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WP.No.2880

MP.No.1 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.03.2023

Pronounced on: 14.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**WP.No.2880 of 2015 and**  
**MP.No.1 of 2015**

Shanthi

... Petitioner

Vs

- 1.The State of Tamil Nadu,  
Represented by its Secretary,  
Department of Home,  
Fort St. George,  
Chennai-600 009.
- 2.The State Security Department of Forests,  
The State of Karnataka,  
Vidhansowdha,  
Bangalore-1.
- 3.The Secretary,  
Department of Home,  
Karnataka State,  
Vidhansowdha,  
Bangalore-1.



WP.No.2880

MP.No.1 of 2015

4.The District Collector,  
Chamarajanagara District  
Bangalore,  
Karnataka State.

5.The District Collector,  
Salem District,  
Salem.

6.The District Superintendent of Police,  
Chamarajanagara District, Bangalore,  
Karnataka State.

7.The Inspector of Police,  
Malai Matheswaran Koil Police Station,  
Chamarajanagara District, Bangalore,  
Bangalore, Karnataka State,

8.The Joint Director,  
CBI  
Chennai-600 006.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the Respondents to transfer the investigation in Crime No.67 of 2014 on the file of Inspector of Police, Malaimatheswarankoil Police Station, Bangalore, Karnataka State to the Joint Director, CBI, Southern Region, Sastri Bhavan, Chennai-6 for Fair investigation to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.K.R.Keshav Murthy (for R2 to R4, R6 & R7)  
State Public Prosecutor for the High Court of  
Karnataka



WEB COPY



WP.No.2880

MP.No.1 of 2015

Mr.B.Vijay (for R1 & R5)  
Additional Government Pleader

No Appearance (for R8)

### **ORDER**

The petitioner's husband, one Palani, left his home around 06.00 hours on 21.10.2014 along with two others, by name, Muthusamy and Raja. He did not return home that day. The petitioner enquired with the two associates and was informed by Raja that they had gone fishing in the Palar river. While so, at around 2.00 a.m. on 22.10.2014, they had heard gun shots aimed towards them. Raja fell into the water and was seen struggling, but was rescued by Muthusamy.

2. In the statement recorded by the Senior Civil Judge, Kollegal under Section 200 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') from Raja on 23.09.2019, he states that one of the bullets fired by the forest officials hit Palani and when he was immobilised, he was taken by the forest officials in their raft on the river. In his statement, he states that he was hit with a bullet in his right leg and hid behind a tree. Muthusamy escaped.

3. In her statement recorded before the Senior Civil Judge, Kollegal on 01.12.2018, the petitioner states that she searched for her husband the following two days unsuccessfully. On 24.10.2014 Kollathur Police informed her that they had found



a dead body floating in the river towards the Karnataka border and asked her to identify the same. Accompanied by her children, she went and identified the body as that of her

husband. The physical condition of the corpse, in her own words, is as follows:

*'My husband's left arm was not there, right hand's muscle was not there, my husband's head was blown off. My husband's private part was ripped off. My husband's t-shirt, white-blue coloured baniyan was not there on his body. My husband's waist threat (ududhaara) was not there. My husband's front teeth were not there.'*

4. According to learned counsel for the petitioner, the above marks clearly indicate torture inflicted on Palani by the Karnataka State officials prior to they have done away with him. The Petitioner consented for the conduct of post-mortem and filed a complaint before Male Mahadeshwara Hills Police Station (in short 'M.M.Hills Police Station') alleging that the Karnataka Forest Department officials had killed her husband.

5. She named Vasudevamurthy, Madhusudan and their staff for the murder. Her complaint was handed over to the Crime Investigation Department (CID), Bengaluru. She also states that she had filed a petition before the Chennai Crime Branch for investigation, but had been informed that there was no necessity for such investigation, as the matter would be investigated by their counterparts/officials in Bengaluru.

6. Pending writ petition and upon completion of the investigation, the officials of the CID at Bengaluru have submitted a 'B' report on the premise that her complaint



WP.No.2880

MP.No.1 of 2015

contained false/wrong information. Petitioner has filed an objection to that report as she is categorical that the investigation had not been fair and had been done with the sole objective of protecting the Karnataka State police officials.

