Kishwar Jahan and Another Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Aug. 14, 2008

Acts Referred: Bengal Police Regulations, 1943 â€" Regulation 299
Constitution of India, 1950 â€" Article 14, 142, 142(1), 144, 20
Criminal Procedure Code, 1973 (CrPC) â€" Section 149, 154, 154(1), 154(3), 156(1)
Penal Code, 1860 (IPC) â€" Section 120B, 299, 300, 302, 306
Special Marriage Act, 1954 â€" Section 13

Citation: (2008) 3 CHN 857 : 112 CWN 1018

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Kalyan Bandopadhyay, Ashis Chakraborty, Aniswar Dutta Gupta and Chaitali Bhattacharya, for the Appellant;Balai Chandra Ray, Sandip Sriman, Tirthankar Ghosh and Rajdeep Biswas, Samaraditya Pal, Shibdas Banerjee, Ashok Kumar Banerjee, Abhrajit Mitra, V. Meharia, D. Mondal, Jishnu Chaudhury, S. Mukherjee, Pradyut Kr. Das, Arunava Sarkar, Sanjiv Kumar Trivedi, Koushik Dey and Kamalesh Jha for Respondent Nos. 3, 5, 7, 8 and 9, Ranjan Roy, for CBI, Pradip Kumar Ghosh, Sekhar Basu, Subrata Basu, Milon Mukherjee, Joymalya Bagchi, Amit Basu, Sandipan Ganguly, Ayan Banerjee and Sourav Bhagat for Respondent Nos. 12 and 13 and Ashok Kumar Mukherjee, Tapan Kumar Jana and Krishnendu Bhattacherjee, for the Respondent

Judgement

Dipankar Datta, J.
Rizwanur Rahman (hereafter Riz), since deceased, son and brother of the petitioners 1 and 2 respectively, was laid to

rest in September last. The suspicious circumstances in which he died, the role of the State Police agencies in investigating the cause of his death,

the conduct of certain police officers of Kolkata Police both before and after his death, alleged involvement of his father-in-law Ashok Todi

(respondent No. 12) and his uncles-in-iaw Anil Saraogi (respondent No. 13) and Pradeep Todi (not a party to the petition) in connection with his

unnatural death, investigation conducted by the Central Bureau of Investigation (hereafter the CBI) being directed by this Court - all these and

much more, have exercised thoughtful consideration of this Court on the face of eloquent arguments advanced by learned Senior Counsel for the

petitioner, the State, the accused police officers and the respondent No. 12 and learned Counsel for the CBI and the respondent No. 13, both on

factual as well as legal points, based on erudition and developed by great industry. The valuable assistance rendered to the Court needs to be

appreciated at the outset.

2. It is discerned from the materials on record that Riz, a computer graphic engineer working at Arena Multi Media (a computer training centre)

had a love affair with his student Priyanka Todi (hereafter Priyanka), daughter of respondent No. 12, which matured in a marriage on 18.8.07

under the Special Marriage Act, 1954. Their marital relationship had the possibility of souring the relation betwee I the father and the daughter and

as such was not disclosed to the respondent No. 12 immt-Jiately thereafter. The couple apprehended that respondent No. 12 might interfere in

their marital relationship and accordingly they had jointly addressed a fetter dated 30.8.07 to the Commissioner of Police, Kolkata Police. The

letter reads as follows:

Sub: Registry Marriage information.

We would like to inform you thai we, Rizwanur Rahaman s/o Late Rehaman Rahman, resident of 7/B, Tiljala Lane, Kolkala-19 and Priyanka Todi

d/o Ashok Kr. Todi resident of CG 235, Salt Lake, Kolkata 91, got married under the presence of Marriage Officer, Sipra Ghosh, on 18st

August, 2007. The copy of our Marriage Certificate is being enclosed for your kind perusal. This marriage was performed with our own wish and

not under the influence of any external pressure. We are also enclosing copy of our birth certificates as proof that we are both matured.

We are presuming that our Father-in-Law/Father, Mr. Ashok Kr. Todi may threaten us with dire consequences or create pressure or can send

antisocial elements or goondas to kidnap us. In view of this we hope to get protection from your end if required.

3. Letters with similar contents were also addressed to the Deputy Commissioner of Police (South Division), the Officers-in-Charge, Karaya

Police Station, Entally Police Station and Bidhannagar Police Station, and others.

4. The Officer-in-Charge, Karaya Police Station upon receipt of the letter jointly written by Riz and Priyanka dated 30.8.07 had endorsed the

same to S.I., Pulak Dutta on 31.8.07. Acting on the basis of such endorsement, S.I. Pulak Dutta had conducted an enquiry and his report

submitted to the Officer-in-Charge, Karaya Police Station reads as follows:

Ref: the attached letter vide L/P(y)1226/07 dt. 31.8.07

An enquiry into the attached petition was made. During enquiry the u/sd. had been to premises No. 7B, Tiljala Lane, Kol-19 and contacted Mr.

Rizwanur Rahaman s/o It. Rezaur Rahaman of 7B, Tiljala Lane Kol-19 and Mrs. Priyanka Todi d/o Ashok Kr. Todi of CG-235, Salt Lake, Kol-

91 and they stated that they are both adult and married each other with their mutual consent as per Special Marriage Act and they have no

complain against each other.

The u/sd. also found father of Priyanka Todi, Mr. Ashok Kr. Todi with other relatives are also present inside the premises and talking with them.

The uncle of Rizwanur Rahaman was also present there. Documents in support of their marriage was verified.

Since both of them are adult and made no complain against each other.

Hence we may keep watch. This is for your kind information.

5. On 31.8.07 itself, Priyanka had been taken to Riz"s residence at Tiljala. Respondent No. 12 was given such information whereupon he had

been to the residence of Riz to persuade Priyanka to return. The effort failed. Despite respondent No. 12 being aware of the Fact that ilis daughter

had started staying with Riz, on the following day, Pradeep Todi (brother of respondent No. 12) lodged a complaint with the Deputy

Commissioner of Police (Detective Department), Kolkata Police alleging that Riz had abducted Priyanka. The relevant part of the complaint reads

as follows:

My niece Smt. Priyanka Todi daughter of Ashoke Todi having completed Graduation from Ashok Hall joined a course in Arena Multimedia

situated at 60A, J.L. Nehru Road, Kolkata-20.

On 31st August, 2007, she left her home as usual for her course at Arena Multimedia and did not return home. Then we searched for her at our

relative"s house and other probable places, but did not find her.

Then we had been to her training center at 60A, J.L. Nehru Road and found Rizewanoor Rahman - the teacher of the said institution absent.

Meanwhile on enquiry we came to know that the said teacher namely Rizewanoor Rahman took her to his residence at 7B, Tiljala Lane, Kolkata-

19 by deceitful means with intent to marry her and detained her. We immediately reached the residence of Rizewanoor Rahman at 7B, Ttljala

Lane, Kolkata-19 and found him there. Being asked Rizewaaoor Rahman confirmed that Priyanka Todi is within in his residence and he is going to

marry her. But in spite of our best efforts we failed to see Priyanka there which created a suspicion in our mind that my niece may have been

shifted to somewhere else.

Being scared and thinking safety and security of my niece and adverse publicity we came back home. We searched in our house for any notes

Written by my niece, if any, but in vain.

6. The complaint was marked to Sukanti Chakraborty, the respondent No. 8 apparently by the Deputy Commissioner of Police on 1.9,07 itself,

who in turn marked it to Kris,hnendu Das, the respondent No. 9. On 3.9.07, the respondent No. 9 submitted the following report:

As ordered, a preliminary enquiry into the enclosed letter of complaint has been done. Rizwanur Rahaman s/o Lt. Rezaur Rahaman of 7B, Tiljala

Lane, Kolkata-19 and Priyanka Todi d/o Ashok Todi qf CG-235, Salt Lake City, Koikata-91 stated that they got married on 8.08.2007 as per

Section 13 of Special Marriage Act before the Marriage Officer Sipra Ghosh of 26, Rameswar Shaw Road, Kolkata-14. It also appeared that

both of them are adults. However a xerox copy of the concerned marriage certificate has been produced by Rizwanur Rahaman, which appears to

be genuine. As such, she is staying with him at his place at 7B, Tiljala Lane, Kolkata-19. This is for favour of your kind information.

7. Pradeep Todi followed up his complaint dated 1.9.07 with another complaint dated 8.9.07, also addressed to the Deputy Commissioner of

Police, Detective Department. This complaint was also marked to the respondent No. 9 through the respondent No. 8. The complaint reads as

follows:

In continuation to my previous complaint of abduction dated 01.09.07, further this is to inform you that after meeting with Priyanka on 04/09/07

Ashoke Todi, father of Priyanka tried to communicate with her several times but denied free access to her daughter.

Ashok Todi who is having a background of heart disease fell ill as he could not tolerate such mental pressure. As such he was admitted in Apollo

Hospital yesterday (07.09.07). Yesterday her aunt went to Rizwanur''s residence at 7B, Tiljala Lane, Kolkata and informed Priyanka to visit her

father who was admitted in Apollo Hospital being seriously ill. She agreed but subsequently she told that she would not go with her aunt but with

others. Unfortunately she did not visit her father on 07/09/07. As such I think that she has been detained under pressure of Rizwanur Rahman who

is not allowing her to visit her father with some ulterior motive. I suspect that there is some foul play behind her confinement which might be under

threat or coercion by Rizwanur and his, family members.

8. In the meantime, while referring to the letter dated 30.8.07 addressed, inter alia, to the Deputy Commissioner of Police (South Division) and the

Officer-in-Charge, Karaya Police Station, Riz and Priyanka jointly addressed a letter dated 3.9.07 to them claiming protection in view of certain

overt acts of respondent No. 12. The letter is reproduced below:

Sub: General Diary

Kindly refer to our earlier letter dated 30.08.07 regarding information of our marriage which was done on 18.08.07. The copy of our marriage

certificate was also enclosed for your kind perusal. We are presuming that our father-in-law/father may engage some anti socials criminals to

kidnap us or may try to forcefully abduct us. Some antisocials are coming to our place and threatening us of dire consequences if we continue to

stay together at our place, i.e. 7B, Tiljala Lane, Koikaia-19. They are trying to threaten and bribe our people so that somehow the girl is sent back

to her parents. Please be informed that if anything happens to us the person who will be responsible is Mr. Ashok Kumar Todi. We are also

requesting you to provide us protection and should also see that no such incident should take place. This is for your information and record. Your

prompt action will be highly appreciated by us.

9. The Officer-in-Charge, Karaya Police Station marked it to S.I. Pulak Dutta, once again. He then submitted a report dated 5.9.07 to the

following effect:

As ordered by you the u/sd. maintained watch in the vicinity of 7B, Tiljala Lane, Kol - 19. The Police person who are to perform duty at ''kiosk''

was informed to maintain watch on time to time in and around of 7B, Tiljala Lane, Kol - 19, they were briefed. Nothing untoward took place till

date. Contacted the relatives of Rizwanur Rahaman they stated that the situation is peaceful and normal. This is for your information.

10. While these facts surface from the records produced before this Court, it is alleged by the petitioners in paragraph 10 of the petition that Riz

and Priyanka were called upon by the then Deputy Commissioner of Police (Headquarters) Gyanwant Singh, the respondent No. 7 to attend at

Lalbazar on 4.9.07, where in the presence of respondent No. 12 and his wife, the petitioner No. 2 and uncles of Riz, he created pressure on

Priyanka to return to her parents but she did not succumb to such pressure. Respondent No. 7 then directed Riz, Priyanka, respondent No. 12,

the petitioner No. 2 and his uncles to the respondent No. 8 who again held out threats. Certain stamp papers containing statements were placed

before Riz by the respondent No. 12 in the presence of respondent No. 8 and other officers of the Anti-Rowdy Section for his signature. Neither

Riz nor the petitioner No. 2 and his uncles were allowed to peruse the contents of the stamp papers. However, Riz and Priyanka having protested,

they failed to obtain Riz''s signature thereon.

11. It is further alleged in paragraph 12 of the petition that on 8.9.07, the respondent No. 9 arrived at the petitioners'' residence to convey that Riz

and Priyanka were required to attend Lalbazar to meet the Deputy Commissioner of Police, Detective Department and they should accompany

him. Around 3.30 p.m., Riz and Priyanka met Ajoy Kumar, the respondent No. 5 at Lalbazar. The petitioner No. 2 and his uncles also

accompanied them and were present to Find the respondent No. 5 become furious the moment Riz and Priyanka entered his chamber. While

shouting, he threatened that if Priyanka did not return to her parents'' house, Riz would be arrested and she sent back home. Riz having protested,

the respondent No. 5 became more furious and gave Riz two options. While one option was that Priyanka must return to her parents for seven

days otherwise Riz would be arrested on charges of abduction and stealing of valuables, the other option given to Riz was to approach the Court

of Law. Riz accepted the first option having become nervous being constantly pressurized by the respondent Nos. 5, 8 and 9. Riz was then

directed to the Anti-Rowdy Section alongwith the respondent Nos. 8 and 9 and when he alongwith the petitioner No. 2 reached there, they found

Anil Saraogi, the respondent No. 13 (uncle of Priyanka) present. The respondent No. 13 wrote on a plain white paper that Priyanka was being

taken by him to her parents for seven days. Contents thereof, signed by Riz, Priyanka and the respondent No. 13, read as follows:

I Anil Saraogi uncle of Priyanka Todi aged about 23 years daughter of Ashok Todi of CG 335, Salt Lake City, Kolkata - 91 do hereby take

charge of my niece Priyanka Todi since her father has been admitted in Apollo Hospital, Bypass and his condition is precarious. I shall again

produce her after 7 days at 7B, Tiljala Lane, Kolkala - 19. During her stay in her house her sustenance, safety and security will he looked into

properly.

Thanking you, I agree (illegible) for 7 days

Yours faithfully, from today at my parent''s

Sd/-Anil Saraogi Place

8/1 Alipore, Sd- Priyanka Todi 8/9/07

Kolkata Ã¯Â¿Â½ 27 Received copy and I have no objection

8/9/7 Sd./- Rizwanur Rahman

Illegible

12. Priyanka did not return. Requests of Riz to let her return fell on deaf years. A dead body was found on 21.9.07 on the rail tracks between

Sealdah and Bidhannagar stations, under Sealdah Division of Eastern Railway, believed to be that of Riz.

13. A written complaint dated 21.9.07 was lodged by the petitioner No. 2 before Karaya Police Station on 22.9.07 alleging that he suspected the

hands of respondent No. 12 behind the death of his brother''s unnatural death. The complaint lodged by him reads as follows:

Re: unnatural death of Rizwanur Rahman of 78, Tiljala Lane, Kolkaia-17.

My younger brother Rizwanur Rahman has an unnatural death and his body was found near Dum Dum Station by G.R.P.

My said brother was married with Priyanka Todi, daughter of Ashok Todi of CG- 235, Salt Lake City, Kolkata-91.

That several times said Ashoke Todi threatened my brother with dire consequence.

That we suspect the hands of said Ashoke Kr. Todi behind the death of my brother.

14. Riz"s death hurt the sentiments of the public at large and led to disruptions in public life. This prompted the then Commissioner of Kolkata

Police Prasun Mukherjee, respondent No. 3 to hold a press conference. According to the petitioners (based on newspaper reports), he declared,

inter alia, that Riz had committed suicide and this was transparent, although report on post-mortem was yet to be received.

15. Enquiry into the unnatural death of Riz was initially conducted by the Dum Dum G.R.P.S. within whose jurisdiction his deadbody was found.

Thereafter such enquiry was handed over to the Criminal Intelligence Department (hereafter the CID) by the State Government. The police officers

arrayed as respondent Nos. 3, 5, 7, 8 and 9 herein, however, were transferred soon after the death of Riz.

16. Alleging that Riz was killed on 21.9.07 by anti-social elements hired by respondent No. 12, in concert with the concerned police officers being

the respondent Nos. 3, 5, 7, 8 and 9 and apprehending that fair and proper investigation into the unnatural death of Riz cannot be conducted in

view of involvement of police officers of Kolkata Police holding high ranks, the petitioners" invoked the writ jurisdiction of this Court by preferring

the instant petition praying for, inter alia, the following relief:

(a) A Writ in the nature of Mandamus directing that the investigation in connection with the unnatural death of Rizwanur Rahaman of 7B, Tiljala

Lane, P.S. Karaya, Kolkata-700019, for which UD Case No. 183 of 2007 has been started and the allegations made by the petitioners in this

petition against Sri Ajay Kumar, DC, DD I: Sri Sukanti Chakraborty, Assistant Commissioner of Police (Anti-Rowdy Section), Lal Bazaar and

Krishnendu Das, Sub-Inspector, Anti-Rowdy Section be forthwith be handed over and be conducted by the Central Bureau of Investigation and

wilh a further direction to the Central Bureau of Investigation to submit a report of such investigations before the Hon"ble Court and on perusal of

such report the Hon"ble Court may he pleased to pass appropriate order/orders as this Hon"ble Court may deem fit and proper;

(b) A Writ in the nature of Certiorari do issue directing the respondents to produce all records m respect of the a allegations made by the

petitioners in the petitions so that the same may be perused and appropriate Orders be passed so that conscionable justice bo done;

(c) A Declaration do issue declaring that the acts and/or actions as complained in the petition against respondent Nos. 4 to 9 are ultra vires Article

21 of the Constitution of India;

(d) Rule NISI in terms of prayers (a), (b) and (c) above;

(e) An Order directing that the investigation in connection with the unnatural death of Rizwanur Rahman of 7B, Tiljala Lane, P.S. Karaya, Kolkata-

700 019, for which UD Case No. 183 of 2007 has been started and the allegations made by the petitioners in this petition against Sri Ajay Kiimar,

DC, DD I; Sri Sukanti Chakraborty, Assistant Commissioner of Police (Anti-Rowdy Section), Lal Bazaar and Krishnendu Das, Sub-Inspector,

Anti-Rowdy Section be forthwith be handed over and be conducted by the Central Bureau of Investigation;

(f) An Order do issue directing the respondents to give police protection to the petitioners:

(g) Ad interim Order in terms of prayer (e) and (f) above.

17. It is on record (supplementary affidavit of the petitioners) that the Chief Minister had appointed a retired Judge of this Court to hold an enquiry

under the Commissions of Enquiry Act, 1952.

18. The Court received the petition. Parties were duly heard. By an interim order dated 16.10.07, it was held as follows:

* * *

At the preliminary stage two issues fall for consideration. Whether the petitioners - the mother and the brother have Constitutional and legal right

the petitioners have made out a case for an interim order as prayed for. In my view, prima facie, the deceased and his wife on 31st August, 2007

had drawn the attention of the various police stations apprehending threats with dire consequences. On 21th September, he was found dead under

unnatural circumstances. The deceased can no longer seek redressal for any personal injury caused to him. In such circumstances, it is only his near

relations who can make a prayer by filing a petition under Article 226 of the Constitution. In this case the mother and the brother of the deceased

have filed the petition praying for an investigation by the CBI. The death of a son in the prime of his youth has caused a void and a wound to the

mother which time can never heal. It is a shock and a loss grievous an irreparable of unimaginable magnitude. The death has permanently deprived

her of a right to happy life with her son, since deceased, which is an inalienable part under Article 21 of the Constitution of India. The shock

bereavement and grievance of the brother is also to be noted. Therefore, the petitioners have a Constitutional right to move the instant petition and

the petition is thus maintainable. Let affidavit-in-opposition to the writ petition as well as to the supplementary affidavit be filed by 30th November,

2007. Reply, if any, by 10th December, 2007. Thereafter, parties are at liberty to mention for hearing upon notice.

19. So far as the prayer for interim relief in the writ petition is concerned, following facts need to be looked into. That on 10th August, 2007 the

deceased and his wife drew the attention of the police stations that respondent No. 12 could threaten them with dire consequences. Prima facie it

appears despite the intimations the police gave the deceased no protection. Instead the deceased and the petitioner No. 2 were summoned to the

Lal Bazar. Subsequently, the deceased on 218t September, 2007 was found dead under unnatural circumstances and, thereafter, it appears the

Commissioner of Police, Kolkata had made some comments on the cause and nature of death and that such comments, prima facie, have every

likelihood of prejudicing any enquiry into the cause of death. During argument it was submitted on behalf of the State that the CID is conducting an

inquiry. Persons have been summoned. It appears from the summons dated 10lh October, 2007 that an investigation is being done in terms of

Section 175 of the Code. Section 175 should be read in conjunction with Section 174. Enquiry u/s 174 is permissible till inquest. Therefore, in my

prima facie view, the investigation carried out by the CID is not. in accordance with the provisions of the Code. Hence, considering the facts and

circumstances of the case, I am of the opinion, prima facie, a case has been made out for passing an interim order. Therefore, let there be an

interim order directing the CBI to investigate into the cause of unnatural death of Rizwanur and the CBI shall file a report in a sealed cover before

this Court within two months from the date of service of authenticated copy of this order.

