

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **28.02.2017**

PRONOUNCED ON : **14.03.2017**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Writ Petition Nos.**4381** of **2005** and **10216** of **2004**

W.P.No.4381 of 2005

V.Radhika Selvi

.. Petitioner

- Vs -

1. The State of Tamil Nadu,
rep by Secretary to Government,
Home Department,
Fort St.George,
Chennai – 600 009.
2. The Director General of Police,
Kamarajar Salai, Chennai – 600 005.
3. The Commissioner of Police,
Egmore, Chennai – 600 008.
4. The Inspector of Police,
Central Crime Branch, (Team IV),
Office of the Commissioner of Police,
Chennai – 600 008.

5. K.Zameer

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to hand over the investigation to Central Bureau of Investigation to register the case and investigate the case in respect of the alleged fake encounter on 26.09.2003 at about 04.30 a.m. relating to Cr.No.868 of 2003 on the file of the 4th respondent.

For Petitioner : Mr.S.Ashok Kumar,
SC for Mr.R.Ramanlal

For Respondent 1 : Mr.K.Venkataramani, AAG
Asst. by Mr.A.N.Thambidurai,
Spl.G.P.

For Respondents2-4 : Mr.R.Rajarathinam,
Public Prosecutor

For Respondent 5 : Mr.S.Swaminathan
for M/s.Span Associates

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W.P.No.10216 of 2004

Balamurali

.. Petitioner

- Vs -

1. The State of Tamil Nadu,
rep by Secretary to Government,
Home Department,
Fort St.George,
Chennai – 600 009.
2. The Director General of Police,
Chennai – 600 008.
3. The Commissioner of Police,
Chennai – 600 008.

4. The Inspector of Police,
Central Crime Branch, (Team IV),
Office of the Commissioner of Police,
Chennai – 600 008.

5. S.S.Krishna Murthy

6. K.Zameer

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to the FIR in Cr.No.868 of 2003 dated 25.09.2003 on the file of the 4th respondent and to quash the same and direct the respondents 1 to 3 to entrust the investigation relating to the killing of late Venkatesa Pannaiyar on 26.09.2003 in an alleged encounter to the CBI or any other independent agency.

For Petitioner : Mr.V.Selvaraj

For Respondent 1 : Mr.K.Venkataramani, AAG
Asst. by A.N.Thambidurai, Spl.G.P.

For Respondents2-4 : Mr.R.Rajarathinam,
Public Prosecutor

For Respondent 5 : Mr.S.Rajendra Kumar
for M/s.Nortan & Grant

For Respondent 6 : Mr.S.Swaminathan
for M/s.Span Associates

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COMMON ORDER**S.Nagamuthu, J.**

One Mr.N.Venkatesa Pannaiyar was killed in a police encounter on 26.09.2003 around 04.30 a.m. at Flat No.6, Mahalakshmi Apartments in Tank Bund Road, Nungambakkam, Chennai. In the same incident, one Mr.Arulmani, a Sub Inspector of Police, was also injured. On the statement of Mr.Arulmani, the then Sub Inspector of Police, a case was registered in Crime No.1693 of 2003 under Sections 332, 353, 324, 307 of I.P.C. and Section 25(1-B)(a) of the Arms Act, 1959 r/w Section 3 of Arms Act. Mr.Venkatesa Pannaiyar and two other persons who were with him by name Johnson and Kattan Ganeshan were arrayed as accused in the said case.

2. When the investigation of the said case was under progress, the Government of Tamil Nadu issued G.O.Ms.No.1271 Public (Law and Order-F) dated 20.10.2003, appointing a Commission of Inquiry with Hon'ble Mr.Justice A.Raman, a retired Judge of this Court. The terms of reference are as follows:

"(1) To inquire into and report the facts and circumstances leading to opening

of fire by the police on 26th September 2003 inside Flat No.6, Mahalakshmi Apartments. No.13, Tank Bund Road, Nungambakkam, Chennai – 600 034 resulting in the death of Thiru Venkatesan Pannaiar.

(ii) To inquire into and report whether the police firing was warranted and justified.

(iii) To inquire into and report whether there was any lapse on the part of the police in handling the situation and in opening fire.”

The Commission duly started holding inquiry.

