

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19785 of 2020
Date of Decision: 04.01.2021

Sukhjinder Singh @ Sunny

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vinod Ghai, Sr. Advocate, with
Ms. Kanika Ahuja, Advocate,
for the petitioner.

Mr. Harin P. Raval, Sr. Advocate, with
Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab,
Ms. Anusha Nagarajan, DAG, Punjab and
Mr. Karan Bharihoke, Advocate.

Mr. Sumeet Goel, Sr. Standing Counsel for the CBI.

Mr. Gagan Pradeep Singh Bal, Advocate,
for the complainant.

AMOL RATTAN SINGH, J.

The petitioner has invoked the jurisdiction of this court under the provisions of Section 482 of the Code of Criminal Procedure, 1973, “read with Article 226 of the Constitution of India.”

The prayer made in this petition is to quash the final report submitted by a Special Investigation Team (SIT) of the Punjab Police to the learned Judicial Magistrate, Faridkot, on July 06, 2020, under the provisions of Section 173 of the Code of Criminal Procedure (pursuant to FIR no.63 of 2015 having been registered at Police Station Bajakhana, District Faridkot, on June 02, 2015, alleging therein

the commission of offences punishable under Sections 295-A and 380 of the IPC).

The petitioner further seeks quashing of the order passed by the learned Judicial Magistrate, First Class, (Duty Magistrate), Faridkot, in case No. CHI-178/2020, on the same date as the submission of the report, i.e. July 06, 2020 (copy Annexure P-15). Vide that order, notice has been ordered to be issued to the petitioner and his co-accused, Shakti Singh, (both of whom were admitted to bail earlier), to appear before that court on 20.07.2020, production warrants to the secure the presence of other accused who were in custody, also having been ordered to be issued.

2. As per the petitioner, the said order is illegal and unsustainable as the very same FIR no.63/2015, alongwith other such FIRs registered pertaining to similar incidents, is already “under investigation/further investigation” with the Central Bureau of Investigation (hereinafter to be referred to as the CBI or the Bureau), pursuant to the orders passed by the learned Special Judge (CBI), Punjab, at Mohali. Therefore, the petitioner contends that “investigation/proceedings” in the same FIR by two different agencies, i.e. the Punjab Police and the CBI, is not permissible.

He further contends that the FIR in question registered at Police Station Bajakhana, District Faridkot, was so registered on the basis of a statement given by one Gora Singh who was working as a *Granthi* (Priest) in the Gurudwara Singh Sahib, village Burj Jawahar Singh Wala, District Faridkot, who stated that the *Saroop* (scripture) of the holy *Shri Guru Granth Sahib Ji* was missing from the *Peera Sahib*, i.e. the place of its rest, and that some unknown persons had stolen the *Saroop* (i.e. the holy book, *Shri Guru Granth Sahib*), which had outraged/hurt religious feelings.

On that statement, the aforesaid FIR came to be registered on June 02,

2015.

3. The petitioner further states in his petition that two other incidents of sacrilege also took place thereafter on September 24 and 25, 2015, with posters containing derogatory remarks etc. about the holy scripture (*Shri Guru Granth Sahib*) as also containing remarks against some Sikh religious leaders, found posted outside the Gurudwara managed by the Shiromani Gurdwara Parbandhak Committee (SGPC) in village Bargari, about 2 kms. from the village from where the holy book was stolen (Burj Jawahar Singh Wala).

That having happened on September 24, thereafter on September 25 a similar poster was found posted outside the Gurudwara of village Burj Jawahar Singh Wala also.

In respect of these two incidents, FIR no.117 came to be registered at the same police station (Bajakhana, District Faridkot), on 25.09.2015, bearing FIR no.117, alleging therein the commission of an offence punishable under Section 295-A of the IPC.

On 12.10.2015 another incident is stated to have happened (as per the petition) with some *Angs* (pages) of the holy book found strewn around the Gurudwara Sahib at Bargari. Some people are stated to have collected those torn pages which they took in a procession to the Kotkapura Crossing in Faridkot District, where they sat on a *dharna* later.

During these protests, allegedly the police resorted to firing, in respect of which FIR no.128 was registered on 12.10.2015 at the same police station (Bajakhana), alleging therein the commission of offences under Sections 295 and 120-B of the IPC.

[Though in the petition it is stated that the said FIR was registered on account of the firing incident, however a perusal of the FIR itself shows that the

allegations made therein are with regard to incidents of similar sacrilege, i.e. strewing/scattering of *Angs* of Shri Guru Granth Sahib, consequent upon which the offences that are alleged to have been committed are those punishable under Sections 295 and 120-B of the IPC. In fact, at the bar it was accepted by learned counsel appearing on all sides, including the State, that FIR no.128 is also one relating to an incident of sacrilege.]

Thus, three FIRs came to be registered in those 4 months approximately, from June 02, 2015 to October 12, 2015, the first pertaining to the theft of the holy scripture and the other two pertaining to alleged sacrilege thereof.

The prayers made in the present petition, however, are only in respect of the report submitted by the Punjab Police qua FIR No. 63 of 2015 and the impugned order passed by the learned Magistrate, on 06.07.2020.

4. On 16.10.2015 the Government of Punjab appointed a Commission headed by retired Justice Jora Singh to enquire into all the incidents of sacrilege and subsequent events of police firing, with the said Commission having submitted its report on 29.06.2016, the contention of the petitioner being that there is nothing on record to show that the said report was accepted by the Government.

5. In the meanwhile, on 02.11.2015 a notification was issued by the Government of Punjab on the basis of which another notification was issued on 05.11.2015 by the Department of Personnel & Training (DoPT), Government of India, transferring the investigation in all three cases, i.e. FIR nos.63 dated 02.06.2015, 117 dated 25.09.2015 and 128 dated 12.10.2015 (all registered at Police Station Bajakhana, District Faridkot), to the CBI.

Consequently, the CBI then registered all three cases as RC-13(S)/2015; 14(S)/2015 and 15(S)/2015, alleging therein the commission of offences punishable under Sections 295-A/280 of the IPC (corresponding to the

first FIR), 295-A (corresponding to the second FIR) and 295 and 120-B of the IPC (corresponding to the 3rd FIR).

6. On 16.03.2017 a 'new Government' is stated to have taken charge in the State of Punjab pursuant to State Assembly elections, with the contention of the petitioner being that the “new Govt.” had a look into the Jora Singh Commission Report and formed an opinion that it had not answered certain key questions referred to it and that as per the State Government, the report of the Commission could not be accepted, it being inconclusive.

The Government is then stated to have decided to set up another Commission of enquiry headed by retired Justice Ranjit Singh, on 14.07.2017, to look into the incidents of sacrilege, as also the police firing (with the police firing stated to have taken place at Kotkapura and Behbal Kalan, as per the petitioner).

7. The petition thereafter goes on to describe as to how one Mahinder Pal @ Bittu who was stated to be a staunch follower of a particular Dera was opposing allegedly orthodox hardliners who were attempting to stop the prayers of the Dera; and as to how a Dera follower who was a resident of Burj Jawahar Singh Wala (one Gurdev Singh) was allegedly shot by hardliners, upon which the aforesaid Mahinder Pal and others started an agitation against the police.

As per the petitioner, one particular officer by the name of Shri Ranbir Singh Khatra is initially stated to have rebuked the Dera followers and taunted them as to how the murderer of Gurdev Singh would be found when even the culprits of the sacrilege incidents had not been found.

Thereafter, upon the agitation by the Dera followers allegedly having gained strength, the said officer is said to have publicly apologized to the aforementioned Mahinder Pal and had assured that the culprits would be caught at the earliest, but allegedly he kept nursing a grudge against Mahinder Pal despite

which the officer was appointed as the head of the SIT constituted for investigation of the sacrilege cases.