* * *

20. The order was not appealed against. The CBI proceeded to register a case of murder [RC. 8(S)/2007-SCU.I/CBI/SCR.I/New Delhi] and,

thereafter, commenced investigation.

21. Though the respondents had prayed for opportunity to file counter-affidavits to the writ petition and such prayer had been granted, counter-

affidavits were not filed. Prayer for extension of time was made and granted. Even then, the respondents chose not to file their counter-affidavits.

22. In the meanwhile CBI concluded its investigation. Report of investigation was filed before this Court in terms of direction passed by it earlier.

23. Concluding portion of the report was read out in open Court. It reads as under:

Conclusion

In view of the facts and circumstances narrated above, the CBI has decided to take the following action:

a) Prosecution of Ashok Todi, Pradip Todi, Anil Saraogi, S.M. Mohiuddin @ Pappu, Ajoy Kumar, the then DC/DD, Sukanti Chakraborty, the

then AC/ARS and SI Krishnendu Das u/s 120B read with Section 306/506 IPC. Ashok Todi, Pradip Todi, Anil Saraogi and S.M. Mohiuddin @

Pappu are liable for further prosecution for the substantive offences u/s 306/506 IPC. Ajoy Kumar, Sukanti Chakraborty and Krishnendu Das are

liable to be prosecuted for the substantive offence pmnshable u/s 506 IPC.

b) RDA for Major Penalty is being recommended against Gyanwant Singh, the then DC/HQ, Ajoy Kumar, the then DC/DD, Sukanti

Chakraborty, the then AC/ARS and Sis Krishnendu Das, Jayanta Mukherjee and Pulak Kumar Dutta.

c) Such action as deemed fit is being recommended against Shri Prasun Mukherjee. the then Commissioner of Police, Kolkata.

Prayer

(i) As directed, a detailed report after conclusion of the investigation is submitted for perusal by this Hon"ble Court;

(ii) the CBI may be permitted to file Police Report/Charge Sheet before the appropriate Court as per provisions of Cr. PC; and

(iii) the Hon"ble Court may pass any other appropriate order or direction as it deems fit and proper in the interest of justice.

24. Prayer was then made by the State as well as the petitioners and other respondents for furnishing them a copy of the report of the CBI to

enable them file their respective counter-affidavits to the petition. Such prayer was opposed by learned Counsel for the CBI. The same was turned

down by an order dated 28.2.2008. Liberty was again given to them to tile counter-affidavits. However, it was observed that the issue of

furnishing copy of report would remain open and would be considered again when the writ petition is heard finally.

25. The State, and the respondent Nos. 3, 5, 7, 8, 9, 12 and 13 filed separate sets of counter-affidavits and the petition was then taken up for final

consideration.

26. Owing to the fact that the CBI had filed its report and had prayed therein for leave of Court to file chargesheet before the competent Court

having jurisdiction, learned Counsel for the respondents barring the CBI were called upon to address the Court making a departure from the usual

rule of allowing the petitioners to address the Court first, Mr. Pal, learned Senior Counsel for the respondent Nos. 3, 5, 7, 8 and 9, however, was

heard in two phases, once before and once after the petitioners were heard.

27. Mr. Balai Chandra Ray, learned Advocate General representing the State and the other official respondents contended that there is no merit in

the writ petition and as such the same merits dismissal. Arguments advanced by him on various points are noted below:

On the conduct of the CBI

(i) Vide order dated 16.10.07, this Court had directed the CBI to investigate the cause of unnatural death of Riz. By the very nature of the order

passed, it was a fact finding enquiry which was directed to be conducted. However, the CBI by registering First Information Report (hereafter

FIR) u/s 302 of the Indian Penal Code (hereafter the IPC) had acted ultra vires the order of the Court in the sense that it had acted in excess of

authority conferred. Having exercised powers which were not conferred on it, the report, being the consequence of such investigation, is ultra vires

and a nullity in the eye of law. For the proposition that any act done in good faith but contrary to provisions of law is ultra vires, reliance was

placed on the decisions reported in 1905 Law Reports 426, Mayor, & c, ofWestminister v. London and North Western Railway Co.; The Barium

Chemicals Ltd. and Another Vs. The Company Law Board and Others, ; Supreme Court Employees'' Welfare Association and Others Vs. Union

of India (UOI) and Another, Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, ; M/s. Shri Sitaram Sugar Co. Ltd. and another

Vs. Union of India and others, ; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, 1875 LR 653, Directors, & C,

The Ashbury Railway Carriage & Iron Co. Limited v. Hector Riche.

(ii) The order of Court is also law. What is applicable in respect of statutes is also applicable for orders of Court. Case of murder that was

registered by the CBI is in disobedience of the order of the Court. The Court''s order being the source of power to investigate the cause of

unnatural death, the CBI ought not to have transgressed into a province not authorized by the order. It should have conducted investigation in the

manner directed by the Court, or not at all. The CBI ought to have directed investigation to find out the cause of death. If it transpired to be a case

of unabetted suicide or accident, the same should have been reflected in its report; on the contrary, if it transpired to be a case of homicide only

then could the CBI have launched into further investigation upon obtaining orders from Court. It had no independent authority to act except within

the parameters of the order of this Court. Power having been exercised by the CBI in a manner contrary to the directions of Court, the entire

investigation stands vitiated. For the proposition that if an act in terms of the statute is required to be performed in a particular manner, it has to be

done in that manner alone and that all other modes are strictly forbidden, the decisions reported in Ramchandra Keshav Adke (Dead) by Lrs. and

Others Vs. Govind Joti Chavare and Others, ,Ramchandra Keshav Adke v. Govind Joti Chavare and AIR 1936 253 (Privy Council) on.

(iii) There has been colourable exercise of power by the CBI. Under the pretext of the order which was the source of its power, the CBI

camouflaged the real power conferred on it and exercised power without authority of law which appears on piercing the veil. To support the

contention that any act in colourable exercise of power cannot sustain in law, reliance was placed on the decisions reported in Ashok Kumar alias

Golu Vs. Union of India and others, K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, Gullapalli Nageswara Rao and Others Vs.

Andhra Pradesh State Road Transport Corporation and Another,

(iv) The report filed by the CBI is a hybrid report. Its conclusion indicates that it is .not in conformity with the order of Court. The Court did not

empower the CBI to make recommendations in relation to drawing up major penalty proceedings against any police officer.

(v) While directing investigation into the cause of unnatural death of Riz, the Court had not reached any conclusion that a cognizable offence had

been committed. Information relating to death is not the same as information disclosing murder. In such circumstances, there was no information

relatable to Sections 299 or 300 of the IPC and hence no FIR could have been registered for homicide or murder. Lodging of FIR by the CBI

alleging murder is absolutely unauthorised in view of the fact that there were no materials before it at the material point of time. Neither the post-

mortem report was before it nor did it approach the CID for making available the evidence that had been collected by it. Registration of a case of

murder by the CBI amounts to usurpation of power. Without a formal FIR, investigation could have commenced since recording of an FIR is not a

condition precedent for conducting investigation. The decision reported in AIR 1945 18 (Privy Council) was relied on for the proposition that

receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation which is supported by

Section 157 of the Code. Reliance was also placed on the decisions reported in State of West Bengal and Others Vs. Sampat Lal and Others, ;

State of Haryana and others Vs. Ch. Bhajan Lal and others, Rajinder Singh Katoch Vs. Chandigarh Administration and Others, Administration in

support of the contention.

(vi) FIR lodged by the CBI does not satisfy Section 154 of the Criminal Procedure Code (hereafter the Code) for, none had reported a case of

murder before the writ petition was filed. Since commission of cognizable offence was not reported to the police at any point of time, the CBI suo

motu could not have registered an FIR in relation to commission of murder.

(vii) CBI had treated service copy of the writ petition as the basis for registering FIR. It could not have done so. The writ petition does not disclose

ingredients of murder. The service copy was not signed by any of the petitioners and as such requirement of Section 154(1) of the Code had not

been fulfilled. In this connection reference was made to the meaning of the word "information" as given in the New Shorter English Dictionary

which is ""knowledge or facts communicated about particular subject, event, etc."" Since the word ''information'' appearing in Section 154(1) of the

Code has not been defined therein, stress was laid on accepting the lexical meaning.

Even otherwise, information collected from copy of the writ petition could not be the basis for registering an FIR, suo motu, because Chapter X of

the CBI Manual (hereafter the Manual) requires verification of information prior to registration of FIR and there was no verification of information

by the CBI before registration of FIR. Registration of FIR by the CBI is thus mala fide.

(viii) Registration of FIR u/s 302 of the IPC is also bad because the CBI having already formed the view that Riz was murdered, nothing remained

to be done to comply with the order of the Court. The FIR reflects the cause of death and hence the direction of the investigation was to ascertain

how Riz was murdered and who murdered him. The investigation conducted by it is thus beyond the periphery of the limits set by the Court by

order dated 16.10.07 and, therefore, is a blatant disobedience of the order of the Court.

(ix) The CBI had no implied power to register FIR and proceed to conduct investigation. The report is neither in accordance with the Code nor in

accordance with the order of the Court. The FIR itself suffers from a number of infirmities. Copy of information was neither sent to any police

station, nor to the jurisdictional Magistrate. The petition of complaint is not signed by the petitioners. Signing of FIR by the officer of CBI is without

authority.

On the conduct of the petitioners

28. The complaint dated 21.9.07 lodged by the petitioner No. 2, received by the Karaya Police Station on 22.9.07 at best amounts to criminal

intimidation punishable u/s 506 of the IPC which is a non-cognizable offence. Neither any further complaint alleging commission of cognizable

offence was lodged before the police nor was any Magistrate approached. Without availing of the statutory remedies for redress, directly the Writ

Court was approached seeking investigation by the CBI although the petitioners have no right in law to choose an investigating agency.

29. The petitioners appear to be well-aware of the provisions of the Code which provides specific remedies. It is not open to the petitioners who

are conversant with law not to take recourse to the statutory remedies available to them. Instead of availing the same, they have approached the

Court of Writ. Efficacious alternative remedy provided by the Code was not exhausted and the writ petition is not maintainable in view of the

decisions reported in Aleque Padamsee and Others Vs. Union of India (UOI) and Others, All India Institute of Medical Sciences Employees''

Union (Regd.) through its President Vs. Union of India (UOI) and Others, ; Hari Singh Vs. The State of U.P., ; Surinder Singh Ahluwalia Vs.

Delhi Special Police Establishment and others, ; Sakiri Vasu Vs. State of U.P. and Others,

30. Approach of the Court in directing CBI investigation-

(i) Having regard to the facts and circumstances presented before the Court on 16.10.07, no order directing investigation by the CBI ought to have

been made particularly when the CID was in seisin of enquiry. If no cognizable offence is made out, police is not bound to investigate, and for this

proposition the decisions in State of West Bengal and Others Vs. Swapan Kumar Guha and Others, were relied on,

(ii) That apart, law and order problem being a State subject under List II of Schedule VII of the Constitution, the investigating agency of the State

could not have been jettisoned. In terms of the Delhi Special Police Establishment Act (hereafter the DSPE Act), consent of the State is a sine qua

non for the CBI to conduct investigation within its territory. Ordering of CBI investigation by the Court without the consent of the State, though not

consciously, is a threat to its republican character and it ought to be undone at the final hearing.

(iii) At the stage the writ petition was moved, there was no scope to entrust the CBI with investigation. Prima facie view recorded by the Court is

incorrect because police has the power to conduct preliminary enquiry. Section 174 of the Code read with Section 175 thereof gives wide powers

and inquest is not terminated once the deadbody is sent for post-mortem. There is no provision of foreclosure in Sections 174 and 175; object

thereof is to serve social performance and, therefore, has to be liberally construed. Power of investigation of unnatural death case subsisted until

reason of death was ascertained or it was found to be unascertainable. Enquiry could not have come to an end upon sending the deadbody for

post-mortem. The Court''s attention was invited to Regulation 299 of the Police Regulation of Bengal, 1943 (hereafter the said Regulation) to

justify the action of the State Police agency. It was submitted on the basis thereof that further enquiry during inquest is not prohibited and enquiry

may continue for more than a day. Therefore, no illegality was committed in the present case.

31. Submissions made by him in respect of other points are noted below:

Since a question had arisen as to whether the order dated 16.10.07 would operate as res judicata or not in respect of issues decided therein,

learned Advocate General submitted that only the point of maintainability of the writ petition had been decided by the learned Judge finally and

such decision could only be questioned in an appeal from the final decision on the writ petition, if preferred, and cannot be raised at subsequent

stages of the same proceeding. According to him all other findings were prima facie and, therefore, had not attained finality and could be decided

by this Court. Decisions cited by him in support of his contentions in this regard are reported in 7 Moore''s Indian Appeal 282 (1857-

60),Maharajah Moheshur Singh v. The Bengal Government and Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another,

32. On the sequence of steps taken by the State Police in respect of investigation of unnatural death of Riz, he submitted that initially the GRP,

Dum Dum caused an inquest into cause of death of an unknown person on 21.9.07, which later on was identified as the deadbody of Riz. The

complaint lodged by the petitioner No. 2 with Karaya Police Station of even date had been transmitted to the G.R.P.S. which had already started

an unnatural death case. Having regard to the public interest which was generated consequent to death of Riz and the media publicity over the

issue, the State Government had considered it proper to hand over investigation to the CID. The CID started investigation from the stage the GRP,

Dum Dum reached. The only provision available to the CID to compel attendance of witnesses was Section 175 of the Code and as such notices

there under were issued whenever necessary. The CID had collected considerable material and was on the verge of completing the investigation

when this Court by order dated 16.10.07 ordered investigation by the CBI.

33. Regarding fate of the report of the CBI, he contended that the report of the CBI is a nullity and is practically useless. Tested with reference to

Section 6 of the DSPE Act, it is made in violation thereof. Even the CBI disregarded Regulaiions 9.3 and 10.1 of Chapters 9 and 10 of the

Manual respectively. Since parties were not furnished with copies of the report, he expressed inability to make submissions in respect of its

contents but contended that in the event the State is required to take further action in terms of the report against some of the city police officers,

non-furnishing thereof would amount to principles of natural justice and reliance in this connection was placed on the decisions reported in D.K.

Yadav Vs. J.M.A. Industries Ltd., ; Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and

others, Dr. Hari Ram (Co-Education) Higher Secondary School and A.K. Kraipak and Others Vs. Union of India (UOI) and Others, It was also

urged with utmost respect that apart from anything else, parties are entitled to have copy of the report on the principle that it might create an

influence on the mind of the Court unknowingly.

34. In conclusion, it was submitted that the writ petition be dismissed.

35. Mr. Pradip Ghosh, learned Senior Counsel for the respondent No. 12 commenced his argument by submitting that his client had become the

victim of the writ petition, finding himself in an unenviable position. Till date, he has not been found guilty of any offence though as a result of

publicity by the media over the death of Riz, his right to life protected by Article 21 of the Constitution has been thoroughly abrogated. The ordeal

faced by respondent No. 12 due to media publicity whereby he has already been found guilty though proof thereof by evidence is not yet

established has had serious repercussions since the image and prestige of the respondent No. 12 has been lowered in the eyes of everyone.

Without any finding of guilt recorded against him by a competent Court and despite being entitled to all safeguards provided in the Constitution as

well as in the other laws, the report of the CBI indicting the respondent No. 12 has violated his basic human rights. Relying on the decision

reported in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, it was contended

that for a direction to the CBI for conducting enquiry, the High Court must reach a conclusion on the basis of pleadings and material on record that

a prima facie case has been made out and the right to life under Article 21 of the Constitution includes the right of a person to live without being

hounded by the police or CBI to find out whether he has committed any offence or is living as a law abiding citizen.

36. According to him, situations for entrusting investigation with the CBI are when the Court directs it to act as its instrumentality and when

directed by the Apex Court in exercise of power conferred by Article 142 of the Constitution. For entrusting the CBI with an investigation, there

has to be overriding reason as justification for making a departure from the ordinary laws. A person who is otherwise not guilty of blameworthy

conduct must not be made vulnerable to investigation. He submitted that the writ petition does not make out any case for investigation by an extra-

ordinary body such as the CBI, bypassing the ordinary investigating agency, since information given by the petitioner No. 2 by letter dated 21.9.07

addressed to the Officer-in-Charge, Karaya Police Station in relation to unnatural death of Riz does not by itself disclose commission of any

offence (unnatural death not being an offence within the meaning of the IPC). Since the letter dated 21.9.07 did not disclose any cognizable

offence, the police was not bound to register any FIR on the basis thereof and thus there was no reason for the petitioners to claim an order from

this Court that the CBI ought to be entrusted with investigation into cause of unnatural death of Riz. In fact, the Court itself was not sure about any

cognizable offence having been committed. No direction in that behalf thus could be issued and it is for this reason that instead of a direction to

investigate a cognizable offence, the cause of unnatural death of Riz was directed to be investigated.

37. He then submitted that the CID was well within its right to conduct preliminary enquiry for ascertaining whether information given to the police

had any substance or not. Conducting of preliminary enquiry by the CID, without registering any FIR after post-mortem had been conducted was

contended not to be contrary to the provisions of law. That the police before recording FIR and conducting investigation on the basis thereof is

empowered to collect information was supported by placing reliance on the decision of the Apex Court in Rajinder Singh Katoch (supra).

38. Mr. Ghosh next contended that involvement of some police officers in the alleged offence was sought to be made out a ground for asking the

CBI to investigate without specific averments that all the police officers of the State police including the officers of the CID would be biased and

thus would not be able to conduct investigation properly. If the petitioners" plea is to be accepted, Then on every occasion when an offence is

committed by a police officer, a special investigating agency has to be called on to investigate such offence. CID being an independent body

subordinate to the Director General, West Bengal Police and having no connection whatsoever with the Kolkata Police, he submitted that there

was hardly any cause for apprehension that investigation being carried out by the CID would be influenced by the then Commissioner of Police,

Kolkata Police and other senior officers. In this connection he referred to the decisions reported in H.C. Narayanappa and Others Vs. The State

of Mysore and Others, People"s Union for Civil Liberties Vs. Union of India (UOI) and Another, and State of Maharashtra Vs. Dr. Budhikota

Subbarao,

39. Assuming that at the initial stage presence of the respondent No. 3 as Commissioner of Police could have influenced the investigation

conducted by the officers of the CID, he contended that the likelihood of bias affecting the investigation to be conducted by the State police

agency which prompted the Court to pass the interim order no longer survived with the transfer of the police officers concerned to inconsequential

posts and the petitioners could obtain relief under ordinary law in the changed circumstances.

40. According to him, departure from the ordinary procedure of investigation resorted to by the Court was not warranted on facts and in the

circumstances. Remedy u/s 156(3) of the Code could be invoked by the petitioners. The interim order had spent its force and in the interest of

justice, injustice caused to a party by an interim order ought to be undone. The interim order is in aid of a final order and it is settled law that once

the Court takes up hearing of a petition finally, it has the power, at the time of passing final order, to take a view different from the one taken at the

stage interim order was passed and to undo any wrong that has occasioned by the interim order, as far as it lies within its power, in the interest of

justice. He asserted that it would be within the competence of the Court to recall the order having regard to the changed factual position as well as

the present legal position. Reliance in this connection was placed on the decisions reported in (2003) 9 SCC 671, National Bal Bhawan v. Union

of India and Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, in this connection.

41. Next, he adopted the submissions of the learned Advocate General in relation to existence of efficacious speedy alternative remedy and while

relying on the decisions cited by him additionally relied on the decision reported in Tilokchand and Motichand and Others Vs. H.B. Munshi and

Another,

42. The respondents having disputed the allegations made in the writ petition, he next contended that disputed questions of fact have surfaced for

determination and the Writ Court should be loath to adjudicate on the basis of such disputed questions of fact. Reference in this connection was

made to the decision reported in 2000 SCC 1248, Pinki Basra v. State of Punjab and Ors.

