

WP(MD)No.22169 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.04.2023

DELIVERED ON : 17.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.22169 of 2016

1.R.Jeyakumar Jothi

2.T.Subramanian @ Raja

3.R.Jeyaram Jothi

4.S.Ramesh

5.M.Rengaiah

: Petitioners

v.

1.The Home Secretary,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Chennai – 600 004.



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3. The Joint Director,
Central Bureau of Investigation,
III Floor, E.V.K.Sampath Building,
College Road,
Chennai.
4. The Inspector of Police,
Railway Police Station,
Tirunelveli.
5. The Deputy Superintendent of Police,
CBCID,
Tirunelveli.
6. Marirajan,
Inspector of Police,
CBCID,
Madurai.
7. The District Collector,
Tirunelveli,
Tirunelveli District.
8. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the third respondent to conduct fresh investigation in Crime No.8 of 2008 on the file of the fourth



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respondent and consequently, directing the respondents 1, 2 & 6 to pay compensation of Rs.10 Crore to each of the petitioners and to provide Government Job to the petitioners 1, 3 & 4.

For Petitioners : Mr.M.P.Senthil
for M/s.Waraon & Sai Rams

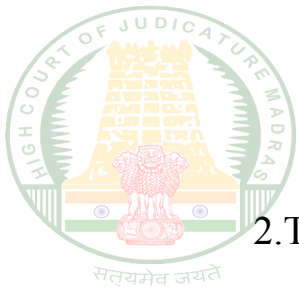
For Respondents : Mr.R.Shanmuga Sundaram,
Advocate General
Assisted by
Mr.M.Siddhardhan,
Additional Government Pleader
for RR.1, 2, 4, 5, 7, 8

Mr.N.Mohideen Basha for R.3

Mr.M.E.Ilango for R.6

ORDER

The petitioners, claiming to be the victims of wrongful prosecution in respect of a case in Crime No.8 of 2008 on the file of the fourth respondent, have filed this writ petition seeking de-nova investigation by the third respondent and compensation for the malicious prosecution.

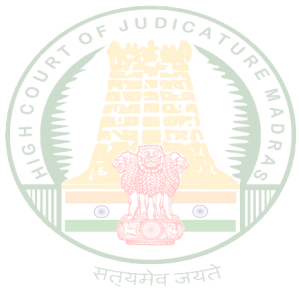


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2.The brief facts of the case, in a nutshell, are as follows:-

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2.1.The petitioners were on a pilgrimage to Tripathi travelling in the Nagarkovil – Tripathy – Mumbai Express bearing Train No.6335 on 13.01.2008 in a reserved compartment S.10 with valid reservation tickets. A young man, named as Rajesh Prabhu who is a native of Madurai, had boarded the train at Nagarkovil at S.9 Coach with an unreserved ticket and waited in S10 Coach for the Travelling Ticket Examiner (TTE) seeking allotment of a berth, which is said to have been objected by the petitioners / accused, that, being an unreserved passenger, the said Rajesh Prabhu cannot wait in the reserved coach. On course of that, there was a quarrel and the petitioners were intimidated by Rajesh Prabhu that they cannot even cross Madurai Junction. With this notice, all the petitioners said to have attacked the deceased and caused fatal injuries. The dead body of Rajesh Prabhu was found by one unknown passenger in a pool of blood and somebody pulled the train when the train just departed from Tirunelveli Junction. The train was taken back to Tirunelveli Junction and on the complaint of the TTE, the Railway Police, Tirunelveli, registered a case in Crime No.8 of 2008 for the offence punishable under Section 302 IPC.



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2.2.The investigation in this case was conducted by four Officers. The initial investigation was conducted by the then Inspector of Police, Railway Police Force [PW44] from 13.01.2008 to 22.04.2008. The first investigation officer has examined totally 195 witnesses and at that stage, the father of the deceased has sent a representation to the then Director General of Police on 29.03.2008 for changing the investigation and also filed an application before this Court in CrI.OP.(MD)No.3938 of 2008 for transferring the case in Crime No.8 of 2008 from the file of the Inspector of Police, Railway Police Station, Tirunelveli, to any other special investigating agency. This Court, by order dated 09.04.2008, has disposed that application with a direction to the respondent therein to consider his representation.

2.3.Accordingly, the Director General of Police vide his proceedings dated 23.04.2008 has directed to transfer the investigation from the file of the Railway Police, Tirunelveli to the Deputy Superintendent of Police, CBCID, Tirunelveli. The Deputy Superintendent of Police, CBCID, Tirunelveli has conducted the further investigation in Crime No.8 of 2008. The second



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investigation officer conducted the investigation from 09.07.2008 to 22.04.2009 and he went on medical leave on 22.04.2009. Therefore, the Deputy Superintendent of Police (in-charge), Tirunelveli has proceeded with the investigation. While so, the case was again transferred to CBCID, Madurai and entrusted with the sixth respondent / Marirajan, the then Inspector of Police, CBCID at Madurai on 01.10.2009, by the Additional Director General of Police, Crime Branch CID, Chennai.

2.4.The sixth respondent / the fourth investigation officer has proceeded with the further investigation from 08.10.2009 and he has filed his final report on 26.04.2010 fixing the petitioners, the co-passengers, as accused that due to the dispute arose between them on account of reservation, the petitioners have killed the deceased Rajesh Prabhu. This final report is based on the statements of PWs.18, 19 and 20, who are said to be eyewitnesses to the incident.

2.5.PW18, a Head Constable working in Railway Police Station, Nagarkovil, is said to have travelled from Nagarkovil to Madurai in Coach



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No.S10 on the date of occurrence and witnessed the incident. PW19 is the

A/C Coach Attendar working at Nagarkovil Railway Station and he was not on duty and he was travelling on the same coach from Nagarkovil to Madurai for the purpose of visiting his mother and sister. PW20, a Tea Stall owner who is running a Tea Stall at Madurai, has went to the neighboring State Kerala to procure tea powder for his tea shop and while returning to Madurai, he was also travelling in S9 Coach on the date of occurrence and said to have witnessed the incident.

2.6.However, these witnesses said to be the eyewitnesses did not state that they have seen the incident neither before the first investigation officer nor before the second investigation officer. However, in their statements recorded on 15.02.2011 by the fourth investigation officer [R.6], after a period of two years from the date occurrence, they claim that they have witnessed the occurrence in a close proximity.

2.7.The case was committed to the Court of Sessions and taken up for trial by the Additional District Sessions Court / Fast Track Court. No.1,



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Tirunelveli in S.C.No.180 of 2010. The trial Court, by order dated 19.11.2011, acquitted the accused / petitioners from the charges levelled against them, on the main ground that these three witnesses [PW18, PW19 and PW20] were planted by the fourth investigation officer / sixth respondent after two years, either to help the real accused or to close the investigation. An attempt was made to prefer an appeal as against the order of acquittal, but the Government has rejected the request vide G.O.(Ms)No.882, Home (Courts 7) Department, dated 16.11.2012.

2.8. Thereafter, the father of the deceased [PW23] has filed an appeal in CrI.A(MD)No.124 of 2013 as against the order passed by the trial Court. The Division Bench of this Court dismissed the appeal by order dated 01.04.2016. Pending this appeal, the petitioners have preferred a writ petition before this Court in WP.(MD)No.6444 of 2014 for a fresh investigation and for a compensation of 10 Crore each. Considering the pendency of the CrI.A(MD)No.124 of 2013 filed as against the judgment of the trial Court, this Court, by order dated 03.11.2015, disposed the said writ petition with liberty to file a fresh writ petition on the disposal of CrI.A(MD).No.124 of

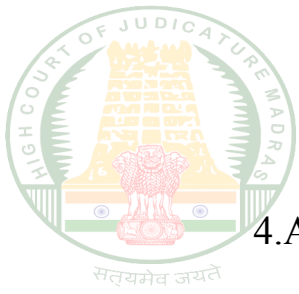


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2013. Therefore, this present writ petition is filed after the dismissal of the appeal filed as against the acquittal in CrI.A(MD)No.124 of 2013.

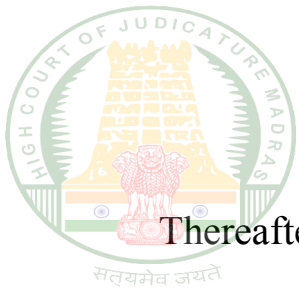
Submissions made on behalf of the petitioners:-

3.Learned Counsel for the petitioners vehemently contest that the fourth investigation officer / sixth respondent herein, in order to safeguard the real accused, has planted the eyewitnesses, PWs.18, 19 and 20, as against these innocent petitioners. The investigation officer has abused his power conferred upon him and filed a false final report as against these petitioners deliberately with an intent to safeguard the real accused. According to him, the deceased Rajesh Prabhu was the cousin of one Ravindran, an influential and powerful politician of the then ruling party of the State Government and the deceased was having an illegal intimacy with the wife of said Ravindran. They were about to get married and for that purpose, the deceased who was working as a Software Engineer in a Private Company in Gujarat, was proceeding to Madurai and at that point of time, he was murdered in between Nagarkovil and Tirunelveli in the running train.



4. Admittedly, the deceased was found in a pool of blood adjacent to berth No.15 in S.9 Coach. He said to have boarded the train with an unreserved ticket and the TTE allotted him with berth No.1 at S.9 Coach. The petitioners were travelling in S.10 Coach. The deceased Rajesh Prabhu said to have initially boarded in S.10 Coach and sit near the petitioners' berth and the petitioners said to have objected that he cannot travel in the reserved coach with open ticket. However, some other passengers from North India were also travelling in S.10 Coach, who were on the waiting list in A/C Coach and waiting for their confirmation. Almost, the entire S.10 Coach was vacant apart from the petitioners and the other North Indian passengers. While so, the petitioners are added as accused as if they raised objections to the deceased to sit in S.10 Coach and on account of that, the offence was committed.

5. The investigation by the first investigation officer was went in the right direction and when the investigation officer was about to reach the main accused, the investigation was transferred from the file of Railway Police to Deputy Superintendent of Police, CBCID, Tirunelveli. He has also zero down the accused and at that juncture, he was made to go on medical leave.



Thereafter, the investigation was entrusted with the sixth respondent to divert the investigation and the same was successfully made by him.

6.The sixth respondent has conveniently omitted the investigations conducted by the Railway Police and the Deputy Superintendent of Police, CBCID, Tirunelveli and the material objects and statements collected by them and filed his final report on 26.04.2010 in a vague manner as against the petitioners, as if there was a quarrel in a vacant compartment for reservation and on that course, the petitioners brutally attacked the deceased and caused the death with 14 fatal injuries. Not even a person with a low IQ will accept the theory of the investigation officer / sixth respondent and the trial Court, while acquitting the petitioners, has condemned the investigation officer / sixth respondent that the witnesses PW18, PW19 and PW20 are planted by the investigation officer R6.

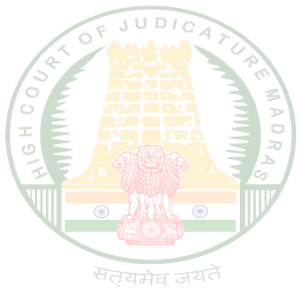
7.Learned Counsel for the petitioners further submitted that the first petitioner had got a job opportunity at London and because of his false implication in this case, he lost his job opportunity and livelihood. The



daughter of the fifth petitioner got married on 27.01.2010. On the same day, in the night, the petitioners were arrested by the sixth respondent as if they have committed murder. Therefore, the reputation of their family with the bridegroom family and other relatives was damaged and the entire family was collapsed. The damages caused to the family in view of their false implication in the criminal case cannot be compensated on money, however, they are fixing the quantum for compensation as Rs.10 Crore each.

Submissions made on behalf of the Respondents:-

8.Learned Advocate General oppose the writ petition on the ground of maintainability, that the issue having complicated question of facts cannot be decided in the writ jurisdiction. He has referred the judgment of the trail Court and also the decision taken by the Division Bench of this Court in CrI.A(MD).No.124 of 2013 and submitted that both the Courts have taken the decision by applying the principles of benefit of doubt and therefore, it cannot be construed that the investigation conducted by the investigation officer as a perfunctory one.



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9. He has also relied on the decisions of the Hon'ble Apex Court in *Nandakumar Krishnarao Navgire v. Jananath Laxman Kushalkar and Others* [(1998) 2 SCC 355] and *Anant Thanur Karmuse v. State of Maharashtra and Others* [2023 SCC Online SC 180]. He has also relied on the decisions of various High Courts across the country in *Channappa and Another v. Sivarudrappa* [1961 SCC Online Kar 4]; *Sapna and Others v. State of Haryana and Others* [CWP-4336-2017]; *Ajeet v. State of Haryana and Others* [CWP No.3749 of 2016, dated 05.04.2016]; and *Venkittu Achari v. C.Vaithyanathan* [2000 (3) CTC 37].

10. Mr. M.E. Elango, learned Counsel appearing for the sixth respondent submitted that the investigation officer [R6] has conducted the investigation in a proper manner and just because the evidence adduced by the prosecution has not been properly appreciated by the trial Court, the entire investigation cannot be construed as a defective one and there cannot be any negative presumption as against the Government Servant under Section 114 of the Indian Evidence Act, 1872. The sixth respondent, investigating officer, is the



one of the best officers in the State of Tamil Nadu and he has received several awards for his effective investigations in various sensitive cases, including the award of “Union Home Minister’s Medal for Excellent Investigation for the year 2019”. He has also furnished the list of awards received by the sixth respondent before this Court.

11.The learned Counsel has also raised the issues on maintainability. For this contention, he has relied on the judgments of this Court in ***D.Arun v. P.Subramani*** [2016 SCC Online Mad 14219]; ***Muthuswamy v. Siddhan and Others*** [2005-2-L.W.229]; ***R.Arun Kumar v. State and Others*** [W.P.No.6262 of 2012, dated 10.11.2021] and ***K.Ratha v. State of Tamil Nadu and Others*** [W.P.(MD)No.13384 of 2012, dated 12.09.2022].

12.This Court considered the rival submissions made on either side and perused the materials placed on record.

13.Admittedly, this is a case of murder and the deceased was found with 14 fatal injuries in a moving train. Initially, the investigation was done by the



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Railway Police, Tirunelveli and based on the order of this Court dated 09.04.2008, the investigation was transferred to CBCID, Tirunelveli and further transferred to CBCID, Madurai. The investigation was entrusted with the sixth respondent / then Inspector of Police, CBCID, Madurai, by the Additional Director General of Police, CBCID, vide his proceedings dated 01.10.2009. The sixth respondent has conducted the further investigation and found that these petitioners are the accused and filed the final report on 26.04.2010. However, the trial Court, after conducting trial, has acquitted all the accused / petitioners by strongly observing that the witnesses PW18, PW19 and PW20, relied on by the sixth respondent for fixing the petitioners as accused, are planted witnesses, planted by the investigation officer / sixth respondent.

14.The petitioners were arrayed as accused in a murder case. They have been acquitted by the trial Court and the appeal against acquittal filed before this Court was also dismissed. Thereafter, these petitioners have filed this petition seeking compensation and also for re-investigation. It is very strange that the accused, after acquittal from the trial Court as well as from this Court,



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have come forward with an application for reinvestigation of the case. I have never seen such petition ever before.