7. The matter is pending before the Court of the Additional Civil Judge (Senior Division) and CJM Court, Kollegala, Chamrajanagar District, Karnataka to hear her objections. Mr.Keshav Murthy, learned Karnataka State Public Prosecutor, who appears for R2 to R4 and R6 and R7 would point out that the matter is pending since long and there has been no appearance by the petitioner to pursue her objections.

8. Mr.Sankarasubbu, learned counsel for the petitioner would insist that Palani had been shot at point blank range by an official in the team comprising ACF Vasudevamurthy, ACT Nagaraj and ten police officials. Untold torture had been inflicted on the petitioner's husband and his left hand mutilated, in all leading to his gory death. The body was then thrown in Kaveri lower Palar river and when found two days later, made to look as though it had all been an accident.

9. Raja's statement recorded on 23.03.2019 suggests that Palani had, in fact, been taken away by the Karnataka police. Raja had been the sole eye witness to this act and thus he had been singled out and killed in an ambush as recently as on 14.02.2023. Effectively, the respondents in Karnataka are alleged to have done away with him, to efface the only eye witness in this case.



10. The petitioner pleads that she cannot expect any justice in the hands of the very same authorities, who had murdered her husband as it is their prime motive to protect those officials who have engaged in the illegal act. She relies on the following judgments, all in the context of deaths caused by police encounters, where, for enforcement of fundamental rights, investigation has been ordered by independent and impartial agencies

(i) *Niranjan Singh & Anr. v. Prabhakar Rajaram Kharote & Ors.*<sup>1</sup>

(ii) *R.S.Sodhi v. State of U.P. and Others*<sup>2</sup>

(iii) *Rubabbuddin Sheikh v. State of Gujarat and Others*<sup>3</sup>

(iv) *Narmada Bai v. State of Gujarat and Others*<sup>4</sup>

(v) *People's Union for Civil Liberties & Another v. State of Maharashtra & Others*<sup>5</sup>

11. Mr.Murthy, for his part, emphasises that the officers have been diligent in doing their duty and in enforcing the mandatory statutory provisions of the Karnataka Forest Act, 1963. He draws attention to several provisions therein, that reiterate the purpose of the Act, which is to provide for control over the forest and Government lands, prevent private owners from exploiting forest resources for commercial and private gain, protect wild life and prevent smuggling sandalwood. Wide powers have been given to

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1 1980 AIR 785

2 1994 supp (1) SCC 143

3 (2010) 2 SCC 200

4 (2011) 5 SCC 79

5 CDJ 2014 SC 831



WP.No.2880

MP.No.1 of 2015

the authorities to restrict poaching and restrain illegal exploitation of forest resources.

12. He accedes to the position that there was gunfire by the Karnataka State Police officers, but hastens to add that it was only as a measure of restricting the illegal activities that Palani and his associates were engaged in. To a specific question as to whether the gunfire was by way of defence or retaliation, or whether it was provoked, Mr.Murthy is fair to state that it was not on account of any of the aforesaid factors, maintaining that it was on account of the officers being certain that the intruders were active poachers.

13. He would have the Court picture the scenario at that time, around 2.00 a.m., when the entire area would have been cloaked in silence and pitch darkness. The authorities then, could only have sensed the presence of other persons in that area as inadequate light and thick foliage would not have permitted either party to have a clear picture of the surroundings.

14. The normal procedure followed at such times and in such situations, is for a warning to be issued, asking the persons to identify themselves. This, he states, was done and this averment is duly supported by the statement of Madhusudan, Range Forest Officer, M.M. Hills Wild Life Range Forest, Gopinatham recorded by Investigation Officer, S.P.Dharanesh, D.S.P., H&B Division, C.I.D., Bengaluru on 30.06.2016.



15. Since there was no proper response, the persons, Palani and his associates, were, taken to be poachers, and the authorities had no option but to shoot towards the general area where the presence of the intruders was sensed and dimly seen. On arriving closer to the bank, the torchlight revealed a raft (Theppa), two individuals and some bags upon the raft.

