general public as also the protestors.

2. On 23.12.2012 FIR No.181/2012 was registered at about 7:00 p.m. on the statement of SI Pradeep Kumar in Police Station (PS) Tilak Marg. Sum and substance of the allegations made in the FIR is that a huge crowd of girls and boys had gathered at India Gate who were trying to proceed to Rashtrapati Bhawan via Rajpath. Certain barricades were put at Rajpath, C Hexagon to stop the crowd from proceeding to Rajpath. The protestors were informed that Section 144 Cr.P.C. had been enforced. It was averred that the persons from the crowd damaged govt. vehicles and a DTC bus parked near India Gate. Some persons from the crowd also damaged CCTV cameras. Some of the protestors were armed with poles and also took out ballies and pipes (installed at India Gate for the Republic Day parade) and put fire to the security posts built for the Republic Day function. The police had to use water cannon to disperse the crowd but to no avail. Some of the persons who were part of the crowd were pelting stones and throwing broken pieces of glass on the police personnel. The crowd continued with arson and violence which compelled the police to use teargas shells. According to the FIR, information with regard to suffering of serious injuries by Constable Subhash Tomar was also received. Some police personnel also suffered injuries at the hands of the protestors. Some of the protestors and the police personnel who suffered injuries were also medically examined at Dr. Ram Manohar Lohia (RML) hospital. Fire brigade vehicle No.DL- 1GB-5741, a Maruti Suzuki SX4 car belonging to Govt. of India and a CATS ambulance were damaged by the protestors. As per the allegations made in the FIR, Constable Vipin, Constable Tejinder, Head Constable Jagdish and Constable Narottam apprehended eight accused who were part of the crowd (unlawful assembly). The FIR was registered under Sections

186/353/188/147/148/149/307/332/34 of the Indian Penal Code (IPC) and Section 3 of the Prevention of Damage to Public Property Act, 1984.

3. The case of the Petitioners is that except Petitioner Chaman Kumar and accused Nafis (who is not a Petitioner in W.P.(Crl.) No.15/2013), the other Petitioners were not even part of the protest. It is stated that the Petitioner Chaman Kumar and said Nafis were making a peaceful protest and were not indulging in any arson, pelting of stones on police personnel or any damage to the public property. With regard to the other (six) Petitioners, it is averred that they were apprehended from various places in close proximity of India Gate and were taken to PS Tilak Marg. Except for Petitioner Chaman Kumar rest of the six Petitioners were beaten mercilessly by the police personnel. They were falsely implicated in this case, were handcuffed and taken to RML hospital where they remained handcuffed throughout the medical check-up.

4. It is averred that Petitioner No.1 Shantanu Kumar is a student of B.A. course at School of Open Learning, University of Delhi. He left Rohini by Metro at about 2:30 p.m. and reached Rajiv Chowk Metro. From there out of curiosity, he went to India Gate to watch the protest and reached there by 4:30 p.m. He stood there for about half an hour and watched the demonstration. Suddenly, a teargas shell exploded in front of him and in the commotion that followed, an old man was having trouble getting across to the main road so the first Petitioner simply helped him to the point where the news vans were parked. While he was walking towards Tilak Marg, he was asked by some policemen to run away. While he was running (near Bhagwan Dass road red light) a policeman threatened him with a lathi and apprehended him.

5. According to the averments made in the Petition, Petitioner No.2 Chaman Kumar was arrested and was taken to the Police Station Tilak Marg at about 3:00 p.m. Similarly, Petitioner No.3 Amit Joshi working with a software company in Noida and Petitioner No.4 Kailash Joshi, who is the cousin of Amit Joshi and is a support engineer in a software company in Gurgaon, claimed that on 23.12.2012 they left Budh Vihar at about 1:00 p.m. They took the bus to Rohini Sector-3. They visited few mobile shops and finally purchased a Micromax A87 handset from a mobile store at about 3:00 p.m. They boarded a Metro feeder bus from Sector-3 Rohini. They reached Rajiv Chowk at 17:42 hours. They hired an auto to go to India Gate but due to police barricades the auto driver left them at Copernicus Marg. When they were on their way to the Metro Station, a group of policemen who were returning back to the Police Station suddenly came towards them and apprehended them at the inter section of Bhagwan Dass road and Tilak Marg. The policemen beat them with their sticks and used abusive language.

6. Petitioner No.5 Nand Kumar is stated to be a student of 12th standard in Govt. Boys Senior Secondary School, Palam, Dwarka and is aged 21 years, whereas Petitioner No.6 Abhishek is a first year student pursuing Bachelor of Arts from the School of Open Learning, University of Delhi. On 23.12.2012 they were alleged to have gone to Purana Quila and where they took photographs with friends. They left Purana Quila at about 6:00 p.m. from where they decided to go to India Gate to take some pictures. They were completely unaware of any protest going on at India Gate and had no clue that an order under Section 144 Cr.P.C. has been promulgated. They noticed a peaceful signature campaign being carried out on a long white plastic sheet and they began reading it and decided to put their signatures on it but before they could find a pen, they heard a loud noise of exploding of some tear gas shells. There was a commotion and they got separated from their friends and started running. They decided to proceed to PS Tilak Marg to save their lives. They were asked to move from there. When they reached Bhagwan Dass road at about 6:30 p.m. they were apprehended by a group of policemen and were taken to the Police Station.

