



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P. (MD)No.426 of 2016

N.Selvaraj : Petitioner/De-facto/complainant

Vs.

1.The Superintendent of Police,
Thanjavur District.

2.State rep by the Inspector of Police,
Ammappettai Police Station,
Thanjavur District.

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C to issue direction directing the first respondent herein to transfer investigation in Crime No.249 of 2014 on the file of the second respondent to the CBCID Tanjore to conduct the investigation in the manner known to law and further direct to file final report within a stipulated time.

For Petitioner

: Mr.A.Thiyagarajan

For Respondents

: Mrs.S.Bharathi, G.A.(Crl.side)

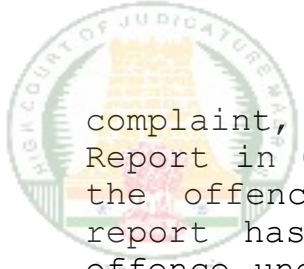
ORDER

This Criminal Original Petition has been filed seeking for transfer of investigation in Crime No.249 of 2014 from the file of the second respondent to the CBCID Tanjore to conduct the investigation in the manner known to law.

2.The case of the petitioner is that his daughter, namely Tharani has married to one Balasubramaniam in the year 2009. The marital relationship became strained as there were repeated demands for dowry by the husband and also his parents. Fifteen days prior to the date of occurrence, the husband had sent the petitioner's daughter to her parents house along with the children to get money for purchasing property. On 05.06.2014, the petitioner's daughter was sent back to the matrimonial home and the husband was informed that money will be arranged and it will be paid within a few months. On 06.06.2014 at about 03.00 pm, the petitioner was informed that his daughter died by committing suicide.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The petitioner suspecting the death of his daughter, lodged a



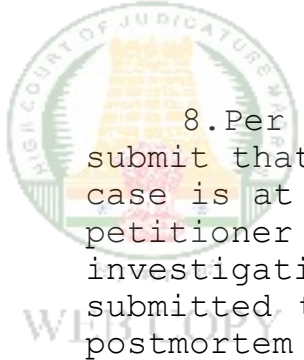
complaint, which resulted the registration of First Information Report in Crime No.249 of 2014 by the second respondent Police for the offence under Section 306 IPC. After investigation, final report has been laid against the said Balasubramaniam for the offence under Section 306 IPC. The petitioner was not aware of the investigation, which was conducted by the second respondent Police and hence, he was able to get copies of the entire materials filed along with the final report, only after the filing of the final report.

4. On seeing the materials filed along with the final report, the petitioner found certain apparent discrepancies in the investigation. The petitioner, aggrieved by the investigation conducted by the second respondent, has approached this Court by way of filing the present Criminal Original Petition seeking for transfer of investigation to any other agency.

5. The learned counsel appearing for the petitioner brought to the notice of this Court the First Information Report that was registered in this case. The incident is said to have taken place on 06.06.2014 at about 03.00 pm and on a cursory look of the FIR, it reveals that FIR was registered on 06.06.2014 at about 10.00 pm. However, the postmortem certificate, reveals the fact that the same was conducted at 03.10 pm on 06.06.2014 and it further reveals the fact that the postmortem was conducted, based on the requisition received from the Revenue Divisional Officer of Kumbakonam on 06.06.2014 at 03.00 pm and there is also a reference to the Crime No.249 of 2014 in the postmortem certificate. The Doctors, who conducted the postmortem, were examined as L.Ws.8 & 9 and they have also spoken about the postmortem conducted on 06.06.2014 at about 03.10 pm.

6. The learned counsel appearing for the petitioner by pointing out the above said documents would submit that the FIR, which was admittedly registered only at 10.00 pm on 06.06.2014 could not have found reference in the postmortem certificate which was conducted at 03.10 pm. That apart, when the incident itself is said to have taken place on 06.06.2014 at about 03.00 pm, RDO, Kumbakonam could not have made requisition at 03.00 pm on the very same day for postmortem by referring to a crime number, which was registered only at 10.00 pm on 06.06.2014.

7. The learned counsel also brought to the notice of this Court several discrepancies in the postmortem certificate and contented that the entire postmortem and also investigation that was conducted by the second respondent Police has become highly questionable and fair investigation has not been done in this case. He further submitted that the petitioner's daughter has been murdered and the second respondent in order to help the accused in this case, has intentionally conducted shabby investigation to ensure the acquittal of the accused in this case.