15.The prosecution case is that the petitioners have committed a murder of a fellow passenger in a moving train. The motive projected by the prosecution as against the petitioners for the commission of offence is that the petitioners objected the deceased to sit in a reserved compartment (S-10) and on account of that, there was a wordy quarrel, the deceased said to have intimidated the petitioners and therefore, the petitioners said to have committed the murder of a fellow passenger.

16.The undisputed facts which are available in this case and create a strong doubt on the motive, as projected by the prosecution, is as follows:-

16.1.The petitioners, as a family, were travelling in compartment S-10 on a pilgrimage from Nagercoil to Tirupathi. The train started at 04.30 am in the early morning and there was no passenger other than the petitioners and few other North Indians, who were waiting like the deceased for their confirmation of reservation. The deceased, an Engineering Graduate, who



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was working in Gujarat was returning to his native, Madurai. He, through Tirunanthapuram, came to Nagercoil and from there, he boarded the train with an unreserved ticket, kept his baggage in S-9 compartment, went to S-10 compartment to get a reservation from the Travelling Ticket Examiner (TTE), who was at S-10 compartment. Both S-9 and S-10 compartments were almost empty with 80 + 80 vacant seats.

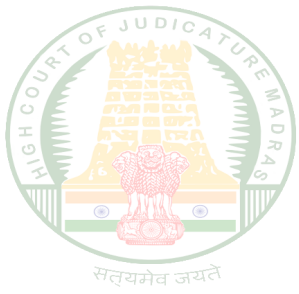
16.2.The deceased, immediately after boarding the train, approached the TTE, obtained confirmation of birth by paying necessary reservation charges. Since the deceased approached the TTE in S-10 compartment, the TTE who was in S-10 compartment has allotted a seat in S-10 compartment initially and on the request of the deceased that he has kept his baggage in S-9 compartment, it was stricken off and it has been allotted in S-9 compartment. This is the statement of the Travelling Ticket Examiner before the first investigation officer and the second investigation officer.

16.3.However, R6 / the fourth investigation officer, who filed the final report, has invented a new theory after 2 ½ years from the date of occurrence



that the accused objected the deceased to sit in the S-10 reserved compartment without any reservation and consequent to the quarrel in this issue, they murdered. It is not known how these petitioners were aware whether the deceased was travelling with reservation or not until the Ticket Examiner verify the same. The fact remains that the deceased got reservation of a berth from the TTE. But, by projecting this motive the petitioners, who were on a pilgrimage to Tirupathi, have been fixed as accused.

16.4. Even according to the prosecution, the petitioners were on pilgrimage and it is not known how a pilgrim was having a knife to commit murder in a moving train. The deceased was brutally murdered with 14 stab injuries. It is unheard of such an attack on any such sudden quarrel. Myself, as an Advocate, have conducted several murder cases and also dealt with several appeals against life imprisonment. I have never heard such brutal attack with 14 stab injuries on a sudden quarrel. The motive attributed by the prosecution for the commission of offence is flimsy and no prudent person can accept this theory of the prosecution for a brutal murder in a moving train due to a sudden quarrel.



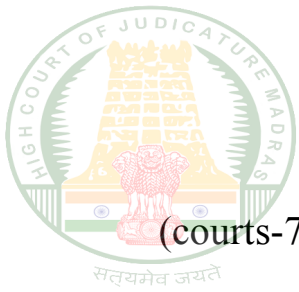
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16.5.The second investigation officer / the Deputy Superintendent of Police, CBCID, has narrowed down the investigation to an issue of adultery and at that point of time, the investigation was changed, another investigation officer was appointed as if the second investigation officer was on leave and it is not known how long this second investigation officer was on leave. Curiously, the second investigation officer / DSP, CBCID, who conducted the investigation for more than one year, has not been examined before the trial Court.

16.6.The investigation conducted by the Deputy Superintendent of Police, CBCID, Tirunelveli, was handed over to the Inspector of Police, Madurai / R6, when suspicion was on the relative of the deceased who is a powerful political person in Madurai.

16.7.As against the finding of the trial Court, though a proposal was made to file an appeal, the Government did not accept the same and rejected the report that this is not a fit case for appeal, vide G.O.(MS).No.882, Home

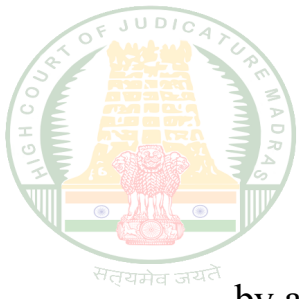


(courts-7) Department dated 16.11.2012. However, the father of the deceased

has filed an appeal before this Court in Crl.A(MD)No.124 of 2013 and the same has been dismissed by the Division Bench of this Court by its judgment dated 01.04.2016. Thereafter, the petitioners filed this writ petition for compensation and also for a fresh investigation.

17.The petitioner's case is that the sixth respondent has maliciously prosecuted them in order to safeguard the real accused. The respondents objected this writ petition on the ground of maintainability. Therefore, this Court frames the following points for determination:-

1. Whether this petition is maintainable under Article 226 of the Constitution of India?
2. Whether this Court can grant compensation under Article 226 of the Constitution of India by invoking its extraordinary power or whether the civil Court alone has the jurisdiction?
3. Whether the trial Court acquitted the petitioners on the ground of benefit of doubt alone?
4. Whether the petitioners are maliciously prosecuted by the sixth respondent?
5. Whether the petitioners are entitled for compensation? and



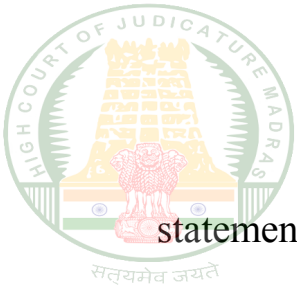
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6. Whether the facts of the case require further investigation by any other investigating agencies?

Point No.1 (Maintainability) :-

18.The incident took place on 13.01.2008. The Inspector of Railway Police conducted the investigation from 13.01.2008 to 22.04.2008. Mr.Selvaraj, DSP, CBCID, Tirunelveli enquired into the matter for a period of 297 days from 15.05.2008 to 25.05.2008 and from 09.07.2008 to 22.04.2009. One Ms.Lalitha, DSP (in-charge), CBCID, Tirunelveli, enquired into the matter for a period of 210 days from 26.05.2008 to 08.07.2008 and from 23.04.2009 to 07.10.2009. The statements recorded by the earlier investigation officers were not at all considered by R6 / Inspector of Police, CBCID, Madurai, who conducted the investigation for a period of 111 days from 08.10.2009 to 27.01.2010 and filed the final report.

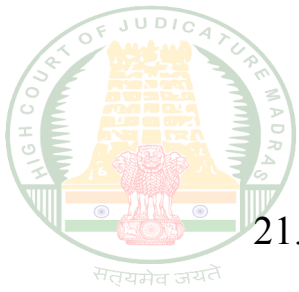
19.The statements of PW1, PW2, PW3, PW8, PW9, PW12, PW18, PW19 & PW20 are contra to their earlier statements. R6 did not verify their



statements and failed to find out the reasons for their new version. It appears

R6 has taken advantage of the provision available u/s.162 Cr.P.C. and has recorded the statements of witnesses to his convenience to fix the petitioners as accused.

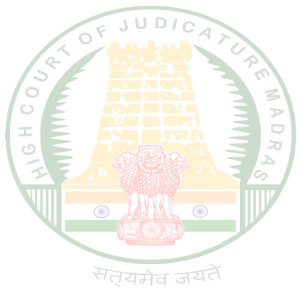
20.The petitioners were examined by the previous investigation officers as witnesses. They remained as witnesses for nearly two years till the investigation was taken over by R6. In fact, PW18, the Railway Police, has been cited as a direct witness only based on the statements of these petitioners. While so, on a flimsy ground, the petitioners were shown as accused after two years and that too, based on the contradictory statements of PWs.18 to 20. PW20 was inserted by R6 after two years as a eye-witness, but he was not available for the interrogation by the previous investigation officers. It was also found during the trial that PW20 is a close associate of one Ravindran, a Politician, against whom, the second investigation officer has narrowed down the motive aspect.



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21. Though the trial Court has acquitted the accused on benefit of doubt, a clear finding has been made by the trial Court that the investigation officer / R6, in order to protect the real accused, has implicated the petitioners, innocent passengers, as accused. The case of the petitioners is also that they were implicated as accused in order to protect the real accused.

22. The investigation is the prerogative of the investigation agency. Not even the Court would interfere with the investigation or during the course of investigation and Court would not issue any direction to the manner in which the investigation to be carried out, which would mean that from the lodging of the first information report till the filing of the final report, the right of investigation exclusively is vested with the investigation agency. Whoever high he may be, a victim of any crime has to depend upon the investigation agency. It is the responsibility of the State to protect the life and limb of every citizen. The affected victims must be ensured that they would get proper justice for the crime committed on them.

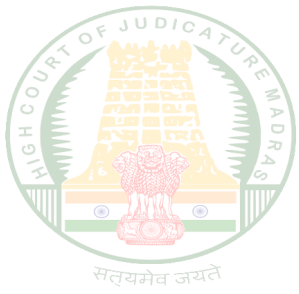


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23.A fair justice can be done, only on the materials placed before the Court by the investigation agency. Therefore, the purpose of an investigation agency must be fair and proper, unbiased and honest. The duty of the Court is not only to protect the rights of an accused, but also to protect and render justice to the innocent victims. The responsibility of the investigation agency in the criminal justice system plays a major role and they are, in fact, the kingpins in the criminal investigation system. Only on a reliable investigation and with reliable evidence, a proper justice can be rendered.

24.It is accepted by the Courts that fair investigation is a fundamental right under Article 21 of the Constitution of India. The Hon'ble Supreme Court, in catena of judgments, has held that fair investigation is not only a right guaranteed to a victim, but also to an accused. Some of the notable judgments of the Hon'ble Supreme Court on the role of investigation agency and the right of a human being for a fair investigation are discussed infra.



WEB COPY 25. ***In Re State of West Bengal and Others v. The Committee for Protection of Democratic Rights, West Bengal and Others [AIR 2010 SC 1476]***, the Larger Bench of Hon'ble Supreme Court has held as follows:-

“41. ... A right becomes a fundamental right because it has foundational value. Apart from the principles, one has also to see the structure of the Article in which the fundamental value is incorporated. Fundamental right is a limitation on the power of the State. A Constitution, and in particular that of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled is to be given a generous and purposive construction. In Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305, this Court has held that while considering the nature and content of fundamental rights, the Court must not be too astute to interpret the language in a literal sense so as to whittle them down. The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure. An instance of literal and narrow interpretation of a vital fundamental right in the Indian Constitution is the early decision of the Supreme Court in A.K. Gopalan v. State of Madras AIR 1950 SC 27. Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty



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except according to procedure established by law. The Supreme Court by a majority held that 'procedure established by law' means any procedure established by law made by the Parliament or the legislatures of the State. The Supreme Court refused to infuse the procedure with principles of natural justice. It concentrated solely upon the existence of enacted law. After three decades, the Supreme Court overruled its previous decision in *A.K. Gopalan* and held in its landmark judgment in *Maneka Gandhi v. Union of India* (1978) 1 SCC 248 that the procedure contemplated by Article 21 must answer the test of reasonableness. The Court further held that the procedure should also be in conformity with the principles of natural justice. This example is given to demonstrate an instance of expansive interpretation of a fundamental right. **The expression 'life' in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity. This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part-III on the principle that certain unarticulated rights are implicit in the enumerated guarantees.**

... ..

44. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any



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Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

*(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. **The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.** In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”*

26. *In Re Sidhartha Vashisht vs. State (NCT of Delhi)* [AIR 2010 SC 2352], the Hon'ble Supreme Court has observed as follows:-

“83. ... The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expensive power of the police to make investigation. These well established principles have been stated by this Court in



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the case of Sasi Thomas v. State and Ors. (2007) 2 SCC (Criminal) 72, State Inspector of Police v. Surya Sankaram Karri (2006) 3 SCC (Criminal) 225 and T.T. Antony v. State of Kerala (2001) 6 SCC 181. In Nirmal Singh Kahlon v. State of Punjab AIR 2009 SC 984, this Court specifically stated that a concept of fair investigation and fair trial are concomitant to preservation of fundamental right of accused under Article 21 of the Constitution of India. We have referred to this concept of judicious and fair investigation as the right of the accused to fair defence emerges from this concept itself."

27. In ***Babubhai v. State of Gujarat & Others* [(2010) 12 SCC 254]**, the Hon'ble Supreme Court has held that the right to fair investigation is a fundamental right of an accused guaranteed under Article 21 of the Constitution of India in the following words:-

"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out



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any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide *R.P. Kapur Vs. State of Punjab* AIR 1960 SC 866; *Jamuna Chaudhary & Ors. Vs. State of Bihar* AIR 1974 SC 1822; and *Mahmood Vs. State of U.P.* AIR 1976 SC 69).

... ..

45. Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non- interference of the court would ultimately result in failure of justice, the court must interfere. ..."

28. This Court, in *Sathyavani Ponrani v. Samuel Raj* [2010 (4) CTC 833], while dealing with fair investigation, has held that such a right is mandatory under Articles 14, 21 and 39 of the Constitution of India. The relevant observation is extracted as under:-



“66.Free and Fair Investigation and Trial is enshrined in [Article 14, 21](#) and [39-A](#) of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore, such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the case. Therefore, such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would in violation of [Article 14](#) of the Constitution.”

29.The petitioners have made out a clear case that the investigation officer / R6 has planted the witnesses PWs.18 to 20 for the purpose of diverting the investigation and close the case by fixing the petitioners as the accused, in order to protect the real accused. The second investigation officer / DSP, CBCID, Tirunelveli, has found that there was an intimacy for the deceased with the wife of Ravindran and he was about to examine the wife of Ravindran. But, before that, he went on leave and later on, the



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investigation was entrusted with the Inspector of Police, that too from
Madurai.

30.The fourth investigation officer / R6 has not conducted any further investigation as to the recordings of the previous investigation officers in the CD file, but has proceeded in a different angle with a motive to fix the petitioners as the accused in order to close the case. As stated by the Hon'ble Supreme Court, the right of fair investigation is not only for the victim, but also for the accused as well. The Hon'ble Supreme Court has already held that a fair investigation is a fundamental right guaranteed under Article 21 of the Constitution of India.

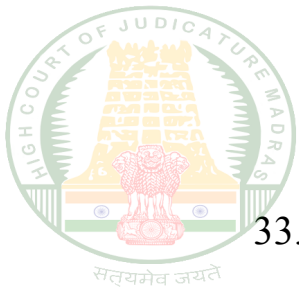
31.Therefore, this Court, without any hesitation, holds that the investigation has not been conducted in a fair manner, which violates the fundamental rights of the petitioners guaranteed under Part-III of the Constitution of India and the petitioners can very well knock the door of this Court under Article 226 of the Constitution of India for the injustice caused to them because of this malicious prosecution and also to find out the truth. As



already stated, this writ petition is filed not only for compensation, but also to find out the real truth by ordering for reinvestigation and therefore, this Court entertained this writ petition and the issue of maintainability is answered as such.

