

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 28509 of 2014 (K)

CR. NO.720/2013 OF MARARIKULAM POLICE STATION.

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PETITIONER(S):

**LATHEESH B.CHANDRAN, AGED 32 YEARS,
S/O.BHUVANA CHANDRAN, RESIDING AT THOTTATHUSSERY,
MUHAMMA P.O., ALAPPUZHA-688 525.**

**BY ADVS.SRI.A.JAYASANKAR,
SRI.C.V.MANUVILSAN,
SRI.MANU GOVIND.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY ITS DIRECTOR, NEW DELHI-110 001.**
- 3. THE DIRECTOR GENERAL OF POLICE,
VAZHUTHACAUD P.O., THIRUVANANTHAPURAM-695 014.**
- 4. THE SUPERINTENDENT OF POLICE,
CBCID (STATS), THRISSUR-680 001.**
- 5. THE DEPUTY SUPERINTENDENT OF POLICE,
OFFICE OF DEPUTY SUPERINTENDENT OF POLICE,
CBCID HHW-II, ALAPPUZHA SUB UNIT, ALAPPUZHA-688 001.**
- 6. THE SUPERINTENDENT OF POLICE,
ALAPPUZHA-688 001.**
- 7. THE CIRCLE INSPECTOR OF POLICE,
MARARIKULAM, SL PURAM P.O., CHERTHALA,
ALAPPUZHA-688 523.**

WP(C).No. 28509 of 2014 (K)

**8. THE SUB INSPECTOR OF POLICE,
MARARIKULAM, SL PURAM P.O., CHERTHALA,
ALAPPUZHA-688 523.**

**R1, R3 TO R8 BY SRI.P. VIJAYARAGHAVAN, STATE ATTORNEY.
R2 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, SC, C.B.I.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-06-2015, ALONG WITH WP(C).NO.7780 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 : TRUE COPY OF THE FIR AND FIS DATED 31-10-2013 IN CR.NO.720/2013 OF MARARIKULAM POLICE STATION.
- EXT.P2 : TRUE COPY OF THE REPORT DATED 07-11-2013 SUBMITTED BY THE 7TH RESPONDENT/CIRCLE INSPECTOR OF MARARIKULAM BEFORE THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT -I, ALAPPUZHA.
- EXT.P3 : TRUE COPY OF THE WRITTEN OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ALAPPUZHA DATED 18-11-2013.
- EXT.P4 : TRUE COPY OF THE NOTICE DATED 20-08-2014 ISSUED BY 5TH RESPONDENT ON BEHALF OF 4TH RESPONDENT.
- EXT.P5 : TRUE COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY DATED 01-11-2013.
- EXT.P6 : TRUE COPY OF THE REPRESENTATION DATED 16-09-2014 PREFERRED BY THE PETITIONER TO THE HOME SECRETARY FOR THE STATE OF KERALA, WITH COPIES OF THE CHIEF MINISTER, HOME MINISTER AND DIRECTOR GENERAL OF POLICE.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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W.P.(C).Nos.7780/2015 & 28509/2014

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Dated this the 8th day of June, 2015

J U D G M E N T

The factual aspects and contentions projected in W.P.(C). No.7780/2015 are as follows:- The petitioner in W.P.(C).No.7780/2015 is accused No.2 in Crime No.720/2013 of Mararikkulam Police Station (later re-registered by the Crime Branch CID as Crime No. 425/CR/STATS/2013, Thrissur), now being investigated by the 5th respondent Superintendent of Police, CBCID, STATS, Thrissur. The case of the prosecution is that the bust of the iconic Comrade, late P.Krishna Pillai, (who was a veteran Communist Party leader in Kerala) situated at Kannarkad in Alappuzha district was destroyed by a group of miscreants. According to the petitioner, factionalism and schism had run deep into the roots of the functioning of the political party, to which he belonged, viz., the Communist Party of India (Marxist) [CPI(M)], at Kannarkad and Alappuzha and that the petitioner, who was a Local Committee Secretary of that party, had to face ire and wrath of political leaders belonging to his own party.

The investigation initially was done at the behest of the local Police (Mararikkulam Police Station) and later the investigation was entrusted to the 5th respondent Superintendent of Police, Crime Branch CBCID, STATS, Thrissur. The sheet anchor of the allegations of the petitioner for projecting his case in support of his prayer is that the present investigation is aimed at incriminating the petitioner along with the other accused, at any cost, projecting them falsely as the mischief makers in the event, which led to the destruction of the bust of iconic deceased comrade. It is alleged by the petitioner that truncated reports have been filed before the jurisdictional Magistrate, by the investigating officer concerned and that the said reports do not bring out truth of the matter. That through out the process of investigation there has been no attempt by the investigating agency to probe the crucial fact as to whether the petitioner is actually innocent and the investigation proceeds as if all efforts should be made to frame him as an accused in this case and that this is done by fabricating the materials collected during the investigation. According to the petitioner, he seeks for a investigation by the Central Bureau of Investigation to unearth the following facts:

- i. The actual truth,
- ii. The actual culprits
- iii. The motivation for the incident
- iv. Who are responsible for the wrong and false indictment of the petitioner.
- v. Why the police machinery in the state caused a deviation to array the petitioner as an accused.”