7. Petitioner No.7 Shanker Singh Bisht is stated to be a contractual employee in RML hospital. It is claimed that on the fateful day at about 5.00 p.m. he was waiting at Mandi House bus stop. He could not get a bus and therefore, decided to go to his aunts house on Lodhi Road. He was apprehended by the police, he was hit with a lathi while he was walking towards Bhagwan Dass road and was implicated in the case.

8. It is claimed that handcuffing of any criminal, unless there was any apprehension that any person accused

of any crime is of a desperate character or is likely to commit suicide or is likely to escape, has been deprecated and completely prohibited by the Supreme Court in Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 526. The Petitioners handcuffing amounted to infringement of their human rights apart from violation of the Supreme Court judgment.

9. It is stated that when the Petitioners were produced before the learned Metropolitan Magistrate (MM) the police officials failed to disclose their (Petitioners) role and thus they were directed to be released on furnishing personal bond and surety bond. Since the Petitioners could not arrange any surety, they were permitted to go, on furnishing personal bond and were asked to furnish the surety bond within two days.

10. Constable Subhash Tomar was removed to the RML hospital on 23.12.2012 where he died on 25.12.2012. It is stated that Constable Subhash Tomar collapsed on account of myocardial infarction (MI). The CCTV coverage depicted that Constable Subhash Tomar was not extended any beating by any of the protestors, rather two of the protestors, that is, Yogender Tomar and Ms. Pauline came to his help and gave him Cardiopulmonary Resuscitation (CPR) to revive him. The Petitioners grievance is that even before the postmortem report came out, the Delhi Police asserted in the media that Constable Subhash Tomar died on account of the internal injuries on the neck, chest and stomach. It is averred that on 26.12.2012 the postmortem report was released which disclosed the cause of Constable Subhash Tomar's death due to myocardial infarction (MI) and its complications that could be precipitated by multiple ante-mortem injuries to neck and chest produced by blunt force impact. The sum and substance of the Petitioners averments is that they were given beatings, handcuffed and were falsely implicated in the case.

11. The following reliefs are sought by the Petitioners:-

a. Issue an order directing the Respondent No.3 to approach the respective mobile service providers to get the mobile locations of all accused persons for the entire day of 23.12.2012 and especially at the time of Constable Mr.Tomarscollapse.

b. Issue a writ of Mandamus or a writ in the nature of Mandamus and/or any other appropriate writ/s, order/s or directions to the effect that the Delhi Police Commissioner be removed for his unconstitutional/illegal act of arresting eight innocent youth and then continuing to hold that they were picked up from the site of the crime, in spite of proofs having surfaced proving that Constable Mr.Tomarsdeath was not due to any attack by any protester and it was because of cardiac arrest.

c. Issue a writ of Mandamus or a writ in the nature of Mandamus and/or any other appropriate writ/s, order/s or direction/s directing the sacking of the Investigating Officer and any other officers who are complacent in this crime of making false allegations against the Petitioners as scapegoats to cloak their inefficiency and inability in controlling the protestors on 23rd December, 2012.

d. Issue an order directing Respondent No.3 to procure and deposit the video footages surfaced in the media of collapse of Constable Mr.Tomar and any other CCTV camera footages for all time to come with the Registrar of this Honble Court.

e. Issue an order directing Respondent No.3 to deposit the video footages procured from DMRC of the date 23rd December, 2012 of the duration from 10 am to 6 pm of Metro stations at Rohini West, Rithala and Rajiv Chowk with the Registrar of this Honble Court.

f. Issue an order directing Respondent No.3 to file an Affidavit to state the places from which the eight accused persons in the instant case were arrested and at what time and with what all evidence.

g. Issue an order directing the video recording of key areas viz. D.O. Room, Visitor Room, IOsrooms, entrance of visitors to the police stations in all police stations and recordings to be kept for all times to come for accountability and transparency.

h. Issue a writ of Mandamus or a writ in the nature of Mandamus and/or any other appropriate writ/s, order/s or direction/s against the Respondents directing that the Petitioners be compensated to the tune of Rupees Fifty Lakhs for keeping them imprisoned for no crime of theirs and for the mental torture and reputation loss they had to undergo because of illegal and unconstitutional arrest and forced captivation in the absence of proofs as well as the reason of arrest.

i. Issue an order directing the Respondents to explain their failure in letting people of Delhi protest peacefully at a place of their choice and in identifying any miscreant who tried to create violence, disrupting the exercise of Constitutional right by the protestors and order Respondent No.1 remove the Delhi Police Commissioner for his failure in protecting constitutionally guaranteed rights of protestors in protesting peacefully at a public place called India Gate.

j. Issue an order directing Respondent No.3 to justify the basis of the statement that there were 10 terrorists who were reported to have come to create destruction in Delhi

k. Issue an order directing the Respondents to file a status report on 20 rapes since the time this Honble Court took cognizance of the inhuman rape of 16th December, 2012 and had pulled up Delhi Police for their failure in containing crimes against women in Delhi.

l. Issue an order directing the FIR against the eight accused persons in the instant case be quashed as it is false and fabricated with a malicious ill-decision to wrongly accuse the Petitioners and put a cloak on the inefficiency of the Respondents.

m. Issue an order directing Respondent No.3 to explain the reasons behind hand cuffing the eight accused persons in the instant case in complete violation of the Honble Supreme Courts directions wherein handcuffing has been directed to be used only in rare cases.

n. Issue an order directing the Respondents to provide adequate security to the two eyewitnesses Mr. Yogender Tomar and Ms. Pauline whose whereabouts are unknown to the Petitioners but known to Delhi Police.

o. Issue an order directing the area Magistrate to record the statement of eyewitnesses of Constable Tomars collapse under Section 164 of the Cr.P.C. to defeat any attempt manipulation by the Respondents.

p. Issue an order directing a judicial inquiry to be set up to uncover the truth on the illegal Hafta being collected by the Delhi Police officials to illegally allow unauthorized vehicles to ply on Delhi roads as evidenced by a news report appeared in "the pioneer".

q. Pass such other writ, orders or directions as this Honble Court deems fit in the circumstances of the case and in the interest of justice including the costs of this Petition.