8. The officer is further alleged to have 'maliciously targeted' the wife of the deceased Gurdev Singh and having subjected her to torture etc., pressurising her to confess to the act of sacrilege by her and her late husband with the help of Dera members.

The wife of the said deceased Gurdev Singh (a lady stated to be named Sarbjit Kaur), is also stated to have filed a petition before this court seeking directions against the aforesaid pressure tactics, with Mahinder Pal @ Bittu assisting her in those proceedings, due to which, as per the petitioner, "he was the bone of contention for the police".

9. It is further alleged that the SIT headed by the aforesaid officer again illegally detained the petitioner alongwith Mahinder Pal, however showing their arrest to be much later in the context of another FIR registered in the year 2011 at Police Station Moga, bearing FIR no.33.

The petitioner is also stated to have been subjected to inhuman torture, with pressure upon him to confess to the acts of sacrilege, upon which a false confession/disclosure statement of the petitioner is alleged to have been recorded by the said officer on 13.06.2018, in the context of FIR no.33 of 2011.

It is however stated in the petition that since the petitioner and others have the highest regard for the holy scripture (*Shri Guru Granth Sahib Ji*), actually no sacrilegious act could have been committed by him and his companions.

10. The petition thereafter reverts back to stating that the investigation in the three main cases of the sacrilege incident already being with the CBI and with the aforesaid officer (Shri Ranbir Singh Khatra) having informed the CBI about the forcibly accepted confession/disclosure statement of the petitioner and the others,

the CBI in fact conducted investigation, including fingerprinting and handwriting tests and a lie detection test, which proved that the confession of the petitioner and the alleged disclosure was manipulated, with the CBI eventually having submitted a closure report dated 29.06.2019 (submitted on July 4, 2019), including therein the details of the 'scientific and factual investigation' conducted by it (according to the petitioner).

11. The petition thereafter refers to the report of the second Commission of Enquiry, submitted on June 30, 2018, and states that no independent lead about the 3 main cases (of sacrilege cases) was found by the Commission, which however dealt with the circumstances leading to the incidents; the petitioners' allegations being that the said circumstances were based on the illegal and fabricated disclosures/confessions extracted by Shri Ranbir Singh Khatra.

12. The next contention in the petition, in fact on which the thrust of the arguments were raised by learned senior counsel appearing for the petitioner, is that when the State Government found that the investigation conducted by the CBI had found that the petitioner and his companions were being falsely implicated, the matter was put to the State Assembly, which resolved to withdraw the investigation of all matters of sacrilege cases entrusted to the CBI, on 28.08.2018, consequent upon which a notification was issued by the Government on 06.09.2018 withdrawing its consent for investigation by the CBI, with the said notification sent to the Under Secretary to the Government of India, in the Department of Ministry of Personnel, Public Grievances & Training.

13. The petitioner next refers to CWP nos.23285, 25837, 25838, 27015 and 28001 of 2018 filed before this court "by the CBI" (as contended in the petition), which were dismissed on 25.01.2019 (by a co-ordinate Bench).

[Factually however, it is seen that as per the said judgment, CWP Nos.

23285, 25837 and 25838 of 2018 were in fact ones that challenged the reports of the two Commissions, with other prayers also made as regards the alleged role of the petitioners therein (as per the FIRs registered), with departmental proceedings also challenged in two of those cases (against the police officials who were arraigned as accused in the FIRs registered pertaining to the firing incidents, i.e. FIR nos.129 and 130, Police Station Bajakhana, District Faridkot).

CWP Nos.27015 of 2018 was one preferred by a police official seeking that investigation in the FIRs (pertaining to the firing incidents), be entrusted to an independent agency such as the CBI.

CWP No.28001 of 2018 however, was one seeking the quashing of the resolution passed by the Punjab Legislative Assembly seeking to withdraw the investigation in the sacrilege cases, including the FIR in question in the present petition, i.e. FIR no. 63 dated 02.06.2015.]

The petitioner submits that despite the judgment, as per the information given by the CBI to the learned Special Judge (CBI) Punjab, the notification issued by the DoPT, Government of India, on 05.11.2015, under Section 5 of the Delhi Special Police Establishment Act, 1946 (entrusting the investigation to the CBI), is still in operation and the CBI “has not been de-notified by the Government of India” and therefore the contention of the petitioner is that the said bureau is still empowered to investigate/further investigate the cases of sacrilege.

14. It is the next contention of the petitioner in his petition that in fact only the recommendations of the Justice Ranjit Singh Commission and the resolution of the State Government dated 28.08.2018 were challenged before this court in those cases, with the notification dated 06.09.2018 passed by the State Government, withdrawing its consent to investigation by the CBI, never challenged till date and

with the CBI therefore submitting its 'Joint Closure Report' *qua* the petitioner and other co-accused, exonerating them of the charges levelled against them by the Punjab Police, with the said Joint Closure Report having been presented before the learned Special Judge on July 04, 2019.

As regards the actual offenders in the sacrilege cases, the petitioner contends that the CBI submitted an 'untraced report'.

15. The other contention raised in detail in the petition is not being referred to at this stage as the arguments of learned senior counsel appearing for the petitioner were essentially with regard to the same contention and consequently, that would be noticed while recording such arguments on behalf of the petitioner, further ahead in this judgment.

In fact it needs to be stated at this stage itself, that at the outset when arguments were addressed before this court on the initial dates, and this court had been informed that the notification of the Punjab Government dated 06.09.2018, withdrawing consent for the CBI to investigate the matters, had been upheld by this court vide its judgment in the afore given writ petitions on 25.01.2019, I had unequivocally expressed my opinion at that stage itself that this court would thereafter have no jurisdiction to go into that matter again (with even the SLP against that order having been dismissed, with no order passed for rehearing the matter again). However, Mr. Ghai, learned senior counsel appearing for the petitioner, had insisted that the circumstances of the case as he would bring before this court, would require interference from this court, especially as it is not the present petitioner who was party to those petitions.

Hence, on his insistence the matter had been heard in detail and at length over a few days but eventually, as would be seen further ahead, I would see no ground to go into that matter again as far as this court is concerned, even though

Mr.Ghai has submitted that a review application filed by the CBI is pending before the Supreme Court. However, with Mr.Raval, learned senior counsel appearing for the State of Punjab, having submitted that at least no notice has been issued in the review application by their Lordships, consequently, the outcome thereof is not certain.

Mr. Raval had further submitted that in any case there was no interim order passed by the Supreme Court in such review application, as would enable this court to go into the validity of the notification issued by the Punjab Government again, and consequently, the CBI stands functus officio in the matter.

16. A regards the replies filed by the two respondents, i.e. the State of Punjab and the CBI, the essential contention in the detailed reply filed on behalf of the State of Punjab (respondent no.1), is that Section 6 of the Delhi Special Police Establishment Act, 1946 (hereafter referred to as the Act of 1946), does not grant jurisdiction to the CBI to investigate in any State (other than a Union Territory), without the consent of the Government of such State, and consequently the jurisdiction vested in the Central Government to empower the CBI to investigate into any matter, as per Section 5 of the said Act, is wholly and completely circumscribed by Section 6 thereof and therefore, once the Punjab Government had issued the notification dated September 06, 2018 (pursuant to the resolution of the Punjab Legislative Assembly), thereby withdrawing the consent earlier granted by the State Government to allow CBI to investigate into the matter, the CBI no longer had any jurisdiction to proceed further.

The stand of the State is that it would be especially so after the notification withdrawing consent has been upheld by this court in its judgment passed in CWP No.28001 of 2018 and connected matters, with even the Special Leave Petition (SLP) filed by the CBI against that judgment having been

dismissed.