Based on Ext.P-1 statement submitted by the one Deepu before the 6th respondent S.I. of Police, Mararikkulam Police Station on 31.10.2013, Crime No.720/2013 of Mararikkulam Police Station was registered by the 6th respondent Station House Officer of that station for offences under Secs.447, 427, 436 and 153 of the I.P.C. By G.o(Rt.)No.1187/13/M3/2013/Home dated 27.12.2013, the investigation of the case was handed over to the then Superintendent of Police, CBCID (STATS), one Sri.P.N.Unnirajan, who had taken over the investigation on 22.1.2014. Later, above said Sri.Unnirajan, was transferred to Thiruvananthapuram Internal Security Branch as Superintendent of Police as per Govt. Order dated 1.2.2014 and the investigation of the case was handed over to Sri.R.K.Jayarajan, Superintendent of Police, CBCID, STATS, Thiruvananthapuram as per G.O(Rt)No.338/2014/Home dated 29.1.2014. On 14.3.2014, one Sri.M.B.Rajendran, the Deputy

Superintendent of Police, CBCID-HHW1 Sub Unit, Alappuzha had taken over the investigation of the case and in the meantime, the first informant, one Sri.Deepu was arrayed as the 1st accused, one Sri.Rajesh, as well as the present petitioner (Sri.P.Sabu) and one Sri.Pramod, were arrayed as accused Nos.1 to 4 in the said crime. On 24.9.2014, the investigating officer obtained necessary permission of the Judicial First Class Magistrate's Court-I, Alappuzha, for conducting polygraph test on Deepu, Rajesh and Pramod and on 1.8.2014, the respective reports of the forensic science laboratory produced before the above Magistrate. Subsequently, on 26.11.2014, on a report by the 5th respondent submitted before the learned Magistrate, offences under Sec.172 B and Sec.34 of the I.P.C. were incorporated along with Secs.153, 447, 436 and 427 of the I.P.C. On 26.12.2014, the investigating officer filed a report of the Judicial First Class Magistrate's Court-Alappuzha to the effect that the 1st informant/1st accused was brought to the place of occurrence and also the place where the alleged conspiracy was said to have hatched that it remained an undisputed fact that the name of the present petitioner did not crop up anywhere during the investigation and the respective reports of

the 5th respondent would indicate that the petitioner was innocent of the allegations now sought to be levelled against him. That the petitioner who was a whole hearted worker of the CPI(M) party, was dragged into the factional disputes within the internal functioning of the said political party and that the iconic communist figure, late P.Krishna Pillai, is adored by one and all, who has got even any remote allegiance to the principles and ideology of the said political party and that it is unthinkable for a person like the petitioner to even think of destroying the bust of the said iconic leader. That being a disciplined party worker, the petitioner had also deep respect for the said iconic leader. The petitioner was the Local Committee Secretary of the party and apart from being known to the other accused, who were also party activists, the petitioner was not in any way involved in any manner in the subject incident, which led to the crime. That prior to the defacing the bust of late Sri.Krishna Pillai, on the same day the statue of late Indira Gandhi, former Prime Minister of India, situated nearby and a flag of the Congress party were also destroyed. In that regard, Crime No. 676/2013 was registered by the Mararikkulam Police Station and three accused, viz., Sreenath, Sumesh and Sandeep Kumar were

arrested. It was based on their statement, that the investigating agency had zeroed on the one of the accused in the present case, one Sri.Latheesh.B. Chandran. Sri.Latheesh.B. Chandran is the petitioner in the connected W.P.(C).No.28509/2014, wherein he has also prayed for entrustment of the further investigation of this case to the Central Bureau of Investigation on the ground that the investigation in the present case is actually aimed at saving the real culprits and that the investigating officer is biased etc. That in response to the averments in W.P.(C).No.28509/2014, the investigating officer (I.O.), as directed by this Court, has filed statement dated 29.11.2104 in W.P.(C).No.28509/2014 [produced for immediate reference as Ext.P-2 in W.P.(C).No.7780/2015], wherein the complicity of the petitioner in W.P.(C).No.7780/2015 is given as follows:

“It is submitted that during the course of investigation, the statement of the veteran communist leader and former district secretariat member and for long term area Secretary of the Kanjikuzhy area, where P.Krishnapillai Memorial situates. Sri.T.K.Palani's statement was recorded. According to him, he was the member of the communist party since 1952 and he has stated that Kannarkadu is a CPM stronghold area and no other party had any clout there. Mr.Latheesh.B.Chandran the petitioner was known to him very well and the petitioner was ousted from the party for antiparty activities. On 30/10/2013, the petitioner contacted him over phone and it was casual talk and on 31/10/2013 at 2.30 AM the matter of ablazing the statue of P.Krishnapillai was informed to him. He wanted the petitioner to come to his residence to accompany with him. Both the petitioner and Mr.Palani went to the scene by

motorcycle and on the way the petitioner informed regarding the destruction of Indira Gandhi statue at Kaippuram to him. Then onwards he smelled a connection between the destruction of both the statue and when it was put to him, the petitioner kept silence on the matter. He suspects the involvement of petitioner in both the incidents. When reached the scene of crime he noticed the petitioner having engaged in conversation with one Mr.P.Sabu a suspected person and close associate of the petitioner. He also opined that no other person or political rival parties would be dare enough to commit such an act since the area was a stronghold of CPI (M). He also suspected the involvement of CPI (M) cadres. Both the petitioner and Mr.P.Sabu were the 2 mastermind of several nefarious activities and they would go to any extent to achieve their illegal object”.

That the petitioner would contend that a reading of the above said statement, especially the above quoted portion, would clearly indicate that the petitioner has been roped in as an accused merely on the ground of suspicion and that such suspicion was in fact unfounded and it is only on such unfounded allegations based on mere suspicion and surmises that the petitioner was brought to the anvil of even being subjected to pre-trial arrest and detention. That that petitioner later filed application before the Sessions Court, Alappuzha, seeking anticipatory bail, wherein the Sessions Court directed the petitioner to surrender before the I.O. and the said officer was directed to produce the petitioner before the jurisdictional Magistrate. The petitioner later filed Bail Application No.9153/2014 before this Court and it was argued before this Court by the learned Director General of Prosecution representing the

State of Kerala that the CPI(M) political party themselves have officially endorsed the correctness of the line of investigation adopted by the present investigation as against the petitioner and others and by Ext.P-3 order dated 5.1.2015, this Court had dismissed the said Bail Application as the investigation was in the nascent stage, etc. That the petitioner later appeared before the I.O. on 12.1.2015 and answered all the queries of the I.O. truthfully. But that giving a wrong and truncated factual projection to the effect that the petitioner did not co-operate with the investigation and that the petitioner threatened the I.O. etc., report was filed as per Ext.P-4 by the 5th respondent before the jurisdictional Magistrate. That the petitioner was able to prove by substantial arguments before the learned Magistrate that the aspersions cast against him in Ext.P-4 report were untrue and that after brief remand, the learned Magistrate had enlarged the petitioner on bail, etc. The petitioner projects certain specific contentions in aid of his attempt to make out a case of biased investigation and the said aspects stated in paragraph of the 18 of the W.P.(C). are as follows:

- “(a) The implication of the first informant as 1st accused without assigning any reasons.
- (b) Till date, the investigating Agency has not obtained any material to implicate the petitioner in the subject crime. He is

indicted only on the basis of suspicions and presumptions and on the basis of a conversation with the principal accused.

- (c) The Communist Party of India has a definite aim of ensuring that petitioner is illegally indicted in the subject crime, as according to them petitioner is a defector and an eyesore for them. If petitioner is made an accused in this case it will be a reason for his adversaries within the respective political party to oust the petitioner from the basic membership of the said party.
- (d) The above political party has prevailed on its workers to threaten the members of the investigating team; such acts not being in the control of the petitioner and resultantly the investigating team has adopted an approach of vindictiveness to the petitioner and they are on the anvil of ensuring that the petitioner is arrayed as an accused in the Final Report. Thus "motive for revenge" has been substituted for a fair investigation.
- (e) In spite of his innocence, to ensure that the petitioner does not secure bail, a false report in the nature of Exhibit P4 has been filed before the learned Magistrate by the Investigating Officer to the effect that the petitioner has intimidated the said officer. The truth is that the petitioner who was already mentally and physically shattered over the turn of events, has not instigated or intimidated the investigating officers in the manner alleged of him.
- (f) The Investigating Officer has recorded untruthful statements of witnesses especially those under Section 164 Cr.P.C. The petitioner is given to understand that the two witnesses who gave the statements under Section 164 Cr.P.C were in fact extensively tutored by the investigating Officer, to ensure that a conviction on conclusion of trial is inescapable.
- (g) The motive for the investigating agency to frame a false case is to ensure that the line of investigation proceeds "in a wrong direction", so that the actual culprits are saved from the arms of law.
- (h) The present investigating agency has not produced any document to show that at any point of time, this petitioner contacted the 1st accused prior to the incident."

