

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CRR No. 3854 of 2016
Date of Decision: 20.12.2017**

Arjan Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

2. CRR No.3939 of 2016(O&M)

Tarsem Lal and another ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

3. CRR No. 4080 of 2016

Gurbachan Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

4. CRR No.4090 of 2016(O&M)

Atma Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

5. CRR No.4136 of 2016(O&M)

S.S. Sidhu and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

6. CRR No. 4160 of 2016

Gurmeet Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

7. CRR No.4214 of 2016(O&M)

Gursharan Singh Bedi and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

8. CRR No.4221 of 2016(O&M)

Amarjit Singh ...Petitioner

VERSUS

Central Bureau of Investigation and others ...Respondents

9. CRR No.4230 of 2016(O&M)

Dharam Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

10. CRR No.4235 of 2016(O&M)

Amrik Singh ...Petitioner

VERSUS

Central Bureau of Investigation and others ...Respondents

11. CRR No. 4254 of 2016

Balkar Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

12. CRR No.4256 of 2016(O&M)

Raghubir Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

13. CRR No.4268 of 2016(O&M)

Norang Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

14. CRR No.4295 of 2016(O&M)

Narinder Singh Malli and another ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

15. CRR No.4300 of 2016(O&M)

Major Singh ...Petitioner

VERSUS

Central Bureau of Investigation and others ...Respondents

16. CRR No.4308 of 2016(O&M)

Jagdeep Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

17. CRR No.4315 of 2016(O&M)

Dharam Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

18. CRR No.4434 of 2016(O&M)

Harjinder Pal Singh and others ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

19. CRR No.4574 of 2016(O&M)

Shamsher Singh and another ...Petitioners

VERSUS

Central Bureau of Investigation and others ...Respondents

20. CRR No.4612 of 2016(O&M)

Surinder Pal Singh

...Petitioner

VERSUS

Central Bureau of Investigation and others

...Respondents

21. CRR No.4727 of 2016(O&M)

Gurnam Singh

...Petitioner

VERSUS

Central Bureau of Investigation and others

...Respondents

22. CRR No.4736 of 2016(O&M)

Bhupinderjit Singh

...Petitioner

VERSUS

Central Bureau of Investigation and others

...Respondents

23. CRR No.4749 of 2016 (O&M)

Pritam Singh and others

...Petitioners

VERSUS

Central Bureau of Investigation and others

...Respondents

24. CRR No.400 of 2017(O&M)

Govinder Singh

...Petitioner

VERSUS

Central Bureau of Investigation and others

...Respondents

25. CRR No.508 of 2017(O&M)

Surinder Pal Singh

...Petitioner

VERSUS

Central Bureau of Investigation and others

...Respondents

26. CRR No.553 of 2017(O&M)

Surinder Pal Singh

...Petitioner

VERSUS

Central Bureau of Investigation and others

...Respondents

27. CRR No.662 of 2017(O&M)

Dharam Singh and another

...Petitioners

VERSUS

Central Bureau of Investigation and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Ahluwalia, Advocate
for petitioners in CRR Nos. 3854, 4160, 4254, 4268, 4727 and
4749 of 2016

Mr. Pankaj Bhardwaj, Advocate,
for petitioners in CRR Nos. 3939, 4080, 4090, 4136, 4214,
4230, 4221, 4235, 4256, 4295, 4300, 4308, 4315, 4434, 4574,
and 4736 of 2016, CRR Nos. 400 and 662 of 2017.

Mr. J.S. Bedi, Senior Advocate with
Mr. Ramandeep Singh, Advocate
for petitioners in CRR No. 4612 of 2016, CRR Nos. 508 and
553 of 2017

Mr. Sumeet Goel, Advocate
Retainer counsel for respondent-CBI.

Mr. Satya Pal Jain, Senior Advocate
Additional Solicitor General for Union of India
with Mr. Dheeraj Jain, Advocate

Ms. Atul Nanda, Advocate General, Punjab with
Ms. Manjari Nehru Kaul, Addl. AG, Punjab.

Mr. R.S. Bains, Advocate
for the complainant.

Mr. APS Deol, Senior Advocate with
Mr. H.S. Deol, Advocate
for the complainant.

SURINDER GUPTA, J.

Above captioned petitions have been filed by petitioners

against orders passed by Special Judge, CBI Punjab, Patiala, dismissing

their application(s) seeking discharge in cases registered by Central Bureau of Investigation (later referred to as 'CBI') relating to death of several persons in encounter, which the prosecuting agency on investigation found to be fake; other cases where some persons were picked up from their houses by Punjab Police, who are missing and some other cases in which accused in custody of police were killed in encounters, which were also found fake.

2. In all the above captioned petitions the point in issue, pressed during arguments, is as to whether trial Court has committed any error by declining applications of petitioners for their discharge for want of sanction as per provisions of Section 6 of the Punjab Disturbed Areas Act, 1983 (as amended in 1989) [for short 'the Act of 1983'] or Section 197 Cr.P.C. As point in issue in all these petitions is same, these have been taken up together for disposal by common order.

3. FIR in above referred petitions were recorded by CBI on the directions of Hon'ble Apex Court and this Court in various petitions filed by relatives of victims, who were allegedly picked up by police and were later on allegedly killed in fake encounters due to torture in custody or are still missing.

BRIEF FACTS:-

4. In **CRR No. 3854 of 2016**, FIR was registered on the statement of Chaman Lal, father of deceased-Gulshan Kumar, which reads as follows:-

“The deceased Gulshan Kumar was my son. He was 22 years old. He was a vegetable seller. On charges of theft, he was picked up by Dilbagh Singh Dy. S.P. of Tarn Taran, who had come with police personnel. Myself, my three sons were

also taken away to Police Station City, Tarn Taran by Dy. S.P. Dilbagh Singh. My daughter was also taken but she was released on the intervention of the locals in the locality itself. At P.S. City, Tarn Taran, all the members of my family were given severe beating. Excepting Gulshan Kumar, all the boys and me were released after 4-6 days. Gulshan Kumar was not released.

At P.S., Gulshan was served tea/meals regularly by me and my son Balwinder Raj. Gulshan was picked up at 10.00 p.m. on 22.06.1993 in presence of locals. Till 21.07.1993, the deceased was seen regularly but on 22.07.1993, he could not be seen in the Police Station. Police did not allow me to take tea on 22.07.1993 for the deceased.

On 23.07.1993 through newspaper, we came to know about killing of deceased in police encounter which took place near Palasaur near to some nallah. Police did not give us his dead body although I visited P.S. for the same. They cremated him as lawaris. His ashes also could not be collected.

Gulshan was innocent and (had) nothing to do with militancy.”

5. On investigation and after recording statements of witnesses, CBI found the version as contained in the FIR as correct. Mohan Lal and Chaman Lal sons of Gopi Nath and Balwinder Raj son of Chaman Lal have stated they were regularly serving tea and meals to Gulshan Kumar at Police Station City Tarn Taran. Swaran Singh has also witnessed the illegal detention of Gulshan Kumar in the lock up of Police Station City Tarn

Taran as he had also remained in that lock up during July, 1993. The story of encounter dated 22.07.1993 was found false and fabricated. The independent witnesses cited by the police denied to have ever visited the scene of encounter or identified the deceased. Dalip Singh son of Laxman Singh, who is alleged to have identified the deceased through their photographs, denied that the deceased was known to him or he had ever identified them. The revolver alleged to have been recovered from the scene of encounter was found as planted by the police and all the documents like seizure memo etc. were found to be fake and fabricated.

6. **CRR No. 3939 of 2016**

CBI registered FIR No. 8(S)/97/SIU-XVI/JMU during investigation conducted by it as per directions of Hon'ble Apex Court in CRWP No. 497 of 1995, on statement of Heera Singh resident of village Thath Garh, Police Station Jhabbal, recorded on 10.06.1996. In his statement the complainant stated that on 02.10.1989, his father Sardar Dharam Singh was killed by the militants while working in fields. His son Sahib Singh left for Delhi to work in Shakti Highway Company as a truck driver because of fear of militants. He was arrested by the police of Police Station Bhilai, Madhya Pradesh and was brought to Mal Mandi Jail, Amritsar by DSP Balbir Singh @ Daddi, ASI Ram Lubhaya, SI Kishan Singh and other members of their police party. On 15.09.1992, complainant came to know through a news item that Sahib Singh had been killed in village Dhardeo in a police encounter on 14.09.1992. When complainant alongwith *sarpanch*, *numberdar* and other respectable of village went to police station to get his dead body, he was told that the same had already been cremated. They went to Sheetla Mandir to collect his mortal remains.

During investigation of CBI, alleged encounter in which Sahib Singh was killed, was found to be fake and challan was presented against petitioners.

7. **CRR No. 4080 of 2016**

FIR was registered on the statement of Pritam Singh, wherein he has alleged that his son Jagdeep Singh @ Makhan Singh, a constable in Punjab Police was dismissed from service and was forcibly taken away by SI Gurbachan Singh, then SHO, Police Station City, Tarn Taran after killing his mother-in-law, namely, Sawinder Kaur, when she did not open the door on asking of police party. On 30.11.1992, report came that Jagdeep Singh @ Makhan had been killed by the police and cremated at cremation ground, Tarn Taran alongwith one more person, namely, Gurnam Singh as unclaimed dead bodies.

8. The investigation in this case revealed that in October, 1992, Jagdeep Singh @ Makhan Singh alongwith his mother-in-law Sawinder Kaur, who worked as *Sewadar* in *Gurudwara* at Tarn Taran, had a scuffle with two police persons, who were indulging in indecent act with girls in *prikarma* of *Gurudwara*. On 18.11.1992, Jagdeep Singh was forcibly picked up in the presence of his wife Amarjit Kaur and other family members, after killing Sawinder Kaur, who had not obeyed the command of accused to open the door and hand over Jagdep Singh to them. Regarding the death of Swinder Kaur, the police after obtaining signatures of Parvesh Kaur on plain paper created a story that she was killed by militants and registered FIR No. 69/92 on 19.11.1992 at Police Station Patti against unknown militants. Jagdeep Singh was wrongfully confined in Police Station City Tarn Taran after abduction and kept in pitiable condition, before he was killed in a fake encounter on 30.11.1992.

9. **CRR No. 4090 of 2016**

FIR was registered in pursuance of order dated 15.11.1995 of Hon'ble Apex Court passed in CRWP No. 497 of 1995, on the statement of Rita Kumari, relating to abduction of Rakesh Kumar son of Vishwa Mitter on 21.12.1992, from Bus Stand Pathankot, District Gurdaspur, Punjab. It was alleged that Rakesh Kumar was detained at Interrogation Centre at B.R. Model School, Amritsar and on 28.12.1992, she came to know through newspaper that her husband had been killed in police encounter. His body was cremated at cremation ground of Durgiana Mandir, Amritsar as unclaimed dead body.

10. In **CRR No. 4136 of 2016**, FIR was registered pursuant to order of Hon'ble Apex Court dated 15.11.1995 passed in CRWP No. 497 of 1995, on the complaint of Buta Singh son of Udham Singh, which reads as follows:-

“Deceased-Baldev Singh @ Deba was my only son. He was a soldier in the Army and was posted at Srinagar. He was 5 ½ years old in the Indian Army. He was 24 years old when he was killed by police in some encounter. He was not a militant. He was on leave to the village for a period of 2 months. His leave was to expire on 13.09.1992 but on 06.09.1992, when he was contemplating to go back to office, he was picked up by Chhearta P/S headed by SHO Mohinder Singh from the residence during night of 05.09.1992. He was sleeping on the house top alongwith his wife. Efforts were made to secure his release by my son-in-law Jaswant Singh but in vain. On 13.09.1992, I came to know from newspaper and villagers that

my son had been killed by the police in an encounter at Jagdev Kalan. His dead body was not handed over nor intimation of killing given to the family. Nobody went to attend his cremation as there was no information with us. His ashes also could not be collected.”

11. During inquiry, CBI found version of complainant as correct and that of the police regarding death of Baldev Singh @ Deba in an encounter as false and concocted.