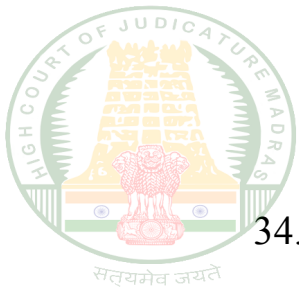
Point No.2 (Compensation) :-

32.If there is any infringement of a fundamental right under Article 21 of the Constitution of India by a public servant, the State is liable to pay compensation. Even the trial Court can award compensation, however, the powers of the trial Court u/s.357 Cr.P.C to award compensation is only to the victims and not to the accused. In this case, the trial Court has given a categorical finding that the investigation officer / R6, who filed the final report, has planted certain witnesses in order to fix the petitioners as accused. The State has not preferred any appeal as against the findings of the trial Court. The appeal against acquittal filed by the father of the deceased was also rejected by this Court.

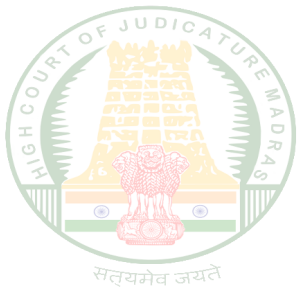


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33.Learned Additional Advocate General appearing for the official respondents and the learned Counsel appearing for the sixth respondent have produced several judgments that the issue for compensation cannot be decided by this Court under Article 226 of the Constitution of India. The main contention of the learned Counsel for the respondents is that the trial Court has given a finding on the benefit of doubt and therefore, it cannot be taken as a ground to pay compensation to the accused. In the judgments referred to by the learned Counsel for the respondents, there are disputed facts, where the Hon'ble Supreme Court and this Court has held that the disputed facts can be decided only before the competent civil Court by adducing evidence. This ratio laid down in these judgments on the disputed facts cannot be equated to the facts and circumstances of this case, where a clear finding has been given by the trial Court as against the investigation officer / R6, the manner in which he has conducted the investigation and the manner in which he has planted the witnesses and the manner in which the petitioners have been fixed as accused.



34.As discussed supra, this Court is also of the view that the investigation officer / R6 has been fixed by some powerful persons to side track the investigation which was conducted by the previous investigation officers and to close the criminal case. The investigation officer / R6 has also successfully completed the task, which has been entrusted upon him. Without any discussion with regard to the investigation conducted by the earlier investigation officer / DSP, CBCID, the sixth respondent / Inspector of Police has created certain statements from PWs.1 to 3, 18 to 20, inserted a new theory, by taking advantage of the provision u/s.162 Cr.P.C that the investigation agencies are not supposed to get the signature of the witnesses and fixed the petitioners, innocents, as accused. The findings of the trial Court and the available materials disclose the fact that the investigation was transferred to the sixth respondent in order to deviate the investigation and to close the criminal case and in that process, the sixth respondent has fixed the innocent passengers, who were in coach S-10, as accused on a commission of murder. As discussed above, the accused have been injured on the final report filed by the investigation officer / R6 and therefore, the State is liable to pay compensation.



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35. This position has been discussed by the Hon'ble Apex Court in catena of decisions from time to time. ***In Re Sube Singh v. State of Haryana and Others*** [(2006) 3 SCC 178], the Hon'ble Apex Court has held as follows:-

“15. The law was crystallized in Nilabati Behera v. State of Orissa 1993CriLJ2899 . In that case, the deceased was arrested by the police, handcuffed and kept in a police custody. The next day, his dead-body was found on a railway track. This Court awarded compensation to the mother of the deceased. J.S. Verma J., (as he then was) spelt out the following principles :-

Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is



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guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. **It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution**, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.

... ..

17. It is thus now well settled that **award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant**. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of

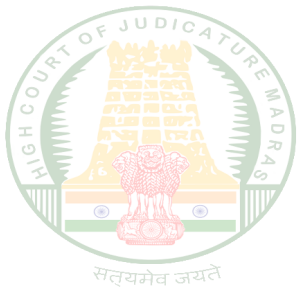


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public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of Code of Civil Procedure.”

36.Further, the Hon’ble Apex Court in ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy and Others [(2013) 1 SCC (LS) 305]*** has observed as follows:-

“Legal liability in damages exist solely as a remedy out of private law action in tort which is generally time-consuming and expensive, and hence when fundamental rights are violated the claimants prefer to approach constitutional courts for speedy remedy. The constitutional courts, of course, shall invoke its jurisdiction only in extraordinary circumstances when serious injury has been caused due to violation of fundamental rights, especially Under Article 21 of the Constitution of India. In such circumstances the Court can invoke its own methods depending upon the facts and circumstances of each case.”



WEB COPY 37. The Hon'ble Supreme Court in ***Bhim Singh Vs State of Jammu and***

Kashmir and others [(1985) 4 SCC 677], has held as follows:-

*“We can only say that the Police officers acted in a most high handed way. We do not wish to use stronger words to condemn the authoritarian acts of the Police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals. Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah Vs State of Bihar and Sebastian M. Hongray Vs Union of India. **When a person comes to us with the complaint that he has been arrested and imprisoned with mischevous or malicious intent and that his constitutional and legal rights were invaded, the mischief or***

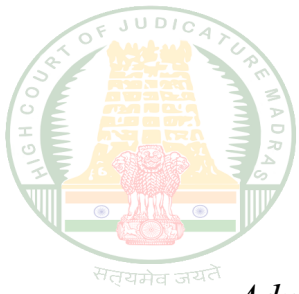


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malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent the State of Jammu and Kashmir to pay Shri Bhim Singh a sum of Rs.50,000/- within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh.”

38. Therefore, it is also a well settled principle that compensation can be granted by this Court under Article 226 of the Constitution of India, even in addition to the remedies available under other enactments, if the facts of the case so warrants. However, the Court can restrict the relief according the facts and circumstances of each case.

39. The next position to be seen is compensation in cases of malicious prosecution. The term malicious prosecution has been discussed in detail by the Hon'ble Supreme Court in ***West Bengal State Electricity v. Dilip Kumar Ray [(2007) 14 SCC 568]*** as follows:-



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"15. Malice and Malicious Prosecution as stated in the Advance Law of Lexicon, 3rd Edition by P. Ramanatha Aiyar read as follows:

Malice - Unlawful intent

Ill Will; intent to commit an unlawful act or cause harm, Express or actual malice is ill will or spite towards the plaintiff or any indirect or improper motive in the defendant's mind at the time of the publication which is his sole or dominant motive for publishing the words complained of. This must be distinguished from legal malice or malice in law which means publication without law full excuse and does not depend upon the defendant's state of mind.

(1) The intent, without justification or excuse, to commit a wrongful act.

(2) Reckless disregard of the law or of a person's legal rights.

Ill will: wickedness of heart. This sense is most typical in non legal contexts.

Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin militia means badness, physical or moral -

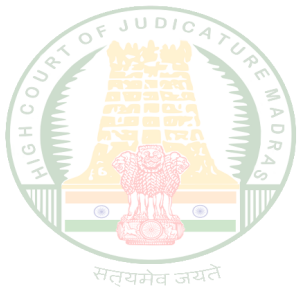


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wickedness in disposition or in conduct - not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive.

Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and willful doing of an act with awareness of a plain and strong likelihood that such harm may result.

The Model Penal Code does not use 'malice' because those who formulated the Code had a blind prejudice against the word. This is very regrettable because it represents a useful concept despite some unfortunate language employed at times in the effort to express it.



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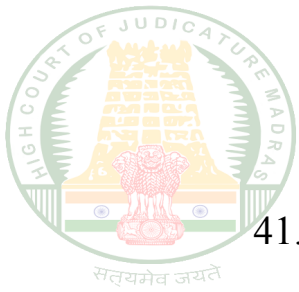
"Malice" in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse.

"Malice", in its legal sense, does not necessarily signify ill-will towards a particular individual, but denotes that condition of mind which is manifested by the intentional doing of a wrongful act without just cause or excuse. Therefore, the law implies malice where one deliberately injures another in an unlawful manner.

... ..

"MALICIOUS PROSECUTION" means that the proceedings which are complained of were initiated from a malicious spirit, i.e., from an indirect and improper motive, and not in furtherance of justice. [10 CWN 253 (FB)]"

40. Therefore, the term malicious prosecution includes the unlawful intent or the improper motive or the malicious spirit or action on the part of the investigation agency.



41. It would be relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***Rudul Sah vs State of Bihar*** [AIR 1983 SC 1086], wherein it has been held that one of the ways in which the violation of the fundamental right under Article 21 of the Constitution of India by the authorities of the State can reasonably be prevented is to direct payment of monetary compensation to the individuals whose rights are affected. In para 10 it has been held as follows:

" ... Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art. 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate

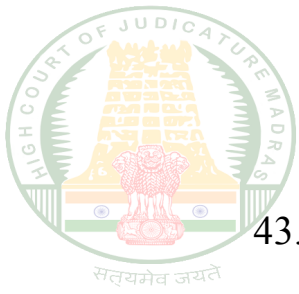


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ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

42.The Hon'ble Supreme Court in ***S.Nambi Narayanan v. Siby Mathews and Others*** [2018/INSC/822] has also provided the compensation of Rs.50 Lakhs to the petitioner therein for the malicious prosecution by the State as it is in violation of his fundamental right guaranteed under Part III of the Constitution of India. The relevant observation is extracted as under:-

"31....The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardised as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under [Article 21](#) of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity."



43.Further, I had an occasion to deal with a similar such case of malicious prosecution in a writ petition in ***V.N.Raja Mohamed and Another v. Government of Tamil Nadu and Others*** [WP(MD)Nos.21495, 21496 of 2016, dated 02.12.2022], wherein, it has been decided as follows:-

“20.In view of the above, this Court is of the view that the petitioners must be compensated suitably for their false implication in the criminal case, infringement of fundamental rights and for the consequential sufferings they have undergone and therefore, these writ petitions are allowed. The Government shall pay a sum of Rs. 10 Lakh [Rupees Ten lakh] to the petitioner VN.Rajamohamed and Rs.8 Lakh [Rupees Eight Lakh] to petitioner M.Manoharan within a period of 16 [sixteen] weeks from the date of receipt of a copy of this order and the same shall be recovered from Ratna Kumar, the Inspector of Police, District Crime Branch, Dharmapurti District. No costs.”

44.Therefore, if the facts provided in a case leads to the Act of Malicious Prosecution by an Officer of the State, the State is liable to pay compensation and can recover the same from the concerned Officer. It is the responsibility of the State to ensure its instrumentalities conduct their



business in a proper and lawful manner. In this case, a great damage has been caused to the petitioners by an Officer of the State and therefore, the State is liable to pay the compensation.

Point No.3 (Findings of the trial Court) :-

45.Unlike civil proceedings, in criminal proceedings the prosecution has to prove the guilt beyond all reasonable doubt. An investigation does not amount to malice if the accused is acquitted merely on the scale of benefit of doubt. However, in certain cases, even though if the accused, at the end of trial, was acquitted on benefit of doubt, certain fact findings of the Court may show the serious lacuna or motive on the part of the investigation officer. In those circumstances, the Court cannot ignore the findings of the trial Court.

46.PW20 is the friend of Ravindran, against whom, the second investigation officer / DSP, CBCID has fixed that there was an illegal intimacy with his wife and the deceased. PW20 has been inserted as a witness only on 21.01.2010. Till such time, all the three investigation officers were



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not aware of this witness and it is also not known as to how the sixth respondent / fourth investigation officer has come to know that PW20 also travelled in the said train and witnessed the occurrence. There is no explanation in his statement with regard to that.

47.PW20 cannot be an eye witness and the trial Court has recorded that this witness is a planted witness and also recorded that the accused are maliciously prosecuted. However, as usual, the trial Court recorded the findings of acquittal by extending the benefit of doubt. An attempt was also made for filing an appeal as against the acquittal by the investigation agency and that was not accepted by the Government and the request was rejected by the Government. However, the appeal against acquittal filed by the father of the deceased in CrI A(MD)No.124 of 2013 was dismissed by the Division Bench of this Court by order dated 01.04.2016.

48.The trial Court, in its judgment, has noted down several infirmities in the final report filed by R6. The relevant observations of the trial Court in this regard are referred as follows:-



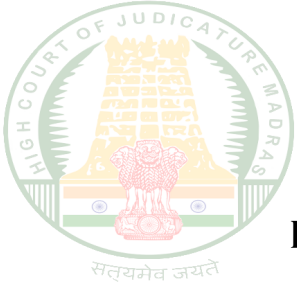
a) **PW20 Mr. Selvam:**

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1. PW20, a tea stall owner at Madurai was introduced as an eye witness by R6 after two years. It is not known as to how the investigation officer was able to find Mr.Selvam [PW20] after two years from the date of occurrence. (99. ... மதுரை சி.பி.சி.ஐ.டி போலீசார் எவ்வாறு அ.சா.20ஐ கண்ணுற்ற சாட்சி என்று தெரிந்து கொண்டார்கள் என்பதற்கு அ.சா.20ஆல் எந்த விளக்கமும் கூறப்படவில்லை....

194. இந்த வழக்கிலும் சம்பவம் நடந்து இரு வருடங்களுக்கு பின்பு சம்பவத்தினை கண்ணுற்றதாக அ.சா.20 கூறியிருப்பதாலும் அ.சா.20ஐ எவ்வாறு புலன் விசாரணை அதிகாரி கண்ணுற்ற சாட்சி என்று தெரிந்து கொண்டார் என்பதற்கு எந்த விளக்கமும் இல்லாததாலும் வேறு சாட்சிகள் இல்லாததாலும் கண்ணுற்ற சாட்சியத்தின் சாட்சியம் நம்பத்தகுந்ததாக இல்லாமல் இயற்கைக்கு முரணானதாக காணப்படுவதாலும் ...)

2. PW.20 is very close to Mr.Ravindran, who is the uncle of the deceased. Both are having respectable positions in a state

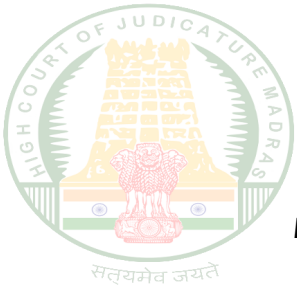


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political party. PW20 initially deposed before the Court that he was not at all familiar with Mr.Ravindran. However, in cross examination, after showing the invitation card of his own family function, he accepted that he is very familiar with Mr.Ravindran. Further, from the invitation card, it can be seen that Mr.Ravindran was the chief guest for that function. (மீண்டும்

அழைத்து குறுக்கு விசாரணை செய்த போது என் மனைவி பெயர் தனலெட்குமி என்றும் என் மூத்த மகள் பெயர் வளர்மதி என்றால் சரி தான் என்றும் என் மகளின் காதுகுத்து விழா 11.04.2010 அன்று விமரிசையாக நடந்தது என்றும் எ.த.சா.ஆ2 என் மகளின் காதுகுத்துக்காக அடிக்கப்பட்ட அழைப்பிதழ் என்றால் சரி தான் என்றும் ரவீந்திரன் 1வது பகுதி தி.மு.க செயலாளர் தலைமையில் மேற்படி விசேஷம் நடந்தது என்றால் சரி தான் என்றும் இறந்து போனவர்மேற்படி ரவீந்திரன் அண்ணன் மகன் என்றால் சரி தான் என்றும் என்னுடைய தலைமையில் நிழற்குடை அமைத்ததற்கு மேற்படி ரவீந்திரனின் புகைப்படம் வைக்கப்பட்டு பேனர் போட்டு வைக்கப்பட்டது என்றும் என்

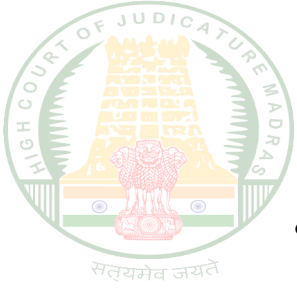


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மீது இ.த.ச.பிரிவு 399 பிரிவின்படி ஒரு வழக்கு நிலுவையில் உள்ளது என்றால் சரி தான் என்றும் ...)