12. In pursuance of the directions of this Court Respondent No.3 through its Additional Deputy Commissioner filed an affidavit resisting the Petition. Respondent No.3 took the plea that the FIR No.181/2012 disclosed commission of various cognizable offences including rioting, assault on public servants and damage to public property. After death of Constable Subhash Tomar, section 302 IPC was added to the investigation. The investigation was underway and the quashing of the FIR at this stage was not justified. The Respondents took the plea that the Petitioners who are accused of committing various offences being part of the crowd indulging in arson, rioting, damage to public property, assault and obstruction to public servants in the discharge of their official duties cannot be permitted to direct the manner of investigation. It was denied that the ground of arrest and the information of arrest were not given to the accused (the Petitioners) or that their relations were not informed about the same. It was stated that non disclosure of these facts, at the time of their production before the learned MM on the next day, by the Petitioners would indicate that these pleas are an afterthought and that they were never handcuffed and were also told the grounds of their arrest. It was stated that the Petitioners cannot claim recording of statement of any witness under Section 164 Cr.P.C.

as it was for the IO to decide as to which witness has to be examined under Section 164 Cr.P.C. It was pleaded that the Petition is based solely on the newspaper reports which cannot be taken as gospel truth and cannot be relied upon unless corroborated by other evidence as held in the case of Dr. B. Singh v. Union of India (2004) 3 SCC 363. Respondents state that the Petitioners have not been able to make out a case for quashing of the FIR in view of the law laid down in R.P. Kapur v. State of Punjab, AIR 1960 SC 866 and State of Haryana and Ors. v. Bhajan Lal and Ors. (1992) Supp 1 SCC 335.

13. The Respondents stoutly denied that any beatings were extended to the Petitioners. It was stated that the investigating agency, i.e., Crime Branch had already collected video recordings from DMRC, 35 CCTV cameras installed around India Gate by Electronic Corporation of India and video recordings done by various TV channels around India Gate on 23.12.2012. The 35 CCTV cameras had approximately ten hours of recording on each camera. The investigating team has also analyzed audio-video recordings of these CCTV cameras and recordings by 22 TV channels on different dates. It was stated that six more TV channels are yet to supply their audio-video recordings pertaining to the date of the incident. With regard to Petitioners Amit Joshi and Kailash Joshi, it was stated that they left Rithala Metro Station at about 4:35 p.m. and left Rajiv Chowk Metro Station at 5:43 p.m. It was pleaded that Petitioner Shantanu Kumar was noticed in the CCTV footage at Rohini (West) Metro Station at 14:39 hours. It was stated that in the data so far analyzed some rioters were seen indulging in assault on policemen and damage to public property around India Gate on 23.12.2012.

14. It was stated that during the course of investigation call details of the mobile phones of the Petitioners were collected and their scrutiny revealed that the location of these Petitioners was as under:-

"(i) Petitioner Chaman Kumar (Mobile Number 9211332530 and 9810366136) was at and in the vicinity of India Gate from 12:57:28 Hrs. onwards.

(ii) Petitioner Abhishek (Mobile Number 9278870183) was at and in the vicinity of India Gate from 17:53:21 Hrs. onwards.

(iii) Petitioner Nand Kumar (Mobile Number 9873375241) was at and in the vicinity of India Gate from 17:31:09 Hrs. onwards.

(iv) Petitioner Kailash Joshi (Mobile Number 9871960808) was at and in the vicinity of India Gate from 18:46:35 Hrs. onwards.

(v) Petitioner Amit Joshi (Mobile Number 8800477922) was at and in the vicinity of India Gate from 18:00:58 Hrs. onwards.

(vi) Petitioner Shantanu Kumar (Mobile Number 7827218677) was at and in the vicinity of India Gate from 16:53:13 Hrs. onwards.

(vii) Petitioner Shankar Singh Bisht (Mobile Number 9891451181) was at and in the vicinity of India Gate from 03:13:52 PM onwards."

15. It was stated that on the basis of CCTV footage, statements of Mr. Yogender Tomar and Ms. Pauline and wireless record of PCR it was evident that Constable Subhash Tomar was seen falling at India Gate at about 5:42 p.m. and was removed by PCR staff along with Yogender Tomar at about 5:50 p.m. During the course of hearing of the Petition it was also verified that Petitioners Amit Joshi and Kailash Joshi had purchased a Micromax mobile A87 from a mobile store at Rohini at 3:00 p.m. only. The Respondents thus stated that quashing of the FIR at this stage is not permissible in law and is not justified.

