

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.134 OF 2017

Minna Pirhonen

Through her Representative

Rajdeep Lahiri

having her address at

University at Helsinki

Metsomaentie 5 H 25,

Finland - 01260

Vantaa

.....

Petitioner

Versus

1. The State of Goa,

Through the Canacona Police Station,

Edapally Panvel Highway (NH 17)

Mastimol, Canacona,

Goa - 403 702,

2. The learned Public Prosecutor

High Court,

Panaji Goa.

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Respondents

Ms. Shikha Sethia, Advocate for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the Respondents.

***Coram : N. M. Jamdar &
Prithviraj K. Chavan, JJ.***

Reserved on : 22 June 2018

Pronounced on: 6 July 2018

Judgment (Per N. M. Jamdar, J)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. Felix Dahl, a twenty-two-year-old Finish national, was found dead with multiple skull fractures and brain haemorrhage on an interior road in Canacona, South Goa. The Canacona police concluded that Felix fell by himself and died an accidental death. The Petitioner, Felix's mother, dissatisfied with this conclusion and the failure of the Goa Police to investigate the death as a homicide, has filed this petition seeking transfer of the investigation to the Central Bureau of Investigation.

3. The Petitioner, Minna Pirhonen, is a citizen of Finland. She is a University Lecturer at the Plant Pathology Laboratory of the University of Helsinki. Felix Dahl, her son, was a third-year student of Economics. He came to India in the year 2014 as a tourist. In

October 2014, he reached Canacona. Canacona is a small city in the south of Goa. It is a popular tourist destination, especially amongst the tourists from the western countries. Canacona has many tourist attractions, the main one is the scenic Palolem beach.

4. On 28 January 2015 at around 6.30 a.m., the Canacona Police Station received a phone call from one Filomena Pereira of Patnem. Filomena informed them that an unknown young male foreigner is lying dead on the road near Sea View Hotel, Patnem. The police reached the spot and found the foreigner lying dead with injuries on his person. They noticed that dried blood covered his face and blood soaked the ground below the head. Nobody from the locality recognized the body. The police conducted the scene-cum-inquest Panchanama, drew a sketch and took photographs of the scene. The dead body was shifted to Hospicio Hospital at Margao. One Lenslood Fernandes, a resident of Agonda and Malaurie Payge Murden, a citizen of United States, established the identity as of Felix Dahl. The intimation regarding the death was given to FRRO branch, Panaji for onward submission to the Embassy of Finland.

5. The police recorded the statement of Lenslood Fernandes. He stated that he knew Felix. Lenslood informed that on 27 January

2015 till late hours he was with Felix having dinner at Mini Goa Restaurant at Patnem. Later Felix disappeared from the Restaurant. Lenslood stated that he made efforts to search for Felix at Patnem and Palolem and in the early morning hours, he went back to Agonda, since Felix could not be traced. Lenslood stated that next morning he learnt from the owner of Mini Goa Restaurant, Raju Ulhas Pagui, that one foreigner was lying dead on the road. Police recorded the statement of Malaurie Payge Murden. She stated that on 27 January in the morning Felix had come to her place when she noticed some bleeding injuries on his person and he was disturbed. The police also recorded the statement of Ms. Joanna Lester George. The police recorded a statement of Dr. Jose, who stated that on 27 January 2015, a local person had come with a male foreigner. The doctor stated that the foreigner had simple injuries and he gave him a tetanus injunction. Dr. Jose stated that Felix was depressed and was answering the questions in only monosyllables. The statement of Andrik Fernandes, owner of Mario Paulo Restaurant was recorded. He stated that on 2 January 2015, Felix had stayed along with his father Dahl Tommy Gunnar Sand and brother Dahl Alex Johannes at his guesthouse. After staying for eight days, Felix's father and brother had gone back to their country. He stated that Felix was not behaving normally.

6. On 29 January 2015, the body was referred for post-mortem at Hospicio Hospital at Margao. The Autopsy Report noted eleven injuries. Injuries on the vital parts were: lacerated wound with irregular edged margin and blood clot within flesh. On the scalp, back 2.0 cm right of midline; 13.0 cm from right ear irregular shaped 1.5 x 1.0 cm x bone deep; on scalp, back 1.0 x 0.5 cm, 1.0 cm below and left of external injury no.2; on scalp back 1.5 x 1.0 cm bone deep 2.5 cm below external injury no.1; on scalp back left side of midline, irregular shaped 2.00 x 1.0 cm x bone deep 2.0 cm left of external injury no.3; on scalp left 1.0 cm above and to the left of external injury no.3 0.5 x 0.5 cm x bone deep. The Autopsy Report stated that injuries of multiple abrasions as caused 'by hard blunt object'. The cause of death was stated as a head injury in the form of fractures of skull bones, damage to the brain and intracranial haemorrhage. Viscera was preserved for analysis.

7. The statements of Filomena and her son Kriny was recorded. Filomena stated that in early hours of 28 January at 5.30 a.m., she was woken up by the barking of her dog. When she came out, she noticed a foreigner was lying on the roadside across the house. She did not notice anything unusual in the night like fighting or quarreling. The police recorded the statement of PSI Anil Gaonkar

of Canacona Police Station and PC driver Genu Velip, who stated that on the earlier day on 26 January night and 27 January early morning, they saw a foreigner walking without shirt and footwear. They stated that they gave him a lift and the foreigner informed them that a dog tried to bite him and when he chased the dog away, two persons came and assaulted him. They stated that the foreigner requested them to drop him at Agonda as he did not have money to hire a rickshaw. The statement of Satpal Singh, owner of Ocean View Bar was recorded who stated that Felix's behaviour was not normal and he used to roam around without a shirt. Statement of the Manager of Mini Goa Restaurant Arun Dhuri was recorded. He stated that on 27 January night Lenslood came with a foreigner, had some drinks and around 00.30 hours of 28 January Lenslood told him that the foreigner had left without informing him. The police recorded statements of the some other witnesses from the locality.

8. On 4 February 2015, the body was handed over to the representative of the family of Felix. The police recorded statements of some of the other foreigners staying nearby area who had interaction with Felix in past. They could not state what had happened to Felix on the night of 27 January 2015 - 28 January 2015. One of them informed that Felix was athletic and sometimes used do cartwheeling

and acrobatics for fun. On 28 July 2015, the police had collected the certificate of final cause of death which stated that there were head injuries in the form of fractures of skull bones, damage to the brain and intracranial haemorrhage. The police authorities concluded that Felix was behaving abnormally and while he was doing, to use their words, "*acrobatics like static jumping and cartwheels on the rocks at Agonda fell by unbalancing and accidental death.*" The statement was submitted to the Sub Divisional Magistrate. The police did not investigate the angle of homicide even though none of the witnesses actually saw the incident or categorically ruled out homicide.