8. Per contra, the learned Government Advocate (Crl.side) would submit that final report has already been filed in this case and the case is at the stage of framing charges. At this point of time, the petitioner is not entitled to seek an order for further investigation or re-investigation before this Court. She further submitted that the discrepancies that have been pointed out in the postmortem certificate by itself will not discredit the investigation which has been conducted by the second respondent and the second respondent had obtained statements from all the witnesses and has conducted fair investigation and filed the final report. Therefore, she would submit that at this stage, this Court should not exercise its jurisdiction under Section 482 Cr.P.C for granting further investigation or re-investigation in this case.

9. The Hon'ble Supreme Court, in the judgment in Vinay Tyagi Vs. Irshad Ali @ Deepak & others reported in (2013) 5 SCC 762, has dealt with the powers of this Court under 482 Cr.P.C for ordering further / re-investigation and has held as follows:

43. This order clearly shows that the High Court contemplated submission of a supplementary report, which means report in continuation to the report already submitted under Section 173(2) of the Code by the Delhi Police.

44. On 28th November, 2007, the case came up for hearing before the High Court. Then CBI filed its closure report making a request that both the accused be discharged. The case came up for hearing before the High Court on 4th August, 2008, when the Court noticed that CBI had filed a report in the sealed cover and the Court had perused it. Herein, the Court noticed the entire facts in great detail. The High Court disposed of the writ petition and while noticing the earlier order dated 4th July, 2007 wherein the accused persons had assured the court that they would not move bail application before the trial court, till CBI investigation was completed, permitted the applicants to move bail applications as well.

45. The application for discharge filed by the accused persons on the strength of the closure report filed by the CBI was rejected by the trial court vide its order dated 13th February, 2009 on the ground that it had to examine the entire record including the report filed by the Delhi Police under Section 173(2) of the Code. The High Court, however, took the contrary view and stated that it was only the closure report filed by the CBI which could be taken into consideration, and then the matter shall proceed in accordance with law. In this manner, the writ petition was finally disposed of,



directing the parties to appear before the trial court on 14th September, 2009. The High Court had relied upon the judgment of this Court in the case of K. Chandrasekhar v. State of Kerala and Others (supra) to say that once investigation stands transferred to CBI, it is that agency only which has to proceed with the investigation and not the Special Cell of the Delhi Police.

46. We are unable to accord approval to the view taken by the High Court. The judgment in the case of K. Chandrasekhar (supra), firstly does not state any proposition of law. It is a judgment on peculiar facts of that case. Secondly, it has no application to the present case. In that case, the investigation by the police was pending when the investigation was ordered to be transferred to the CBI. There the Court had directed that further investigation had to be continued by the CBI and not the Special Cell of the Delhi Police.

10. The Hon'ble Supreme Court had an occasion to consider the very same issue in the judgment in Pooja Pal Vs. Union India & Others reported in (2016) 3 SCC 135 and held as follows:

49. This Court in the above disquieting backdrop, did underline that discovery, vindication and establishment of truth were the avowed purposes underlying the existence of the courts of justice. Apart from indicating that the principles of a fair trial permeate the common law in both civil and criminal contexts, this Court underscored the necessity of a delicate judicial balancing of the competing interests in a criminal trial - the interests of the accused and the public and to a great extent that too of the victim, at the same time not losing the sight of public interest involved in the prosecution of persons who commit offences.

50. It was propounded that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the state and the prosecuting agency was authoritatively stated. This Court observed that the interests of the society are not to be treated completely with disdain and as persona non grata. It was remarked as well that due administration of



justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community.

51. While highlighting the courts' overriding duty to maintain public confidence in the administration of justice, it was enunciated as well, that they cannot turn a blind eye to vexatious and oppressive conduct, discernable in relation to the proceedings. That the principles of rule of law and due process are closely linked with human rights protection, guaranteeing a fair trial, primarily aimed at ascertaining the truth, was stated. It was held as well, that the society at large and the victims or their family members and relatives have an inbuilt right to be dealt fairly in a criminal trial and the denial thereof is as much injustice to the accused as to the victim and the society. Dwelling upon the uncompromising significance and the worth of witnesses in the perspective of a fair trial, the following revealing comments of Bentham were extracted in paragraph 41:

"41. "Witnesses", as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political count and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice to become ultimate causalities. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slot process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way



for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert the trial getting tainted and derailed and truth becoming a causality. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose the truth without any fear of being haunted by those against whom he has deposed."