12. **CRR No. 4160 of 2016**

FIR was registered on the complaint of Devinder Singh son of Amrik Singh, dated 06.03.1997, alleging therein that on 25.11.2012, a police party headed by DSP Gurmeet Singh had abducted Amrik Singh from Hotel Amaltash (Ludhiana) and he was detained in CIA Staff Tarn Taran and thereafter his whereabouts were not known.

13. During investigation, it was found that Amrik Singh son of Santokh Singh was a transporter. Marriage of daughter of brother-in-law of Amrik Singh, was solemnized at Hotel Amaltash, Ludhiana on 25.11.1992. It was attended by Amrik Singh, who was picked up at about 02.00 p.m., from Hotel (i.e. venue of marriage) by Gurmeet Singh, the then Deputy Superintendent of Police CIA Staff Tarn Taran alongwith his police party. The police had caught Amrik Singh from his arms and dragged him downstairs. He was put in a police vehicle already waiting in the compound and taken away from the spot. Family members and other present in the marriage function have given eye-witness account of the said incident and independent witnesses also corroborated their statements including the photographer, who was taking photographs of the marriage function. From

the video being prepared at the time of marriage, photographs of petitioner Surinder Singh and Parminderjit Singh could be extracted, which disclose their presence in the marriage function. The family members made all efforts to get Amrik Singh released and made representations to higher police officers including Chief Minister, Punjab and other ministers but could not succeed in getting Amrik Singh released. In the affidavit of Daya Singh, retired Deputy Superintendent of Police (since deceased), it has come on record that Ajit Singh Sandhu, the then Senior Superintendent of Police, Tarn Taran demanded ₹10 lacs for the release of Amrik Singh, who was later eliminated. In a cover up action, police obtained signatures of Ajit Singh, brother of Amrik Singh and fabricated his false confessional statement to show that Amrik Singh died somewhere and his *bhog* ceremony has been performed by family members. The family members were surprised to see publication of *bhog* ceremony of Amrik Singh in the newspapers as they neither saw the dead body nor were aware of his death. The investigation further revealed that Suba Singh manipulated entries of log book of his vehicle no. PB-02-B-2992 to show his presence in Tarn Taran despite ample evidence that he was in Ludhiana on 25.11.1992.

14. **CRR No. 4214 of 2016**

This Court vide order dated 16.12.1996 passed in CRWP No. 415 of 1994 and CRM-M-465 of 1995 entrusted the investigation of the case relating to alleged murder of Gurpartap Singh aged 17 ½ years while in custody of Punjab Police to Central Bureau of Investigation. It was observed by this Court that Gurpartap Singh was in police custody, when he was alleged to have escaped and later killed in police encounter. On investigation, CBI discarded the police version that Gurpartap Singh had

escaped from police custody. It was found that he was in custody of police party comprising of 17 armed persons and his handcuffs had been tied with strong leather belt of a police official. The entire version of police in this regard was found to be concocted. It was found that Gurpartap Singh was actually killed on 22.11.1993 and in order to keep his identity concealed, his dead body was shown as unidentified despite the fact that his identity was well known to Inspector Sant Kumar, who headed a police party at the time of alleged encounter. It was also found that Gurpartap Singh had been kept in illegal police custody by CIA Staff, Tarn Taran w.e.f. 02.10.1993 to 23.10.1993 and from 30.10.1993 he was kept in illegal custody of CIA Staff Barnala. **The police had also prepared a false record to show that his police remand was allowed by the Court, whereas no such remand had been granted.** After finding the police version regarding escape of Gurpartap Singh from police custody and his death in an encounter false, CBI presented the challan against petitioners.

15. **CRR No. 4221 of 2016**

FIR was registered pursuant to order of Hon'ble Apex Court dated 15.11.1995 passed in CRWP No. 497 of 1995, on the statement of Rajwant Kaur wife of Balwinder Singh, wherein she alleged that she alongwith her mother-in-law were taken away from her house on 04.10.1992 by police party led by DSP Ashok Kumar Sharma alongwith SHO Amarjit Singh. On the same day at about 06.00 p.m., police brought them to village Jhabbal Kalan and arrested husband of complainant from house of Aarsal Singh @ Shalla and brought all the three to Police Station Jhabbal. Mother-in-law of complainant was released on 4th day while complainant was released on 7th day by SHO Amarjit Singh after taking

₹2000/- but Balwinder Singh, husband of complainant, was not released. Complainant met her husband twice in police station, who had been badly beaten by the police. She met her brother-in-law, namely, Ajaib Singh, ASI in Delhi Police, who made every effort to get Balwinder Singh released but was later told by DSP Ashok Kumar Sharma that Balwinder Singh had been sent to Ferozepur. Thereafter, whereabouts of Balwinder Singh could not be located. During investigation, CBI found that Balwinder Singh was not having any link with terrorist activities and as per extra-judicial confession of DSP Ashok Kumar Sharma made before Gurdial Singh Dhillon and Depender Singh, he had been killed by the police.

16. **CRR No. 4230 of 2016**

FIR was registered on the statement of Balbir Kaur wife of Dildar Singh, pursuant to order of Hon'ble Apex Court dated 15.11.1995 passed in CRWP no. 497 of 1995, directing CBI to investigate the matter relating to cremation of large number of unclaimed dead bodies by Punjab Police. As per complainant, her son, namely, Sukhwinder Singh, a Constable in Punjab Police, was on leave on 18.04.1993. On that day he was picked up by SI Ram Lubhaya alongwith his police party from her house on the pretext that he had been absenting from duty and will be assigned some work. Next day, she alongwith her husband went to Police Station Beas, where they were not allowed to meet Sukhwinder Singh. *Panchayat* was also taken for the release of Sukhwinder Singh but in vain. Despite all the efforts made to locate him, they could not find any clue about him and apprehend that he had been killed by the police and later cremated. During investigation by CBI, it was found that two persons, namely, Sukhwinder Singh and Surmukh Singh were killed in police encounter and their dead

bodies were cremated on 23.04.1993 as unidentified dead bodies without taking any photograph. It was found to be case of wrongful confinement and killing of Sukhwinder Singh by the petitioners. Even in the postmortem report of one of the dead body, there were six multiple (reddish blue) abrasions on the front of chest with size varying between 4x1 cm x 3.2 cm., which were indicative of torture in police custody. After concluding that Sukhwinder Singh and Surmukh Singh were killed in fake encounters, CBI presented the challan against petitioners in Court.

17. **CRR No. 4235 of 2016**

FIR was registered on the statement of Chanan Singh son of Tarra Singh, wherein he stated that his son Gurbinder Singh was living a peaceful life and was not a militant. One militant, namely, Surjit Singh of Kaleke wanted to enroll him in his militant outfit but his son Gurbinder Singh refused. On being arrested, Surjit Singh made a statement to police implicating Gurbinder Singh. The police came to house of complainant and took him to Police Station Beas where he was given beatings. Complainant took police to the house of his brother, namely, Swaran Singh, who was Inspector in BSF, where Gurbinder Singh had been kept because of fear of Surjit Singh. Police caught Gurbinder Singh and took him to Police Station Beas. He remained in police custody at Police Station Beas for a fortnight, from where he was taken in the morning to some other place and complainant was released on third day. After reaching home, complainant took *panchayat* and villagers alongwith his brother to Police Station Beas, where he was told by *Munshi* to collect ashes of his son from Durgiana Mandir cremation ground, Amritsar. On reaching Durgiana Mandir cremation ground, they checked name of Gurbinder Singh in the register

and collected ashes from cremation ground. Through a news item, they came to know that Gurbinder Singh was killed in a fake encounter.

18. **CRR No. 4254 of 2016**

FIR was registered under order of this Court in CRWP No. 1774 of 1996 titled 'Smt. Paramjit Kaur vs. State of Punjab'. Smt. Paramjit Kaur had alleged that her husband Surjit Singh was killed by the police in a fake encounter.

19. During investigation it came to light that on 07.05.1992, village Bhorchi Rajput, Patti Jasso Nangal was cordoned by a large police force comprising of the officials of CRPF, Army and police led by DSP Balkar Singh, SHO Udham Singh and ASI Satwant Singh. The cordoning of village continued till 06.00 p.m. All the male members of village were separated and assembled at a place called 'Mulk Shah Pir' and house to house search was conducted. SHO Udham Singh detained five persons, namely, Surjit Singh, Jatinder Singh, Paramjit Singh, Mangal Singh and Amarjit Singh (relative of Paramjit Singh). After cordon of the village lifted, Surjit Singh, Jatinder Singh, Paramjit Singh were taken away by the police to Police Station Jandiala, where they were illegally detained. Surjit Singh fell unconscious during interrogation. On 08.05.1992, Trilok Singh son of Tara Singh, Surinder Singh son of Hari Singh, Mangal Singh son of Bachan Singh, Sewa Singh son of Hazara Singh, all residents of village Bhorchi Rajput went to Police Station Jandiala and saw Surjit Singh in illegal detention. In the afternoon aforesaid all the detained persons were taken to Mal Mandi Interrogation Centre at Amritsar. After interrogation, Surjit Singh was seen being carried away by four police personnel on their shoulders in an unconscious state and thereafter, his whereabouts were not

known. On 08.05.1992, SHO Udham Singh of Police Station Jandiala registered false FIR against Surjit Singh son of Harnam Singh.

20. **CRR No. 4256 of 2016**

During investigation by CBI relating to cremation of large number of unclaimed dead bodies by the Punjab Police, under the orders of Hon'ble Apex Court dated 15.11.1995 passed in CRWP No. 497 of 1995, instant FIR was registered on the complaint of Balwinder Kaur alleging that her son, namely, Harpal Singh @ Nikka was abducted from her house on 14.08.1992 by ASI Ram Lubhaya and his police party. Respectable of the village went to Police Station Mehta to get Harpal Singh @ Nikka released but they were not disclosed whereabouts of Harpal Singh @ Nikka and then they went to Mall Mandi, Amritsar but returned empty handed. On 19.09.1992, complainant came to know through a news item that Harpal Singh @ Nikka had been killed in a police encounter on 18.09.1992. During investigation, the entire police version regarding encounter was found to be false and challan against petitioners was presented in Court.

21. **CRR No. 4268 of 2016**

During investigation as per orders of Hon'ble Apex Court in CRWP No .497 of 1995, Gian Singh father of Gurdev Singh made a statement before CBI, which led to registration of FIR. Statement of Gian Singh reads as follows:-

“Gurdev Singh was my son. He was engaged in farming. He was 24 years old and married. On charge of sheltering militants, my son was picked up by ASI Narang Singh of PP Kairon and other police personnel on 30.01.1993 at 6.00 am from the house in presence of family members. I can identify

ASI Narang Singh. Efforts were made by family members and Panchayat Members for his release but in vain. ASI Narang Singh was also contacted by family members but he denied to have arrested my son. At later date I met some police constables at PS Patti, who disclosed that my son had been killed by ASI Narang Singh and subsequently cremated at Patti Cremation Ground by the Police. His dead body was not handed over to me and neither any information about his being killed given to the family. I may further add that ASI Narang Singh had told my distant relative, Tarlok Singh that he (Gurdev Singh) would be released after some time but later on he denied having arrested him. My son was innocent and had nothing to do with militancy.”