16. The statement recorded from Madhusudhan on 30.06.2016 states that there was exchange of gunfire and he takes the stand that it was only in response to gun shots at 1.00 a.m., that he and his team had realised that the poachers were active. He has deposed that the poachers provoked them by firing gun shots and it was only by way of retaliation that he had fired two rounds from his pistol.

17. Mr.Murthy repeatedly emphasises that all three men were known offenders and poachers. The Conservator of Forests had short-listed 80 active poachers capturing their images in hidden cameras and an official communication sent to the Tamil Nadu police and Forest Department in this regard. To this Mr.Sankarasubbu would retort that, that was no justification for murder.

18. Siddachari, who was accompanying him fired one round from his rifle and Chennappa fired once with his slide action gun. To be noted that there is nothing on record in support of the allegation that Palani and his associates had opened fire first.

19. Approaching the raft, they found that one of the poachers had fallen into the



WP.No.2880

MP.No.1 of 2015

water and disappeared. They found two plastic bags with fresh venison (deer meat) with blood dripping from it. Nothing more had to be done and the rafting paddle, the bags containing venison and head torch found at the spot were collected and the team returned to the office.

20. The statement of Muthusamy, recorded under Section 200 of the Cr.P.C. corresponds with that of Raja qua Palani having been taken by the police officials. The only difference is that while Raja says that Palani fell down with pellet wound and was screaming and the forest officials took him in his raft indicating that he was alive when he was taken, Muthusamy says that Palani died in the firing and his body was taken by the forest officials. However, both concur that Palani, whether dead or alive, had been taken by the Karnataka police.

21. A preliminary objection is raised on the maintainability of this Writ Petition on the specific ground of territoriality. One is unable to pin point the exact location of the events as it is only from a careful study of the statements that this Court draws conclusions on this aspect. The Court has also taken the assistance of a map of the area and the media reports of the incidents of 22.10.2014 to 24.10.2014 to understand better the topography and set the events in context.

22. To be noted, that the reference to media reports is solely to understand the geography of the area and to appreciate better the location in which the events have



WP.No.2880

MP.No.1 of 2015

transpired. The following points emerge - The terrain is, admittedly, hilly, part of the Gopinatham Forest Range, M.M. Hills in the vicinity of the Palar river, which acts at that point, as the border between the States of Tamil Nadu and Karnataka. Palani, his associates and their families are resident in one of the border villages and the fact remains that MM Hills Police Station was the station of choice of the petitioner and this police station falls within the territory of Karnataka.

23. Mr.Murthy would submit that the procedure followed by the respondents is in line with the requirements of Section 173 of the Cr.P.C. In the present case, enquiry had revealed that the facts as portrayed by the petitioner in her complaint were incorrect. While she proceeded on the basis that the demise of Palani was a murder and that the police officials were, and ought to be mulcted with responsibility and liability for the same, the investigation did not support such a statement.

24. All the officials concerned, including those who were on the scene of crime had been diligent in doing their duty to contain and restrict the illegal activity of poaching. The enquiry had been conducted scrupulously. The inquest had been conducted by an officer of the level of Taluka Executive Magistrate.

25. The post-mortem was videographed which reveals absolute transparency and fairness. The final opinion on the post mortem report shows the cause of death as traumatic shock and cranio cerebal injury due to hit of missile by rifle firearm.



26. Under the head 'further opinions', it states,

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(1) Injury Nos.1 to 5 in the post-mortem report caused by firearm injury and are antemortem. Those injuries are as follows:

*'External Injuries*

*1.Forearm entry wound cruciate shape, of site 2x1.5 cm present over Rt parietal area of head 10 cm above Rt ear, 4cm below midline of head and 6 cm from Rt orbital ridge. lacerated penetrative wound extends to downwards and backwards. On dissection outer table of skull shows clean cut penetrative entry wound measures 8mm in diameter and inner table shows bevelling of margins and red colour extra vacation of blood. Skull bone shattered into pieces – extensive comminuted fracture of vault and base of skull with 1 cm. side of mandible (blast head). Brain abs.... WHAT*

*2.Laceration 12x2 cm x cavity deep over Lt front temporo parietal head extends from inner margin of left eye to back of head irregular margins.*

*3.Laceration 5x5 cm x bone cavity deep over left.. occiput area 8 cm above nape of neck, 4 cm below midline of vault and above upper margin Lt ear, irregular, red margins.*