3. Though PW20 is very close to Mr.Ravindran, it is not known as to why he did not say about the incident to anyone for two years from the date of occurrence. There is no explanation at all from PW20 for this delay. (அ.சா.20 கூறுவது போன்று சம்பவம் நடந்திருந்தால் அ.சா.20 பார்த்திருப்பதால் செய்தித்தாளில் விளம்பரப்படுத்தப்பட்ட போதும் விசாரணைகள் நடத்தப்பட்ட போதும் எந்த பகுதிக்கு அவர் பிரதிநிதியாக இருக்கிறாரோ அந்த பகுதியின் தி.மு.க. செயலாளருக்கு உறவினயராக இறந்து போனவர் குறித்து இறந்து போன சம்பவம் குறித்து மேற்படி நபர்களிடம் தெரியப்படுத்தி இருப்பார். அவ்வாறு எதுவும் தெரியப்படுத்தியதாக அ.சா.20 ஆல் கூறப்படவில்லை. இரண்டு வருடங்கள் யாரிடமும் கூறாமல் இருந்து விட்டு சம்பவ தினம் தன்னைக் தள்ளிக் கொண்டு சென்ற நபர்களை பார்த்தாக கூறிவிட்டு இரண்டு வருடங்களுக்கு பின்பு அவர்களை அடையாளம்



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காண்பித்ததாக

கூறுவது

நம்பத்தகுந்ததாகவும்

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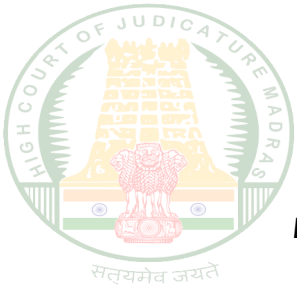
ஏற்கத்தகுந்ததாகவும் இல்லை ...)

4. It is not acceptable that he was able to identify all the accused persons in the first instance after two years.

5. There is no evidence to show that PW20 was travelling on the train on the particular date. (100. சம்பவ ரயில் வண்டியில் அ.சா.20 பயணித்தார் என்பதற்கு எந்த ஆதாரங்களும் இல்லை. எஸ்9 கோச்சில் வேறு நபர்கள் இருந்ததாக கூறிய போதிலும் ரயில்வே சார்ட்டானது எஸ்9 கோச்சில் எவரும் பயணியாக இல்லை என்பதை புலப்படுத்துவதாக உள்ளது ...)

6. Having a tea shop in Madurai, it is not known as to why he went to Trivandrum to fetch tea powder, when it is not his usual business to go to Trivandrum for fetching tea power. (99. ...

மதுரையில் டீக்கடை வைத்திருக்கும் நபர் திருவனந்தபுரத்திற்கும் நாகர்கோவிலுக்கும் சென்று டீத்ரூள் வாங்கச் சென்றதாக கூறுவது நம்பத்தகுந்ததாக இல்லாததால் அ.சா.20 இந்த வழக்கில்



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WEB COPY புலன் விசாரணை அதிகாரியல் சாட்சியாக
தயாரிக்கப்பட்டிருக்கிறார் என்பதை தான் அ.சா.20ன்
சாட்சியம் புலப்படுத்துவதாக உள்ளது.)

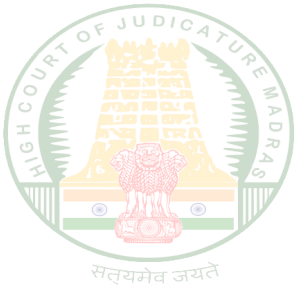
7. There is also a criminal case pending as against PW20 for the offence under Section 399 IPC.

8. As per PW20's version, one person was holding the head of the deceased, two persons were holding the legs of the deceased and one other person sat on the chest of the deceased and stabbed the deceased. **This is not at all possible in a single berth, because of lack of space.**

9. **Therefore, PW20 is planted by the investigation officer, the sixth respondent herein, after two years of the incident.**

b) PW18 and PW19 :

1. PW18, Mr.Sathyadoss, was working as Head Constable in Nagarkovil Railway Police and PW19, Mr.Sugumar, was working as a A/C Mechanic in Southern Railway.



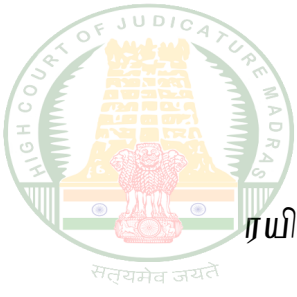
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2. As per the railway chart, no passengers were travelling in S.10 Coach, excepting the petitioners.

3. PW18 and PW19 have stated that they were travelling in S.9 Coach. They claimed that they have warrant for travelling, however the same has not been produced before the Court nor any attempt has been made by the prosecution to produce the same. (101. அ.சா.18ம் அ.சா.19ம் மேற்படி கோச்சில் பயணித்ததாக கூறிய போதிலும் அதற்கான வாரண்ட் இருப்பதாக கூறிய போதிலும் நீதிமன்றத்தில் அதை தாக்கல் செய்யப்படவில்லை ...)

4. Both PW18 and PW19 are working in the railway department. If they are the direct witnesses to the occurrence, they should have informed the same to their respective higher officers. At least, they should have informed the same to the Station Master, once the train reached Tirunelveli. However, they did not utter any word to their superior officers when the train halted at Tirunelveli Junction. (101. ... அவர்களாலும் ரயில்வேதுறையல் பணிபுரியும் நபர்களிடமும்



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ரயில்வே காவல்துறையில் பணிபுரியும் நபர்களிடமும் சம்பவம் குறித்து எதுவும் கூறப்படாமல் ரயில்வே நிலையம் வந்த பின்னரும் ஸ்டேசன் மாஸ்டரிடம் எதுவும் கூறப்படாமல் இருந்ததாக கூறுவது மேற்படி இரு நபர்களும் மேற்படி கோச்சில் பயணித்தார்கள் என்பதற்கு எந்த ஆதாரமும் இல்லாத போது ...)

5. PW18 stated that immediately after the incident, he informed the same to one Muthuraj, the Sub-Inspector of Police, Railway Police, who is his higher authority. **However, neither the said Muthuraj was examined before the Court nor the call records of PW18 was produced by the prosecution.** (104. அ.சா.18 சம்பவம் நடந்தவுடன் உதவி ஆய்வாளர் முத்துராஜிக்கு செல்போன் மூலம் தகவல் கொடுத்ததாக கூறியிருக்கும் போது மேற்படி முத்துராஜ் என்பவரை சாட்சியாக விசாரித்து அதை நிரூபிக்காததற்கு என்ன காரணம் என்று அரசு தரப்பில் கூறப்படவில்லை. அது போன்று மேற்படி அ.சா.18ன் செல்போனில் இருந்து அ.சா.18 முத்துராஜிக்கு தகவல் தெரிவித்தார் என்பதை நிரூபிக்க எந்த நடவடிக்கையும் எடுக்கப்படவில்லை ...)



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6. As per the version of PW18 and PW19, a person stabbed the deceased and ran towards S.10 coach in a moving train. However, as per the version of PW.20, three persons were holding the deceased and one person stabbed the deceased on chest. (102. அ.சா.18,19 ஒரு நபர் குத்திவிட்டு ஓடியதாக கூறியிருக்கும் போது அ.சா.20 மூன்று நபர்கள் பிடித்து வைத்திருக்க ஒரு நபர் குத்தியதாக சாட்சியம் அளித்துள்ள காரணத்தினால் அ.சா.18,19ம் அ.சா.20ஐ அந்த கோச்சில் பார்த்ததாக கூறாத காரணத்தினால் அ.சா.18,19,20 மேற்படி கோச்சில் இருந்திருக்க வாய்ப்பில்லை என்றும் அவர்கள் சம்பவத்தினை கண்ணுற்றிருக்க வாய்ப்பில்லை என்றும் இந்த வழக்கிற்காக தயாரிக்கப்பட்ட சாட்சிகள் என்றும் இந்நீதிமன்றம் கருதுகின்றது.)

7. Therefore, these witnesses did not witness the incident at all and they are all planted witness by the investigating officer / sixth respondent herein.



c. PW3, PW.8 and PW9:

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1. PW3, Mr.Palani, was the Ticket Examiner who boarded the Train at Tirunelveli Junction. PW8, Mr.Krishnan, was the Station Master of Tirunelveli Railway Station and PW9 was the Station Manager of the Tirunelveli Railway Station.

2. As per the photographs taken from the scene of occurrence and the deposition made by PW37 (Photographer), there is a visible stab injury in the face. The body of the deceased was found lying upside down near Berth No.15. When the body was lifted, these stab injuries must have been seen by the officials. (115. அ.சா.37ன் சாட்சியம் சா.பொ.35 புகைப்படங்கள் இறந்த நபரின் கையில் வெளிப்படையாக காயங்கள் முகத்தில் காயங்களும் வயிற்றில் நான்கு குத்துக் காயங்களும் காணப்படுகின்றது என்பதை புலப்படுத்தும் போது வயிற்றில் காயங்கள் சட்டை மறைத்து இருந்தாலும் முகத்திலும் கையிலும் உள்ள காயங்கள் வெளிப்படையாக தெரியும் விதத்தில் இருக்கும் போது அந்த நபரை ஒரு இடத்தில் இருந்து எடுத்து வைக்கும் போது வயிற்றிலுள்ள காயம் தெரிய வாய்ப்புள்ளது என்பதால் ஒரு நபர் கொலை



செய்யப்பட்டிருக்கிறார் என்று பார்த்த அளவிலே தெரியும்
விதத்தில் இருக்கும் போது ஸ்டேசன் மாஸ்ட் மேலாளர் மற்றும்

T.T.R ஆகியவர்கள் அந்தக் கோச்சை துண்டிக்க நடவடிக்கை
எடுக்காமல் கழுவி விட்டிருப்பது அவர்கள் தடயங்களை
அழிப்பதற்காக செயல்பட்டிருக்கிறார்கள் என்பதை
உறுதிப்படுத்துவதாக உள்ளது. ரத்த வாந்தி எடுக்கும் நபருக்கு
கையில் அழமான வெட்டுக்காயம் காண்பதற்கு வாய்ப்பில்லை.
முகத்திலும் காயம் காணப்பட வாய்ப்பில்லை என்பதால் பார்க்கும்
இடத்திலேயே காயம் இருப்பது தெரிந்தும் அவர் ரத்த வாந்தி
எடுத்ததாக கூறி கோச்சை கழுவி விட்டிருப்பது சம்பந்தப்பட்ட
நபரை காப்பாற்றுவதற்காக ஸ்டேசன் மாஸ்டர், T.T.R மேலாளர்
ஆகியவர்கள் செயல்பட்டிருக்கின்றனர் என்பதை தான்
உறுதிப்படுத்துவதாக உள்ளது.)

3. The Station Master, Manager and TTE, in order to protect the
murderer, cleaned the coach immediately, after the Train halted again in
Tirunelveli junction.

4. When there is a clear stab injury, in order to escape from their
responsibilities, these witnesses are lying that it is blood vomit.



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d) PW-46, Inspector Marirajan (R6):

1. The investigating officer has admitted that while beginning the investigation, he went to the house of accused nos.1 and 2 and conducted an enquiry. However, the investigating officer has failed to record their statements in the case diary. (135. ... 28.10.2009 அன்ற நாட்குறிப்பில் எதிரிகள் ஒருவரை விசாரித்ததாக மேற்குறிப்பு செய்துள்ளேன் என்றும் அதில் அவர்களுடைய வாக்குமூலம் நம்பும்படியாக இல்லாததால் பதிவு செய்யவில்லை என்று எழுதியுள்ளேன் என்றும் எதிரிகள் எதிர்மறையாக என்னிடம் வாக்குமூலம் கொடுத்தார்கள் என்பதற்கு ஆதாரம் என்னிடம் இல்லை என்று சாட்சியம் அளித்துள்ள காரணத்தினால் எதிரிகள் திருநெல்வேலி ரயில்வே போலிசில் கொடுத்த வாக்குமூலத்தினை போன்று கொடுத்ததால் அதை பதிவு செய்யாமல் மறுத்து விட்டதாக எதிரிகள் தரப்பில் கேட்கப்பட்ட கருத்து ஏற்கத்தக்கதாக இருக்கிறது.)

2. There is no explanation from the investigating officer as to how he

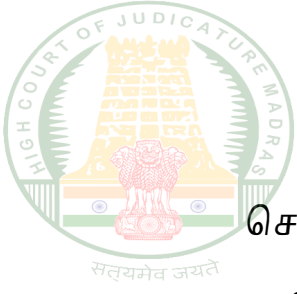


came to know about PW.20 after two years of the occurrence.

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3. The accused were arrested even before conducting any identification parade. (129. ... அ.சா.20ன் சாட்சியத்தின் அடிப்படையில் அடையாள அணிவகுப்பு எதுவும் நடத்துவதற்கு முன்பே அ.சா.20ஆல் எதிரிகளை அடையாளம் காண்பிப்பதற்கு முன்பே எதிரிகளை சந்தேகப்பட்டு கைது செய்ததாக கூறியிருக்கின்ற காரணத்தினால் மேற்படி செய்கையும் புலன் விசாரணை அதிகாரியின் விசாரணை சரியானதல்ல என்பதை தான் புலப்படுத்துவதாக உள்ளது.)

4. There is no explanation from the investigating officer as to why the statements of PW18 and PW20 alone are hand written, when the rest of the statements are typed. (133. இந்த புலன் விசாரணை அதிகாரியால் தயாரித்த வாக்குமூலங்களில் இருவரின் வாக்குமூலங்கள் மட்டுமே கையினால் எழுதப்பட்டு இதர வாக்குமூலங்கள் அனைத்தும் தட்டச்சு செய்யப்பட்டிருக்கிறது என்று ஒப்புக் கொள்ளப்பட்டிருக்கின்ற காரணத்தினால் மேற்படி வாக்குமூலங்கள் இந்த புலன் விசாரணை அதிகாரியால் தயாரித்து இருக்க வாய்ப்புள்ளது என்றும் மேற்படி சத்தியதாஸ்,



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செல்வம் இருவரின் வாக்குமூலத்தின் அடிப்படையில் தான்
எதிரிகளை கைது செய்திருக்கின்ற

காரணத்தினால் இவர்கள் இருவரின் வாக்குமூலங்களை மட்டுமே
தனிப்பட்ட கையால் எழுதுவதற்கு எந்த விளக்கமும் இல்லாத
காரணத்தினால் அதுவும் இந்த வழக்கின் உண்மை தனத்தின்
மீது ஐயப்பாட்டை தோற்றுவிப்பதாக உள்ளது
என்று இந்நீதிமன்றம் கருதுகின்றது.)