43. On the extent of Court''s power to direct CBI investigation, Mr. Ghosh submitted that undoubtedly the Writ Court has the power to entrust the

CBI with an investigation of any particular case but such direction can be given only in the rarest of rare cases where there is sufficient material to

come to a prima facie conclusion that there is a need for investigation by the CBI. There being a well-defined hierarchical administrative set up of

the police in the State which is the appropriate investigating agency, direction to the CBI to investigate is likely to create an impression that all is not

well with the statutory agency which is likely to cause a stigma. He referred to the decisions in Sahngoo Ram Arya (supra). Sampat Lal (supra),

and Common Cause, A Registered Society Vs. Union of India and Others,

44. He referred to the interim order dated 16.10.07 passed by this Court on this petition to emphasize the point that the Court had directed

investigation of the unnatural death of Riz by the CBI and nothing more. He criticised the action of the CBI in registering FIR u/s 302 of the IPC

and causing investigation of alleged murder. In this connection he echoed the submissions of the learned Advocate General that the actions of the

CBI are ultra vires and its conclusions, as indicated in the report, are a nullity. Since the CBI acted in a manner which is at variance with the

direction of the Court and overreached the order of the Court, the entire investigation stands vitiated. In this connection, he relied on the decisions

reported in Bidi, Bidi Leaves'' and Tobacco Merchants Association Vs. The State of Bombay, Savitri Rawat Vs. Govind Singh Rawat, and The

Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, .

45. He proceeded to argue that the CBI could, without registration of any FIR, investigate the case. In support of such submission reference was

made to the Manual which provides for a preliminary enquiry without registering any FIR as also the decision reported in 2007(1) SCC 630,

Sashikant v. CBI wherein provisions of the Manual were noted.

46. It was then contended by him that the Court having directed CBI to ascertain the cause of death, it should have acted as an agency entrusted

to find facts like a Special Officer appointed by the Court, The order did not inhibit conducting of enquiry but registration of FIR amounts to

usurpation of power by overreaching the limits and as a result, a fact finding enquiry has been sought to be converted into a regular police case.

Reference in this regard was made to the decision reported in Bandhua Mukti Morcha Vs. Union of India (UOI) and Others,

47. Investigation by the CBI in the present case, according to him, has violated respondent No. 12''s fundamental rights guaranteed by Articles 14

and 21 of the Constitution of India. What was meant to be a fact finding enquiry for the purpose of ascertaining the cause of death of Rizwanur

was converted into an investigation u/s 157 of the Code without following the safeguards provided in the statute thus exposing a person like the

respondent No. 12 to an extra ordinary procedure which is harsher and more onerous than ordinary procedure mandated in law which by itself

amounts to violation of Articles 14 and 21 of the Constitution of India. Reference was also made to the decision in A.R. Antulay Vs. R.S. Nayak

and Another, for the proposition that if a discrimination is brought about by judicial perception and not by executive whim, if it is unauthorized by

law it would be in derogation of the right of the respondent No. 12 and that when injustice is brought to the notice of the Court it should not feel

shackled and decline to rectify that injustice or otherwise the injustice noticed will remain for ever a blot on justice.

48. The report of the CBI, he continued, is nothing but a culmination of iliegal exercise of power and hence is vitiated. The Court had directed

enquiry, limited in the sense that the cause of death has to be ascertained and the CBI having come to a finding that Riz had committed suicide, the

matter ought to have been allowed to rest awaiting further orders of Court. According to him, suicide in itself is not an offence but attempt to

suicide is, and for every suicide it cannot be said that there must be an abettor of such suicide. The CBI, according to him, had gone out of its way

to record that it is a case of suicide abetted by some of the respondents.

49. Next, he contended that every citizen has a right to obtain copy of FIR which is a public document and it is settled law that the FIR itself can

be challenged. Reliance in this connection was placed on the decision reported in State of West Bengal and Others Vs. Swapan Kumar Guha and

Others, In terms of Section 157 of the Code, the Officer-in-Charge of the Police is obliged to send the report to the jurisdictional Magistrate

without any delay so that while the Magistrate is kept informed of registration of the case, the accused has a right to obtain necessary copy of the

FIR for approaching the appropriate Court of Law for remedy. But in the instant case though FIR was lodged surreptitiously, the same was not

sent to the learned Magistrate having jurisdiction thereby making it impossible for the respondent No. 12 to seek a legal remedy before the

appropriate Court in terms of provisions contained in the Code. Since fact of registering a case on the basis of the FIR lodged by CBI was kept

under wraps till such time it was disclosed by the CBI in its affidavit, respondent No. 12 was precluded from laying his hands on it. Copy of the

FIR not having been sent to the jurisdictional Magistrate, it was contended that there has been non-compliance with the provisions of the Section

157 of the Code which is fatal. Reliance in this connection was placed on the decision in Rajeevan and Another Vs. State of Kerala, The

misadventure of the CBI has caused serious prejudice to the rights of the respondent No. 12 who, though is shown as an accused, is also entitled

to equal protection of the law. Decisions in Bhajan Lal (supra), Roy V.D. Vs. State of Kerala, and Delhi Administration Vs. Ram Singh, were

relied on in support of the proposition that the investigation carried out by the CBI was not legally competent and Court has ample power to

invalidate such investigation by quashing the FIR.

50. He reiterated his claim that the CBI having filed a report before this Court, the respondent No. 12 is entitled to a copy thereof in consonance

with principles of natural justice and fair play. Disclosure of report, according to him, is not impermissible and he urged that the parties may be

allowed to deal with it. Reference was made to the decision reported in Maniyeri Madhavan Vs. Sub-Inspector of Police and others, in this

regard.

51. It was then argued that when the statutory investigation was not allowed by the Court and investigation was directed to be conducted by an

incompetent authority, the result cannot be relied on. Other than vague allegations, there are no other tangible materials to make out a case against

him the respondent No. 12.

52. He also contended that the action of the CBI is in violation of Article 20(3) of the Constitution of India. The respondent No. 12 was never

informed that he had been named as an accused in the FIR till such time the Court had made an observation in this behalf in course of hearing.

Having been named as an accused, the respondent No. 12 was entitled to the fundamental right against self-incrimination under Article 20(3). In

this connection, the decisions reported in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, , Nandini Satpathy

Vs. P.L. Dani and Another, ; Nandini Sapathy v. P.L. Dani, and 1966(384) US 436, Miranda v. State of Arizona were relied on.

53. According to him, the CBI had served upon respondent No. 12 a notice u/s 160 of the Code calling upon him to appear as a witness without

stating that an FIR had already been registered and that the respondent No. 12 was named as an accused therein. There was thus concealment of

facts by the CBI. There was also violation on the part of the CBI not to extend protection available under Article 20(3) and it amounts to fraud.

54. Before parting, he submitted that the role of the media in the present case has definitely interfered with administration of justice. A pure and

simple suicide, as a result of media glare was presented as murder. He questioned the propriety of the actions of the media and urged this Court

relying on the decision reported in M.P. Lohia etc. Vs. State of West Bengal and Another, to deprecate interference by the media in respect of

matters which are subjudice.

55. He concluded by submitting that registering an FIR and investigation pursuant thereto were unwarranted and without any authority of law and

consequently the report submitted by the CBI is illegal, unauthorised, void and cannot be acted upon in law and liable to rejection. No case for

grant of relief by the Writ Court had been made out by the petitioners and the writ petition, accordingly, is liable to be dismissed.

57. Mr. Joymalya Bagchi, learned Counsel represented the respondent No. 13. He adopted the arguments of the learned Advocate General and

Mr. Ghosh and argued a few other points, According to him, parameters for substituting ordinary investigating/law enforcement agency by another

agency requires an exceptional case. Since the writ petition was moved a week after unfortunate death of Riz, the core question which arises for

determination is as to whether such an exceptional case was made out or not which called for entrusting the CBI with investigation of the cause of

his unnatural death. He urged that the Court must examine as to whether the prayers, interim and final, made by the petitioners could have and

presently can be allowed.

57. While referring to the complaint lodged by the petitioner No. 2 dated 21.9.07, he submitted that on that date the petitioner No. 2 was not

aware of the cause of death of Riz. However, the petitioners had pleaded in the petition that Riz had been killed/murdered. What warranted the

change in perception of the petitioners, according to him, has not been disclosed.

58. If there be change of mind emanating from additional information, that ought to have been communicated to the Officer-in-Charge of the police

station. As on date of presentation of the petition, communication of a cognizable offence having been committed was not made. The

transformation in the mind of the petitioner No. 2 was not made clear by stating anything in the writ petition regarding alleged murder of Riz.

59. There being no exceptional case for investigation by the CBI, he contended that the order dated 16.10.07 was not warranted on facts.

60. Next, it was contended that law and order being a subject included in List 2 of the VIIth Schedule of the Constitution, separation of powers

which is a basic feature of the Constitution was sought to be interfered with or at least suspended by reason of the order dated 16.10.07. The facts

were not such that a case for investigation by CBI had been made out. The Court, therefore, erred in passing such an order.

61. Even otherwise, he contended, by the order dated 16.10.07 the CBI was not directed to investigate any crime. The primary duty of a citizen to

communicate commission of a cognizable offence was not fulfilled. Therefore, the condition precedent for exercise of power u/s 154(1) of the

Code was non-existent. Therefore, registration of an FIR by the CBI is absolutely illegal.

62. Next, he referred to paragraph 26 of the writ petition where the petitioners had assigned reason as to why a CBI probe was necessary.

According to him, very wide of proposition of law had been canvassed. Fact that one police officer may be biased cannot end in a conclusion that

the entire cadre would be biased and the entire police force in the State would act in concert. The Commissioner of Police, Kolkata Police is

neither the head of organisation like CID nor any case of brotherhood of uniform has been made out. In this connection reliance was placed on the

decision reported in Ram Prakash Singh Vs. State of Bihar, By reason of changed circumstances, he argued, likelihood of bias is rendered remote

which is an important factor to be taken into consideration. Reference was made to the decision reported in State Bank of Bikaner and Jaipur Vs.

Srinath Gupta and another, Since the petitioners had not pleaded that the CID investigation is contrary to the provision of the Code, likelihood of

bias stood obliterated.

63. On the authority of the decision in Shasikant (supra) and Rajendra Singh Katoch (supra), he urged the Court to appreciate that the action of

the CID in conducting preliminary enquiry cannot be branded as contrary to law.

64. By relying on the decisions in Rubabbuddin Sheikh Vs. State of Gujarat and Others, and Rubabbuddin Sheikh Vs. State of Gujarat and

Others, , it was contended that direction to CBI to enquire and/or investigate must be preceded by a prima facie satisfaction that the statutory

investigative agency has not been discharging its duties properly and that if it is difficult to come to a conclusion that investigation is not proceeding

towards the correct direction, CBI investigation should not be ordered.

65. It was then contended that unless there is a specific direction by the Court to register an FIR on disclosure of cognizable offence and to

conduct investigation in respect thereof, the CBI is precluded from registering an FIR on its own without obtaining permission from any Court. He

referred to the decision of the Division Bench of this Court reported in Association for Protection of Democratic Rights Vs. State of West Bengal

and Others, and referred to paragraph 160 thereof to contend that a specific direction was given by the Division Bench to register and/or initiate a

criminal proceeding in accordance with law which was conspicuously absent in the order dated 16.10.07. The CBI within six days of the order

dated 16.10.07, without having any additional material, had lodged a case/FIR u/s 302 of the IPC. By so doing, the CBI already reached a

conclusion that it is a case of murder and as the cause of death is already known, the whole purpose of investigation as to the cause of death was

rendered meaningless. The CBI could not have register a case for murder even on the date of investigation since information given to Karaya

Police Station was one of unnatural death and not of any cognizable offence. Therefore, registration of the FIR by the CBI is contrary to law.

66. He continued by submitting that there being no authorisation by the Court, the report of the CBI following investigation conducted on the basis

of such an FIR is unauthorised and non est, CBI not having the statutory authority to investigate a crime in the present case, prayer for filing police

report travels beyond the authority delegated to it and cannot form the basis of any prosecution. Report of cause of death was called for in aid of

the present proceeding and the order was not meant to supplant the ordinary investigative process.

67. There being absence of a case of failure to discharge statutory duty by the investigative machinery of the State, the likelihood of any bias in

conducting investigation not surviving with the transfer of the concerned police officers and the petitioners having the liberty of approaching the

appropriate forum, he contended that the terms of the interim order do not warrant continuation. In the result, the writ petition is liable to be

dismissed.

68. Mr. Pal, learned Senior Counsel representing the respondent Nos. 3, 5, 7, 8 and 9 put forth the following submissions.

69. On the point of maintainability of the writ petition, he submitted that the writ petition does not disclose a cause of action, it involves hotly

disputed facts, and verification of the contents of the writ petition is defective since paragraphs 2 and 23 thereof and contents of paragraphs 4, 6

and 15 of the supplementary affidavit have been affirmed as true to the knowledge of the deponent which is ex facie bad and incurable. Reliance in

this connection was placed on the decisions of the Apex Court reported in The State of Bombay Vs. Purushottam Jog Naik, and Savithramma,

Vs. Cecil Naronha and Another, he urged that the writ petition not being maintainable deserves to be dismissed.

70. Preliminary submissions made by him are noted below:

1) Since an interim order can only be in aid of the final relief and not beyond it, the interim order dated 16.10.07 ought to be construed as limiting

the CBI investigation as prayed for in the writ petition and not against either Prasun Mukherjee or Gyanwant Singh.

2) Having regard to the law laid down in Common Cause (supra), the prayer in the writ petition for investigation by CBI into the acts and conduct

of these persons and to find out whether or not they have committed any offence cannot be granted since it is not permissible in law.

3) No criminal case was filed by the petitioners (i.e. complaint u/s 200 of the Code or petition u/s 156(3) of the Code) and no complaint was

lodged with the police station disclosing commission of cognizable offence by any of the police officers. The complaint dated 21.09.07 lodged by

the petitioner No. 2 does not contain any reference to these police officers and the entire grievance is against respondent No. 12. The impieadment

of the police officers is only an afterthought. The petitioners have therefore failed to make out any case of inaction of the State to conduct any

investigation into any offence that might have been committed by these police officers.

71. On the Court''s order dated 16.10.07, he contended that the order directing CBI to investigate is ultra vires the Constitution which makes law

and order an exclusive state subject in List II of the 7th Schedule of the Constitution. CBI has no power and jurisdiction to investigate in respect of

offences of murder, homicide, aiding and abetting suicide as it has done in the instant case. Detailed submissions were made in this connection by

referring to the provisions of the DSPE Act and particularly Sections 3, 5 and 6 thereof.

72. It was further submitted by him that the conclusion arrived at by the Apex Court in Sampat Lal (supra) is not law declared under Article 41 of

the Constitution: conclusion therein is virtually based on the consent given by the learned Lawyer for the State. No consent having been granted by

the State of West Bengal u/s 6 of the DSPE Act for exercise of power and jurisdiction by the CBI in the State of West Bengal in respect of

offences u/s 306/506/120B of the IPC, the observations in the report of the CBI regarding recommendation of charges under the aforesaid

Sections against the respondent Nos. 5, 8 and 9 is totally beyond its jurisdiction, illegal and ultra vires the Constitution.

73. He adopted the submissions of learned Advocate General to contend that the CBI has proceeded on a misreading of the order dated

16.10.07 and consequently its action and report are ultra vires.

74. He next contended that the interim order dated 16.10.07 cannot in any way restrict the scope of the final order. According to him reasons

disclosed in the interim order are ex facie erroneous. According to the scope of enquiry/investigation u/s 174/175 of the Code, it could have been

carried on upto the date of receipt of post-mortem report finally. It is his contention that only after obtaining such post mortem report can the final

report of a reported case of unnatural death u/s 174 of the Code be filled in and submitted to the appropriate Magistrate. It is a matter of record

that the State Investigating Agency (at that time CID) could not complete its investigation u/s 174 since prior thereto interim order dated 16.10.07

was passed by this Court. As a result, the final report of the unnatural death case could not be submitted. Reference in this connection was made

to page 7 of the affidavit dated 5.3.08 and Annexure ""R-2"" thereto filed on behalf of the State wherefrom it would appear that the portion of the

form of final report has been kept blank which could only be filled up after receiving the post-mortem report finally. These could not have been

known to the learned Judge at the time of passing interim order since these were not placed before the Court.

75. Regarding the CBI''s actions after order dated 16.10.07, it was submitted that the Court by order dated 16.10.07 while directing CBI to

investigate into the cause of unnatural death of Riz did not allow the petitioners'' other prayer for handing over investigation by CBI in relation to

allegations made against respondent Nos. 5, 8 and 9. Though the first part of prayer (e) of the petition was allowed by the Court, the other part

was not allowed and, therefore, should be deemed to have been rejected by the Court. Thus CBI acted without jurisdiction in purporting to

investigate into allegations made against the police officers.

76. Also, the CBI had no jurisdiction to investigate in view of the bar u/s 6 of the DSPE Act. The scope of the order of the Court was restricted to

investigation of unnatural death of Riz in relation to U.D. Case No. 183/07, to be carried out u/s 174 of the Code for finding out the cause of

unnatural death and nothing more. Consequently, the order dated 16.10.07 lifted the bar of Section 6 in relation to this limited investigation, and for

any offence beyond investigating into the cause of death, the bar of Section 6 would apply and hence the CBI had no jurisdiction to cause any

investigation beyond this limited scope. CBI report is without jurisdiction insofar as it extends beyond investigation of unnatural death case. All

findings and observations in the CBI report against the police officers are thus ultra vires and illegal.

77. The action of the CBI in straight way registering an FIR without a preliminary enquiry was also subjected to criticism by Mr. Pal. According to

him the Manual in Chapter 9 (Clause 9.3) contemplates preliminary enquiry in case of an unnatural death. Without any such enquiry, the CBI took

the unusual step of registering murder case u/s 302 which is contrary to the Manual. It was also contended that the FIR allegedly drawn up by the

CBI was made over to the Court of the learned Chief Metropolitan Magistrate, Calcutta on or about 17.11.07 after an unexplained delay of 30

days of its registration and that the CBI did not approach the Jurisdictional Magistrate at Sealdah. Since the writ petitioners did not allege that the

accused police officers are guilty of abetment of suicide, the CBI by arriving at such finding proceeded beyond the writ petition.

78. With regard to non-disclosure of report of the CBI to the parties, it was contended that the scope of the writ petition cannot be expanded by

virtue of such which was not made available to the respondents represented by him as a result whereof they had no chance to indicate their stand in

relation thereto. The CBI report being a subsequent event and the respondents not having had the opportunity to consider it or deal with it and in

the absence of averments in the writ petition or in the affidavits, the Court may not reach a conclusion that further steps are required to be taken on

the basis thereof which may contain observations/findings against the respective respondents. In this connection, reliance was placed on the

decision reported in Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others,

79. Next, he contended that non-disclosure of the report of the CBI is violative of principles of fairness and would render this proceeding illegal

and void. Such non-disclosure is a fatal defect in that it is contrary to basic canons of justice. Once the adjudicator of a proceeding looks into a

document, irrespective of the result that such look might produce a litigant simultaneously must be allowed access to such document and failure

would constitute violation of principles of natural justice. The authorities relied on in this connection are reported in The State of Punjab Vs. Bhagat

Ram, Kashinath Dikshita Vs. Union of India (UOI)and Others, Mohd. Quaramuddin (Dead) by Lrs. Vs. State of A.P., State Bank of India and

others Vs. D.C. Aggarwal and another, S. Parthasarthi Vs. State of Andhra Pradesh, Inderpreet Singh Kahlon and Others Vs. State of Punjab

and Others, M.C. Mehta Vs. Union of India (UOI) and Others, State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., and Union of India

and others Vs. Mohd. Ramzan Khan,

80. He contended that no privilege was claimed in respect of the report of the CBI and not allowing the parties access thereto would be contrary

to law. The decision in S.P. Gupta Vs. President of India and Others, was referred to in this connection.