52. It was underlined that if ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interest of justice do not get incapacitated in the sense of making the proceedings before the courts, mere mock trials. While elucidating that a court ought to exercise its powers under Section 311 of the Code and Section 165 of the Evidence Act judicially and with circumspection, it was held that such invocation ought to be only to subserve the cause of justice and the public interest by eliciting evidence in aid of a just decision and to uphold the truth. It was proclaimed that though justice is depicted to be blindfolded, it is only a veil not to see who the party before it is, while pronouncing judgment on the cause brought before it by enforcing the law and administer justice and not to ignore or turn the attention away from the truth of the cause or the lis before it, in disregard of its duty to prevent miscarriage of justice. That any indifference, inaction or lethargy displayed in protecting the right of an ordinary citizen, more particularly when a grievance is expressed against the mighty administration, would erode the public faith in the judicial system was underlined. It was highlighted that the courts exist to do justice to the persons who are affected and therefore they cannot afford to get swayed by the abstract technicalities and close their eyes to the factors which need to be positively probed and noticed. The following statement in *Jennison vs. Baker*, (1972) 1 All ER 997 was recalled:

"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."



53. It was declared that the courts have to ensure that the accused persons are punished and that the might or the authority of the state is not used to shield themselves and their men and it should be ensured that they do not wield such powers, which under the Constitution has to be held only in trust for the public and society at large. That if any deficiency in investigation or prosecution is visible or can be perceived by lifting the veil covering such deficiency, the courts have to deal with the same with an iron hand appropriately within the framework of law was underlined.

1. Referring to its earlier decision in Karnel Singh vs. State of M.P. (1995) 5 SCC 518, it was reiterated that in a case of a defective investigation, the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 of the Code or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It recalled as well its observations in Ram Bihari Yadav v. State of Bihar & others, (1998) 4 SCC 517 that the courts are installed for justice oriented mission and thus if a negligent investigation or omissions or lapses due to perfunctory investigation are not effectively rectified, the faith and confidence of the people would be shaken in the law enforcing agency and also in the institution devised for administration of justice.

2.

55. Though, as referred to hereinabove, trial was completed and the accused persons were acquitted, in the textual facts, this Court did direct retrial as prayed for, to avoid subversion of the justice delivery system and ordered the investigating agency or those supervising the investigation to act in terms of Section 173(8) of the Code as the circumstances would so warrant.

56. The observations and the propositions, though made in the backdrop of a request for retrial, those pertaining to the essentiality of a fair and complete investigation and trial as well as the solemn duty of the courts to ensure the discernment of truth to administer even handed justice as institutions of trust of public faith and confidence, are in our estimate, of universal application and binding effect, transcending the factual settings of a case. An adverse deduction vis-à-vis the quality of investigation and a trial trivializing the cause of justice, is however the essential pre-requisite,



for such remedial intervention by way of further investigation, reinvestigation, additional evidence, retrial etc. to be made objectively but assuredly for the furtherance of the salutary objectives of the justice dispensing system as contemplated in law, it being of paramount pre-eminence.

57. This Court in Mohd. Hussain @ Julifikar Ali (supra) was also seized of a situation imploring for a retrial following the termination of the prosecution principally on account of delay, when juxtaposed to the demand for justice in cases involving grave crimes affecting the society at large. The offence involved was under Sections 302/307/120B IPC and Sections 3 and 4 of the Explosive Substances Act, 1908 and had perpetrated an explosion in a passenger carrying bus. This Court amongst others recalled its observations in Kartar Singh vs. State of Punjab (1994) 3 SCC 569 that while dispensing justice, the courts should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear ones and above all the collective interest of the community and the safety of the nation, so that the public, may not lose faith in the system of judicial administration and indulge in private retribution. It however also took note of its ruling in State of M.P. vs. Bhooraji and others (2001) 7 SCC 679 that a de novo trial should be the last resort and that too only when such a course becomes desperately indispensable and should be limited to the extreme exigency to avert a failure of justice. It noted with approval the observation in P. Ramachandra Rao (supra) that it is neither advisable nor feasible nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings and that the criminal courts are not obliged to terminate the trial or criminal proceedings merely on account of lapse of time. That such time limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings or to terminate the same and acquit or discharge the accused, was emphatically underlined. Reference too was made of the decision in Zahira Habibulla H. Sheikh (supra).