22. Investigation by CBI revealed that on 30.01.1993, a police party headed by ASI Narang Singh had visited the house of Gurdev Singh at 06.00 a.m. and inquired whereabouts of Deba from Gian Singh, who apprised the police that there is no person named 'Deba'. At this ASI Narang Singh inquired about sons of Gian Singh, who apprised him that he had four sons, namely, Sukhdev Singh, Gurpal Singh, Jassa Singh and Gurdev Singh. At this ASI Narang Singh specially inquired about Gurdev Singh, who was sleeping inside the house, picked him and took him to Police Post Kairon. Gian Singh with his brother Sujan Singh visited Police Post Kairon and requested ASI Narang Singh to release Gurdev Singh being innocent. He directed them to meet DSP Kashmir Singh. Gian Singh alongwith some other persons met DSP Kashmir Singh in his office, who promised to release Gurdev Singh on 02.02.1993 but he was not available in his office

till 05.02.1993. When he was contacted by Gian Singh and others, he informed them that Gurdev Singh had been killed in the morning by ASI Narang Singh. On reaching Police Post Kairon, they came to know that Gurdev Singh was taken out by ASI Narang Singh to Police Station Patti on the previous night. They again contacted DSP Kashmir Singh, who asked them to collect ashes of Gurdev Singh from Patti Cremation Ground. It also came to notice during investigation that Sukhwant Singh son of Balwant Singh was also picked up from his house on 05.02.1993 at about 06.00 a.m. in the presence of his father and other family members. On 06.02.1993, father of Sukhwant Singh was apprised that Sukhwant had been killed in police encounter. They visited Police Post Civil Hospital, Patti, where they saw two dead bodies lying inside a vehicle and identified body of Sukhwant Singh. The relatives of Sukhwant Singh, who were available at Patti Cremation Ground, were not allowed by the police to pay homage to him. They were allowed to collect ashes of Sukhwant Singh from cremation ground on 07.02.1993. During investigation, CBI found that fake documents were prepared to show the encounter as genuine. Gurdev Singh was shot dead by firing of a grazing shot from high velocity firearm at close range. Empty cartridges recovered from the place of encounter could not be linked with 7.62 mm rifle allegedly shown to have been recovered from the deceased. On the basis of evidence collected by CBI, it was concluded that it was a case of fake encounter and challan was presented against petitioners.

23. **CRR No. 4295 of 2016**

FIR in this case was registered by CBI during investigation as per orders of Hon'ble Apex Court dated 15.11.1995 passed in CRWP No.

497 of 1995. Allegations in the FIR relate to abduction of Harjit Singh @ Gora by police official of Police Post Daburjee, District Amritsar from his house on 11.11.1992 at 03.00 a.m. After 15-16 days of detention, complainant-Balbir Singh, who had also been taken away with Harjit Singh @ Gora, was released.

24. On inquiry, CBI found that Harjit Singh @ Gora and complainant-Balbir Singh were picked up by police party headed by SI Narinder Singh Malli, then Incharge of Police Station Daburjee on 11.11.1992 from their residence at village Sultanwind. They were detained at Police Post Daburjee. After 20-22 days, complainant-Balbir Singh was released but whereabouts of Harjit Singh @ Gora were not known. After registration of FIR, the matter was investigated, where it was found that Harjit Singh @ Gora was seen in the custody of SI Narinder Singh Malli for the last time by independent witnesses and thereafter, his whereabouts are not known. With these observations, challan was presented against petitioners.

25. In **CRR No. 4300 of 2016**, this Court vide order dated 21.01.1998 passed in **CWP No. 1200 of 1996 (*Mrs. Swaran Kaur vs. State of Punjab and others*)** directed CBI to conduct inquiry regarding whereabouts of alleged detainee-Santokh Singh son of Surjit Singh. On inquiry, it was found that Santokh Singh was taken away by Inspector Major Singh from his house at village Jaspal on 31.07.1991 evening. Mother of detainee, namely, Swaran Kaur alongwith other respectable persons of village met Inspector Major Singh on 01.08.1991 and on later dates seeking release of Santokh Singh, who was an employee of Punjab State Electricity Board, Buttari. Investigation confirmed illegal detention of said Santokh

Singh at Police Station Sadar Tarn Taran but his whereabouts could not be located thereafter.

26. **CRR No. 4308 of 2016**

During investigation by CBI in the matter relating to cremation of large number of unclaimed dead bodies by the Punjab Police, as per direction of Hon'ble Apex Court in CRWP No. 497 of 1995, it was found that encounter dated 28.12.1992, wherein three Sikh youths and accused Ram Singh were allegedly killed, was found to be false. It was found that one Aroor Singh, killed in encounter was a *sewadar* of Shiromani Gurudwara Parbhandhak Committee at Darbar Sahib, Tarn Taran. He had reported the matter of snatching of his tractor by two unknown militants at Police Station Mahochahal. In enquiry regarding snatching of his tractor, ASI Nachattar Pal Singh and HC Nazar Singh visited the house of Aroor Singh and informed his family members that their tractor had been traced and Aroor Singh was required to visit Police Station Manochahal to identify the same. On 16.12.1992, Aroor Singh alongwith his family members and villagers visited Police Station Manochahal and met SI Raj Kumar, who asked Aroor Singh to stay in the Police Station and directed other persons accompanying him to go home. When Aroor Singh did not return home till 08.00 p.m., his wife Jasbir Kaur and son Gurwinder Singh alongwith other villagers visited Police Station Manochahal and found that Aroor Singh had been mercilessly beaten in the presence of SI Raj Kumar and ASI Nachhattar Pal Singh. Villagers were informed that Aroor Singh and his family were harbouring the militants including militant Gurbachan Singh Manochahal, a relative of Aroor Singh and they refused to release Aroor Singh. On 17.12.1992 and 18.12.1992, Gurwinder Singh provided morning

tea to his father-Aroor Singh at Police Station Manochahal, where Jasbir Kaur and Balwinder Singh also met him. Thereafter, they were not allowed to go inside the police station. On 27.12.1992, Jasbir Kaur alongwith others met Senior Superintendent of Police, Tarn Taran, who demanded ₹1 lac for the release of Aroor Singh and also admitted custody of Aroor Singh with DSP Ashok Kumar. The money could not be paid and the family of Aroor Singh through a news item came to know that he had been killed in police encounter alongwith three militants near village Dode. About the other person killed in encounter, namely, Resham Singh, it was found that he was also picked up by the police party headed by ASI Nachhattar Pal Singh and demand of ₹20,000/- was raised for his release. The encounter was found to be false. Even the news item was got published by Ajit Singh Sandhu, then SSP, Tarn Taran by giving information to correspondents of newspapers, Jagbani and Ajit that Resham Singh had been killed in police encounter near village Dode. **This information was given to press-reporters even prior to the time of encounter as mentioned in the police record.** With the observation that it was a case of cold blooded murder of Aroor Singh by the petitioners, CBI presented the challan in this case.

27. **CRR No. 4315 of 2015**

In an inquiry by CBI, as per order dated 30.05.1997 passed by this Court in CRWP No. 651 of 1992, it was found that Harjit Singh was abducted by Constable Satbir Singh alongwith another person from Bus Stand Thatian-Wadadpura, Police Station Beas on 29.04.1992 at about 11.00 a.m. Enquiry also revealed that ASI Ram Lubhaya, the then I/C P.P. Gagarbhana had taken ₹30,000/- from Kashmir Singh (father of the abductee) to release Harjit Singh, but on 11.05.1992, Harjit Singh and

Lakhwinder Singh @ Lakha were shown arrested from the area of village Khowala, P.S. Lopoke by S.I. Dharam Singh, the then SHO Police Station Lopoke, and a case FIR No. 55 dated 11.05.1992 was registered against them. Enquiry also revealed that both Harjit Singh and Lakhwinder Singh alongwith an unknown person who were already in police custody were killed by a police party headed by S.I. Dharam Singh and a fake encounter regarding their killing was shown in papers on 12.05.1992 in the area of village Bhullar, Police Station Lopoke.

28. FIR was recorded as per result of above preliminary inquiry, which further found corroboration from evidence collected during investigation and challan was presented against petitioners.

29. **CRR No. 4434 of 2016**

FIR No. 9 dated 01.02.1993 was registered for offence punishable under Sections 302, 307 IPC and 25 of the Arms Act, on the complaint of Harjinder Pal Singh, Sub Inspector/SHO, Police Station Sadar Ropar on 01.02.1993 but investigation was handed over to CBI vide order dated 06.05.1997 passed by this Court in CRM-M-19259-1996. As per version in the FIR recorded by police, Kuldeep Singh was taken for recovery of weapon as per his disclosure statement recorded in a case no. 8 dated 31.01.1993. When the police party after stopping the vehicle on the bank of river in village Bhadal proceeded further, it was attacked and in cross firing Gurmail Singh and Kuldeep Singh were killed.

30. On investigation, CBI found that Kuldeep Singh was abducted by the police party headed by DSP Jaspal Singh from his house on 15.01.1993 at about 03.30 a.m. alongwith his father Nirmal Singh. Villagers approached DSP Jaspal Singh and SSP Ropar Sanjeev Gupta but they were

told that Kuldip Singh will not be released and will be killed like terrorist as he alongwith others were planning to blast Thermal Plant, Ropar. Family members of Gurmail Singh i.e. his wife, mother and father were also abducted on 12.12.1992 from their house. Except father of Gurmail Singh, wife and mother were released on 15.12.1992 by CIA Staff, Ropar, while father was released on 26.12.1992 after the surrender of Gurmail Singh before the police on 26.12.1992. On investigation, CBI found it to be a case of fake encounter. It was also found in investigation that there was no criminal record of both the deceased, namely, Kuldip Singh and Gurmail Singh and leather belt of constable with which handcuff chain was allegedly fastened while taking Kuldeep Singh for recovery of weapon was also found to be undamaged and not in torn condition.

31. **CRR No. 4574 of 2016**

FIR was registered in this case by CBI, on complaint of Paramjeet Singh dated 19.09.1996 regarding abduction and subsequent killing of his brother Harbans Singh by Punjab Police, during inquiry in the matter relating to cremation of large number of unclaimed dead bodies by Punjab Police, which was being conducted under the orders of Hon'ble Apex Court passed in CRWP No. 497 of 1995. As per complainant, Harbans Singh was abducted on 18.12.1990 by Jhilmil Singh, then Inspector/SHO of Police Station Sadiq alongwith his maternal uncles Raghubir Singh and Randhir Singh. All the three were illegally confined in Police Station Sadiq and CIA Staff Faridkot. Raghubir Singh and Randhir Singh were released from Faridkot by Jhilmil Singh for some consideration but Harbans Singh was not released. He was shown as arrested in case bearing FIR No. 9/91, Police Station Sadiq, for offence punishable under Section 25 of the Arms

Act and was sent to judicial custody. He was later on taken by the police of Police Station Patti on 14.03.1991 and sent to Central Jail, Amritsar. On 06.04.1993, he was taken on remand by police of Police Station Sadar Tarn Taran in a case bearing FIR No. 124 dated 30.12.1990. On scrutiny of police file of FIR No. 28 dated 15.04.1993, Police Station Sadar Tarn Taran, it was disclosed that Harbans Singh was taken to village Chambal in the morning of 15.04.1993 for recovery of dumped arms and ammunition, where three militants allegedly fired upon police party and in cross-firing Harbans Singh and one unidentified militant got killed while remaining two militants fled away from the spot of encounter. On preliminary inquiry CBI found that it was a case of killing of Harbans Singh alongwith one more unidentified person in a fake encounter by SHO Puran Singh, SI Shamsheer Singh, ASI Jagir Singh and others. It was also found that none of the log books of three police vehicles of Police Station Sadar Tarn Taran, allegedly used by police personnel on 15.04.1993 bear any entry about the visit to place of encounter and forged documents in the form of seizure memo etc. were prepared by the police.

32. CRR No. 4612 of 2016

CBI had registered FIR in this case under the orders dated 15.08.1999 passed in CWP-140-1996, filed by Jagir Kaur wife of Piara Singh, wherein she had alleged that her husband Piara Singh, ex-serviceman, son Harphool Singh, nephew Gurdeep Singh, and relative Swaran Singh were picked up from their residence at village Jeobala, P.S. Jhabal, District Amritsar on 23.07.1992 at 09.00 a.m., by a police party headed by DSP Bhupinderjit Singh and were detained at Police Station Verawal. Complainant approached the police officers personally to get the

detenue released but police did not give any clue about them. Complainant with one Kundan Singh met the then Governor of Punjab during his visit at village Makkar near P.S. Jhabal but in vain. During investigation by CBI, allegations levelled by complainant were found to be correct and corroborated by evidence collected by CBI. After abduction of aforesaid persons some eminent persons of village Jeobala as well as employees of Punjab State Electricity Board, Tarn Taran met Lt. Col. M.S. Kochhar, the then Incharge Army Unit at village Jhabal and sought his intervention in seeking release of Piara Singh and other abductees but this yielded no result. Investigation also revealed that on 26.07.1992, the aforesaid detenues were detained at Police Post Verowal, where they were seen by one Kulwant Singh, resident of village Dehlanwal, to whom he passed on one *rukka* regarding their detention at Police Post Verowal with the request to pass on this *rukka* to one of the relative of his wife, namely, Joginder Singh Pahar. *Rukka* was delivered by Kulwant Singh to Joginder Singh Pahar, who further passed on the same to in-laws of Gurdip Singh at village Sanghe and by them to parents of Gurdip Singh. The family members of detenues and employees of PSEB, Tarn Taran met Khubi Ram, the then Superintendent of Police (Operation) and brought to his notice illegal detention of aforesaid persons, who gave them a written message addressed to Deputy Superintendent of Police, Govindwal Sahib/SHO Verowal, which reads as follows:-

“Your Sub Inspector Police rounded up one Gurdeep Singh R/o Geowala as applicant is saying you see his case if he is not involved in any serious crime then he may be released and if you required them satisfy them.”

