



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.07.2019

DELIVERED ON : 12.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

W.P (MD) No. 23633 of 2018

and

W.M.P (MD) No. 21420 of 2018

P. Suganthi,
General Secretary,
All India Democratic Women's Association,
having Office at
27, Mosque Street,
Chepauk,
Chennai - 600 005.

... Petitioner

Vs.

1. State of Tamil Nadu,
represented by its
Home Secretary,
Secretariat,
Fort St. George,
Chennai.
2. The Director General of Police,
Post Box No. 601,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.
3. The Central Bureau of Investigation,
represented by its,
Joint Director,
'A' Wing, III Floor,
Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.
4. The Superintendent of Police,
CBCID South/Investigating Officer
in Cr.No.1/2018,
CBCID - Head Quarters,
SIDCO Electronics Complex,
Block No.3, First Floor,
Guindy Industrial Estate,
Chennai - 32.



5.Devanga Arts College,
represented by its
Secretary,
Aruppukkottai,
Virudhunagar District.

6.Nirmaladevi

7.Murugan

8.Karupasamy

9.Nagalakshmi,

Member,

Southern District Women's Federation,

137, LIG Colony,

K.K.Nagar,

Madurai.

... Respondents

***[R.9 is impleaded as party respondent vide order of
this Court made in W.M.P(MD)No.21957 of 2018 in W.P
(MD)No.23633 of 2018, dated 27.02.2019.]***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the first respondent to transfer the investigation in Cr.No.1/2018 on the file of the Judicial Magistrate No.II, Virudhunagar to the third respondent and in turn, direct them to form a Special Investigation Team to conduct *de novo* investigation or in the alternative, further investigation in Cr.No.1/2018 pending on the file of the Court of Judicial Magistrate No.II, Virudhunagar and pass such other or further orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mrs.U.Nirmala Rani

For Respondents : Mr.P.H.Aravind Pandian
Additional Advocate General
assisted by
Mr.M.Chandrasekaran
Additional Public Prosecutor
for R.1, R.2 & R.4

Mr.R.R.Kannan for R.5

Mr.T.Lajapathi Roy for R.7

Mr.P.Balasubramanian for R.8

No appearance for R.6 & R.9

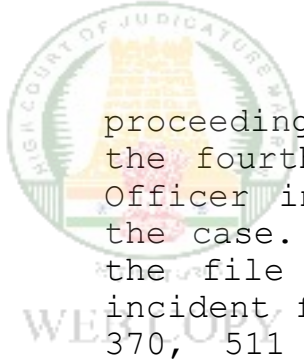
**ORDER****M. SATHYANARAYANAN, J.**

WEB COPY This writ petition styled as a Public Interest Litigation is filed by Ms.P.Suganthi, General Secretary of All India Democratic Women's Association (AIDWA), having office at 27, Mosque street, Chepauk, Chennai - 600 005, praying for issuance of a writ of Mandamus to direct the first respondent to transfer the investigation in Cr.No.1 of 2018 on the file of the Court of Judicial Magistrate No.II, Virudhunagar, to the third respondent, namely, Central Bureau of Investigation, to conduct de novo investigation or in the alternative, further investigation and pass such further orders.

2. The petitioner, in the affidavit filed in support of this writ petition, among other things, would state that the petitioner Association is a nation-wide organisation committed to the cause of equality of women and their emancipation and freedom fighter K.P.Janakiammal, Pappa Umanath, Brinda Karat, a Rajya Sabha Member, are some of the icons in the said Association. The petitioner Association also strongly campaigns against social evils, like, female feticide, infanticide, child abuse, sexual violence, domestic violence, trafficking, honour killing and also helps the women victims of said violences to get justice through hundreds of legal aid and counselling centres situated in almost all districts and it is having an impressive and enviable track record.

3. It is further averred by the petitioner that a Tamil weekly magazine, viz., "Nakkiran", published a news item on 08.04.2018 and with regard to the same incident, an audio conversation was also under circulation as to certain happenings between the sixth respondent and some college going girls for soliciting them for certain sexual harassment. According to the petitioner, the said audio conversation reveals the possible involvement of higher officials of Madurai Kamaraj University and so it could go upto the level of the Chancellor.

4. It is further averred that the deponent of the affidavit along with other members of AIDWA conducted a demonstration before the fifth respondent college, in which, the sixth respondent was employed as Assistant Professor demanding initiation of criminal action against those who are involved and to protect the safety of the girls and due to their intervention, the fifth respondent has lodged a complaint on the file of Aruppukkottai Town Police Station on 16.04.2018, which culminated in registration of a case in Cr.No.170 of 2018 for the commission of the offences under Sections 370, 511 I.P.C., read with Section 67 of Information and Technology Act, 2000 and the sixth respondent was arrested and remanded to judicial custody. The investigation which was pending on the file of Aruppukkottai Town Police Station was transferred by the



proceedings of the second respondent, dated 17.04.2018 to CBCID - the fourth respondent and the said agency, in turn, appointed an Officer in the level of Superintendent of Police, to investigate the case. CBCID, in turn, registered a case in Cr.No.1 of 2018 on the file of CBCID South Police, with regard to the very same incident for the alleged commission of the offences under Sections 370, 511 I.P.C., read with Section 67 of the Information and Technology Act, 2000.

