

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

MAT 1054 of 2025

With

IA No : CAN 1 of 2025

With

IA No : CAN 2 of 2025

Sahajahan Sk. & Anr.

Vs.

Supriya Mandal Gayen & Ors.

For the Appellants	: Mr. Fazlur Rahman, Adv. Mr. Md. Babul Hussain, Adv. Ms. Dona sanyal, Adv. Mr. Mihinur Hossain, Adv. Ms. Sulagna Sen, Adv
For the Writ Petitioner/ Respondents no. 1	: Mr. Billwadal Bhattacharyya, Ld. Sr. Adv. Mr. Moyukh Mukherjee, Adv. Ms. Sagnika Banerjee Adv. Ms. Tamoghna Pramanik, Adv.
For the Union of India	: Ms. Reshmi Bothra, Adv. Mr. Piyas Choudhury, Adv.
For the CBI	: Mr. Dhiraj Trevedi, Ld. Sr. Adv. & Ld. LSG. Mr. Amajit De, Special PP, CBI.
Hearing Concluded on	: July 28, 2025
Judgement on	: August 04, 2025

DEBANGSU BASAK, J.:-

1. Appellant has sought leave to file an appeal against the judgment and order June 30, 2022 passed in WPA 702 of 2024.

2. Learned Counsel appearing for the appellant has submitted that, the appellant is not a party respondent in the writ petition in which the impugned order was passed. He has submitted that, the appellant is both a necessary and proper party in the writ petition as the writ petition concerns the criminal case in which the appellant is an accused. By the impugned judgment and order, learned Single Judge has directed Central Bureau of Investigation (CBI) to take over the investigation. Consequently, legal rights of the appellant has been affected.

3. Learned Counsel appearing for the appellant has submitted that, there is unexplained delay with regard to the filing of the writ petition. He has pointed out that, the First Information Report with regard to the police case concerned is of 2019 in which a chargesheet was filed in 2022. Thereafter, the private respondent has filed a writ petition in 2024 without explaining the delay in approaching the Writ Court.

4. Learned Advocate appearing for the appellant has contended that, since the writ petitioner did not challenge the chargesheet submitted, before the jurisdictional Court, the question of the private respondent receiving any relief in the

writ petition does not arise. He has contended that, the writ petition was a result of a political vendetta.

5. In support of his contention, learned Advocate appearing for the appellant has relied upon **2010 Volume 2 Supreme Court Cases 114 (Dalip Singh Vs. State of Uttar Pradesh and Others.)**, **1962 SCC OnLine SC 130 (Udit Narain Singh Malpharia Vs. Additional Member Board of Revenue)** and **2022 Volume 15 Supreme Court Cases 164 (Hasmukhlal D. Vora and Another Vs. State of Tamil Nadu)**

6. Learned Senior Advocate appearing for the Respondent no. 1 has contended that, the appellant has no right of appeal. He has contended that the appellant as an accused has no right to choose his investigating agency. The appellant is neither a necessary nor a proper party to the writ petition in which the impugned judgment and order has been passed. In support of his contentions, he has relied upon **2011 Volume 5 Supreme Court Cases 79 (Narmada Bai Vs. State of Gujarat and Others.)**, **2009 Volume 6 Supreme Court Cases 65 (Narender G. Goel vs. State of Maharashtra)**, **2014 Volume 4 Supreme Court Cases 626 (Dinubhai Boghabhai Solanki Vs. State of Gujarat and Others.)**,

2025 SCC OnLine SC 893 (Ramachandraiah and Another Vs. M. Manjula and Others) and 2024 SCC OnLine Cal 2417 (Enforcement Director, Kolkata Zonal Office vs. State of West Bengal & Others).

7. In respect of incidents relating to the post-poll violence, three police cases had been registered on June 8, 2019 at the Nazat Police Station, namely, Nazat Police Station Case No. 139 of 2019, Nazat Police Station Case No. 141 of 2019, Nazat Police Station Case No. 142 of 2019. All the three police cases relates to incidents occurring on June 8, 2019 apparently on different timelines.

8. Writ petition filed by the respondent No. 1 is in respect of Nazat Police Station Case No. 142 of 2019 in which the appellant is one of the accused. Police, on completion of investigation, has submitted charge sheet in respect thereof.