9. The Petitioner received the body in Finland. She got an autopsy done and obtained expert an opinion from Dr. Edward N. Willey. Dr. Willey opined that the multiplicity of injuries and depressed fractures suggest a fatal assault and not a simple fall from standing height on the road or even a hard surface. The Petitioner being a doctor in biological sciences, could understand the nature of the injuries and their implications. The Petitioner also came to the circumstances in which body was found. The Petitioner was convinced that such multiple skull fractures could not be a result of a simple fall on the roadside stones and injuries were most likely due to an assault. The Petitioner sent detailed e-mails to the Superintendent of Police of

Goa, Inspector General of Police of Goa, the Chief Minister, Director General Police of Goa. She made a serious grievance that Felix's skull was fractured and such injuries cannot be by falling on the stones by the road. She pointed that such injuries are not possible unless hit by force to result in death. The Petitioner stated that Felix was most likely to have been murdered and that it appears that the local police are trying to cover up a crime and pleaded with the superior authorities to carry out a proper investigation in the killing of her son. She also indicated her suspicions behind the death.

10. The complaints of the Petitioner were not taken any further by the Authorities. An Advocate in Goa made an application under Right to Information Act on 9 September 2015 to give names of foreign tourists reported dead in Goa from 2005 till that date. Felix was listed at Sr. No.36 with a remark “*Natural death*”. Distressed by this conclusion, the Petitioner engaged services of advocates in India to pursue the matter in the Court of law. The Petitioner, through her representatives again made complaints to the Inspector of General of Police Goa against the Canacona Police Authorities for not registering an FIR and that no proper investigation was being conducted in the suspicious death of Felix. It was again pointed out that, looking at the overall circumstances, it could not be a simple case of accidental fall,

and a serious grievance was made regarding the refusal to investigate further.

11. Since none of the representations, even to the highest authorities, had any effect, the Petitioner filed a Criminal Application No.19 of 2016 in the Court of Judicial Magistrate, Canacona on 5 May 2016 under Section 156 of the Code of Criminal Procedure 1973. The Petitioner prayed to direct the Canacona Police Station to investigate and to register an FIR. A detailed reply was filed by the Superintendent of Police, South, Margao, opposing the application. The police reiterated that Felix might have had an accidental fall on the edge of the tar road between 1.30 a.m. to 5.30 a.m. on 28 January 2015 and he remained unattended till morning and succumbed to the injuries. It was stated that no circumstances were revealed in the investigation to indicate homicide. Canacona police argued that Felix used to do acrobatics like static jumping and cartwheeling on rocks at Agonda and he fell by missing his balance. It was also argued that there is no complaint filed whereby the police could have taken cognizance of the allegation of murder. It was argued that a complaint disclosing cognizable offence is mandatory. As to the e-mails sent by the Petitioner to the Director General of Police, Inspector General of Police and Superintendent of Police, it was argued that the

information should have been given to the Officer in charge of the police station at Canacona.

12. The learned Magistrate rejected the contention of police stating that one cannot ignore the fact that the Petitioner is a resident of Finland and she had made requests to the Authorities to take over the investigation and had demanded that it was a case of homicide. The learned Magistrate held that the e-mails and legal notices sent constituted enough material for the police authorities to proceed and it was not a justifiable stand that the Petitioner did not come to Canacona Police Station to lodge a report to refuse to investigate. The learned Magistrate observed that the FIR could have been filed on the basis of the statement of Filomena Pereira, who was the first informant and her statement did not disclose that Felix committed suicide or died a natural death. The learned Magistrate further observed that the conclusion that Felix simply fell on some stones near the road and sustained so many injuries does not appear to be believable. The Magistrate also referred to the report of Dr. Willey who conducted the second autopsy of Felix and had opined that could be a homicidal attack. The learned Magistrate observed that it is not known on what basis the police concluded that it was a natural death when there was the statement of Malaurie Murden that Felix used to tell her that

somebody wants to kill him and somebody is following him. The learned Magistrate by order dated 5 October 2016 directed the Police Inspector, Canacona Police Station to file an FIR under Section 302 of IPC and an investigation through a different officer.

13. Pursuant to the order of the learned Magistrate an FIR No. 80/2016 was registered on 3 November 2016 that is, one year and ten months after the incident. Since there was hardly any progress, the Petitioner made an application on 21 March 2017 seeking the updated status of the FIR. The Police Inspector of Canacona, in pursuance to the request made for information, informed the Judicial Magistrate that the statements of various witnesses were recorded and many witnesses are not traced and there was no clue in the detection of crime. It was stated that since the Police Inspector was busy with the investigation in respect of C. No.33 of 2017, he could not focus full time on the present investigation. Query was thus replied that the investigation is in progress and charge sheet has not yet been filed. The Petitioner sent further representations and again had to apply under Right to Information Act, but she was told that the investigation was under progress. The Petitioner again wrote to the Superior officers. In the meanwhile, various newspapers, national and international, gave extensive coverage to the 'mystery' surrounding

Felix's death. Media gave wide coverage to factum of many deaths of tourist in Goa in recent years including that of Felix.

14. On 25 July 2017, noticing that there was no headway even after the order of the Magistrate nor any genuine attempts were being made, the Petitioner having been convinced that fair and impartial prosecution at the hands of local police is not possible, has filed the present petition seeking transfer of investigation to Central Bureau of Investigation as an outside and more efficient investigating agency.

15. On 14 December 2017, the Division Bench (*Bhadang & Sardesai, JJ*) recorded the statement of the learned Public Prosecutor that the investigation is in progress. The Petitioner supplied some extracts from Facebook. The Petitioner had also indicated her suspicion, and clues to what according to her could be the cause of the death of Felix. On 14 December 2017, the statement of the learned Public Prosecutor that the case was being investigated was recorded and the matter was adjourned. On 5 April 2018, the learned Public Prosecutor handed over the copy of the final report. He stated that the police had filed a closure report in the form of 'A Summary' as no material to proceed further was found. It was contended that now if

the Petitioner has any grievance, the Petitioner could approach the Magistrate where the report would be filed under Section 173 of Code of the Criminal Procedure. The Petitioner contended that the prayer of the Petitioner is for transfer of investigation, for which the present petition would have to be heard. The petition was accordingly taken up for final disposal. The record of the investigation was produced, and compilations were filed.

16. We have heard Ms. Shikha Sethia, learned counsel for the Petitioner and Mr. S. R. Rivankar, learned Public Prosecutor for the Respondents. We have perused the records in detail.