5. He has stated 10 other passengers from North India were travelling in
S.10 Coach, however, he did not try to examine them, even though, they
are important witnesses. (135. அ.சா.46 எஸ்.10 கோச்சில் இதர
10 வடநாட்டு பயணிகளும் பயணித்தார்கள். மேற்படி 10
வடநாட்டு பயணிகளும் முக்கியமான சாட்சிகள் என்று எனக்கு
தோன்றவில்லை என்று கூறியுள்ள காரணத்தினால் எஸ்10
கோச்சிலுள்ளவர்கள் தான் கொலை செய்ததாக புலன்
விசாரணை அதிகாரியால் கூறிய போதிலும் கொலை நடக்கும்
போதும் அதற்கு பின்னரும் எதிரிகளுடன் வடநாட்டு
பயணிகள் இருந்திருக்கும் போது அவர்களை விசாரிக்காமல்
அவர்கள் முக்கியமான சாட்சிகள் அல்ல என்று புலன்

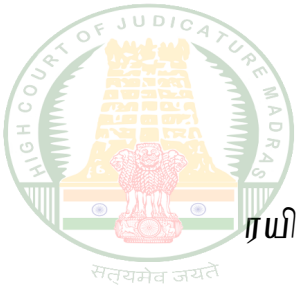


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விசாரணை அதிகாரி கூறவதில் இருந்து அவருடைய புலன் விசாரணை சரியானதல்ல என்பதும் ஒரு தலைபட்சமாக உள்ளது என்பதை புலப்படுத்துவதாக உள்ளது என்றும் மேற்படி வடநாட்டு பயணிகளை விசாரித்திருந்தால் எதிரிகள் மேற்படி குற்றச்செய்கையில் ஈடுபடவில்லை என்பது தெரிந்துவிடும் என்பதற்கு மேற்படி நபர்களை விசாரிக்காமல் அவர்கள் முக்கியமான சாட்சிகளாக எனக்குத் தோன்றவில்லை என்று புலன் விசாரணை அதிகாரியால் கூறப்படுகின்றது என்று இந்நீதிமன்றம் கருதுகின்றது.)

6. As per his version, one Laaser (Dispensed with) (LW36) and Sathyadoss (PW18) were travelling on the coach. However, he did not take any measures to add them as witnesses during the Identification Parade. In order to avoid the truth, the investigating officer purposefully omitted these aspects.

7. There were three drawings drawn by the investigating agency on a suspected person. However, not a single drawing is placed before the Court. (139. அ.சா.46 சத்தியதாஸ், லாசர், 3வது எதிரி ஆகியோர் சந்தேக நபர் என்று கூறி அடையாளம் கூறி



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ரயில்வே போலிசாரால் படம் வரையப்பட்டது என்றால் சரி தான்
என்றும் ஆனால் அந்த படங்களை குற்ற அறிக்கையுடன்
நீதிமன்றத்தில் தாக்கல் செய்யவில்லை என்றால் சரி தான்
என்றும் அவர் வரைந்த படத்தை காண்பித்து சத்தியதாசிடம்
விசாரணை செய்யவில்லை என்றும் சாட்சியம்
அளித்திருப்பதாலும் எதிரிகளுக்கும் மேற்படி படங்களுக்கும்
வேறுபாடு உள்ளதால் அதனை நீதிமன்றத்தில் தாக்கல்
செய்யவில்லை என்றால் எந்த சூழ்நிலையில் யாரால் எப்படி
வரையப்பட்டது என்று ஆதாரம் இல்லாததால் நீதிமன்றத்தில்
தாக்கல் செய்யவில்லை என்று பதில் அளித்து இருப்பதினால்
புலன் விசாரணை அதிகாரி சரியாக புலன் விசாரணை
செய்யாமல் உண்மையான குற்றவாளியை கண்டுபிடிப்பதற்கு எந்த
நடவடிக்கையும் எடுக்காமல் உண்மையான குற்றவாளியை
மறைப்பதற்கு எஸ்.10 கோச்சில் இந்த 5 எதிரிகளையும்
எதிரியாக காண்பித்து குற்ற அறிக்கை தாக்கல்
செய்திருக்கிறார் என்பதை தான் புலப்படுத்துவதாக உள்ளது.
எனவே மேற்படி சாட்சியத்தில் இருந்து சத்தியதாஸ் சந்தேக
நபரை பார்த்திருக்கிறார் என்பது தெளிவாகின்றது. லாசர்



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சந்தேக நபரை பார்த்திருக்கிறார் என்பது தெளிவாகின்றது.

3வது எதிரி சந்தேக நபரை பார்த்திருக்கிறார் என்பது தெளிவாகின்றது. மேற்படி வரைபடங்களையும் தாக்கல் செய்வது புலன்விசாரணை அதிகாரியின் வழக்கிற்கு எதிராக இருக்கும் என்பதால் அவரால் தாக்கல் செய்யப்படவில்லை என்பதையும் எதிரிகள் இந்த குற்றச்செய்கையில் சம்பந்தப்பட்டவர்கள் அல்ல என்பதையும் புலப்படுத்துவதாக உள்ளது என்று இந்நீதிமன்றம் கருதுகின்றது.)

8. PW18, Sathyadoss, has stated that immediately after the incident he has reported to his superior officer one Muthuraj, Sub Inspector. The investigating officer / sixth respondent, has not taken any steps to enquire the said Muthuraj to bring out the truth. (140. ... சாட்சி சத்தியதாஸ் சம்பவத்தினை பார்த்தவுடன் ரயில்வே உதவி ஆய்வாளர் முத்துராஜிடம் தகவல் தெரிவித்ததாக கூறியுள்ளார் என்றும் அந்த முத்துராஜை சாட்சியாக விசாரணை செய்யவில்லை என்றும் சம்பவம் நடந்த கோச்சை நான் பார்வையிடவில்லை என்றும் சாட்சியம் அளித்திருக்கின்ற காரணத்தினால் புலன் விசாரணை அதிகாரியின் மெத்தன



போக்கை காட்டுவதாக தான் அவருடைய சாட்சியம் உள்ளது என்பதை புலப்படுத்துவதாக உள்ளது. ...)

9. Further, the trial Court has clearly observed that PW20 was planted by the investigation officer / R6 in order to safeguard the real accused, who committed the crime. The relevant observations of the trial Court in this regard are extracted as under:-

(104. ... அ.சா.20 மதுரையில் தங்கி வியாபாரம் பார்க்கும் நபர் மேற்படி ரயிலுக்கு வந்து பயணம் செய்ததாக கூறுவது நம்பத்தகுந்ததாக இல்லையென்றும் தி.மு.க. பிரதிநிதியாக இருந்த போதிலும் அந்த வட்ட செயலாளரை தெரியாது என்று மறுத்து அவருடைய வீட்டு விசேஷத்திற்கு அழைப்பிதழை காண்பித்த பின்பு தெரியாது என்று கூறிய நபர் தலைமையில் விசேஷம் நடத்தப்பட்டிருக்கின்றது என்பது எதிரிகள் தரப்பால் நிரூபிக்கப்பட்டிருக்கின்ற காரணத்தினால் அ.சா.20ன் சாட்சியம் துளி அளவும் நம்பக்கூடிய சாட்சியமாக காணப்படவில்லை என்றும் மதுரை சி.பி.சி.ஐ.டி ஆய்வாளரால் அரசியல் செல்வாக்குடன் அரசியல் செல்வாக்கை சேர்ந்த நபரின் உறவினர் இறந்து போனவர் என்பதால் இந்த சாட்சி தயாரிக்கப்பட்டிருக்கிறது என்பதை தெளிவுபடுத்துவதாக உள்ளது என்றும் இந்நீதிமன்றம் கருதுகின்றது. ...

... ..

108. ... எஸ்9 கோச்சில் இறந்து போனவர் மட்டுமே கிடந்ததாக அரசு தரப்பு சாட்சிகளால் கூறப்பட்டிருப்பதால் அதிலும் வேறு எந்த பயணிகளும் பயணிக்காத காரணத்தினால் வழக்கை முடிப்பதற்காக



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மதுரை சி.பி.சி.ஐ.டி புலன் விசாரணை அதிகாரியால் இந்த எதிரிகள் சண்டை போட்டிருக்கின்றனர் என்று கற்பனை கதையை ஏற்படுத்தி குற்றச் செய்கையுடன் இணைத்து வழக்கு தாக்கல் செய்யப்பட்டிருக்கிறது என்று கூறப்பட்டிருக்கின்றது என்று இந்நீதிமன்றம் கருதுகின்றது.

... ..

118. ... உண்மையான குற்றவாளியைக் காப்பாற்றுவதற்காகவோ அல்லது வழக்கை முடிப்பதற்காகவோ குற்றவாளியாக ஒரு நபரை காட்டப்பட வேண்டுமென்ற எண்ணத்தில் எதிரிகள் பெர்த் அலாட் செய்ததற்கு சண்டை இட்டதாக கூறி அவர்கள் குற்றவாளியாக சேர்க்கப்பட்டிருக்கிறார்கள் என்பதை தான் அரசு சான்றாவணமும் முதல் தகவல் அறிக்கையும் புகாரும் புலப்படுத்துவதாக உள்ளது என்று இந்நீதிமன்றம் தீர்மானிக்கிறது.

... ..

128. ... அ.சா.20ஐ இரண்டாண்டுகளுக்கு எந்த ஒரு புலன் விசாரணை அதிகாரியும் விசாரிக்காத போது எந்த ஒரு சாட்சிகளும் அ.சா.20 சம்பவசமயத்தில் சம்பவ ரயிலில் பயணித்தார் என்று கூறப்படாத போது எதன் அடிப்படையில் இந்த புலன் விசாரணை அதிகாரி அ.சா.20 சம்பவத்தினை கண்ணுற்றார் என்று கண்டுபிடித்தார் என்பதற்கு விளக்கம் கொடுக்காத போது இந்த அ.சா.20 இந்த புலன் விசாரணை அதிகாரியால் தயாரிக்கப்பட்ட சாட்சி என்பதை தான் அவருடைய சாட்சியம் அ.சா.20 மற்றும் இதர அரசு தரப்பு சாட்சிகளின் சாட்சியம் தெளிவுப்படுத்துவதாக உள்ளது.

... ..

140. ... உண்மையான குற்றவாளியை கண்டுபிடிப்பதற்கு அவரால்

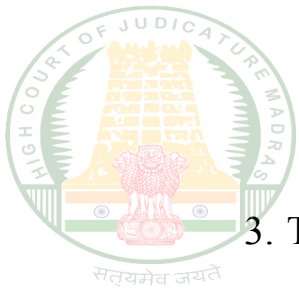


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நடவடிக்கை எடுக்காமல் உண்மையான குற்றவாளியை காப்பாற்றுவதற்கு நடவடிக்கை எடுத்திருக்கிறார் என்பதை தான் புலப்படுத்துவதாக உள்ளது என்று இந்நீதிமன்றம் கருதுகின்றது. எனவே எதிரிகள் தரப்பில் கூறுவது போன்று ரவீந்திரன் உறவினர் வழக்கில் சம்பந்தப்பட்டவரை காப்பாற்றுவதற்காக ரவீந்திரன் தி.மு.க. பிரதிநிதியாக இருந்ததால் அ.சா.20 அதே வட்ட தி.மு.க. பிரதிநிதியாக இருந்தவரை வைத்து எதிரிகள் மீது குற்ற அறிக்கை தாக்கல் செய்யப்பட்டிருக்கிறது என்பதை தான் புலன் விசாரணை அதிகாரியின் சாட்சியமும் இதர நபர்களின் சாட்சியமும் புலப்படுத்துவதாக இருக்கின்ற காரணத்தினால் இந்த புலன் விசாரணை அதிகாரியின் சாட்சியத்தின் அடிப்படையிலும் அ.சா.20ன் சாட்சியத்தின் அடிப்படையிலும் எதிரிகளை குற்றத் தீர்வுக்கு உள்ளாக்க முடியாது என்று இந்நீதிமன்றம் தீர்மானிக்கிறது.)

e. Other infirmities found by the trial Court:

1. It is not known who pulled the chain and the investigating agency failed to find out the real person who pulled the chain.
2. Railway officials might have acquainted some knowledge with the occurrence and hence, in order to protect someone, they have destroyed the evidence by washing away the entire coach without any delay, by violating the Rules prescribed in the Railway Manual.



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3. There is no reason from the prosecution as to why the case has been transferred from CBCID, Tirunelveli to CBCID, Madurai and the necessity for such transfer.

4. PW27 is the senior officer to one Mr.Raman, who is a railway employee. The said Raman was having duty from 12.01.2008 (10.00 PM) to 13.01.2008 (06.00 AM) in Nagarkovil Railway Station. PW27 has stated that he has given oral permission to the said Raman to go to Madurai and Raman has travelled on S.10 coach on the date of occurrence, where the petitioners were also travelling. However, being a crucial witness, the said Raman was dispensed with by the prosecution.

5. As per the railway chart, both S.9 and S10 coaches were almost empty. There is no possibility of fighting at all for the purpose of reservation.

49.From the above findings of the trial court, it is crystal clear that the trial Court has acquitted the accused, not just based on benefit of doubt alone. The trial Court has strongly observed that there is a motivated lacuna on the



part of investigation officer in order to safeguard the real accused. The trial

Court went on to observe that PW20, who was shown as the direct witness, is a witness planted by the investigating officer / sixth respondent herein, after two years of the date of occurrence. Therefore, the contention of the respondents that the trial Court has failed to appreciate the evidence in a proper manner and acquitted the accused on benefit of doubt alone cannot be accepted.

Point No.4 (Whether the petitioners are maliciously prosecuted):-

50. Investigation is a process of finding out the truth. The purpose of any investigation officer is to find out the ideal truth. In this case, the investigation was conducted for more than three years. Three officers have conducted detailed investigation prior to the sixth respondent / fourth investigation officer. It is a basic principle for the succeeding investigation officer to go through the file of the previous investigation officers and ought to have carried out the findings of the previous investigation officers before proceeding in a different angle. The first investigation officer / Railway police has narrowed down the motive for the commission of the offence that it was



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on account of illegal intimacy. The second investigation officer / Mr.Selvaraj, DSP, CBCID, has also arrived on the same conclusion with the materials collected by him during the investigation.

51.The crucial things identified by the second investigation officer and the materials collected by him is that Mr.Ravindran is the deceased's uncle. He is a politician and he has prevented the second investigation officer from examining his wife, Santhi and the deceased's mother. One retired police officer has also gave a statement to the second investigation officer that the motive for the murder is because of illegal intimacy between the deceased and Ravindran's wife. However, the sixth respondent / fourth investigation officer did not investigated in that angle, but, attributed motive to the retired police officer.