3. When things stood thus, these two writ petitions came to be filed making certain allegations against the police and questioning the legality of the investigation done and praying for transfer of the investigation to CBI to probe into the police encounter, in which, Mr.Venkatesa Pannaiyar was killed.

4. The petitioner in W.P.No.4381 of 2005 is the wife of Mr.Venkatesa Pannaiyar. According to her, in nutshell, the allegation made by the police that the deceased Venkatesa Pannaiyar was a gangster is absolutely false. She has stated that her husband was a very respectable person involved in various social activities. She has further alleged that the incident in which her husband was killed was not a real encounter but a planned murder. One Mr.S.S.Krishnamoorthy, Deputy Commissioner of Police, Central Crime Branch, Chennai headed the police team which shot her husband, who was unarmed and murdered him on the spot, it is contended. She has further submitted that the investigation in the hands of Inspector of Police, Nungambakkam Police Station would not bring out the truth because the Investigating Officer is subordinate to the Deputy Commissioner of Police, whereas, the head of the police team Mr.S.S.Krishnamoorthy, the Deputy Commissioner of Police who killed her husband was an Officer subordinate to the Commissioner of Police, Chennai. She has further alleged that the Commission of Inquiry constituted for the purpose of inquiry into the circumstances leading to the death of her husband was only an eyewash and it would not serve any purpose. With

these grievances, the petitioner Mrs.Radhika Selvi has come up with W.P.No.4381 of 2005 for transferring the investigation of the case relating to the alleged fake encounter and also to quash the case in Crime No.868 of 2003 on the file of the Inspector of Police, Central Crime Branch, Chennai.

5. Crime No.868 of 2003 came to be registered in the following circumstances: Originally, on the report of one Mohamed Zameer, a case in Crime No.1574 of 2003 under Sections 147, 148, 341, 432, 452, 380 and 506(i) r/w 34 I.P.C. was registered on 22.09.2003 against one Pepsi Murali, Venkatesa Pannaiyar and others. Later on, the said case was transferred to the Central Crime Branch, Chennai City by the Joint Commissioner of Police, Central Zone, Greater Chennai. On such transfer, the said case was re-registered in Crime No.868 of 2003. It is alleged that the first accused Mr.Pepsi Murali was arrested at 02.30 a.m. on 26.09.2003. It is further alleged by the police that on such arrest, he disclosed that Mr.Venkatesa Pannaiyar was with one Mr.Johnson and Mr.Ganesan @ Kattan Ganesan at Flat No.6, Mahalakshmi Apartments in Tank Bund Road, Nungambakkam, Chennai. In

his confession, according to the police, he further disclosed that Mr.Venkatesa Pannaiyar was armed with a firearm and that he was planning to abscond to scuttle the ongoing investigation by the police.

6. It is the further case of the police that the police team led by Mr.S.S.Krishnamoorthy, the then Deputy Commissioner of Police, went to Flat No.6, Mahalakshmi Apartments in Tank Bund Road at 04.30 a.m. to apprehend Mr.Venkatesa Pannaiyar in connection with the above case.

7. It is the case of the petitioners that at that time when the police team knocked at the door of the house, the inmates opened the door and suddenly the Deputy Commissioner of Police Mr.S.S.Krishnamoorthy fired from his pistol at the deceased and the deceased fell to the bullets. Thus, according to the petitioners, the deceased was killed by Mr.S.S.Krishnamoorthy in a fake encounter. The petitioner has further alleged that her husband Mr.Venkatesha Pannaiyar was not armed with any weapon and he did not open fire.

8. But in the counter filed by the Inspector of Police, Central Crime Branch, Egmore, Chennai and the Commissioner of Police Mr.A.K.Tripathy, it is stated that at 04.30 a.m. the police team headed by Mr.S.S.Krishnamoorthy. On reaching the flat, called the inmates to open the door. At that time, Mr.Kattan Ganesan and Mr.Johnson were with Mr.Venkatesa Pannaiyar in that flat. Despite the call by the police to surrender, none of them surrendered. But, according to the Commissioner of Police, Mr.Venkatesa Pannaiyar suddenly opened fire at the police. Therefore, in exercise of right of private defence, the police had to return fire, which resulted in his death. It is also stated that in the crossfire one Mr.Arulmani, a Sub Inspector of Police, who was in the police team, was injured. Thus, according to the police, the firing by the police was necessitated because Mr.Venkatesa Pannaiyar opened fire from his gun at first against the police.