33. Kashmir Singh son of Sucha Singh resident of village Jhabal also saw the aforesaid persons in police custody of Police Station Jhabal. He talked to the detainee Piara Singh and Gurdip Singh with permission of police personnel, who disclosed about their illegal detention and shifting from one place to other. The aforesaid fact was also affirmed in the enquiry in the complaint of Harjit Kaur @ Joginder Kaur by L.D. Hans, PCS, ADC, Tarn Taran. Statement of Kashmir Singh under Section 164 Cr.P.C. was also recorded. Detenues have also disclosed about their torture and harassment at the hands of police to Kashmir Singh. The matter was also brought to notice of Senior Superintendent of Police, Tarn Taran, who got produced Kashmir Singh before him. He did not rely on statement of Kashmir Singh. All the efforts of complainant to get the detenues released did not yield any result. Even the local MLA Smt. Vimla Dang, a CPI leader also intervened in the matter. After detailed investigation, CBI found that the aforesaid persons were illegally picked up and detained in police post/Police Station Verowal w.e.f. 26.07.1992 onward and thereafter whereabouts of aforesaid persons are not known.

34. **CRR No. 4727 of 2016**

During course of investigation of cremation of large number of *lawaris* dead bodies by Punjab Police during militancy period, as per order of Hon'ble Apex Court dated 15.11.1995 passed in CRWP no. 497 of 1995, Gurnam Kaur filed a complaint that her son Karanbir Singh, a farmer, aged 26 years, was picked up by ASI Gurnam Singh of Police Post Shahbazpur, Police Station Manochahal, Tarn Taran, Amritsar on 01.10.1992 at about 11.00 a.m. in the presence of villager Partap Singh and brother Harjinder Singh on the allegation of his alleged involvement in militant activities.

Allegations levelled by Gurnam Kaur were corroborated during investigation by the statements of witnesses. The investigation further revealed that in the month of October, 1992, Karanbir Singh was working in field and police party headed by ASI Gurnam Singh came to the village and enquired about Karanbir Singh. Harjinder Singh brother of Karanbir Singh was also picked up with him and taken near the police vehicle where both were given beatings. The police enquired about their links with militants. Later on Harjinder Singh was released and Karanbir Singh was taken to his residence in the village where he was again given beatings in the presence of neighbourers. During this entire process, the police kept on enquiring from him about his links with militants. After an hour or so, Karanbir Singh was dragged by the police in its vehicle and taken away from the spot. Gurnam Kaur, mother of Karanbir Singh alongwith villagers visited Police Post Shahbazpur from where she could not have any intimation of his son and since then he has not been heard off. The CBI presented the challan under Sections 364 and 365 IPC against ASI Gurnam Singh only.

35. **CRR No. 4736 of 2016**

FIR was registered on the directions of this Court vide order dated 25.08.1999 passed in CRWP No. 140 of 1996, filed by Jagir Kaur, wherein she alleged that her husband Piara Singh, ex-serviceman alongwith her son Harphool Singh, her nephew Gurdip Singh and her relative, namely, Swaran Singh were picked up from their residence at village Jeobala, Police Station Jhabal, District Amritsar on 23.07.1992 at 09.00 a.m. by police party headed by DSP Bhupinderjit Singh, Tarn Taran. Later she came to know that aforesaid persons have been detained at Police Station Verowal. She

met the police officials and then Governor of Punjab to get all the aforesaid persons released but in vain. After the abduction of aforesaid persons, their whereabouts were not known. CBI during investigation found allegations of complainant as correct and presented the challan against petitioner.

36. **CRR No. 4749 of 2016**

Hon'ble Apex Court vide order dated 30.08.1994 passed in CRWPs No. 214, 220, 240 and 241 of 1994, directed CBI to investigate the alleged detention of Balwinder Singh @ Bajju son of Puran Singh, Balwinder Singh @ Kala son of Naurang Singh, Harjinder Singh @ Rana son of Sohan Singh and Saroop Singh @ Suba son of Harbans Singh, all residents of Gurdaspur.

37. As per complainant, six persons were picked up by the police from different places in District Gurdaspur during the period 03.01.1994 to 17.01.1994 and killed in fake encounters regarding which FIR No. 19 dated 25.01.1994 was registered at Police Station Dhariwal, District Gurdaspur. On registration of FIR under the directions of Hon'ble Apex Court, the matter was investigated by CBI. During investigation, CBI found that Balwinder Singh @ Bajju was picked up by SI Pritam Singh from his residence from village Bhaini Paswal on 03.01.1994 and taken to Police Station Kahnuwan, District Gurdaspur, where he was illegally detained upto 14.01.1994. He was then shifted to CIA Staff, Gurdaspur and detained upto 25.01.1994.

38. Balwinder Singh @ Kala was picked up by SI Pritam Singh alongwith his police party on 17.01.1994 at about 10.30 a.m. from the office of Assistant Engineer, P.S.E.B. Purana Shala, District Gurdaspur, where he was working as L.D.C. and taken to CIA Staff, Gurdaspur, where he was

kept detained upto 25.01.1994.

39. Harjinder Singh @ Rana was apprehended by SI Pritam Singh and his police party on the intervening night of 16/17.01.1994 and in the morning he was shifted to CIA Staff, Gurdaspur where he was illegally detained upto 25.01.1994.

40. Saroop Singh @ Suba was produced on 14.01.1994 by respectable of village Jagowal Bet at Police Station Kahnuwan under the pressure of SI Pritam Singh and he was later shifted to CIA Staff, Gurdaspur, where he was illegally detained upto 25.01.1994.

41. All the aforesaid persons were killed in a fake encounter by petitioners at an abandoned Canal Rest House in the area of village Kunjur on 25.01.1994. **Expert of CFSL, New Delhi opined that earth particles collected from clothes of aforesaid four deceased did not talley with earth particles of the place of occurrence.**

42. From the above and other evidence collected during investigation led the CBI to conclude that all the above four deceased were detained illegally at Police Station Kahnuwan and CIA Staff, Gurdaspur till 25.01.1994 and were killed in police custody. With these observations, challan against petitioners was presented.

43. In **CRR No. 400 of 2017**, FIR was registered during investigation of CBI under the orders of Hon'ble Apex Court dated 15.11.1995 passed in CRWP No. 497 of 1995. During inquiry, it was found that complainant-Nazar Singh was taken to Police Post Algo Kothi on 16.12.1992 by SI Jarnail Singh and his police party and they asked him to make his son, namely Balbir Singh @ Veera to surrender as he was required for investigation. On 21.12.1992, complainant produced his son before SHO

Gurvinder Singh in the presence of his elder son Balwinder Singh, Jagtar Singh son of Gurbaksh Singh and other persons of the village. He kept on meeting his son Balbir Singh @ Veera for next six days at Police Post Algo Kothi but on 7th day he was told that DSP Kashmira Singh of Police Station Patti had taken away Balbir Singh @ Veera. On the next day, complainant met DSP Kashmira Singh, who informed that his son Balbir Singh had been taken away by DSP Ashok Kumar of Police Station Chabbal. Complainant met DSP Ashok Kumar, who told him that officials had gone out and asked him to come later on. Complainant kept on meeting SHO of Police Station Chabbal but did not get any information regarding whereabouts of his son. Complainant then met Ajit Singh Sandhu, Senior Superintendent of Police, who did not respond to his request and thereafter representations were made to Inspector General of Police, which were sent to Police Station for investigation but no action was taken thereon. Complainant had been trying to locate his son till the date he gave information to CBI but was not successful.

44. During investigation, CBI found that Nazar Singh had been making efforts for the release of his son and met police officers. He had also paid ₹60,000/- to SI Gurbinder Singh, who returned this amount in two installments to Balwant Singh Khara after about 2/3 months. Allegations levelled by complainant were found to be correct and challan against petitioners was presented.

45. **CRR No. 508 of 2017**

FIR was recorded on the statement of Sukhwant Kaur of village Ghanupura, Police Station Chhearatta, wherein she alleged that on 31.10.1992 at about 05.00 p.m., ASI Avtar Singh of Police Station Sarahali

came to her residence and picked up her husband Sukhdev Singh, who was working as Vice Principal in Government High School, Lopoke and her father Sulakhan Singh. Later, when contacted, police denied their abduction. During inquiry conducted by CBI under the orders of Hon'ble Apex Court vide order dated 15.11.1995 passed in CRWP No. 497 of 1995, it was revealed that family members of both Sukhdev Singh and Sulakhan Singh protested but ASI Avtar Singh took them away in their vehicle on the pretext that they were wanted by SI Surinder Pal Singh in connection with some other matter. Ujagar Singh father of Sukhdev Singh, who was retired inspector from Punjab Police met both the abducted persons in Police Station Sarahali and his meeting was arranged by SHO Sarahali, who assured him that both will be released after questioning. The family members and school staff made efforts for their release but in vain. Both the abducted persons were taken out from the police station and killed somewhere in a fake encounter. CBI after investigating the matter submitted closure report on which learned Magistrate directed further investigation. On further investigation, it was found that Sukhdev Singh was working as Vice Principal in Government High School, Lopoke and was residing in his house at village Ghanupura at Amritsar with his wife Sukhwant Kaur and children. Jagtar Singh brother of Sukhwant Kaur visited her on 31.10.1992 and left his father at his sister's house and went towards Attari in connection with some business related work. In the afternoon on 31.10.1992, ASI Avtar Singh came to village Bakan Kalan and visited the house of Jagtar Singh. He enquired about Sulakhan Singh and wife of Jagtar Singh informed him that he had gone to his daughter's house at village Ghanupura. In the evening at 05.00 p.m., he alongwith his police party came to village

Ghanupura. From the shop of Ravinder Pal Singh situated at Ghanupura, he enquired about the residence of Sukhdev Singh. At that time he was wearing his name plate also on his dress. Ravinder Pal Singh told him about the residence of Sukhdev Singh, which was 50 yards from his shop. Thereafter, he entered the house of Sukhwant Singh, where Ujagar Singh, Sulakhan Singh and Sukhdev Singh were present. Despite the protest of Sukhwant Kaur and Ujagar Singh, a retired inspector from Punjab Police, he took away Sukhdev Singh and Sulakhan Singh. Karam Singh, neighbourer of Sukhwant Kaur had also came to the spot on seeing the police and witnessed the entire incident. On coming to know about taking away of Sukhdev Singh and Sulakhan Singh by the police, Jagtar Singh visited Police Station Sarahali with his brother Balkar Singh. They were made to wait outside the police station and Ujagar Singh was allowed to meet Sukhdev Singh and Sulakhan Singh by SHO Surinder Pal Singh, who assured him that both will be released after questioning and asked them to send their food. From there they went to the house of their cousin Subheg Singh and asked him to arrange food for Sukhdev Singh and Sulakhan Singh, which was sent to Police Station Sarahali where they were assured that both abducted persons will be released after 2-3 days. Sukhwant Kaur sent telegram to SHO Sarahali and other police officers on 01.11.1992 about picking up of her husband and father by the police. On 02.11.1992, also the food was sent for Sukhdev Singh and Sulakhan Singh but on 03.11.1992, Sentry refused to take the food and informed that both Sukhdev Singh and Sulakhan Singh had been taken to some secret place. Teachers of Government High School, Lopoke also visited Police Station Sarahali and Senior Superintendent of Police of the District seeking release of their

colleague but till date whereabouts of Sukhdev Singh and Sulakhan Singh have not come to notice of anyone.