52.At times, there may be an error of finding depending upon the persons who are conducting the investigation. In this case, the sixth respondent has projected him that he is one of the intelligent investigation officers in the State and he was rewarded with several awards for his

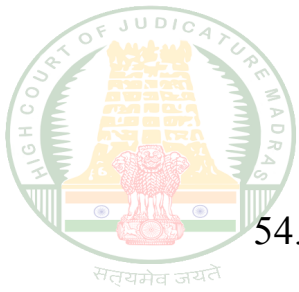


investigations. It may be true. But, the intelligence has been pervertedly used in this case in order to safeguard the real accused and in order to close the case, innocent people have been roped-in as accused. This Court has a basic doubt on the motive attributed by the sixth respondent. This motive was not spoken to by the TTE and the other alleged eye-witnesses who travelled in the train, for nearly two years. The investigation was conducted by a DSP, CBCID, Tirunelveli. He got information about an illegal intimacy for the deceased with his Aunt. Her husband was also a powerful politician. DSP Selvaraj has recorded in the CD files about the information which he has received from a retired Inspector of Police and has proceeded the investigation in that track. He has made all possible efforts to examine the deceased's Aunt / wife of Ravindran and the deceased's mother. However, all his attempts were prevented.

53. In this context, the investigation officer Selvaraj went on leave. There is no material available as to how long he went on leave. Deliberately, he was not examined during the trial and therefore, the reason for his leave and the duration could not be ascertained. The fact remains that the



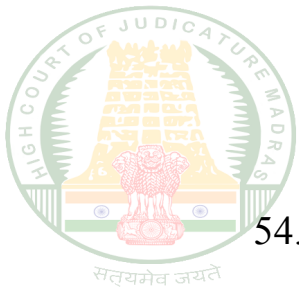
investigation was proceeded by the in-charge DSP, CBCID, Tirunelveli for a period around six months. Thereafter, she also went on leave. While so, instead of entrusting the further investigation with the in-charge DSP of CBCID, Tirunelveli, the investigation was entrusted with R.6, an Inspector of Police, who was working at CBCID, Madurai, at that relevant point of time. The materials collected by the previous investigation officers are towards the family members of the deceased, who are at Madurai. While so, the investigation, which was conducted by CBCID, Tirunelveli, for some undisclosed reasons was entrusted with the Inspector of Police, CBCID, Madurai. This, according to the learned Counsel for the petitioners, is to deviate the investigation and to close the criminal case. The investigation conducted by R.6 also substantiates the contention of the petitioners. Since the learned Counsel for the sixth respondent has produced voluminous awards said to have been received by R.6 for his investigation, this Court has carefully considered the allegations made as against R.6. Therefore, I collected the entire CD files and perused the entire CD files.



54.The materials, which I have noted down from the CD files, are

discussed as follows:-

54.1.The occurrence is said to have been taken place around 06.15 AM in a running train. The train stopped at Tirunelveli and the body of the deceased was not noted by anybody. The train left the Station at 06.37 AM and stopped within two minutes. An unknown person stopped the train by pulling the emergency chain. The person, who pulled the chain, is not shown as a witness nor any attempt was made to find that person. PW1, the Ticket Examiner of the Coach, Mr.Ramdoss, set the law in motion at about 07.30 am, by filing a complaint. In the complaint itself, it is specifically mentioned that there were stab injuries on the deceased on the stomach, chest and neck caused by a sharp weapon and the case was registered for the offence u/s.302 IPC. However, in the subsequent statements recorded u/s.161(3) Cr.P.C., the Station Master, Ticket Examiner and all other railway officials have stated that they were under the impression that it was a blood vomiting. The investigation has initially proceeded as if the victim died due to some blood vomit.



54.2.A statement was recorded from the defacto complainant / Ticket Examiner, Ramadoss [PW1] on the date of occurrence, wherein, he has stated that **within five minutes** from the departure of the Train from Nagercoil, the deceased has **approached him** for allotment of a berth and he has allotted a berth at S.10 Coach, however, the deceased has requested him to allot the berth in S.9 Coach that his bags are kept in S.9 Coach. Therefore, he has allotted the berth B1 in S.9 Coach. He has also stated in his statement that excepting the deceased, there were no other person in S.9 Coach. This witness PW1 has stated the same to the investigation officer Mr.Selvaraj on 27.08.2008. Whereas, a different statement has been recorded by the fourth investigation officer / sixth respondent from the same Ticket Examiner, Ramadoss, on 22.10.2010 after two years that there was a quarrel between the deceased and the accused persons and one of the accused has objected for the deceased sitting in S.10 Coach.

54.3.As per the initial version of Ramadoss [PW1], at the time of lodging the complaint, excepting the petitioners, the entire S.10 Coach was vacant. The adjacent S.9 Coach was also vacant. The deceased has



approached the Ticket Examiner within five minutes from the departure of the train. The berth was also allotted to the deceased in S.9 Coach. While so, the subsequent version of Ramadoss, after two years, as to the objections of the petitioners / accused in S.10 Coach with the deceased as if the deceased is an unreserved passenger and that he is not expected to sit in the S.10 Coach is without any logic.

54.4.Ramadoss [PW1] gave this further statement after two years of the incident, contrary to his earlier statement, however, the sixth respondent has not ascertained the reason for not informing this story to previous investigation officers. The sixth respondent / fourth investigation officer has taken advantage of the corrections in the ticket that the berth initially allotted in S10 – B1 was struck and allotted in S.9 Coach and projected his theory that it was due to the objections of the accused.

54.5.Mr.Krishnan, PW8, Station Master, was on duty in Tirunelveli Railway Station on the date of occurrence. His statement was recorded on 13.01.2008, where he has stated that the Rail Guard informed him about the



chain pulling and as per his direction, the train got reversed and again halted

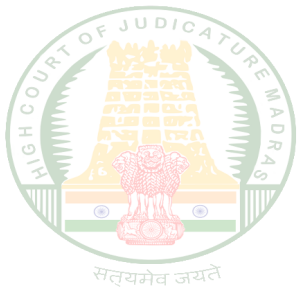
at the station. He further stated that he has entered into S9 coach and has seen that the body was upside down near berth no.15. He has turn the body by himself and found blood flows from the **stomach**. He further stated that as per his direction, the TXR staff has washed away the coach. Again, his statement was recorded by the next investigation officer Mr.Selvaraj, where he has stated that he has turned the body and found blood in **Mouth alone**. He further stated that TTE Palani told him to wash away the coach. This statement was recorded by the investigation officer Mr.Selvaraj in the case diary on 27.08.2008. However, his statement is missing from the CD file. There was an attempt to screen the evidence from the initial stage, the railway officials have cleaned the coach against the guidelines, however, no one was booked for screening the evidence.

54.6.Further, it has been seen that when the body was lifted down in the platform, photographs were taken by adjusting the shirt without exposing the injury on the stomach. This has been noticed by the previous investigation officer Mr.Selvaraj and he has also recorded this aspect in the CD file. The



shirt of the deceased was marked as Ex.P10. PW39, the Head Constable, who handed over the body for Post Mortem has deposed before the trial Court that while he handed over the body, he found holes in the T-shirt on wounded places and retained the T-shirt for evidence. While this is being the case, in order to escape from their liabilities, the photographs were taken by adjusting the shirt exactly on the wounded places to hide the stab injuries.

54.7.The deceased has called one Sandhya, PW12, through his second SIM on 13.01.2008 at about 06.13 am and at that time, Sandhya heard a sound of “AMMA”. This is the original statement of Sandhya before the first investigation officer and the second investigation officer. On 16.11.2009, Sandhya has given her statement to the sixth respondent. However, the previous statements of Sandhya have been subsequently changed before the fourth investigation officer, as if she heard an additional sound by another person of intimidation by saying “what will you do if we come to Madurai”. Again, the fourth investigation officer / sixth respondent herein did not enquire Sandhya regarding her previous statements and the contradictions.



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54.8. The materials available in the CD file disclose that the deceased has used two SIM cards. One bearing mobile number 9879552344 [SIM 1] and the another bearing mobile number 9998424833 [SIM 2]. The deceased was using SIM 2 on the date of occurrence ie., on 13.01.2008. He has used this mobile number lastly on 27.11.2007. Between 27.11.2007 and 13.01.2008, the deceased was using SIM 1, as per the call records. This SIM card was found inside the wallet of the deceased. On perusal of the call records of this mobile number [SIM 1], it appears that on 10.01.2008, there was an outgoing call at about 09.45.05 PM having a talk-time of 720 seconds to the mobile number 9787344461, which belongs to Sandhya. Again on 11.01.2008, an incoming call from Sandhya at 05.23 PM having talk-time of 840 seconds. Again on 11.01.2008, there was an incoming call from Sandhya at 05.35.38 PM having talk-time of 660 seconds. Admittedly, the deceased departed from Gujarat by boarding a Train in Gandhidham on 11.01.2008 at about 05.20 am. Hence, Sandhya knew that the deceased was coming from Gandhidham and boarded the train. Sandhya did not say anything about it. Nor any of the investigation officer made any enquiry in this regard. There is

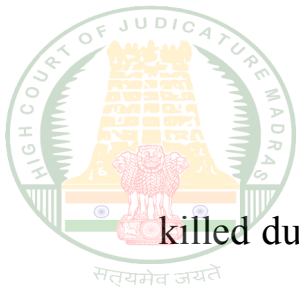


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no investigation as to what transpired between Sandhya and the deceased at 05.00 am on 11.01.2008 and 05.00 pm on 11.01.2008. But, it has been projected as if she got the information that the deceased is coming to Madurai only on 13.01.2008.

54.9.A call was received by the deceased from an unknown number 9344134084, which is recorded in the CD file as if it is a call from one Shanthi, the person with whom the illegal intimacy was alleged. However, the further details were not at all collected by the investigation agency in this regard.

54.10.Mr.Selvaraj, DSP, CBCID, has intended to examine one Astalakshmi and Ishwarya, the mother and sister of the deceased Rajesh Prabhu on 14.07.2008 and also informed them through a Constable Arun Kumar. One Rajeshwaran, the Grandfather of the deceased called the investigation officer and objected for examining Astalakshmi and Ishwarya that it is not proper to examine them at that time. The investigation officer, in his case diary, on 13.07.2008 has recorded that the deceased might have been



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killed due to some dispute in their family and if the mother of the deceased is examined, the real truth would come to light and that the said Rajeshwaran is preventing the examination of these witnesses. This Rajeshwaran has prevented the investigation of the Railway Police also.

54.11.Mr.Selvaraj, DSP, has examined one Pandimathevi on 14.10.2008 and she has stated that she is a distant relative of the deceased Rajesh Prabhu. Her son and the deceased studied together in the engineering college and they also resided at BB Kulam, Kamarajar Street, Madurai and in the same street, the deceased's grandfather was having a house. In the said house, the deceased's father was residing in the upstairs and his brother one Ravindran was residing in the ground floor. Thereafter, they shifted to P & T Nagar and according to Pandimathevi, the deceased Rajesh Prabhu used to visit his uncle Ravindran's house and had an affair with his wife Santhi. A similar statement was given by Pandimathevi's husband Nagarajan. However, these witnesses were not re-examined by R6. The trial Court has also raised a question to R6 in this regard, for which, he simply stated that they were not examined as they are not necessary witnesses. Though an evidence was available on the motive

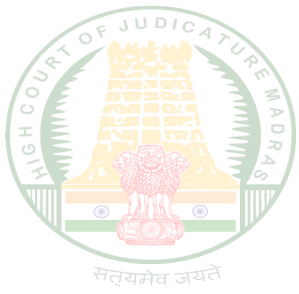


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of adultery, the investigation officer / R6 failed to examine the case and rule out its possibility.

54.12.Mr.Selvaraj, DSP, after examining the TTE, Ramadoss and Station Master, Krishnan on 28.07.2008, has recorded that somebody, who knew that the deceased is coming through Gandhidam Express, waited at Nagarkovil Station, committed the murder at S.9 Coach and left the train at level crossing.

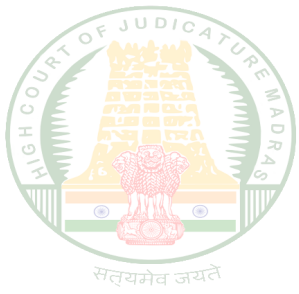
54.13.The deceased's mother, Astalakshmi and her grandparents have stated before the DSP Selvaraj on 16.02.2009 that the deceased Rajesh Prabhu, after his study, spend most of his time in Ravindran's house. Ravindran's wife seems to have called the deceased Rajesh Prabhu for coaching her children. Mr.Selvaraj, in his case diary dated 25.02.2009, has narrowed down the suspected assailant one Nagarajan from Villukurichi. His cell phone number was noted as 9443500814 and the tower location of the cell phone show that on 13.01.2008, he was present at Nagarkovil. But there was no follow-up in this regard.



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54.14. In his case diary dated 14.03.2009, DSP Selvaraj has recorded that there was an illicit relationship between the deceased and the wife of Ravindran and because of that, a problem arose in the family and the family members pacified the issue by sending the deceased Rajesh Prabhu to Gujarat. Rajesh Prabhu, who came on three days leave for Diwali festival, has stayed in home for 17 days and Ravindran has warned the deceased Rajesh Prabhu. Mr.Selvaraj suspected that after the incident, the deceased's mother, Astalakshimi, was kept in house-arrest by Rajeshwaran in his house at BB.Kulam. Though the deceased's father Jayakumar was having a house in P & T Nagar, even after one year of the death, they were staying in BB.Kulam. He has also recorded that they might have been intimidated that if she disclose anything, the same fate will happen to her other sons. In this regard, DSP Selvaraj has also sent a Women Sub-Inspector of Police, Mrs.Irin Thangabala from Virundunagar to examine Astalakshmi on 14.03.2009, however, Rajeshwaran and Vijayakumar have created problem and did not allow her to examine Astalakshmi.

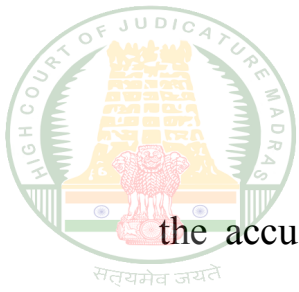


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54.15.The Investigation was transferred to Inspector of Police, Marirajan / sixth respondent herein by the Additional Director General of Police, Crime Branch CID, on 01.10.2009 on the ground that the investigation officer (Mrs.Lalitha, PW45) has went on medical leave. As per the CD file, the previous investigation officer investigated the case finally on 03.10.2009. However, on 01.10.2009, the investigation was transferred to the sixth respondent. If PW45 was on medical leave, as claimed, it is now known as to how she was able to investigate the case on 03.10.2009. Thus, it is clear that only during the course of investigation, the case was transferred to the sixth respondent for the reasons best known to them. The trial Court has rightly asked this question to the prosecution as to the reasons for transfer, however, there was no proper response from the prosecution.

54.16.Lasor [LW36], Gate Keeper, Valliyoor, is said to have travelled in S10 coach upto Sengulam with an unreserved ticket. Sengulam is the place where the Train was halted for some time. The Train reached Sengulam after one hour. When Lasor was also travelled in S.10 Coach without reservation,



the accused have not raised any objection with regard to the travelling of Lasor. But the prosecution case is projected as if the accused had grievance as against the deceased alone, who had kept the bag in S9 coach, approached the Ticket Examiner in S10 coach and also got a reservation in S9 coach.