17. The case of the Petitioner in brief is as follows: The Petitioner, lecturer in Helsinki, was not in India when the incident had occurred. There are no eyewitnesses to the said incident. The Petitioner who is a doctor in biological science had seen the autopsy report. The body of Felix was received in Finland, and the Petitioner carried out the second autopsy in Finland. After Felix's death and receiving the body and getting an examination done and knowing the circumstances, the Petitioner was not convinced that such injuries could be by a mere fall. The Petitioner suspected foul play. The police authorities had not considered the hypothesis of homicide right from

the inception. The Petitioner had some theories as to what could have happened to Felix which led to his death. From April 2015 onwards, the Petitioner addressed series of communications to the State functionaries. Petitioner wrote to the Director General of Police, Inspector General of Police, Superintendent of Police and the Chief Minister Goa, indicating her suspicion as to what could have happened. A gist of these emails, in Petitioner's words is as follows: "Felix was found dead on a gravel road in Patnem, Goa, January 28th this year with a trauma to the back of his head. The autopsy that was done in India and a second autopsy done in Finland showed that his skull bone had been fractured. The local police in Goa concluded that he had fallen from his feet and hit his head. His death was explained as an accident. The autopsy done by Finish doctor found it very unlikely that the cause of death would have been falling on a flat gravel road, but instead added that more force, like hitting him on the head with a blunt object, would have been needed to cause his injuries and death. He was most likely murdered. Felix had been traveling together with two men, Ziaan Mohd. S/o Muktaruddin from Jaipur, most likely a scammer, Sun Awiskar (real name Andre Nguyen) from Canada, Felix had used lot of money while traveling with them, and had invested some money in an apartment in Jaipur, which was later sold with profit. He told to his father that he will ask his share of the profit,

and most likely that was the reason why he was murdered. Lenslood Fernandes may have been paid to bring Felix to Patnem, where Ziaan Mohd. S/o Muktaruddin and Sun Awiskar stayed in a guest house, to be murdered the night of 27-28 January. Lenslood Fernandes claims that Felix escaped from him and he has no knowledge of what happened to him after that. However, after the killing, Lenslood Fernandes returned to Agonda where both he and Felix lived, and the very same night took all Felix's belongings, including his computer, into his possession. It seems that at this point he already knew that Felix was dead. Early in the morning Lenslood went to identify Felix and according to police, he was also helping during the autopsy. He was the last person to see Felix alive and most likely Felix was murdered." The Petitioner thus raised various questions regarding the credibility of Lenslood and how he was helping the police in autopsy proceedings. She requested the authorities to carry out a detailed investigation. The Petitioner also wrote to the Chief Minister requesting the Chief Minister that there are many unexplained deaths of the tourists in Goa like the present one and implored the Chief Minister to look into the issue. According to the Petitioner by the time learned Magistrate passed the order, precious time was lost and even after the order, a perfunctory investigation is being done. The Petitioner having been convinced that there will be no fair and

impartial investigation in the death of her son by the local police has approached this Court by this writ petition seeking transfer of the investigation to the Central Bureau of Investigation, the CBI being an outside and more efficient Investigating Agency.

18. Before we consider the merits of the request, an outline of the legal position in respect of powers and duties of the Constitutional Courts to direct the investigation to be transferred to the CBI and a summary of the case law on the subject is necessary.

19. In the case of *State of West Bengal and others V/s Committee for Protection of Democratic Rights & Ors*¹ an issue was referred to the opinion of the Constitution Bench as to whether in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court could direct the CBI established under Delhi Special Police Establishment Act, 1946 to investigate into a cognizable offence alleged to have taken place within the territorial jurisdiction of the State, without the consent of the State Government. The Constitution Bench laid down the following legal position. In exercise of its jurisdiction under Article 226 of the Constitution of India has power to direct the CBI to investigate a cognizable offence alleged to have

¹ (2010) 3 SCC 571

been committed within the territory of a State without the consent of that State and such direction will not entrench upon the federal structure of the Constitution. The direction to transfer the investigation to the CBI also does not violate the doctrine of separation of power. The Superior Courts are the protectors of civil liberties and have not only the power and jurisdiction but also an obligation to protect the fundamental rights, more particularly those guaranteed under Article 21 of the Constitution. There are however certain self-imposed limitations on the exercise of these Constitutional powers, but no inflexible guidelines can be laid down to decide whether to transfer the case or not. The power of transfer should not be exercised as a matter of routine or merely because a party has leveled some allegations against the local police. The power to transfer the investigation can be used when it becomes necessary to provide credibility and instil confidence in the investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

20. The contour of the jurisdiction of the High Court to transfer the investigation to the CBI came up for consideration of the bench of three Judge in the case of *Mithilesh Kumar Singh Vs State of*

*Rajasthan and others*². It was a case where a young college student had fallen from the fourth floor of a hostel where she was staying with her sister. Her father had called for a fair and proper investigation as to whether there was a case of ragging by the seniors as alleged by the father or she had committed suicide. The father had invoked the jurisdiction of Apex Court under Article 32 of the Constitution of India. Allowing the petition, the Court held that the decision whether a transfer should or should not be ordered depends on the satisfaction of the Court that the facts and circumstances of a given case require such an order. No hard-and-fast rule has been or can be prescribed. Though transfer is not ordered just because a party seeks to lead the Investigating Agency to a given conclusion, the sensibility of the victims of the crime or their next of kin, is not wholly irrelevant. Further the transfer of investigation to an outside agency does not necessarily mean that the transferee agency will implicate anyone in the commission of the crime. The Apex Court took note of the fact that local influences, pressures and pulls are commonplace when State Police investigate matters of some significance. It was observed that unless the Court sees any design behind the prayer for transfer, the same must be seen only an attempt to ensure that the truth is discovered and the transfer is the perceived on the independence of the

2 (2015) 9 SCC 795

transferee more than any other consideration. The Court underscored a basic proposition that the Court has rarely, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion. It is not necessary for the person seeking a transfer to make out a cast-iron case of abuse or neglect on the part of the State Police, before ordering a transfer. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case.

21. The aspect of transfer to CBI was elaborately dealt with by the Apex Court in two decisions rendered in the year 2016. The first being *Pooja Pal Vs Union of India and others*³ and second in *Dharam Pal Vs State of Haryana and others*⁴. Both these decisions reiterated a duty on the Superior Court to ensure complete justice. The decision took a review of the earlier law on the subject.

22. The gist of the legal position expounded in the decision of *Pooja Pal* and *Dharam Pal*, which will serve as a guideline in the present case, is as follows. Crimes affect the entire society and thus the interest of the society in the investigation is not to be entirely ignored. The society at large, the victims or their family members and