17. As per the respondent State, simply because the Government of India in the Department of Personnel and Training has not issued any notification thereafter, rescinding/withdrawing its earlier notification dated 05.11.2015 (conferring jurisdiction on the CBI to investigate into such cases, including the FIR presently in question, i.e. FIR no.63/2015), that would still not nullify the notification of the State Government dated 06.09.2018, as upheld by this court in the aforesaid judgment passed on 25.01.2019.

Hence, as per the respondent State of Punjab, after such withdrawal of consent by the State Government, upheld by this court and further by the Supreme Court, (vide dismissal of the SLP against that judgment of this court), it would only be the Punjab Police and the SIT constituted to investigate the matter as would have jurisdiction to do so and to submit its final report under the provisions of Section 173 of the Cr.P.C. to the competent court at Faridkot, with that court being the only competent court in the cases in question including the present case, even in terms of Sections 11 and 14 of the Cr.P.C.

18. Other than the above essential stand, the respondent State has said that in terms of the judgments of the Supreme Court in “**Romila Thapar vs. Union of India**”, (2018) 10 SCC 753, and “**Narmada Bai vs. State of Gujarat**” (2011) 5 SCC 79, the accused cannot choose his investigating agency or ask for a change of such an agency and that in fact even in the judgment of this court dated 25.01.2019, in the aforesaid writ petitions, it has been specifically held that nothing had been brought to notice of the court that the State Government cannot withdraw its consent, with it further held that only one agency can investigate a particular case.

That essentially in fact is the argument of the State Government as was

of course elaborated upon in detail by Mr. Harin Raval, learned senior counsel appearing for the State, as would be noticed further ahead.

19. As regards the stand of the CBI (respondent no.2), as per its original reply and an additional reply filed thereafter, it has stated that in terms of the law laid down by the Supreme Court in **K.Chandrashekhhar vs. State of Kerala and others** (1998) 5 SCC 223 and **Kazi Lhendup Dorji vs. CBI** (1994) (suppl.) 2 SCC 116, a consent once given by the State Government in terms of Section 6 of the Act of 1946 cannot be thereafter withdrawn and consequently, in any case with the Government of India in the Department of Personnel and Training not having issued any such notification, nor having actually directed the CBI to return the investigation to the Punjab Police, the investigation thereafter conducted by the Punjab Police is illegal.

Importantly, the CBI has also referred to a letter written to the Director, CBI, dated July 29, 2019, by the Special DGP-cum-Director, Bureau of Investigation, Punjab, requesting for further investigation by the CBI and informing that fresh leads and clues having been found, the CBI would be required to conduct further investigation (despite the closure report filed by it on 04.07.2019 before the Special Judge, Mohali).

20. Other than that, while obviously admitting that CWP Nos.23285, 25837, 25838, 27015 and 28001 of 2018 were dismissed by this court on 25.01.2019 (in one of which the legality of the resolution passed by the Punjab Vidhan Sabha on 28.08.2018 had been challenged), and that the SLP filed by the CBI against that judgment had also been dismissed by the Supreme Court, however, the stand of the bureau is that a review application filed by the CBI is still pending in the Supreme Court, and that in any case even while dismissing the SLP on grounds of delay, the question of law was left open by

the Apex Court.

(A copy of the review application has been annexed with the reply and is said to be dated 05.03.2020).

21. It has also been stated by the Bureau that since the CBI was conducting still further investigation on receipt of the letter of the Special DGP, Bureau of Investigation, Punjab, the SIT constituted by the State Government could not have conducted investigation and therefore could not have filed the impugned chargesheet/report under the provisions of Section 173 of the Cr.P.C.

22. Eventually, it has been prayed by the CBI in its reply, that the Punjab Police be restrained from conducting a parallel investigation into the FIR in question, as also into the other two FIRs pertaining to the incidents of sacrilege, i.e. FIR Nos.117 dated 25.09.2015 and 128 dated 12.10.2015, both registered at Police Station Bajakhana, District Faridkot.

Quashing of the final report submitted by the Special Investigation Team of the Punjab Police to the learned JMIC, Faridkot, on 06.07.2020, has also been sought.

In other words, in fact the stand of the CBI in its reply, is virtually identical to the prayer made by the petitioner in his petition.

23. Importantly of course, it is to be noticed that it is also stated in the reply of the CBI (paragraphs 11 and 12 of the first reply dated 08.08.2020), that during investigation, the fingerprints of the petitioner, his co-accused Shakti Singh and the late Mahinder Pal alias Bittu, and other suspects arrested by the Punjab Police, were not found to be matching with the “chance fingerprints/palm print developed by the CFSL, New Delhi”, on the posters pasted on the walls of the gurudwaras of villages Burj Jawaharsingh Wala and Bargari. It has also been stated that the handwritings on the poster did not match with the handwritings of the

accused persons as per the investigation of the CBI, and that the petitioner and others had denied their involvement in the three cases and had stated that they had been coerced by the Punjab Police to make confessions.

24. In the additional reply filed by the Bureau, other than reiterating what had already been contended by it, some letters/communications between the Government of Punjab and the Department of Personnel and Training (Ministry of Home Affairs), as also between the DoPT and the CBI have been annexed, which however are not being referred to in detail, other than by way of the references thereto that would be made in the arguments of learned counsel, for the reason that it would be superfluous to do so because of the view taken by this court as regards the contention of both, the petitioner and the CBI, on the jurisdiction of the CBI to conduct further investigation after the judgment of this court (co-ordinate Bench) dated 25.01.2019, in the earlier mentioned Civil Writ Petitions.

25. Coming therefore to the arguments raised by learned counsel appearing in this matter; Mr. Ghai, learned senior counsel appearing for the petitioner, first submitted the facts as are not disputed by counsel on all sides and therefore the gist of the sequence of events is being given as follows:-

(i) 3 cases pertaining to sacrilege were registered by way of First Information Reports (FIRs) in Police Station Bajakhana,(as already noticed from the pleadings):

- a) FIR no.63 dated 02.06.2015;
- b) FIR no.117 dated 25.09.2015;
- c) FIR no.128 dated 12.10.2015.

Thereafter, two FIRs were registered at the same police station, pertaining to the incident of police firing on protesters (as alleged):-

- a) FIR no.129 dated 14.10.2015;
- b) FIR no.130 dated 21.10.2015.

(ii) The first three FIRs (pertaining to the sacrilege incidents), were

decided to be handed over to the CBI by the State Government of Punjab, vide a notification issued on 02.11.2015;

The Government of India issued a 'concomitant notification' on 05.11.2015, entrusting the investigation of those three cases under the provisions of Sections 5 and 6 of the Act of 1946;

The cases were registered accordingly by the CBI bearing RC no.13, 14 and 15, all dated 13.11.2015.

(iii) FIR nos.129 and 130 at that stage were continued to be investigated by the SIT constituted in the Punjab Police.

However, the investigation in these two cases was also subsequently entrusted to the CBI vide a notification dated 24.08.2018, but within 4 days thereafter a resolution was passed in the Punjab Legislative Assembly on 28.08.2018, by which investigation in all five cases (3 cases of sacrilege and 2 cases of police firing) was resolved to be withdrawn from the CBI and consequently, a notification was issued by the State Government withdrawing its consent for investigation by the CBI, on 06.09.2018.

[Learned senior counsel further submitted that in fact the CBI therefore actually never ever took over investigation in two cases pertaining to police firing and that even no cases were actually registered by it with regard thereto, because of the fact that the consent of the State Government had been withdrawn vide a notification issued within 4 days of the notification entrusting such investigation to the CBI.]

Though the three cases of police firing incidents have no direct bearing at all on the prayers made in the present petition, however, since learned senior counsel for the petitioner had specifically wished to bring to the notice of this court the bare facts regarding investigation in all the cases, the aforesaid contentions have

been duly noticed.