58. Vis-à-vis the notions of 'speedy trial' and 'fair trial' as the integral constituents of Article 21 of the Constitution of India, it was observed that there was a qualitative difference between the right to speedy trial and the right of the accused to fair trial. While pointing out that unlike the accused's right of fair trial, the lapse or termination of the right to speedy trial does not per se prejudice the accused in defending himself, it was proclaimed that mere lapse of several years since the



commencement of prosecution by itself, would not justify the discontinuance of prosecution or dismissal of the indictment. It was stated in no uncertain terms, that the factors concerning the accused's right to speedy trial have to be counterpoised with the impact of the crime on the society and the confidence of the people in the judicial system. It was noted that speedy trial secures rights to an accused but it does not preclude the rights of public justice. It was expounded that the nature and gravity of the crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former, the long delay in conclusion of trial should not operate against the continuation of the prosecution but if the right of the accused in the facts and circumstances of the case and the exigencies or situation leans the balance in his favour, the prosecution may be brought to end. It was held that the guiding factor for a retrial essentially has to be the demand of justice. It was emphasized that while protecting the right of an accused to fair trial and due process of law, the interest of the public at large who seek protection of law ought not to be altogether overlooked so much so, that it results in loss of hope in the legal system. Retrial in the facts of the case was ordered.

59. The content and scope of the power under Article 226 of the Constitution of India to direct investigation by the CBI in a cognizable offence, alleged to have taken place within the territorial jurisdiction of the State, without the consent of the State Government fell for scrutiny of this Court in Committee for Protection of Democratic Rights (supra).

60. While examining the issue in the context of the power of judicial review as embedded in the constitutional scheme, it was held that no Act of Parliament could exclude or curtail the powers of the constitutional courts in that regard. Reiterating, that the power of judicial review, is an integral part of the basic structure of the Constitution, it was underlined that the same was essential to give a pragmatic content to the objectives of the Constitution embodied in Part III and other parts thereof. In elaboration, it was held that Article 21 of the Constitution not only takes within its fold, the enforcement of the rights of the accused but also the rights of the victim. It was predicated that the State has a duty to enforce the human rights of the citizens for fair and impartial investigation, against any person accused of commission of any cognizable offence. Referring to Section 6 of the Delhi Special



Police Establishment Act, 1946, it was ruled that any restriction imposed thereby could not be construed to be one on the powers of the constitutional courts and thus cannot be taken away or curtailed or diluted thereby. While proclaiming the supervening powers of the High Court under Article 226 of the Constitution of India to direct, entrustment of the investigation to the CBI as in the case involved, this Court sounded a caveat as well that the very plentitude of such power inheres a great caution in its exercise and though no inflexible guidelines can be laid down in that regard, the same has to be invoked sparingly, cautiously and in exceptional situation when it becomes necessary to provide credibility and to instill 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. (emphasis supplied)

61. The facts in *Bharati Tamang* (supra) seeking de novo investigation, present somewhat an identical fact situation. The appellant's husband, President of a political party was brutally murdered in public view and in the presence of police and security personnel by the supporters of the rival party. The investigation into the sordid incident had been completed. Alleging that the probe initially held by the state police and thereafter by the CID and by the CBI were faulty, the prayer for de novo inquisition was made. Imputation of attempts by the prosecution to suppress the truth in spite of the fact that the assailants were identified and named in the FIR and that the incident was in effectuation of a deep rooted conspiracy and preceded by previous threats were made. The CBI in its pleadings, inter alia, cited, prevailing law and order situation in the town;

abscondence of most of the accused persons;

murder of its informants;

fear psychosis in the locality and resultant want of support from the local public as hindrances to its investigation.