16. In Writ Petition (Crl.) No.5/2013 the Petitioner on the basis of the averments made by the Petitioners in Writ Petition (Crl.) No.15/2013 makes a prayer for referring the investigation of the case to the CBI on the ground that the investigation conducted by Delhi Police is manipulative. It is averred that as per the statement of the independent eye witnesses Yogender Tomar and Ms. Pauline as well as the statement of

Medical Superintendent, RML hospital, Constable Subhash Tomar died not on account of any injury but on account of myocardial infarction (MI).

17. The Petition for transfer of the investigation is resisted by Respondent No.3 (as also by the other Respondents) on the ground that transfer of investigation to the CBI is not warranted in the facts of the instant case. No material has been placed on record to show that the investigation conducted by the Crime Branch of Delhi Police is not fair and proper.

18. I have heard Mr. Somnath Bharti Advocate for the Petitioners (in W.P. (Crl.) 15/2013), Mr. Gaurav Kumar Bansal, Petitioner in person (in W.P. (Crl.) 5/2013), Mr. Siddharth Luthra, learned ASG for Commissioner of Police, Mr. Neeraj Chaudhari, learned Standing Counsel for the Union of India and Mr. Pawan Sharma, learned Standing Counsel for the State.

19. Learned ASG has fairly conceded that as against the eight accused arrested on 23.12.2012 (including the seven Petitioners) no evidence of causing injuries by them on the person of Constable Subhash Tomar has been collected/ found; thus the prosecution would not be charging them under Section 302 IPC. He, however, urges that there is ample evidence through the statement of witnesses, CCTV coverage and other material to show the offences of damage to the public property, obstruction to the public servants in discharge of their duties, causing injuries to the public servants etc. Admittedly, the police had promulgated Section 144 Cr.P.C. in the area of India Gate. As per the evidence collected, the eight accused were arrested amongst protestors and their exact role for commission of the various offences is under investigation. Since the investigation is under progress, the FIR cannot be quashed at this stage.

20. I shall be dealing with the prayers made in Writ Petition (Crl.) No.15/2013 one by one.

21. The mobile location of the Petitioners has already been obtained by the investigating agency during the pendency of the writ petition. A copy of the call details at the time calls were received or made from the mobiles of the Petitioners in the vicinity of India Gate has already been provided to the Petitioners. The prayer atherefore stands satisfied.

22. Similarly, the video footage with regard to falling of Constable Subhash Tomar has already been obtained; the video footages of the Metro Stations at Rohini (West), Rithala and Rajiv Chowk have also been obtained by the investigating agency, the arrest memos of all the Petitioners have already been filed.

23. I have perused the statement of Yogender Tomar and Ms. Pauline. The same is inconsonance with the plea that has been raised by the Petitioners in this Petition. Since these two witnesses supported the Petitionersversion in their statement recorded under Section 161 Cr.P.C., the Petitioners can always take advantage of the same. Moreover, it is the prerogative of the IO to analyze the circumstances and to decide whether there is any possibility of any witness changing his/her stand under any pressure etc. during the proceedings in the Court. The Petitioners who are accused in a case have no locus to direct the manner of investigation. (Union of India v. W.N. Chadha, 1993 (Supp.) 4 SCC 280). In any case prayers in clause d,e,f and ohave already been satisfied.

24. The prayers in clause gjkand p are in the nature of Public Interest Litigation (PIL). The Petitioners have primarily approached this Court in respect of grievances concerning them. They shall be at liberty to take appropriate remedy of filing a PIL with regard to all these prayers if they are so advised.

25. A petition questioning promulgation of Section 144 Cr.P.C. in the area around India Gate is subject matter of another writ petition before the Division Bench of this Court and the Petitionerscounsel admitted the same. Hence, I shall refrain from dealing with the propriety of imposition of Section 144 Cr.P.C. and thus the prayer (i) made in the petition being pending before the Division Bench is not dealt with by me.

26. Now I shall turn to the rest of the grievances made by the Petitioners.

BEATINGS GIVEN TO THE PETITIONERS

27. According to the averments made in the Petition all the Petitioners except Chaman Kumar were given beatings by the Constables of Delhi Police who apprehended them. It is also stated in the Petition that they were medically examined. It is urged by learned counsel for the Petitioners that giving beatings to the Petitioners was inhuman and unacceptable in a civilized society. The beatings by the police personnel particularly to these innocent people casts a permanent scar in the memories of the Petitioners. The conduct of Delhi Police personnel including its senior officers and Commissioner of Police has therefore to be deprecated and a compensation of `50 lacs as claimed by the Petitioners should be awarded to them so that such acts of illegally arresting people and treating them inhumanly are not repeated by the police.

28. The contention raised on behalf of the Petitioners is refuted by the learned ASG. My attention was drawn to the MLCs of the Petitioners wherein some bruises were noticed only in the MLCs of the Petitioners Amit Joshi and Kailash Joshi. In the Petition, Petitioners Amit Joshi and Kailash Joshi did not indicate the specific part of the body on which the injuries were inflicted with the stick/lathi. MLC of Petitioner Amit Joshi discloses some bruises over the left shoulder and multiple bruises over back on both the thighs. The MLC of Petitioner Kailash Joshi discloses some bruises over the lower back and right wrist. Any beating with force over the shoulder or over the right wrist prima facie would have resulted in some fracture which is not the case here. I would not deal with this contention any further, in this Writ petition under Article 226 of the Constitution of India and Section 482 Cr.P.C. as it might not prejudice the case of the either parties. Suffice it to say, prima facie these injuries cannot be received with serious lathi blows at the hands of the police personnel. The MLCs of the other Petitioners do not indicate any external injury which falsifies the averments made in the Petition that they were extended beatings mercilessly by the police. Thus the plea that the Petitioners were beaten mercilessly cannot be believed.