9. It is further alleged by the police that on the report of Mr.Arulmani, the case in Crime No.1693 of 2003 was registered and then a report was submitted to the Revenue Divisional Officer / Executive Magistrate to hold inquiry under Section 176 Cr.P.C. He held inquiry, which according to the police, revealed

the truth that the deceased Venkatesa Pannaiyar opened fire and therefore in self defence Mr.S.S.Krishnamoorthy opened fire that killed Mr.Venkatesa Pannaiyar.

10. It is also stated in the additional counter that Hon'ble Mr.Justice A.Raman held inquiry in terms of the reference made to him as per the provisions of the Commissions of Inquiry Act and submitted a report to the Government. Since a writ petition was filed in W.P.No.25365 of 2004 and in W.P.M.P.No.30837 of 2004 in W.P.No.25365 of 2004 stay was granted by this Court, the report could not be made public. The said stay was vacated by this Court on 13.02.2017 only. According to the additional counter dated 27.02.2017, filed by the Additional Commissioner of Police, Central Crime Branch, Chennai the report of the Commission would be laid in the State Legislative Assembly and the same would be made public in due time. It is also stated that based on the report of the Commission, necessary action would be initiated.

11. The writ petition in W.P.No.10216 of 2004 has been filed by Mr.Balamurali, who has been referred as Pepsi Murali, as

an accused in Crime No.868 of 2003. He has also made similar allegations like the allegations made by Mrs.Radhika Selvi in W.P.No.4381 of 2005. On similar grounds he has asked for transfer of the investigation of the case relating to the killing of Mr.Venkatesa Pannaiyar to CBI and he has also prayed for quashing of the case in Crime No.868 of 2003.

12. We have heard the learned counsel on either side and perused the records carefully.

13. In these two writ petitions, a specific prayer has been made for quashing the FIR in Crime No.868 of 2003 dated 25.09.2003, which was registered against the petitioner in W.P.No.10216 of 2004 Mr.Balamurali, late Venkatesa Pannaiyar and others. It is brought to our notice that on completing the investigation of the said case in Crime No.868 of 2003, a final report has been filed before the learned jurisdictional Magistrate, upon which, the learned Magistrate has taken cognizance. We are also informed that the trial of the said case is in progress. Since the investigation has been completed, since the jurisdictional Court has found that there are prima facie

materials to take cognizance and also to frame charges, in our considered view, at this length of time and at this stage, the question of quashing the F.I.R. is not feasible.

14. Though it is contended by the learned counsel for the writ petitioners that the case in Crime No.868 of 2003 is a false case and the records have been cooked up by the police to suit their convenience, we cannot go into these disputed facts. It is for the petitioner, Mr.Balamurali to workout his remedies against the police report or the order taking cognizance or face the trial to establish his innocence. Therefore, we are not inclined to interfere with the case in Crime No.868 of 2003.

15. The main relief sought for in these writ petitions, as we have already pointed out, is for transfer of the investigation of the case in Crime No.1693 of 2003 on the file of the F-3 Nungambakkam Police Station which relates to the incident in which Mr.Venkatesa Pannaiyar was killed.

16. In respect of this case, in the counter as well as in the additional counter filed by the police, it is stated that the

investigation was done by the Inspector of Police, Nungambakkam Police Station and in culmination of the said investigation, he filed a police report before the learned jurisdictional Magistrate, upon which, cognizance was taken by the learned jurisdictional Magistrate for offences under Section 332, 353, 324, 307 IPC and Section 25(1-B)(a) of the Arms Act 1959 r/w Section 3 of Arms Act against Pepsi Murali and another. On Committal, the said case is on trial before the learned II Additional Sessions Judge, Chennai in S.C.No.325/2011 and it stood posted for trial on 07.03.2017.

17. The learned counsel for the petitioners has focussed the following grounds for transfer of the investigation to the CBI:

(i) When it is specifically alleged by the wife of the deceased Venkatesa Pannaiyar and others that Mr.Venkatesa Pannaiyar was killed by the police in a fake encounter and it was a planned brutal murder by the police, there should have been a through and impartial investigation as required in law.