5. The petitioner would further state that the Chancellor of Madurai Kamaraj University, the Honourable Governor of Tamil Nadu, had also constituted an One Man Commission led by a retired bureaucrat, namely, Mr.Santhanam, to enquire into the audio conversation matter. The Office of the Chancellor also issued a press statement denying the involvement. The petitioner Association also submitted a representation to His Excellency, the President of India, praying for fair investigation and also for removal of the Chancellor and they did not approach this Court at that point of time believing that CBCID would conduct a fair and proper investigation considering the sensitivity of the case.

6. The grievance expressed by the petitioner is that the fourth respondent, namely, CBCID, did not conduct the investigation in a fair and qualitative manner and sought to portrait the small fry, namely, the sixth respondent in a bad light and in that process, left the higher officials from the ambit of the investigation for the purpose of appeasing the higher echelons. It is also pointed out by the petitioner that out of 103 witnesses, there are 68 formal witnesses; 20 mahazar witnesses; 6 hear-say witnesses; 2 expert witnesses and 6 eyewitnesses and out of them, only 4 witnesses are directly involved and two of them are their friends and one is the defacto complainant. Among the said witnesses, 30 belong to Police Department; 11 from Revenue Department; 6 from victims' families; 4 are friends and relatives of the accused and faculty and non-faculty members of the fifth respondent college and also officials and others, who would speak about the said incident. In sum and substance, it is the submission of the petitioner that the fourth respondent had deliberately done unfair and improper investigation and in that process, sought to leave some very important personalities from the ambit of the crime and hence, came forward to file the present writ petition for the above said relief.

7. The writ petition was listed on 28.11.2018 for admission and a Division Bench of this Court (Honourable Mr.Justice K.K.Sasidharan and Honourable Mr.Justice P.D.Audikesavalu) has taken note of the rival submissions, especially, with regard to the completion of investigation and filing of charge sheet which was also taken on file in S.C.No.145 of 2018 by the Mahila Court, Srivilliputtur, expressed the view that final report filed should be perused for deciding the issue as to whether notice should be issued to the respondents and directed the Mahila Court,



Srivilliputtur, to forward the entire case records including the final report in a sealed cover and this Court, with a direction that the said materials should reach this Court on or before 03.12.2018, directed the listing of the matter on 10.12.2018. When the matter was listed on 10.12.2018, the same Division Bench of this Court has taken note of the fact that since the documents were forwarded by the trial Court only on 07.12.2018, they could not verify the records and however, taking into consideration the personal inconvenience of the learned Advocate General, directed the listing of the matter on 07.01.2019. Thereafter, the matter was adjourned to number of times and when it was listed on 27.02.2019, a Division Bench of this Court (Honourable Mr. Justice N. Kirubakaran and Honourable Mr. Justice S. S. Sundar) ordered notice to the respondents 3, 4 and 6 to 8 returnable on 18.03.2019 and also taking into consideration the allegations that no proper investigation has been made and only three persons have been fixed as accused, granted interim stay of further proceedings till 18.03.2019 and directed the listing of the matter on that day. Meanwhile, the matter was listed on 11.03.2019 and taking note of the submissions made by the learned Counsel for the sixth respondent/A.1 that even her Advocate is being prevented from meeting the sixth respondent, to find out the veracity of the said allegation, directed the production of the sixth respondent/one of the accused, namely, Mrs. Nirmaladevi before this Court by 02.15 p.m., on 12.03.2019 and directed the listing of the matter on 12.03.2019. On 12.03.2019, the said Division Bench had interacted with the sixth respondent/A.1 only for the purpose of knowing as to whether she has been threatened and she has been denied to access the legal assistance and got a clarification and thereafter, the matter was listed for a number of times.

8. When the matter was again listed on 22.04.2019, having felt that the sixth respondent/one of the accused, namely, Mrs. Nirmaladevi, would not have any occasion to talk freely, directed the production of the sixth respondent in the Chambers on 22.04.2019 and accordingly, she was produced and in the presence of two female CISF personnel and a female Private Secretary to the Honourable Judges, the sixth respondent was enquired without the presence of the Investigating Officer or any of the police officials. Thereafter, the petitioner and her Counsel were also before the said Division Bench and presented their views about the case and directed the listing of the matter on 23.04.2019 at 02.15 p.m.

9. A mention was made by the learned Additional Advocate General for listing of the matter for the reason that in the light of the interim orders in operation, the trial of the case could not be proceeded with and accordingly, the matter is listed today (08.07.2019).

10. Mrs. U. Nirmala Rani, learned Counsel for the petitioner has drawn the attention of this Court to the written arguments and also made the following oral submissions:



- (a) The alleged confession given by the sixth respondent/A.1 is hit by Section 26 of the Indian Evidence Act.
- (b) The written complaint given by the victims to the college authorities, namely, the fifth respondent would not see the light.
- (c) No attempts have been made to record the statements of the girls or the material witnesses under Section 164 of the Code of Criminal Procedure as there is every possibility that they may be threatened or coerced not to stick on to their earlier versions.
- (d) Neither Aruppukkottai Town Police Station who originally registered the case nor the present Investigating Agency, namely, CBCID, did cause any enquiry and find out the reasons as to why the fifth respondent lodged a complaint belatedly despite submissions of written complaints by the victim girls.
- (e) The audio conversation recorded which has been originally recorded through mobile phone which was later on burned/copied to Compact Disc, revealed the role and criminality of the higher and highest officials and the persons in power. Despite that, no fair investigation has been done, at least, to find out whether the allegations levelled against them are true or not.