HANDCUFFING

29. The learned counsel for the Petitioners urges that the Petitioners were handcuffed while being taken to RML hospital and they remained handcuffed while they were medically examined which is in violation of the guidelines issued by the Supreme Court of India in the case of Prem Shankar Shukla.

30. As far as the handcuffing of the Petitioners is concerned, apart from bare allegations made in the petition no supportive evidence has been annexed with the petition. Admittedly, the Petitioners were produced before the learned MM on 24.12.2012 when after hearing the parties the Petitioners were directed to be admitted to bail. Admittedly, no allegations were leveled by the Petitioners that they were handcuffed by the police.

Moreover, if the Petitioners had been handcuffed for a long time, that is, while they were carried to RML hospital and were medically examined, there would have been some bruises or reddish mark on the wrists of the Petitioners, most of whom were young boys. These marks were not noticed on the MLCs of any of these seven Petitioners which belies the Petitioners allegations regarding their handcuffing. Moreover, I shall not believe these allegations as these facts were not brought to the notice of the SHO either orally or even in the bail Application.

ILLEGAL ARREST

31. The learned counsel for the Petitioners urged that the Petitioners were apprehended from various places particularly near Tilak Marg and Bhagwan Dass road inter section between 6 to 7 p.m. They were not disclosed the ground of their arrest and their near relations were not informed of their arrest which is in violation of the guidelines issued by the Supreme Court in D.K. Basu v. State of West Bengal (1997) 1 SCC 416.

32. As far as time of the arrest of the Petitioners and the contention that they were really arrested between 6/7 p.m. but their arrest was shown at 11:30 p.m. in the arrest memos and that they were not informed about the grounds of arrest, the learned ASG has taken me through the FIR No.181/2012 recorded in PS Tilak Marg

which clearly indicates that each of the four Constables (Constable Vipin, Constable Tejinder, Head Constable Jagdish and Constable Narottam) had apprehended two of the Petitioners and produced them before SI Pradeep Kumar who was author of the FIR, which was recorded at 9:00 p.m. The learned ASG has argued that arrest memos of each of the seven Petitioners/accused was prepared by the IO at about 11:30 p.m. The names of the near relation informed and the offences under which each of the Petitioners was arrested was very much reflected in the arrest memos. The completion of formalities about the arrest of the accused takes sometime which were completed by 11:30 p.m. and thus, it cannot be said that there was any illegal detention.

33. The arrest memos of the seven Petitioners/accused have been placed on record by Respondent No.3 as Annexure R-1. Admittedly, all the accused were arrested at 11:30 p.m., but it is not possible that each of the eight persons were arrested at 11:30 p.m. It is thus evident that the IO took his time in completing the formalities. In Column 9 of the arrest memo the name, address and telephone number of the relations of each of the eight accused was mentioned. Arrest memos were signed by each of the accused (the Petitioners).

34. In the case of D.K. Basu v. State of West Bengal (1997) 1 SCC 416 the following guidelines were laid down by the Supreme Court:-

"35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:-

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of

the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

35. In the instant case the arrest memos have been placed on record. As stated earlier the time of the arrest of the Petitioners is 11:30 p.m. and an explanation for putting the time of arrest has also been given by the learned ASG.

36. In the case of *Sher Bahadur Singh v. State of U.P.* 1994 Cr.L.J. 720 it was held that when a DD entry is made regarding arrest of an accused and a copy is supplied to him, it is sufficient to inform him the grounds of his arrest.

37. In *Raj Kumari and Anr. v. SHO, Noida and Ors.* AIR 2003 SC 4693 the Petitioner alleged her arrest was made in the night intervening 15- 16.08.1997, she filed an Affidavit in support of her averment. Whereas police claimed her arrest was at 5:30 in the morning and an Affidavit in support of the averment by the police was filed. The Petitioner did not raise a plea of non-disclosure of the grounds of arrest in the bail application as is raised in the present case. The allegations of violation of the report of Supreme Court in *D.K.Basu* were not accepted.

38. To the same effect are the observations of the Full Bench of the Allahabad High Court in *Dr. Vinod Narain v. State of U.P. and Ors.* 1996 Cr.L.J. 1309 and a Division Bench judgment of the Allahabad High Court in *Udaybhan Shuki v. State of U.P. and Ors.* 1999 Cr.L.J. 274.

39. As has been stated hereinabove, there is not even a whisper in the bail application moved by the Petitioners or even in the order passed by the learned MM that the Petitioners ever complained of non disclosure of the grounds of their arrest or non passing of the information to their near relatives/friends.

40. Thus, it cannot be said that the grounds of arrest were not disclosed to the Petitioners or that their relations were not informed. Therefore, it cannot be said that the observations made by the Supreme Court in *D.K. Basu* were violated. In view of this the Petitioners charges of infliction of merciless beatings, handcuffing and their illegal arrest cannot be accepted. Therefore, their claim for compensation is also not tenable.

