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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 27-9-2019

Order delivered on 30-1-2020

WPCR No. 121 of 2017

1. Dhananjay Kumar S/o Radhoram Bhagat Aged About 50 Years R/o Muhalla Maanpur Kumar Toli, Post Buniyadganj, Police Station Mofsil, District Gaya, Bihar.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Home Department, Mahanadi Bhawan Mantralaya, New Raipur Chhattisgarh.
2. Superintendent Of Police, Bilaspur Chhattisgarh
3. Station House Officer, Police Station Sirgitti, Dist. Bilaspur Chhattisgarh

---- Respondents

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For Petitioner	Dr. Shailesh Ahuja, Advocate
For Respondent/State	Shri S.C. Verma, Advocate General with Shri Ghanshyam Patel, Govt. Advocate & Shri Vikram Sharma, Dy. Govt. Advocate

FULL BENCH

Hon'ble Shri Prashant Kumar Mishra, J

Hon'ble Shri Rajendra Chandra Singh Samant, J

Hon'ble Shri Gautam Chourdiya, J

C A V Order

The following order of the Court was delivered by

Prashant Kumar Mishra, J.

1. The matter has been posted before the Full Bench for having an effective pronouncement on the following question formulated by the learned Single Judge (Sanjay K. Agrawal, J.) :

> *Whether in a writ petition preferred under Article 226/227 of the Constitution of India seeking direction for registration of FIR and investigation against the accused persons alleged to have committed the cognizable offence(s), the said accused persons are necessary or proper party and they are required to be noticed and heard before issuing any such writ/direction, if any ?*

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2. The writ petition was preferred for seeking a direction to the respondent authorities to register First Information Report (FIR) and arrest Mithilesh Kumar and his other family members for committing offences punishable under Sections 498-A and 304-B of the Indian Penal Code.

3. Daughter of the petitioner namely; Priyanka Kumari (since deceased) was married with Mithilesh Kumar on 30-11-2014. The couple were blessed with a male child on 7-9-2015. On account of alleged ill treatment and demand of dowry Priyanka Kumari was found dead by hanging on 28-10-2016. The petitioner made an application to the concerned Station House Officer on 21-11-2016 for registering FIR against his daughter’s husband Mithilesh Prajapati, mother-in-law

Shakuntala Devi, brother-in-law Devesh Kumar & Omprakash. Since no action was taken by the police the writ petition was filed.

4. The learned Single Judge noticed the judgments relied by the State's counsel rendered by the Supreme Court in ***Aleque Padamsee and Others v Union of India and Others***[1] and ***Sakiri Vasu v State of Uttar Pradesh and Others***[2] as also the decision of the Division Bench {Ajay Kumar Tripathi, CJ & Parth Prateem Sahu, J.} of this Court rendered in ***Arun Singh Thakur v State of Chhattisgarh and Others***[3], wherein the order passed by the learned Single Judge (Goutam Bhaduri, J.) in ***Amit Singh Thakur v State of Chhattisgarh and Others***[4] after referring the decision rendered by the Supreme Court in ***Lalita Kumari v Government of Uttar Pradesh and Others***[5] for registering FIR and completing the investigation at the earliest, has been set aside on the ground that the order was passed without any notice or opportunity of hearing to the effected party.

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5. The learned Single Judge also referred three other judgments of the Supreme Court rendered in ***Udit Narain Singh***

1 (2007) 6 SCC 171
2 (2008) 2 SCC 409
3 WA No.651 of 2018 (decided on 14-2-2019)
4 WPCR No.462 of 2018 (decided on 13-8-2018)
5 (2014) 2 SCC 1

Malpaharia v Additional Member Board of Revenue, Bihar and Another[6], ***Prabodh Verma and Others v State of Uttar Pradesh and Others***[7] and ***Sadhu Bhagwandas Durlabhram and Others v Udaykumar H. Dave and Others***[8] wherein the Supreme Court has held that the High Court should not hear & dispose of writ petition under Article 226 of the Constitution of India without hearing the persons who would be vitally effected by its judgment.

6. While referring the question of general importance for having an effective pronouncement by a larger Bench the learned Single Judge seems to be guided by the observations made by the Supreme Court in ***Udit Narain Singh Malpaharia*** (supra), ***Prabodh Verma*** (supra) & ***Sadhu Bhagwandas Durlabhram*** (supra) and the Division Bench of this Court in ***Arun Singh Thakur*** (supra). In these matters, the Supreme Court and the Division Bench of this Court have held that the High Court should not hear & dispose of writ petition under Article 226 of the Constitution of India without hearing the persons who would be vitally effected by its judgment, however, the issue at the stage of registration of FIR is somewhat different than an issue where the person against whom the Court is

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6 AIR 1963 SC 786
7 (1984) 4 SCC 251
8 (2006) 9 SCC 599

approached would be adversely effected as any of his vested or statutory rights would be taken away or jeopardised. The prospective accused is not entitled to be heard at the stage of investigation, which is different than prosecution.

7. Registration of FIR and the power of police to investigate a cognizable offence is the statutory obligation of the concerned police as has been dealt with in Chapter XII from Sections 154 to 176 of the Code of Criminal Procedure (Cr.P.C.).

8. These provisions have been considered in detail by the Supreme Court in ***Lalita Kumari*** (supra) to hold thus :

> 109) The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation" and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence.
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> 110) This can also be seen from the fact that Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be

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valid for 24 hours. However, a Maharashtra State amendment to Section 151 allows the custody of a person in that State even for up to a period of 30 days (with the order of the Judicial Magistrate) even before a cognizable offence is committed in order to prevent commission of such offence. Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166 IPC.

111) Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has a '*reason to suspect the commission of an offence*'. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

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119) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has

> been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

9. The issue as to whether an accused has right of hearing before registration of FIR has fallen for consideration before the Supreme Court in a catena of decisions. We shall quote few of the judgments wherein the Supreme Court has held that no such right of hearing is available to an accused at the stage of registration of FIR and investigation.

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10. In ***Union of India and Another v W.N. Chadha***[9], popularly known as '***Bofors Case***', the High Court quashed the orders of the criminal Court who had issued letter rogatory against the person, on the ground that the Special Judge has not complied with the principle of *audi alteram partem*. Upon full dissection of the law on the subject the Supreme Court in ***W.N. Chadha*** (supra) observed thus in paras 90, 95, 96 & 98 :

9 1993 Supp (4) SCC 260

90. Under the scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.

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95. It is relevant and significant to note that a police officer, in charge of a police station, or a police officer making an investigation can make and search or cause search to be made for the reasons to be recorded without any warrant from the Court or without giving the prior notice to any one or any opportunity of being heard. The basic objective of such a course is to preserve secrecy in the mode of investigation lest the valuable evidence to be unearthed will be either destroyed or lost. We think it unnecessary to make a detailed examination on this aspect except saying that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law.

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96. True, there are certain rights conferred on an accused to be enjoyed at certain stages under the Code of Criminal Procedure - such as Section 50 whereunder the person arrested is to be informed of the grounds of his arrest and to his right of bail and under Section 57 dealing with person arrested not to be detained for more than 24 hours and under Section 167 dealing with the procedure if the investigation cannot be completed in 24 hours - which are all in conformity with the 'Right to Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. But so long as the investigating agency proceeds with his action or investigation in strict compliance with the statutory

> provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Code of Criminal Procedure.
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> xxx xxx xxx
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> 98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.
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> (Emphasis supplied)

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11. In ***Narender G. Goel v State of Maharashtra and Another***[10] the Supreme Court held thus in paras 11 & 12 :

> 11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. this Court observed : (SCC p.743, para 11)
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> > "There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the Court with the burden of searching for all the

10 (2009) 6 SCC 65

> potential accused to be afforded with the opportunity of being heard."
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> 12. The accused can certainly avail himself of an opportunity to cross examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code.
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> (Emphasis supplied)

12. The Supreme Court in ***Samaj Parivartan Samudaya and Others v State of Karnataka and Others***[11] held thus in paras 44 & 50 :

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> 44. We are of the considered view that no prejudice has been caused to the intervenor/affected parties by non-grant of opportunity of hearing by the CEC. In any case, this Court has heard them and is considering the issues independently.
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> xxx xxx xxx
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> 50. There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialized agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties.

11 (2012) 7 SCC 407

However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners.

13. In ***Anju Chaudhary v State of Uttar Pradesh and Another***[12] the Supreme Court held thus in paras 30 to 34 :

Is an accused entitled to hearing pre-registration of an FIR?

30 Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this Court in State of UP v. Bhagwant Kishore Joshi , a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of a FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

31. The rule of *audi alteram partem* is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that

12 (2013) 6 SCC 384

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application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1860 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer In-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons. Firstly, the Code does not provide for any such right at that stage. Secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of Union of India v. W.N. Chadha clearly spelled out this principle in paragraph 98 of the judgment that reads as under:

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> "98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self- defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

32. In Samaj Parivartan Samuday v. State of Karnataka, a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as 'suspect' or 'likely offender' in the report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under :

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> "50. There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners."

> 33. While examining the abovestated principles in conjunction with the scheme of the Code, particularly Section 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.
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> 34. Even in the cases where report under Section 173(2) of the Code is filed in the Court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the Court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.
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> (Emphasis supplied)

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14. The legal proposition that if the order to be passed behind the back of the party was to entail in some civil consequence than the said party is required to be heard by the Writ Court, as has been mentioned by the learned Single Judge in the reference order, has also been considered by the Supreme Court in its recent judgment rendered in ***E. Sivakumar v Union of India and Others***[13] to hold thus in para 11 :

> 11. Our attention was invited to the observations made in para 73 in State of Punjab, which in turn

13 (2018) 7 SCC 365

> adverts to the exposition in D. Venkatasubramaniam v. M.K. Mohan Krishnamachari, wherein it has been held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. That may be so, if the order to be passed behind the back of the party was to entail in some civil consequence to that party. But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected.

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15. In addition, the Supreme Court in ***W.N. Chadha*** (supra) has also considered the application of rule of *audi alteram partem* at the stage of registration of FIR in paras 76 to 90 of the report.

16. In the above view of the matter, it is an absolutely settled legal position that a prospective accused has no right of hearing before registration of FIR and investigation by the police officer or before the Court including the writ Court, therefore, in a writ petition seeking direction for registration of FIR and investigation into a cognizable offence, the prospective accused is neither necessary nor a proper party.

17. Reference is answered accordingly.

18. Since only the stated question was referred to the Full Bench the file of the writ petition is sent back for listing the same before the appropriate Bench having the roster.

Sd/-	Sd/-	Sd/-
(Prashant Kumar Mishra)	(Rajendra Chandra Singh Samant)	(Gautam Chourdiya)
Judge	Judge	Judge

Gowri

HEAD NOTE

Prospective accused has no right of hearing before registration of FIR and investigation by the police officer or before the Court including the writ Court, therefore, in a writ petition seeking direction for registration of FIR and investigation into a cognizable offence, the prospective accused is neither necessary nor a proper party.

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