54.17.It is also to be noted that Lasor [PW36] in his statement has stated that while he got down at Sengulam from S10 coach, he found a person coming towards S10 coach from unreservation coach and he is not the Ticket Examiner. The first investigation officer / Railway Police have also drawn a picture based on the identifications pointed out by Lasor, however, the same is not available in the CD file. Further this particular witness has been dispensed with by the prosecution.

54.18.Similarly, another drawing was also drawn on the identifications pointed out by Sugumar [PW19] and that picture is also not available. Another drawing was drawn on the identifications pointed out by the third accused and this picture alone is available in the CD file. There is no investigation with regard to the photographs and there is no explanation for



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the missing photographs, which has been drawn by the Railway Police, from the CD file.

54.19.LW29, One Raman, Master Craftsman, Nagercoil Railway Station, has admitted before the investigation officers, that he was travelling in S.10 in berth No.50 without reservation Ticket. Admittedly, the petitioners / accused were travelling in berth Nos.56, 62, 59, 66 and 67, adjacent to this Raman. He has never stated about any occurrence of oral fight between the deceased and the petitioners. He was the only person who was travelling very close to the accused. If there was any fight within 5 minutes of departure, being adjacent berth traveller, Mr.Raman happens to be the direct witness for the quarrel between the deceased and the petitioners. However, he has never stated about any such incident and surprisingly he has also been dispensed with by the sixth respondent.

54.20.PW18, Sathyadass, is a Grade I Constable, Railway Police, Nagarkovil. He was travelling without ticket in S.10 Coach. He has been identified by the first investigation officer only after the statement given by



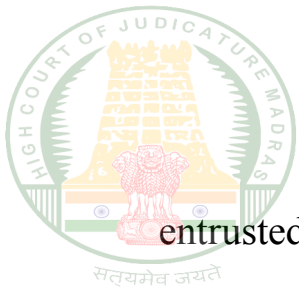
the third petitioner / Jeyaram Jothi that a person woke them up and asked questions about a running person, when the train was about to reach Tiruvelveli Junction. Before the first investigation officer / Railway Police, PW18 has deposed that he has heard some noise and that one person was running towards S.9 Coach and that he has informed about the murder to his immediate superior officer Mr.Muthuraj. He has deposed the same statement before the CBCID Tirunelveli. However, before the sixth respondent, it has been projected as if he has seen all the petitioners in the place of occurrence. Curiously, Mr.Muthuraj, to whom PW18 is said to have reported the incident, has not been examined.

54.21.Mr.Ravindran [LW24] is the uncle of the deceased. He is the husband of Santhi with whom the deceased was said to have an illicit relationship. Admittedly Ravindran was a politician. PW20, who has been projected as a direct witness to the incident, initially deposed before the Court that he does not know Mr.Ravindran. However, Ex.A2 an invitation card revealed that a family function of PW20 was celebrated with Mr.Ravindran as the Chief Guest. After producing the invitation card, PW20 accepted his close



relationship with Mr.Ravindran. PW20 and LW24 are in the same political party and are very close to each other. There is no doubt that this PW20 is planted by the sixth respondent after two years.

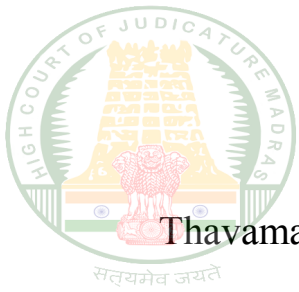
54.22.During the course of investigation by the DSP Mr.Selvaraj, a retired Inspector of Police, one Mr.Thavamani, contacted the investigation officer on 02.03.2009 and informed him that there was an illegal intimacy for the deceased with the wife of Ravindran and on that motive, Ravindran has arranged hooligans and committed the murder. DSP Selvaraj has attempted to examine the mother of the deceased and wife of Mr.Ravindran. It was prevented by Ravindran and others. Selvaraj has also made an attempt to examine those witnesses through a Women Sub-Inspector of Police. That was also thwarted. Mr.Selvaraj has recorded all his attempts to examine the close relatives of the deceased on this issue. He could not succeed in that context. In the meantime, the investigation was transferred from him that he went on leave. The petitioners claim that DSP Selvaraj has found out the truth and was about to fix the real accused and therefore, those powerful persons have made the previous investigation officer Selvaraj to made on medical leave and



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entrusted the investigation with R.6, an Inspector of Police at CBCID, Madurai.

55.The subsequent conduct of R.6 in not continuing the investigation from the stage which was left out by the previous investigation officer substantiate the version of the petitioners. Mr.Selvaraj has recorded the information received from the retired police officer Mr.Thavamani in the CD file on 02.03.2009. The investigation officer / R6 has attributed a motive to the said Thavamani, without even examining him that he had a motive as against the family of Ravindran. R6 has also attributed a motive to the earlier investigation officer DSP Selvaraj that Mr.Selvaraj has personally met Thavamani on 17.01.2009. In order to discredit the earlier investigation officer Mr.Selvaraj, the R.6 went to the extent of recording that there was some material available on the meeting between Mr.Thavamani and Selvaraj on 17.01.2009 without any materials and has recorded in his CD file that Selvaraj has wrongly recorded on 02.03.2009 as if he got information from Thavamani only on 02.03.2009. I verified the entire CD file of Selvaraj and there is no such recording that there was a prior meeting between Selvaraj and



Thavamani on 17.01.2009, as projected by R.6. The manner in which he has discredited the earlier investigation officer Selvaraj disclose the perverted intelligence of the investigation officer R.6.

56. There is no material to that effect. However, it has been recorded that there was a meeting between them on 17.01.2009 and that it was very much available in the CD file. Curiously, the said Thavamani was not cited as a witness and Mr. Selvaraj, though cited as witness as LW24, was dispensed during the trial. Deliberately, the investigation officer R.6 has not proceeded with the materials available from the previous investigation officer and by not examining the previous investigation officer before the Court, he has prevented the DSP Selvaraj to depose before the Court.

57. Though the previous investigation officers recorded in the case diary about the materials which they have collected pertaining to the illegal intimacy, the fourth investigation officer / sixth respondent has not continued the investigation, from the stage where it was left out by the previous investigation officers. He did not examine these witnesses, but had abruptly



closed the investigation in the angle, which was investigated previously, however, inserted PW20, a friend of Ravindran, as an eye witness and projected a different theory for the occurrence.

58.The Nagercoil – Mumbai Express starts at Nagercoil at about 04.45 am. Almost the entire S.9 and S.10 Coaches were vacant. The TTE was in S. 10 Coach and therefore, the deceased, who boarded the train with an unreserved ticket, approached the TTE, confirmed his berth in S.9 Coach and has left to S.9 Coach. While so, it is not known how there can be a motive for committing an offence of murdering the deceased for having travelled in S.10 Coach without any reservation.

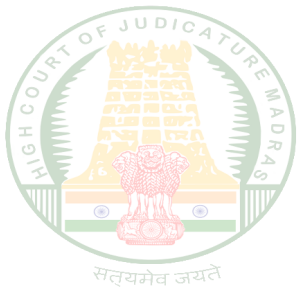
59.This theory has been created taking advantage of a correction in the reservation receipt. The deceased approached the TTE for a berth. The TTE was in S.10 Coach. Almost 90% of S.10 Coach was vacant as per the railway chart. The deceased has also requested for a berth only upto Madurai from Nagercoil. Therefore, the TTE has initially allotted the berth in S.10 Coach. However, the deceased has left his bag in S.9 Coach and therefore, on his



request, the berth was allotted in S.9 Coach and the reservation receipt has been modified accordingly. Taking advantage of this striking in the reservation receipt, which was recovered from the deceased, this new theory has been intelligently inserted by the sixth respondent.

60.Mr.Ramados (PW1), TTE, has never stated about this quarrel between the petitioners and the deceased, in his complaint before the first investigation officer or before the second investigation officer and also before the third investigation officer. However, a statement has been recorded from this PW1 / TTE that there was a quarrel between the deceased and the petitioners since the deceased has travelled without any reservation in their coach. Even according to the sixth respondent, there were some other passengers without reservation in S.10 Coach and it is not known why the petitioners have to raise a dispute with the deceased alone.

61.According to the sixth respondent, one Raman, a railway employee, was also travelling in S.9 Coach adjacent to the petitioners' berth. Though he was cited as a list of witness, he was dispensed with during the trial.



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62.The deceased was coming from Gujarat. He boarded the train at Nagercoil in S.9 Coach, left his bag, went to S.10 Coach to confirm a berth for him in the train. He also got a berth. While so, it is not known how there can be a dispute on account of travelling without reservation in S.10 Coach and how the petitioners have come to know that the deceased was travelling without a reservation.

63.This Court is suspecting the involvement of some powerful people, who were capable of transferring the investigation from one officer to another officer. When the first investigation officer has narrowed down the motive as that of illegal intimacy and attempted to examine the prime witness, he was prevented and thereafter, the case was transferred. The second investigation officer has also, after sometime, proceeded with the motive on illegal intimacy and he was made to go on leave. Similarly, the third investigation officer. When there are several Inspectors of Police available in CBCID, Tirunelveli, this investigation has been entrusted with an Inspector of Police at CBCID, Madurai and he has also filed the final report as against the



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petitioners with flimsy reasons without conducting any investigation on the line in which the investigation was conducted by the previous investigation officers.

64.The fifth petitioner, a retired Bank Manager, has made a representation to the Chief Minister's Cell, which was forwarded to the Superintendent of Police, Kanyakumari, for enquiry, in N.Ref.P3/CM Cell/34824/11 DSP/DCB/376/11. The Superintendent of Police directed the Deputy Superintendent of Police, District Crime Branch, Nagercoil, to conduct an enquiry on the petition forwarded by the Chief Minister's Cell.

65.Accordingly, the Deputy Superintendent of Police, District Crime Branch, has conducted an enquiry in the year 2011 and has submitted a detailed report. In his report, the Deputy Superintendent of Police has clearly stated about the illegal intimacy between the deceased and his aunt and the consequent problems arose on account of the same. He further stated that when the investigation was conducted by CBCID, Tirunelveli, it went in the right direction, however, when the case was transferred to CBCID, Madurai,



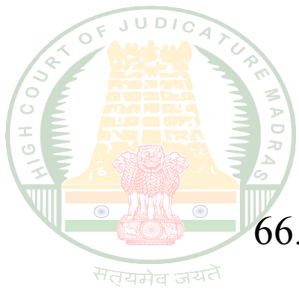
some of the witnesses of the case, ie., the petitioners herein, have been portrayed as accused. The Deputy Superintendent of Police has also recommended to transfer the investigation from the file of CBCID, Madurai to some other investigation agency. It appears that this report was not placed before the trial Court. However, the petitioners have obtained this report under the Right to Information Act and filed this report in the typed-set of papers along with the writ petition. The conclusion of the enquiry report is extracted as under:-

“இறந்து போன ராஜேஸ் பிரபுவின் சித்தப்பா 1வது எதிர்மனுதாரரான திரு.ரவீந்திரன். இவர் மதுரை மாநகரின் 1வது மண்டல தி.மு.க. செயலாளராக இருந்துவருகிறார். இவருடைய மனைவி சாந்தி என்பவருக்கும் இறந்துபோன ராஜேஸ் பிரபுவுக்கு உறவை மீறிய முறைதவறிய உறவு இருந்து வந்துள்ளது. இது அவர்களுடைய உறவினர் அனைவருக்குமே தெரிந்த உண்மை. அவர்கள் பல காலமாக மதுரை மாநகரில் குடியிருந்து வந்தாலும் அவர்களுடைய சொந்த ஊர் சிவகங்கை மாவட்டம் மளவராயனேந்தல் ஊராகும். அங்கேயும் இவர்களுடைய முறை தவறிய உறவு தெரிந்துள்ளது. திரு.ரவீந்திரன் பலமுறை ராஜேஸ் பிரபுவை எச்சரித்ததாகத் தெரிகிறது.



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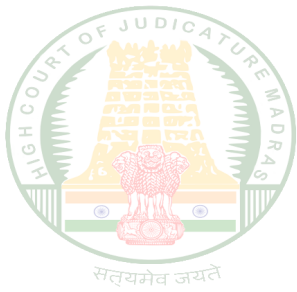
எச்சரிக்கையையும் மீறி முறை தவறிய உறவு நீடித்ததாலும் அடிக்கடி ராஜேஸ் பிரபு ஊருக்கு வருவதாலும் கூலிப்படையின் மூலம் ராஜேஸ் பிரபுவை கொலை செய்திருக்கும் வாய்ப்பே அதிகமாக உள்ளதாக திருநெல்வேலி CBCID போலீசார் விசாரித்தவரையில் தெரியவந்துள்ளது. மனுதாரரின் மகன் இவ்வழக்கில் ஒரு முக்கிய சாட்சியாவார். திருநெல்வேலி CBCIDயில் இவ்வழக்கு புலன் விசாரணையில் இருந்தவரை அவர் கொலையாளியை அடையாளம் காட்ட பல இடங்களுக்கும் சென்றுள்ளார். திருநெல்வேலி CBCIDயில் இவ்வழக்கு புலன் விசாரணையில் இருந்தவரையில் இறந்துபோன ராஜேஸ் பிரபுவின் சித்தப்பா ரவீந்திரன் இக்கொலையைச் செய்திருக்க வாய்ப்பு உள்ளதாகவே விசாரணை சென்றுள்ளது. மதுரை CBCIDக்கு வழக்கு மாறுதலாகிச் சென்ற பின்னரே வழக்கின் விசாரணை திசை மாறிச் சென்று இவ்வழக்கில் சாட்சிகளாக விசாரிக்கப்பட்டவர்கள், ஏதிரிகளாக்கப்பட்டு குற்ற பத்திரிக்கை தாக்கல் செய்யப்பட்டுள்ளது. எனவே இவ்வழக்கினை வேறு ஒரு புலனாய்வு பிரிவுக்கு மாற்றி விசாரணை மேற்கொள்ளலாம் என அறிக்கை சமர்ப்பிக்கிறேன்.”



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66.This report dated 14.09.2011 was filed before the Chief Minister's Cell even before the judgment of the trial Court, however, no action was taken. The trial proceeded. The trial Court has also made similar observations as against the fourth investigation officer / R6. Even then, the State agencies have not corrected their mistake by taking appropriate action as against the concerned officer. On the other hand, they are still defending the officer.

67.Therefore, this Court, without any hesitation, comes to the conclusion that the petitioners have been maliciously prosecuted by R6 / investigation officer and the trial Court has also recorded its finding to that effect. Though specific findings were made against the investigation officer / R6, neither the Department nor the Inspector of Police / R6 have preferred any appeal against that order and the request for appeal was rejected by the Government vide G.O.Ms.No.882, Home (Courts – 7) Department, dated 16.11.2012. The appeal filed by the deceased's father was also dismissed by this Court in CrI.A(MD)No.124 of 2013, dated 03.11.2015 and therefore, the findings of the trial Court became final.



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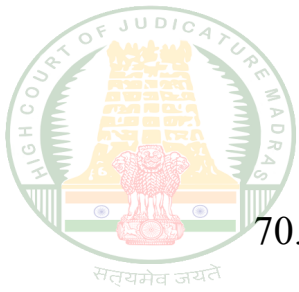
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Point No.5 (Entitlement for compensation):-

68.Since this Court has held that the petitioners have been maliciously prosecuted, as per the reasonings stated supra, the petitioners are entitled for compensation.