QUASHING OF THE FIR

41. The principles with regard to quashing of the FIR are very well settled. The powers of the Court under Section 482 Cr.P.C. to quash the FIR are very wide. These residuary powers to quash the FIR can be exercised (i) to make such order/orders as may be necessary to give effect to an order under the Code, or (ii) to prevent abuse of the process of the Court or (iii) otherwise to secure the ends of justice. At the same time, it is well settled that the powers under Section 482 Cr.P.C. have to be exercised only with restrained and circumspection. In the case of *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.* 1992 Supp. (1) SCC 335, the Supreme Court analyzed the law on the subject and enumerated an illustrative (non- exhaustive) list of cases where FIR could be quashed. Paras 102 and 103 of the report are extracted hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV

and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

42. Turning to the facts of the instant case, the learned counsel for the Petitioners urges that the record of the mobile locations of each of the Petitioners has been obtained by the investigating agency. The investigating agency evasively says that they were in the vicinity of India Gate at a particular time. The investigating agency does not state that they were present at India Gate and therefore, it is evident that they have been falsely implicated in the case.

43. With regard to the death of Constable Subhash Tomar, the learned counsel for the Petitioners contended that it has already been proved by the postmortem report that Tomar's death was not on account of any external injury but on account of myocardial infarction (MI). The learned counsel contended that although some injuries near neck and chest caused due to blunt force have been found but the same were only on account of the Cardiopulmonary Resuscitation (CPR) given by witnesses Yogender Tomar and others who tried to revive the deceased and thus there is no material whatsoever to connect the Petitioners of having

committed any crime in relation of FIR No.181/212. Therefore, it would be appropriate to quash the FIR as against the Petitioners.

44. As stated earlier, it is conceded by the learned ASG that there is no material against the Petitioners to connect them with the offence of causing death of the Constable Subhash Tomar. It is not in dispute that Section 144 Cr.P.C. was promulgated at India Gate and the surrounding area. It is borne out from the statements of Constable Vipin, Constable Tejinder, Head Constable Jagdish and Constable Narottam recorded under Section 161 Cr.P.C. and through other evidence that a number of persons in the crowd indulged in rioting, causing injuries to the police personnel and destroying of public property. I have hereinabove mentioned the details of destruction of the property. Video clipping played during the course of arguments which showed that a Head Constable of the Traffic Police was gheraoed by the protestors and was assaulted, humiliated and obstructed in the discharge of his official duties; his motorcycle was also damaged. One Constable of Delhi Police was also seen being surrounded and assaulted by the protestors.

45. The presence of Petitioners Chaman Kumar, Abhishek, Nand Kumar, Shantanu Kumar and Shanker Singh Bisht as per their call details has been noticed in the vicinity of India Gate on the fateful day at 12:57, 17:53, 17:31, 16:53 and 3:13 onwards respectively. The timing shows the presence of the Petitioners in the area is because of the fact that either a call was made or a call was received by the earlier said Petitioners at the aforesaid time. Thus, if the mobile phone of the earlier said Petitioners had not received any call or if call was not made by the Petitioners from their mobile phones earlier or later than this time, the same would not be recorded in the call details. Thus, the presence of these Petitioners either before or after the call details collected by the investigating agency cannot be ruled out. Therefore, the call details do not conclusively establish non-commission of the offences by the above stated persons.

46. As far as Petitioners Kailash Joshi and Amit Joshi are concerned, as per the CCTV footage they left Rajiv Chowk Metro Station at 17:43 hours. Furthermore, their cell phone was used in the vicinity of India Gate at 18:46 and at 18:00 hours respectively. Since both of them were together, their presence in the vicinity of India Gate at about 6:00 p.m. cannot be ruled out.

47. As per the evidence collected by the investigating agency so far, the crowd started turning violent after 3:00 p.m. and it continued till the evening and the Petitioners were apprehended while they were running. Thus, at this stage, it would be too early to say that none of them or any of them had neither violated Section 144 Cr.P.C. nor had committed any of the offences being investigated by the police in FIR No.181/2012.

48. The learned counsel for the Petitioners places reliance on the Full Bench judgment of the High Court of Punjab and Haryana in Vinod Kumar Sethi v. State of Punjab, AIR 1982 PandH 372 and a Supreme Court judgment in State of Karnataka v. L. Muniswamy, AIR 1977 SC 1489 in support of his contention that the FIR against the Petitioners is liable to be quashed. However, in view of the factual position noticed hereinabove and the proposition of law culled out in State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. 1992 Supp. (1) SCC 335, it will not be expedient to quash the FIR at this stage. The authorities cited by the learned counsel for the Petitioners does not help the Petitioners case.

49. In this view of matter, at this stage it cannot be said that the investigating officer of the case acted illegally or misused his powers in arresting the Petitioners who as per the allegations of the prosecution were apprehended by the four police officials while they were running from the crowd which had indulged in the offence of rioting, causing damage to the public property and obstructing public servants in the discharge of their official duties and causing injuries to a number of public servants/police personnel. The way the Traffic Head Constable and a Constable of Delhi Police were being treated by the crowd as shown in the CCTV footage, that was played during the hearing, shows that it was not only infeasible for a public servant to perform his duties faithfully but was also humiliating for him. Thus, as stated above, it cannot be said at this stage that the arrest of the Petitioners was illegal or that the Petitioners have been made scapegoats. The prayers and therefore, cannot be granted.

50. One of the prayers made in the Petition is to provide adequate security to Mr. Yogender Tomar and Ms. Pauline whose whereabouts are not known to the Petitioners, but are known to Delhi Police.