*4.Laceration 3.5 cm x 3.5 cm x cavity deep over Lt mastoid area of head below and behind left ear irregular margins, underlying bare of skull bones, mastoid bone fractures.*

*5.Laceration 1 x 1 cm x cavity deep over fracture just above the medial aspect of Rt eye, irregular margins.'*

(2) Injuries 6 and 7 could have caused by aquatic animals and are post-mortem in nature. They are as follows:

*'6.Laceration 30 cm x 10 cm x muscle deep over medical aspect of Rt arm pale margins edges nibbled s/o PM injury Lt Rt arm bones skeletonised and Lt Rt forearm of hand absent edges at shoulder nibbled pale, s/o PM injury.*

*7. Lt Rt arm bones skeletonised and Lt fore arm of hand absent edges at shoulder nibbled, pale, s/o PM injury.*



WP.No.2880

MP.No.1 of 2015

(3) Left upper limb, forearm and hand missing could be because of aquatic animals activity and decomposition changes.

27. The report was forwarded to experts in the Forensic Science Laboratory (FSL) and the authority, based in Madiwala has opined as follows:

*'As per the crime scene study, the shooter possessing the 0.315 caliber weapon was stated to be standing at a distance of 88.5 feet from the palar river and deceased was standing on the back of the river beside the boat, The shooter position was higher than the deceased, hence,*

*A)The injury mentioned by the Medical Officer at Serial No.1 of the PM report is consistent with the statement of the Forest Officials*

*B)Since the direction of firing is from upward to downward, the version of Smt.Shatha wife of the deceased is inconsistent with the injuries mentioned above.'*

28. It has been the categoric stand of Mr.Sankarasubbu that Palani was shot point blank. However, this is not supported by the study of the crime scene that has been referred to by the expert in the FSL where the distance between the shooter and the victim is stated to be 88.5 feet and from a higher position.

29. There have been no specific errors or perversities pointed out in the reports of the experts, being the FSL or in the conduct of inquest or the post-mortem and the statement that he has been shot point blank does not appeal, though it is admitted by the Karnataka respondents that Palani has been shot by one of their own, the shooting does not appear to be point blank based on the reports of the experts.

30. Raja had also been apprehended thereafter and taken by the officials for x-ray



WP.No.2880

MP.No.1 of 2015

and scanning to the Mysore Medical College in December, 2015. The Assistant Professor, Mysore Medical College, has given a report dated 10.12.2015 disclosing that the injury that had been reported by Raja to the Salem Medical Centre Hospital was more than 6 months, 9 pellets had been found in the x-ray and the range of fire was between 12 and 120 feet.

31. The prayer in the Writ Petition is for a Writ of Mandamus directing the Respondents to transfer the investigation in Crime No.67 of 2014 on the file of Inspector of Police, Malaimatheswarankoil Police Station, Bangalore, Karnataka State to the Joint Director, CBI, Southern Region, Sastri Bhavan, Chennai-6 for fair investigation to secure the ends of justice.

32. In fact, the above prayer, as on date is infructuous, as the investigation is complete and has yielded a 'B' report on the basis of which the matter has been closed, though the petitioner has objected to such closure.

33. I now proceed to discuss the cases cited by the respondents on the aspect of territorial jurisdiction and maintainability. In *LT. COL. Khajoor Singh v. The Union of India & Another*<sup>6</sup>, 7 Judges of the Hon'ble Supreme Court considered a challenge to a decision of the Jammu and Kashmir High Court.

34. The appellant was a Commissioned Officer in the Jammu and Kashmir State

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<sup>6</sup> 1961 AIR 532



Force. He was compulsorily retired from service and that decision came to be challenged by him. The Writ Petition was opposed primarily on the ground that it was not maintainable as the authority against whom the Writ was sought was outside the territorial limits of jurisdiction of that High Court.

35. The objection was accepted relying on an earlier judgments of the Hon'ble Supreme Court in *Election Commission, India V. Saka Venkata Subba Rao*<sup>7</sup> and *K.S.Rashid and Son V. The Income Tax Investigation Commission etc.*<sup>8</sup>. In appeal, the matter was first heard by 5 Judges and thereafter referred to a larger Bench, as the correctness of the aforesaid two decisions was questioned.