Point No.6 (Re-investigation):-

69.A person was done to death. The investigation was conducted by a Deputy Superintendent of Police, CBCID. Mr.Selvaraj, DSP, CBCID has conducted effective investigation from 09.07.2008 to 22.04.2009. Though he was cited as a witness, he was deliberately not examined by the prosecution. The investigation was transferred to R6 on 01.10.2009, on the ground that the previous investigation officers went on leave. It is not known whether Mr.Selvaraj, DSP, was on leave from 22.04.2009 to 30.09.2009. Since he was not examined during the trial, the Court could not find out the real reason for the transfer of investigation from the DSP, CBCID, Tirunelveli.



70. Perusal of the CD files of Mr. Selvaraj, DSP, reveal that he made a proper and meticulous investigation in this case. In fact, he narrowed down the real accused. At that point of time, he was made to go on leave (or went on leave) and the investigation was entrusted to some other investigation officer. In fact, the subsequent investigation was also conducted by the DSP (in-charge), CBCID, Tirunelveli. That Officer was also made to go on leave (or went on leave) and the investigation has been entrusted with R6, the Inspector of Police, who was serving in the CBCID at Madurai. If a DSP goes on leave, then naturally there will be an in-charge DSP. While so, it is not known how the investigation conducted by the DSP, CBCID, for more than a year was entrusted with an Inspector of Police, that too in a different range. Moreover, it is not the case that CBCID, Tirunelveli, was not having any Inspectors of Police or that CBCID, Madurai, was not having any DSP rank officer for that matter. This creates a basic doubt that this investigation has been entrusted with R6 with a sole object to divert the investigation and to close the criminal case. The manner in which the investigation was conducted by R6 also substantiates this doubt and as a result, the real accused is still roaming amongst us. Therefore, the case needs to be reinvestigated and the



decisions of the Hon'ble Supreme Court in this regard are usefully referred
infra.

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71. *In Re Pooja Pal Vs. Union of India (UOI) and Others* [AIR 2016 SC 1345], the Hon'ble Supreme Court has held as follows:-

“67. While recalling its observation in State of Bihar and Anr. v. JAC Saldanha (1980) 1 SCC 554, that on a cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8) of the Code and that the adjudicatory function of the judiciary commences, thus delineating the well demarcated functions of crime detection and adjudication, this Court did recognize a residuary jurisdiction to give directions to the investigating agency, if satisfied that the requirements of law were not being complied with and that the investigation was not being conducted properly or with due haste and promptitude. It was reiterated in Babubhai (supra) that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, may direct investigation de novo, if it is satisfied that non-interference would ultimately result in failure of justice. In such an eventuality endorsement of the investigation to an independent agency to make a fresh probe may be well merited. That not only fair trial but fair investigation is also a part of the



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constitutional rights guaranteed Under Articles 20 & 21 of the Constitution of India and therefore investigation ought to be fair, transparent and judicious, was reemphasised. The expression "ordinarily" as used in Section 173(8) of the Code was noted again to rule that in exceptional circumstances however, in order to prevent miscarriage of criminal justice, a court may still direct investigation de novo. The above postulations being strikingly common in all these decisions, do pervade the fabric and the content thereof and thus dilation of individual facts has been avoided.

68. That the extra-ordinary power of the constitutional courts Under Articles 32 and 226 of the Constitution of India qua the issuance of direction to the CBI to conduct investigation must be exercised with great caution was underlined in Committee for Protection of Democratic Rights (supra) as adverted to hereinabove. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation or where the incident may have national and international ramifications or



where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.”

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72. *In Re Dharam Pal v. State of Haryana and Others* [AIR 2016 SC

618], the Hon'ble Supreme Court has held as follows:-

*“21. We may further elucidate. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour; the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even **the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham***



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one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law". "

73. In ***K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Chennai [(2013) 12 SCC 480]***, the Hon'ble Supreme Court has held as follows:-

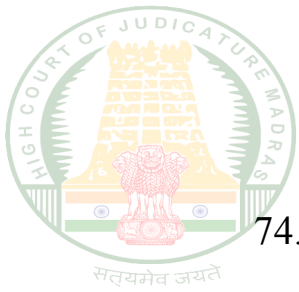


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“13. ... This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. ...

... ..

17. ... the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.”



74. ***In Re Vinay Tyagi v. Irshad Ali and Others [(2013) 5 SCC 762]***, the

Hon'ble Supreme Court, while explaining the purpose of fresh investigation / reinvestigation / de novo investigation, has observed as follows:-

“16. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation



and, if necessary, even by another independent investigating agency.

As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'. **In the case of Sidhartha Vashisht v. State (2010) 6 SCC 1, the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report. In the case of Gudalure M.J. Cherian and Ors. v. Union of India and Ors.(1992) 1 SCC 397, this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the**



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investigation, such investigation being entrusted to a specialized agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instil confidence in public mind, it may become necessary to pass such orders. Further, in the case of *R.S. Sodhi, Advocate v. State of U.P.* 1994 SCC Supp. (1) 142, where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not exercise such jurisdiction but the expression 'ordinarily' means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. 'Ordinarily' excludes extra-ordinary or special circumstances. ***In other words, if special circumstances exist, the court may exercise its jurisdiction to direct 'fresh investigation' and even transfer cases to courts of higher jurisdiction which may pass such directions."***

75. In Re Manohar Lal Sharma v. The Principal Secretary and Others

[(2014) 2 SCC 532], the Hon'ble Supreme Court has held as follows:-

“38. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law.



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The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by the CBI under the DSPE Act, the same principles apply and CBI as an investigating agency is supposed to discharge its responsibility with competence, promptness, fairness and uninfluenced and unhindered by external influences.

39. The abuse of public office for private gain has grown in scope and scale and hit the nation badly. Corruption reduces revenue; it slows down economic activity and holds back economic growth. The biggest loss that may occur to the nation due to corruption is loss of confidence in the democracy and weakening of rule of law.”

76.A family of five persons have knocked the doors of this Court for a remedy that they were falsely implicated in a murder case and on account of that, their entire family faced untold misery. This Court is satisfied that they have been victimised for the purpose of closing a criminal case. They were arrested on a day when their sister got married and languished in jail for 90 days. Allowing the writ petition for compensation is not sufficient to redress



their grievance. Ordering a reinvestigation alone can render substantial justice in this case. It is to be noted that for the first time, an accused has come forward with a request for reinvestigation, after securing an order of acquittal.

77.The petitioners who were arrested in January, 2010, have knocked the doors of the Chief Minister's Cell, this Court, etc., and waiting for justice for the past 13 years. This writ petition which was filed in the year 2016 was being adjourned from time to time for the appearance of the learned Advocate General. Though there is a specific finding by the trial Court, the State Police / Government did not take any remedial measures by ordering a probe on the observations made by the trial Court. Instead, they are protecting the Officer by engaging the Top Law Officer of the State. On the representation of the petitioners before the Chief Minister's Cell, an enquiry was also conducted by the Deputy Superintendent of Police, District Crime Branch, Nagercoil and a detailed report was submitted to the Chief Minister's Cell. Even that report was not considered. If that report was considered at the relevant point of time, then at least to some extent, the injustice done to the petitioners could have been prevented. The State is not supposed to protect its



Officers alone, but is having a duty towards its ordinary citizens as well.

However, in this case, the State Government did not bother to address the grievance of an ordinary citizen, even after the filing of this writ petition for the past seven years.

78.The trial was concluded on a faulty final report. The Government has failed to consider the case of the petitioners even after the observations made by the trial Court. The appeal filed by the defacto complainant as against the order of the trial Court was also dismissed. Neither the Police nor the Judicial Magistrate can order for reinvestigation at this stage. The grievance of the petitioners need to be addressed and therefore, in view of the above discussions and following the ratio laid down by the Hon'ble Supreme Court, this Court, in the given circumstances of the case, is inclined to order for a *de nova* investigation.

79.The CD files clearly reveal that the earlier investigation officer has proceeded as against a powerful politician, who is also the uncle of the deceased. The previous investigation officer has also collected some materials

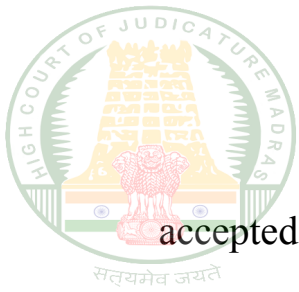


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that there was illegal relationship for the deceased with the wife of the said Politician. A retired police officer, one Thavamani, has given this tip to the previous investigation officer. However, the DSP, CBCID, was prevented from proceeding further on that direction. From the manner in which the investigation has been transferred, this Court is of the view that powerful persons were behind the transfer of investigation. The ruling party which was in existence at that relevant point of time is the ruling party at present also.

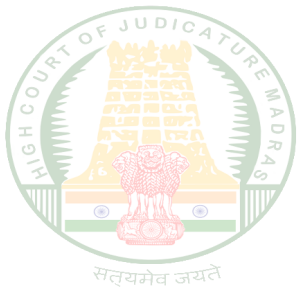
80. There is a clear finding as against the investigation officer / R6 by the trial Court and an attempt was made to get concurrence of the Government to file an appeal as against the judgment of the trial Court. However, it was rejected by the Government vide G.O.Ms.No.882, Home (Courts – 7) Department, dated 16.11.2012, after perusing the judgment of the trial Court and the opinion of the Public Prosecutor, that it was not a fit case for appeal.

81. The finding of the trial Court has clearly exposed the manner in which the sixth respondent has conducted the investigation. The State has



accepted the verdict by not preferring any appeal. Even then, the State has not initiated any disciplinary proceedings based on the observations made by the trial Court. Now, they are defending this writ petition by engaging the Advocate General. On the one hand, the State chose to remain silent by not preferring any appeal as against the judgment of the trial Court. On the other hand, they are engaging the Top Law Officer of the State to defend the very same officer. Therefore, while ordering for a reinvestigation, this Court feels that there might not be a proper investigation by the State agency.

82.The sixth respondent / investigation officer is an intelligent officer, has received several awards for his excellent investigations. However, it appears that he used his intelligence to close a case to protect the real accused, a powerful politician and at the same time, has fixed innocent people as accused in order to close the case. The sixth respondent has served as an Inspector of Police, Additional Superintendent of Police in CBCID and now, he is serving as Superintendent of Police. The Officers in CBCID are almost his colleagues or his subordinates. Therefore, this Court is not inclined to entrust the task with the CBCID, Tamil Nadu either.



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WEB COPY 83. Finding out the truth is the sole object of the investigation agency.

But in this case, the investigation agency has been used as a tool to bury the truth and thereby, a grave injustice has been done to innocent people. The petitioners are not only innocent passengers, who have travelled in the train, they were also on a pilgrimage to Tirupathi. The investigation officer has in fact destroyed the very faith of the innocent pilgrims, who were on a religious tour. If this is how the investigation can be conducted and innocent people can be fixed as accused, then the confidence of the common man on the very system itself would be shaken. Therefore, it is necessary to conduct a *denova* investigation in this case to find out the truth not only on the real accused, who were powerful in deviating the investigation, but also to find out the manner in which the investigation was conducted. Since the sixth respondent is a powerful police officer in the State of Tamil Nadu, this Court deems it fit to entrust this *de nova* investigation with the CBI.

84. This Court is aware that investigation by CBI cannot be ordered in every case for the mere asking by the petitioners and / or the irregularities



committed by the officials. This Court is also aware that the State of Tamil

Nadu has withdrew the consent given to the CBI for investigation, in general.

However, given the special circumstances of this case, as discussed supra, this Court, with the powers conferred under Article 226 of the Constitution of India, treats this case as a special case, orders for a *de nova* investigation by the CBI. The Superintendent of Police, CBI, Madurai, shall take up the investigation immediately and shall conduct the investigation and find out the truth.

Conclusion:-

85.This Court is satisfied that the investigation has been entrusted to the sixth respondent in order to close the case and in order to prevent the investigation to proceed with the illegal intimacy affair. In order to close the case and to conceal the intimacy affair, the petitioners, who travelled as a family for a pilgrimage, have been arrayed as accused by the sixth respondent in a murder case, by planting witnesses and were arrested on the date when the fifth petitioner's daughter got married. The petitioners have also languished in jail for more than 90 days and one of the petitioners, namely,



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Jeyaram Jothi, an Engineering Graduate, has lost his job opportunity in view of this case.

86. Therefore, this Court is of the view that the petitioners are entitled for a compensation. Accordingly, this writ petition is allowed as under:-

i. The Government shall pay a compensation of Rs.20 Lakh, each, to the petitioner Nos.1,2,4 and 5 and shall pay a compensation of a sum of Rs.30 Lakh to the petitioner No.3 (an Engineering Graduate, who lost his job opportunity).

ii. The State is also having a responsibility to find out the truth. Therefore, this Court reopens the investigation in Crime No.8 of 2008 and entrusts the investigation with the CBI, Madurai, for *de nova* investigation. The Superintendent of Police, CBCID, Madurai, shall forward the papers to the Superintendent of Police, CBI, Madurai, for *de nova* investigation, within a period of two weeks from the date of receipt of a copy of this order.



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iii. The Superintendent of Police, CBI, Madurai, shall conduct the investigation, independently, uninfluenced by the observations made by this Court, in a thorough manner and find out the truth. They shall also conduct the investigation with regard to the manner in which the sixth respondent was entrusted with the investigation and whether he had a motive for closing the case as against the real accused.

iv. The CBI is expected to file a report before this Court as to the progress of the case within a period of six months from the date of receipt of a copy of this order.

There shall be no order as to costs. Connected miscellaneous petitions, if any, shall stand closed.

Internet : Yes
Index : Yes / No
NCC : Yes / No
gk

17.10.2023



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Note:

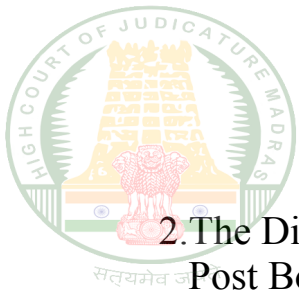
WEB COPY

Registry is to

1. Issue order copy by **15.11.2023**.
2. Mark a copy of this order to
 - i. The Superintendent of Police,
Central Bureau of Investigation,
Madurai.
 - ii. The Superintendent of Police,
CB-CID,
Madurai.
 - iii. The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.
 - iv. The Inspector General,
Railway Protection Force,
Southern Railway,
Zonal Headquarters,
Chennai.

To

1. The Home Secretary,
Secretariat,
Fort St. George,
Chennai – 600 009.



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2. The Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Chennai – 600 004.

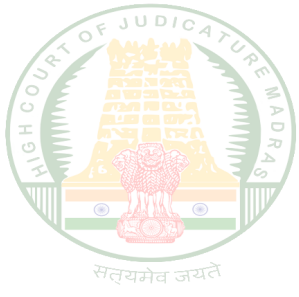
3. The Joint Director,
Central Bureau of Investigation,
III Floor, E.V.K.Sampath Building,
College Road,
Chennai.

4. The Inspector of Police,
Railway Police Station,
Tirunelveli.

5. The Deputy Superintendent of Police,
CBCID,
Tirunelveli.

6. The District Collector,
Tirunelveli,
Tirunelveli District.

7. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.



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B.PUGALENDHI, J.

gk

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