³ (2016) 3 SCC 135

⁴ (2016) 4 SCC 160

relatives have a right to be dealt with fairly in a criminal trial. Denial of fair investigation thereof is as much injustice as to the victim and the society as to the accused. A victim cannot be treated as an alien or a total stranger in the criminal trial. With the passage of time, there is a greater emphasis on victimology, and the crime has to be viewed from the perspective of the criminal as well as the victim when judged in the social context. The justice system will acquire credibility only when the people will be convinced that justice is based on the foundation of truth. The Courts are meant for imparting justice, and if a negligent or biased investigation is not effectively rectified, the faith and confidence of the people in the law enforcing agency and in the institution for the administration of justice would be shaken. The power vested in the Superior Court to transfer the investigation has to be invoked sparingly, cautiously. But when it becomes necessary to provide credibility and to instil confidence in the investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice. The Superior Courts can exercise the power. In a given case, even if charge-sheet is filed, it is open for the High Court to direct investigation of the case to be handed over to CBI or to any other agency or to direct investigation *de novo* in order to do complete justice, in the facts of the case. In a given case the investigation could

be transferred even after considering time period has elapsed. The State has a duty to safeguard human rights by providing for fair and impartial investigation. Grave responsibility lies upon the investigating agency, not to conduct an investigation in a manner *prima facie* indicative of a biased mind and every effort should be made to bring the guilty to law. A fair investigation is a part of the constitutional rights guaranteed under the Constitution of India and the investigating agency cannot be permitted to investigate in a tainted or biased manner. Fair trial includes a fair investigation. Any criminal offence is one against the society. The State is a guardian of human rights and protector of law. The concept of "fair and proper investigation" means that investigation must be unbiased, honest, just and in accordance with law. The primary purpose of an investigation is to bring out the truth by conducting a fair and proper investigation, in accordance with law and to ensure that the guilty are punished. It is necessary to ensure a fair and proper investigation and to prevent misdirecting or hijacking of the investigation by outside influences. Where non-interference of the court would result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation. Paramount consideration for directing the transfer of investigation is the advancement of the cause of justice and to instil confidence in the

mind of the victims as well as the public. If the investigation is neither effective nor purposeful or fair, it would be the duty of the courts, if considered necessary, to order further investigation or reinvestigation to prevent the miscarriage of justice.

23. In the case of *Anandibai Pawanraje V/s The Inspector & Others*⁵, the Division Bench of Bombay High Court dealt with the prayer for transfer of investigation to CBI from a widow of the deceased that her husband while proceeding from Mumbai to Pune, his car intercepted and both he and his driver were shot dead in broad daylight. FIR was registered against unknown persons under Section 302 of the Indian Penal Code. The widow of the deceased alleged political rivalry and involvement of a Minister of the State. The Division Bench transferred the investigation to CBI, however, did not conclude finally on the actual influence placed on the investigation. The Court took note of the perception. The Division Bench held that no steps were taken to rule out an alternate possibility in respect of circumstances which led to the death. The Division Bench found that the investigation by the State police was without appreciation of the need to get to the truth and theory of murder having committed by a particular person was ignored and no efforts were made in the

5 Criminal Writ Petition No.81 of 2008 dated 23 October 2008

investigation of that theory. Non considering of a possible hypothesis without reason was thus held to be a parameter indicating bias.

24. We now turn to the case in hand. The learned Public Prosecutor raised a preliminary objection that once the police had submitted the closure report, this Court should not direct the transfer of investigation and the Petitioner must approach the Magistrate who has a power for further investigation. We are not inclined to treat this objection as an impediment to ascertain the factual matrix and to decide whether investigation from outside and a more competent agency is required in the interest of justice. The law is, that in a given case transfer of investigation to CBI can be directed even after the charge sheet is filed. Transfer can be directed even after a considerable passage of time if the interest of justice so requires. The order to transfer investigation to CBI cannot be passed by the Magistrate. Therefore we will have to ascertain whether there is any failure of justice and if so, to take corrective measures.

25. At the outset, we would comment on few discordant notes in the argument on behalf of the Respondents. First was on the role and status of the Petitioner. The Petitioner was almost treated as an intermeddler. The Petitioner had to apply under the Right to

Information Act to get some basic documents and information. It was indicated that the Petitioner could not dictate the manner in which the investigation must be carried out. It was contended that the Petitioner has no business to send emails to one of the persons she suspected and though certain documents have been supplied to the Petitioner, they cannot be demanded as a right. The Petitioner cannot be treated as alien to the investigation. The Petitioner is the mother of the deceased. Her son traveled to another country and met his death there. The Petitioner refuses to believe that her young son would die by merely falling on the road. She feels that her son was a victim of a homicide. She has been writing to the Director General of Police, Inspector General of Police, Superintendent of Police and even to the Chief Minister. Her communications show anguish and despair. Her reactions out of extreme agony and frustration should be understood with sensitivity and sympathized. The police will do well in keeping in minds the words of the Supreme Court in the case of *Dharam Pal*.

“2. Cry for fair trial by the accused as well as by the victim sometimes remains in the singular and individualistic realm, may be due to the perception gatherable from the facts that there is an attempt to contest on the plinth of fairness being provoked by some kind of vengeance or singularity of “affected purpose”; but, irrefutably a pronounced and pregnant one, there are occasions when the individual cry is not guided by any kind of revengeful attitude or anger or

venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge of conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as perceived by him, is nothing but an apology for the same and mirrors before him the world of disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated.”

The second was the role of Felix. Though it is open to the police to point out the mental state of Felix or his financial condition, Felix is not on trial. Felix is the victim and not the accused. Even otherwise there is nothing adverse pointed out against Felix. It was also contended that Dr. Willey had given a biased report. Why he should do so is not substantiated. Lastly, the generalised comments during the arguments about the conduct of foreigners in Goa are also of no relevance. Every crime must be investigated in a fair and impartial manner. That is the work and duty cast on the police.

26. The question that arises is whether the investigation in

this case is being conducted in a fair, impartial and competent manner or that there are indications to the contrary, because of which the investigation has to be handed over to a competent outside agency. To be more specific, whether considering the totality of the circumstances, a transfer would advance the cause of justice and whether the refusal to look into the issue would be a failure to exercise the duty cast upon the Constitutional Courts to uphold the Rule of Law.

27. First, we will deal with the issue as to whether the circumstances indicated that homicide was likely and was there are any justifiable reasons not to investigate that angle. The scene-cum-inquest Panchanama is part of the record. It reads thus:

“Scene cum Inquest Panchanama

Panchas 1:- Shri Dayanand s/o Gopi Komarpant, age 48 yrs, occ- Driver, r/o. H. No.209 Colomb Canacona Goa.

2:- Shri Venkatesh s/o Manuswami Vodar, age-50 yrs, Occ-Business, r/o New Waddem Vasco, presently running business at Patnem Canacona Goa.

We the above named panchas have been called by PSI Prashal Dessai of Canacona P. S. and requested to act as panch witnesses in drawing scene cum inquest panchanama concerned in Canacona P.S. U.D. No.08/15 u/s 174 Cr.P.C. PSI Prashal Dessai briefed the fact and purpose of drawing this Panchanama accordingly we agreed, remained present and what we see and observed as under.