2. It is in the light of aforementioned factual matrix projected in the Writ Petition that the petitioner in W.P.(C).

No.7780/2015 seeks for a prerogative writ of mandamus to direct the 1st respondent Union of India and the 2nd respondent State of Kerala, to entrust the further investigation of the present crime to the 4th respondent Central Bureau of Investigation. The petitioner also relies on certain reported rulings of this Court and the Supreme Court in aid of his contentions. The petitioner relies on the decision of this Court in the case, Mariya v. Dy. Supdt., CBCID & others reported in 2008 (1) KHC 1041, wherein, according to the petitioner, the political set up in the State under the governance of the CPI(M) party, came under the scanner of this Court and that this Court found in the facts of that case that a serious investigation by an impartial agency is necessary to bring out the truth and that paragraph 9 of the said reported judgment of this Court deals with the political situation in Kannur district, which according to the petitioner, is par with that at CPI(M) strong holds in Alappuzha district. That in a catena of decisions of the Apex Court as in the cases as in State of Punjab v. Davindar Pal Singh Bhullar, reported in AIR 2012 SC 364, the Apex Court has held that if the court is convinced that the power of investigation has been exercised by an investigating officer malafide or the matter is not investigated at all

properly, then the Court under Art. 226 of the Constitution of India and under Sec.482 of the Cr.P.C. is crowned with the statutory power to exercise control over the administration of justice in criminal proceedings within the territorial jurisdiction of the High Court concerned so as to ensure that proceedings undertaken under the Cr.P.C. are executed to secure the ends of justice and that for this, the Parliament has engrafted the provision in Sec.482 of the Code of Criminal Procedure to confer the inherent power and authority and the High Court is repository of such power under the said statute. That the concept of due process in criminal justice and the attendant investigation is inbuilt in the scheme of things engrafted in Art.21 of the Constitution of India and that this Court is sufficiently empowered from the dynamics and perspectives of the Art.21 of the Constitution of India to ensure that the investigation is fair and unbiased and is effectuated fairly and properly so that it is not only fair and proper but also appears to be fair and impartial to all concerned, not only for the accused, victim and the executive authorities concerned but to the entire community at large and the citizenry. The prayer W.P.(C).No. 7780/2015 is as follows:

“Issue a writ of mandamus directing respondents 1 and 2 to entrust the investigation of Crime 425/CR/STATS/2013 presently

being investigated by the 5th respondent to the 4th respondent. The Superintendent of Police, Central Bureau of Investigation, Ernakulam.'

3. The factual aspects and contentions projected in the connected W.P.(C).No.28509/2014 are as follows:- That the petitioner in W.P.(C).No.28509/2014 (Sri.Latheesh.B. Chandran), was one of the members of the personal staff of the former Chief Minister of the State of Kerala, Sri.V.S.Achuthanandan, and that the petitioner is a believer of the hardcore communist based ideology and that it is only for accomplishing the ulterior political motives, that the petitioner has been enlisted as a suspect as long as one year in the aforementioned incident related to the destruction of the bust of the iconic Community party leader, late Sri.P.Krishna Pillai, which was partially gutted on the midnight of 31.10.2013 by some antisocial elements, without any single crumbs of admissible evidence. That the bust of comrade, late Sri.Krishna Pillai, erected in front of the memorial, also suffered damages in the incident. Various levels of investigation teams were constituted and reconstituted again and again, but even after more than an year there has been no single significant step forward in identifying and roping in the real culprits who destroyed the memorial. That the

agencies which in different terms had been investigating the matter are still searching in dark and that allegedly due to their incompetency, they are unnecessarily harassing the petitioner in different ways and that there is no single sign that the petitioner will get any justice from the present investigating agency and that the petitioner suffers only abuse of power at the hands of the investigating agency. That the petitioner is a law abiding citizen, that he is a real Communist, is having the fire and enthusiasm inside him, to unveil the real facts which led to the untoward incident. But unfortunately the petitioner is another law abiding citizen, who has been made a scapegoat and the petitioner has no other alternative but to pray before this Court that unless an impartial central agency, viz. Central Bureau of Investigation, investigates this case, no justice will be rendered to him as well as to the memorial of the iconic Communist comrade late Sri.P.Krishna Pillai.

4. It is urged that no reasons whatsoever are discernible anywhere in Ext.P-2 report dated 7.11.2013 filed by the 7th respondent Circle Inspector of Police, Mararikkulam, before the jurisdictional Magistrate at Alappuzha, so as to connect the

petitioner with the said crime and it is only for this reason, that he opposed the request for permission to conduct polygraph test by filing a written objection thereto contending that he is ready and willing to co-operative with any lawful steps in the investigation, except those types of test like polygraph test, which are unconstitutional, which have no legal validity. The petitioner further submits that the present investigating team has basically no proper clue so as to unravel the mystery of the incident in question and that they are moving with a pre-determined mind so as to somehow or other implicate persons like the petitioners herein as accused. The petitioner has submitted representations as in Ext.P-6 before the State authorities concerned praying for entrustment of the investigation from the Crime Branch to the central agency concerned, viz., the Central Bureau of Investigation and that it should be under the monitoring control by this Court. The petitioner has relied on the decisions of the Apex Court and this Court as in Onkar Lal Bajaj v. Union of India reported in (2003) (2) SCC 673, Joginder Kumar v. State of U.P. reported in (1994) 4 SCC 260, V.S.Achuthanandan v. State of Kerala and others, reported in 2014 (3) KHC SN.2 and M.G.George Muthoot v. State of Kerala and others

