

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.06.2019	Delivered on 02.07.2019
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.4670 of 2019
and
Crl.M.P.No.2769 of 2019

C.K.Nandhakumar ...Petitioner

.Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

2.The Superintendent of Police,
Erode District,
Erode.

3.The Inspector of Police,
Perundurai Police Station,
Crime No.443 of 2018,
Erode District.

4.The Central Bureau of Investigation,
Rep.by its Superintendent of Police,
Special CBI ACB,
3rd Floor, Sastri Bhavan,
26, Haddows Road,
Nungambakkam,
Chennai-600 006.

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondents 1 and 2 to withdraw the investigation in Crime No.443 of 2018 from the 3rd respondent and to transfer the same to the 4th respondent for fair and thorough investigation.

For Petitioner : Mr.N.Manokaran

For R 1 to R3 : Mr.M.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed seeking for transfer of investigation in Crime No.443 of 2018, pending on the file of the 3rd respondent Police.

2. The case of the petitioner is that he is a social worker who started an organisation called Makkal Sevai Iyakkam. The petitioner started exposing a lot of illegal mining/quarrying that was happening in various villages at Erode District. The petitioner filed W.P.No.16126 of 2016 before this Court for a direction to the authorities to take appropriate action against persons who are involved in illegal mining. Pursuant to the filing of the writ petition, the authorities took action against the concerned persons who were involved in illegal mining and penalty proceedings were also initiated against those persons.

3. The Revenue Divisional Officer, Erode, by his proceedings dated 22.03.2018, imposed a penalty of Rs.7,99,73,100/- against one K.R.Senapathi @ Chinnakannu and T.C.Subramaniam @ Balki Mani. These two persons are said to be the henchmen of one thoppu N.D.Venkatachalam, who is a sitting MLA. In view of the illegal mining being stopped and penalty imposed against the above said persons, there was a personal grudge against the petitioner. The petitioner kept raising various social issues as a result of which various complaints were given against the petitioner and FIRs came to be registered, which according to the petitioner are all false cases to put pressure on the petitioner to stop his social activities.

4. The petitioner was in fact detained under Act 14 of 1982, and he was later released by the Advisory Board after finding that there are no sufficient grounds to detain the petitioner.

5. While so, on 08.08.2018, at about 11.00 a.m., the petitioner was proceeding along with his son in a motorcycle to his house. At that time, he was intercepted by K.R. Senapathi @ Chinnakannu and T.C. Subramaniam @ Balki Mani and a group of persons. The petitioner was abused in filthy language and his son was snatched from him and the petitioner was forcibly taken in a Jeep along with his son. The son was dropped near the house of his grandmother and the petitioner was beaten black and blue. Ultimately, the petitioner was pushed down on the road side. The petitioner was taken to the Government Hospital, Perundurai and admitted and was given treatment. The Police recorded the statement of the petitioner and a case came to be registered in Cr.No.443 of 2018 for an offence under Section 341, 363, 324 and 506(ii) IPC.

6. The petitioner had to undergo nearly four surgeries since he sustained nine fractures in both his hands and legs. The petitioner found that the investigation was not proceeding effectively since the main accused persons had the support of the local MLA. Therefore, the petitioner started making representations to the higher authorities. The petitioner started getting threats from the accused persons and therefore he approached this Court and sought for a compensation and Police protection and this Court also granted Police protection to the petitioner.

7. The petitioner found that the respondent Police are not taking any action against the above said K.R.Senapathi @ Chinnakannu and T.C.Subramaniam @ Balki Mani, due to the interference of the local MLA and the Police were taking hasty action to file a Final Report without adding the main accused persons and by showing minor offences. Left with no other option, the present criminal original petition has been filed seeking for transfer of investigation to some other agency.

8. The 3rd respondent who is investigating the case, has filed a counter affidavit wherein, he explained the various steps taken by the Police and the progress made in the investigation. The entire counter affidavit is devoted to only deny the allegations made by the petitioner upto Paragraph No.24. The respondent Police has attempted to give the image of an extortionist to the petitioner. The entire counter affidavit does not speak anything about the witnesses examined in this case and the progress made in the investigation and the entire counter affidavit attempts to portray a bad image about the petitioner. The only relevant para in the entire counter affidavit which talks about the investigation conducted in the present case is para 31 and the same is extracted hereunder:

"31. I humbly submit that the investigation in this case has already been completed in a proper manner and the charge sheet has to be filed after the arrest of absconding accused. The petitioner or the eye witness could not identified the accused. Hence the claim of the petitioner to

transfer the case to another investigation agency namely to the fourth respondent does not arise".