62. On behalf of the appellant, accusation of tardy prosecution of the case, and free and open movement of the key accused persons in the city avoiding arrest were made as well. The plea of the impleaded accused persons that the appellant after the demise of her husband had initiated the writ proceedings for political gain was rejected. Their contention based on Section 319 of the Code that in course of the trial, on availability of sufficient evidence, any person not being an accused could



be ordered to be tried, was also negated. The propositions expounded in *Zahira Habibulla H. Sheikh* (supra) qua the duty of the court to ensure fair investigation by remedying the deficiencies and defaults therein so as to bring forth full and material facts to prevent miscarriage of justice were reiterated. It was concluded that when the courts find extra ordinary or exceptional circumstances rendering reinvestigation imperative, in such eventualities even de novo investigation can be ordered. While ruling that in case of discernable deficiency in investigation or prosecution, the courts have to deal with the same with iron hand appropriately with the framework of law, it was underlined that in appropriate cases even, if charge-sheet was filed, it was open for the High Court and also this 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.

63. Noticing that certain transcripts of some conversations relating to the incident intercepted by the CBI were awaiting analysis by the forensic agency as a part of the investigation, this Court in the ultimate, transferred the case beyond the territorial limits of the district involved and directed that the probe be carried out by the CBI to be monitored by its Joint Director as named. It was ordered that the CBI would ensure that all required evidence is gathered by leaving no stone unturned, so that all accused involved in the offence are brought for trial to be dealt with in accordance with law. The trial that had meanwhile commenced was kept in abeyance pending conclusion of the further investigation by the CBI and the submission of report before the transferred court as ordered. Not only in issuing these directions this Court revisited the imperatives bearing on the duty of the Court to ensure that criminal prosecution is carried out effectively and the perpetrators of the crime are duly punished by the appropriate court of law, it noticed as well some of the factual features of the case namely;

The deceased at his death was the President of a political party.

There was a deep rooted rivalry between his party and another party.

The deceased had organized a meeting of his party on the date of the incident.

Police personnel were present at the place of the occurrence. Though present, no report thereof was registered immediately thereafter.



Wide coverage of the incident by the media.

Availability of the transcripts of the intercepted conversations of some of the accused persons and the office bearers of the rival political party.

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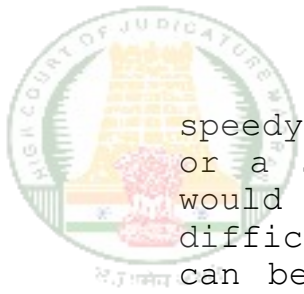
64. This Court in Babubhai (supra) while examining the scope of Section 173(8) of the Code, did recall its observations in Manu Sharma vs. State (NCT of Delhi), (2010) 6 SCC 1, that it is not only the responsibility of the investigating agency but as well as of the courts to ensure, that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. It underlined, that the equally enforceable canon of criminal law is that high responsibility lies upon the investigating agency, not to conduct an investigation in a tainted and unfair manner and that such a drill should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law de hors his position and influence in the society as nobody stands above law. It propounded that the word "ordinarily" applied under Section 173(8) of the Code, did attest that if the investigation is unfair and deliberately incomplete and has been done in a manner with an object of helping a party, the court may direct normally for further investigation, and not for reinvestigation. It was however added as a sequiter that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, and if it is considered necessary, may direct for de novo investigation as well. It was observed that if an investigation has not been conducted fairly, the resultant charge sheet would be invalid. It was held as well, that such investigation would ultimately prove to be a precursor of miscarriage of criminal justice and the court in such a contingency would be left to guess or conjecture, as the whole truth would not be forthcoming to it. It was held that fair investigation is a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and thus the investigating agency cannot be permitted to conduct an investigation in a tainted or biased manner. It was emphasised that where non-interference of the court would ultimately result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation.

65. In Rubabbuddin Sheikh (supra) as well, though as many as eight action reports had been submitted by the state police on the incident of reported murder of the brother of the petitioner in a fake encounter and the