11. The learned Counsel for the petitioner has also drawn the attention of this Court to the statements of the victim girls, namely, L.W.2, L.W.3, L.W.4, L.W.5 and L.W.6 and would submit that the audio conversation between them and the sixth respondent/A.1 recorded in the mobile phone had clearly revealed that the sixth respondent/A.1 is very well connected to important persons in power and taking advantage of the situation, made every possible attempts to lure the said witnesses into flesh trade and the sixth respondent/A.1 being the Assistant Professor in the services of the fifth respondent college, would not have indulged in such acts but for the active support and connivance of the very important personalities. Since the CBCID is one of the arms of the State Government, it has not deliberately evinced keen interest to find out the truth which is the purpose of fair investigation.

12. The attention of this Court was also invited to the press statement appeared in Times of India, English Daily, dated 16.04.2018, wherein the former Vice Chancellor of Madurai Kamaraj University, namely, Mr.V.P.Chelladurai, has spoken about the formation of a Committee to investigate the misappropriation of funds in the college and also planning to file a complaint to Madurai District Police with regard to the lurement on the part of the sixth respondent for the purpose of investigating the case thoroughly and however, the fourth respondent did not even choose to summon and record the statement of the former Vice Chancellor of Madurai Kamaraj University.

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

13. It is further submitted that the fourth respondent has

built up the entire case based upon the alleged confession of Accused Nos.2 and 3 without any supporting and corroborating materials so as to enable the accused to go scot-free and the attention of this Court was also drawn to the statements of L.W.34, L.W.35 and L.W.61A and would submit that the statements were tailor made to suit the convenience of the accused, so that, the big persons involved in the said scam, would go unpunished.

14. It is also argued by the learned Counsel for the petitioner that all the accused should have been subjected to brain mapping/ Narcoanalysis, polygraph test to find out the real truth and admittedly, the investigation has not been proceeded on the said lines obviously with a view to favour the accused and other important personalities.

15. It is also brought to the knowledge of this Court that before the Principal Seat of this Court, one D.Ganesan, State Co-ordinator of Revolutionary - Students Youth Front, Tamil Nadu, had filed W.P.No.11333 of 2018 praying for appointment of One Man Commission as to the very same incident and also made allegations against on-going CBCID investigation and however, the present writ petition is altogether for a different prayer filed purely in public interest and though the present writ petition came to be filed after the said writ petition, it is not a bar.

16. It is further brought to the knowledge of this Court that one C.R.Jayasukin, a native of Kanyakumari District, also filed a writ petition in Writ Petition (Criminal) No.311 of 2018 before the Honourable Supreme Court praying for transfer of investigation from CBCID to CBI on five grounds and the said writ petition has not been drafted properly and though it was dismissed by the Honourable Supreme Court *in limini* by recording the reason that "*We find no good grounds to entertain the present writ petition. The writ petition is accordingly dismissed.*" and still it is not a bar or *res judicata* for this Court in entertaining the present writ petition.

17. The learned Counsel for the petitioner, in support of his submissions, placed reliance upon the following decisions:

- (a) **Municipal Committee, Amritsar v. Hazara Singh** reported in 1975 (1) SCC 794.
- (b) **State of U.P. and another v. Synthetic and Chemical Ltd., and another** reported in 1991 (4) Supreme Court Cases 139.
- (c) **Government of India v. Workmen of State Trading and others** reported in 1997 (11) Supreme Court Cases 641.
- (d) **Zahira Habibulla H.Sheikh and another v. State of Gujarat and others** reported in 2004 (4) Supreme Court Cases 158.
- (e) **T.Sekaran v. The State of Tamil Nadu** [W.P(MD)No.4412 of 2008, <https://hcservices.ecourtsindia.org/cases/09.02.2010>].
- (f) **Babubhai v. State of Gujarat and others** reported in 2010 (12) Supreme Court Cases 254.



(g) **State of Punjab v. CBI and others** [SLP(Criminal) No.792 of 2008, decided on 02.09.2011].

(h) **J.Anbazhagan v. The Union of India and others** reported in 2018(4) MLJ 129.

(i) **E.Sivakumar v. Union of India** reported in 2018 (7) Supreme Court Cases 365.

18. Per contra, Mr.P.H.Aravind Pandian, learned Additional Advocate General appearing for the respondents 1, 2 and 4 would submit that initially the writ petition was not at all entertained and a Division Bench of this Court on 28.11.2018 merely directed the submission of the final report in a sealed cover to find out as to whether notice should be ordered or not and notice to the respondents 3, 4, 6 to 8 were ordered only on 27.02.2019 and while ordering so, interim stay of further proceedings was also granted.