81 The recommendation of the CBI in relation to initiation of disciplinary proceedings against the respondent Nos. 5, 7, 8 and 9 was also severely

criticized by him by submitting that the CBI transgressed its limit. Service conditions, including disciplinary proceedings and penalty that can be

imposed against them are governed by statutory rules subject to Articles 310 and 311 of the Constitution. Whether or not a disciplinary

proceeding should be initiated against a particular officer is the exclusive domain of the respective disciplinary authorities of the officers. Reliance in

this connection was placed on the decision reported in Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another,

Referring to the Manual of the CBI, it was contended that it is fallacious to refer thereto as the source of power of CBI to recommend disciplinary

action, since the Manual cannot enlarge the scope of the DSPE Act which does not empower CBI to recommend disciplinary action. In any event,

it was contended that the investigation conducted by police agency under the provisions of the Code can only end in a report in final form and not

in recommendation of disciplinary proceedings. The recommendation being totally beyond the jurisdiction of the CBI and ultra vires the

Constitution, he urged the Court to set it aside.

82. No case, it was submitted, had been made out against Prasun Mukherjee, respondent No. 3. The petitioners had not made any prayer for

investigation by the CBI in relation to any allegation against respondent No. 3. That apart, neither any declaration was prayed for against him on

the basis of Article 21 of the Constitution nor Rule Nisi has been prayed for against him. Therefore, the writ petition is liable to be dismissed

against respondent No. 3 with compensatory costs. In this connection he referred to the decision reported in Ganapati Madhav Sawant (dead)

through his Lrs. Vs. Dattur Madhav Sawant, for the proposition that scope of the writ petition has to be restricted to what has been pleaded

therein and its scope cannot be expanded without amendment.

83. By referring to the transcript of the press conference of Prasun Mukherjee as produced by Kolkata T.V. in compliance with the Court''s order,

it was contended that respondent No. 3 had never stated that it was transparent that Riz had committed suicide, as alleged in the writ petition; on

the contrary, he had commented in such press conference that Riz seemed to have committed suicide apparently. Further, the word transparent

was used by the respondent No. 3 in the press conference in a different context and not in respect of the cause of death. No conclusive opinion as

to cause of death was given by the respondent No. 3 at the press conference and it stands established from the transcript produced in Court.

84. The observations made by the learned Judge in the interim order dated 16.10.07 to the effect that the Commissioner of Police had made

comments which, prima facie, have every likelihood of prejudicing any enquiry into cause of death is not based on records which have now been

made available to the Court. Therefore, it was submitted with respect that the Court can and should hold that there was no ground for displacing

the State machinery of investigation and to hand over investigation to the CBI.

85. Countering the allegation of failure on the part of the respondent No. 3 to act on the letter dated 30.8.07 written by Riz and Priyanka, it was

contended that the allegation is absolutely incorrect. The said letter was addressed to the Commissioner of Police and not personally to respondent

No. 3. It was received by the receiving Section of police headquarters at Lalbazar but was never placed before the respondent No. 3 as it was

routed out of police headquarters at Lalbazar to another police station on the point of jurisdiction. It was ultimately routed back to Kotkata Police

headquarters on 25.9.07. By that time, Riz had died. It was. further submitted that respondent No. 3 having been transferred from Kolkata Police

immediately after death of Riz is not in a position to substantiate the course of the said letter dated 3.8.07.

86. Next, it was urged that the petitioners had also failed to make out any case against Gyanwant Singh, respondent No. 7 for CBI investigation

into his conduct and, therefore, the acts and conduct of respondent No. 7 could not have been made the subject-matter of CBI investigation.

87. While defending respondent No. 7, Mr. Pal contended that allegations made against him are to be found in paragraph 10 of the writ petition in

relation to the incident that purportedly took place on 4.9.07 and paragraph 6 of the supplementary affidavit. It was denied that the respondent

No. 7 had called Riz and Priyanka at Police Headquarters, Lalbazar and that he had ever met Riz or any of his family members. In respect of the

allegation regarding T-shirts, the stand of the respondent No. 3 as expressed in paragraph 12 of his affidavit-in-opposition was adopted.

According to him, no act or conduct of respondent No. 7 could be construed as violative of rights of Riz protected under Article 21 and.

therefore, the Court ought not to make any order affecting respondent No. 7.

88. On behalf of respondent Nos. 5, 8 and 9 it was submitted by him that since they have been accused of a criminal offence. Article 20(3) of the

Constitution gives them immunity from being compelled to be a witness against themselves and as such they are entitled to exercise their right to

remain silent with regard to the purported events of 1.8.07, 4.8.07 and 8.9.07. Any finding by this Court vis-a-vis prayer (c) of the petition would

necessarily involve adjudication of disputed questions of fact and prejudice their right as accused persons apart from being in violation of Article

20(3). In this connection, decisions in Collector of Customs and Others Vs. Calcutta Motor and Cycle Co. and Others, ; K. Joseph Augusthi and

Others Vs. M.A. Narayanan, Official Liquidator, Palai Central Bank Ltd., and Nandini Satpathi (supra) were relied on.

89. While referring to the written complaints made by Pradip Todi, it was contended on behalf of the respondent Nos. 5, 8 and 9 that they clearly

acted in discharge of their official duties. In view of these complaints, neither of their acts and conduct could be construed as violative of Article 21

of the Constitution nor have the writ petitioners been able to show any. According to him, there is therefore no scope of any action of these officers

being declared to be violative of any right of anyone under Article 21 of the Constitution. In this connection, it was contended that the police is not

barred to give advice and to ensure that there is no confrontation. The people at large with their own private problems approach the police

authorities with the expectation that the very presence of the police would act as a deterrent in the escalation of such problems which otherwise

have the potentiality of leading to undesirable consequences involving commission of offence. This, he submitted, is statutorily recognised in Section

149 of the Code and 23 of the Police Act. Reference was also made to the Indian Standards of Code of Conduct for the Police Human Rights,

International Challenges, by Dr. S. Subramanian (page 262).

90. He also contended that after 8.9.07, even according to the writ petitioners, Riz till his death on 21.9.07 had no contact with Kolkata Police. It

is further revealed from the writ petition that Riz was in touch with Priyanka during this period and, therefore, any nexus or link between the death

of Riz on 21.9.07 and the alleged action of respondent Nos. 5, 8 and 9 admittedly 13 days prior to that does not arise and thereby the requirement

of offences of abetment is not met. Even in the letter to the Karaya Police Station dated 21.09.07, the petitioner No. 2 did not air any grievance

against the police despite he being present in each of the interactions between Riz and Priyanka on the one hand, and the police officers and

respondent No. 12 on the other hand. He cannot thus claim to be unaware of the alleged actions of the police and the allegations that have been

made are clearly an afterthought in order to sensationalise the matter.

91. He concluded by submitting that the writ petition should be dismissed in limine with penal costs and the report of the CBI prepared without due

authority of law should also be set aside.

92. Answering the contentions raised on behalf of the State, the city police officers and the private respondents, Mr. Bandopadhyay, learned

Senior Counsel appearing for the petitioners advanced elaborate arguments touching factual incidents vis-a-vis legal points preceding and following

the death of Riz, and on other relevant issues.

93. According to him, after Riz married Priyanka on 18.8.07, a joint letter was written by them on 30.8.07 addressed to the Commissioner of

Police informing him of their marriage which was solemnised according to their wishes and not under the influence of any pressure and an

apprehension was expressed that respondent No. 12 might threaten them with dire consequences and anti social elements/goondas might be hired

to kidnap them. They sought for protection of the police. Letters with the same contents were also sent to other police officers in the State, namely

the Deputy Commissioner of Police (South Division), the Superintendent of Police, 24-Parganas (South), Officers-in-Charge of Entally,

Bidhannagar and Karaya Police Stations as well as to the Chairman of the West Bengal Human Rights Commission.

94. Immediately thereafter Priyanka started residing in her matrimonial home and also informed the respondent No. 12 of the same. On 31.8.07,

the respondent No. 12 visited the residence of Riz and persuaded him and the petitioners to send Priyanka back, to which she did not accede. On

the same night, two police officers attached to Karaya Police Station viz. Jayanta Mukherjee and Pulak Dutta visited the residence of Riz and

created mental pressure on Priyanka and Riz to persuade her to return to her parents'' houpe which was again turned down by her.

95. Instead of providing assistance and protection to Riz and Priyanka, the authorities of Kolkata Police summoned them on 1.9.07, 4.9.07 and

8.9.07 at Lalbazar. No complaint disclosing commission of cognizable offence by Riz was lodged at any police station and even if lodged, no FIR

was registered. In the absence of registering an FIR for commission of cognizable offence and in the absence of any order from a competent

Magistrate directing investigation of a cognizable offence u/s 156(3) of the Code, the authorities of Koikata Police had no authority whatsoever to

summon Riz at Lalbazar. Referring to the decision reported in H.N. Rishbud and Inder Singh Vs. The State of Delhi, which explains what

investigation"" under the Code would consist of, it was contended that examination of persons should also fall within the ambit and scope of

investigation but in the absence of an FIR, no investigation could have been conducted and calling Riz at Lalbazar was thoroughly illegal.

96. Respondent Nos. 1, 2, 4, 6, 10, 11, 14 and 15 did not make their versions available while countering statements made in the writ petition up

to the incidents of 8.9.07 and therefore the averments made by the petitioners remain uncontroverted. Similar is the position with respondent Nos.

3, 5, 7, 8 and 9 who chose not to controvert the material allegations levelled against them by the petitioners. Reliance was placed on the decision

reported in Smt. Naseem Bano Vs. State of U.P. and others, for applying the doctrine of non-traverse.

97. In course of strenuously urging that the police officers as well as the private respondents had violated Riz''s right protected under Article 21 of

the Constitution, reliance was placed on the decisions reported in Kapila Hingorani Vs. State of Bihar, ; Olga Tellis and Others Vs. Bombay

Municipal Corporation and Others, ; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Kharak Singh Vs. The State of U.P. and

Others, Reference was also made to the decisions of the Allahabad High Court reported in 2002 Cr. LJ 3588 ,Samsher Alam alias Sheru v. State

of U.P. and Smt. Pooja Arya @ Tabassum Bano and Santosh Kumar Vs. State of U.P., for the proposition that the right to life under Article 21 of

the Constitution guarantees the right to privacy as also the right to adult citizens of this country the freedom to marry according to their own wishes

and that such sacrosanct privilege should not be allowed to be rendered non-functional by the police authorities in their effort to dislodge or undo

inter-religious marriages.

98. For the proposition that if one does not break a law, the right to life and liberty would include the right not to be disturbed and the right to be

left alone is recognised to be a right under Article 21 of the Constitution, the decision reported in Directorate of Revenue and Another Vs.

Mohammed Nisar Holia, was relied on. The aforesaid decisions clearly lay down the law that in case of inter-religious marriage if a police officer

or any other person interferes with the marital life of a couple, the same shall amount to violation of Article 21 of the Constitution. Reliance was

also placed on the decision reported in Lata Singh Vs. State of U.P. and Another, to buttress the contention that the police officers had no

business to interfere in the conjugal life of an adult couple and that the Apex Court had directed initiation of criminal proceedings against those who

try to break up inter-caste or inter-religious marriages.

99. In this connection reliance was also placed on the decision in Dr. Dinesh Kumar and others Vs. Moti Lal Nehru Medical College, Allahabad

and others, for the proposition that directions of the Apex Court are not intended to be brushed aside or overlooked or ignored and meticulous

compliance is the only way to respond to such directions. Reference was also made to Article 144 of the Constitution of India which ordains that

all authorities, civil and judicial, shall act in aid of the Supreme Court. The police officers and respondent No. 12 having harassed Riz and Priyanka

and having committed acts of violence, order on the concerned authorities to institute appropriate criminal proceedings against them in view of the

directions given by the Apex Court in Lata Singh (supra) was prayed.

100. The police officers have interfered in the conjugal life of Riz and Priyanka without valid cause and, therefore, have exposed themselves to the

risk of having a declaration against them that they have acted against right to life and liberty. By summoning Riz at Lalbazar without there being a

cognizable case to be investigated on registration of FIR, the respondent Nos. 5, 7, 8 and 9 acted ultra vires the provisions of the Code and

invaded the rights of Riz as protected by Articles 21 and 14 of the Constitution and, therefore, their impugned actions are unconstitutional. The

decision reported in Smt. Soubhagya Vs. The Chief Secretary, State of Karnataka and Others, was relied on while urging the Court to direct the

State to take appropriate disciplinary action against the erring police officers.

101. Inspection of copy of documents seized by the CBI reveal awareness of the respondent 12 as well as the police officers that Riz and

Priyanka were living together as husband and wife and hence there was no scope to entertain any complaint that Riz by deceitful means had

persuaded Priyanka to stay with him or for the police officers of Kolkata Police to summon Riz and Priyanka, unless of course they were forced

upon to create a situation to break the marriage between Riz and Priyanka under the influence of the respondent Nos. 12 and 13.

102. It was further contended that soon after Riz had been reported to be dead, the petitioner No. 2 had lodged a written complaint with the

Karaya Police Station expressing in unequivocal terms that hands of the respondent No. 12 was suspected behind such death. In spite thereof, no

cognizable case was started against respondent No. 12. Enquiry was undertaken by the CID into the unnatural death of Rizwanur, as submitted by

the learned Advocate General before the learned Judge who passed the interim order on 16.10.07, which was thoroughly illegal. In terms of

Section 154 of the Code, FIR relating to a cognizable case was required to be registered and investigation of the same ought to have been

conducted.

103. He submitted that inquiry according to the Code means every inquiry conducted thereunder, other than a trial by a Magistrate or Court.

There was no order of the Magistrate to conduct enquiry in the case of unnatural death of Riz and question of conducting enquiry did not arise.

After Riz"s expiry, post-mortem of his deadbody was conducted on the following date and the corpse was interred on that day itself. In terms of

Section 174 of the Code read with Section 175 thereof, there was no scope to conduct any enquiry into the unnatural death of Riz after the inquest

was over. Scope of investigation u/s 174 of the Code is restricted till inquest. Section 175 has to be read in conjunction with Section 174 and thus

can be invoked only during inquest of the deadbody. The CID had started enquiry, according to the State, on and from 27.9.07 after the corpse of

Riz had been interred and there was thus no scope for the CID to summon any person for investigation u/s 175. The CID had in fact conducted

investigation in connection with unnatural death of Riz without registering a cognizable case on the basis of complaint dated 21.9.07 which is per se

illegal.

104. Regarding the scope of Section 174 of the Code, the decisions reported in Kodali Purnachandra Rao and Another Vs. The Public

Prosecutor, Andhra Pradesh, , Pedda Narayana and Others Vs. State of Andhra Pradesh, Pedda Narayana v. State of A.P. were relied on.

105. It was next contended that in case of commission of a cognizable offence, the provisions contained in the Code do not confer any power on

the police officers to hold preliminary enquiry. According to him, the submissions of learned Advocate General and other learned Senior Counsel

for the parties that CBI ought to have conducted preliminary enquiry before recording an FIR u/s 302 of the IPC has no substance at all. Decisions

relied on by him for the proposition that preliminary enquiry is unheard of in the scheme of the Code are reported in 1994 Cr. LJ 2502, Kuldip

Singh v. State; The Union of India (UOI) Vs. Alliance Assurance Co. Ltd. and Another, ; Shiv Parshad Pandey Vs. C.B.I. through Director, New

Delhi, Raghunathan Vs. State of Kerala, ; Mohindro Vs. State of Punjab and Others, Mrs. Vidya Stokes Vs. State of Himachal Pradesh and

Another, , Giridhari Lal Kanak Vs. State and Others, ; Udaybhan Shuki Vs. State of U.P. and Others, and P. Sirajuddin, etc. Vs. State of

Madras, etc.,

106. The decision in Shashikant (supra) was relied on in support of the proposition that registration of a case is sine qua non for starting an

investigation. The decision reported in Hemant Dhasmane Vs. Central Bureau of Investigation and Another, was heavily relied on in support of the

contention that police referred to in Chapter XII of the Code, for the purpose of investigation, would apply to the officer/officers of the DSPE Act

and that on completion of investigation, report has to be filed by it in the manner provided in Section 173(2) of the Code. According to him

conducting of preliminary enquiry into an offence has been introduced by way of judicial verdict since the same is not recognised in the Code. On

the basis of the aforesaid submissions, he contended that the CBI had not committed any illegality by registering a case u/s 302 of the Code

without making any preliminary enquiry.

107. It was submitted that sequence of events would suggest a clear tendency on the part of the State''s investigating agency of not disabusing its

mind that death of Riz was suicidal based on comments made by respondent No. 3. As a result, no cognizable case on the basis of the complaint

lodged by petitioner No. 2 was recorded and there was no investigation at all in respect of such complaint. In aid of the contention that the police

authorities should have disabused their mind, reliance was placed on paragraph 29 of the decision in Sampat Lal (supra) as also the decision

reported in Patel Lilabhai Ambalal and etc. Vs. Patel Kanubhai Mafatlal and Others, wherein the police was directed to register the written

complaint as FIR for offence punishable u/s 302 of the IPC and other Sections and to conduct investigation.

108. Reliance was also placed on the decision reported in AIR 1982 SC 826, Bhagwant Singh v. Commissioner of Police to contend that there is

similarity in conducting of lackadaisical investigation by the police authorities which was admonished by the Apex Court. Paragraph 49 of the

decision in Bhajanlal (supra) was relied on for the proposition that ""reasons to suspect"" has to be governed and dictated in the facts and

circumstances of each case and at that stage the question of adequate proof of facts alleged in the FIR does not arise. Based thereon it was

submitted that this would demolish the submission of learned Senior Counsel for the respondents that the complaint lodged by the petitioner No. 2

did not disclose any offence. It was contended that the police has no absolute and unfettered discretion whether to prosecute an accused or not

and in this connection reliance was placed on the decision reported in Sheonandan Paswan Vs. State of Bihar and Others,

109. In support of the contention that the High Court has the power to direct CBI to investigate, reference was made to the decisions in Central

Bureau of Investigation Vs. State of Rajasthan and Another, ; Gudalure M.J. Cherian and Others Vs. Union of India (UOI) and Others, ; R.S.

Sodhi Vs. State of U.P. and others, and Central Bureau of Investigation Vs. State of Gujarat, ; The Committee for Protection of Democratic

Rights and Another Vs. State of West Bengal and Others, ; State of West Bengal and Others Vs. Jawahar Singh and Others, are the Division

Bench decisions of this Court which were relied upon for the same effect, Reliance was also placed on the decisions in 1994 Supp (1) SCC 145,

State of Bihar and another Vs. Ranchi Zila Samta Party and another, , State of Bihar v. Ranchi Zila Samta Party for the proposition that pendency

of reference before Constitution Bench of the Apex Court does not bring everything to a grinding halt.

110. On the point that existence of alternative remedy is not an absolute bar to entertain a writ petition, reliance was placed on the decisions

reported in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, ; Sales Tax

Officer, Jodhpur and Another Vs. Shiv Ratan G. Mohatta, ; Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, Mrs.

Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., , ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India

Ltd. and Others, air 2007 SCW 2010, Popcorn Entertainment v. City Industrial Development Corporation; AIR 2007 SCW 6879, BCPP

Majdoor Sangh v. N.T.P.C. and 2008(1) SLR 5, M.P. State Agro Industries Development Corporation Ltd. v. Jahan Khan.

111. He also urged the Court to lay down the law that in a particular case where State action is challenged on the ground of violation of Article 21

and the Article 226 petition is not entertained on the ground of availability of an efficacious alternative remedy, that would amount to exclusion of a

person"s right to seek relief from Court which would hit the basic structure of the Constitution. In this connection he also referred to the decision of

the Apex Court reported in L. Chandra Kumar Vs. Union of India and others, for the proposition that no law can take away the power

exercisable by the Court under Article 226. If that is so, that would hit the basic structure of the Constitution.

112. The decisions of the Apex Court reported in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, ;

Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, K. Venkatachalam Vs. A

Swamickan and Another, and Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs.

V.R. Rudani and Others, were relied on for emphasizing the High Courts power to issue Mandamus under Article 226 and based thereon it was

submitted that since no investigation was conducted by the State police and no FIR was lodged on the complaint of the petitioner No. 2, this Court

rightly directed the CBI to investigate and this was all the more necessary since highly ranked police officers of the State had been accused of

indulging in illegal activities and also to instill confidence in the mind of the public.