36. In conclusion, the Court held that the High Court within the jurisdiction of which the act or omission takes place has proper jurisdiction, not because a part of the cause of action arose there, but in consequence of the use of the words 'in appropriate cases' in Article 226 of the Constitution of India.

37. The next case relied upon is *State Through CBI v. Raj Kumar Jain*<sup>9</sup>. The Hon'ble Supreme Court reiterates the bar of a Court taking cognizance of offences without sanction of the appropriate authority. The judgment, rendered in August, 1998, was a decade after the registration of the case. In conclusion, the Bench states that one

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7 1953 S.C.R. 1144

8 1954 S.C.R. 738

9 Laws (SC) 1998-8-117



course of action is to remand the matter to the Special Judge with a direction to look into the report under Section 173(2) of the Cr.P.C. and documents referred to thereon, to decide whether further investigation was warranted or not.

38. However, in view of the elapse of a decade, they felt that a further delay was not appropriate and, having gone through the documents themselves expressed the opinion that the conclusion of the CBI that no prima facie case has been made out against the respondents, was just and proper. This is what Mr.Murthy would have me to do in the facts and circumstances of the present case.

39. In *Popular Muthiah v. State represented by Inspector of Police*<sup>10</sup>, the Hon'ble Supreme Court considered an appeal arising from a decision of a Division Bench of this Court and reiterated the fact that the inherent power of the High Court in intervening in proceedings before the Magistrate should be exercised sparingly.

40. While intervening, it was not just required to apply its mind to the materials on record, but was also required to consider as to whether any purpose would be served thereby. They also felt that in those cases the High Court had not granted adequate opportunity to the accused and that any order that had been passed should have been after proper opportunity. The decision of the High Court was set aside and the matter remanded to the High Court to decide in accordance with law and afresh.

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<sup>10</sup> (2006) 7 SCC 296



WP.No.2880

MP.No.1 of 2015

41. In *Shri Rajendra Ramchandra Kavalekar v. State of Maharashtra & Anr.*<sup>11</sup>, a judgment of the Bombay High Court was called in question. The Bombay High Court had dismissed the case of the accused noticing that all papers and documents pertaining to the case in question were in the possession of the CBI Court and thus it would not be appropriate for the High Court to intervene.

42. However, the main plea of the accused related to the territorial jurisdiction. The Bench, recalling its observation in the case of *Navinchandra N. Majithia Vs. State of Maharashtra & Ors.*,<sup>12</sup> that ‘so far as the territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed’, reiterated that the territorial jurisdiction with regard to criminal offence would be the place of occurrence of the alleged event and not the location of the police station where the complaint was filed or FIR registered.

43. The above view has also be reiterated by a Division Bench of the Himachal Pradesh High Court in the case of *Raj Pal Singh v. Central Bureau of Investigation & Ors.*<sup>13</sup>.

44. In *Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass and Ors*<sup>14</sup>, a

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<sup>11</sup> (2009) 11 SCC 286

<sup>12</sup> (2007) 7 SCC 640

<sup>13</sup> 2015 All MR (Cri) Journal 515

<sup>14</sup> AIR 1952 Bom 365



Division Bench of the Bombay High Court decided a challenge to the jurisdiction of the

Court to hear the Suit. At paragraphs 1 and 2, Hon'ble Chief Justice Chagla, as he then

was, states as follows:

*'(1) This appeal raises a very interesting and important question as to the jurisdiction of this Court. Mr. Justice Shah took the view that this Court had no jurisdiction to try the plaintiff's suit, and on that ground he dismissed it. It is from that order of dismissal that the plaintiff has come in appeal before us.*

*(2) A preliminary observation may be not out of place as to the manner in which issues as to jurisdiction should be tried. Mr. M. V. Desai has made a grievance that the learned Judge took the view that an issue with regard to jurisdiction is always an issue of law and must be tried as a preliminary issue. I do not think that this grievance is fully justified. As I read the judgment, the learned Judge has tried this issue as an issue of law because, for the purpose of his decision, he has assumed that all the facts averred by the plaintiff in his plaint are proved, and, therefore, this issue has been tried on a demurrer.*