(iv) Two commissions were set up by the Punjab Government in succession to each other, as already noticed, headed by Justice (Retd.) Jora Singh and Justice (Retd.) Ranjit Singh respectively.

(v) As per Mr. Ghai the police officials in the second set of cases, i.e. the cases of police firing, filed the five Civil Writ Petitions referred to earlier, i.e. CWP Nos.23285, 25837, 25838, 27015 and 28001 of 2018, before this court, which as per him, only challenged the findings of the two commissions and the arraignment of the petitioners therein as accused in those two cases. However, he also admitted that in CWP no.28001 of 2018, the petitioner therein had also requested that the investigation in FIR nos.129 and 130 be handed over the CBI and that this court should monitor such investigation.

(vi) This court (co-ordinate Bench) in its judgment dated 25.01.2019 dismissed all the writ petitions with a direction that the SIT constituted by the State of Punjab should expeditiously conclude investigation and that “it shall employ all investigative skills and forensic methods at its command” to do so.

(vii) That despite the said judgment of this court (dated 25.01.2019), the CBI continued its investigation and filed a closure report on 04.07.2019 before the learned Special Judge, CBI, Mohali (the date of the report itself being 29.06.2019, Annexure P-5 with the petition).

Other than the remaining arguments of Mr. Ghai, the above are the undisputed facts accepted by counsel on all sides in the present case.

26. Mr. Ghai then submitted that in fact in its closure report, the CBI referred to all the evidence gathered by it, which according to learned senior counsel is actually before withdrawal of consent and on the basis of such evidence the petitioner herein, i.e. Sukhjinder Singh alias Sunny, and two other co-accused,

were found to be innocent and three persons were found to be involved in the occurrences of sacrilege.

27. Mr. Ghai next submitted that in fact even the State of Punjab itself, despite the notification dated 06.09.2018 withdrawing its consent, still asked the CBI to continue investigation by way of a letter of the Special DGP-cum-Director, Bureau of Investigation, Punjab, addressed to the Director, CBI, on 29.07.2019 (Annexure P-16 placed on record by way of an application) and consequently, the CBI thereafter filed an application before the Special Judge on 26.08.2019, requesting that court to keep the closure report in abeyance, as further investigation in fact was needed to be conducted by the Bureau.

That application is stated to be still pending before the learned Special Judge, with learned senior counsel submitting that in fact the delay in a decision thereupon was due to the fact that against the judgment of this court dated 25.01.2019, an SLP had been preferred by the CBI before the Supreme Court, which at that stage was still pending; and subsequently of course court working became highly 'erratic' due to the ongoing pandemic.

28. Learned senior counsel for the petitioner next submitted that in fact the State of Punjab gave leads to the CBI vide the aforesaid letter of the Special DGP to further investigate into the sacrilege cases and therefore the CBI started investigation with the permission of the Special Court, as per the the interim order passed by it on January 08, 2020 (copy Annexure P-10).

He submitted that in fact the said order has never been challenged by the State Government or by any person, though the State moved an application before that court asking for a direction to the CBI to hand over the case diaries and material evidence to the Punjab Police.

29. Mr. Ghai next submitted that in fact despite the order of this court dated 25.01.2019 directing the SIT to conclude the investigation at the earliest, in fact a SIT was constituted by the State/the Punjab Police only on the 22nd April, 2020, and therefore in any case with the Director, Bureau of Investigation also already having asked the CBI to continue investigation in July, 2019 itself, the new SIT constituted could not have submitted its final report under Section 173 of the Cr.P.C., which it however still did, on July 06, 2020.

Prior to that report being submitted, the State moved an application before learned Judicial Magistrate, Faridkot, (to whose court the report under Section 173 Cr.P.C. was to be submitted), on July 2, 2020 (copy Annexure P-12), informing that court that the SIT constituted was authorised to investigate into the allegations made in FIR no.63 dated 02.06.2015, with the occurrence having taken place within the jurisdiction of the said court; and further bringing to the notice of that court that the consent granted to the CBI was withdrawn by the State of Punjab vide its notification dated 06.09.2018 and that this court had also upheld the said notification, with even the SLP filed against the said judgment having been dismissed by the Supreme Court.

Mr. Ghai submitted that as regards the said SLP (Civil) no.807 of 2020, that was dismissed by the Supreme Court wholly on account of the delay by the CBI in filing it, with the question of law left open vide the order of the Supreme Court dated 20.02.2020.

30. He next submitted that in fact the court at Faridkot was not informed by the Punjab Police that the CBI court at Mohali was also seized of the matter and that in fact the Bureau was conducting further investigation on leads given by the Punjab Police itself.

31. The next contention of learned senior counsel for the petitioner was that on July 04, seven accused were arrested and produced before the court at Faridkot, including the petitioner and another person, both of whom had in fact been ordered to be released on bail by the learned Special Judge earlier.

However, upon producing them before the Faridkot court, the Punjab Police submitted before that court that in fact it had not become aware earlier of the bail orders passed in favor of the petitioner and his co-accused Shakti Singh, but due to the same they were to be released (which was thereafter ordered by the learned Magistrate at Faridkot on July 04, with five other accused remanded to police custody till July 06).

32. Mr. Ghai submitted that in fact the impugned report under Section 173 Cr.P.C. having thereafter been submitted to the learned Magistrate at Faridkot, within two days on July 06, 2020, it was obvious that in fact no proper investigation whatsoever had been conducted by the SIT and therefore in any case the report deserves to be quashed on that ground also, other than on the ground that two agencies cannot be allowed to investigate into the same FIR simultaneously.

33. Learned senior counsel further submitted that in fact even in the impugned report, no reference whatsoever has been made to the 'scientific investigation' conducted by the CBI and the entire report is based on the investigation allegedly undertaken by the SIT after its constitution in 2020 and after the accused were arrested in July 2020 itself.

34. As regards the judgment of this court dated 25.01.2019, learned senior counsel submitted that this court never directed re-investigation but had only directed investigation/further investigation by the SIT, with in fact no SIT existent on the date of the judgment and the SIT itself having been constituted only on April 22, 2020 i.e. about 1 year and 3 months later.

He next submitted that though the aforesaid judgment considered the issue of investigation into all five cases (3 pertaining to sacrilege and 2 pertaining to the police firing incident), and also noticed the judgment of the Supreme Court in **Kazi Lhendup Dorji (supra)**, 2 judgments were not cited before the Bench, in “**Gurbir Singh vs. Union of India**”, 1997 (4) RCR (Crl.) 137 and “**K.Chandrashekhar vs. State of Kerala and others**”, 1998 (2) RCR (Crl.) 719, in which, Mr. Ghai contended, it has been held that once a notification under the provisions of Sections 5 and 6 of the Act of 1946 has been issued, no de-notification can be issued thereafter to withdraw the consent given by the State Government or to de-notify the CBIs' investigation.

The contention of learned senior counsel therefore is that since the petitioner in the present petition was never a party to any of those 5 petitions, that judgment of this court is not binding upon him and consequently, this court could still go into the issue of legality/illegality of the notifications issued by the State Government, withdrawing its consent for investigation by the CBI and at least as far as the present petitioner is concerned, this court would direct the CBI to continue with its investigation; (though Mr. Ghais' 'broader argument' was that in fact in view of the law laid down in **K.Chandrashekhar's case (supra)**, the CBI would still be required to continue investigation in the context of all five cases *qua* all accused and *qua* all aspects thereof).

35. Mr. Ghai next referred to the judgment of the Supreme Court in **Vinay Tyagi vs. Irshad Ali @ Deepak** 2013 (2) RCR (Criminal) 197 (para 36), to submit that unless any competent court orders fresh investigation, any direction issued for investigation can only mean further investigation, taking into account investigation already conducted, and with the SIT having been constituted only in April, 2020, no further investigation was in fact conducted by it and it started fresh investigation without

any order of a competent court in that regard.