19. It is also brought to the knowledge of this Court that subsequently, the sixth respondent/A.1 who was incarcerated for a quite long time despite filing of final report, was enlarged on bail by a Single Bench of this Court and prior to that, every time the bail applications were filed, came to be dismissed on the basis of the strong opposition raised by the prosecution and as such, it cannot be said that the fourth respondent has conducted unfair investigation.

20. It is the vehement and forceful submission of the learned Additional Advocate General appearing for the respondents 1, 2 and 4 that the petitioner under the garb of a Public Interest Litigation, made wild, reckless and baseless allegations against the Honourable Governor of Tamil Nadu, who is also the Chancellor of Madurai Kamaraj University, without any supporting or tenable materials and if such kind of writ petitions styled as Public Interest Litigations are entertained and media sensitivity is created, the investigation of any such cases cannot go on as it put pressure on the investigating agency also.

21. It is also submitted by the learned Additional Advocate General that investigation was conducted by a lady Officer who belongs to Indian Police Service and she is having an impeccable and excellent track of record and admittedly, no allegations have been levelled against the Investigating Officer and on legal plea, would submit that after the filing of the writ petition, admittedly, the charge sheet has been filed with voluminous supporting documents which were also taken on file in S.C.No.145 of 2018 by the Mahila Court, Srivilliputtur and but for the interim orders granted by this Court, the trial Court would have commenced and prays for the dismissal of this writ petition with exemplary costs.

22. Mr.T.Lajapathi Roy, learned Counsel for the seventh respondent has drawn the attention of this Court to Section 4(2) of



the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and would submit that in terms of Section 4(2)(b) and (c) of the said Act, no Redressal Committee is in place and investigation is totally flawed and the seventh respondent has been roped in as accused and after filing of the charge sheet, he has filed a petition to discharge him and it came to be dismissed by the trial Court and making a challenge to the same, he filed CrI.R.C(MD)No.63 of 2019 before this Court and the same is pending.

23. It is also well settled position of law that an accused is not entitled to ask for fresh investigation or further investigation and it also appears that the seventh respondent impliedly supports to the case of the petitioner to a limited extent. The submission made on behalf of the seventh respondent is unsustainable in law and it is to be noted at this juncture that as against the dismissal of the petition for discharge, he also invoked the Criminal Revisional jurisdiction of this Court and the same is pending and he is always at liberty to work out his remedy in accordance with law before the competent forum.

24. This Court paid it's best attention and anxious consideration to the rival submissions and also perused the materials placed before it and also considered the decisions relied on by the petitioner.

25. It is pertinent to point out at this juncture that one C.R.Jayasukin, a native of Kanyakumari District, had filed Writ Petition(Criminal) No.311 of 2018 praying for issuance of a writ of Mandamus for appropriate directions, directing the first respondent therein, namely, Director General of Police, Tamil Nadu, to transfer the sexual scandal case involving Nirmaladevi - the sixth respondent herein, to CBI and also praying for monitoring the case by the Honourable Supreme Court. The said writ petition was listed on 07.12.2018 before the Honourable First Bench of the Supreme Court and it was dismissed on that day and it is relevant to extract hereunder the said order:

"Permission to appear and argue in person is granted.

We find no good ground to entertain the present writ petition. The writ petition is accordingly dismissed."

26. It is the submission of the learned Counsel for the petitioner that the said writ petition came to be filed without proper and sufficient averments and he did not file the final report, but the fact remains that the prayer was for transfer of investigation to CBI and the said prayer was rejected by the Honourable Supreme Court vide order dated 07.12.2018.

27. The prayer in the present writ petition was to transfer the investigation of the case to the third respondent, namely, CBI



with a further direction to constitute a Special Investigating Team to conduct *de novo* investigation or in the alternative, further investigation in Cr.No.1 of 2018 on the file of the fourth respondent.

28. It is also to be noted at this juncture that case after investigation, has culminated in a charge sheet which has been taken on file in S.C.No.145 of 2018 by the Mahila Court, Srivilliputtur and despite the said subsequent development, no steps have been taken to amend the prayer.

29. The judgment relied on by the petitioner in ***Municipal Committee, Amritsar v. Hazara Singh*** reported in **1975 (1) SCC 794** laid down the proposition that "Every statement contained in a judgment of that Court would be attracted by Article 141 and statements on matters other than law have no binding force."

30. The judgment in ***State of U.P. and another v. Synthetic and Chemical Ltd., and another*** reported in **1991 (4) Supreme Court Cases 139** also laid down the proposition that "Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent."

31. In ***Government of India v. Workmen of State Trading and others*** reported in **1997 (11) Supreme Court Cases 641**, it is held that a non-speaking order of the Honourable Supreme Court cannot be termed as a binding precedent and therefore, the decision of the High Court was not justified.

32. There cannot be any difficulty in abiding by the said decisions, but the order passed by the Honourable Supreme Court in Writ Petition(Criminal) No.311 of 2018, dated 07.12.2018, would specifically state that the Court did not find any good ground to entertain the writ petition.

33. Be that as it may, the moot questions that arise for consideration in this writ petition are:

(i) Whether the facts and circumstances of the case on hand require transfer of investigation to CBI with a further direction to constitute a Special Investigating Team?