*Now, it is open to a Court to take the view that, even if the plaintiff were to establish all the facts alleged by him the Court would have no jurisdiction. In that view of the matter, a preliminary issue on a demurrer will arise, and that would undoubtedly be an issue of law. But there may be a case where an issue as to jurisdiction would require leading of some evidence, in which case an issue of jurisdiction would raise a mixed question of law and fact. Such an issue may be tried as a preliminary issue, or it may be tried as an issue along with other issues. This would depend upon whether the evidence with regard to jurisdiction could be separated from the evidence on other, issues. Therefore, it would not be correct to say that in all cases an issue as to jurisdiction is necessarily an issue of law. This position is made perfectly clear in the judgment of Sir Beaumont in 'SOWKABAI v. SIB TUKOJIRAO HOLKAR', 34 Bom L R 6.'*



45. That case dealt with the business of a joint family, such business involving both movable and immovable properties. The Division Bench held the suit maintainable in respect of the partition of both movables as well as immovables, on the facts and circumstances of that case.

46. In the present case, there is, really, no dispute raised on the question of territoriality. The petitioner's repeated entreaty is that, since the officials who had perpetrated the killing/murder of Palani and the investigating authorities were from the same State, there is a strong possibility of a partial, biased and unfair investigation. The thrust, and the sole thrust of the petitioner, is only on the fairness or otherwise of the investigation.

47. An appreciation of the aforesaid judgments would lead to the following propositions on the aspect of territorial jurisdiction and maintainability:

- i) In criminal offences, the assumption of jurisdiction by an authority would be based on the location of the alleged act or omission.
- ii) In the present case, the site of the incident leading to Palani's demise was, admittedly, along the banks of the Palar river in Karnataka.
- iii) The petitioner has lodged a complaint, FIR has been registered and proceedings are on-going before the police and judicial authorities at Karnataka.



WP.No.2880

MP.No.1 of 2015

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- iv) The petitioner does not challenge the territoriality of the proceedings at Karnataka and the assumption of jurisdiction by those officials. In fact, the entirety of the proceedings in Crime No.67 of 2014 are at her instance.

48. Since jurisdiction of the authorities has rightly been assumed, the only question that arises and survives is whether the prayer for transfer of investigation is liable to be accepted and whether this Court finds cause to intervene.

49. Only the Karnataka State officials are seen to be vehemently defending the Writ Petition and there has been no opinion put forth by the State of Tamil Nadu or the authorities here who have left it to the Court to take a view in the matter. The petitioner has, admittedly, filed a complaint before the M.M. Hills police station in Karnataka and territorial jurisdiction thus vests there. This is on the one hand.

50. I now come to the cases cited by the learned counsel for the petitioner that set out in detail the situations where Courts had felt the necessity to intervene and refer the investigation to an independent agency.

51. In *Rubabbuddin Sheikh* (supra), the petitioner was the brother of one Sohrabuddin, who was alleged to have been killed by the officials of the Gujarat Police in a fake encounter. The petitioner alleged that the investigation conducted by the Gujarat Police could not have been fair and impartial, since high officials of the Gujarat Police had been involved. His request was that the case be transferred to the Central



WP.No.2880

MP.No.1 of 2015

Bureau of Investigation.

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52. The defence was that charge sheet had been submitted and the trial was on-going and the proceedings were at an advanced stage when the request for transfer could not be considered.

53. That defence was not accepted by the Hon'ble Supreme Court, stating that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and in order to ensure that complete justice is done, it was always open to the Court to handover the investigation to an independent agency, like the CBI.

54. Thus their conclusion was that such reference to an independent agency could even be made post submission of charge sheet. In that case, they felt that the investigation had not run in a proper direction as they had noted several factual discrepancies appearing in the 8 action taken reports and the charge sheet. It was felt that the police authorities have not been fair and impartial and had not dealt with offences alleged against the high ranking police officials that were of a grave nature, appropriately.

55. In such a case, they also indicated that the State police authorities of Gujarat should have taken help from other police officials located in different States. The Hon'ble Supreme Court would thus felt compelled to direct investigation by the CBI and



WP.No.2880

MP.No.1 of 2015

submit a report to the Court within six months. The police authorities in the State of Gujarat were directed to handover the records of the case of the CBI.