He submitted that in fact before this court the stand of the State being that the investigation was being conducted in terms of sub-section (8) of Section 173 of the CR.P.C., and the State police itself having asked for the CBI for its diaries etc. the impugned report dated 06.07.2020 is wholly unsustainable.

36. In that context Mr. Ghai pointed to that part of the closure report submitted by the CBI (Annexure P-5, paragraph 15), wherein all dates with regard to the fingerprints examinations, handwriting examinations, polygraphic examinations, the Forensic Psychological Assessment Report and the Layered Voice Analysis Report, are all shown to be either dated prior to 06.09.2018, or at least the evidence gathered before receipt of the report of the laboratory with regard thereto, is shown to be prior to 06.09.2018.

His contention is that therefore this court would be bound to look at the closure report of the CBI and that in view of the fact that all evidence gathered by the Bureau should have been brought to the notice of this court (co-ordinate Bench) at the time of hearing of the five petitions in which judgment was passed on 25.01.2019.

Learned senior counsel submitted that in fact the reference in that judgment to no investigation having been conducted by the CBI at all, is wholly erroneous on account of the fact that such investigation was not brought to the notice of the Bench.

37. Last, Mr. Ghai submitted that though even a review application filed by the petitioner before this court (co-ordinate Bench) in CWP no.23285 of 2018 and connected petitions has been dismissed, yet, in view of the aforesaid contentions raised, this court would still interfere in the matter as regards the acceptance of the impugned report filed before the learned Judicial Magistrate at

Faridkot, by the Punjab Police, and would set aside the said report as also the impugned order by which the petitioner had been summoned to appear before that court, upon the said report having been submitted to it.

38. *Per contra*, Mr. Harin P. Raval, learned senior counsel appearing for the State of Punjab, submitted that with this court already having upheld the notification of the State of Punjab withdrawing the consent earlier given for investigation into the FIR in question by the CBI, i.e. FIR No.63 (and other related FIRs), and even the SLP filed by the CBI against the said judgment having been dismissed by the Supreme Court, there would be obviously no question of reconsideration of such withdrawal of consent with now even the review application filed by the petitioner before this court qua the judgment dated 25.01.2019, having been dismissed.

Mr. Raval drew attention to that part of the judgment of this court (dated 25.01.2019), wherein it has been specifically held as follows:-

“...this court does not find any infirmity with the decision taken by the Punjab Government to withdraw the consent under Section 6 of the Act pursuant to resolution of the Vidhan Sabha. In the instant case, the CBI did not seriously oppose the withdrawal of consent. Even in its reply, it meekly stated that the matter was under investigation and did not question the validity of notifications withdrawing the consent for investigation by it.”

He thus submitted that the contention of Mr. Ghai that the said petitions were only pertaining to the recommendations made by the two commissions set up by the Punjab Government, and the arraignment of the petitioners therein as accused thereafter, is wholly incorrect, and in fact a specific issue in those petitions was also with regard to the validity of the said notification of the Punjab Government dated 06.09.2018.

Learned senior counsel appearing for the State also drew attention to that part of the said judgment wherein it has been stated (immediately thereafter), that in fact no real investigation had actually been conducted by the CBI.

39. Next, Mr. Raval referred to paragraph 46 (RCR addition) of the judgment in **Vinay Tyagi** (supra) to submit that it was held therein that **Chandrashekhars'** case was not a binding precedent. He submitted that in the present case there was no report prepared by the CBI at that stage and therefore the Punjab Police, at least at that stage, was not required to go into any such investigation in view of the aforesaid observations of this court.

[It is of course to be noticed by this court that thereafter, as would be seen further, learned senior counsel had taken instructions to the effect that the Punjab Police would be willing to in fact go into the evidence collected by the CBI and submit a supplementary report to the learned Judicial Magistrate seized of the proceedings at Faridkot.]

40. As regards the letter of the Special DGP-cum-Director, Bureau of Investigation, Punjab, written to the Director, CBI at the end July, 2019, i.e. almost 11 months after the notification withdrawing consent had been issued on 06.09.2018, Mr. Raval submitted that the said letter was wholly misplaced and that he has taken specific instructions to the effect that the said letter was written without knowledge of the Government and had no approval of the Government and possibly had been written under an erroneous impression by the Special DGP-cum-Director, Bureau of Investigation.

In any case, he submitted, the said letter cannot override the withdrawal of consent duly notified by the State Government itself.

41. Learned senior counsel appearing for the State next drew attention to the additional reply fled on behalf of the CBI on 12.11.2020, with him pointing to Annexure R-2/5 annexed thereto, which is a letter addressed by an Under Secretary

to the Government of India in the Department of Personnel and Training to the Chief Secretary to the Government of Punjab, on 28.06.2019, stating therein that as regards the three FIRs pertaining to the sacrilege incidents (including the FIR in question presently), the matter was being taken up with the CBI as regards the material evidence that may have been collected by it, and for handing it over to the Punjab Police.

Mr. Raval therefore submitted that even the DoPT had no objection to withdrawal of the consent of the Punjab Government and with even the stand of the CBI before this court, as recorded in the judgment dated 25.01.2019, being the same.

Similarly, learned senior counsel appearing for the State pointed to various other communications annexed with the additional reply of the CBI, to submit that the stand of the State Government has always been (after 06.09.2018), that the CBI should hand over all investigation and evidence gathered to the Punjab Police.

42. Mr. Raval also in fact submitted that once this court had upheld the withdrawal of consent and the SLP against that judgment had been dismissed it would be contemptuous for the CBI to continue investigation, or to seek continuation of the investigation, which fact was also brought out in one of those communications addressed by the State of Punjab to the DoPT.

43. He next submitted that as regards what has been observed by the Supreme Court while dismissing SLP No.807 of 2020, to the effect that the question of law was left open, that observation can not be held to apply to the withdrawal of consent by the Punjab Government, once such withdrawal has been upheld by this court and the challenge thereto repelled on any ground by the Supreme Court; and leaving such question open would only mean that in any other

case, the action of withdrawing consent by a State Government, could be an issue to be reconsidered.

In that context Mr.Raval cited the following judgments:-

- i). **State of Rajasthan vs. Milap Chand Jain** (2013) 14 SCC 562;
- ii). **National Highway Authority of India vs. BBEL** (2017) SCC Online Delhi 10189.

In fact learned senior counsel also referred to judgments of other High Courts and one of this court on the same subject, which are not really necessary to be gone into, the law in that regard being well settled.

44. Learned senior counsel for the State next submitted that two facts were in fact suppressed by the petitioner:-

- i. The order dated 10.07.2020 passed by the Special Judge on the application of the CBI dated 07.07.2020, asking that court to direct the Punjab Police to not investigate the matter, as also the application dated 20.07.2020 filed by the petitioner himself before that court, asking for the same relief;
- ii. That even though the petitioner was very well aware of the fact that this court had upheld the notification dated 06.09.2018 vide its judgment dated 25.01.2019, the said judgment was never annexed with the petition so as to bring out before this court the details of what has been held therein.

45. Mr. Raval next pointed to the impugned report submitted by the Punjab Police under the provisions of Section 173 of the Cr.P.C., with him submitting that in fact the thread of the earlier investigation conducted by the SIT constituted in the year 2015, was picked up by the SIT constituted in April, 2020 (after dismissal of the SLP by the Supreme Court), and therefore there was no fresh investigation conducted into the sacrilege cases by the Punjab Police, with only further investigation continued after litigation in respect thereof had ended (with the dismissal of the SLP).