(ii) Whether this Court, in exercise of it's jurisdiction under Article 226 of the Constitution of India (or) Section 482 of the Code of Criminal Procedure, can order further or fresh investigation?

34. First, let us deal with Question No.(ii).



Question No. (ii):

35. It is also to be noted at this juncture that in the case on hand, final report has already been filed before the jurisdictional Court which has been taken on file in S.C.No.145 of 2018 by the Mahila Court, Srivilliputtur.

36. In **Zahira Habibulla H.Sheikh and another v. State of Gujarat and others** reported in **2004 (4) Supreme Court Cases 158**, which pertains to the case commonly known as 'Best Bakery Case' wherein, Zahira who claims to be an eyewitness to macabre killings allegedly as a result of communal frenzy. The Honourable Supreme Court having noted that in the light of the peculiar facts and circumstances of the case and the ample evidence on record, there was a glaring demonstrating subversion of justice delivery system and further taking note of no congeal and conducive atmosphere prevailing, ordered re-trial and transferred the case from Gujarat High Court to Bombay High Court.

37. In the case on hand, the present case cannot be compared to the said case for the reason that the statements of the victim girls have been recorded and the alleged mobile phone conversations between the sixth respondent/A.1 and the girls have also been investigated in accordance with the Information and Technology Act, 2000 and Section 65-B of the Indian Evidence Act.

38. In **E.Sivakumar v. Union of India** reported in **2018 (7) Supreme Court Cases 365**, challenge was made to the order dated 26.04.2018 made in W.P.No.19335 of 2017 which pertains to transfer of investigation as to the illegal manufacture and sale of Gutkha and Pan Masala containing Tobacco and/or Nicotine, to the Central Bureau of Investigation. A perusal of the facts of the case would reveal that allegations have been made against the high ranking police officials of All India Service as to the allowing of sale of illegal manufacture of Gutkha and Pan Masala and having noted that the underground gutkha business is a crime against society which needs to be curbed and investigation by a centralized agency like the CBI would be more comprehensive and cover all aspects of the illegal manufacture, import, supply, distribution and sale of banned chewable tobacco items, including the detection of all those involved in such illegal import, manufacture, supply, distribution and sale, as also the detection of corruption and complicity of public servants and/or Government servants in this regard, the Honourable Supreme Court confirmed the order passed by the Division Bench of the Principal Seat of this Court for transfer or investigation to CBI. Accordingly, the investigation was transferred to CBI which is conducting the investigation.

39. It is to be noted at this juncture that involvement of certain persons outside the State also alleged and therefore,



thought fit to hand over the investigation to CBI as the allegations made against certain persons who reside and carry on business in Tamil Nadu also.

40. Attention of this Court was invited to the statements of the alleged victim girls, namely, L.W.2, L.W.3, L.W.4, L.W.5 and L.W.6, who were said to have been lured by the sixth respondent for sexual trade and sexual gratification. The contents of the conversation did not *prima facie* appear to be directly pointing out the alleged illegal acts of high echelons of power or important personalities. The said decision has no application to the case on hand.

41. In ***J.Anbazhagan v. The Union of India and others*** reported in **2018(4) MLJ 129**, a Division Bench of this Court had considered all the judgments rendered by the Honourable Supreme Court as to the transfer of investigation, especially, the communication of the Director of Income Tax (Investigation) and after surveying and considering all the judgments of the Honourable Supreme Court, in paragraph 140, it is observed as follows:

"140. There can, however, be no cast iron formula for directing transfer of investigation to the CBI. The Court would have to take a decision taking into account the facts and circumstances of the case. Prima facie materials of the commission of an offence, the gravity of the offence, the effect of the offence on the people in general would be relevant factors for deciding whether CBI investigation should be ordered. Surreptitious manufacture, import distribution and sale of prohibited items such as gutkha and other forms of chewable tobacco which adversely impacts the health of the people, including in particular the young, and has inter-State ramifications is certainly a fit case to be transferred for investigation to a centralized agency like the CBI, more so, when there are serious allegations of connivance of different officials of the Central and different State Government, including top police officials of the State of Tamil Nadu."

Ultimately, the investigation of the case was transferred to the file of the CBI and in paragraph 144, it was observed that "*direction for transfer of investigation is not to be construed as any definite finding of the Court of the complicity of any constitutional functionary or of any specific official of the State Government.*"

42. As already pointed out, the present case does not involve any inter-State involvement of persons outside the State and in the absence of any specific allegations, especially, as to the criminal acts against the persons in power or position, as a matter of course, the investigation of a case which is culminated into a charge sheet, cannot be reopened and transferred to CBI.



43. A perusal of the affidavit filed in support of this writ petition would also disclose that the general statements have been freely made without any supporting materials or substance and it also appears that the petitioner under the guise of filing this Public Interest Litigation tried to collect some materials/evidence and such a course cannot be permitted.