51. The IO has already recorded their statements under Section 161 Cr.P.C. wherein they have supported the Petitioners version regarding collapse of Subhash Tomar and his removal to RML hospital. No material has been placed on record that there is any threat to the security of Mr. Yogender Tomar or Ms. Pauline. There is not even a whisper in the Petition that these witnesses have any threat to their life or liberty and the source thereof. Thus, the Petitioners prayer for providing any security to Mr. Yogender Tomar and Ms. Pauline is also not tenable.

52. It may be noticed that Article 19(1) of the Constitution explicitly guarantees every citizen with the fundamental rights of freedom of speech, expression and peaceful assembly. The right of peaceful protest is therefore unquestionable. However, citizens have an obligation to exercise these rights peacefully, with respect for the law and for the rights of others. Every citizen of this country has got a fundamental right to make peaceful demonstration. But has a duty to see that such peaceful demonstration does not interfere with the rights of the other citizens of the city who too have the right to move freely.

53. The citizens have a right to form groups, to organise and to assemble together with the aim of addressing issues of common concern. The citizens of the country are expected to ensure that their peaceful demonstration is not hijacked by the anti-social elements. Mass protest is a potent symbol of the exercise of this right, but the protection of this right extends only in respect of a "peaceful" assembly. This right does not cover a demonstration where the organizers have violent intentions which result in public disorder. The thinking that every right gives rise to a corresponding duty is based on the premise that freedom without acceptance of responsibility can destroy the freedom itself, whereas when rights and responsibilities are balanced, freedom is enhanced. According to Roscoe Pound "Rights and Duties are essentially correlative".

54. The fundamental rights were included in the Constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The framers of the Constitution regarded democracy of no avail if civil liberties, like freedom of speech and expression were not recognised and protected by the State. According to them, "democracy" is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the Constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights. But these rights come with corresponding duties which serve as a reminder to every citizen that while the Constitution specifically confers on them certain Fundamental Rights, it also expects them to observe certain basic norms of democratic conduct and behaviour. In Ramlila Maidan Incident, In re, (2012) 5 SCC 1 the Supreme Court observed as under:-

"4. The "balancing of interests" approach is basically derived from Roscoe Pound's theories of social engineering. Pound had insisted that his structure of public, social and individual interests are all, in fact, individual interests looked at from different points of view for the purpose of clarity. Therefore, in order to make the system work properly, it is essential that when interests are balanced, all claims must be translated into the same level and carefully labelled. Thus, a social interest may not be balanced against individual interest, but only against another social interest. The author points out that throughout the heyday of the "clear and present danger" and "preferred position" doctrines, the language of balancing, weighing or accommodating interests was employed as an integral part of the libertarian position. (Freedom of Speech: The Supreme Court and Judicial Review, by Martin Shapiro, 1966.)

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12. The Framers of our Constitution, in unambiguous terms, granted the right to freedom of speech and expression and the right to assemble peaceably and without arms. This gave to the citizens of this country a very valuable right, which is the essence of any democratic system. There could be no expression without

these rights. Liberty of thought enables liberty of expression. Belief occupies a place higher than thought and expression. Belief of people rests on liberty of thought and expression. Placed as the three angles of a triangle, thought and expression would occupy the two corner angles on the baseline while belief would have to be placed at the upper angle. Attainment of the preambled liberties is eternally connected to the liberty of expression. (Preamble: The Spirit and Backbone of the Constitution of India, by Justice R.C. Lahoti.)

13. These valuable fundamental rights are subject to restrictions contemplated under Articles 19(2) and 19(3), respectively.

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21. Article 51-A deals with the fundamental duties of the citizens. It, inter alia, postulates that it shall be the duty of every citizen of India to abide by the Constitution, to promote harmony and the spirit of common brotherhood, to safeguard public property and to abjure violence.

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40. It is obvious that Parliament realised the need for inserting the fundamental duties as a part of the Indian Constitution and required every citizen of India to adhere to those duties.The restriction placed on a fundamental right would have to be examined with reference to the concept of fundamental duties and non-interference with the liberty of others. Therefore, a restriction on the right to assemble and raise protest has also to be examined on similar parameters and values. In other words, when you assert your right, you must respect the freedom of others. Besides imposition of a restriction by the State, non-interference with the liberties of others is an essential condition for assertion of the right to freedom of speech and expression.

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48. In Himat Lal K. Shah v. Commissioner of Police (1973) 1 SCC 227 again a Constitution Bench of this Court, while dealing with a situation where a person seeking permission to hold a public meeting was denied the same on the ground that under another similar permission, certain elements had indulged in rioting and caused mischief to private and public properties, held Rule 7 framed under the Bombay Police Act, 1951 as being arbitrary and observed as under:-

"32. ... It is not surprising that the Constitution makers conferred a fundamental right on all citizens to assemble peaceably and without arms While prior to the coming into force of the Constitution the right to assemble could have been abridged or taken away by law, now that cannot be done except by imposing reasonable restrictions within Article 19(3). But it is urged that the right to assemble does not mean that that right can be exercised at any and every place. This Court held in Railway Board v. Niranjan Singh (1969) 1 SCC 502 that there is no fundamental right for anyone to hold meetings in government premises. It was observed:-

"12. ... The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please."

55. In view of the above discussion FIR No.181/2012 cannot be quashed at this stage and no further directions are needed in the writ petition; the same is accordingly dismissed.