9. Mr.N.Manokaran, learned counsel appearing for the petitioner apart from reiterating the case of the petitioner submitted that the petitioner has lost all his hopes and there has been absolutely no investigation in this case and that the Police have not even gone near the main accused persons who are freely roaming around with the help of the local MLA. The

learned counsel further submitted that if persons who take up social cause are attacked in this manner, no one will come forward for any social cause and therefore this Court must re-enforce the confidence in the system by passing appropriate orders transferring the investigation to some other agency and bring all the accused persons to book.

10. The learned counsel for the petitioner substantiated his argument by relying upon the judgment of the Hon'ble Supreme court in Pooja Pal .Vs. Union of India (UOI) and Ors reported in [2016 3 SCC] 135 and Aziza Begum .Vs. State of Maharashtra and Another reported in [2012 3 SCC 126]

11. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the investigation is being conducted by the 3rd respondent in a proper manner and there is no requirement to transfer the investigation at this stage.

12. This Court wanted the 3rd respondent to submit the Case Diary to this Court and the same was also handed over by the learned Additional Public Prosecutor.

13. This Court has carefully considered the submissions made on either side and also the materials available on record along with the Case Diary submitted by the 3rd respondent.

14. This Court did not get any indication with regard to the progress made in the investigation from the counter affidavit filed by the 3rd respondent. The entire counter affidavit is devoted to paint a wrong picture about the petitioner and to deny all allegations made by the petitioner. Therefore, this Court had to necessarily go through the CD file in order to understand the progress made in the investigation.

15. The above said K.R.Senapathi @ Chinnakannu and T.C.Subramaniam @ Balki Mani are the main accused persons in the complaint given by the petitioner. The complaint elaborately explains the entire incident and also the role played by the above said two persons who had attacked the petitioner along with henchmen. The above said two persons belong to the same locality and they are not outsiders. However in the entire CD file there is nothing to show that any effective steps were taken by the 3rd respondent to secure the main accused in this case and to subject them to interrogation. It is clear from records that the petitioner has sustained very grievous injuries and there was a clear motive behind the attack since it was the petitioner who was responsible for stopping the illegal mining and for making the above said persons to pay penalty for the illegal mining. This is clearly borne out by records and the

entire incident had taken place pursuant to the writ petitions filed by the petitioner before this Court. With these prima facie materials, the 3rd respondent should have taken steps to arrest the main accused persons in the course of investigation. However, for reasons best known to the 3rd respondent he had dealt with the main accused persons with kid gloves. If the main accused persons had been interrogated, the 3rd respondent could have easily identified the henchmen who were involved in the attack against the petitioner. However the 3rd respondent wants to play it safe by showing them as unidentified absconding accused persons.

16. The petitioner has clearly described the entire incident in the 161 statement recorded by the Police. The son of the petitioner who was also pocked up from the place and dropped midway, also speaks about the incident and the persons who were present during the occurrence. There are other witnesses who speak about the injuries sustained by the petitioner and the treatment given to him and the doctors who treated the petitioner speak about the nature of injuries sustained by the petitioner. Even with all these materials, the 3rd respondent did not arrest even one accused person in this case. The CD file makes it clear that the 3rd respondent, for some strange reasons, is not carrying on with the investigation effectively and it looks like there is an attempt to cover up the main accused persons and there seems to be an underlying pressure exerted on the 3rd respondent from some quarters and the same prevents the 3rd respondent from effectively conducting the investigation and it is very evident from the CD file.

17. It will be relevant to place reliance on the judgments cited by the learned counsel for the petitioner.

18. The Hon'ble Supreme Court in Aziza Begum .Vs. State of Maharashtra and Another referred supra has held as follows:

"11. Learned counsel for the appellant submits before us that the appellant wanted the investigation to be fairly conducted by an independent agency and urged before us for an order for the investigation to be conducted not by the same police authorities which had undertaken the investigation earlier but by any other independent investigating agency.

12. In the facts and circumstances of this case, we find that every citizen of this country has a right to get his or her complaint properly investigated. The legal framework of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of

equal protection of laws and is covered by the guarantee under Article 14 of the of the Constitution.

13. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing rule of law and maintaining proper balance in law and order. These are very vital issues in a democratic set up which must be taken care of by the Courts".

19. The Hon'ble Supreme Court has dealt elaborately with the issue of fair investigation in Pooja Pal referred supra, the relevant portions are extracted hereunder:

"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.

54. 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.