44. In **Mithilesh Kumar Singh v. State of Rajasthan** reported in **2014 (14) SCALE 25**, a young college girl died under mysterious circumstances and initially, a case was registered under Section 306 I.P.C., on the ground that she was harassed by senior students and she was taken to fourth floor and made to see downwards even though she was scared and she fell down and suffered injuries and in order to cover up the truth and to save reputation of the college, false medical record was prepared to show that she had fourteen weeks' pregnancy on account of which she committed suicide. The father of the girl filed a writ petition for transfer of investigation to CBI apprehending that the investigation done by the local police may not be fair. The Honourable Supreme Court by majority judgment, transferred the investigation to CBI and it is relevant to extract hereunder paragraphs 9 and 10:

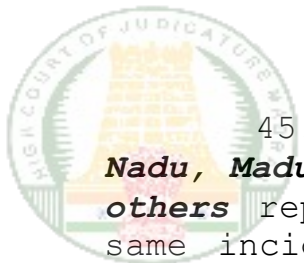
"9. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates



matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.

10. Having said that we need to remind ourselves that this Court has, in several diverse situations, exercised the power of transfer. In *Inder Singh v. State of Punjab* (1994) 6 SCC 275 this Court transferred investigation to CBI even when the investigation was being monitored by senior officers of the State Police. So also in *R.S Sodhi Advocate v. State of U.P.*, and others 1994 (Supp) (1) SCC 143 investigation was transferred even when the State Police was doing the needful under the supervision of an officer of the rank of an Inspector General of Police and the State Government had appointed a one-member Commission of Inquiry headed by a sitting Judge of the High Court to enquire into the matter. This Court held that however faithfully the police may carry out the investigation the same will lack credibility since the allegations against the police force involved in the encounter resulting in the killing of several persons were very serious. The transfer to CBI, observed this Court, "would give reassurance to all those concerned including the relatives of the deceased that an independent agency was looking into the matter."

The above cited judgment laid down the proposition that there is no hard and fast rule for universal application to all cases and each case will obviously depend upon the facts of each case and the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion and it is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation and in that event, the Court may step in and exercise its extraordinary powers. In the case on hand, in the light of the materials gathered during investigation which culminated in the form of a charge sheet with supporting documents and that premier investigating agency of the State, namely, Crime Branch CID is prosecuting the case, it cannot be said that the case would end in acquittal.



45. In **S.Selvagomathi v. Chancellor / Governor of Tamil Nadu, Madurai Kamaraj University, Raj Bhavan, Chennai - 600 022 and others** reported in (2018) 4 MLJ 634, which pertains to the very same incident, challenge was made to the appointment of one man Inquiry Committee by the Honourable Governor of Tamil Nadu in the capacity of Chancellor of Madurai Kamaraj University and the writ petition came to be disposed of, observing among other things that against a High Constitutional Authority, allegations cannot be recklessly or casually made and also expressed the view that the writ petitioner, namely, Ms.Selvagomathi has scandalized the first respondent/Chancellor of Madurai Kamaraj University, without any basis.

46. It is to be pointed out at this juncture that in paragraph 10 of the affidavit filed in support of the present writ petition, it is stated that All India Democratic Women's Association, in which, the petitioner is a General Secretary, had sent memorandums on 21.04.2018 to the National Commission for Women and also to His Excellency, the President of India, seeking fair investigation and also removal of the Chancellor/the Honourable Governor of Tamil Nadu.

47. As already pointed out, even taking the statements of L.W.2, L.W.3, L.W.4, L.W.5 and L.W.6 as it's face value, still there are no specific allegations made and the investigation and the charge sheet supported by voluminous documents prima facie do not reveal anything in support of the above said allegation made in paragraph 10 of the affidavit filed in support of this writ petition and that apart, no tenable materials have been placed in support of this writ petition for ordering transfer of investigation.

Question No. (i):

48. In the decision in **Vinay Tyagi v. Irshad Ali @ Deepak and others** reported in (2013) 5 SCC 762, it is held that "the High Court, in exercise of powers conferred under Section 482 Cr.P.C., can order fresh/de novo/reinvestigation and such a direction can be given only in exceptional cases and unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the High Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a fresh investigation." In the case on hand, the said stage has crossed and final report has been filed which was also taken on file in S.C.No.145 of 2018 by the Mahila Court, Srivilliputtur.

49. In **Kishan Lal v. Dharmendra Bafna and another** reported in (2009) 7 Supreme Court Cases 685, the scope of Section 173(8) of the Code of Criminal Procedure, came up for consideration and the facts of the case would disclose that a charge sheet was filed by the competent Court of jurisdiction against Accused Nos.1 and 2 under Sections 406, 420 and 120-B I.P.C., and it was taken cognizance and on the premise that the learned Magistrate did not



take cognizance against other accused, the appellant therein filed an application under Section 482 of the Code of Criminal Procedure for setting aside the said order and it was disposed of by granting liberty to the petitioner to approach the jurisdictional Magistrate. Pursuant to the liberty granted, the appellant filed a petition for further investigation before the jurisdictional Magistrate and it was ordered and the revision filed before the High Court also came to be dismissed and hence, a Special Leave Petition was preferred which after admission, was converted as criminal appeal. It is relevant to extract hereunder paragraph 15 of the said judgment:

"15. An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. Although some decisions have been referred to us, we need not dilate thereupon as the matter has recently been considered by a Division Bench of this Court in *Mithabhai Pashabhai Patel & Ors. vs. State of Gujarat* [(2009) 6 SCC 332] in the following terms: (SCC pp. 336-37, paras 12-13)

"12. This Court while passing the order in exercise of its jurisdiction under Article 32 of Constitution of India did not direct re-investigation. This court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of sub-section (8) of Section 173 of the Code can pray before the Court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not be insisted upon.