46. **CRR No. 553 of 2017**

FIR in this case was recorded during investigation as per order of Hon'ble Apex Court dated 15.11.1995 passed in CRWP No. 497 of 1995. During inquiry, complainant-Smt. Rajwant Kaur made a statement that on 01.11.1992 in noon, her husband Sukhdev Singh was picked up from his fields at village Banka by Punjab police personnel of Police Station Sirhali led by Surinderpal Singh SI/SHO and Chanchal Singh ASI and was killed in a fake encounter in the night and his dead body was cremated as unclaimed on 02.11.1992. CBI conducted the inquiry, which revealed that Sukhdev Singh son of Sardool Singh was picked up by police party led by Surinderpal Singh SI/SHO of Police Station Sirhali at 01.00 p.m. and later killed in a fake encounter during the intervening night of 01.11.1992 and 02.11.1992 at village Khara. On the basis of inquiry, FIR was registered in this case. It was also found in investigation that on 01.11.1992, one Swarn Singh son of Mukhtiar Singh alongwith his paternal uncle Santokh Singh had left his house at 07.00 p.m. and went to market outside the village alongwith Sukhdev Singh son of Surta Singh. When they were returning at about 08.00 p.m., they were asked to stop at police *naka* where Sukhdev Singh son of Surta Singh stopped but Swarn Singh fled away in panic. Some policemen ran behind Swarn Singh in pursuit and soon Sukhdev Singh heard noise of firearm shots. On being left by the police, Sukhdev Singh ran to the house of Swarn Singh and informed his family. In the morning blood spots were found inside and outside *Janj Ghar* in a street. Santokh Singh visited Police Station Sirhali and found dead body of Swarn Singh who had

been shot from behind. There was another dead body lying with Swarn Singh which he could not identify. That dead body was of Sukhdev Singh son of Sardool Singh, husband of complainant. As per postmortem report, Swarn Singh had died because of a bullet injury fired from behind and Sukhdev Singh had died because of two firearm injuries on his chest and head. While the body of Swarn Singh was handed over to Santokh Singh, the dead body of Sukhdev Singh was cremated by municipal authorities as unclaimed. FIR No. 88 of 1992 was registered at Police Station Sirhali regarding the attack on police party and encounter with terrorists. Firearm i.e. .303 rifle and empty cartridges were shown as recovered from near body of Sukhdev Singh. As per CFSL report, empty rounds cannot be linked to .303 rifle recovered from the scene. Entire story propounded by police regarding encounter was found false and it was observed that victim Sukhdev Singh was shot from a close range. He was fully known to police but his dead body was cremated as unclaimed without intimation to his family.

47. **CRR No. 662 of 2017**

During inquiry by CBI as per order of Hon'ble Apex Court dated 15.11.1995 passed in CRWP No. 497 of 1995, CBI received a complaint of Kashmir Singh, father of Daljit Singh, wherein he alleged that police of Police Station Lopoke had picked him and his two sons, namely, Baljit Singh and Rajwant Singh. His sons were released after spending one day and one night in confinement at Police Station Lopoke. Complainant was told that he will be released only if he makes his son Daljit Singh to surrender before the police. Complainant came to Amritsar alongwith police party of Police Station Lopoke to bring his son Daljit Singh from Amritsar.

Daljit Singh was picked up by police party from the house of his maternal aunt, namely, Dalbir Kaur and taken to Police Station Lopoke. Thereafter, complainant was released and he met Senior Superintendent of Police and other higher police officers for release of his son but in vain.

48. During investigation, CBI found that Daljit Singh was shown to have been killed in an encounter with CIA Staff headed by DSP Balbir Singh and other police officials on 29.12.1992 at bridge near village Sarangdev Ajnala alongwith another Sikh youth, namely, Jagira. As per postmortem report, Daljit Singh had suffered firearm injuries on his body, which were sufficient to cause his death. Dead bodies of Daljit Singh and Jagira were cremated by police as unclaimed dead bodies. The encounter was found to be stage managed and challan was presented against petitioners.

49. In all the above referred petitions, CBI registered FIRs on the statements of relatives of persons, who were either (i) picked up by the police from their houses and later on killed in encounters and their dead bodies were cremated as unclaimed or (ii) they were shown to have been ran away from the police custody/killed in police custody or (iii) are missing after being taken away by the police.

50. Bunch of 27 petitions has been taken together for disposal by a common order as point raised in all the petitions is same i.e. requirement of sanction under Section 6 of the Act of 1983 or 197 Cr.P.C., but for reference facts of case of petition ***Arjan Singh and others vs. Central Bureau of Investigation and others (CRR No. 3854 of 2016)***, and facts of other cases will be referred, if required, in later part of order.

51. In case of ***Arjan Singh and others vs. Central Bureau of***

Investigation and others (CRR No. 3854 of 2016), CBI after inquiry filed charge-sheet on 04.05.1999. Petitioners alongwith one Balbir Singh, who has since died, filed application under Section 227 Cr.P.C. seeking their discharge for want of sanction from competent authority i.e. Central Government, which was dismissed by Additional Sessions Judge, Patiala with the observations as follows:-

“.....From the facts of the case it is not found that the applicants were acting in the discharge of their duty and as such sanction u/s 6 of the Act was not at all required. Thus I find that the present application is without any merit and the same is dismissed.”

52. Petitioners (including Balbir Singh) filed CRR No. 175 of 2000 before this Court, which was decided on 05.03.2001 with the observations as follows:-

“The provisions of law, no doubt, is in favour of the petitioners but the prosecution's categorical case is that the accused had staged a fake encounter. Gulshan Kumar alias Kalu was already in the custody of the police when the alleged occurrence took place. Therefore, the whole story was a false one. The version of the accused was certainly contained in the FIR but that was not at all the version of the prosecution which was based on the evidence of the witnesses who established that Gulshan Kumar was already in police custody and consequently, his death in the early hours of July 22, 1993 was under an entirely different set of circumstances as also, as a corollary, were the deaths of three other deceased. All the

deceased had been cremated unidentified and unclaimed. The respondents have contended that sanction had been obtained for the prosecution of the accused from the State Government in terms of Section 197 Cr.P.C. but that was only by way of abundant caution. Nevertheless the criminal acts of the petitioners had not been performed in discharge of their official duties and for this reason sanction under section 197 Cr.P.C. was not at all necessary.

It would be grossly unfair and unjust to discuss the defence of the petitioners in detail and analyze the facts of the case in the light of the FIR no. 70 dated July 22, 1993 because it might cause untold prejudice to the defence. In case the State FIR stands scrutiny then it would likewise cause prejudice to the prosecution. It would be suffice to hold that sanction is required by law only if the accused are alleged to have committed the offence while acting or purporting to act in the discharge of their official duty. The offences for which the petitioners are to be tried can by no stretch of imagination be said to have been committed by them in the discharge of their official duties. Therefore, neither the provisions of the Punjab Disturbed Areas Act, 1983 nor the provisions of Section 197 Cr.P.C. are applicable to the prosecution case against the petitioners. It would be a fallacy to hold that sanction of the Central Government is required because the Punjab Disturbed Areas Act, 1983 was applicable and the petitioners had exercised their power under Section 4 thereof. If this

contention is accepted then not only would sanction be required but the arguments could be further extended to hold that the petitioners had committed no offence whatsoever and deserved outright discharge. The prosecution in this case does not rely upon the “police version” of the case but entirely on its own version which is based on oral and documentary evidence which shall be presented at the trial. Resultantly, this petition is held to be totally devoid of merit and the same is hereby dismissed.”

53. Petitioners filed Special Leave Petition (Criminal) No. 2336 of 2001 in Apex Court against order dated 05.03.2001, which was disposed of by the Apex Court vide order dated 25.04.2016 (***Criminal Appeal No. 190 of 2003 Devinder Singh and others vs. State of Punjab through CBI, 2016 (12) SCC 87.*** After looking into law on the point and facts of the case, Apex Court summarized the principle concerning the requirement of sanction for prosecution under various enactment in para 39 of the judgment, which reads as follows:-

“39. The principles emerging from the aforesaid decisions are summarized hereunder :

I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

II. Once act or omission has been found to have been committed by public servant in discharging his

duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Cr.P.C. has to be construed narrowly and in a restricted manner.

III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 Cr.P.C., but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr.P.C. would apply.

V. In case sanction is necessary it has to be decided

by competent authority and sanction has to be issued on the basis of sound objective assessment.

The court is not to be a sanctioning authority.

VI. *Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.*

VII. *Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.*

VIII. *Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of*

the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.”

54. In the next para i.e. para no. 40, the Apex Court on the basis of facts of the case observed as follows:-

“40. In the instant cases, the allegation as per the prosecution case it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct there is no requirement of any sanction. However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not

*come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. **The trial court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law.** The trial to proceed on the aforesaid basis. Accordingly, we dispose of the appeals/writ petition in the light of the aforesaid directions.”*

55. It is evident from the above order that there is categorical finding of Apex Court that at this stage it cannot be said as to whether version of prosecution that it was a fake encounter and death was caused by torture or version of defence that it is a case of discharge of official duty, is correct? Hon'ble Apex Court has given a very clear direction to trial Court to proceed on the basis of prosecution version and re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty.

56. Immediately after the order of Apex Court, petitioners again

moved application seeking their discharge with the plea that act of petitioners in this case was during the discharge of their official duty. The application of petitioners was, however, dismissed.

57. I have heard learned counsel for petitioners, learned Addl. Solicitor General for Union of India, learned Advocate General, Punjab learned counsel for CBI and learned counsel for complainant in detail.

ARGUMENTS:-

58. Learned counsel for petitioners has argued that FIR in this case was registered on the statement of complainant(s) that their sons, siblings or some near relatives were picked up by police e.g. in the case of ***CRR No. 3854 of 2016 (Arjan Singh and others vs. Central Bureau of Investigation and others)*** FIR was registered on the statement of Chaman Lal wherein he has alleged that his son Gulshan Kumar was picked up by Dilbagh Singh, DSP of Tarn Taran and was taken to Police Station City Tarn Taran alongwith him and his three sons. His daughter was also picked up but was released on the intervention of locals in the locality itself. After 4/6 days all the family members except Gulshan Kumar were released. On 23.07.1993, complainant came to know about killing of his son in police encounter near some drain at Palasour. Complainant visited police station but he was not handed over the dead body of his son, which was cremated as unclaimed. Learned counsel has argued that Punjab had faced a very grave challenge to law and order and residents of State were facing terrorism, which was at its peak in eighties and first half of nineties. Petitioners, who are police officials were performing their duties in a highly charged atmosphere and prevailing danger posed by militants to the life, liberty, movement of general public and authority of State. Police officers/officials also faced

similar threat to their life and many lost their lives, while performing their duties. CBI was well aware of this fact that act of petitioners in all the cases was in discharge of their official duty and as per the provision of Section 6 of the the Act of 1983 and had moved for sanction of prosecution of petitioners, which in some cases was allowed by Government of Punjab, but sanction under the above Act was required from Central Government. Petitioners moved application for their discharge, which was dismissed by the trial Court without looking into the documents on file, with observation that at this stage there is nothing on record to show that act of the petitioners was in discharge of their official duties.

59. During the pendency of criminal appeal before the Hon'ble Apex Court, CBI again made submission for grant of time to seek sanction for prosecution from the Central Government as per provisions of Section 6 of the Act of 1983. An affidavit on behalf of Union of India, copy of which has been placed as Annexure P-6, was filed, wherein it took stand that the Act of 1983 was promulgated to deal with terrorism backed by inimical forces from across the border and to provide full protection to officers of State Police and Magistrates in *bona fide* discharge of their duties for taking steps to curb terrorist activities. As per provisions of Section 6 of the Act of 1983 and Section 197 Cr.P.C. only Central Government is competent for grant of sanction as prescribed under the Act of 1983 as amended in 1989. As per order dated 16.02.2006 passed in Criminal Appeals before the Hon'ble Apex Court, CBI sought adjournment to send the record of cases to Central Government to consider the question of sanction in terms of Section 6 of the Act of 1983 as amended in 1989, which was allowed vide order as follows:-

“During the course of arguments, it was stated on behalf of the Central Bureau of Investigation (C.B.I.) that the matter will be sent to the Central Government with the entire records to consider the question of sanction in terms of Section 6 of the Punjab Disturbed Areas Act, 1983 (for short 'the Act'), as amended in 1989. In view of this stand taken on behalf of the C.B.I. And the Union of India, we direct that until further orders, operation of the impugned orders shall remain stayed and the Central Government will consider the matter in terms of Section 6 of the Act in accordance with law without being prejudiced by any observation made in any of the impugned orders. Let the matter be examined by the Central Government within eight weeks from the receipt of records from the C.B.I. Learned counsel for the C.B.I. will refer the matter and produce the entire records within three weeks from today.