In that context he pointed to the composition of the SITs earlier

constituted, and the dates thereof in 2015, to counter Mr. Ghais' contention that no investigation at all had been conducted earlier and consequently, it was a fresh investigation conducted by a newly constituted SIT in April, 2020.

In fact learned senior counsel for the State also submitted that even *khandit* (torn) *Angs* (pages) of the holy Sri Guru Grandh Sahib were recovered pursuant to such investigation, and therefore the contention of learned senior counsel appearing for the petitioner in that context, is wholly misconceived.

(Mr. Raval also referred to the order of the learned Special Judge dated 08.01.2020, in that context)

46. Learned senior counsel therefore concluded that in view of the fact that this court has already upheld withdrawal of consent vide the notification of the Punjab Government and had in fact directed the SIT constituted in the Punjab Police to conclude investigation, very obviously the CBI no longer could have conducted investigation and therefore the CBIs' application before the Special Judge that it be allowed to continue further investigation and that the closure report submitted by it be held in abeyance, is a wholly misconceived application, as is the closure report submitted 10 months after the withdrawal of the consent by the Punjab Government, both of which therefore cannot even be entertained by the Special Judge, the Bureau in fact having become *functus officio* in the matter.

47. It is to be again noticed, most importantly, that though in the previous part of his arguments (addressed prior to the last dates on which arguments were heard and judgment reserved), learned senior counsel appearing for the State of Punjab had submitted that the evidence gathered by the CBI having been submitted vide its closure report of July, 2019, was well after the notification dated 06.09.2018 and therefore such evidence could not be considered by any competent court, he however thereafter submitted that he had taken specific instructions to the

effect that evidence gathered by the CBI prior to 06.09.2018, would be considered by the Punjab Police, upon the CBI handing over all case diaries and the evidence gathered by it to the State police, and a supplementary report under Section 173(8) Cr.P.C. would be submitted by the Punjab Police to the learned Judicial Magistrate at Faridkot, for consideration of that court as regards the evidence gathered by both the investigating agencies; as also for it to consider the opinion of the Punjab Police on the evidence gathered by the CBI *vis-a-vis* the evidence gathered by the State police.

48. Those being the contentions on behalf of the State of Punjab, thereafter, Mr. Sumeet Goel, learned standing counsel appearing for the respondent CBI, submitted in terms of the reply and the additional reply filed by the Bureau (as noticed in paragraphs 19 to 24 *supra*), with him stressing on the fact that with no notification issued by the Department of Personnel and Training, Government of India, withdrawing the notification earlier issued on 05.11.2015 (by which investigation was handed over to the CBI), the CBI would be bound to continue such investigation and with the Special DGP-cum-Director, Bureau of Investigation, Punjab, having in fact asked the CBI to continue with the investigation a good 10 months after the notification dated 06.09.2018 was issued, the CBI in any case cannot be asked to stop such investigation.

49. As regards the judgment of this court dated 25.01.2019 and the dismissal of the SLP thereafter filed by the CBI, Mr. Goel submitted that since a review application is still pending before the Supreme Court *qua* dismissal of the said SLP, this court would not bar the CBI from investigating further into the matter, in the aforesaid circumstances.

Thus, learned counsel for the CBI essentially argued on the same lines as learned senior counsel appearing for the petitioner, the stand of the CBI in any

case being no different from the petitioner before this court.

50. Last, Mr. Gagan Pradeep Singh Bal, learned counsel appearing for the complainant in the FIR, i.e Gora Sigh, other than reiterating what learned counsel appearing for the State of Punjab had argued, submitted that the investigation of the CBI is wholly vitiated and without application of mind, and to stress on that argument, Mr. Bal submitted that in fact the opinion of no handwriting expert was required as regards either the theft of the holy scripture, or even the sacrilege thereof, with him further contending that in fact this court had directed a wholly independent investigation by the SIT constituted in the Punjab Police, vide the judgment dated 25.01.2019.

On the issue of a supplementary report to be submitted under the provisions Section 173(8) of the Cr.P.C, Mr. Bal referred to a judgment of the Supreme Court in “**Babubhai vs. State of Gujarat**”, 2010 (4) AICLR 759.

(That was essentially a case declaring with the issue of where further investigation and reinvestigation could be ordered by a high court).

51. In rebuttal to the arguments of learned senior counsel appearing for the State of Punjab and learned counsel for the complainant, Mr. Ghai, learned senior counsel appearing for the petitioner, essentially reiterated what he had earlier argued, but also further submitted that though two of the SITs constituted, on 10.06.2015, by the State of Punjab (prior to handing over the investigation to the CBI) are shown to be for investigation into FIR nos.63 and 128, once the investigation had been handed over to the CBI, thereafter, the earlier investigation by the SITs lost their relevance completely, and there being a gap of almost 5 years before a new SIT was constituted in April, 2020, it could not be considered to be conducting further investigation but only fresh investigation, which was never ordered by this court in its judgment dated 25.01.2019 and in fact with no SIT

even existent on that date, fresh investigation could not have been undertaken by the SIT constituted on April, 2020.

52. Having heard the arguments of all learned counsel, it is appropriate to again observe at this stage that in fact upon a perusal of the judgment of this court in CWP no.28001 of 2018 and connected cases, dated 25.01.2019, I had not been inclined even to hear the matters in detail as regards the issue of validity of the withdrawal of consent by the State of Punjab vide its notification dated 06.09.2018, that matter already having been adjudicated upon by a coordinate Bench, with the SLP filed against that judgment having been dismissed (as already observed hereinafore).

Yet, with Mr. Ghai, learned senior counsel appearing for the petitioner, having insisted that since the prayer in the petition was for quashing of the report submitted by the SIT constituted in the Punjab Police, under the provisions of 173 of the Cr.P.C., which obviously was at a stage much after the aforesaid judgment was delivered, and with him having submitted that in view of that other arguments also need to be noticed as would be raised by him, including the validity of the said notification, the contentions raised on both sides, even with regard thereto, have been duly noticed hereinabove.

53. Having said that, it needs to be reiterated, yet again, that with this court having already upheld the validity of the said notification pursuant to a resolution of the Punjab Legislative Assembly dated 28.08.2018, any other Bench of this court would be lacking inherent jurisdiction to again hear the matter qua that issue at least.

Even though Mr. Ghai strenuously argued that the judgments of the Supreme Court in **Gurbir Singh** and **K.Chandrashekhars'** cases (supra), were not

brought to the notice of the Bench hearing those petitions, that again would make no difference, in view of the fact that though non-reference to any law laid down may render a particular judgment to be *per incuriam* as regards the proposition of law itself that may have arisen in that particular case/set of cases, yet, firstly, as regards the judgment itself qua that particular issue pertaining to a particular occurrence itself, it would be deemed to be a judgment *in rem* and would be *stare decisis* for the purpose of that particular occurrence.

Further in any case, even a review petition having been filed by the present petitioner, in CWP no.23285 of 2018 (decided along with CWP no.28001 of 2018 on 25.01.2019), the said review application has also been dismissed by a detailed order dated 23.11.2020, by the same Bench.

54. It is specifically to be noticed that though one of the reasons for dismissal of that review application is that the present petitioner (who had filed the review application bearing no. RA-CW-225-2020), was not a party to those petitions decided on 25.01.2019, however, his Lordship has duly noticed the judgments cited in the review application, including in **Gurbir Singh** and **K.Chandrashekhar's** cases (supra), along with other judgments cited, and has held specifically that the circumstances of those cases were different to the present circumstances, in which pursuant to a resolution passed by the Vidhan Sabha, the State Government issued a notification withdrawing the case from the CBI (withdrawing consent), with it reiterated that the said judgment (dated 25.01.2019) had specifically noticed that the investigation made by the CBI 'had actually not made any headway'. (Thus, even the contention of Mr. Ghai to the effect that the closure report of the CBI had showed that it had gathered evidence well before the notification issued by the State Government on 06.09.2018, would make no difference as regards the jurisdiction of this court (coordinate Bench) in reopening

the issue qua such withdrawal of such consent).