55. Though, as referred to herein above, 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 deprivation 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 explicated 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 providing 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,

(i) prevailing law and order situation in the town;

(ii) abscondence of most of the accused persons;

(iii) murder of its informants;

(iv) 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.

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 aforesaid, 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 consistency in the expositions and enunciations on the issue highlighting the cause of justice as the ultimate determinant for the course to be adopted.

76. A "speedy trial", albeit the essence of the fundamental right to life entrenched in the Article 21 of the Constitution of India has a companion in concept in "fair trial", both being in alienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the state police

notwithstanding, has to be essentially invoked if the statutory agency already in-charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

77. As every social order is governed by the rule of law, the justice dispensing system cannot afford any compromise in the discharge of its sanctified role of administering justice on the basis of the real facts and in accordance with law. This is indispensable, in order to retain and stabilize the faith and confidence of the public in general in the justice delivery institutions as envisioned by the Constitution.

78. As succinctly summarised by this Court in Committee for Protection of Democratic Right (supra), the extra ordinary power of the Constitutional Courts in directing the CBI to conduct investigation in a case must be exercised sparingly, cautiously and in exceptional situations, when it is necessary to provide credibility and instill confidence in investigation or where the incident may have national or international ramifications or where

such an order may be necessary for doing complete justice and for enforcing the fundamental rights. In our comprehension, each of the determinants is consummate and independent by itself to justify the exercise of such power and is not inter-dependent on each other.

79. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

80. Any criminal offence is one against the society at large casting an onerous responsibility on the state, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, the plentitude and content

thereof can neither be enervated nor moderated by any legislation.

81. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in *Vinay Tyagi vs Irshad Ali @ Deepak and others* (2013)5SCC 762 to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

82. Prior thereto, in the same vein, it was ruled in *Samaj Parivartan Samudaya and others vs. State of Karnataka and others* (2012)7SCC 407 that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

83. That the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial was reiterated by this Court in *Rattiram and others vs. State of Madhya Pradesh* (2012)4SCC 516. It was postulated that the criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is the perception of a trial from the view point of criminal as well as the victim when judged in the social context.

84. This Court in *National Human Rights Commission vs. State of Gujarat and others* (2009)6SCC 767 did proclaim unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are *raison d'être* for their existence.

85. That the preeminence of truth is the guiding star in a judicial process forming the foundation of justice had been aptly propounded by this Court in Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack De Sequeira (dead) through L.Rs (2012)5SCC 370. It was ruled that the entire judicial system had been created only to discern and find out the real truth and that the Judges at all levels have to seriously engage themselves in the journey of discovering the same. Emphasizing that the quest for truth is the mandate of law and indeed the bounden duty of the courts, it was observed that the justice system will acquire credibility only when the people will be convinced that justice is based on the foundation of the truth. While referring with approval, the revealing observation made in Ritesh Tewari and another vs. State of U.P. and others (2010)10SCC 677 that every trial is voyage of discovery in which truth is the quest, the following passage of Lord Denning scripted in Jones vs. National Coal Board (1957) 2 All ER 155(CA) was extracted in affirmation:

"...It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth."

86. A strain of piognance and disquiet over the insensitive approach of the court concerned in the textual facts in the context of fair trial in the following observations of this Court in Vinod Kumar vs. State of Punjab (2015)3 SCC 220 sounds an awakening caveat:

"The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious trial Judge to ignore the statutory command, not recognize "the felt necessities of time" and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracizing the concept that a civilized and orderly society thrives on the rule of law which includes "fair

trial" for the accused as well as the prosecution."

87. The observations though made in the backdrop of repeated adjournments granted by the trial court, chiefly for cross-examination of a witness resulting in the delay of the proceedings, the concern expressed is of overarching relevance demanding sentient attention and remedial response. The poser indeed stems from the indispensable interface of the orderly existence of the society founded on the rule of law and "fair trial" for the accused as well as the prosecution. That the duty of the Court while conducting a trial is to be guarded by the mandate of law, conceptual fairness and above all its sacrosanct role to arrive at the truth on the basis of material brought on record, was reiterated.

88. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in *Manohar Lal Sharma vs. Principal Secretary and others* (2014)2SCC 532 that the aim of investigation is ultimately to search for truth and to bring the offender to book. The observations of Lord Denning in his rendering in "The Due Process of Law" First Indian Reprint 1993 page 102 were alluded to at page 553 as under:

"In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

89. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsized in the prefatory chapter dealing with the history

of criminal investigation in the treatise on Criminal Investigation - Basic Perspectives by Paul B. Weston and Renneth M. Wells:

"Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognizing that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime - the certainty that a criminal will be discovered, arrested and convicted.