Place the matter after three months. These cases shall not be treated to be tied up.”

60. Learned counsel for petitioners has argued that in the affidavit filed in this petition on behalf of Ministry of Home Affairs, Union of India has put forth its stand that sanction of the Government is required under Section 6 of the Act of 1983 as amended in 1989 before prosecuting petitioners in respect of anything done or purported to have been done in exercise of power conferred under Sections 4 and 5 of above Act. This indicates legal position as prevailing under the Act of 1983. Even the Hon'ble Apex Court after examining the matter has left it open to the Court to appraise on the basis of evidence adduced by the prosecution or by the

accused or if even in any other manner it comes to notice of the Court that there was reasonable nexus of the incident with discharge of official duty of petitioner(s), in that situation to re-examine the issue of sanction required under Section 6 of the Act of 1983 and take decision in accordance with law. The Court below instead of examining the material on record to reach the conclusion in this regard, declined the application of petitioners with the observation that the matter of legal sanction shall be decided at the stage of final judgment after the completion of evidence of prosecution. This will not only result in unnecessary litigation but also the sword of prosecution will remain hanging over the heads of petitioners, who have acted in discharge of their official duties during the period of terror, disturbance, turmoil and threat to life and liberty to its residents, which the State of Punjab had faced.

61. While relying on the observations of Hon'ble Apex Court in case of **General Officer Commanding, Rashtriya Rifles vs. Central Bureau of Investigation and another, 2012 (6) SCC 228**, he has argued that the act of petitioners in all these petitions was during the discharge of their official duties. In some of the cases, they were taking persons arrested to effect recovery of weapons or moving them from one place to other, when encounters took place in which they were killed. The protection and immunity granted to officials particularly as per provisions of Act of 1983 has to be widely construed in order to assess the act complained of. He has referred to observations of Hon'ble Apex Court in paras 50 and 52, which read as follows:-

“50. A sudden decision to do something under authority or the purported exercise of such authority may not

necessarily be predetermined except for the purpose for which the official proceeds to accomplish. For example, while conducting a raid an official may not have the apprehension of being attacked but while performing his official duty he has to face such a situation at the hands of criminals and unscrupulous persons. The official may in his defence perform a duty which can be on account of some miscalculation or wrong information but such a duty cannot be labelled as an act in bad faith unless it is demonstrated by positive material in particular that the act was tainted by personal motives and was not connected with the discharge of any official duty. Thus, an act which may appear to be wrong or a decision which may appear to be incorrect is not necessarily a malicious act or decision. The presumption of good faith therefore can be dislodged only by cogent and clinching material and so long as such a conclusion is not drawn, a duty in good faith should be presumed to have been done or purported to have been done in exercise of the powers conferred under the statute.

51. xx xx xx xx xx

52. *It is in the aforesaid background that we wish to record that the protection and immunity granted to an official particularly in provisions of the Act 1990 or like Acts has to be widely construed in order to assess the act complained of. This would also include the assessment*

of cases like mistaken identities or an act performed on the basis of a genuine suspicion. We are therefore of the view that such immunity clauses have to be interpreted with wide discretionary powers to the sanctioning authority in order to uphold the official discharge of duties in good faith and a sanction therefore has to be issued only on the basis of a sound objective assessment and not otherwise.”

62. He has argued that in that case also the allegation against petitioners was of killing of some persons in a fake encounter and Hon'ble Apex Court keeping in view facts of the case, has observed that sanction of the Central Government to proceed with criminal prosecution/trial is required. He has supported his arguments with observations in other citations, such as Matajog Doeby vs. H.C. Bharti, 1956 AIR (SC) 44, P. Arulswami vs. State of Madras, 1967 AIR (SC) 776, B. Saha and others vs. M.S. Kochar, 1979 (4) SCC 177, Mansukhlal Vithal Dass Chauhan vs. State of Gujarat, 1997 (7) SCC 622, Abdul Wahab Ansari vs. State of Bihar and anr., 2000 (8) SCC 500, State of Orissa through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew, 2004 (2) RCR (Cri.) 663, Sankaran Moitra vs. Sadhna Dass and another, 2006 (2) RCR (Cri.) 389, Rakesh Kumar Mishra vs. State of Bihar, 2006 (1) RCR (Cri.) 456, Om Parkash and others vs. State of Jharkhand through the Secretary, Deptt. of Home, Ranchi-I and another, 2012 (4) RCR (Cri.) 662, D.T. Virupakshappa vs. C. Subash, 2015 (12) SCC 231, Devinder Singh and others vs. State of Punjab through CBI, 2016 (12) SCC 87 and Manorma Tiwari and others vs. Surendra Nath Rai, 2016 (1) SCC 594.

Union of India has reiterated the stand of Union Government as per its affidavit of January, 2002, wherein it is stated that sanction of Union of India as per provisions of Section 6 of the Act of 1983 is required.

64. Ms. Manjari Nehru Kaul, Addl. AG representing the State of Punjab has argued that State of Punjab has granted sanction in appropriate cases where it was applied and has refused to grant sanction where it was found that the act of accused-petitioners was not in discharge of their duties. She, however, affirms that for the acts done and purporting to be done in exercise of powers conferred by Sections 4 and 5 of the Act of 1983 as amended in 1989, the competent authority to award sanction, as per provisions of Section 6 of the Act of 1983 as amended in 1989, is the Central Government.

65. Learned Advocate General Mr. Atul Nanda, while supporting and endorsing the submission of learned counsel for petitioners has argued that as per spirit of provisions of Section 4 of the Act of 1983, when a police party comes under fire, it was empowered to retaliate and Section 6 of the Act of 1983 provide protection to police official as mentioned in Section 4 of the Act of 1983 from prosecution except with prior sanction of Central Government. The Court below has not looked into this aspect while deciding applications filed by petitioners. During the days of terrorism, State of Punjab has faced a grave challenge to law and order posed by militants. The police officers have taken risk to their lives to bring out the State from that grave situation. Now prosecuting for the act done by them during discharge of their duties will affect morale of police force. While referring to observations of Hon'ble Apex Court in para 40 in case of ***Devinder Singh (supra)***, he argues that opportunity was provided to

petitioners to raise the issue of grant of sanction before starting their prosecution and the trial Court was duty bound to look into all the documents including the FIR registered by the police, memos of recovery of weapons etc. prepared at the place of encounter. In support of his contention, he has relied on observations of Hon'ble Apex court in cases of ***General Officer Commanding (supra)*** and ***Surinderjit Singh Mand and another vs. State of Punjab and another, 2016 (8) SCC 722***. He has argued that the trial Court has abdicated to see if the sanction as per provisions of Section 197 Cr.P.C. and Section 6 of the Act of 1983 is required, rather brushed aside the matter by observing that this fact will be seen at the time of final decision of the case. Sanction for prosecution is an issue, which is to be looked into at the inception of trial and not at later stage. About sanction for prosecution given in some cases by State Government under Section 197 Cr.P.C., he has clarified that the same was given erroneously by the State as the sanctioning authority in this case is Central Government and sanction is required under Section 6 of the Act of 1983. While referring to observations of Hon'ble Apex Court in case of ***Devinder Singh (supra)***, he argues that even the Hon'ble Apex Court has mandated that the Court has to look into the material on record while deciding the question of sanction and in this case Court has not looked into any such material.

66. Learned Retainer counsel for CBI and learned counsel for complainant have argued that the FIR in these petitions were recorded as per direction of Hon'ble Apex Court or this Court to CBI to investigate the matter of cremation of large number of unclaimed dead bodies by Punjab Police, which in no manner could be termed as act performed as per spirit of

Section 4 of the Act of 1983 or Section 197 Cr.P.C. CBI after investigation presented the challan. Though, State of Punjab has now twisted its stand in favour of petitioners regarding sanction required under Section 6 of the Act of 1983 but earlier Punjab State had examined the matter and reached the conclusion that petitioners have committed the offence and should be prosecuted in the Court of law and accordingly allowed sanction under Section 197 (2) Cr.P.C. Thereafter, petitioners moved application for their discharge, which was dismissed by Additional Sessions Judge, Patiala with the observation that no sanction under Section 6 of the Act of 1983 was required. Petitioners filed revisions against order of learned Additional Sessions Judge, Patiala, which was dismissed by this Court with the observation that provisions of the Act of 1983 or Section 197 Cr.P.C. are not applicable to present cases. In the Criminal Appeal before the Hon'ble Apex Court, though CBI represented during the pendency of the appeal that they intend to move Central Government for sanction and also applied for the same but Hon'ble Apex Court after considering this fact observed that in the course of proceedings, if any interim order was passed on the basis of particular submission by counsel for a party, that does not amount to reflect the decision of the Court and such interim orders are of no avail to the cause espoused by appellants. It was specifically argued before Hon'ble Apex Court that sanction in these cases under Section 6 of the Act of 1983 as amended in 1989 is required from Union of India before launching prosecution but this fact after due consideration was not approved. Observations made by learned Additional Sessions Judge in orders passed while dismissing application(s) of petitioners seeking discharge or by this Court in revisions against order of learned Sessions Judge, were never set

aside by the Hon'ble Apex Court. In para 40 of the judgment passed by Hon'ble Apex Court, it has been observed in very clear terms that version of petitioners as well as prosecution will be weighed after recording of evidence. Having once failed upto Hon'ble Apex Court to get the verdict in their favour, petitioners have indulged in dilatory tactics by moving another application and this attitude of petitioners has not only resulted in delay of trial but will create hurdle in further progress of the trial as at any point of time they will move another application raising the plea that the Court can look into the material on record to reach the conclusion that sanction is required. This attitude of petitioners is not appreciable. This Court should now give direction to trial Court to proceed further in the matter and to decide the issue raised by petitioners at the time of final disposal of the case. Hon'ble Apex Court while laying down the principles and giving directions to trial Court in the case of *Devinder Singh (supra)* has discussed entire law on the point. It has not accepted any of the contentions raised by petitioners or remanded the case back to trial Court for fresh decision. The material on record has already been examined by the trial Court, then by this Court and again by Hon'ble Apex Court. Petitioners by moving one application or the other are delaying the trial of the case. Provisions of Sections 4 and 5 of the Act of 1983 are not applicable to facts of the case. It is after recording of evidence that learned trial Court can look into the fact as to whether version as put-forth by prosecution is correct or the defence version is correct and then decide the question of requirement of sanction under Section 6 of the Act of 1983 or Section 197 Cr.P.C.

67. Before proceeding further I take note of citations referred by learned counsel for petitioners and learned Advocate General, Punjab on the

issue that sanction for prosecution of petitioners is required under Section 6 of the Act of 1983. Observations in citations referred by learned counsel for petitioners and learned Advocate General, Punjab, were made keeping in view facts and circumstances of those cases. However, the same are not relevant to be discussed in detail as in this case Hon'ble Apex Court has already looked into entire law on the point and laid down guidelines in the case of **Devinder Singh (supra)**, enumerating principles for the guidance of trial Court and observed in para 39 (vii) as follows:-

“39.7 Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.”