13. It is, however, beyond any cavil that 'further investigation' and 're-investigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely under Articles 226 and 32 of the Constitution of India could direct a 'State' to get an offence investigated and/or further investigated by a different agency. Direction of a re-investigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar*, [(2008) 5 SCC 413], opined as under: (SCC p.415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section



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it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation..."

50. In **Athul Rao v. State of Karnataka and another** reported in **2018-1-L.W. (Crl.) 287**, the trial Court has framed charges against the appellant for the offences punishable under Sections 417, 465, 468 and 471 I.P.C. and however, no charge has been framed against the appellant for the offences punishable under Sections 497, 498 and 306 I.P.C., in relation to the actual death of Padmapriya. Therefore, the second respondent filed an application before the trial Court in C.C.No.31 of 2008 for further investigation into the offences under Sections 497, 498 and 306 I.P.C., and the said application was rejected on the ground that the charge sheet filed would indicate that the statements of 76 witnesses were recorded and four articles were seized. The said decision was put to challenge before the High Court under Section 482 Cr.P.C., and it was allowed. The appellant/accused made a challenge to the said order by filing a Special Leave Petition which after admission was converted as Criminal Appeal No.1367 of 2017. The following question arose for consideration before the Honourable Supreme Court:

"Whether the High Court was justified in allowing the prayer of the second respondent for further investigation under Section 173(8) Cr.P.C., in the fact situation of the present case?"

The Honourable Supreme Court, during discussion, has placed reliance upon it's earlier decision in **Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and others** reported in **(2017) 4 Supreme Court Cases 177 : 2017-2-L.W. (Crl.) 185** and extracted paragraphs 48 to 51 and it is very relevant to extract hereunder the same:

"48. As adverted to hereinabove, whereas Section 311 of the Code empowers a Court at any stage of any inquiry, trial or other proceeding, to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, if construed to be essential to be just decision of the case, Section 319 authorizes a Court to proceed against any person, who though not made an accused appears, in course of the inquiry or trial, to have committed the same and can be tried together. These two provisions of the Code explicitly accoutre a Court to summon a material witness or examine a person present at any stage of any inquiry, trial or other proceeding, if it



considers it to be essential to the just decision of the case and even proceed against any person, though not an accused in such enquiry or trial, if it appears from the evidence available that he had committed an offence and that he can be tried together with the other accused persons.

49. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

50. The unamended and the amended sub-Section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

51. In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C. clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to



direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C. to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C. would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh (supra), the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part



of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.

(emphasis supplied)"

51. In paragraph 9, it was observed after taking note of the fact that the second respondent is not the complainant and the complaint in question was instituted by the mother of the second respondent and she was not the applicant and in any case, at the instance of the second respondent, it was not open to the Court to direct further investigation as the trial Court had already framed charges and taken cognizance of the case against the appellant. It is also relevant to extract hereunder paragraph 13:

"13. ... The statements of the accused and two witnesses so recorded were already on record in CC. No.31/2008. Further, charge-sheets have been filed after thorough investigation of the allegations made by the complainant from all angles and charges have also been framed. The case has been set down for trial. Considering all these, it was not just and proper to direct further investigation. This opinion reached by the Trial Court was not in conflict with the liberty given by the High Court to respondent no. 2 in the earlier round of proceeding instituted by the appellant. That liberty was hedged with the observation that the Trial Court was expected to consider the application in accordance with law. It was, therefore, inapposite for the High Court to conclude that in view of the liberty given to respondent no. 2 on the earlier occasion, it was necessary to issue direction for further investigation."

52. In the light of the principles enunciated in the aforesaid latest decision of the Honourable Supreme Court, this Court is of the considered view that it is not the fit case to order fresh/further/de novo investigation in respect of the case in Cr.No.1 of 2018 on the file of the fourth respondent, in which, charge sheet has already been filed and taken on file in S.C.No.145 of 2018 by the Mahila Court, Srivilliputtur.

53. The learned Counsel for the petitioner during the course of arguments also made a complaint that the Investigating Agency did not take any steps to conduct Narcoanalysis, polygraph test, despite non-objection on the part of the concerned accused. No material whatsoever has been placed before this Court as to the non-objection of the concerned accused as to the said aspect. The conduct of Narcoanalysis, polygraph test during the course of the investigation is no longer *res integra* in the light of the decision of the Honourable Supreme Court in **Selvi and others v. State of Karnataka** reported in (2010) 7 Supreme Court Cases 263. It is relevant to extract hereunder paragraphs 102, 103, 104, 106 and 254:



104. These concerns have been recognised in Indian as well as foreign judicial precedents. For instance, Das Gupta, J. had observed in *State of Bombay v. Kathi Kalu Oghad*, [1962] 3 SCR 10, at pp. 43-44: (AIR p.1819, para 30)