113. He then contended that the State did not place complete facts before the Court and in fact has tried to hide and/or suppress facts. Decisions

reported in Mohd. Subrati alias Mohd. Karim Vs. State of West Bengal, and Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar, were

relied on in support of the contention that it is obligatory on the part of the State to place before the Court all the relevant facts relating to the

impugned action truly, clearly and with utmost fairness.

114. Regarding the interim order passed on 16.10.07 it was contended that the cause of death of Riz was directed to be investigated and that

there was no ambiguity in the order. Relying on the decision reported in B.P.L. Ltd. and Others Vs. R. Sudhakar and Others, it was contended

that to understand an interim order one has to look to the prayer made to the interim relief, facts of a given case and the terms of such order.

115. It was next contended that although the Manual makes a provision for preliminary enquiry but it is not obligatory on the part of the CBI to

initiate preliminary enquiry in each and every case inasmuch as the Manual cannot override the provisions of the Code. The decision reported in

Paramjit Singh @ Mithu Singh Vs. State of Punjab Through Secretary (Home), was relied on wherein it has been held that investigation procedure

prescribed in the Code is required to be scrupulously followed by the concerned Officer-in-Charge of a Police Station and that the local Police

Rules do not in any manner override the provision of the Code. The self-same decision was also relied on for the proposition that a defect of

procedural irregularity in investigation, if any, cannot vitiate and nullify the trial based on such defective investigation.

116. Countering arguments of learned Senior Counsel in relation to enjoyment of immunity under Article 20(3) of the Constitution, it was

contended that the said provision has no application in the present case at all. According to him, Article 20(3) is available to an accused person

either before the police officer or before the Criminal Court where the trial is conducted Decisions in Tukaram G. Gaokar Vs. R.N. Shukla and

Others, were referred to for the category of cases where protection of Article 20(3) would be available. It was also contended that if the

respondents had made statements in an affidavit countering allegations contained in the writ petition, the same cannot be treated as evidence in a

criminal case having regard to the decision reported in Parkash Rai Vs. J.N. Dhar,

117. Based on the aforesaid submissions it was ultimately contended tnat the Court may be pleased to declare the acts of all the police officers

involved including respondent No. 3 unconstitutional.

118. Referring to the document being Annexure R-2 of the counter-affidavit of the State, he contended that the incident was first reported by the

guard of a local train that one male trespasser had been knocked down and killed (aged about 55 years). The case proceeded on the basis on

recording of such age. Later on, in another affidavit affirmed on behalf of the State on 31.3.08, the age of the deceased was recorded as 40. Since

the petitioners had not been furnished copy of the CBI''s report it is uncertain as to whether the CBI took note of such difference of age and

whether the dead body of Riz which was handed over to the family of the petitioners was the body which was found on the Railway tracks or not.

Accordingly, it was urged that the CBI ought to be directed to make farther investigation on the point.

119. In view thereof, he prayed that the CBI ought to be directed to proceed further in accordance with law including making a further

investigation regarding the discrepancy in recording of age of Riz which has surfaced from the various documents on record.

120. It was also claimed that a direction be issued for institution of criminal case against all the erring police officers and Ashok Todi and his

relatives for acting in a heinous manner to break the marital tie of Riz and Priyanka, in terms of the decision in Lata Singh (supra).

121. Mr. Ranjan Roy, learned Counsel representing the CBI sought to justify its actions by drawing reference to the order passed by this Court on

16.10.07. According to him, the Court by the said order having recorded a prima facie conclusion that the investigation being carried on by the

CID under Sections 174/175 of the Code was not in accordance with law and having directed the CBI to investigate the cause of death of Riz,

investigation was taken up by it after registering an FIR on the basis of the contents of the writ petition wherein the petitioners had alleged that Riz

had been killed by respondent No. 12 with the aid and assistance of the other respondents. In paragraph 2 of the petition the petitioners had

alleged that Riz had been killed and this constituted prima facie material for the CBI to suspect murder. Since investigation u/s 174 of the Code

was declared not to be in accordance with law and if provision of Section 174 is taken away, the only course open to the CBI was to record FIR

u/s 154 and to proceed with the investigation.

122. According to him, having regard to the totality of the circumstances including the series of incidents which were taken into account, it cannot

reasonably be contended that there were no ingredients of the offence of murder. It is not the law that information full and complete must be laid

for registering an FIR since it need not be encyclopaedic. On the basis of the gist of the facts stated in the petition the FIR was drawn up and

registered and immediately thereafter it was transmitted to the Metropolitan Magistrate''s Court at Calcutta. The ultimate object of investigation

being to link the offence with the offender, the investigation does not stand vitiated by any procedural irregularity not having the effect of causing

miscarriage of justice. He continued by submitting that the Court''s intention could not have been to entrust the CBI with a fact finding enquiry but

the spirit of the order was to empower the CBI to register an FIR and conduct investigation on the basis thereof.

123. He further contended that the direction to investigate included a direction to register an FIR and in this connection attention of the Court was

invited to the decisions reported in Madhu Bala Vs. Suresh Kumar and others, Suresh Chand Jain Vs. State of Madhya Pradesh and Another, and

Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, By relying on the said decisions, he contended that when a Magistrate is approached u/s 156(3)

of the Code and the Magistrate directs the Police to conduct investigation without a formal direction for registering an FIR, the provisions of

Section 156(1) of the Code empowering the police to investigate a cognizable case is to be invoked and, therefore, the police is duty bound to

formally register a case and then conduct investigation thereof. According to him, the ratio of the aforesaid decisions is that even it a Magistrate

does not say in so many words while directing investigation u/s 156(3) of the Code that an FIR should be registered, it is the duty of the Officer-in-

Charge of the Police Station to register FIR regarding cognizable offence disclosed by the complaint because the police officer could take further

steps contemplated in Chapter XII of the Code only thereafter.

124. He next advanced arguments on the effect of the investigation carried out by the CBI. For the proposition that any manner of illegality or

irregularity in investigation does not vitiate either the enquiry or the trial following it unless it can be established that it has resulted in flagrant

miscarriage of justice, he placed reliance on the decisions in A.C. Sharma Vs. Delhi Administration, , Leela Ram (Dead) Through Duli Chand Vs.

State of Haryana and Another, , State of U.P. v. Hari Mohan reported in AIR 2001 SC 142 and Union of India (UOI) Vs. Prakash P. Hinduja

and Another,

125. By relying on the decision in Bhagwant Kishore Joshi (supra), he contended that since receipt of information of the police is not a condition

precedent for embarking on an investigation in terms of Section 157 of the Code and the police can investigate on the orders of the Court having

regard to the word ""otherwise"" occurring in Section 157, the investigation by the CBI cannot be urged to be defective or to have the effect of

vitiating the investigation.

126. He contended that no rights are decided on the basis of an FIR for it only sets the investigation into motion. Having regard to the allegation in

the petition that the respondent No. 12 was responsible for the death of Riz there were ingredients constituting an offence and, therefore, the CBI

could not have started investigation on the premise that Riz had died a suicidal death.

127. He vehemently objected to the prayer of the parties to have a copy of the report of the CBI. By referring to the decision reported in 2005

SCC 415, State of Orissa v. Debendra Nath Padhi, he contended that the right of the accused to have document(s) for defence is only at the stage

of the trial and not prior thereto. That the accused are only entitled to copy of the report u/s 173 of the Code after the same is submitted before the

appropriate Criminal Court was sought to be contended by placing reliance on the decision in Anukul Chandra Pradhan v. Union of India reported

in 1996 SCC (Cri) 1338.

128. He concluded by submitting that the report which has been filed by the CBI before this Court is not to be construed as one u/s 173(2) of the

Code but to assist the Court and to satisfy its conscience that a proper investigation has been conducted on the basis of the materials collected and

that if the Court directs the CBI to conduct further investigation on any particular point, the CBI would be duty bound to give effect to such order.

He accordingly prayed for liberty to the CBI to proceed further according to law.

129. Parties were granted liberty to file written notes on arguments which have since been filed and considered.

130. Having heard arguments advanced on behalf of the respective parties and on scrutiny of the facts and circumstances of the case, the following

issues arise for determination by this Court:

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

(ii) Should the writ petition fail because it does not disclose any cause of action, because adjudication of the issues would involve resolving hotly

disputed facts and because of defective verification of pleadings, as contended by Mr. Pal?

(iii) Whether "Kolkata Police"s inaction" vis-a-vis the complaint lodged by the couple and Kolkata Police in action" vis-a-vis complaints of

Pradeep Todi impugned herein justified? Is respondent No. 3 responsible in any manner?

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

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

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

(vii) Whether the CBI acted ultra vires in registering an FIR for alleged offence or murder and conducted investigation on the basis thereof in a

manner not authorised by law?

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

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

some of the respondents?

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

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

Issue No. 1

131. Whether a writ petition shall be entertained or not having regard to existence of an efficacious alternative remedy is entirely the discretion of

the Court of Writ. Article 226 of the Constitution does not impose any such limitation or restraint. It is one imposed by the Court of Writ in its own

wisdom and is part of its various ''self-imposed restrictions''. Requiring a party to exhaust the alternative remedy prior to approaching the Court of

Writ is not a rule of law but a rule of convenience which does not and cannot oust the jurisdiction of the Court. On a given set of facts a Court of

Writ may refuse to entertain a writ petition in view of availability of an efficacious alternative remedy while exercising discretion judiciously but to

hold that a writ petition owing to such fact is not maintainable in law, to the mind of this Court, is not the correct exposition of law.

132. The law relating to exercise of Writ powers by High Courts under Article 226 has been authoritatively expounded by the Apex Court in L.

Chandra Kumar (supra).

133. It is also significant to note that the Apex Court in its decision in Surya Dev Rai Vs. Ram Chander Rai and Others, has approved the principle

of law laid down by the Delhi High Court in Govind v. State (Govt. of NCT of Delhi) reported in 2003(6) ILD 468 wherein the High Court ruled

as follows:

The power of the High Court under Article 226 cannot be whittled down, nullified, curtailed, abrogated, diluted or even taken away by judicial

pronouncement or by legislative enactment or even by amendment of the Constitution. The power of judicial review of an inherent part of the basic

structure and it cannot be abrogated without affecting the basic structure of the Constitution.

(emphasis supplied)

134. In the decisions of the Apex Court relied on by the learned Advocate General starting from All India Institute (supra) to Sakiri Vasu (supra),

no law could be or has been laid down that a writ petition would not be maintainable in law if an alternative remedy provided by law, which is

efficacious, is not pursued, what has been laid down is that in view of the remedy available to a person aggrieved (by non-registration of a

complaint disclosing commission of cognizable offence by the police and conducting investigation in pursuance thereof) under Sections 154(3), or

under 156(3) or under 200 read with 190 of the Code, a writ petition ought not to be entertained.

135. In the present case the petitioners have claimed that investigation of cause of unnatural death of Riz be entrusted with the CBI and that actions

of the respondent Nos. 4 to 9 be declared as unconstitutional.

136. No Magistrate discharging duties under the Code has the power to direct investigation of any particular offence by the CBI. It is only the

Court of Writ exercising powers under Articles 32 and 226 of the Constitution or the Apex Court under Article 142 thereof that can direct

investigation by the CBI if the circumstances of the case so warrant. In view thereof, the contention that the petitioners have an efficacious

alternative remedy under the Code is untenable.

137. Also, the issue as to whether respondent Nos. 5, 7, 8 and 9 acted ultra vires or not by invading Riz''s precious right to life is one which can

only be determined by the Court of Writ, and not by any magisterial adjudication.

138. It is true, one of the reasons for which the petitioners felt aggrieved was that the Karaya Police Station had not registered an FIR on receipt

or the complaint of the petitioner No. 2 dated 21.9.07. However, fragmentation of causes of action for moving different Courts would have only

given rise to multiplicity of proceedings. The frame of the petition is in conformity with Order 2, CPC principles and all the issues raised therein can

be dealt with by the Writ Court.

139. The contention of the learned Senior Counsel for the respondents that the writ petition is not maintainable, for, the petitioners have not

approached the Magistrate thus cannot be accepted. Therefore, this Court finds no reason to dismiss the writ petition on the ground of availability

of alternative remedy.

140. There is another reason why this Court is disinclined to accept the contention raised by the learned Advocate General, The plea of non-

availing of alternative remedy by the petitioners was raised by him at the time of admission hearing of the writ petition. The learned Judge while

admitting the writ petition, although did not specifically deal with such objection did not also keep the point of maintainability of the petition open.

An objection having been raised but not pronounced upon must be treated as overruled and this Court thus finds no reason to dismiss the writ

petition on the point of existence of efficacious alternative remedy.

141. To lay down a proposition of law, as urged by Mr. Bandopadhyay, that whenever a writ petition is filed praying for enforcement of right

under Article 21 of the Constitution the same ought to be entertained without relegating the applicant to an available alternative forum, for the same

would hit the basic structure of the Constitution, in the considered opinion of the Court would not be prudent. By a number of outstanding

decisions, the Supreme Court has infused LIFE in the letters of Article 21. The various facets of right to life and personal liberty have been noticed

by the Apex Court in paragraph 57 of the decision in Kapila Hingarani (supra). It is not possible for the Court to precisely demarcate the nature of

cases where the Writ Court would be justified in its interference despite availability of alternative remedy and the cases where not to interfere. Each

case has to be decided on its merit. However, when an individual perceives a threat to his life and limb and seeks enforcement of his right to life,

interference of the Writ Court may be more intrusive but to lay down as a matter of rule that a writ petition must be entertained whenever right

guaranteed by Article 21 is sought to be enforced despite availability of an alternative remedy would itself result in impinging on exercise of judicial

discretion by the Writ Court.

142. The issue is thus answered in favour of the petitioners.

Issue No. 2

143. It has been submitted by Mr. Bandopadhyay that the writ petition having been held to be maintainable by this Court by its order dated

16.10.07, the issue cannot be reopened. On readin the said order, this Court is convinced that the learned Judge held the writ petition to be

maintainable in the context of locus standi of the petitioners to present it. Unless a cause of action had been disclosed in the writ petition, the Court

could not have decided the issue of locus standi in vacuum.

144. While being in complete agreement with the learned Judge, this Court would venture to give certain additional reasons in support of recording

its satisfaction that the objection of Mr. Pal (that the writ petition does not disclose any cause of action) has not impressed this Court. A man is

born free and has the right to stay free unless he indulges in unlawful activities which, if proved, may result in penal consequences depriving him of

such right. The Constitution guaranteed this right to Rlz. By marrying Priyanka, he did not commit any crime. Evidence on record is considered

sufficient to demolish the allegation levelled against him by Pradeep Todi. He had, therefore, the absolute right to live a life which is decent,

complete, fulfilling and worth living. According to the petition case, Riz was done to death at the instance of respondent No. 12 and that there has

been no free, fair and impartial investigation of the cause of his death in accordance with Saw. The right of the petitioners to live in the company of

the newly married couple was thus rendered infructuous. The petitioners in law have a right to claim that whoever the offender is, is brought to

book. This is the right which is sought to be enforced by presenting the writ petition. The objection being thoroughly misconceived is overruled.

145. The objection that hotly disputed facts are involved which, necessarily cannot be adjudicated by the Writ Court is equally unmeritorious.

Merely because a question of fact is raised would not justify the Court not to entertain the petition and to require the party approaching it to seek

relief by taking recourse to the ordinary remedies instead of the extra-ordinary remedy of Writs. The Apex Court in ABL International (supra)

after noticing several previous decisions of the Apex Court held that in an appropriate case the Writ Court would have the jurisdiction to entertain

a writ petition involving disputed question of fact since there is no absolute bar to entertain a writ petition in this behalf and that such a ground

cannot be called in aid to refuse its entertainment in all cases as a matter of rule. On the authority of the said decision, the Court would not be

justified in dismissing the writ petition without looking into its merits and ascertaining which of the facts are disputed that cannot be resolved by writ

remedy. The objection, accordingly, fails.

146. Exception has been taken by Mr. Pal in relation to verification of pleadings as contained in paragraphs 2 and 23 of the petition and those

contained in paragraphs 4, 6 and 15 of the supplementary affidavit. In paragraphs 2 and 23 of the petition the petitioners have pleaded that Riz

was killed by hired killers engaged by the city police officers named therein at the instance of the respondent No. 12. The only defect appears to

be that contents of paragraphs 2 and 23 of the petition, with like substance, have been differently verified. While paragraph 2 has been verified as

true to the knowledge of the deponent, paragraph 23 has been verified as his submission. The petitioners while disclosing cause of action had

pleaded that Riz had been killed. Whether or not Riz had been killed is an issue which may fall for a decision before the competent Court

according to law. However, defect in verification of the pleadings contained in the petition, in the considered view of the Court, is not so fatal that it

would warrant dismissal of the writ petition on this ground. Contents of paragraphs 4, 6 and 15 of the supplementary affidavit relate to allegations

of fact which have been verified as true to knowledge of the deponent. No defect is found in verification of pleadings of the supplementary

affidavit. The contention, therefore, stands overruled. This issue is also answered in favour of the petitioners.

Issue No. 3

147. Bandopadhyay has contended with sufficient force that despite seeking protection from high ranking police officers, Riz was not given any

protection at all; on the contrary, he was treated in such a manner by the Kolkata Police as if he had committed an offence punishable under law.

148. Mr. Pal sought to counter the submission by inviting the Court''s attention to the fact that the complaint of Riz and Priyanka dated 30.8.07

addressed to the Commissioner of Kolkata Police never reached the table of the respondent No. 3 since it was routed out of Lalbazar on the

ground of jurisdiction and by the time it reached Lal bazar again, Riz had unfortunately breathed his last.

149. The situation tells a very sony tale indeed. The cry of Riz was not heard by the Kolkata Police. Instead, its officers were busy elsewhere. A

young married couple had sought for police protection apprehending interference in their marital life by the father of the bride. Letters were served

not only on the Commissioner of Police but to other responsible police officers. Apart from the Officer-in-Charge, Karaya Police Station who

deputed Jayanta Dutta, S.I. to conduct an enquiry, others chose to look the other way. Although a report was filed by him acknowledging the fact

of a valid marriage between Riz and Priyanka, respondent No. 12 was not summoned by any of the police officers to elicit information regarding

the apprehension expressed by them. On the contrary, despite respondent No. 12 being aware that his daughter had voluntarily started living with

Riz in his residence, false and frivolous, complaints were lodged by Pradeep Todi one after the other. The alacrity and speed with which these false

complaints were attended to raises eye-brows when juxtaposed with the complaint filed by the couple. Repeatedly, Riz and Priyanka were

summoned to Lalbazar as and when the Todis wished that they be summoned. One wonders whether the city police officers would be so agile and

on their toes if a complaint is sought to be lodged before them by a common man without having the necessary contacts. That the officers of

Kolkata Police care little about such complaints is amply proved when one looks to the complaint of the couple.

150. As is evident from Mr. Pal''s submission, the complaint was never placed before the respondent No. 3 since it was addressed to the

Commissioner of Police whereas complaints of Pradeep Todi, addressed not to an officer in his personal name but to the Deputy Commissioner,

Detective Department were attended to within a very short time of their receipt. The system is such that one cannot but look at the entire facts with

despair. The respondent No. 3 was not allowed to look into complaints of citizens. His subordinates took their own sweet time to enquire into the

complaint, the result of which did not see the light of the day. No one was taken to task. The entire incidents which occurred between 31.8.07 and

8.9.07 are suggestive of the inescapable conclusion that there exist two police stations, Lalbazar for the influential who have easy access to its

corridors, and the local one supposedly for the aam aadmi. It is also not an uncommon sight nowadays that a common man has to even knock the

doors of the Writ Court with a writ petition for a direction on the police to register an FIR which the High Court, in view of the decision in Aleque

Padamsee (supra) and other decisions referred to therein, would not be justified in entertaining having regard to the alternative remedies available

under the Code.