Here at near h. no.24 Patnem Canacona we are present along with PSI Prashal Dessai and staff. PSI Prashal Dessai introduced us one Smt. Filomeno Pereira r/o h. no. 24 Patnem, Canacona and informed that she is the informant in this case. We are present on narrow internal tar road in front the house of Smt. Filomeno Pereira. The said internal tar road is ends near the residence of Dr. Marian Currehia. The width of the tar road infront the house of Filomeno Pereira is about 2.50 mtr., having cemented compound wall border of Filomeno on the right hand side and open place on the left hand side of the road, while one faces towards Dr. Marian residence. The left side border of the said tar road infront of Filomeno house is of stones with irregular border. In the open space infront of Filomeno house we see some construction debris dumped at the distance of above 2 mts where the body is lying. About 70 mts from main Patnem, road we noticed a body of Foreign National lying dead by the side of the road, opposite to the H. no.24 belonging to Mrs. Filomeno Pereira. One black colour Activa bearing no.Ga-08-C-1545 covered with blue colour tarpolin is seen stationed towards the left side of the road and dead body is seen in between the road and stationed active scooter. The road near the dead body is seen about 6 inches high above the ground level. The said dead body is seen lying towards the left side of the road, while one proceeding to Dr. Marian residence. Deceased is seen wearing grey colour long pant and upper portion is seen open. Face is seen smeared with blood and blood is flowing on the ground, mud is sop with blood below the head. Bruises are seen all over the back, both hand fingers are seen closed in fist condition many liner superficial scratch injuries are seen on posterial part of right

hand swelling noticed over the right wrist base of the thumb and palm is seen turned bluish. Some reddish colour medicine is seen applied on some bruises.

In order to facilitate the inquest panchanama the dead body is observed into three different parts.

Head to neck:- *Deceased is seen having brownish colour long hair. Both eyes are seen partly opened. Mouth is seen closed. Blood stains are seen all over the face. On minute checking five cut bleeding injuries with irregular shapes are noticed on the back side center head of the deceased at about the distance of 4 inches above the neck. The distance between each injuries is about 1 to 2 inches. No any other external visible injuries are seen over this part of the dead body.*

Neck to Waist :- *No any clothes are seen over this part of the dead body. Both hands are folded in elbow. Bruises over lateral about 4 X 4 inches above three inches below the right nipple. One horizontal liner superficial bruise below the chest and small abrasion patches noticed on the right lateral side of abdomen. Red colour medicine which is generally used in the hospital for external injuries is seen applied to all the superficial injuries sustained by the deceased. Some swelling with bruises is seen on the right elbow and lateral side of the left forearm. Many liner superficial scratch injuries are seen on posterial part of the right hand. Right wrist base of the thumb and palm and back of palm wrist is seen swollen and palm is seen turn bluish. No any other visible external injuries are seen on this part of the dead body.*

3) **Waist to toes:-** Deceased is seen wearing gray colour long pant having trademark on back side waist portion as "MTWTF 35 WEEK DAY". Upon checking pant pocket one 50 rupees Indian currency note is found in left side pant pocket. Both legs are seen bend in knees. Swelling is seen on left foot with minor injuries on toe. Bruises are seen near both legs fingers. Small fresh bleeding injury is seen on toe of the right leg. No any other visible external injuries are seen over this part of the dead body.

Checked private part seen intact from outside.

Body turned towards back and some bruises are seen all over the back. No any other visible external injuries are seen over this part of body.

The 50 rupees note is removed and put in auto press polythene bag. A paper slip is prepared by writing the details and signed by us and by PSI Prashal Dessai. The said slip is put in said auto press polythene bag and sealed with Canacona P.S. Seal and same is marked as exhibit "A".

The said gray colour long pant is removed by covering the dead body with bedsheet and same is put in pista colour thread line envelope and sealed with Canacona P.S. seal by writing the relevant details on it, signed by we panchas and PSI Prashal Dessai. The same is attached under panchanama and marked as exhibit "B".

The control sample of mud near the dead body is put in auto press polythene bag and thereafter closed the auto press and put in khaki colour envelope and sealed with Canacona P.S. seal by writing the content on it, signed by we panchas and by PSI Prashal Dessai. The same is

attached under the panchanama and marked as exhibit "C".

Further, the mud mixed with blood from near the dead body is removed and put in auto press polythene bag, closed the auto press and inserted in khaki colour envelope and sealed with Canacona PS seal by writing the content on it signed by we panchas and PSI Prashal Dessai and same is attached under panchanama and marked as exhibit "D".

Photographs of the scene are clicked in different angles by PSI Prashal Dessai and PC 6507.

Panchanama commenced at 07.00 hrs and concluded at 09.00 hrs.

Panchanama written in English, read over to us, explained to us in our understanding language and found correctly recorded as per our say and observation.

*Before me,
Sd/-
(Prashal P. N. Dessai)
PSI, Canacona PS*

*Panchas : 1) Sd/-
2) Sd/-*

(emphasis supplied)

The Autopsy Report stated the opinion as cause of death as "*head injury in the form of fractures of skull bone, damage to brain and intracranial haemorrhage*".

28. A healthy young foreign national was found on a small

tarred road in the middle of the night with five fractures to skull, damage to the brain and intracranial haemorrhage with only his trousers and with no money. What would be a normal reaction at this scene. Filomena, did not state that it was an accident. Nature of injuries and the circumstances indicated a strong possibility of homicide. In the entire investigation papers, there is no indication at all that angle of homicide is considered. Why not is the moot question.

29. In the reply before the Magistrate, it is reported that Felix used to do acrobatics on rocks at Agonda where he fell and died. In the final report it is stated that Felix had a habit of performing acrobatic stunts on beaches, as some of the witnesses had stated. This is different than falling on road side stones. Felix was a young boy of 22 years and physically fit. Occasionally cartwheeling on the beach is not an unusual thing. However, it could not have been straight away assumed that in the middle of the night on an isolated road Felix would do cartwheeling and hit his head and suffer multiple skull fracture lay there for hours without calling for help and pass away. Felix was not found dead at the bottom of a cliff to demonstrate death from a fall. His body was found on a tarred road, with border stones. The skull is one of the hardest bone in the human body. For the skull to have five

life-threatening fractures with haemorrhage, it was likely to be a result of a violent force. What we find surprising is that this theory was not even considered as possible.

30. On the face of it, the incident did not look like an accident. None of the witnesses stated that it was an accident. No one saw the actual incident. It is not an ordinary occurrence to find a person, a foreigner lying dead on the side of the road in a pool of blood with injuries on his head. Any independent, competent police machinery would immediately evaluate the circumstances to form various hypothesis, homicide being one of them. In the present case, the police authorities have right from the inception decided that it was a case of accidental fall. This stand is stoutly defended even in this Court. If out of various paths that are available, if only one path is chosen then the conclusion of that path is inevitable and all the material found on the same path will fortify the outcome.