9. Respondent No. 1 approached the writ court complaining that, the investigations conducted in respect of Nazat Police Station Case No. 142 of 2019 were perfunctory and that the same should be conducted by a specialized investigating agency, namely, the CBI. By the impugned judgment and order, learned Single Judge has accepted such

contentions and that directed CBI to conduct further investigations by constituting a special investigation team.

10. Issue of maintainability of the appeal filed at the behest of a person who is not a party respondent to the writ petition and an accused in the criminal case, where, further investigation has been directed by the impugned judgment and order, requires consideration. In other words, the issue is as to whether, the appellant before us can be granted leave to appeal, in view of the fact that, the appellant was not a party respondent in the writ petition in which the impugned judgment and order was passed and that, the appellant is an accused in a criminal case, in which, the writ court, by the impugned judgment and order has directed further investigation by the CBI.

11. ***Dalip Singh (supra)*** has been rendered in the context of tenancy rights where, a party to the proceeding was found to make patently false statement. ***Dalip Singh (supra)*** cannot be held to be an authority for the proposition that an accused in a criminal case has a right to prefer an appeal.

12. ***Udit Narain Singh Malpharia (supra)*** has considered the issue as to whether, persons who were before the Tribunal, whose order was under challenge in a writ

petition, are necessary parties or not. It has answered such question by holding that, in a writ petition praying of a writ of certiorari, not only the Tribunal or authority whose order is sought to be quashed but also parties in whose favour such order was issued are necessary parties. In the facts and circumstances of the present case the writ petitioner has not challenged any order of any in the writ petition.

13. *Hasmukhlal D. Vora and Another (supra)* has dealt with the inherent powers of the High Court under Section 482 of the Criminal Procedure Code, 1973. It has held that, delay can be fatal to the case of the prosecution. Again, the same is not an authority for the proposition that, an accused can prefer an appeal against an order passed by the writ court.

14. *Narender G. Goel (supra)*, in a criminal writ petition, has held that, the accused has no right to be heard at the stage of investigation.

15. *Narmada Bai (supra)* in a petition under Article 32 of the Constitution of India has held that, accused do not have a say in the matter of appointment of an investigating agency. The accused cannot choose as to which investigation agency must investigate the alleged offence committed by them.

16. *Dinubhai Boghabhai Solanki (supra)* has referred to various authorities on the issue of right of an accused to be heard. It has observed that, rule of audi alteram partem is not superimposed at the stage of investigation. It is also observed that, accused has no participation as a matter of right during the course of investigation. It has also observed that the decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. It is of the view that, there is no obligation for the High Court to either hear or to make the accused a party to the proceedings before directing that the investigation be conducted by a particular investigating agency.

17. *Enforcement Director, Kolkata Zonal Office (supra)* has held that, CBI can be appointed to investigate crimes involving public officials.

18. In *Ramachandraiah and Another. (supra)*, Supreme Court has considered the issue as to whether, an accused can assail an order directing investigation of the police case by the CBI. It has answered such issue in Paragraph 16 which is as follows:-

“16. Thus, the law settled on the above score answers the argument raised by Mr. Lekhi. Therefore, we are of the considered view that once an FIR is registered and investigation has taken place, direction for an investigation by the CBI is not open to challenge by the prospective suspect or accused. The matter for entrusting investigation to a particular agency is basically at the discretion of the Court.”

19. As an accused, the appellant, does not have a right to be heard at the stage of investigation or have a say in the matter of an appointment of an investigating agency. Rule of audi alteram partem is not super imposed at the stage of investigation so far as an accused is concerned.

20. High Court is not obliged to hear the accused or make the accused a party to a writ petition, in which, the writ petitioner has sought direction for investigation to be conducted by a particular investigating agency. Moreover, direction for an investigation by the CBI passed by the High Court, is not open to challenge by a prospective suspect or an accused in a criminal case.

21. Appellant before us is not a party to the writ petition in which by the impugned judgment and order direction has been passed for investigation by CBI. Appellant is an accused

in such criminal cases in which, by the impugned judgment and order CBI has been directed to investigate.

22. In view of the proposition of law as has been noted above, the appellant has no right to appeal against the impugned judgment and order.

23. Consequently, CAN 1 of 2025 of the appellants seeking leave to appeal is dismissed. In view of the dismissal of CAN 1 of 2025, CAN 2 of 2025 along with MAT 1054 of 2025 are also dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

24. I agree.

[PRASENJIT BISWAS, J.]