90. Reverting to the facts, the gruesome and sordid assassination of the appellant's husband in broad day light under the public gaze is not in dispute. As a consequence of the murderous

assault with firearms and indiscriminate use thereof, Raju Pal along with two others fell to the bullets. Records seem to suggest that even prior to the incident, attempts were made on his life but he survived the same in view of the timely intervention of the security guards. That representations were made by him seeking additional protection and that after his murder, the appellant and the party higher ups of Raju Pal had persistently appealed, amongst others, to the Governor and the Chief Minister of the State for handing over the investigation to the CBI is also testified by the records.

91. Pledged imputations of the appellant include deliberate, uncalled for and mysterious replacement of the earlier sets of personal security officers/gunners of the deceased, presence of high police officials near the place of occurrence, indifference on the part of the state police to act with alacrity, hasty conduct of the post mortem of the dead body and cremation thereof without handing over the same to the appellant or any of his relatives, political pressure on the investigating agency to distort the course of the probe and to screen the incriminating evidence collected etc. One of the Investigating Officers in his writ petition, questioning his suspension had also pleaded on oath about the unexpected and unwarranted interference of the higher ups in the department to withhold evidence gathered in course of the investigation underway. Though nothing decisively turn on these accusations, the same having been refuted by the respondents, the fact remains that the appellant's husband had been mercilessly killed by a group of gun wielding assailants in a public place, in the open view of all concerned. Such a daring and desperate act did have a terrorizing impact on the society sending shock waves amongst all cross sections of the community and received wide coverage by the media. The incident understandably is not one to be lightly glossed over or trivialized.

92. The trial on the basis of the investigation completed hitherto by the state police and the CBCID has remained stayed by the orders of this Court. Prior thereto however as per the materials laid before this Court,

several eye-witnesses cited by the investigating agency have been examined. As the trial is pending for the present, we refrain from commenting on their testimony, except that they seem to have resiled from their statements under Section 161 of the Code. Having regard to the manner in which the offence had been committed, it is incomprehensible that there was no eye-witness to the incident. Thus, if the persons cited as eye-witnesses by the investigating agency retract from their version made before the police, then either they have been wrongly projected as eye-witnesses or they have for right or wrong reasons resiled from their earlier narration. In both the eventualities, in our opinion, the investigation has to be faulted as inefficient, incomplete and incautious with the inevitable consequence of failure of the prosecution in the case in hand. Such a fall out also spells a dismal failure of the state machinery as a pivotal stake holder in the process of justice dispensation to protect and assure the witnesses of their safety and security so to fearlessly testify the truth. We would hasten to add that these observations are by no means suggestive of the complicity of the respondent Nos. 4 & 5 and other accused persons standing trial. These, to reiterate, are farthest from even any presumptive hypothesis of their involvement in the offence for the present and are engendered by the concern of possible failure of justice.

If the investigating agencies, as involved, have not been able to identify and present eye-witnesses of the incident who would under all circumstance religiously and devotedly abide by their version about the same, the shortcoming apparently is in the probe made, sadly reflecting on the competence, commitment and efficacy of such agencies. The very fact that this Court had earlier stayed the trial while permitting the appellant to approach the High Court with the relief for assignment of the investigation to the CBI does signify its expectation that the High Court would adopt a sensitive insight into the issues raised and appropriately address the same. The pendency of the trial and the examination of the witnesses so far made thus in our estimate is not a

disarming factor for this Court, to consider the necessity of entrusting the investigation to the CBI even at this stage. To reiterate, a decision in this regard has to be induced and impelled by the cause of justice viewed in the overall facts and circumstances attendant on the incident. No inflexible norm or guideline is either available or feasible".

20. It is clear from the above judgments that the constitutional Court in an appropriate case in order to instill any confidence in the investigation has very wide powers to order for further investigation or re-investigation by a different agency. The only caveat that is to be borne in mind is that this power should not be used in a routine manner without there being strong reasons to order for transfer of investigation.

21. As the cause of justice has to reign supreme, a Court of law cannot reduce itself to be a resigned and helpless spectator, in the face of a faulty investigation. A fair trial encompasses within it a fair investigation. Article 21 of the Constitution of India embraces both the life and liberty of the accused as well as the interest of the victim. It cannot be one sided only favouring the accused person. The investigation must be unbiased, honest, just and in accordance with law and the emphasis of an investigation is to bring out the truth of the case before the Court of Competent jurisdiction. The jurisdiction of a Court to ensure fair and proper investigation in an adversarial system of criminal administration is of a very high decree than in an inquisitorial system and it has to take care and precaution to ensure that interested or influential persons do not misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders escaping from the clutches of law.