(ii) A separate counter case should have been registered in respect of the murder of Venkatesa Pannaiyar under Section 302 IPC and other offenses against the police and the same should have been investigated simultaneously while investigating the case in Crime No.1693 of 2003.

(iii) The investigation of both the cases should have been entrusted to an independent and impartial investigating agency and the same should not have been entrusted to a subordinate police officer of the same department. In this case, though the police team, which involved in the alleged encounter, was headed by the then Deputy Commissioner of Police, a senior officer in the Cadre of Indian Police Service, the investigation of the case was done by an Inspector of Police, who was subordinate to him. Thus, investigation

done by the Inspector of Police which culminated in the final report against the accused would not satisfy the requirements of law as the same was not fair investigation by an impartial agency.

(iv) The appointment of Commission under the provisions of the Commissions of Inquiry Act, in the instant case was made as an eyewash and the mere appointment of the said Commission would not in any manner hamper the necessity for a through and impartial investigation by an independent police agency.

(v) A number of witnesses have spoken before the inquiry Commission and there are also very many circumstances to show that the deceased Venkatesa Pannaiyar was not armed with any gun and the story that he opened fire and therefore Mr.S.S.Krishnamoorthy had to exercise his right of self defence is an absolute

falsehood. The gun which was allegedly used by the deceased was found by the Ballistic expert not in working condition which, according to the petitioners, would go to show that it was not at all used by the deceased.

18. The learned Public Prosecutor, while taking us through the counters and the additional counters filed in these cases and the other records, would submit that in respect of the encounter in which the deceased was killed, promptly a case was registered in Crime No.1693 of 2003 on the file of the Nungambakkam Police Station, the same was thoroughly investigated and it was found that when the police wanted the deceased to surrender, the deceased suddenly opened fire from his gun and only in exercise of right of private defence Mr.S.S.Krishanmoorthy, the then Deputy Commissioner of Police, who was heading the police team, had to open fire.

19. The learned Public Prosecutor would further submit that the Inspector of Police had done a through investigation satisfying all the legal requirements. He would further submit

that since the police report laid by the Inspector of Police was to the satisfaction of the learned Magistrate, he took cognizance of the offences and then committed the case to the Court of Sessions and the Court of Sessions also has framed charges against the accused on finding that there were sufficient grounds to proceed further against the accused. He would submit that had it been true that it was a fake encounter and there is no truth in the version of the police, the learned Judicial Magistrate would not have taken cognizance of the offence and he would have ordered for further investigation of the case.

20. He would further submit that the inquiry Commission was appointed by the Government only with a good intention of finding out the truth relating to the circumstances which led to the occurrence. He would further submit that the report of the Commission would be laid on the table of the State Legislative Assembly as required under the Act and based on the said report, further action, if need be, would be taken.

21. We have considered the above submissions carefully. As we have already narrated, the dispute is in respect of the

manner in which the deceased Venkatesa Pannaiyar was killed. The version of the police is that he was killed in police encounter in exercise of right of private defence because the deceased Venkatesa Pannaiyar opened fire with his gun. But the case of the petitioners is that the deceased Venkatesa Pannaiyar was unarmed and he never made any attempt on the lives of the police team. It is their further case that the police came there with a conspiracy hatched already to kill the deceased Venkatesa Pannaiyar and accordingly Mr.S.S.Krishnamoorthy murdered the deceased by shooting him down. Thus, there are two versions about the occurrence.

22. In respect of the said occurrence, the Inspector of Police, Nungambakkam Police Station recorded the statement from Mr.Arulmani the Sub Inspector of Police who sustained injuries in the occurrence, registered a case in Crime No.1693 of 2003 against Mr.Venkatesa Pannaiyar, Mr.Johnson and Mr.Ganesan. Whether yet another case should have been registered in respect of the same occurrence ? In this regard, the learned Public Prosecutor would refer to a judgment of a Division Bench of this Court in ***P.Pugalenthirai Vs. State of***

Tamil Nadu reported in **CDJ 2016 MHC 904**, wherein, this Court, after having elaborately referring to various provisions in Chapter XII of Cr.P.C. has held that there is no scope to register yet another case in respect of the same occurrence except a counter case. In paragraph 26 of the judgment this Court has held as follows:

“26. It is on record that after the occurrence was over, the deceased as well as the two injured police officers were rushed to the Government hospital where the Doctor, after examining the deceased, declared him dead. He found injuries on the two police officers and therefore he admitted them as inpatients. Based on the report of the Inspector of Police concerned, a case has been registered in Crime No.1523 of 2010 under various penal provisions. It is well settled by a catena of judgments of the Hon'ble Supreme Court that FIR is not an encyclopedia which must disclose all facts and details relating to the

offence reported. It is also not necessary for the Station House Officer to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information (vide judgment of the Hon'ble Supreme Court in C.B.I. Vs. Tapan Kumar Singh reported in (2003) 6 SCC 175). Thus, during the course of investigation, it may turnout that the story as narrated in the information is either false or misleading and the true version is either different or slightly different. On conclusion of the investigation, while filing the final report, the investigating officer would state the true facts of the case which may even be different from the facts stated in the FIR. Any statement which comes into being from any witness subsequent to the registration of the case, would still be a statement only

under Section 161 of Cr.P.C. and yet another case cannot be registered under Section 154 of the Cr.P.C. on the said statement. The information setting the law in motion under Section 154 of the Cr.P.C. cannot be equated to a complaint as defined under Section 2(d) of the Cr.P.C. Therefore, in respect of an occurrence, if on the basis of the earliest information, a case has been registered under Section 154 Cr.P.C., in our considered view, as per the settled law, there is no scope to register yet another case in respect of the same occurrence except a counter case.”

23. In the instant case, in our considered view, though there was no bar to register a counter case on the complaint made alleging that Mr.Venkatesa Pannaiyar was murdered, the mere failure to register such a counter case by the police would not deter the investigation in respect of the said allegations, during investigation in Crime No.1693 of 2003.

24. Now, turning to the legality of the investigation of the case in Crime No.1693 of 2003, admittedly it was done by an officer in the rank of Inspector of Police and he was after all a subordinate to the Commissioner of Police, Chennai city. Mr.S.S.Krishnamoorthy, who headed the police team which killed the deceased Venkatesa Pannaiyar was a Deputy Commissioner of Police and he was also a subordinate to the Commissioner of Police, Chennai city. Thus, Mr.S.S.Krishnamoorthy the Deputy Commissioner of Police was a superior officer to the Inspector of Police who investigated the said case.

25. The Hon'ble Supreme Court in an identical situation, in ***R.S.Sodhi Vs. State of U.P.*** reported in ***AIR 1994 SC 38*** has held that since the accusations were directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned, including the relatives of the deceased, may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credible. The Hon'ble Supreme Court further

went on to say that faithfully the local police may carry out the investigation but, the same will lack credibility since the allegations are against them. In that case also, the victims were killed by the local police in a police encounter. The victims were described as Punjab militants. The investigation was done by the local police. In the light of these facts, the Hon'ble Supreme Court transferred the investigation to the CBI. In paragraph 2 of the judgment, the Hon'ble Supreme Court has held as follows:

"2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We

have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and. that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the

Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order."

26. In the instant case, it is not explained to the Court as to why it was not thought of that the investigation should have been entrusted to at least an officer above the rank of Deputy Commissioner of Police not under the control of the Commissioner of Police, Chennai City. It is also not explained to the Court as to why the officer who is far below in the hierarchy to Mr.S.S.Krishnamoorthy, Deputy Commissioner of Police was allowed to investigate the case.

27. At this juncture, we may also refer to a recent judgment of the Hon'ble Supreme Court in ***People's Union for Civil Liberties Vs. State of Maharashtra*** reported in ***CDJ 2014 SC 831***, wherein, the Hon'ble Supreme Court has issued a number of guidelines in respect of investigation into police encounters. Guideline number 3 reads thus:

"3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek."

In this judgment, the Hon'ble Supreme Court has only reiterated the view taken earlier consistently in several judgments including ***R.S.Sodhi case*** referred to above.

28. In the light of these judgments, it is crystal clear that in the instant case, the investigation should have been entrusted

to any other agency like CBI or at least to CB CID of Tamil Nadu police so as to unearth the truth and instill confidence in the system in the minds of the people. Unfortunately, it was not done by the Government on its own.