68. The above judgment is *inter se* parties, as such, applies to petitioners and respondent with full force. The Apex Court has held that at the time of framing of charge the Court has to proceed on the basis of accusations against accused and prosecution version. This observation was further clarified in the next paras of judgment where Hon'ble Apex Court has observed that **trial Court has *prima facie* to proceed on the basis of prosecution version.** In all these petitions prosecution version specifically state that story of encounter propounded by petitioners, FIRs registered, alleged recoveries shown after encounter are false and fabricated. In the cases where victims were picked up and are missing, petitioners have no defence to put forth at this stage and provisions of Section 6 of the Act of 1983 or Section 197 Cr.P.C., without any material on record to show that their act is covered under provision of these sections, in no manner can be

read to their assistance in furthering the plea that sanction for prosecution in such cases is at all required. The relevant judgment of Hon'ble Apex Court, which call for attention of this Court while deciding these petitions is in case of ***Devinder Singh (supra)*** and observations made in other cases by Hon'ble Apex Court, which have been referred by learned counsel for petitioners and learned Advocate General, Punjab are of no help of them at this stage.

69. Hon'ble Apex Court while deciding bunch of appeals tagged with Criminal Appeal No. 190 of 2003 decided on 25.04.2016, ***Devinder Singh and others vs. State of Punjab through CBI, 2016 (12) SCC 87*** had laid down principles relating to seeking of sanction for prosecution of Government Servants as per provisions of Section 6 of the Act of 1983 as amended in 1989 or Section 197 Cr.P.C., in para 39 of judgment, (reproduced in para 53 above).

70. Hon'ble Apex court observed that question of sanction should be dealt with at the stage of taking a cognizance but his question may arise at any stage of proceedings and in some cases, it may not be possible to decide the question effectively and finally without giving opportunity to defence to adduce evidence. In such cases, question of good faith and bad faith be decided on conclusion of trial. Keeping the principles as mentioned in para 39 of the judgment in case of ***Devinder Singh (supra)***, Hon'ble Apex Court proceeded to make observation with regard to cases in hand in para 40 (as already reproduced in para 54 above).

71. It is not disputed during course of arguments that the question as to whether sanction is required for the prosecution of petitioner in all the above captioned revisions, is to be decided keeping in view principles laid

down by Hon'ble Apex Court and observations in para 40 of the judgment in case of ***Devinder Singh (supra)***, which is a judgment in personam binding on parties in these petitions.

72. Observations by Hon'ble Apex Court, while deciding the matter relating to present petitions are as follows:-

- (i). In the instant cases, the allegation as per the prosecution case it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place.
- (ii) **Considering the aforesaid principles, in case the version of the prosecution is found to be correct there is no requirement of any sanction.** However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment.
- (iii) As at this stage it cannot be said which version is correct.

The trial court has prima facie to proceed on the basis of prosecution version and can re-decide the

question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law.

(iv) The trial to proceed on the aforesaid basis.

73. Perusal of above directions of Hon'ble Apex Court shows that if the version of prosecution is found to be correct, there is no requirement of any sanction. The version of the prosecution, in all these cases, is that police has indulged in killing several persons in fake encounters, in custody by torture or by eliminating them otherwise. Hon'ble Apex Court has observed that if the version of prosecution is found to be correct, there is no requirement of any sanction. Here a very vital question, which arises for consideration, is that to adjudge the veracity of version of prosecution it has to be allowed opportunity to lead evidence and it is only after conclusion of evidence of prosecution that the Court on the basis of defence evidence or the material placed on record can come to the conclusion as to which version i.e. of prosecution or the defence is correct and then decide as to whether sanction for prosecution is required or not. Above directions are clear indication of the view taken by Hon'ble Apex Court. In view of above observations of Hon'ble Apex Court, it is too early for petitioners to raise the issue of grant of sanction before the trial Court. They could certainly wait for conclusion of prosecution evidence and then raise this issue after leading evidence in defence or by relying on other material that have come on file.

74. Learned counsel for petitioners have argued that though Hon'ble Apex Court has observed that if the version of prosecution is found to be correct, there is no requirement of any sanction but at the same time it has given opportunity to the accused to produce evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties. If any such material comes on record, trial Court is required to decide the question of grant of sanction afresh from stage to stage or even at the time of conclusion of trial i.e. at the time of judgment. Learned counsel for petitioners, while emphasizing on material on record, has referred to observations of Hon'ble Apex Court in case of **Om Prakash and others vs. State of Jharkhand through the Secretary, Department of Home, Ranchi-1 and another, 2013 (3) SCC (Cri.) 472** and has argued that FIR, memo of recoveries of different types of weapons, arms and ammunition from the persons who were killed in encounter, is sufficient evidence, which is part of record to infer that the police officers have exercised their powers as per provisions of Section 4 of the Act of 1983. He has relied on observations of Hon'ble Apex Court in paras 16 and 17 of judgment in above referred cases, to this effect, which read as follows:-

“16. This seizure memo, in our opinion, indicates that the criminals had used motor cycles and they were armed with deadly fire arms. Three of the motor cycles were found at the scene of offence. The fire arms used by the criminals were of foreign make. There is no reason to doubt the veracity of this seizure memo because it is difficult for the police to concoct such a scene and plant

such weapons.

17. *From the two FIRs, it is clear that the criminals riding on the motor cycles armed with deadly firearms had attacked the house of businessman Naredi. Naredi lodged a complaint at Vistupur Police Station. Upon receiving information, the police machinery had swung into action. Dy.S.P. Rajiv Ranjan Singh left his office along with his team to trace the criminals. They could trace the criminals. They asked the criminals to surrender. The criminals instead of surrendering fired at them. The police had to launch a counter attack to save themselves and also to nab the criminals, which was their legal duty and in this counter attack, four of the criminals received bullet injuries and succumbed to those injuries. The death of four criminals in the firing was preceded by an attack by them on businessman Naredis house and also an attack on the police personnel. There is no doubt that the criminals had set out on a mission to attack Naredis house so as to recover ransom. From the weapons found lying at the scene of occurrence, we feel that the criminals had taken to the life of crime and were not novices. The past record of the criminals support this conclusion of ours.”*

75. He has also relied on observations of Hon'ble Apex Court in case of **Suresh Kumar Bhikamchand Jain vs. Pandey Ajay Bhushan, 1998 SCC (Cri.) 1**, wherein Hon'ble Apex Court in para 19 of the judgment

has observed as follows:-

“19. After giving our careful consideration to the facts and circumstances of the case and the respective submission of the learned counsel for the parties it appears to us that the question of requirement of sanction under Section 197 Criminal Procedure Code should not be confused with the scheme of trial under the Code of Criminal Procedure and the stage at which an accused against whom the cognizance of offence has been taken by the learned Magistrate can lead evidence in support of his defence. The question for consideration is when a Magistrate on the basis of a complaint issued process for appearance of the accused on being satisfied that there is sufficient ground for proceeding and the accused appears before the Magistrate and takes the plea that the offence alleged to have been committed by him was in the discharge of his official duty and further he was not removable from his office save by or with the sanction of the Government and consequently the court has no power to take cognizance except with the previous sanction of the Government as required under sub- section (1) of Section 197 of the Code of Criminal Procedure than the Magistrate would be required to decide the plea on the materials on record then existed or the accused can produce relevant material to establish the necessary ingredients for invoking Section

197(1) of the Code? According to Mr. Sibal, the Magistrate can examine the plea only with reference to the materials available on record and at that stage accused cannot have any right to produce any evidence to support his plea. According to the learned Attorney General, if the accused is debarred from producing the relevant materials to indicate that the acts complained of were in fact committed by the accused in discharge of his official duty and he can only produce the materials when the criminal proceeding reaches the stage under sub-section (4) of Section 246 in any warrant case instituted otherwise than on police report, then the very object and purpose of the provisions of Section 197 will get frustrated and the public servants will have to face irresponsible or vexatious proceeding even in respect of acts done by him in discharge of official duty. According to the learned Attorney General, therefore, though at that stage it may not be permissible for an accused to lead any oral evidence but there cannot be any bar for him to produce necessary documents including official records for the limited purpose of consideration as to whether Section 197 can be said to be attracted and whether there exists a valid sanction.

76. I have carefully perused the judgments cited by learned counsel for petitioners. In case of ***Om Prakash (supra)***, Hon'ble Apex Court has observed in para 38 of the judgment as follows:-

“38. *It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This court has repeatedly admonished trigger happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognized as legal by our criminal justice administration system. They amount to State sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. Requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. Plea regarding sanction can be raised at the inception.*

77. While making above observation, Hon'ble Apex Court has

visualized both the situations where the police personnel indulged in liquidating the criminals and has observed that such killing must be deprecated. It has also observed that where the police officers have acted in discharge of their duties and come under attack, they are required to take drastic action against criminals to protect life and property of the people and to protect themselves against the attack. It was a case where petitioner-Kailashpati Singh had filed a complaint, levelling allegations against police officers of killing his son. On his complaint, learned Magistrate summoned the accused, who filed petitions before the Jharkhand High Court seeking quashing of criminal proceedings in the complaint on the ground that sanction required under Section 197 Cr.P.C. was not obtained before launching prosecution of police officers. The police officers have come up with versions in that case as follows:-

“4. The other version which also needs to be stated is disclosed from the FIR lodged on 1/7/2004 by one Jeevan Prasad Naredi, a dealer in scrap that on 1/7/2004 at 9.50 p.m. some miscreants came to his house riding on motor cycles. They were armed with firearms. They fired at his office situated in his house and ran away. This was done to threaten him and to force him to yield to their ransom demand. It is the case of the police personnel as disclosed in the FIR lodged by the Dy.S.P. Rajiv Ranjan Singh that, having received information about this incident, the police set out to arrest the accused. They traced them and asked them to surrender. However, instead of surrendering, they fired at the

police. The police had to retaliate to save themselves and, in that, four criminals were killed. The rest escaped. Son of the complainant was one of those who were killed.

78. Arms and ammunition had been recovered from the spot by the police regarding which seizure memo was prepared. The persons killed in encounters were also involved in number of criminal cases. Taking view of all the facts and circumstances, Hon'ble Apex Court observed that no inference can be drawn that the police action is indefensible or vindictive or that police officers were not acting in discharge of their official duties. The above observations are not applicable to facts and circumstances of the cases in hand as in these cases police version has been put to scrutiny in investigation conducted by the CBI under the order of Hon'ble Apex Court or this Court and by collecting evidence produced on record, it has been found that the FIRs, recovery memos and other documents prepared by the police regarding the alleged encounters were false and fabricated. In case of ***Om Prakash (supra)***, complainant had filed complaint not supported by any document that the police version was false.

79. In case of ***Suresh Kumar Bhikamchand Jain (supra)***, the appellant had filed complaint against respondent relating to incident of demolition of unauthorized construction, which was prevented by them. Respondents were Collector/District Magistrate, Additional Superintendent of Police, Sub Divisional Magistrate and Superintendent of Police of that area. Complaint was dismissed against Superintendent of Police on the ground of lack of sanction while remaining accused were summoned. The petition filed by them before the High Court was allowed and Hon'ble Apex

Court keeping in view these facts has observed that order of the Aurangabad Bench of Bombay High Court observing that sanction under Section 197 Cr.P.C. was required in the case, suffers from no infirmity. The facts of this case are also distinguishable from facts of present petitions, wherein genuineness of submissions of complainant have been investigated and verified by the investigating agency and the documents regarding encounters have been found to be false and fabricated.

80. Admittedly, at this stage, it cannot be said that which version, i.e. one given by prosecution or one put forth by petitioners, is correct. Even if I take a note of submission by learned counsel for petitioners that the trial Court on the basis of material on record could conclude whether sanction is required or not, I find that this submission of learned counsel for petitioners also has no merit. The prosecution has collected evidence in support of the case of complainants, who have alleged taking away of victims and their elimination or missing at later stage. The mere fact that some FIR was registered regarding encounter and recovery of weapon etc., shown to have been made from the spot where that victim was killed, which on investigation by CBI were found to be false and fabricated, is no reason for the trial Court to reach a conclusion at this stage as to whether act of petitioners was in discharge of their official duties and was protected under Section 6 of the Act of 1983 as amended in 1989.

81. Section 6 of the Act of 1983 as amended in 1989, protects persons acting under Sections 4 and 5 of the Act of 1983, which reads as follows:-

6. Protection of persons acting under sections 4 and 5 —

No suit, prosecution or other legal proceedings shall be

instituted except with the previous sanction of the Central Government against any person in respect of anything done or purporting to be done in exercise of the powers conferred by sections 4 and 5.