disappearance of his sister-in-law in which, amongst other, allegedly the anti-terrorist squad of the state police was involved, a proceeding was initiated on the basis of a letter addressed to the Chief Justice of India seeking a direction for investigation by the CBI. In view of the rival contentions advanced as to the permissibility or otherwise of the transfer of the investigation as prayed for, this Court on an in-depth audit of the decisions rendered by it, did negate the plea that subsequent to the submission of a charge sheet, the court is not empowered in any case whatsoever to handover the investigation to an independent agency like CBI. It was held, having regard to the parameters outlined by the two sets of authorities on the issue, that such a course however would be permissible in an appropriate case where the facts bearing thereon would demonstrate lack of proper investigation and vitiations thereof by factual discrepancies endorsing such a deduction. The aspect that accusations in the contextual facts were directed against the local police personnel in which high police officials of the state had been made accused also did weigh with the determination. The view taken in *Gudalure M.J. Cherian* (supra) that though ordinarily, after the investigation is completed by the police and charge sheet is submitted to the court, the investigation ought not to be re-opened by entrusting the same to a specialized agency like CBI, nevertheless in a given situation, to do justice between the parties and to instill confidence in the public mind it may be warranted, was noted with approval. The overriding imperative of permitting transfer of investigation to the CBI was thus acknowledged to be in the advancement of the cause of justice and to instill confidence in the mind of the victims as well as the public.

66. The renderings in *Hussainara Khatoon* (supra), *A.R. Antulay* (supra), *P. Ramachandra Rao* (supra), *Vakil Prasad* (supra), *Sampat Lal* (supra), *Babubhai* (supra) and *Common Cause* (supra) have been pressed into service on behalf of the respondent Nos. 4 & 5 to highlight the demand of speedy trial as a mandate of the fundamental right to life guaranteed under Article 21 of the Constitution of India. While emphasizing that speedy trial is the essence of criminal justice and any delay constitutes denial thereof, it has been propounded therein, that any procedure which does not ensure a quick trial cannot be regarded as reasonable, fair or just and would fly in the face of such cherished constitutional promise. While observing that the right to speedy trial is a composite right comprising all the stages namely; investigation, inquiry, trial, appeal, revision and retrial, it was however noted in *P. Ramachandra Rao* (supra) that no guidelines for a



speedy trial can be intended to be applied as hard rules or a straight jacket formula and that their application would depend on the fact situation of each case, which is difficult to foresee, so much so that no generalization can be made. It was expounded as well in the Sampat Lal (supra) that in spite of the procedure laid down in the relevant provisions of the Criminal Procedure Code, a court, in a given case, if is satisfied that the statutory agency has not functioned in an effective way or that the circumstances are such that it may reasonably be presumed or inferred that it may not be able to conduct the investigation fairly or impartially, the court may reasonably consider to supplement the procedure.

67. While recalling its observation in State of Bihar and another vs. JAC Saldanha and others (1980) 1 SCC 554, that on a cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173 (8) of the Code and that the adjudicatory function of the judiciary commences, thus delineating the well demarcated functions of crime detection and adjudication, this Court did recognize a residuary jurisdiction to give directions to the investigating agency, if satisfied that the requirements of law were not being complied with and that the investigation was not being conducted properly or with due haste and promptitude. It was reiterated in Babubhai (supra) that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, may direct investigation de novo, if it is satisfied that non-interference would ultimately result in failure of justice. In such an eventuality endorsement of the investigation to an independent agency to make a fresh probe may be well merited. That not only fair trial but fair investigation is also a part of the constitutional rights guaranteed under Articles 20 & 21 of the Constitution of India and therefore investigation ought to be fair, transparent and judicious, was reemphasised. The expression "ordinarily" as used in Section 173(8) of the Code was noted again to rule that in exceptional circumstances however, in order to prevent miscarriage of criminal justice, a court may still direct investigation de novo. The above postulations being strikingly common in all these decisions, do pervade the fabric and the content thereof and thus dilation of individual facts has been avoided.

68. That the extra-ordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to the CBI to conduct investigation must be exercised with great

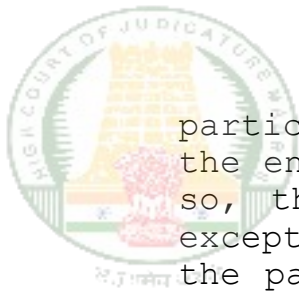


caution was underlined in Committee for Protection of Democratic Rights (supra) as adverted to hereinabove. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

69. In Kashmeri Devi (supra), being satisfied, in the prevailing facts and circumstances that effort had been made to protect and shield the guilty officers of the police who allegedly had perpetrated the offence of murder involved, this Court directed the Magistrate concerned before whom the charge sheet had been submitted, to exercise its power under Section 173(8) of Code to direct the CBI for proper and thorough investigation of the case and to submit an additional charge-sheet in accordance with law.