WRIT PETITION (CRL.) No.5/2013

56. As stated earlier, Petitioner Gaurav Kumar Bansal who is an Advocate by profession seeks transfer of the investigation of the instant case to an independent agency - CBI.

57. The Petitioners grievances are almost the same as of the Petitioners in W.P.(Crl.) No.15/2013. The Petitioner stated that two independent eye witnesses, that is, Mr. Yogender Tomar and Ms. Pauline saw the

collapse of Constable Subhash Tomar. The Delhi Police falsely came up with the story that Constable Subhash Tomar died because of the injuries sustained as a result of the clash between the mob and the Delhi Police. The Petitioner gave details of the interview given by Ms. Pauline to various TV news channels and the statement by Dr. T.S. Sidhu, Medical Superintendent, RML hospital with regard to the postmortem examination. The Petitioner therefore, claimed that a false story has been cooked up by Delhi Police and in the circumstances, to bring out the truth it would be appropriate to transfer the investigation of the FIR to an independent agency like CBI.

58. The Petition has been resisted by the Respondents by filing an Affidavit by Respondent No.3 through the Additional Deputy Commissioner of Police. The Respondents denied that the investigation has not been carried out fairly or properly or that the FIR has been cooked up. It was claimed that no value can be attached to the news reports as these cannot be said to be evidence.

59. The Petitioner relies on Court of its Own Motion v. Govt. of NCT of Delhi and Anr., W.P.(C.) No.6459/2012, decided on 10.10.2012 by this Court in support of this contention that the Court can always take into account and act on news reports, whereas Respondents relies on Dr. B. Singh v. Union of India and Ors. (2004) 3 SCC 363 to contend that the newspaper reports cannot be taken as gospel truth.

60. I need not go into the controversy whether the newspaper reports can be taken cognizance or not. Suffice it to say that out of eight accused, seven Petitioners are before this Court in W.P.(CrI.) No.15/2013. No prayer was made by them for transfer of investigation from the Crime Branch to any other agency or to the CBI. The Competent Authority transferred the investigation of the instant FIR from local police to the Crime Branch. I have already observed above that the statement of Mr. Yogender Tomar and Ms. Pauline who are alleged to be two independent eye witnesses by the Petitioners in W.P.(CrI.) No.15/2013 and by the Petitioner in the instant Petition, corroborates the Petitioners version. No material has been placed on record by the Petitioner which would impel this Court to transfer the investigation from Crime Branch to the CBI.

61. There is no dispute about the proposition of law that the High Court has ample powers to direct the investigation by an independent agency including the CBI.

62. In Narmada Bai v. State of Gujarat, (2011) 5 SCC 79, relying on Rubabbuddin Sheikh case (2010) 2 SCC 200 the Honble Supreme Court in Para 38 held as under:-

"38. The following conclusions in Rubabbuddin Sheikh case are relevant:-

60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any independent agency.

Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.

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, we now deal with the facts of this case whether such investigation should be transferred to the CBI Authorities or any other independent agency in spite of the fact that the charge-sheet has been submitted in court. On this ground, we have carefully examined the eight action taken reports submitted by the State police authorities

before us and also the various materials produced and the submissions of the learned counsel for both the parties.

It is clear that in an appropriate case, particularly, when the Court feels that the investigation by the State police authorities is not in proper direction as the high police officials are involved, in order to do complete justice, it is always open to the Court to hand over the investigation to an independent and specialised agency like CBI."

63. In the case of Mohd. Anis v. Union of India 1994 Supp (1) SCC 145 the Supreme Court transferred the investigation to the CBI as there were allegations of involvement of local police in the encounter. Relevant Paras of the report are extracted hereunder:-

"5. ... Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice."

"2. ... Doubts were expressed regarding the fairness of the investigation as it was feared that as the local police was alleged to be involved in the encounters, the investigation by an officer of the U.P. Cadre may not be impartial."

64. Turning again to the facts of the instant case it is not in dispute, rather it is borne out from the video clippings of the CCTVs installed around India Gate, the coverage from the news channels that the demonstration on 23.12.2012 did turn violent and obstruction was caused to the public servants in discharge of their public duties, public property was destroyed, and police personnel were beaten up and humiliated. The job of the investigating agency in the instant case is only to identify the persons who were responsible for committing the offences. Thus, there is no ground to come to the conclusion that the CBI is better equipped to identify the culprits than the Crime Branch or that the Crime Branch of Delhi Police has got any motive to falsely implicate any person. As stated earlier, while discussing W.P.(Crl.) No.15/2013 Mr. Siddharth Luthra, learned ASG was candid enough to admit that the investigating agency did not find any evidence with regard to causing of death against the eight accused persons who were arrested in the vicinity of the India Gate. At the cost of repetition I may add that the Petitioners in both the Petitions had apprehension that the version as given by Mr. Yogender Tomar and Ms. Pauline may not be taken into account at all by Delhi Police or that their statements may not be correctly recorded, which is belied from the record. Admittedly, the Petitioner is not personally concerned with the investigation of the case. The seven Petitioners out of the eight accused who were arrested in connection with the instant FIR, as stated earlier, did not make a prayer for transfer of the investigation of this case to any other Agency.

65. In the facts and circumstances of the case, I do not find any ground for transfer of the investigation of this case from the Crime Branch of Delhi Police to the CBI. The Petition is accordingly dismissed.

66. Pending Applications stands disposed of.

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