"30. ... for long it has been generally agreed among those who have devoted serious thought to these problems that few things could be more harmful to the detection of crime or conviction of the real culprit, few things more likely to hamper the disclosure of truth than to allow investigators or prosecutors to slide down the easy path of producing by compulsion, evidence, whether oral or documentary, from an accused person. It has been felt that the existence of such an easy way would tend to dissuade persons in charge of investigation or prosecution from conducting diligent search for reliable independent evidence and from sifting of available materials with the care necessary for ascertainment of truth. If it is permissible in law to obtain evidence from the accused person by compulsion, why tread the hard path of laborious investigation and prolonged examination of other men, materials and documents? It has been well said that an abolition of this privilege would be an incentive for those in charge of enforcement of law 'to sit comfortably in the shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunting up evidence.' [Sir James Fitzjames Stephen, History of Criminal Law, p. 442] No less serious is the danger that some accused persons at least, may be induced to furnish evidence against themselves which is totally false - out of sheer despair and an anxiety to avoid an unpleasant present. Of all these dangers the Constitution makers were clearly well aware and it was to avoid them that Article 20(3) was put in the Constitution."

106. A similar view was articulated by Lord Hailsham of St. Marylebone in *Wong Kam-ming v. R*, [1979] 1 All ER 939, at p. 946 : (AC p. 261 B-C)

"... any civilised system of criminal jurisprudence must accord to the judiciary some means of excluding confessions or

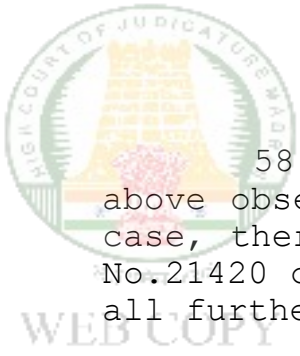


"Nakkiran".

56. In **2010 (6) Supreme Court Cases (Journal Section)**, the Honourable Chief Justice of India has delivered a lecture as to the Reporting of Court Proceedings by Media and the Administration of Justice and it is useful to extract the following observations:

"The influential media agencies must promote the best practices for newsgathering and emphasise the importance of maintaining ethical standards for the coverage of judicial proceedings. The guidelines framed by bodies such as the Press Council of India, the Editors' Guild of India do touch on these issues - such as cross-checking and verifying facts before reporting, refraining from sensationalisation and not commenting on sub judice matters. In many cases such M.P. Lohia v. State of W.B. [(2005) 5 SCC 686 : 2005 SCC (Cri) 556], the Supreme Court has warned the media against indulging in public trials when the matter is sub judice. In the absence of a prompt legislative intervention, the judiciary can take the lead in framing guidelines for reporting on sub judice matters."

57. This Court, on a thorough consideration and appreciation of materials placed before it and also the arguments advanced by the learned Counsel for the petitioner as well as the learned Additional Advocate General appearing for the respondents 1, 2 and 4 and the learned Counsel for the seventh respondent, is of the considered opinion that this is not a fit case for issuing appropriate direction for transfer of the investigation of the case in Cr.No.1 of 2018 registered by CBCID South Police, to the third respondent - CBI to constitute a Special Investigation Team to conduct *de novo* investigation. As already pointed out, the investigation of the case is already over and culminated in a final report against the accused which has already been taken on file in S.C.No.145 of 2018 by the Mahila Court, Srivilliputtur and in the light of the subsistence of interim order passed by this Court on 27.02.2019, the trial of the case could not be proceeded with. It is made clear that the observations/findings given hereinabove are only for the purpose of disposal of this writ petition and this Court has not ventured into the merits or demerits of the case. Therefore, the trial Court is to adjudicate the case on its own merits depending upon the quality of evidence. The trial Court is also clothed with sufficient power in the form of Section 319 Code of Criminal Procedure, to rope in any person other than accused that comes to his knowledge from the evidence and that apart, under Section 216 Code of Criminal Procedure, the trial Court is also having the powers to alter the charge.



58. In fine, this writ petition is dismissed subject to the above observations. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, W.M.P(MD) No.21420 of 2018 is also dismissed and the order of interim stay of all further proceedings granted on 27.02.2019, shall stand vacated.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

rsb

To

- 1.The Home Secretary,
State of Tamil Nadu, Secretariat,
Fort St. George, Chennai.
- 2.The Director General of Police,
Post Box No.601, Dr.Radhakrishnan Salai,
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- 3.The Joint Director,
Central Bureau of Investigation,
'A' Wing, III Floor, Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.
- 4.The Superintendent of Police,
CBCID South/Investigating Officer
in Cr.No.1/2018, CBCID - Head Quarters,
SIDCO Electronics Complex,
Block No.3, First Floor,
Guindy Industrial Estate,
Chennai - 32.

+1CC TO MR.T.LAJAPATHI ROY, Advocate Sr. No.75303

+1CC TO MR.RR.KANNAN, Advocate Sr. No. 75274

ORDER MADE IN
W.P(MD)No.23633 of 2018
and
W.M.P(MD)No.21420 of 2018
12.07.2019

SGS (CO)

TR (23.07.2019) 25P 7C