70. In Godalure M.J. Cherian (supra), this Court in a petition under Article 32 of the Constitution of India, lodged in public interest, did after taking note of the fact that charge sheet had already been submitted, direct the CBI to hold further investigation in respect of the offence involved. In recording this conclusion, this Court did take note of the fact that the nuns who had been the victim of the tragedy did not come forward to identify the culprits and that as alleged by the petitioners, the four persons set up by the police as accused were not the real culprits and that the victims were being asked to accept them to be so. The paramount consideration for the direction issued was to secure justice between the parties and to instill confidence in public mind. The same imperative did impel this Court to issue a similar direction for fresh investigation by the CBI in Punjab and Haryana High Court Bar Association (supra). Here as well the investigation otherwise had been completed and charge-sheet was submitted.

71. This Court dealing with the proposition that once a charge sheet is filed, it would then be exclusively in the domain of the competent court to deal with the case on merits in accordance with law and that the monitoring of the investigation would cease in all respects, held, in



particular, in K.V. Rajendran (supra) in reiteration of the enunciations aforestated, that though it is ordinarily so, the power of transferring investigation in rare and exceptional cases for the purpose of doing justice between the parties and to instill confidence in the public mind, can be made invoking its constitutional power available, to ensure a fair, honest and complete investigation.

72. The precedential ordainment against absolute prohibition for assignment of investigation to any impartial agency like the CBI, submission of the charge-sheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victim(s) and the public in general in the justice administering mechanism, is thus unquestionably absolute and hallowed by time. Such a measure however can by no means be a matter of course or routine but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike.

73. In the decisions cited on behalf of the CBI as well, this Court in K. Saravanan Karuppasamy and Sudipta Lenka, (supra), recounted the above propositions underpinning the primacy of credibility and confidence in investigations and a need for complete justice and enforcement of fundamental rights judged on the touchstone of high public interest and the paramountcy of the rule of law.

74. The judicially propounded propositions on the aspects of essentiality and justifiability for assignment of further investigation or reinvestigation to an independent investigating agency like the CBI, whether or not the probe into a criminal offence by the local/state police is pending or completed, irrespective of as well, the pendency of the resultant trial have concretized over the years, applicability whereof however is contingent on the factual setting involved and the desideratum for vigilant, sensitised and evenhanded justice to the parties.

75. The exhaustive references of the citations seemingly repetitive though, assuredly attest the conceptual consisting in the expositions and enunciations



on the issue highlighting the cause of justice as the ultimate determinant for the course to be adopted.

95. In the wake of the above, we are unhesitatingly inclined to entrust the CBI, with the task of undertaking a de novo investigation in the incident of murder of Raju Pal, the husband of the appellant as afore- mentioned. Though a plea has been raised on behalf of the respondent Nos. 4 and 5 in particular that this incident has been exploited by the appellant for her political gains, we are left unpersuaded thereby, as her achievements in public life must have been fashioned by very many ponderable as well as imponderable factors. In any view of the matter, such a contention, in our view, is of no consequence or relevance. We would, however make it abundantly clear that this direction for entrustment of the investigation to the CBI anew has been made in view of the exceptional features of the case as overwhelmingly demonstrated by attendant facts and circumstances indispensably necessitating the same.

96. We are aware that in the meantime, over a decade has passed. The call of justice however demands, that the CBI in spite of the constraints that it may face in view of the time lag, would make all possible endeavours to disenter the truth through its effective and competent investigation and submit the same before the trial court, as early as possible preferably within the period of six months from today. The clarion call of justice expects a befitting response from the country's premier and distinguished investigating agency. On receipt of the report by the CBI only, the trial court would proceed therewith in accordance with law and conduct and conclude the trial expeditiously and not later than six months. The interim order staying the ongoing trial is hereby made absolute.