55. It is of course a different matter altogether that the learned senior counsel appearing for the State Government itself, has now made a categorical statement before this court, after taking specific instructions in that regard, that the Punjab Police would still be willing to accept the evidence gathered by the CBI prior to 06.09.2018, with the SIT constituted thereafter to sift and weigh the evidence against that gathered by the SIT itself, and thereafter would submit a report under the provisions of sub-section (8) of Section 173 of the Cr.P.C.

Thus, with the Government and the investigating agency itself willing to do so, the judgment of this court dated 25.01.2019, directing the SIT to complete its investigation, would obviously not stand in the way of the SIT looking at the evidence gathered by the CBI and thereafter presenting it to the competent court under the provisions of Section 173 (8) of the Cr.P.C., for consideration of that court on merits.

56. Coming to the argument with regard to the review application filed before the Supreme Court; mere pendency of a review application seeking a review of the order dated 20.02.2020 passed in SLP no.807 of 2020, would not empower this court to assume jurisdiction qua the matter already settled by a coordinate Bench on 25.01.2019, with even the review application filed before this court on 23.11.2020 having been dismissed.

Hence, the arguments raised by Mr. Ghai learned senior counsel appearing for the petitioner, as also Mr. Sumeet Goel, learned counsel for the CBI, to the effect that since a review application is pending before the Supreme Court, the CBI would have jurisdiction to continue with the investigation, despite this court vide the judgment dated January 25, 2019 having upheld the notification withdrawing the case from the CBI, is an argument that has to be empathetically

rejected and is so rejected.

57. Therefore the argument of Mr. Ghai that the withdrawal of consent by the State Government vide its notification dated 06.09.2018 is bad in law, is also an unsustainable argument before this court, that being an issue emphatically decided by this court vide the aforesaid judgment, as also vide the order passed in the review application filed by the petitioner.

In fact, the following passage from the judgment dated 25.01.2019 has been reproduced in the 'review order' dated 23.11.2020:-

“In view of the observations made above, this Court does not find any infirmity with the decision taken by Punjab Govt. to withdraw the consent under section 6 of the Act pursuant to resolution of the Vidhan Sabha. In the instant case, the CBI did not seriously oppose the withdrawal of consent. Even in its reply, it meekly stated that the matter was under investigation and did not question the validity of notifications withdrawing the consent for investigation by it. On the other hand, it forwarded the notifications to Government of India for further necessary action. Para 4 and prayer clause of the reply read as under:-

“4. That the Govt. of Punjab, vide another Notification No. 7/521/2013-2H4/4901 dated 06.09.2018 had also withdrawn its consent for the investigation of above mentioned 03 cases. The copy of said notification was sent to the Under Secretary, Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, New Delhi for further necessary action.

That in view of the submission made in the foregoing paragraphs, it is submitted that appropriate directions/orders as deemed appropriate by this Hon'ble Court may kindly be passed.”

On a specific query being put to CBI counsel about the status of investigations despite lapse of almost three years, no clear answer was forthcoming.”

58. Thus, though one reason for upholding the notification dated 06.09.2018 may have been on account of the CBI not having brought before this court the extent of the investigation carried out by it (as it now seems to have presented before the 'Special CBI Court' in the closure report presented on 04.07.2019, Annexure P-5), yet, while dismissing the review application on

23.11.2020, it has been specifically observed by the co-ordinate Bench (before the aforesaid reproduction), that neither the judgments in Gurbir Singh or K.Chandrashekhars' cases (supra), could help the case of the review applicant (i.e. the present petitioner), as in Chandrashekhars' case the CBI had almost completed the investigation, whereas in this case it had not completed the investigation and consequently withdrawal of the consent by the Punjab Government was to be upheld.

59. Other than that, what was specifically held in the judgment dated 25.01.2019, as pointed out by Mr. Raval, needs to be reproduced here again to reject the contention made by learned senior counsel appearing for the petitioner, (that despite a direction to the SIT to conclude its investigation, the CBI had never been debarred by this court from continuing investigation). That passage reads as follows:-

“In view of the observations made above, this court does not find any infirmity with the decision taken by the Punjab Government to withdraw the consent under Section 6 of the Act pursuant to resolution of the Vidhan Sabha. In the instant case, the CBI did not seriously oppose the withdrawal of consent. Even in its reply, it meekly stated that the matter was under investigation and did not question the validity of notifications withdrawing the consent for investigation by it.”

Consequently, this court in any case cannot again go into the same issue of withdrawal of consent vide the notification dated 06.09.2018, again.

60. In that context, it is also to be held that even the letter written by the Special DGP-cum-Director, Bureau of Investigation, Punjab, on 29.07.2019, to the Director, CBI, asking the CBI to conduct further investigation in the light of the evidence that may have been gathered by the Punjab Police, does not help the petitioner in his prayer that the CBI should continue investigation.

That would be so because a letter written by a police officer serving in the Government, obviously cannot override a notification issued by the

Government itself (on 06.09.2018), withdrawing consent for the CBI to continue to investigate the case, with that notification also having been upheld by this court.

This is especially so as learned senior counsel appearing for the State took specific instructions (after this court had put a query in that regard), and made a statement on the next date of hearing, that the said letter was issued without any approval or sanction of the Government and that no file noting existed granting such approval at any competent level of the Government.

Hence, a letter 'at a local level', even by a Special DGP-cum-Director, Bureau of Investigation, would not empower the CBI to continue investigation after the Governments' notification dated 06.09.2018, withdrawing consent for it to investigate, has been upheld by this court and specific directions have been given in the judgment dated 25.01.2019, to the SIT constituted in the State Police, to conclude investigation expeditiously.

61. Coming then to the merits of what has been pleaded in the petition as regards any *mala fide*/prejudice of a particular officer heading the SIT, as also on the report made under Section 173 (2) of the Cr.P.C. not being sustainable on grounds of *de novo* investigation having been conducted by the SIT constituted in April 2020; with learned senior counsel having further submitted that there was lack of application of mind by that SIT, especially with the impugned report under Section 173 having been submitted to the learned Judicial Magistrate at Faridkot on 06.07.2020, merely two days after police remand had been granted by that court qua five accused.

62. As regards the first argument, that it was a *de novo* investigation conducted by the SIT constituted on April 22, 2020, that argument is not found to be sustainable in view of what has been pointed out by the learned senior counsel appearing for the State, from the report submitted by the Punjab Police to the

learned Judicial Magistrate, Faridkot, under the provisions of Section 173 of the Cr.P.C.

In that report, the SIT constituted earlier, first under the Chairmanship of the SP (Headquarters), Faridkot and thereafter under the Chairmanship of the IGP, Bathinda Zone (on 10.06.2015), has been referred to. Though it has been immediately thereafter stated that no effective progress was made in the case and that the matter had been handed over to the CBI with it thereafter again handed over to the SIT headed by Sh. R.S. Khatra, DIG, I would not hold the investigation conducted by the SIT formed on 22.04.2020 to be *de novo* investigation, in view of the fact that investigation by the SIT earlier constituted (in 2015), had never concluded; and consequently, with a direction also having been issued by this court in its judgment dated 25.01.2019, to the SIT, to conclude its investigation, I would accept the investigation conducted by the new SIT constituted on 22.04.2020 to be further investigation of that initially undertaken in the year 2015 by the Punjab Police itself (and not re-investigation).