31. We do not find the insistence of the Petitioner unreasonable. It is not that there were eyewitnesses who saw Felix falling on the ground and hitting his head on the stones, and yet the Petitioner insists that such incident did not take place, and that matter be transferred to CBI. It is also not that Felix had fallen from a rock

face while rock climbing and that the Petitioner was insisting that he did not fall by accident but he was pushed. In such circumstances, the insistence of the Petitioner could have been viewed differently. The scene-cum-inquest Panchanama and the photographs placed on record show that the road where the body of Felix was found lying is a tar road and the head was resting on the ground with gravel. Border stones are away from the body. The body was not lying on the stones. Neck is intact. There could be various explanations. It is possible that Felix was assaulted elsewhere and his body was quietly put on the ground, or that Felix was assaulted with a blunt object on the spot, or that he could have been assaulted with any of the stone lying on the spot, or that it could be that he was made unconscious and killed. However, none of these angles were even thought of by the police. The police were content with an explanation that Felix was cartwheeling on the road in the middle of the night, he fell and hit his head on the border stones and suffered multiple skull fracture and bled to death. The most unlikely explanation was embraced as the only possible one. This approach creates serious doubt of the credibility of the police investigation.

32. The question is not whether the theory of fall is a possible theory, which is the line of argument by the Respondents before us,

but the question is were there other hypotheses possible and why it did not occur to the police to investigate it further. The request made by the Petitioner to explore this angle was consistently ignored. A preposterous stand was taken before the Magistrate that the Petitioner should have come to Canacona Police Station to lodge a complaint. Such stand was rightly rejected by the Magistrate. In spite of the fact that the Felix was found dead and homicide was the possible angle, and his mother was repeatedly sending emails to all authorities to investigate homicide, to take a stand that homicide angle need not to be investigated since the Petitioner did not come to lodge a complaint at Canacona, is compounding the situation. Though Mr. Rivankar submitted that the State has accepted the order of the learned Magistrate and has not challenged it, the fact remains that such a stand was taken. The Autopsy Report may indicate a possibility of an accidental fall, but it does not categorically rule out homicide. In fact it attributes the injury to a hard and blunt object. Having once determined to pursue the conclusion of accidental death, the police authorities have collected the evidence that fit the conclusion. The hypothesis of an accident was not even a choice, because even for exercising a choice there has to be an elimination process. It is clear that the police were determined not to consider homicide. In the case of *Anandibai*, the Division Bench found such unwarranted refusal to

examine alternate hypothesis demonstrates prejudice. It was contended on behalf of the state that the Police have discretion in the matter of investigation. They do have, but it is not absolute. There is no discretion to carry out an unfair investigation.

33. Now turning to the evidence collected by the police authorities. Had this case been treated as a homicide based on circumstantial evidence, the ingredients in the chain such as Motive, Last Seen Together, Injuries, would assume importance. In this context, the role of Lenslood Fernandes, whose version has been considered as unquestionable truth by the police authorities, needs to be considered. The identity of the body was established on the same day by Lenslood. The statement of Lenslood was recorded on 28 January. Lenslood stated that he is in the business of renting rooms and used to play music on his phone at the Ocean View restaurant. He stated that he became friends with Felix because of discussion over music. He stated that he used to have dinner with Felix and his girlfriend. Lenslood stated that he had noticed a change in the behaviour of Felix recently and he was roaming like a stranger. He stated that Malaurie also noticed this change in behaviour. Lenslood stated that on the night of 27 January when he met Felix, he noticed that Felix had some injuries. Felix told him that on the night of 26

January one foreigner tried to harass him sexually and upon his refusal, the stranger assaulted him and after that he came across a police jeep who dropped him at Agonda. Lenslood stated that thereafter on the night of 27 January at around 8.30 he and Felix came to Mini Goa Restaurant. Lenslood stated that he had three pegs of alcohol and Felix had ginger lemon and hot coffee. According to Lenslood, Felix did not want to eat anything, but Lenslood ordered fish curry rice and fed some food to Felix. He stated that when he went to the bathroom and returned, Felix was missing. He stated that he made inquiries everywhere and went back to Mini Goa restaurant. Lenslood stated that he went thereafter to Palolem with some foreigners and to a petrol pump. Despite his search, he did not find Felix. Lenslood tried to contact Felix's girlfriend on Felix's laptop, but internet connection was not available. Lenslood stated that next day morning at 10.20 hours, he noticed four missed calls on his phone of a Restaurant owner. When he called back, he was told that one foreigner is lying dead at Patnem and whether he is his friend. This was the version of Lenslood.

34. In the final summary report, it is stated by the police that Joanna Lester George, late at night of 27-28 January, saw a foreigner without shirt walking fast on the road in front of her house where she

was residing near Patnem, and this foreigner was not usual in his behaviour. Mr. Rivankar submitted that Joanna would be the last person to have seen Felix. Ms. Sethia pointed out to us that in the final report it is not mentioned that Joanna was with Cory Goldberg. Cory mentioned in his statement that Joanna only told him that there is someone on the road late in the night. It is surprising that Cory and Joanna both being citizen of United States, Joanna would not mention to Cory that the person walking on the street was a 'foreigner' without a shirt late at night, as this would be a strange thing and undoubtedly worthy of sharing. Further, Cory also stated that he could not remember whether the lights on the street were working.

35. Therefore, we come back to Lenslood. According to Lenslood, he became friend with Felix because Lenslood used to play music on his phone and Felix came and discussed music with him. The Petitioner has placed before us the extract from a Facebook chat between Lenslood and the brother of the Felix which took place after the incident. This document was supplied to the Investigating Authority as well. On 31 January 2015, Lenslood had sent photographs of the site of the incident, to Felix' brother. From this discussion, the attempt of Lenslood to convince Felix's brother that there was an accidental death is clear. Lenslood stated that he would

send a copy of post-mortem report when the officer allows him to take it. It appears that Lenslood knew the police procedure well. It is pointed out to us that Lenslood had the telephone number of the family members, but after Felix went missing that night, there does not appear to be any phone call made by Lenslood to anyone. Even during the search, Lenslood did not call anyone to find out Felix's whereabouts. The Petitioner has obtained the records of the cell phone used by Lenslood under the Right to Information Act. The record shows that last call from cell phone at 21.49 on 27 January. Next call is an outgoing call at 10.21 a.m. on 28 January. Chunilal, cook at Mini Goa Restaurant did not say that Lenslood ordered any food. This assumes importance since Lenslood categorically stated that he fed food to Felix, an attempt to indicate close friendship. Even the statement that Felix was in financial trouble does not appear to be matching with the bank records of Felix which show that there have been withdrawals of substantial amounts periodically. As per investigation, there is no documentary proof as to where Lenslood was between 1.30 a.m. to 5.00 a.m., the time period of Felix's death suggested by the Autopsy Report. This is not to come to any conclusion, neither it is the scope of this petition to hold Lenslood guilty. Suffice it to state that had this case been treated as a homicide, Lenslood would have serious circumstances to explain.

36. The investigation papers show Lenslood has played a significant part. He was involved in the identification of the body, he stated that he was a close friend of Felix and even operated his laptop and assured to send post mortem reports. All his assertions have been accepted as gospel truth by the police.