reported in 2010 (1) KHC 329 = 2010 (1) KLD SN 124 = 2010 (1) KLT 399 = ILR 2010 (1) Ker.441. It is in the light of these factual averments and legal contentions that the petitioner has filed the instant W.P.(C).No. 28509/2014 with the following prayers:

- i. Declare that the case in hand is very prominent and that, the present investigating Agency is investigating in a wrong direction and is incapable of finding the real culprits and that this is a fit case to be committed to a centralized agency viz., Central Bureau of Investigation (CBI).
- ii. Issue a Writ of Mandamus directing the 1st Respondent to commit the investigation of CBCID Case No.425/CR/STATS/13 of CBCID (STATS), Thrissur, in Cr.No.720/2013 of Mararikulam Police Station, which is the Crime in nexus with demolition of the memorial of Comrade P.Krishna Pillai, to a centralized agency viz., the 2nd Respondent/Central Bureau of Investigation (CBI) with a direction to complete the investigation under the monitoring control of this Hon'ble Court;
- iii. Issue a writ of Mandamus or any other appropriate writ directing the 1st Respondent and 3rd Respondent for considering Exhibit P6 Representation, at the earliest, by affording an opportunity of being heard to the Petitioner."

5. As the main prayer in the above captioned two Writ Petitions (Civil) is the same to the extent it relates to the effectuation of fair and proper investigation in Crime No.720/2013 of Mararikulam Police Station, re-registered by Crime Branch CID as Crime No. 425/ CR/STATS/2013, these matters are disposed of as per this common judgment.

6. As stated earlier, the 4th respondent in W.P.(C).No. 28590/2014 has filed a statement dated 29.11.2014 before this Court. The said respondent has stated that the investigation in this case has revealed that two teams have been deployed in the

destruction of both Comrade late Sri.P.Krishna Pillai's memorial and the statue of late Indira Gandhi, by the petitioner herein in W.P.(C). No. 28509/2014 and his associates and that the suspects must have the intention to create a conflict or riot between the Congress and CPI(M) party workers so as to fish the petitioner out of the troubled water. It is further stated in paragraphs 12 and 13 of the said statement as follows:

“12. It is humbly submitted that during the course of investigation it is revealed that the petitioner who is the main suspect had contacted both the accused persons involved in the destruction of Indira Gandhi statue at Kayippuram, and the suspected persons involved in the destruction of P.Krishna Pillai Memorial. On verifying the call details of Latheesh B.Chandran, who purportedly used several mobile phones subscribed by others, it is revealed that the petitioner is not using any mobile phone on his own subscription. He uses several mobile phones such as 9846036686, 9961016686, 9946910658 besides several other mobile numbers such as 9048795017 in the subscriber name of one Mrs.Sindhu Kanakan and 928804257 in the subscriber name of one Mr.Pushpangadan.

13. It is submitted that on questioning the petitioner, he denied of having been contacted the suspects and others and also denied of having attended/contacted 400 phone calls on the date of occurrence. On verifying the call details, it is clearly proved that he had a sleepless night on the day of occurrence. Though he initially agreed to subject him to polygraph test, but when appeared in the court, he declined to undergo the polygraph test.”

Various other aspects are also averred in the said statement.

7. Heard Sri.C.P.Udayabhanu, learned counsel appearing for the petitioner in W.P.(C).No.7780/2015, Sri.A.Jayasankar & Sri.C.V. Manuvilson, learned Advocates appearing for the petitioner in W.P.(C).No.28509/2014, the learned State Attorney the appearing

for the official State respondents and learned Standing Counsel appearing for the CBI. Sri.C.P.Udayabhanu, the learned counsel for the petitioner in W.P.(C).No.7780/2015 submitted that as can be seen from paragraph 8 of Ext.P-3 order dated 5.1.2015 issued by this Court in Bail Application Nos.9134 and 9153 of 2014, the Director General of Prosecution had submitted that the official CPI(M) political party themselves have endorsed the correctness of the line of investigation taken in this case by the Police as against the accused and that according to the learned D.G. of prosecution, it was factional feud that had occurred within the political party, which payed way for the mischief in this case, etc. On this basis, Sri.C.P.Udayabhanu, the learned counsel for the petitioner urges that the State Prosecution machinery shall not in any manner depend on the endorsement or vindication made by a political party on the correctness or otherwise of the line of investigation taken by the Police in any given case, especially in a case having wide political ramifications and that this submission may be appreciated in the light of the specific averment made by the petitioners that the petitioners are being made scapegoats due to the intense factional struggle in their political party and the clear

fact that the prosecution agency is even trying to justify their line of investigation based on the stand taken by the official wing of the political party concerned itself clearly points to the correctness of the specific allegation made by the petitioners herein about the tainted and biased manner of the investigation in this case.