151. Be that as it may, Kolkata Police unnecessarily involved itself in the incident and continued such involvement for oblique reasons instead of

distancing it once it was ascertained on enquiry that the marriage between Riz and Priyanka was legal and valid and Priyanka had expressed her

desire, in no uncertain terms, to live with her husband in his house. No matter how agonised the Todis were and apparently seeming to be justified

in their reaction in asking the police to resolve the issue, once the police officers found that Priyanka was not missing, that she had not been

detained against her wish and that she had married Riz legally, they had no business to interfere in the personal lives of the couple and summon Riz

repeatedly to Lalbazar. Statute does not permit them to act in such manner. The writing placed by Mr. Pal delineating duties and functions of the

police cannot come to the rescue of the officers since apart from lacking in statutory force, the dialogue that the officers of Kolkata Police, initiated

to solve the issue was not bonafide. They were aware of the falsified claim of Pradeep Todi, yet they ventured into unchartered territory. None of

the respondents have really been able to justify as to why Riz and Priyanka were called to Lalbazar. From the version of the respondent No. 3 in

the press conference it is clear that Riz was summoned to Lalbazar not because the police was convinced that his presence is required but because

of the Todis insistence. Riz had been hounded by the police in clear breach of his right to life under Article 21 of the Constitution, significantly

though he had not committed any offence and was living as a law abiding citizen. This Court records its utter displeasure in relation to functioning of

the Kolkata Police force in this regard.

152. At this stage, one cannot but deprecate the stand of the State Government. It failed to file counter affidavit to the writ petition within the time

fixed by the order dated 16.10.07. It then applied for extension of time. The ground for extension of time was that incumbents in the posts of

Commissioner of Police (Prasun Mukherjee), Deputy Commissioner of Police. Headquarters (Gyanwant Singh) and Deputy Commissioner of

Police, Detective Department (Ajoy Kumar) had been transferred and, therefore, no proper counter could be offered. At the same time, prayer

was made for supply of copy of the report of the CBI to enable it to file its counter. Why would the State require the report of the CBI to file a

counter to the writ petition had not been spelt out. Time to file counter affidavit was extended without directing copy of the report of CBI to be

furnished. Then came a cryptic counter affidavit containing particulars of little use. The order of the Court dated 28.2.08 had been misconstrued

was the excuse put forward therefor. That order did not restrict filing of counter affidavit on the point mentioned therein and the expression ''inter

alia'' appears not to have been taken note of by the State. This Court is unable to accept the explanation, for the affidavit proceeds to question the

CBI''s actions taken in purported compliance with the order dated 16.10.07 which the Court by its order dated 28.2.08 did not ask the State to

deal with. There was no dearth of wise counsel. Since the learned Advocate General was representing the State, his advice could have been

obtained for understanding the said order. However, it was not obtained. Even thereafter, two separate affidavits were filed by the State on

31.3.08 (in terms of order dated 26.3.08) and on 2.4.08. The opportunity was not availed of by the State to deal with the contents of the entire

writ petition by seeking further leave of Court. Based on records, it should have laid bare the entire facts before the Court. The conduct of the

State in not disclosing facts, clear and complete, when life of one of its subjects had been taken away in suspicious circumstances which have since

surfaced is appalling.

153. Now the case made out against the respondent No. 3 in the petition, his response and statements made by him in course of the press

conference seeking to justify the police action may be noticed.

154. Though it has been alleged in paragraph 2 of the petition that hired men of respondent No. 3 along with others at the instance of respondent

No, 12 had been instrumental in killing Riz, this Court has noted that absolutely no relief has been claimed against respondent No. 3. However,

whether any relief can legally be or should at all be granted in view of the prayer Clauses of the petition would come up for discussion while a

decision is given on the last issue, provided the Court is satisfied on the basis of the materials on record that there is something against respondent

No. 3.

155. The purported negative role of the respondent No. 3 is sought to be amplified by the petitioners by referring to a newspaper report annexed

to the petition reporting the press conference convened by him as also with reference to his introduction to respondent No. 12 by Snehasish

Ganguiy, the added respondent, for solving the problem of respondent No. 12 which resulted in pressure and influence being created on Riz by the

city police officers.

156. Thrust of the allegations of the petitioners against respondent No. 3 is that in the press conference he had stated that Riz had committed

suicide and it is very transparent. It had also been alleged that respondent No. 3 in no uncertain terms called the reaction of the Todi family (on

finding that their daughter Priyanka who has been brought up with care for 23 years would leave them one fine morning and start a new life with an

unknown youth) natural. It is the further allegation that when asked by a reporter as to why the Kolkata Police intervened in a case between two

adults, he replied ""Who would intervene, the PWD?

157. By filing an affidavit, respondent No. 3 made his version available. It appears therefrom that the press interview was given by him to diffuse

the tension that had built up in the area where Riz resided and that the actions taken by Kolkata Police needed clarification to avoid confusion and

misconception in public mind. While he was emphatic in his statement that no conclusive opinion was given by him as to cause of death of Riz at

the press conference, he asserted in paragraph 6 that his statements have been distorted and quoted out of context by the print media. He used the

word "apparent" while conveying that Riz had committed suicide because he thought it could be a possibility. The veracity and correctness of the

newspaper report annexed to the petition was denied. In course of submission, Mr. Pal contended that the word "transparent" had been used by

him in a different context and he had been misunderstood.

158. He also denied that he was introduced to respondent No. 12 by the added respondent or that he had instructed respondent No. 12 to meet

the respondent No. 5. However, it was admitted by him that the added respondent had introduced Pradeep Todi to him as a family friend in

course of a brief meeting on 7.9.07 and he had been told about a complaint which Pradeep Todi had lodged with the Detective Department

regarding Riz and Priyanka, But. he had neither instructed Pradeep Todi to meet the respondent No. 5 nor did he give any indication that he would

use his personal influence for the benefit of Pradeep Todi.

159. This Court had called for the unedited video recordings of the press conference convened by respondent No. 3 together with transcripts from

various TV channels including Doordarshan. While a number of channels responded with edited recordings, only Kolkata TV could produce a

compact disc containing video recording of the press conference in its entirety. The compact disc together with transcript was filed in Court

alongwith an affidavit. The Court records its appreciation for the assistance rendered by Kolkata TV.

160. Reliance was placed on portions of this transcript by Mr. Pal to demonstrate that the allegations made against the respondent No. 3 are

absolutely baseless.

161. The transcript annexed to the affidavit of Kolkata TV is only of the statements made by the respondent No. 3 on his own immediately on

taking his seat. Transcript of the answers given by the respondent No. 3 to the questions of the reporters present there, however, has not been

provided.

162. The video recording of the press conference has assisted the Court to a great extent to assess the role of the Kolkata Police in relation to the

incidents right from 31.8.07 and to arrive at its findings.

163. It would, therefore, be necessary to reproduce from the transcript statements made by the respondent No. 3 in course of the press

conference to ascertain whether the Kolkata Police was unbiased in its approach, whether the respondent No. 3 was at all posted with all relevant

information or whether despite being aware of all relevant facts he feigned ignorance, and whether there was any attempt on his part to twist facts

to suit the convenience of the force to which he belongs, especially because diffusing of tension was the reason for convening the press conference.

Relevant extracts read thus;

******

In this case if has been learnt that on 18th August these people had gone and registered their marriage. Which happens in several cases. On 3rd

August they leff their home. And the girl left her home. However, the members of the girl"s family didn"t find any clue about the girl and thought

that the girl went missing. In the night the girl rang up at her home and said that she has come to such and such place, I won"t come back home.

From now she will stay with Rizwanur Rahman whom she had married. After hearing the tale from their daughter the family members couldn"t

believe her. Later on they contacted with the boy and rushed to their home at Tiljala.

******

In the next morning the girl"s relative came to Lalbazaar and lodged a complaint of missing. But verbally they requested police not to make the

matter public as it will hamper the reputation of the family and the girl. For that the police did not do anything formally. But both of them were

called to Lalbazaar and were asked that is the girl a major. In such cases the majority of the girl is seen. Once a girl is a major, it is totally upto her

choice what she will do. It is very clear. Usually what we do is when a girl is called missing by her relatives usually they think the girl has been

abducted against her will,, being influenced it seems to be true. Because the family which has nurtured the girl for 18 or 25 to 26 years fails to think

that in a night time the girl would become a member of another family. So they wanted to make us convinced. In this case our duty is to find out the

whereabouts of the persons linked Though in this case the boy and the girl were located as they had an address in Kolkata. And we always try to

do this, once we trace the girl or the boy particularly if a girl is missing our responsibility is found (sic to find) them out. Even a major girl can be

abducted, against her will, or blackmailing, every thing can happen variedly. In that case we call both the parties and try to understand in what

background she had left. Once it is understood then it is made clear to the family that your girl has not been harmed. Your girl is safe. She has not

been taken against her will or anything and if she is a major then it is upto her what she would do. We cannot interfere in the matter. That is what

happened in this case.

******

Number one is in the first day the boy and the girl had same point of view. So they were released according to their will. According to us as she

was a major her choice was respected. She was allowed to go back. She went back.

******

On 4th September, the family members of the girl asked us to give them a scope to talk to the girl and the boy. Accordingly we called both of them

and they came to us voluntarily.

******

However, on 8th the girl''s family members said that they want to lodge a formal complaint of abduction. They said that the girl can''t say like this.

She has been influenced and they lodged a complaint that that their daughter had been kept forcefully without her intention. In this background of

which they were again called.

******

It is very unfortunate that he had decided to commit suicide. Suicide in the sense that he had sent SMS to his friends which we come to know

through several newspapers.

However, in the morning at around 10.30 am it is impossible that one person is being killed and put to the tracks.

******

164. Having perused the records produced in Court, particularly the complaints lodged by Pradeep Todi, this Court cannot but observe that the

respondent No. 3 did not address the press with correct and complete facts. He seemed to be totally oblivious of the facts that Riz and Priyanka

had addressed a representation to him seeking protection; that respondent No. 12 had been to the residence of Riz on 31.8.07 and had persuaded

Priyanka to return; that on a written complaint lodged by Pradeep Todi on 1.9.07, an enquiry was conducted on the order of the Deputy

Commissioner, Detective Department by the respondent No. 9 who found the couple eligible to marry and the marriage certificate was found to be

genuine; and that on false and frivolous complaints and without registering an FIR, Riz was being summoned to Lal Bazar. His version of the Todis''

reaction and the repeated sermons sent to Riz to be present at Lalbazar at their beck and call are clearly suggestive of a partisan attitude taken by

the Kolkata Police without even realizing that by marrying Priyanka, Riz had neither committed any offence nor was Priyanka missing, as alleged

by Pradeep Todi, which was the real cause for the police being pro-active.

165. It is naive to assume that Riz had been to Lalbazar voluntarily as suggested by the respondent No. 3. Immediately after his marriage, Riz

found himself in troubled waters. As and when the Deputy Commissioners (respondent Nos. 5 and 7) required his presence, respondent No. 9

was deputed to bring him to Lalbazar. In such circumstances, there is good reason to believe, as pleaded, that he wilted under pressure and

succumbed to the directives given to him by the police. To suggest that Riz attended at Lalbazar voluntarily was clearly aimed at shifting the focus.

166. The respondent No. 3, being the Commissioner of Police at the relevant time, also- ought not to have defended the reaction of the Todis in

public as well as his subordinates particularly when the police machinery was activated not on the basis of what is true but absolutely on reckless

allegations. Also, the respondent No. 3 being the police supremo having years of experience behind his back should have refrained from making

any observation of the nature that at 10.30 a.m. it is impossible that a person is killed and put on the tracks. It was too early in the day to come to

any conclusion and such observations coming from no other than the Police Commissioner was bound to have an effect on the investigation.

167. This Court is of the further view that the answer reportedly given by the respondent No. 3 to the question as to why the police intervened in a

marital dispute (who would intervene, the PWD?) has not been countered specifically by asserting that no such answer was given. It probably

could not have been disputed by the respondent No. 3 for, it appears from the video recording, that he did answer the question in the manner

reflected in paragraph 25 of the petition and the newspaper report annexed thereto.

168. Now, the question arises as to whether the respondent No. 3, in any manner, is responsible or not?

169. The press conference of respondent No. 3 brings to the fore a veiled attempt on his part to shield his force and subordinates. On the facts the

respondent No. 3 knew or ought to have known, he failed to take into account all the relevant factors, took into account irrelevant factors and

reached a conclusion which no Commissioner of Police, properly directing himself as to his duties, could have reached. Respondent No. 3''s

perception of police powers is also undoubtedly flawed which is amply reflected from the materials on record. Justification of the actions/inaction

of Kolkata Police furnished by him has to be rejected as not valid.

170. It also appears that the respondent No. 3 withheld facts. In his affidavit, what advice he had given to Pradeep Todi when he met him on

7.9.07 is conspicuous by its absence. The fact that Pradeep Todi had met him was not disclosed in course of the press conference. Probably there

could hardly be any justification for keeping these incidents in wraps and as such was not sought to be justified.

171. The respondent No. 3 in the press conference betrayed his serious concern for the family of the Todis without even permitting a peep in his

mind that after all the petitioner No. l had lost her grown up son who had been brought up with care by her for 30 years. There were no signs of

sympathy and no words of condolence for her. It is, however, a question of moral values and this Court would not find fault if a public servant

lacks it.

172. Whether or not there was any personal involvement of the respondent No. 3 in the incidents of 1.9.07, 4,9.07 and 8.9.07 has got to be

established in duly constituted proceedings and this Court would be loath to return any finding on this aspect.

173. For reasons discussed above, this Court is constrained to hold that the respondent No. 3 acted irresponsibly and instead of diffusing tension,

he added fuel to fire.

174. The issue is answered accordingly.

Issue No. 4

175. Allegation against respondent No. 7 is primarily contained in paragraph 10 of the petition. According to the petitioners, he had summoned Riz

and Priyanka at Lalbazar on 4.9.07 and created mental pressure on both. He has generally denied the allegations made against him in the writ

petition while expressing his inability to specifically deny the same in the absence of copy of the report of the CBI wherein recommendation for

initiation of disciplinary proceeding for major penalty against him has been made.

176. Prayer for supply of copy of the CBI"s report made by respondent No. 7 to enable him file his counter affidavit was rejected by the order

dated 28.2.08 and he was given liberty to file it by 6.3.08, By refraining to deal with the allegations specifically for want of report of the CBI, a

ground not tenable in law after the order dated 28.2.08 was passed, respondent No. 7 has himself to blame for failing to traverse the allegations of

summoning Riz at Lalbazar without a cognizable case registered against him and torturing him, and the Court has no other option but to treat the

allegations as uncontroverted. That Riz was indeed called upon to attend at Lalbazar on three occasions including 4.9.07 has been admitted by the

respondent No. 3 in the press conference. Presence of Riz and Priyanka at Lal Bazar on 4.9.07 is also proved from the contents of the complaint

lodged by Pradeep Todi, which has been extracted above.

177. Having regard to the turn of events, this Court has no hesitation to record that respondent No. 7 in the absence of a cognizable case

registered against Riz, having summoned him and created pressure on him invaded his right to privacy and thereby acted ultra vires.

178. Allegations against respondent Nos. 5, 8 and 9 are traceable in various portions of the petition.

179. Mr. Pal, learned Counsel for the respondent Nos. 5, 8 and 9 contended that these respondents remained silent, in exercise of the right

guaranteed by Article 20(3), with regard to the purported events of 1.9.07, 4.9.07 and 8.9.07 and their silence cannot be treated as admissions on

the authority of the decision of the Apex Court in Naseem Bano (supra).

180. Per contra, it is contended that Article 20(3) has no manner of application in the present case for it is not available to one who seeks

opportunity to counter allegations in the writ petition and thereafter chooses not to counter it. Whatever the respondents would disclose in the

affidavit cannot be treated as evidence in a criminal case and hence Article 20(3) cannot be invoked.

181. The decisions cited by learned Senior Counsel for the petitioners and the concerned respondents on the point have been looked into. In the

considered opinion of this Court, ratio of those decisions are useful for understanding the intendment of Article 20(3) and the Court would be

guided in returning a finding one way or the other on the basis of the principles of law laid down therein. However, this Court may note that the

preamble of the Evidence Act, 1872 has since been amcnded together with the definition of "evidence" and hence the decision in Parkash Rai

(supra) would have no application.

182. Article 20 of the Constitution provides for protection in respect of conviction of offences. Clause (3) thereof embodies the doctrine against

self-incrimination. It guarantees the right to a person not to be forced to incriminate himself. It is intended to give protection to a person accused of

offence in criminal proceedings. In other words, it secures the freedom of a person not to be compelled to give evidence that might amount to an

admission or confession of a crime, wherefor his person may be put under restraint by being imprisoned. Though the word freedom is not

mentioned in any of the Clauses of Article 20, by providing that certain things shall not be done to a person his freedom is secured.

183. For invoking Article 20(3) and to have protection guaranteed thereby, three pre-conditions must exist, viz. (i) a person must be accused of

any offence; (ii) there must be a compulsion on him ""to be a witness"", and (iii) it must be ""against himself if any of these is non-existent. Article

20(3) cannot be invoked.

184. Court''s calling upon a party to counter allegations contained in a petition by filing an affidavit, in the considered view of this Court, cannot

amount to a compulsion aimed at procurement of self-incriminatory statements by pressure or force. If a party accused of an offence chooses to

make any statement, he is welcome to do so. But by remaining silent, he cannot legitimately expect the Court to remain silent. The Court would be

justified, in such event, to proceed on the basis of the available materials and to return such finding on appreciation thereof as is warranted in the

facts and circumstances.

185. In this connection one may take note of the decision of the Apex Court in Capt. Dushyant Somal Vs. Smt. Sushma Somal and Another, The

facts therein were that the appellant and the respondent were parents of two minor children, one a daughter and the other a son; they started living

separately as a result of estrangement between them; while the son was in the custody of the respondent pursuant to an order passed under the

Guardians and Wards Act, the son escorted by his grandmother was waiting at a bus stop when the appellant accompanied by three or four

persons forcibly took him away, on the respondent''s complaint police registered a case u/s 363 of the IPC but the search for tracing the son

proved abortive; this led the respondent to apply before the High Court under Article 226 for a writ of habeas corpus directing the appellant to

produce her son; the appellant in answer to the rule denied having kidnapped his son whereupon the High Court then decided to examine

witnesses; pursuant thereto the respondent and her mother deposed in Court but the appellant chose not to cross-examine the witnesses produced

by the respondent or to examine himself or anyone else as a witness; the Court having been satisfied that the son had been unauthorisedly taken

away by the appellant from the lawful custody of the respondent and was being illegally detained by him, a writ of habeas corpus was issued

directing the appellant to produce his son before the Court so that custody of the child could be given to the respondent: the appellant having failed

to do so, he was found guilty of contempt and was directed to be detained in civil prison.

186. The Apex Court had the occasion to hear the appeal against the order committing the appellant to prison for contempt and the petition for

special leave to appeal which was directed against the order of the High Court on the Article 226 petition. The order of the High Court issuing the

writ was upheld. While dealing with the submission of the appellant that he did not give evidence or examine any witnesses on his behalf nor did he

cross-examine the respondent or his mother because in such case he would be disclosing his defence in the criminal case registered u/s 363, IPC

and that compulsion to disclose his defence would be contrary to Article 20(3) of the Constitution, the Apex Court rejected his contention as

misconceived and observed as follows:

Protection against testimonial compulsion did not convert the position of a person accused of an offence into a position of privilege, with immunity

from any other action contemplated by law. A criminal prosecution was not a fortress against all other actions in law. To accept the position that

the pendency of a prosecution was a valid answer to a ryle for Habeas Corpus would be to subvert the judicial process and to mock at the

Criminal Justice system. All that Article 20(3) guaranteed was that a person accused of an offence shall not be compelled to be a witness against

himself, nothing less and, certainly, nothing more. Immunity against-testimonial compulsion did not extend to refusal to examine and cross-examine

witnesses and it was not open so a party proceeding (sic) (proceeded against) to refuse to examine himself or anyone else as a witness on his side

and to cross-examine the witnesses for the opposite party on the ground of testimonial compulsion and then to contend that no relief should he

given to the opposite party on the basis of the evidence adduced by the other party. We are unable to see how Article 20(3) comes into the

picture at all.

187. This ruling gives a clear answer to the issue. The respondent Nos. 5, 8 and 9 were given liberty to file their counter affidavits by the order

dated 28.2.08 instead of any direction being passed (read: any compulsion) in this regard. There was no question at all of compelling them to be

witnesses against themselves. While choosing to remain silent, they could have either denied having summoned Riz to Lalbazar or even if had called

him to Lalbazar, they could have justified their action. Silence of these respondents cannot debar the Court from pronouncing its decision on the

basis of the available evidence. On the authority of the aforesaid ruling this Court is constrained to hold that by not choosing to counter the

allegations contained in the writ petition to the extent that Riz had been summoned without the authority of law, the concerned respondents

remained silent at their own risk and peril for Article 20(3) could not have been invoked in the present case and in view of the uncontroverted

allegations, this Court would proceed treating the allegations made in the petition against these respondents as correct.