37. What is unearthed by the Petitioner by herself about Lenslood is extremely worrying. The Petitioner made an application under the Right to Information Act to find out whether any criminal cases are registered against Lenslood. A reply received from Canacona police station on 27 July 2017 was 'Nil'. Ms. Sethia pointed out that when the Petitioner's application under Section 156 was heard by the Magistrate, on that date itself, Lenslood had applied for bail for offences under Sections 353, 504, 506(ii) and 427 of Indian Penal Code. The copy of the order is placed on record. It was sought to be explained by the Police that the FIR was not directly against Lenslood. Again, this is just a technical argument. What the Petitioner wanted to know was that is when Lenslood is projecting himself as a good friend of Felix, what were his credentials and whether he had any criminal antecedents. The police could have shared this information.

38. Another disturbing facet has unfolded. The Petitioner has

filed an affidavit with a news item in the local English newspaper. The news report states that Canacona police arrested four history sheeters as suspects in burglaries in Canacona taluka. The news quotes the police as all the accused previously been accused of thefts. The names of the accused have been identified as Satish Dessai, Boy alias Kahanya Pagi, Lance (Lenslood) Fernandes and Viket Bhagat. Statement of PSI Prashal Desai to that effect is quoted. We enquired with Mr. Rivonkar about the veracity of the report and he, upon instructions, confirmed that the news report is correct and Lance is Lenslood. He stated that he was not a history-sheeter as such. However, the statement of the PSI quoted shows that Lenslood was previously accused of theft. Ms. Sethia further pointed, which was not denied, that Viket Bhagat, one of the four is now an accused in a trial of the murder of a young British woman.

39. This state of affairs raises some very serious questions. The incident cannot be trivialized as a mere accident. This appears to be far more than just an accidental fall, but the police have chosen not to examine. The Police have a duty to check that there was no crime. For a crime ruptures peace, law and order, and police must rule out homicide hypothesis firmly. Here it is not even considered as one.

40. Several statements by local and foreigners were recorded. These may look voluminous, but they are just general interviews with people around about Felix. They hardly throw light on the incident. Throughout there has been an emphasis in the investigation and even in the argument before us, on the state of mind of Felix. It is repeatedly pointed to us that for some days before death Felix was in a disturbed state of mind and was behaving strangely. It was argued that Felix was depressed and was roaming around without a shirt. The statement of Shivkumar Rathod, Nanda Pagi, were read to explain minor injuries on Felix on the earlier day and to show that his behaviour was not normal. The statement of Dr. Tawaries, Genu Velip, Anil Gaonkar, were read to show the same position. However, the police authorities have given no importance to the statement of Malaurie who stated that Felix told her that he feared for his life.

41. Further what is the sequitor of the argument based on the state of mind of Felix. Does this mean that the man who is depressed or fearing for his life or behaving abnormal, cannot be murdered? Why would Felix, who was generally normal healthy suddenly lose his mind and hit his head on a rock ? Should it not a matter of investigation as to what made him say that he feared for his life or that he suddenly started behaving strangely. Having declared to themselves that there

was nothing suspicious about the death but was only an accident, the police did nothing further. The emails sent by the Petitioner to even the Director General of Police, Inspector General of Police and Superintendent of Police, have no effect. Ultimately, the Petitioner had to engage the services of advocates in India, who then took the matter before the learned Magistrate. Even before the learned Magistrate, a frivolous stand was taken that the Petitioner should have come to Canacona police station to register a complaint.

42. It was contended on behalf of the police that after the FIR was registered, the investigation was carried out in detail and none of the suspicious of the Petitioner have come true. We are not prepared to accept this *fait accompli*. By the time, the Petitioner could make this arrangement and move the learned Magistrate, and by the time the learned Magistrate passed the order on 5 October 2016, a period of almost two years was lost. It is for two years that the police did not even consider investigating on the angle of homicide.

43. There is no merit in criticizing and pointing out that the suspicions of the Petitioner were unfounded. The Petitioner is not the investigating authority, it is the police. The Petitioner had sent emails in March 2015 naming Ziaan Mohd. s/o Muktaruddin from Jaipur

and stating that it was perhaps a property deal in Jaipur that was the result of the death of Felix and Lenslood Fernandes was instrumental in the same. Absolutely nothing was done in respect of this angle. The statement of Ziaan was recorded on 2 December 2017, after filing of the petition. Ziaan stated that he had rented a flat in Ruby Residency sometime in January 2015. He stated that he met Felix in a restaurant. He referred to a jewelry business in Agonda area and stated that he met Felix in Goa two to three times and once at Jaipur. Ziaan stated that he offered Felix his apartment at Jagatpur and told him to use it for free. It is rather surprising that Ziaan would offer his flat for free to the stranger, whom he only met twice. As per the questionnaire supplied by the Petitioner, a supplementary statement was recorded on 5 September 2017. He was questioned about the financial transaction with Felix. Ziaan stated that he had purchased an apartment from one broker. He stated that he did not get it officially transferred.

44. Ms. Sethia has drawn our attention to the affidavit and documents regarding the purchase of flat by Ziaan which are part of the investigation. It is pointed out to us that the crucial details are left blank, and these documents appear to be bogus property deals. This was the very suspicion which was indicated by the Petitioner as far as back as March 2015 stating that Ziaan, most likely a scammer, has

utilized Felix's money for some illegal property purchases and upon demanding its return, Felix was murdered. As regards these blank documents are concerned, it is only stated by the Respondents that there may be some illegalities, but from these nothing can be finalized. Again, this angle is trivialized. Ziaan stated that he does not know Lenslood Fernandes. Supplementary statement of Lenslood was recorded on 3 August 2017. In this supplementary statement, Lenslood stated that Felix informed him that he wanted to start a restaurant business in Agonda. Lenslood stated that Felix had a business of renovating old houses at Jaipur with his friends. He stated that Felix's friend from Jaipur had visited him two to three days before the death of Felix. Nothing of this sort has been disclosed in his earlier statement.

45. With this kind of investigation, the police authorities have submitted a closure report as 'A Summary', as an undetected and unresolved crime. From the record we have perused and discussed above, this 'A Summary' conclusion was inevitable since the police authorities chose to travel on a wrong path from the inception. When various paths were available, the police defiantly and deliberately chose not to investigate the aspect of homicide. It is only after the Magistrate passed an order, after two years, when precious time was

lost, some efforts seem to have made to take the statement of Ziaan. It is not that contact in Jaipur and sell and purchase of flats were a figment of the imagination of the Petitioner. They have been proved to exist. Today, after placing before us a final report and stating the crime as undetected, we have been called upon by the police authorities to simply let the matter be as it is, leaving the Petitioner to go for a redressal to the Magistrate, who can at the most ask the same police to investigate further. The result of such exercise can be easily foreseen.