56. In the case of *Niranjan Singh* (supra), the petitioner had filed a complaint arraying two Sub-Inspectors and eight constables as accused. A blood-curdling plot was disclosed in the complaint revealing a conspiracy against the brother of the complainant and his ultimate murder. An inquiry had been ordered under Section 202 of the Cr.P.C.

57. Learned Magistrate had, taking an overall survey of the evidence produced, been of the opinion that there were sufficient grounds to proceed against the accused for various offences, including murder. Non-bailable warrants were also issued. There was an encounter thereafter, where both parties sustained injuries and one succumbed to a gun shot wound.

58. While dealing with the interpretation of Section 439 of the Cr.P.C., the Bench has made some observations in regard to the State bias and police threats that are pressed into service by the petitioner in support of the request for transfer. Those observations would constitute obiter, as the legal question that arose was something else.

59. In *R.S.Sodhi* (supra), the prayer was in regard to an incident that had taken place at Pilibhit in September, 1991, where ten persons were reported to have been killed in what was described as an encounter between the Punjab militants and the local police.



WP.No.2880

MP.No.1 of 2015

60. A Public Interest Litigation was filed based on a news item reporting the incident. The investigation had been handed over to an officer of the rank of Inspector General and the local police officers who were suspected to have involved with the unsavoury incidents had been transferred to enable the officer to carry on the enquiry unhindered.

61. Though the State Government had appointed a one Member Commission headed by a Judge of the Allahabad High Court to enquire into the matter, stay had been granted in a Writ Petition challenging that reference. The premise on which the matter proceeded before the Hon'ble Supreme Court was that the need for an independent investigation in such matters can hardly be disputed, since the local police had been involved in the alleged encounters.

62. The request was for a reference to the Central Bureau of Investigation. The Hon'ble Supreme Court recalled its earlier observations in the case of *Chaitanya Kalbagh V. State of U.P.*<sup>15</sup> to the effect that there was an imperative need to ensure that the guardians of law and order observe the high code of discipline expected from them and that they function strictly as the protectors of innocent citizens.

63. In that case, emphasis was laid on the observation that matters which properly fall within the domain of the State Government should be left to that Government and that

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<sup>15</sup> (1989) 2 SCC 314



WP.No.2880

MP.No.1 of 2015

Government should first be petitioned before there was any intervention or interference by the Court. The Writ Petition was closed finding it desirable to entrust the investigation to the CBI, such that all concerned would feel confident in the assurance of impartial enquiry.

64. The Court clarified that such reference should not be construed as a reflection on the credibility of either the local police or the State Government as they had been guided solely by the large requirements of justice.

65. In *Narmada Bai* (supra), the grievance was as against the killing of Tulsiram Prajapati, the petitioner's son in an encounter by the officials of Gujarat and Rajasthan police. She had sought a mandamus seeking compensation and for transfer of the enquiry to the CBI.

66. According to the petitioner, her son had been done away with in a fake encounter by the official respondents with the sole ulterior motive to shield themselves in the investigation emanating under the directions of the Hon'ble Supreme Court in *Rubabbuddin Sheikh* (supra) . Her son had been incarcerated in Central Jail, Udaipur and had complained of a life threatening attack by co-prisoners. He alleged conspiracy among the police officials of Gujarat, Rajasthan and Maharashtra against him.

67. After a detailed analysis of the manner in which the enquiry had been conducted in that case and based on the observations and conclusions of the Hon'ble



WP.No.2880

MP.No.1 of 2015

Supreme Court in *Rubabbuddin Sheikh* (supra), the Bench transferred the enquiry to the CBI.

68. Courts have thus been consistently adopting a view that the necessity to take away the enquiry/investigation/proceedings from one agency and entrust the same to an alternative independent agency would depend on the facts of the specific case. I do not find any restriction imposed on a Court in dealing with the request for transfer even if territorial jurisdiction were to lie in another State.