188. On the basis of the materials on record this Court holds that by summoning Riz without registering any cognizable case against him on the

basis of the complaints of Pradeep Todi and/or by invading Riz''s precious right to life despite being well and truly aware that Priyanka had married

him on her own without pressure exerted from any quarter, respondent Nos. 5, 7, 8 and 9 jointly and severally are guilty of exceeding police

powers conferred on them and thereby have acted ultra vires the Constitution.

189. This issue is answered in favour of the petitioners.

Issue Nos. 5 and 6

190. These issues being related are examined together.

191. Arguments in detail were advanced by the learned Advocate General, Mr. Pal and Mr. Bandopadhyay on the scope and ambit of Sections

174 and 175 of the Code.

192. While the learned Advocate General contended, by placing reliance on Sections 174 and 175 read with Regulation 299 of the said

Regulations, that investigation into cause of unnatural death may continue even after inquest and till such time report of chemical examination is

received, Mr. Bandopadhyay opposed such contention by submitting that summoning of witnesses for examination u/s 175 of the Code is

permissible till inquest report is prepared by the Magistrate concerned u/s 174 thereof.

193. It appears from the order dated 16.10.07 that the contention of Mr. Bandopadhyay was upheld by the learned Judge. Observations of His

Lordship have been noted supra but are extracted below for proper appreciation:

Section 175 should be read in conjunction with Section 174. Enquiry under, Section 174 is permissible till inquest. Therefore, in my prima facie

view, the investigation carried out by the CID is not in accordance with the provisions of the Code.

194. Advocate General urged before this Court that the conclusion reached by the learned Judge is erroneous and that this Court, on proper

appreciation of the statutory provisions, ought to hold that the CID did not commit any illegality in continuing with investigation even after inquest.

195. To appreciate the rival contentions on the point, Section 174(1) of the Code to the extent relevant for the present purpose, if para-phrased,

would read:

when the officer-in-charge of a police station receives information that a person has committed suicide, or has been killed by another or by an

accident, or has died under circumstances raising a reasonable suspicion that some other person has commited an-offence, he shall immediately

give intimation thereof to the nearest Executive Magistrate empowered to hold inquests and, shall proceed to the place where the body of such

deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and drew

up a report of the apparent cause of death describing such wounds, fractures, bruises, marks of injury as may he found on the body.

196. Section 174(2) of the Code ordains that the inquest report shall be signed by such police officer and other persons who concur therein and

shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

197. If the police officer conducting inquest entertains any doubt regarding the cause of death, he is obliged in terms of Section 174(3) to forward

the body for medical examination by qualified medical personnel appointed by the State Government and subject to conditions mentioned therein.

198. Section 175(1) of the Code empowers a police officer proceeding u/s 174 thereof to summon, in writing, two or more persons as aforesaid

for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so

summoned shall be bound to attend and to answer truly all questions except those which would adversely affect him in the manner mentioned

therein.

199. Regulation 299 finds place in Part IV of Chapter 6 of the said Regulations titled ""Unnatural Death and Injuries"". Clause (a) of Regulation 299

provides for submission of a First Information Form in B.P. Form No. 48 in case of receipt of information of a death occurring in any of the

circumstances mentioned in Section 174 of the Code. According to Clause (b) thereof, the police officer concerned shall proceed to the place

where the body of the deceased person is and after making investigation prescribed in Section 174 of the Code and making such further enquiry as

may be necessary, shall submit his final report to the nearest Magistrate empowered to hold inquests. The investigation report signed by the police

officer and two or more respectable persons, as required by Section 174 shall be attached to the final report. Clause (c) prescribes submission of

case diaries in respect of enquiries into unnatural or suspicious deaths if the enquiry lasts more than one day. Investigation report u/s 174 of the

Code in B.P, Form No,48 must contain particulars regarding the District, the police station, the U.D. Case number with date, dates of

commencement and closure of investigation together with information in respect of the following-

1) Name, parent age, residence, age of deceased:

2) Place where body was found:

3) Description of the corpse and position in which found;

4) Apparent injuries or mark on the body;

5) Manner in which and weapon (if any) by which injuries appear to have been inflicted:

6) Circumstances, if any which give rise to suspicion of foul play:

7) Actual list and description of clothes etc.:

8) Opinion of the witnesses as to cause of death:

9) Opinion of police officer as to cause of death:

10) Name and address of witnesses:

11) Signature of witnesses:

200. The Court would proceed in the light of the above statutory provisions, which are considered relevant, to decide the contentious issue.

201. Regarding the scope and ambit of Section 174 of the Code, Mr. Bandopadhyay has relied on the decisions of the Apex Court in Pedda

Narayana (supra) and Kodali Purnachandra Rao (supra).

202. In paragraph 11 of the decision in Pedda Narayana (supra), it has been held as follows:

A perusal of this provision would clearly show that the object of the proceedings u/s 174 is merely io ascertain whether a person has died under

suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the

deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of

the proceedings u/s 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police io have mentioned these

details m the inquest report.

203. In Kodala Purnachandra Rao (supra), the Court ruled as follows:

Section 174, Cr.PC peremptorily requires that the officer holding an inquest on a deadbody should do so at the spot. This mandate is conveyed by

the word "there" occurring in Section 174(1). Sub-section (3) of the Section further requires the officer holding the inquest io forward the body

with a view to its being examined, by the medical man appointed by the State Government in this behalf, if the state of the weather and the distance

admit of its being so forwarded without risk of such putrefaction on the road as would renders such examination useless. The Sub-section give a

discretion to the police officer not to send the body for post-mortem examination by the medicoal officer only in one case, namely, where there can

be no doubt as to the cause of the death. This discretion however is to be exercised prudently and honestly.

204. The view in Pedda Narayana (supra) has been approved by a larger bench of the Apex Court in Khujji alias Surendra Tiwari Vs. State of

Madhya Pradesh,

205. A couple of months prior to the decision in Khujji (supra), a quorum of the Apex Court consisting of the selfsame learned Judges had the

occasion to deal with Section 174 of the Code in Malkiat Singh and Others Vs. State of Punjab, In paragraph 12 of the said decision, the Court

observed as follows:

12. ******Section 174 of the Code empowers the police officer to investigate in the presence of two or more respectable witnesses and report

only the cause of death and the person, if known, that has committed the offence. Section 175 empowers him to summon any person who appears

lo he acquainted with the facts of the case and every person so summoned shall be bound to attend the inquest and answer truly all the questions

other than.... The Investigating Officer is enjoined so forward the inquest report to the Magistrate along with the statement recorded at the inquest,

so that the Court would see the record, at the earliest of the circumstances leading to the cause of the death of the deceased ami the witnesses

examined during the inquest....

206. The word "there" in Section 174 is most important. An inquest is therefore to be conducted at the citus where a deadbody is found (the death

having occurred in unnatural circumstances) for ascertaining the apparent cause of death. Cause of death has to be ascertained on the basis of

ocular impression of the officer conducting inquest and from information collected from persons (at least two) present at the spot.

207. However, in terms of Regulation 299 of the said Regulations, a report has to be forwarded to the nearest Magistrate prior to the police

officer proceeds for inquest and the final report has to be forwarded after the inquest is complete. Although Regulation 299 enables further enquiry,

this Court has been unable to find any statutory provision which entities the police officer to keep in abeyance submission of final report to the

Magistrate awaiting report of post-mortem or chemical examination. Those reports might suggest the exact cause of death. But in terms of Section

174 of the Code the first impression of the police officer conducting the inquest with regard to the apparent cause of death is important, which has

to be reproduced in the form of a reports containing information in respect of matters mentioned in B.P. Form No. 48 referred to above. If such

report is to be delayed pending receipt of post-mortem or chemical examination report, the object of the statutory provision to bring to the notice

of the Magistrate at the earliest the circumstances leading to the death would be frustrated. Merely because a deadbody is required to be sent for

post-mortem when the officer conducting inquest entertains any doubt regarding the cause of death, there can be no warrant for the proposition

that the final report in terms of Regulation 299 must await the expert''s report. Reading the provisions of Section 174 as it is one after the other and

in between lines, this Court is inclined to hold that the final report must be filed at the earliest possible opportunity and without any delay and must

not be held up for want of report throwing light on the exact cause of death or else the very purpose of Section 174 would be defeated. Regulation

299 cannot supplant Section 174 of the Code or override it and on the authority of the decision in Paramjit Singh (supra), it is held that Regulation

299 cannot be read or construed in a manner to mean that it enables a police officer to file his final report after obtaining expert opinion.

208. For reasons aforesaid, the contention raised on behalf of the State and the police officer respondents that a final report u/s 174 must await

expert opinion on post-mortem and other examinations which might be necessary has again not impressed this Court.

209. This Court therefore shares the view expressed by the learned Judge that after inquest, there is no scope for farther enquiry/investigation u/s

174 of the Code and prima facie finding that investigation being carried on by the CID is not in accordance with law is hereby confirmed.

210. Before proceeding further, this Court may notice that in Lata Singh Vs. State of U.P. and Another, , the Apex Court felt the necessity of

making comments touching a matter of grave public concern (inter-caste and inter religious marriages between majors) and held as follows;

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be

united to face the challenge before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying

the caste system. However, disturbing news are coining from several parts of the country that young men and women who undergo inter-caste

marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are

wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major

he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the

maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of

violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the

administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious

marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one

who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings

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

211. Howsoever sincerely the judiciary at the highest level of the country may think of bringing about union of people belonging to different

communities and religions through inter-caste and inter-religious marriages, in reality the situation is a far cry. The case presented before this Court

bears ample testimony thereof.

212. Facts and circumstances which have surfaced in course of hearing the present writ petition depict exactly the undesirable, unwarranted and

deplorable situation which the learned Judges anticipated and endeavoured to abort while passing directions (supra) for taking suitable actions

against the perpetrators of harassment, threats and violence who fail to take inter-caste and inter-religious marriages by near relatives in their stride.

Unfortunately, the directions remain on black and white without being cared for.

213. The question that arises now is what was the nature of investigation that was being conducted by the CID? Law is well-settled that in terms of

provisions contained in the Code when a Magistrate makes an enquiry it is an enquiry, otherwise it becomes an investigation. In the interim order

dated 16.10.2007, the learned Judge considered a summons issued by the CID to a witness issued u/s 175 of the Code dated 10.10.07. As

noticed earlier, once the inquest was complete further enquiry/investigation under Sections 174/175 of the Code is not contemplated. The learned

Judge thus observed that investigation conducted by the CID was not in accordance with law.

214. Though learned Advocate General and Mr. Pal have been critical of the observations made by the Court in its order dated 16.10.2007, stand

of the State Government in this respect is nebulous to say the least. Despite repeated opportunities extended to the State to file counter affidavit to

the petition as noted above, affidavits which have been filed do not clear the position. According to the learned Advocate General, the order dated

28.2.2008 passed by this Court was misconstrued and as such an affidavit touching only the point on which affidavit was invited thereby was filed.

Be that as it may, he contended that the CID was conducting a preliminary enquiry before launching into an investigation and that such enquiry is

permissible having regard to the decisions of the Apex Court in Sirajuddln (supra), Bhagwant Kishore Joshi (supra), Bhajan Lal (supra) and

Rajinder Singh Katoch (supra).

215. True it is that the complaint lodged by the petitioner No. 2 with the Karaya Police Station on 22.9.2007 did not in so many words disclose

the commission of a cognizable offence resulting in the unnatural death of Riz. Viewed in isolation, non-registration of a cognizable case on the

basis thereof may not be faulted. But, at the same time, there was clear indication therein of the suspicion that respondent No. 12 might have a

hand in such unnatural death. What the petitioner No. 2 intended to convey was that respondent No. 12 had been threatening Riz with dire

consequences for having married his daughter and, therefore, could be held responsible for his death. The chain of circumstances preceding and

following this complaint (some could very well have been suspected) being of some significance deserves to be noted. The chain viz. (i) inter

religious marriage between Riz and Priyanka; (ii) Riz and Priyanka being aware that such marriage would not be accepted by her family; (iii) letters

to various police officers, jointly, written by Riz and Priyanka, in anticipation of unlawful interference in their marital life by respondent No. 12; (iv)

apathy of the Kolkata Police to provide any protection to the married couple; (v) futile attempt of respondent No. 12 to persuade Priyanka to

return home; (vi) complaints lodged by Pradeep Todi alleging abduction of Priyanka by Riz; (vii) enquiries made by Pulak Dutta, SI attached to

Karaya Police Station reporting that the couple are majors and the certificate of marriage is genuine, (viii) enquiry made by the respondent No. 9

on being directed by respondent Nos. 5 and 8 and reporting to the same effect; (ix) summoning of Riz and Priyanka at Lalbazar through the

respondent Nos. 8 and 9 without a formal FIR and discussions in the chambers of respondent Nos. 5 and 7; (x) agreement between the parties -

Priyanka to return within 7 days; (xi) breach of agreement - Priyanka fails to return; (xii) abortive requests of Riz to allow Priyanka to return; (xiii)

mysterious death of Riz; (xiv) the Police Commissioner of Kolkata without being impartial, declaring in a press conference that Riz had committed

suicide; and (xv) the CID conducting preliminary enquiry for days together without registering FIR, did afford reasonable ground to suspect foul

play behind the unnatural death of Riz.

216. On the basis of the surrounding circumstances one could reasonably reach either of two conclusions, i.e. that death of Riz had occurred as a

result of commission of crime or that suffocating circumstances, brought about by the respondent No. 12 with his aides and allies, for Riz tying the

nuptial knot with Priyanka had resulted in such mental torture that he decided to give up his life. To embark on an investigation of a cognizable

case, a police officer must have ''reason to suspect''. In the considered view of this Court, the investigative machinery of the State police agency

ought to have activated itself by recording an FIR, if not for an offence u/s 302/506/120B of the IPC, but certainly u/s 306/506/120B thereof the

ingredients wherefor were available. Reasons for suspecting commission of a crime ought to have been governed and dictated by the

circumstances without looking for adequate proof of facts at that stage. Even if the unnatural death of Riz did not reveal any foul play or even if the

chain of circumstances did nor warrant recording of FIR under Sections 306/506/120B of the IPC, circumstances which surfaced did provide

reasonable grounds for the CID to at least initiate criminal proceedings in terms of the directions of the Apex Court in Lata Singh (supra) against

respondent Nos. 12 and 13, as well as Pradeep Todi, and the city police officers who were instrumental in ensuring that the imer-religious marriage

between the two breaks up and Priyanka returns to her parental home. Instead, the CID had been continuing investigation u/s 174 of the Code

more than 14 (fourteen) days after post-mortem report was obtained.

217. The State in its counter affidavit, as noted earlier, has not disclosed the nature of enquiry undertaken by the CID and as such the extent to

which such enquiry progressed also could not be ascertained.

218. In the present case, right from the press conference of the respondent No. 3 an impression was sought to be given that Riz had committed

suicide without there being any provocation. The circumstances pointed out above were sufficient to justify investigation into either the suspicion of

murder or suspicion of abetment of suicide. As has been held in Patel Lilabhai Ambalal (supra), it is elementary for the police to suspect everything

and everyone and thereafter by process of elimination and inclusion come to the conclusion, the conclusion being the last thing on the completion of

investigation and not the first thing at the beginning of the investigation.

219. It was entirely for the CID to decide upon its next course of action, but to contend that a preliminary enquiry was resorted to and result

thereof was awaited has failed to impress this Court.

220. While the need for preliminary enquiry in particular cases before conducting an investigation of a cognizable offence cannot be obliterated, in

the guise of a preliminary enquiry and by unduly prolonging it a legitimate investigation which may be had cannot be stifled. Conducting preliminary

enquiry before recording FIR is not mandatory in all cases. In some of the decisions cited by Mr. Bandopadhyay, preliminary enquiry in respect of

a complaint disclosing commission of cognizable offence has been held to be unknown in the scheme of the Code. However, on careful

consideration of the decisions cited by learned Senior Counsel for the respondents on the point of preliminary enquiry, this Court would hold

preliminary enquiry of a limited nature to be permissible even in respect of cognizable cases. Persons of ''high profile'', dignitaries, persons in

authority, celebrities, etc. are sometimes at the receiving end due to reckless allegations, mostly made anonymously, which might mar their

respective careers and to obliterate the possibility of their unnecessary involvement in such cases that a preliminary enquiry may be had to ascertain

facts. Such enquiry would also be advisable if a pure civil dispute is sought to be brought within the arena of criminal law by the complainant to

wreak vengeance against an adversary. There can, however, be no exhaustive enumeration of cases warranting preliminary enquiry but each case

has to be considered on the basis of its own peculiar facts.

221. Considering the facts of the present case, this Court is unable to hold that the prevailing circumstances did not warrant lodging of an FIR by

the CID for conducting a full-fledged investigation. The possibility of killing time in the guise of ascertaining facts in course of preliminary enquiry to

shield offenders including high ranking police officers cannot be ruled out. To this extent, this Court holds the CID to be grossly negligent.

Borrowing the words of Hon''ble Pathak, J. (as His Lordship then was) in Bhagwant Singh (supra), this Court holds that the ""investigation by the

police following the occurrence was desultory and lackadaisical, and showed want of appreciation of the emergent need to get at the truth of the

case.

222. Submission of Mr. Pal that the decision in Sampat Lal (supra) does not lay down a law having the force of a binding precedent and the

conclusion reached regarding power of the High Court to direct investigation by the CBI where the State Government does not grant consent for

such investigation, is misconceived.

223. In paragraph 13, the Apex Court held:

In our considered opinion, Section 6 of the Act does not apply when the Court gives a direction to the CBI to conduct an investigation and

Counsel for the parties rightly did not dispute this position.

224. Reflection of the opinion of the Apex Court was based on its independent consideration of the provisions of the DSPE Act, apart from the

fact that Counsel appearing for the parties before it did not dispute the position that when a direction is given by the Court in an appropriate case,

consent envisaged u/s 6 thereof would not be a condition precedent. The submission of Mr. Pal is therefore unacceptable.

225. On very many occasions. Courts have ordered CBI investigation in the interest of fair and impartial investigation as well as in the interest of

the State Police agencies, to avoid any doubt on credibility of the investigation-Reference in this connection may be made to the decision in Md.

Anis (supra).

226. In Central Bureau of Investigation v. State of Gujarat (supra), it was held that where the investigating agency is not doing proper investigation

and/or there is reason to believe that there is laxity in the investigation, a direction may be given to the CBI to investigate the matter in appropriate

cases.

227. In Gudalure M.J. Cherian (supra), it has been held that in a given situation, to do justice between the parties and to instill confidence in the

public mind it may become necessary to ask the CBI to investigate a crime.

228. In R.S. Sodhi (supra), CBI was entrusted with investigation since accusations were directed against the local police personnel to ensure that

all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the

final outcome of the investigation credibility.

229. In Central Bureau of Investigation v. State of Rajasthan (supra), it was held that powers of the High Court under Article 226 of the

Constitution and of the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked though sparingly for giving such

direction to CBI to investigate in certain cases.

230. The question as to whether law laid down in Sampat Lal (supra) could be considered to be a binding precedent on the face of reference of

the issue to a Constitution Bench was considered by the Division Bench of this Court in Association for Protection of Democratic Rights (supra). It

was held therein as under:

We are of the opinion that the pendency of the reference would not debar this Court from deciding the question as to whether this is a fit case and

direct the CBI to continue with the investigation which was initially ordered on 15th March, 2007, Unless and until the question referred to a

Larger Bench is considered and answered by the Supreme Court, the law as earlier laid down is binding on this Court. We find support for this

view from a number of judgments of the different High Courts.

231. While noticing the decision in Shashikant (supra) wherein it was held that when a reference of a vital question of law is made to ''a Larger

Bench all other proceedings pending in other Courts do not come to a grinding halt, the Division Bench satisfied itself on facts and in the

circumstances before it that it would be necessary to have the entire, fact situation investigated by the CBI and directed accordingly.

232. In Sahngoo Ram Arya (supra) relied on by Mr. Ghosh the Apex Court has reminded the High Courts not to direct CBI investigation as a

matter of course and that there is a need for the High Court on consideration of the pleadings with reference to the reply filed to come to the

conclusion and to record a prima facie satisfaction that the material before it is sufficient to direct an enquiry by the CBI.