82. Sections 4 and 5 of the Act of 1983 as amended in 1989 read as follows:-

“4. Power to fire upon persons contravening certain orders

—Any Magistrate or Police Officer not below the rank of Sub-Inspector or Havildar in case of the Armed Branch of the Police may, if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning, as he may consider necessary, fire upon, or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area, prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.

5. Powers to destroy arms dump, fortified positions, etc.—

Any Magistrate or Police Officer not below the rank of a Sub-Inspector may, if he is of the opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made or any structure used as training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence.”

83. Learned counsel for petitioners have argued that there is material on case file like FIR of encounter and recovery memos showing weapons recovered from those killed in encounter to show that the act of petitioners was in discharge of their duties. In order to appreciate this aspect of the argument of learned counsel for petitioners, I look into applications moved by petitioners in case CRR No. 3854 of 2016 (Arjan Singh and others vs. CBI and others), wherein they raised the plea in para 8 of their application. In para 9 they have given reference that Gulshan Kumar, Jarnail Singh, Harjinder Singh and Karnail Singh were involved in some cases and recovery of weapons was effected from them from the spot of encounter, which find mentioned in FIR No. 70 of 1993 dated 22.07.1993.

84. The trial Court on the basis of plea raised by petitioners had reached the conclusion that in view of prosecution version, statements of witnesses of prosecution and other material on file, the plea raised by petitioners is not tenable. I find no reason to differ with learned trial Court on this aspect as CBI during investigation has found the FIR and recovery of weapons and such other material put-forth by petitioners in support of their contention, in case of alleged encounters, as false and fabricated. As per observations of Hon'ble Apex Court, trial Court has to proceed as per prosecution version, which at this stage do not support plea put-forth by petitioners.

85. While deciding the appeals of petitioners {in case of ***Devinder Singh (supra)***} Hon'ble Apex Court, keeping in view peculiar facts and circumstances of these cases, has not left petitioners remediless. Trial Court has also applied the same precaution and kept the question of sanction

required for prosecution of petitioners pending, to be looked into at appropriate stage. In petitions where the victims were allegedly picked up from their houses or were in police custody and have gone missing, provisions of Sections 4 & 5 of the Act of 1983 are not *per se* applicable. In such cases, if prosecution succeed in proving prosecution version, petitioners shall stand debarred from raising plea of requirement of sanction for their prosecution, as per provisions of Section 6 of Act of 1983 or even under Section 197 Cr.P.C.

86. Here learned counsel for petitioners have raised two arguments that firstly, Ministry of Home Affairs, Union of India has taken the stand that sanction for prosecution is required as per provisions of Section 6 of the Act of 1983 (as amended in 1989); and secondly, even the CBI during pendency of Criminal Appeal (SLP) before the Apex Court has represented that sanction for prosecution of petitioners is required and had even forwarded the case of some of petitioners before Union of India with a request to accord sanction and when the prosecuting agency as well as Union of India are not opposed to the plea of petitioners that sanction for prosecution is required, the Court has not to intervene and direction is required for the prosecuting agency to obtain the required sanction.

87. In the case of ***Devinder Singh (supra)***, the question before the Hon'ble Apex Court for decision was as follows:-

“2. In the appeals the question involved is whether in view of the provisions contained in section 6 of Punjab Disturbed Areas Act, 1983 (as amended in 1989) (for short the 1983 Act) the prosecution or other legal proceedings relating to Police officers can be instituted without prior sanction of the Central

Government.”

88. Issue of submission of CBI on 16.02.2006 before Hon'ble Apex Court that matter be sent to Central Government with entire record to consider the question of sanction in terms of Section 6 of the Act of 1983 (as amended in 1989), was raised during course of final arguments and was considered by Hon'ble Apex Court. It will be relevant to refer to paras 7 and 8 of the judgment in case of **Devinder Singh (supra)**, which are reproduced as follows:-

“7. This Court vide order dated 20.7.2001 stayed the further proceedings before the trial court in SLP (Crl.) No.2336/2001 - Balbir Singh & Ors. v. State of Punjab. Similar orders of interim stay were passed in other cases also. One such order was passed on 21.1.2002 in SLP (Crl.) Nos.3072-75/2001 and these matters had been tagged. On behalf of the accused appellants, order dated 16.2.2006 has been referred to in which it has been observed that the CBI had stated during the course of the arguments that the matter be sent to the Central Government with the entire record to consider the question of sanction in terms of section 6 of the 1983 Act. This Court in view of the stand taken by the CBI continued the interim stay on operation of the impugned orders and observed that the Central Government will consider the matter in terms of section 6 and in accordance with law without being prejudiced by any observation made in any of the impugned orders. Cases were ordered to be listed after three months. This Court

was informed by the Additional Solicitor General on 10.10.2006 that the Central Government has opined that the case of Balbir Singh was not a fit case for giving sanction for prosecution in terms of section 6 of the 1983 Act. So far as Harpal Singh is concerned, the Central Government was not the competent authority and with respect to another accused Bhupinderjit Singh, CBI has not submitted full report. Thereafter interim order was passed on 13.2.2007 by this Court to consider grant of sanction in the case of Gurmeet Singh. On 22.9.2010 this Court noted in the interim order that Balbir Singh in Crl. Appeal No.190/2003 had died and this Court dismissed the appeal as abated against him. Appeal with respect to other appellants was adjourned. Interim stay was granted in other connected matters on 30.7.2012 with respect to cases pending in the trial court at Patiala.

- 8. It was submitted by learned counsel appearing on behalf of accused appellant that sanction to prosecute was necessary in view of the provisions contained in section 6 of the 1983 Act as amended in 1989. Thus the prosecution could not have been launched without obtaining sanction of the Central Government. This Court by interim order had directed on submission being raised by CBI that the matter will be referred to the Central Government for sanction and in certain cases*

Central Government had granted sanction and in others it had declined. Sanction to prosecute was necessary as the act was done in discharge of official duties. As a matter of fact, false allegations of fake encounter have been made in the cases. The deceased indulged in various criminal activities. They were creating unrest and the officers have discharged their duties at the time of the incident. Thus without prior sanction to prosecute by the Central Government, they could not have been prosecuted. The prosecution deserves to be quashed.

9. *Per contra, it was submitted on behalf of the CBI and the learned counsel appearing on behalf of the complainant that in such cases of criminal activities, fake encounters, custodial death due to torture etc., sanction to prosecute is not at all required as fake encounters, torture in custody and other criminal acts complained of do not form part of their official duties. Thus, the High Court has rightly upheld the order of the trial court, in such cases the sanction to prosecute is not necessary in such cases.”*

89. Hon'ble Apex Court answered the plea raised by counsel for petitioners and counsel on behalf of CBI in para 11 of the judgment as follows:-

- “11. *It was submitted by learned counsel on behalf of the appellants that in the course of proceedings the CBI has taken a stand that it would refer the cases for sanction to*

the Central Government. This Court is bound by such stand of the CBI on the basis of which interim order was passed and the petition may be disposed of in terms of the interim order that the Central Government may decide the question of sanction. We are not at all impressed by the submission made by learned counsel appearing on behalf of the appellants. In the interim order this Court has never decided the legality or the correctness of the impugned orders passed by the High Court. In the course of proceedings interim order was passed on the basis of particular submission made by counsel for the CBI but this Court has never decided the question whether sanction at this stage is necessary or not. Hence the interim orders are of no avail to the cause espoused by the appellants.”

90. It is no more *res integra* that it is no part of an official duty to commit an offence, and never can be. In other words, there must be a reasonable connection between the act and discharge of official duty. The matter in question as per prosecution case pertains to death caused in fake encounters or by torture in police custody and some of the victims are still missing. Section 6 of the Act of 1983 (as amended in 1989) provides protection in respect of anything done or purported to be done in exercise of powers conferred by Sections 4 and 5 of the Act of 1983 (as amended in 1989). Section 4 of the Act of 1983 (as amended in 1989) gives ample power to any Magistrate or Police Officer not below the rank of Sub-Inspector or Havildar in case of the Armed Branch of the Police to fire upon

and otherwise use force and even to the causing of death against a person who is acting in contravention of any law and order, if such officer is of the opinion that it is necessary to do so for the maintenance of public order after giving such due warning. Section 5 of the Act of 1983 (as amended in 1989) authorizes the officer mentioned therein to destroy any arms dump or fortified positions etc.

91. Hon'ble Apex court in the concluding para of the judgment in case of ***Devinder Singh (supra)*** has observed that if the prosecution version is found to be correct, there is no requirement of any sanction. As per observation of Hon'ble Apex Court, it will be pre-mature to discard the prosecution version before giving it opportunity to produce evidence to prove its case. In the light of evidence of prosecution, the evidence produced in defence and the other material on file, trial Court may form a view as to whether the act of petitioners was in discharge of their duties and is protected under Section 6 of the Act of 1983 (as amended in 1989). Hon'ble Apex Court while dealing with question pertaining to cases in hand made reference to observations in para 15 and 16 in case of **P.K. Pradhan vs. State of Sikkim represented by the Central Bureau of Investigation, 2001 (3) RCR (Criminal) 835**, which reads as follows:-

“15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking

protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon

conclusion of the trial.

16. *In the present case, the accused is claiming that in awarding contract in his capacity as Secretary, Department of Rural Development, Government of Sikkim, he did not abuse his position as a public servant and works were awarded in favour of the contractor at a rate permissible under law and not low rates. These facts are required to be established which can be done at the trial. Therefore, it is not possible to grant any relief to the appellant at this stage. However, we may observe that during the course of trial, the court below shall examine this question afresh and deal with the same in the main judgment in the light of the law laid down in this case without being prejudiced by any observation in the impugned orders.”*

92. It has been repeatedly observed by Hon'ble Apex Court that the protection under Section 197 Cr.P.C. is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The official duty implies that the act or omission must have been done by the public servant within the scope and range of his official duty for seeking protection of Section 197 Cr.P.C. or any other statute, which require prior sanction before prosecution. Same proposition of law is applicable for sanction as per spirit of Section 6 of the Act of 1983 and the petitioners are required to make out on file that their act in each case is covered by the provisions of Sections 4 & 5 of the Act of 1983 and prosecution version is

incorrect or false. At the start of trial, the Court as per observations of Hon'ble Apex Court has *prima facie* to proceed on the basis of prosecution version.

93. In view of my above discussion, I find no legal or factual infirmity in impugned orders declining applications of their discharge filed by petitioner(s). However, learned trial Court has observed that at this stage, there is nothing on file to suggest that act of accused was in the discharge of their official duties or provisions of Section 6 of the Act of 1983 are attracted. As per directions of Hon'ble Apex Court in the case of *Devinder Singh (supra)*, the trial Court has *prima facie* to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to notice of the Court that there was reasonable nexus of the incident with discharge of official duty, the Court shall re-examine the question of sanction and take decision in accordance with law. The above directions nowhere means that the trial Court has to wait till the final decision of the trial. In the event of any such evidence/material coming to its notice even at prior stage, the same can be looked into to re-examine the question of sanction. The observation of trial Court in impugned order(s) that it will look into the question of sanction at the final stage stands modified in the above terms. Revision petitions have no merits, as such, dismissed with above observations. However, applications if any, filed by petitioners under Section 6 of the Act of 1983 or Section 197 Cr.P.C. can be kept pending by trial Court by passing a brief order if it is of the opinion that the evidence on file do not suggest nexus of the incident with the discharge of official duties of petitioners or calling for sanction as per

provisions of Section 6 of the Act of 1983 and decide the same at appropriate stage.

94. Before parting it will be relevant to take a note of the fact that after filing of charge-sheet in these cases a long period has elapsed and the prosecution evidence is yet to start. It is neither in the interest of prosecution nor petitioners that sword of prosecution keep on hanging over their heads for such a long period. The trial Court is directed to proceed further in the matter expeditiously and frame a schedule for recording evidence of prosecution at the earliest and then to allow petitioners to lead defence evidence, if required, in support of their plea.

December 20, 2017

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No