8. The respective parties through their learned Advocates concerned reiterated their submissions and contentions as referred to above.

9. The scope and width of the powers conferred on this Court for directions for entrustment of criminal investigation being conducted by the State Police agencies to the Central Bureau of Investigation may be initially considered. There is a catena of decisions of the Apex Court and various High Courts, including this Court on this aspect of the matter. But this Court would primarily endeavour to make a focus on this issue based on the Five Judge Constitution Bench landmark decision of the Apex Court in the case STATE OF WEST BENGAL AND OTHERS v. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS, WEST BENGAL AND OTHERS reported in (2010) 3 SCC 571. It has been held by the Apex Court in paragraphs 51 and 39 thereof that the Constitution of India expressly confers the

power of judicial review on the Supreme Court and High Courts under Articles 32 and 226 respectively and that the judicial review is an embedded and inalienable component of the basic structure of the Constitution, which cannot be ousted or abridged even by a Constitutional amendment. It has been further amplified in paras 68 and 52 thereof that no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights and such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Therefore, to borrow the words of Lord Steyn, judicial review is justified by a combination of *“the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review”*. It has been cogently held in para 57 of the said Constitution Bench decision that the powers of judicial review conferred on the High Court are, in a way, wider in scope and the High Courts are authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any government to enforce fundamental rights and, “for any other purpose”. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement

of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but “for any other purpose” as well, i.e. for enforcement of any legal right conferred by a Statute, etc. and that what has been stated in regard to exercise of jurisdiction by the Supreme Court under Art.32, must apply equally in relation to the exercise of jurisdiction by the High Courts under Art.226 of the Constitution of India. In paras 43 and 44 thereof it has been held by the Apex Court that the doctrine of separation of powers cannot curtail the power of judicial review conferred on the Constitutional courts in situations where the fundamental rights, which include Arts.14, 19(1)(a) and 21, are sought to be abrogated or abridged on the ground that the exercise of such power would impinge upon the said doctrine. It has been held unequivocally in paragraph 69 of the decision that being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Art.21 of the Constitution in particular, zealously and vigilantly. Therefore, a direction by the High Court in exercise of its

jurisdiction under Art.226 of the Constitution to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. That when the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. Irrespective of there being any statutory provision regarding the consent of the State Government concerned, acting as a restriction on the powers of the Courts, the restriction imposed by Sec.6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution and therefore it was held therein that exercise of power of judicial review

by the High Court would not amount to infringement of either the doctrine of separation of power or the federal structure. Accordingly, the Constitutional Bench made the following broad conclusions in paragraph 68 of the said reported judgment:

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

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of “*the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review*”.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure."

10. In paragraph 71 of the said decision, the Supreme Court held that the view taken by the Apex Court in *Minor Irrigation & Rural Engg. Services, U.P.*, *Sahngoo Ram Arya* reported in (2002) 5

SCC 521, that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency and that Their Lordships of the Constitutional Bench respectfully concurred with those observations in that case. However, a word of very strong caution was made by the Constitutional Bench as parting remarks in para 70 of the said landmark judgment and it will not be out of context to quote the said words of strong caution made by the Apex Court, which reads of follows:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

Therefore, it can be seen that the very plenitude of the power available under the provisions as in Articles 32 and 226 of the Constitution of India, requires great amount of caution in its exercise of discretion and such an order is not to be passed in a matter of routine merely because a party has levelled some allegations against the local Police. This extraordinary power could be exercised most sparingly and cautiously and in very rare and exceptional situations, where it really becomes imperative and necessary to provide credibility and to instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. The Supreme Court specifically cautioned that otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

11. After hearing all sides and on close scrutiny of the contentions and averments of the parties, this Court is of the considered opinion that no extraordinary factual situation arises in

this case so as to invoke the extraordinary jurisdiction conferred on this Court to order for entrustment of the investigation with the CBI. This Court of the considered opinion that it is the solemn responsibility of the State Police authority to exercise all due diligence so as to live upto to its heavy responsibility expected of it from the citizenry at large, so as to effectuate fair and proper investigation in the crimes that are registered in the State and so as to instil atleast the optimum level of confidence of the community at large and the citizenry. In tune with the aforestated view taken by this Court regarding the importance to restore the rule of law based constitutional governance mechanisms in the State, it would be apposite to refer to the case, Onkar Lal Bajaj v. Union of India reported in (2003) 2 SCC 673, wherein the Apex Court has held in para 36 as follows:

“The role model for governance and decision taken thereon should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to

operate.”