233. What Section 6 ordains is that the Central Govt. may not direct investigation by CBI without the consent of that State in any area within the

State other than a Union Territory or a railway area but such fetter in Section 6 of the DSPE Act does not in any manner affect or restrict the

power, authority and competence of the Court exercising jurisdiction under Article 226 to direct investigation by the CBI.

234. It is too obvious that for directing investigation by CBI, the Court has to satisfy itself that investigation by the State agency has faltered to such

extent that continuation thereof would be farcical and manifestly result in injustice. And it is trite that Mandamus is issued wherever injustice is

traced.

235. Though while passing the interim order dated 16.10.07 the Court did not have the benefit of considering the version of the respondents on

affidavits, the materials presented were duly considered and on the basis of appreciation thereof prima facie satisfaction was recorded by the Court

that investigation was not proper and therefore the CBI was directed to investigate the cause of death of Riz.

236. Regard being had to the facts and circumstances which fell for consideration on 16.10.07, this Court is of the considered view that entrusting

the CBI with investigation of cause of death of Riz cannot be said to be improper or unwarranted. This Court therefore holds that the Court was

perfectly justified in directing CBI investigation.

237. These issues are answered accordingly.

Issue No. 7

238. This has been a hotly debated issue at the Bar as would appear from the submissions of learned Counsel for the parties recorded above.

239. Learned Counsel for the respondents except the CBI have contended that the CBI acted ultra vires in registering an FIR for alleged offence

of murder and, therefore, all steps taken on the basis thereof are null and void and hence inoperative.

240. To decide this issue it would be worthwhile to take a further look to the direction of the Court dated 16.10.07 which reads as follows;

Therefore, lei there be an interim order directing the CBI to investigate into the cause of unnatural death of Rizwanur and the CBI shall file a report

in a sealed cover.

241. In this connection, this Court also considers it necessary to extract a passage from the decision of the Apex Court in H.N. Rishbud (supra)

dealing with "investigation" under the Code. It reads thus:

Investigation usually starts on information on relating to the commission of an offence u/s 154 of the Code. If from information so received or

otherwise, the officer-in-charge of a police station has reason to suspect the commission of an offence, he or some other officers deputed by him,

has to proceed to the spot to investigate the facts and circumstances off the case and if necessary to take measures for the discovery and arrest of

the offenders. Thus, investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes ''all the

proceedings under the Code for the collection of evidence conducted by a police officer''.

242. In Bhagwant Kishore Joshi (supra), the position emerging from Section 157 of the Code was reiterated that an Officer-in-Charge of a police

station can start investigation either on information or otherwise.

243. In .the present case it is an admitted position on facts that when the order dated 16.10.07 was passed by the Court, there was no FIR

disclosing commission of cognizable offence. On 22.9.07, the petitioner No. 2 had by his complaint informed Karaya Police Station about the

unnatural death of Rizwanur and that he suspected the hands of respondent No. 12 behind his death. Immediately thereafter, the CID had taken

over investigation and had conducted investigation which ultimately was declared to be "not in accordance with law". The Court directed CBI to

investigate the cause of unnatural death of Riz on 16.10.07 on this petition in which the CBI was a respondent. In the petition it had been alleged

that Riz had been killed/ murdered. As has been held in H.N. Rishbud (supra) and Bhagwant Kishore Joshi (supra), the CBI was empowered to

conduct investigation on the basis of information received otherwise than information recorded u/s 154 of the Code.

244. It has been contended on behalf of the CBI that it had proceeded to register an FIR taking into consideration the contents of the writ petition.

Learned Advocate General has contended that such a course of action was impermissible without seizing copy of the writ petition. This Court is

afraid, it cannot agree with him. CBI being a respondent in the writ petition and having been served with a copy thereof in accordance with the

rules framed by this Court which requires (subject to exceptions) service of copy of petition on the respondents in each case where interim relief is

prayed for which might affect them, the CBI was well within its jurisdiction to note the contents of copy of the writ petition supplied to it and to act

on the basis thereof, it has not been shown before this Court that contents of copy of the writ petition supplied to the CBI by the petitioners was on

any score different from the petition filed in Court or copy of the same supplied to the State. The need to seize the original, therefore, would not

arise, information disclosed to the CBI through the writ petition would constitute information received from sources other than a complaint

registered as an FIR u/s 154 of the Code which the CBI was empowered to investigate u/s 157 thereof and thus this Court finds no illegality on the

part of the CBI in proceeding to register an FIR on the basis of the writ petition.

245. There are two other reasons for which this Court is inclined to hold that the CBI"s action in registering an FIR is defensible.

246. The Court in its order dated 16.10.07 had ruled, albeit on prima facie satisfaction, that investigation under Sections 174/175 of the Code

after inquest was complete could not be conducted in law. It has been correctly contended by Mr. Roy that once the Court held that investigation

under Sections 174/175 could not be conducted after inquest was complete, argument of the respondents that investigation should have been

confined only to unnatural death and to ascertain its cause within the limits of Section 174, is fallacious. It is preposterous to suggest, even on the

face of recording of such a finding, that by directing investigation to be made by the CBI to find the cause of "unnatural death" of Riz the Court

intended to have an investigation conducted limited to the nature permissible u/s 174 of the Code. The Court"s order cannot be read as a statute

divorced from the facts of the case and terms of the order. Understandably, the direction for conducting investigation implied registration of an FIR

preceding investigation and, therefore, had to be treated as one casting an obligation on the CBI to first register a case and thereafter proceed to

find out the cause of death, whether suicidal or homicidal.

247. Having regard to the facts and circumstances which were on record, accidental death of Riz was ruled out. Therefore, in order to find out

whether the death was suicidal or homicidal, the CBI being empowered to exercise powers conferred on the police to investigate under Chapter

XII of the Code could have done so only on recording an FIR. Action taken by the CBI in this behalf does not appear to this Court to be

offending either the power conferred on it by the Code or the order dated 16.10.07. It has been contended on behalf of the respondents that the

CBI has interpreted the order dated J6.10.07 by reading words therein, otherwise absent, without seeking any clarification. If the CBI had

proceeded on the basis of its own interpretation of the order which does not appear to be absurd or unreasonable, the Court Would not invalidate

the impugned action on the ground that the CBI ought to have approached the Court for further clarification instead of taking recourse to a

particular action. It would have been a discreet action on the part .of the CBI but mere indiscretion, without anything more, cannot be equated with

mala fides.

248. That apart, in the decisions in Madhu Bala (supra), Suresh Chand Jain (supra) and Md. Yusuf (supra), the Apex Court has held that when a

Magistrate orders the police to conduct investigation u/s 156(3) of the Code, that would include a direction to the police to register an FIR in the

absence of any such direction given by such Magistrate and the police would have to take further steps contemplated in Chapter XII of the Code

only thereafter. Viewed in this perspective and on the authority of what have been laid down therein, the CBI was justified in recording an FIR

before it proceeded to conduct investigation.

249. The numerous decisions cited by the learned Senior Counsel for the State, the respondent police officers, the respondent No. 12 and learned

Counsel for the respondent No. 13 in support of their contention to the contrary have been carefully looked into. The CBI exercised power for an

authorised purpose and in accordance with law. Having regard to the facts and circumstances of the present case, the cited decisions are not

apposite since the situation for applying the ratio thereof is non-existent.

250. This Court thus holds that in registering an FIR and in conducting investigation on the basis thereof, the CBI did not act ultra vires.

251. This issue is answered in favour of the CBI.

Issue No. 8

252. In its order dated 28.2.08, this Court for reasons recorded did not accede to the request of the parties for supply of copy of the CBI''s

report but the issue was left open for being considered at the time of final hearing. Parties have again addressed the Court on the point of supply of

copy of the report. Several decisions have been cited by Mr. Pal in support of his submission that looking into the report by the Court without

extending opportunity to the parties to look into the same would be against judicial principles as well as natural justice. The decisions cited by Mr.

Pal mostly relate to disciplinary proceedings initiated against delinquent employees. The rules regarding disciplinary proceedings are not quite

identical as rules that are required to be followed in conducting investigation of a criminal case or in criminal proceedings. As part of compliance

with natural justice principles, a delinquent employee who has been proceeded against by initiation of a disciplinary proceeding is entitled to have a

copy or to look into any document which the prosecution seeks to rely on against him in the enquiry or which the Enquiry Officer may consider

relevant for the purpose of enquiry. Such an employee is aiso entitled to have copy of any document or to have inspection thereof which is in the

custody of the employer and is considered by him to be relevant for his defence, the question of relevancy being an issue required to be decided by

the Enquiry Officer. Depriving the delinquent employee of such opportunity having regard to the tact situation of each case may result in violation of

principles of natural justice. So far as criminal proceedings are concerned, the stages at which documents may be made available to parties

interested are laid down in the Code itself. It would thus be open to the parties to apply for the same in accordance with provisions contained in

the Code. Not a single decision has been cited before this Court which lays down the law that while a Court looks into information and/or

documents collected in course of criminal investigation at the pre-chargesheet stage, the Court is obliged to supply such document to an aggrieved

party who intends to look into the same before the Court renders a decision in respect thereof. In the present case, criminal proceedings against

some of the respondents are in an embryonic stage. Evidence has been collected and it has been reported to this Court by the CBI that a prima

facie case for proceeding further against them before the appropriate Court for alleged involvement in commission of offences punishable under the

IPC exists and leave has been prayed for to enable it to file chargesheet before the appropriate Court of law. Till such time the Magistrate takes

cognizance of the alleged offences committed by the accused, it cannot be said that criminal proceedings are pending against anyone. There is no

determination of guilt by this Court on the basis of the report of the CBI. If a chargesheet is filed before the Competent Court and it takes

cognizance and asks the chargesheeted accused persons to stand trial, the accused persons would be within their right to seek documents in

accordance with the provisions of the Code as also in the light of the decision in Debendra Nath Padhi (supra). In such circumstances, the

contention that since the report of the CBI has been placed before this Court and the Court has looked into it, hence the parties are also entitled to

look into the same is obviously untenable.

253. Learned Advocate General very humbly has submitted that contents of the report might unknowingly influence the mind of the Court. Also,

Mr. Pal has contended that non-supply of the report of the CBI would give rise to a lurking suspicion in the minds of the police officers that the

Court had formed a view against them without disclosing its contents to them.

254. In the considered view of this Court, requirement to comply with natural justice principles can be invoked where the Court or an adjudicator

proceeds to form an opinion against an individual on the basis of a document behind his back. Whatever conclusion this Court has reached is

based on its appreciation of the pleadings of the parties and the records produced, which have been duly inspected by the parties. The report of

the CBI has been considered only for the limited extent of ascertaining whether the CBI should be permitted to proceed further in accordance with

law. If the argument of Mr. Pal is to be accepted, then in every case where a Competent Court, empowered to deal with applications under

Sections 458 or 439 of the Code, looks into case diaries placed before it by the Public Prosecutor, it would have to permit access to Advocates

for the accused to the case diaries. This would be a course of action dehors the Code and contrary to principles settled in Debendra Nath Padhi

(supra). So long the investigation is not closed by way of filing of a formal report u/s 173(2) of the Code, persons who might be shown as accused

in the FIR have no right to claim copy of the report containing materials which have been collected against them and particularly in view of the fact

that report filed before this Court is not a final report but is one in aid of the final report.

255. This Court therefore has no reason to take a view different from the one taken on 28.2.08 when the prayer of the parties was rejected for the

time being. It is accordingly held that the respondents have no right to look into the report of the CBI and to have copy thereof.

256. This issue is answered accordingly.

Issue No. 9

257. Mr. Pal, as noted above, subjected the recommendations contained in the report of the CBI for initiation of departmental proceedings (major

penalty-proceedings) against the respondent Nos. 5, 7, 8 and 9 to severe criticism. According to him, the CBI had no business to make such

recommendation. Mr. Roy sought to counter the contention by referring to Chapter 20 of the Manual. According to him provisions contained in

Manual have statutory force and in terms of provisions contained in the said chapter, recommendations made by the CBI for initiation of

departmental action cannot be faulted.

258. Clause 20, 4 of Chapter 20 being relevant is set out hereunder:

In the. cases investigated by the CBI in which the same facts constitute the ground for both Departmental Action as well as prosecution, the

chargesheet u/s 173 Cr. PC should he filed immediately on completion of investigation along with the original relied upon records, after obtaining

sanction for prosecution wherever necessary. For Departmental Action, simultaneous request should be sent to the competent disciplinary

authority. This request should be sent along with authenticated copies of the relevant documents immediately to the competent authority/Head of

Department with copies to the C.V.C. and the CVO of the organization. In other cases involving less serious offences or involving malpractices of

a departmental nature, RDA only should he taken and the question of prosecution should generally not arise. Any difference of opinion regarding

the question whether Departmental Action or prosecution in a Court of Law should be initiated in the first instance, will be resolved, on the basis of

the advice of CVC.

259. It has been conceded by Mr. Roy that the report filed before this Court is not u/s 173(2) of the Code but to enable the Court to satisfy itself

that an appropriate investigation has been conducted in terms of its order.

260. Having regard to the facts that the report was one to assist the Court to record a satisfaction that the cause of death of Riz has been

ascertained with additional information relating to complicity of persons in connection therewith and that chargesheet u/s 173 of the Code of

Criminal Procedure has not been filed, it was beyond the jurisdiction of the CBI to include in its report filed before this Court the recommendation

for initiation of major penalty proceedings against some of the police officers. As Clause 204 provides, request for initiation of disciplinary

proceeding should be sent to the competent disciplinary authority simultaneously with filing of chargesheet u/s 173 of the Code. The stage therefore

has not yet arrived and at this stage it was inappropriate for the CBI to state in unequivocal terms that grounds for initiating departmental action

against the erring police officers did exist and that action should be taken in that direction.

261. Additionally, the CBI ought to have appreciate that the petitioners had prayed for a declaration from this Court that the actions of the police

officers (respondent Nos. 5, 7, 8 and 9) are ultra vires. The issue being sub judice, it was absolutely inappropriate for the CBI to make a

recommendation in this direction without obtaining leave from Court.

262. This issue is accordingly answered in favour of the respondent Nos. 5, 7, 8 and 9.

Issue No. 10

263. Exercise of power of investigation by the CBI is governed by statutory provisions under the general law applicable to such investigations. The

dominant purpose of registering a case is to ensure conducting of investigation in respect of the allegations contained in the FIR and in the event

sufficient materials exist in support of the allegations, to present charge sheet before the Court for securing the ultimate end of linking the offence

with the offender.

264. It is on record that while issuing notice u/s 160 of the Code the CBI had clearly indicated the case number which was under investigation. The

FIR was despatched to the Court of the Chief Metropolitan Magistrate, Calcutta and to other Magistrates at Bankshall Court. Contention that the

CBI faltered in complying with Section 157 of the Code is without basis for the Court has ascertained in course of hearing that the Magistrates''

Court referred to above have duly received copy of the FIR.

265. Submission of Mr. Ghosh that in the absence of any knowledge of an FIR having been registered respondent No. 12 could not challenge it is

unmeritorious. There was no embargo on the respondent No. 12 to apply for the certified copy of the FIR for the purpose of challenging it. That a

defect or irregularity in conducting investigation cannot vitiate the trial unless of course gross miscarriage of justice has occasioned is settled law.

Even otherwise, if there be any irregularity in conducting investigation the same cannot vitiate the trial which might ensue for it has not been

demonstrated before this Court that there has been such gross miscarriage of justice which would require interdiction by this Court. Even if there

be any irregularity or defect in investigation, those aggrieved thereby would not be without remedy.

266. It is settled law that decision to investigate or the decision on the agency which would investigate does not attract principles of natural justice.

The accused cannot have a say in who should investigate the offences he is charged with see Central Bureau of Investigation and another Vs.

Rajesh Gandhi and another, Central Bureau of Investigation v. Rajesh Gandhi. This Court in the earlier part of this judgment has expressed its

concurrence with the order of the Court dated 16.10.07 that the case at hand called for investigation by the CBI. For reasons discussed above,

this Court is unable to concur with the learned Counsel for the respondents barring the CBI that the actions of the CBI are tainted. On the basis of

materials collected, a prima facie case exists for proceeding against persons named in the concluding portion of the report extracted above. There

is no reason as to why course of law should be obstructed, merely because it might not be to the liking of some of the respondents.

267. In view of the aforesaid discussion there appears to be no reason as to why the CBI should not be allowed to proceed further.

268. The issue is answered accordingly.

269. Having regard to the aforesaid discussion, this Court grants liberty to the CBI to proceed in accordance with law tor filing chargesheet before

the Competent Court u/s 173(2) of the Code, There shall, however, be no direction for further investigation as prayed for by Mr. Bandopadhyay

regarding discrepancy in age of the deceased as recorded in the official records but absolute liberty is reserved to the CBI to conduct further

investigation before it actually files the charge sheet on any point it may consider necessary in the interest of justice. However, it shall not act upon

the proposal to recommend to the State initiation of disciplinary proceedings for major penalty against respondent Nos. 5, 7, 8 and 9 or any other

police officer.

270. Since this Court has returned a finding that the city police officers (respondent Nos. 5, 7, 8 and 9) invaded Riz"s right to life without authority

of law while discharging duty as public servants, it is declared that they have acted ultra vires and their acts impugned herein are unconstitutional.

271. However, on the question as to what is the effective relief that ought to be granted on facts and in the circumstances of the case vis-a-vis the

prayers made has presented its own difficulties. In view of the law laid down in Rani Laxmibai (supra), an allegation of fact has to be pleaded in the

petition for enabling the adversary to meet it based on the principle that a party should not be caught unawares at the hearing. But, rules regarding

pleadings at least in respect of writ petitions have been diluted to good extent by subsequent decisions. One may profitably refer to the decision in

State Bank of India v. S.N. Goyal reported in AIR 2008 SCW 4355 wherein it has been held that in writ proceedings, the High Court can call for

the record of the case, examine the same and pass appropriate orders after giving an opportunity to the State/ the statutory authority to explain any

particular act or omission, and that it is quite different from a civil suit where the parties are governed by rules of pleadings and there can be no

adjudication of an issue in the absence of necessary pleadings. The decision in Ganapati Madhav Sawant (supra) cited by Mr. Pal is therefore

clearly distinguishable. In the present case, the factual foundation for seeking effective relief has been laid though a prayer in that behalf is absent.

Parties have been heard at length on the claim of Mr. Bandopadhyay that the State should be directed to initiate disciplinary proceedings against

the erring police officers. The decision in Rani Laxmibai would, therefore, have no application on facts.

272. This Court at the same time is not oblivious of the observations of Hon"ble Sethi, J. (as His Lordship then was) in Lily Thomas, Vs. Union of

India and Others, that ""justice is a virtue which transcends all barriers and the rules of procedures or technicalities of law cannot stand in the way of

administration of justice. Law has to bend before justice.

273. Though the petitioners have not claimed any relief against the respondent No. 3 as also against respondent Nos. 5, 7, 8 and 9 consequent to

declaration that was sought and has been granted, in the considered view of this Court interest of justice would be best served if liberty is reserved

unto the State to proceed in accordance with law. Accordingly, it is observed that the State may initiate such action as it deems fit and proper

against any of or all the respondent Nos. 3, 5, 7, 8, 9, 12 and 13 in accordance with law.

274. Observations made and/or findings recorded in this order are wholly for the purpose of a decision on this writ petition and the same shall not

influence or prejudice the adjudicator of future criminal proceedings, if initiated according to law.

275. The writ petition stands allowed, while the applications stand dismissed. However, parties shall bear their own costs.

276. Report of the CBI together with the compact disc placed on record by Kolkata TV shall be re-sealed by the Assistant Court Officer and

retained with the records of the case.

277. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites

therefor.

Later:

278. Learned Advocate General, Mr. Banerjee, learned Senior Counsel and Mr. Basu, learned Counsel appearing for the State, the respondent

Nos. 3, 5, 7, 8, and 9, and the respondent Nos. 12 and 13 respectively have prayed for stay of operation of the judgment and order. Such prayer

is opposed by Mr. Bandopadhyay, learned Senior Counsel for the petitioners.

279. Since implementation of the order might have the effect of depriving some of the respondents of their right to personal liberty, for the ends of

justice this Court considers it fit and proper and accordingly grants stay as prayed for. The operation of the order shall remain stayed for three

weeks from date.