29. It was only at that juncture, W.P.No.10216 of 2004 was filed on 31.03.2004 and W.P.No.4381 of 2005 was filed on 08.02.2005 seeking transfer of the investigation to the CBI. These two writ petitions have been pending on the file of this Court for about 13 years. Though counters were filed by the respondents on time, these writ petitions could not be disposed of expeditiously though the resolution of the dispute in these writ petitions should have been considered as very urgent. But unfortunately, these writ petitions remained pending and finally by an order dated 30.09.2015, the Hon'ble Chief Justice ordered to post these two writ petitions before the Criminal Bench. Thus, these matters came up for hearing before this Bench in the month of January, 2017. Considering the urgency, we have given priority and have heard these cases.

30. As we have already pointed out, in the instant case, we find every justification in the request of the petitioners for

transferring the case to CBI or to some other Agency, since the investigation of the case was done by an Inspector of Police who was subordinate to the Deputy Commissioner of Police who shot Mr.Venkatesa Pannaiyar dead, now, the question is, at this length of time, whether it would sub serve the cause of justice in transferring the case to CBI. We are pained to say that it would not.

31. The Hon'ble Supreme Court in ***Maneka Gandhi Vs. Union of India*** reported in **(1978) 2 SCR 621** has held that several fundamental rights guaranteed in Part III of the Constitution of India require to be read as components of one integral whole and not as separate channels. The reasonableness of law and procedure, to withstand the test of Articles 21, 19 and 14 must be right, just and fair and not arbitrary, fanciful or oppressive, meaning thereby that speedy trial must be reasonably expeditious trial as an integral and essential part of the fundamental right of life and liberty under Article 21 of the Constitution of India.

32. Subsequently, the Hon'ble Supreme Court in ***A.R.Anthulay Vs. R.S.Nayak*** reported in **1992 CriLJ 2717**

has formulated certain propositions, meant to serve as guidelines. They are:

"(i) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;

(ii) Right to speedy trial following from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial;

(iii) Who is responsible for the delay and what factors have contributed towards delay relevant factors.

(iv) Each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage."

(emphasis added)

33. Keeping in mind the above guidelines of the Hon'ble Supreme Court, if we look into the facts of the present case, as we have already concluded, though this case should have been investigated either by the CBI or by some other independent

impartial agency, at this length of time i.e. after 14 years of the occurrence, if any such investigation is ordered, in our considered view, it would not serve any purpose as many of the witnesses would have either died or would have forgotten the facts. Further, for any reason, in pursuance of such investigation, if anybody is put under trial, it would certainly cause serious prejudice to the accused in his defence. Undoubtedly, any order transferring the investigation afresh by CBI at this length of time, as requested by the writ petitioners would surely be in violation of the right to have speedy investigation which is guaranteed in Article 21 of the Constitution of India. Therefore, we find it difficult to transfer the case, at this length of time to the CBI for investigation.

34. The learned Public Prosecutor and learned Additional Advocate General would submit that since chargesheet has already been laid in the case against two persons and since investigation revealed that there is no truth in the allegations made against the police officials, now the investigation cannot be transferred to the CBI at this stage. We are not at all persuaded by this argument. Simply because chargesheet has

been laid without there being any meaningful investigation, this Court, which is obligated to safeguard the Fundamental Rights of the citizens of this country, in particular the life and personal liberty guaranteed under Article 21 of the Constitution of India, cannot shut its eyes. The mere fact that chargesheet has been laid by the police, which is an outcome of an investigation done by a subordinate police officer though there are allegations against superior police officer will not deter this Court from ordering investigation by CBI. Therefore, this argument of the learned Public Prosecutor and Learned Additional Advocate General deserves to be rejected.

35. Now turning to the Enquiry Commission appointed by the Government under the Commissions of Inquiry Act, though it is alleged by the petitioners that it is an eyewash and it would not serve any purpose, since it was examined by this Court in a separate writ petition and since we are informed that the stay granted by this Court was later on vacated thereby paving way for the Government to lay the report of the Commission on the Table of the Legislative Assembly, we do not want to express any opinion regarding the same. We only record the statement

of the Commissioner of Police, Chennai that based on the recommendations of the Commission, necessary action, if need be, would be taken. If any action, as warranted in law, is not taken on the report of the Commission, any one who is aggrieved will be at liberty to workout his / her remedies in the manner known to law.