Further, in the case *Joginder Kumar v. State of U.P.* reported in (1994) 4 SCC 260, the Supreme Court has accentuated the aspect that the quality of a nation's civilization can be largely measured by methods it uses in the enforcement of criminal law and that the horizon of rights is expanding, but at the same time, the crime rate is also increasing. It was held in paragraphs 8 and 9 thereof as follows:

“8.... The Court has been receiving complaints about violation of human rights because of indiscriminate arrests.

9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities, on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider;....”

It would also be relevant to note the observations of the Division Bench of this Court in the case *V.S.Achuthanandan v. State of Kerala and others*, reported in 2013(4) KHC SN.2 = ILR 2013 (4) Ker.190 = 2013 (2) KLD 580, wherein it was observed as follows:

“The investigation is now concluded and final report is filed before the Magistrate. The persuasion of the petitioner before us is to look into the same and evaluate the material rather embark upon a process of sifting the grain from the chaff so as to find it to be insufficient and then order investigation by the CBI afresh. This is nothing short of scuttling the statutory procedure prescribe under the Code of Criminal Procedure. The duty cast on the Magistrate is to

look into the material, ie., the final report and proceed further as stated above to take recourse to several available options, if he or she deems it fit. The order accepting the final report or even one directing, further investigation again can be the subject-matter of appeal and revision as provided under the Code. We will not be doing justice or exercising our discretion properly, if we act preempting such procedural seminal consideration by the jurisdictional Magistrate. If we interfere now, it is nothing but upsetting the hierarchy of judicial forums as prescribed under the Code.”

Though the above said observations in V.S.Achuthananthan's case supra are in the context that ordinarily the superior courts should not short-circuit or pre-empt the decision making process invested with the criminal court of competent jurisdiction, who are to deal with the situations arising out of the acceptance or otherwise of a final report, the said observations are also relevant in the larger perspective that constitutional courts like the High Courts, instead of mechanically relying on CBI investigation, should make all endeavours possible so as to restore the efficacy and vigour of the State Police investigation mechanisms so that the State instrumentalities can fully live upto its constitutional role of being the guardians and custodians of law and order and crime investigation in the State concerned.

12. At the same time, it is to be noted that a Division Bench of this Court in the decisions as in M.G.George Muthoot v. State of Kerala and others reported in 2010 (1) KLT 399 = 2010 (1) KHC 329

= 2010 (1) KLD SN 124 = ILR 2010 (1) Ker.441, has held that in order to ensure fair and proper impartial and complete investigation and to restore faith in the investigation process, the High Court is always well equipped to issue necessary directions to ensure and effectuate the conduct of such investigation by issuing necessary directions as are warranted in the facts and circumstances of the case. In the case *Indira Priyadarsini Forum v. State of Kerala* reported in 2001 (2) KLT 56, p.59, para 9 the Division Bench of this Court held that if the statutory duty cast on the police is not discharged in an effective way and there is no fair and prompt investigation, the court can issue appropriate directions in that regard. In the case *Babu Bhai v. State of Gujarat* reported in (2010) 12 SCC 254, the Apex Court has held that the investigating officer cannot be permitted to conduct investigation in a tainted and biased manner and further held that if non-interference of the courts would result in failure of justice, the court must interfere.

13. Dr.Peter Ronald Desouza, former Director of Indian Institute of Advanced Studies, Simla, and Professor Emeritus of the Centre for Study of Developing Societies, New Delhi, has opined in one of his articles, on the role of Constitutional Courts in a

Constitutional Democracy, as follows:

“The court has to decide how to educate a society such that it stops acting as a lynch mob. It has to defend the Constitution.. We are a Constitutional Democracy, not a lynching one. It may mean going against the tide. But the court does not have to be popular. It has to be right and just.”

Therefore, on adjudging the factual matrix of this case on the anvil of the legal framework that governs the field, this Court during the course of submissions on 4.6.2015, had requested all the parties concerned including the State Police authorities as to whether the Director General of Police (State Police Chief) could be directed to independently make a review and evaluation of the entire investigation done in this case so far and ascertain as to whether the same has proceeded on the correct and proper lines or as to whether it needs to be cleared off the cobwebs of deficiencies or requires atleast fine tuning to unravel the unvarnished truth of the matter and after conducting such review of the case diary materials, the Director General of Police would decide whether further investigation of this crime could be entrusted to a team of officials of the State Police with impeccable credentials, nominated by the State Police Chief so that not only the complainants and the accused, but also the community at large, will be instilled with confidence about the openness and fairness of the State Police

authorities and so that the investigation at the hands of the State Police is not only fair and impartial but also should appear to be fair and impartial to all stake holders and the community at large. The learned Advocates appearing for the Writ Petitioners in these cases, even without taking instructions from their respective parties, fairly submitted before this Court that they are fully satisfied with such an option now offered by this Court, but they should be given a short time to get instructions from their parties to make appropriate submissions in that regard. The learned State Attorney appearing for the official State respondents, including the Director General of Police (State Police Chief), also wanted a short time to consult with the State Police Chief to get instructions on this aspect of the matter now queried by the court. This Court had specifically pointed out to the learned State Attorney that if the State Police Chief is willing for this course of action, it should be ensured that the decision in this regard as aforestated should be taken by him independently in exercise of his discretion and that he shall not seek any guidance or advice from any superiors at the political level of governance, keeping in view the extreme sensationalism and political controversy that this case has already generated. The learned State