46. Now to deal with arguments on law advanced by the Respondents, Mr. Rivankar sought to distinguish the judgments in the case of *Dharam Pal, Pooja Pal and Anandibai Pawanraje*, on facts. The basic principles laid down in these judgments cannot be kept aside by trying to distinguish the decisions on facts. Because the Courts have transferred investigation to CBI on certain grounds in a given case, does not mean that only on those grounds transfer can be ordered and if those grounds do not exist, the transfer cannot be ordered. Such approach would be a complete misconstruction of the position of law. Mr. Rivonkar contended that the power of transfer to CBI should be exercised sparingly. There is no quarrel with this proposition. The power of transfer cannot be used for the mere asking. The transfer is to be ordered once the Court is satisfied that such

course of action will promote justice in a given case. Mr. Rivonkar relied upon a decision in the case of *Disha Vs State of Gujarat and others*⁶ to point out that since there was no allegation of bias or malafides transfer was not directed. In the case of *Disha*, the petitioner therein herself was the accused. She along with her husband, were alleged to have duped a large number of investors through fraudulent schemes. Transfer of investigation was *inter alia* sought on the ground that the Petitioner will face harassment owing to a number of investors. Rejecting this prayer, the Apex Court held that cases could be transferred when an accused is a powerful and influential person but in case of *Disha*, she was the accused. Mr. Rivonkar then contended that the Petitioner wants investigation against the persons whom the Petitioner has a suspicion, and unless Court comes to a *prima facie* conclusion that these persons are guilty, the investigation by CBI cannot be directed to be held against them. He relied on the case of *Secretary, Minor Irrigation and Rural Engg. Services, U. P. & others Vs Sahngoo Ram Arya and Another*⁷, In this case, the Petitioner had filed the petition seeking an investigation by CBI against a minister. The High Court had issued a direction to CBI to hold an enquiry against the minister. It is in the context of such prayer and directions that the Apex Court observed the need for *prima facie* proof

6 (2011) 13 SCC 337

7 [2002] 5 SCC 521

of involvement. In the present case, such a direction is not sought against any particular person and all that is sought is an independent investigation.

47. It cannot be emphasized enough that an investigation must be fair, transparent and judicious as it is the minimum requirement of the Rule of Law. The investigating agency cannot be permitted to investigate in a tainted and biased manner. In the present case, there is a clear failure to examine the case in fair and impartial manner. The requests to the highest officials have not brought about any change, nor the order of the Magistrate. This failure could be the result of incompetence, indifference, prejudice, bias or an outside influence. We are not holding a disciplinary inquiry against the police authorities. Our endeavor is to ensure that there is a fair and partial investigation and the credibility of people in the Rule of Law in the State is maintained. In the case of *Mitilesh Kumar*, the Apex Court has acknowledged the phenomenon of existence of local influences on the investigations. Smaller the place, higher the chances of the local influences. It cannot be expected from the Petitioner, a citizen of another country, to give details of bias and *malafides* by naming a person. An unexplained deviation from ordinary course of conduct by the investigating agency can itself suggest the presence of forces that

are causing the deviation. The Petitioner's endeavour is not to hold the police officers guilty *per se* but to have a just and impartial investigation. In the cases such as these where the intervention of the Constitutional Courts is called upon, the exercise cannot be hedged into fixed formulas. Ultimately the conclusion will depend on the conscience of the Court upon considering the totality of the circumstances. The Court has to look into all the facts and proceed predominantly in the advancement of the cause of justice.

48. We must take note of an alarming issue highlighted by the Petitioner. That is the number of deaths of foreign tourists in the State of Goa in the last decade. It appears from a response to a query under the Right to Information Act that the number runs into hundreds. Many of the deaths are put down as accidents, natural death or suicides and there is an outcry about such conclusions. There is extensive coverage of 'mysterious' deaths of tourists in Goa, in the international media. We are not commenting on the correctness of the cause in every case, but such occurrences themselves and the resultant situations are not conducive for the perception about the existence of the Rule of Law. We are of the opinion that the State of Goa should take a review of this situation on a priority basis. The State could consider setting up a Special Cell headed by a senior officer to deal

with such investigations. The State may consider not to let such investigations remain in the hands of the local police alone. We trust that the State will take appropriate positive steps in this regard.

49. The need to instill confidence in the investigations and consequently in the administration of justice and when the incident may have national and international ramifications, is one of the parameters for transfer. Goa attracts a large number of foreign tourists. South Goa, with its evergreen forests and white sand beaches, is a particularly favorite destination for the foreign tourists. Tourism is a substantial revenue earner for the State. The State Government is taking various initiatives to encourage regulated tourism, at the national and international level. An essential concomitant of any tourism policy is the safety of the tourists. A tourist, unfamiliar with new surroundings, is more vulnerable to crime, if not adequately protected. While choosing a tourist destination, the perception of safety and security at the destination is one of the dominant factor. The deaths of tourists cannot be left in the realm of suspicion. Inept and prejudiced investigations damage the perception about the existence of the Rule of Law. Therefore, lapses such as the present one not only remain a local phenomenon but the ramifications traverse

into the national and international sphere. Not only the Rule of Law must exist, but all attempts must be made to ensure that it is seen to exist.

50. Thus, to sum up, the quality and manner of investigation in Felix's death for the period of one year and eight months from the death till the order of the Magistrate; the stand taken by the police before the Courts; the investigation after the order of the Magistrate, is not indicative of a fair and impartial investigation. The local Police have chosen to steer the investigation clear of the angle of homicide, even though it was one of the strong hypothesis. The conclusion presented in 'A Summary' was a goal that was destined to be achieved as a result of deliberately traveling on a wrong path. Such Final Report obviously cannot be accepted. The inaction before the order of Magistrate was the cause and merely because some investigation has been carried after the order, does not mean that the investigation has become fair. Repeated requests even to the highest police officers in the State had no effect. Compounded with the backdrop of many deaths of foreign tourists, this case has become one such on whose outcome the perception of people regarding the administration of justice hinges. It is of paramount importance that the faith in the Rule of Law is sustained and is not allowed to become a casualty at the hands of

myopic officers of a local police station.

51. A Constitutional Court cannot remain a mute spectator when an apparent faulty and prejudiced investigation is meandering towards a predetermined end. It is therefore necessary to transfer the investigation of this case to an outside and competent investigatory agency. CBI has been chosen by the High Courts in several cases. Considering the case from all angles, we are satisfied that it is necessary to transfer the investigation of this case to the CBI.

52. We must clarify that transferring the investigation to CBI does not mean that we have ruled on the guilt of the persons named as that is not the scope of the petition. Having considered the totality of the circumstances, we have held that it would be in the interest of justice to transfer the present investigation from Canacona Police Station, South Goa to the CBI.

53. In the result, the Writ Petition succeeds. The investigation of the case is transferred to CBI. Rule is made absolute accordingly.

54. All the material collected in the investigation will be maintained and no part thereof will be destroyed and it will be handed

over, in its present state, to the CBI for enabling it to conduct the investigation as directed. The Director General of Police, Goa is directed to take all the record pertaining to the case in his custody, seal the same and hand over the same in the sealed condition to the CBI. The CBI is directed to take charge of the investigation forthwith and to conduct the investigation expeditiously.

Prithviraj K. Chavan, J

N. M. Jamdar, J