36. At this juncture, let us examine as to what is the other relief that could be given to the petitioners in these writ petitions. In ***Nirmal Singh Kahlon Vs. State of Punjab*** reported in ***AIR 2009 SC 984*** the Hon'ble Supreme Court has held that the concept of fair investigation and fair trial are concomitant to preservation of fundamental right of accused under Article 21 of the Constitution of India.

37. In ***Sidhartha Vashisth @ Manu Sharma Vs. State (NCT of Delhi)*** reported in ***2010 6 SCC 1***, the Hon'ble Supreme Court has held as follows:

*"The investigation should be judicious,
fair, transparent and expeditious to ensure
compliance to the basic rule of law. These*

are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.”

38. As held by the Hon'ble Supreme Court in the above judgments, it is not only the responsibility of the investigating agency but also of the Courts to ensure that investigation is fair and does not in any manner hamper the freedom of an individual except in accordance with law. Equally enforceable canon of criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of bias mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position.

39. In ***K.Chandrasekar Vs. State of Kerala*** reported in **1998 5 SCC 223**, ***Ramachandra Vs. R.Udhayakumar*** reported in **2008 5 SCC 415**, ***Mithabhai Pashabhai Patel Vs.***

State of Gujarat reported in **2009 6 SCC 332** and ***Kishan Lal Vs. Dharmendra Bafna*** reported in **2009 7 SCC 685**, the Hon'ble Supreme Court has emphasised that where the Court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the Court may direct further investigation under Section 173(8) Cr.P.C. and even transferring the investigation to an independent agency rather than directing a reinvestigation. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.

40. In ***Kashmiri Devi Vs. Delhi Administration*** reported in **AIR 1998 SC 1323** the Hon'ble Supreme Court has held, where investigation has not been conducted in a proper and objective manner, it may be necessary for the Court to order for fresh investigation so that real truth may be revealed.

41. Thus, as has been held consistently by the Hon'ble Supreme Court, speedy and fair investigation and fair trial are part of the Fundamental Rights guaranteed under Article 21 of the Constitution of India. In this case, in our considered view, if

investigation is transferred to CBI at this length of time and investigation is commenced afresh, it would offend fair and speedy investigation guaranteed under Article 21 of the Constitution of India. For these reasons, we are unable to transfer the case to the CBI for investigation as prayed for by the petitioners.

42. These writ petitions ought to have been given preference and disposed of within a reasonable time as soon as they were entertained. Of course, the heavy pendency of cases which amounts to more than 4 lakhs may be the reason for such delay. But, the urgency and importance of the issues and the serious violation of the Fundamental Rights alleged in these writ petitions, missed the attention of this Court for thirteen long years. Since this Court had omitted inadvertently to give preference to these writ petitions and to dispose of the same on time so as to ensure fair, proper, impartial and speedy investigation, there has occurred failure of justice to the petitioners. For this, who is to be blamed ? Mahatma Gandhi said *"It is the best thing to blame ourselves when people cannot get on well with us."* Yes, we accept the blame. At this length

of time, we could only express our regret. However, we assure the people of this Country that this would not repeat. Having said so, we cannot omit to grant the minimum possible relief to the petitioners. Having spent their valuable time and money, the petitioners cannot go without even getting the cost from the State. In our considered view, therefore, directing the first respondent to pay Rs.25,000/- to each writ petitioner towards cost would meet the ends of justice.

43. In the result, the writ petitions are dismissed. However, the first respondent shall pay cost of Rs.25,000/- (Rupees twenty five thousand only) to each writ petitioner within six months from the date of receipt of a copy of this order.

(S.N.J.) (A.S.M.J.)
14.03.2017

Index : Yes.
kk

S.NAGAMUTHU,J.

&

ANITA SUMANTH,J.

kk

To

1. The Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St.George, Chennai – 600 009.
2. The Director General of Police,
Kamarajar Salai, Chennai – 600 005.
3. The Commissioner of Police,
Egmore, Chennai – 600 008.
4. The Inspector of Police,
Central Crime Branch, (Team IV),
Office of the Commissioner of Police,
Chennai – 600 008.

PRE DELIVERY ORDER
in W.P.Nos.4381 of 2005
and 10216 of 2004

RESERVED ON : **28.02.2017**

PRONOUNCED ON : **14.03.2017**