Attorney assured the Court that this suggestion made by the Court will be considered by the State Police Chief in all seriousness and that the case may be posted after 3 or 4 days so as to enable him to get back to the Court after getting instructions from the State Police Chief.

14. The matter was again listed before this Court today, viz., 8.6.2015. Sri.C.P.Udayahbanu, learned counsel for the petitioner in W.P.(C).No.7780/2015 and Sri.A.Jayasankar, & Sri.C.V.Manuvilsan, learned Advocates appearing for the petitioner in W.P.(C).No. 28509/2014 submitted that their parties are fully willing to accept the course of action suggested by this Court. The learned State Attorney appearing for the State authorities including the Director General of Police (State Police Chief) submitted on instructions from the State Police Chief that the State Police Chief is willing for this course of action and that after taking the decision in the matter, as suggested by this Court, the State Police Chief will convey the decision to this Court in a sealed cover. This Court then observed that there is no requirement to keep the main matters pending here so that the State Police Chief is not constrained to take a decision in the matter when this Court is seen to be in the seisin of the main

matter and that it is the concern of this Court that each instrumentality of the State should act within its respective constitutionally and statutorily allotted spheres of action so that each instrumentality endeavours constantly to live upto to the expectations of the role designed to it and that these main matters could itself be now finally disposed of by issuing appropriate directions in the light of the suggestion made by the Court and the submissions made by the the parties concerned and that it will be open to the State Police Chief to appraise this Court later by filing an appropriate application in these matters about the decision taken by the State Police Chief as aforestated. It was also made clear by this Court to the learned State Attorney representing the State Police Chief that though the State Police Chief is to take an independent view of the matter, he will be fully at liberty to seek necessary guidance or support from his subordinates or other competent police officials including the members of the present investigation team for getting inputs on various aspects to be evaluated and reviewed by the State Police Chief on the investigation so far conducted.

15. In the light of the aforementioned aspects, more

particularly in the light of the above said submissions made by the petitioners and the submissions made on behalf of the State Police Chief, it is ordered in the interest of justice as follows:

The respondent State Police Chief shall immediately call for the entire CD files in relation to the impugned Crime No. 425/ CR/STATS/2013 from the present investigating team and get the same examined through his appropriate support staff/officials concerned and make a thorough and comprehensive review and evaluation of all the various steps and actions so far taken in the investigation in this case. Based on this review and evaluation, the State Police Chief will decide independently in exercise of his discretion as to whether the investigation so far conducted requires necessary remedial action or even as to whether more fine tuned approach is required in the conduct of the investigation and to effectuate fair and proper conduct of the further investigation or to instil confidence in the fairness of the investigation amongst all stake holders including the community at large and as to whether the further investigation should be entrusted to another team of competent officials, who may be

nominated by the State Police Chief and who have impeccable credentials so as to make all endeavours to maximise the confidence of all concerned about the fairness of the State Police authorities. As earlier observed, while complying with these directions, the State Police Chief will act and decide independently in view of the sensationalism and political controversy generated to this case without seeking any consultation or guidance from the superiors at the political level of governance. However, it is made clear that the State Police Chief will be fully at liberty to depend on any support staff or subordinate Police officials or such other competent Police officials or even the members of the present investigating team to get necessary inputs and materials so to effectuate the conduct of the thorough review and evaluation of the investigation so far done. This Court is not proposing to burden the State Police Chief with any explicit time limit for taking the decision in this regard. This Court has the confidence that the State Police Chief will take an independent decision in the matter, which would inspire confidence of all stake holders and the citizenry at large. Therefore, the

decision to be taken shall be fully within the exclusive province and domain of the State Police Chief. Needless to say, keeping in view the requirement of the investigation itself, the State Police Chief will endeavour to take decision in the matter as directed above, without much delay and within a time frame as deemed fit and proper by him in the facts and circumstances of this case. The learned State Attorney is requested to forward a certified copy of this judgment to the State Police Chief and the other official State respondents concerned. After the decision is taken by the State Police Chief as directed above, it is open to the learned State Attorney to make an appropriate application in these matters to convey to this Court the decision so taken by the State Police Chief.

With these observations and directions, the Writ Petitions (Civil) stand finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

C.R.