11. The learned counsel appearing for the petitioner also brought to the notice of this Court the Judgment of the Hon'ble Supreme Court in Dharam Pal Vs. State of Haryana & others report in CDJ 2016 SC 114, where it has held as follows:

20. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very



sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

21. We may further elucidate. The power to order fresh, de-novo or re- investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "'id'ee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self- evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under



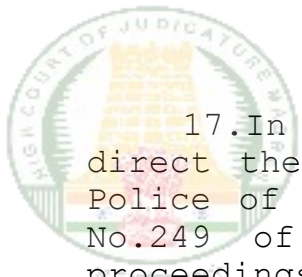
12. What ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisdiction? Firstly investigation must be honest, just and in accordance with law. Secondly, entire emphasis on fair investigation has to be to bring out the truth of the case before the Court of competent jurisdiction. Once these two paradigms of fair investigation are satisfied, there will be least requirements to the Court of law to interfere with the investigation, much less quashing the same or transfer it to any other agency. Bringing out the truth by fair and honest investigation in accordance with law will repel the very basis of an unfair, tainted investigation or cases of false implication.

13. In the instant case, a poor father, who has lost his daughter, has been running from pillar to post to find out the real cause of the death of his daughter. The previous happenings make the father strongly think that his daughter has been murdered by the accused in this case. The petitioner being the father has now been exposed to certain shocking revelations with regard to the manner in which the investigation has happened in this case. The discrepancies that have been pointed out before this Court and the same having been discussed hereinabove, clearly go to show that all is not well in the manner in which the investigation has been carried out in this case.

14. The available materials on record would only lead to acquittal of the accused persons without there being any materials against them and materials that are available, clearly suffer from serious discrepancies.

15. The investigation has been conducted in such a shabby fashion wherein the requisition for postmortem and the very conduct of the postmortem has been done even before the FIR was registered and the postmortem certificate interestingly contains the crime number. The postmortem report also reveals about the setting in of rigor mortis in the body of the deceased, which is unbelievable, since admittedly the daughter of the petitioner is said to have died at 03.00 pm and the postmortem has been conducted at about 03.10 pm. Rigor mortis can set in starting from two to six hours and not in 10 minutes. Apart from this, there are certain material infirmities that were pointed out by the learned counsel appearing for the petitioner.

16. This is one of the extraordinary cases where this Court has to exercise its jurisdiction under Section 482 Cr.P.C and order for re-investigation. Only re-investigation in this case will bring out the true facts, which will enable the Court of competent jurisdiction to try the case in a fair manner.



17. In view of the above discussion, this Court deems it fit to direct the first respondent to appoint a Deputy Superintendent of Police of his choice to re-investigate the entire matter in Crime No.249 of 2014. Since this Court had granted stay of the proceedings, the Trial Court has not framed charges in this case. Presently, the entire final report along with supporting materials are pending before the learned Mahila Court, Thanjavur. In view of the re-investigation ordered by this Court, the concerned Court shall keep the proceedings in abeyance.

18. This Criminal Original Petition is disposed of with the following directions:

(i) The entire C.D. file, in this case in Crime No.249 of 2014, shall be handed over by the second respondent to the first respondent within a period of one week from the date of receipt of copy of this order.

(ii) The first respondent shall appoint a Deputy Superintendent of Police of his choice to conduct re-investigation, within a period of two weeks from the date of receipt of copy of this order.

(iii) The Deputy Superintendent of Police, to whom the investigation is assigned by the first respondent, shall investigate the case in a fair manner by examining all the witnesses and shall file a fresh report before the Mahila Court, Thanjavur, within a period of four months from the date on which the concerned Deputy Superintendent of Police takes up the investigation.

(iv) The final report along with the statement made by witnesses that has been filed by the second respondent shall not form part of the records of the case and entire report and the statements shall stand eschewed.

(v) The learned Mahila Court, Thanjavur shall take cognizance of the fresh report, which is to be filed by the Deputy Superintendent of Police to whom the case is assigned for investigation and thereafter, shall proceed in accordance with law.

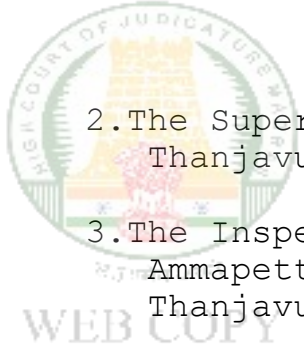
Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

gns
To

1. The Mahila Court,
<https://hcservices.ecourts.gov.in/hcservices/>
Thanjavur.



2.The Superintendent of Police,
Thanjavur District.

3.The Inspector of Police,
Ammapettai Police Station,
Thanjavur District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.Thiyagarajan, Advocate in SR No.78643

Cr1.O.P. (MD) No.426 of 2016

NM/SV/SAR 4/26.09.2018/21P/6C