22. Every citizen in this country has a right to get his or her complaint properly investigated. A fair and proper investigation is always conducive to the ends of justice and to for establishing the rule of law and to maintaining proper balance in law and order in a democratic set up. This must be taken care by the constitutional Courts.

23. On carefully assessing the entire material available on record, this Court has no hesitation to come to a conclusion that the 3rd respondent has not investigated this case

effectively and a clear attempt is being made to shield the main accused persons. Therefore, in order to ensure fair investigation and to bring the offenders to book, this Court has to necessarily transfer the investigation to some other agency.

24. Even though, the petitioner has sought for a transfer of investigation to CBI, this Court deems it fit to transfer the case to the CBCID and repossess confidence in the said agency that it will conduct a fair investigation in this case.

25. In the result, the 3rd respondent is directed to hand over the entire Case Diary to the Inspector of Police, CBCID, Erode, within a period of two weeks from the date of receipt of copy of the order. The Inspector of Police, CBCID, Erode, shall take up the investigation and proceed further effectively in accordance with law and complete the investigation as expeditiously as possible and file a Final Report before the concerned Court.

This Criminal Original Petition is ordered accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP
To

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

2.The Superintendent of Police,
Erode District,
Erode.

3.The Inspector of Police,
Perundurai Police Station,
Crime No.443 of 2018,
Erode District.

4.The Superintendent of Police,
The Central Bureau of Investigation,
Special CBI ACB,
3rd Floor, Sastri Bhavan,
26, Haddows Road,
Nungambakkam,
Chennai-600 006.

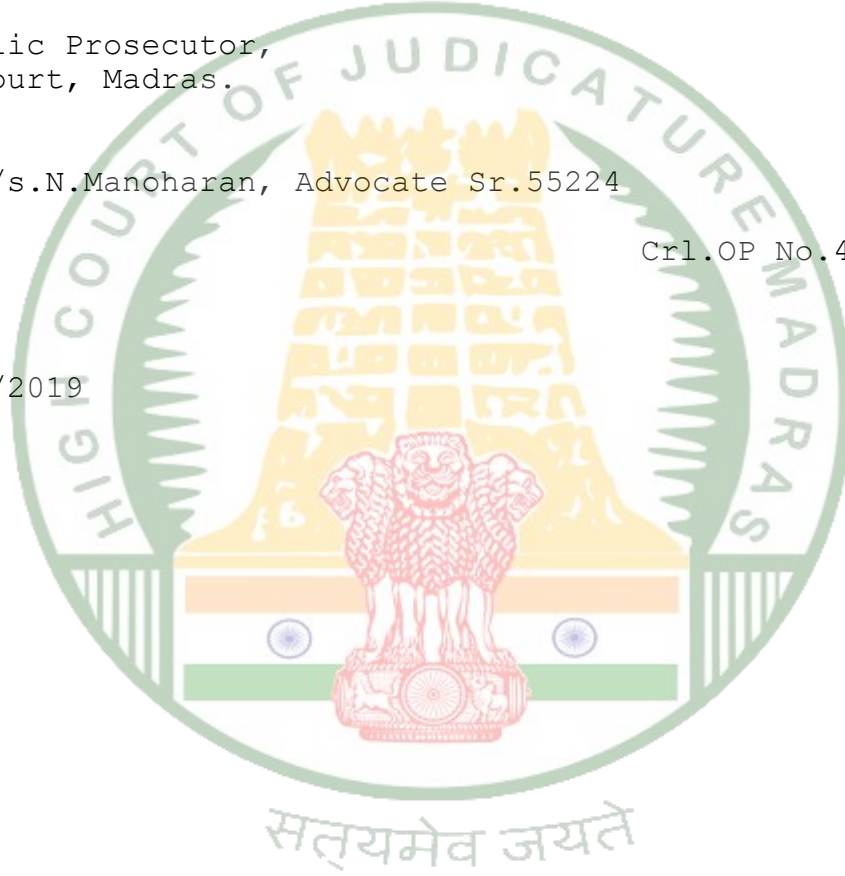
5.The Inspector of Police,
CBCID, Erode.

6.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Manoharan, Advocate Sr.55224

Cr1.OP No.4670 of 2019

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srg 23/07/2019



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