69. After all, the petitioner is, admittedly, a resident of Tamil Nadu. There is nothing untoward in her belief that she would be best served by the authorities in her State. However, based on the location/situs of the incidents of 22.10.2014 to 24.10.2014, she has admittedly approached the police authorities in Karnataka with her complaint. Her choice of police station is not disputed as being the proper station to have approached.

70. Besides, it is to be noted, that in the cases dealt with above, it was the enquiry itself that was the subject matter of challenge. In the present case, pending Writ Petition, the Petitioner's complaint in Crime No.67 of 2014 has been closed by way of 'B' report, and the petitioner has also filed an objection thereto as early as on 23.03.2019.

71. Had the circumstances been different, meaning that, (i) had the enquiry still been pending with the authorities (ii) not closed by way of 'B' report and (iii) objection



WP.No.2880

MP.No.1 of 2015

of the petitioner not been pending before the Court at Karnataka, it might have been a different scenario. However, such a situation does not arise in the present case.

72. The objections filed by the petitioner are pending decision before the Additional Civil Judge (Senior Division) and CJM Court, Kollegala, Chamrajanagar District, Karnataka. Since the matter is pending before the Court for adjudication, there need be no apprehension on the part of Petitioner that a proper adjudication will not ensue.

73. I am thus of the considered view that the appropriate course of action would be for the petitioner to pursue the matter before the Court concerned. This Court believes that the marshalling of the facts and examination of the reports/results of investigation must/will be done by the said authority who will be armed with the machinery to collate requisite evidence and verify in depth the facts of 22<sup>nd</sup> to 24<sup>th</sup> of October, 2014.

74. A transfer of the matter at this juncture is unnecessary and pre-mature apart from leading to an inference that the Court concerned would not hear the petitioner's objection fully or fairly. This Court finds no reason to draw such an inference or voice such apprehension.

75. Having said so, there are some facets of the matter that, in my considered view, cast some doubt in regard to the trajectory of events as they reveal themselves. The



WP.No.2880

MP.No.1 of 2015

first is the concurring statements of Raja and Muthusamy in regard to Palani having been taken by the Karnataka forest officials on the raft. This militates against the statements of the officials that Palani fell into the water and disappeared. This aspect of the matter warrants a thorough re-look.

76. The second aspect of the matter relates to the injuries that were found on the person of Palani. The portion extracted in paragraph 26 supra indicates that there were several injuries that were antemortem. These injuries, which are mostly noted as serious lacerations, could have caused by any number of factors, including violence by the officials.

77. These aspects of the matter, as well as any others that are raised by the petitioner or commend themselves to the attention of the Court concerned, must be enquired into by the learned Judge in adjudicating the petitioner's objection to closure of Crime No.67 of 2014 under Section 173(2) of Cr.P.C.

78. This Writ Petition is disposed declining the request of the petitioner. The objections of the petitioner are listed for hearing next on 24.03.2023 and will, no doubt, be heard and decided expeditiously, to ensure that justice is done. No costs. Connected Miscellaneous Petition is closed.

**14.03.2023**



WP.No.2880

MP.No.1 of 2015

Index : Yes / No

Speaking Order/Non-speaking order

Neutral citation: Yes/No

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To

- 1.The State of Tamil Nadu,  
Represented by its Secretary,  
Department of Home,  
Fort St. George,  
Chennai-600 009.
- 2.The State Security Department of Forests,  
The State of Karnataka,  
Vidhansowdha,  
Bangalore-1.
- 3.The Secretary,  
Department of Home,  
Karnataka State,  
Vidhansowdha,  
Bangalore-1.
- 4.The District Collector,  
Chamarajanagara District  
Bangalore,  
Karnataka State.
- 5.The District Collector,  
Salem District,  
Salem.
- 6.The District Superintendent of Police,  
Chamarajanagara District, Bangalore,  
Karnataka State.



WP.No.2880

MP.No.1 of 2015

7.The Inspector of Police,  
Malai Matheswaran Koil Police Station,  
Chanarajanagara District, Bangalore,  
Bangalore, Karnataka State,

8.The Joint Director,  
CBI  
Chennai-600 006.

**DR.ANITA SUMANTH, J.**

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WP.No.2880  
MP.No.1 of 2015

**WP.No.2880 of 2015 and**  
**MP.No.1 of 2015**

**14.03.2023**