No doubt, the CBI thereafter submitted a closure report on 04.07.2019 in the court of the learned Special Judge, CBI, at Mohali, but such closure report in any case could not have been submitted after this court had upheld the notification of the Punjab Government dated 06.09.2018, consequent upon which the CBI was actually bound to hand over all case files pertaining to its own investigation to the Punjab Police, but which it seemingly did not do on account of the fact that it had (much later) instituted SLP no. 807 of 2020 before the Supreme Court, which was dismissed on 20.02.2020.

63. In fact no order of the Supreme Court passed during the pendency of that SLP has been brought to the notice of this court, either allowing the CBI to still continue investigation, or staying the operation of the judgment of this court dated

25.01.2019. Hence, no such order seems to have been passed.

In any case, once the SLP also stood dismissed (even though only on the ground of the delay), the closure report submitted by the CBI on 04.07.2019 is to be wholly discarded, it being a report submitted about 10 months after the notification of the Punjab Government dated 06.09.2018, withdrawing consent for any further investigation by the CBI (with that notification upheld by this court to repeat yet again).

64. As regards the contention of Mr. Ghai on the delay in constituting the SIT in April 2020, that contention may otherwise have had some merit, because after the said judgment dated 25.01.2019 was passed, the SLP itself was only filed by the CBI in the month of January/February 2020, one year after the said judgment, which is why in fact the petition was dismissed on grounds of delay; but even so, simply because a new SIT was constituted in April 2020 thereafter, the delay in continuation of the investigation by the SIT so constituted would not be, in my opinion, fatal to the case of the State, with the direction of this court in that judgment being that it would be the SIT of the State police that would conclude its investigation.

Hence, as already noticed, as a SIT had first been constituted in June 2015 (though only very little investigation may have been conducted by it up till the time such investigation was handed over to the CBI in November 2015), any delay in constitution of a new SIT to further investigate the matter after consent for CBI investigation was withdrawn (with the earlier SIT not having submitted any conclusive report), would not negate the direction given by this court in the judgment dated 25.01.2019.

65. Next coming to the allegation of *mala fides* on account of the alleged prejudice in the mind of the Chairman of the SIT constituted on 22.04.2020, as is

contended by the petitioner in his petition.

I would find no ground to actually entertain that contention, with the officer himself (Sh. Ranbir Singh Khatra) not having been impleaded as a respondent in the present petition to enable him to even file any reply with regard to the allegation made, and consequently simply because that allegation has been made, the investigation conducted by the SIT between 22.04.2020 and 06.07.2020 (including the report under Section 173 of the Cr.P.C. as was submitted to the court at Faridkot), or even the investigation thereafter continuing in respect of which a supplementary report is to be submitted under the provisions of sub-section (8) of Section 173 (as stated in the report submitted on 06.07.2020 itself), would not be ordered to be discarded by this court.

However, in view of what has been contended in the petition, this court would be inclined to direct that upon the CBI handing over the case diaries and files and all material evidence gathered by it, to the Punjab Police (as would be directed at the end of the judgment), the SIT be ordered to be headed by a different officer so as to ensure that no element of prejudice, whatsoever, remains in the mind of the petitioner, though of course with it to be reiterated by this court that the petitioner otherwise cannot choose an investigating agency of his own choice and further, with this court to observe that directing such change of the head of the SIT, would not in any manner reflect on the conduct of the officer already heading the SIT, i.e. the aforesaid Sh. Ranbir Singh Khatra, IPS.

66. As regards the contention, even on behalf of the CBI, that since the question of law was left open in the order dismissing the SLP (with the said SLP having been dismissed only on grounds of delay), therefore the CBI should be allowed to investigate, the said order is reproduced as follows:-

“Permission to file Special Leave Petitions is granted.

The Special Leave Petitions are dismissed on the ground of delay.

However, the question of law is left open.

Pending application stands disposed of.”

Undoubtedly and obviously the question of law has been left open by their Lordships, but as regards the notification issued pursuant to the resolution of the Punjab Assembly dated 28.02.2018, which resolution was subject matter in CWP no.28001 of 2018, that cannot be re-agitated before this court at least.

The matter as regards that issue is *stare decisis* and it would be beyond the ‘jurisdiction’ of any coordinate Bench of this court to go into that matter again.

If that were not so, litigation can be opened and re-opened again and again, *qua* the same occurrence itself, leading to no end of such litigation.

Therefore, if a petitioner in a different petition (who was not a petitioner in the earlier set of petitions decided), raises the issue again, *qua* the same occurrence itself, i.e. in this case investigation by the CBI into the occurrence leading to registration of FIR no.63 of 2015 at Police Station Bajakhana, District Faridkot, on June 02, 2015, that would not be permissible as regards this court at least.

If any judgment on that issue is required to be cited, the one referred to by Mr. Raval, learned senior counsel appearing for the State, in the case of the State of Rajasthan v. Milap Chand Jain (2013) 14 SCC 562, can be cited.

It also may be observed here, even as has been held in **Kunhayammed** vs. **State of Karela** (2000) 6 SCC 359, that though dismissal of a Special Leave Petition without anything stated on the merits of the case, would not amount to *ratio decidendi* being laid down by the Supreme Court (and obviously not so when the question of law itself has been left open), however, the SLP having been dismissed for any reason, with the judgment of this court therefore not having been interfered with, the question that has been decided in such judgment, on the

question of the notification as is in issue (dated 06.09.2018), would be *stare decisis* qua this court.

67. Before concluding and issuing any direction, it is to be observed that though the prayer in this petition is for quashing the report submitted under the provisions of Section 173 of the Cr.P.C. by the Punjab Police, in FIR No. 63 of 2015, and the order passed thereupon by the learned JMIC, Faridkot, on 06.07.2020, however, in the very same prayer clause itself, the petitioner has stated that the impugned report and order are illegal and arbitrary etc. on the ground that the same FIR and other FIRs pertaining to similar incidents are subject matter of investigation/further investigation with the CBI, pursuant to the orders passed by the learned Special Judge (CBI), Punjab, and therefore two parallel investigations/proceedings in the same FIR, by two different agencies, is not permissible.

Hence, this being a petition invoking jurisdiction of this court under the provisions of Section 482 of the Cr.P.C, while issuing directions, the issue of investigation carried out/being further sought to be carried out by the CBI, in the context of the said FIR, would need to be obviously adjudicated upon by this court.

68. Consequently, in conclusion, this petition is disposed of with it being held as follows, (and directions accordingly given):-

- (i) In view of the judgment of this court dated 25.01.2019, passed in CWP No. 23285 of 2018 and connected petitions, including CWP no. 28001 of 2018, investigation continued by the CBI after the notification of the Punjab Government dated 06.09.2018 withdrawing consent for investigation, is held to be without jurisdiction, as the said notification withdrawing such consent has been upheld by this court;
- (ii) In view of the fact that the respondent-State of Punjab itself, through

learned senior counsel appearing for it, has very categorically made a statement before this court that nonetheless the SIT constituted for investigation in the said FIR, would be willing to look at all the evidence gathered by the CBI and present a supplementary report in that regard under the provisions of sub-section (8) of Section 173 of the Cr.P.C. alongwith the evidence gathered by the CBI, (also giving its own opinion thereupon in such report), the respondent-CBI is directed to handover all case diaries and evidence gathered by it in the context of investigation in the said FIR no. 63 of 2015, to the Punjab Police, within one month from today, with the learned Special Judge, CBI, Punjab, at Mohali, also directed to return all material received by his court from the CBI, to the CBI, to enable it to further transfer it to the Punjab Police;

All proceedings before that court, after September 06, 2018, are held to be unsustainable and *non-est*, in the light of the notification of that date and the judgment dated 25.01.2019;

- (iii) The closure report submitted by the CBI on 04.07.2019 to that court shall consequently be discarded, though the evidence presented alongwith that report, would naturally be taken into consideration by the learned Judicial Magistrate at Faridkot, upon it being presented by the Punjab Police, alongwith its supplementary report;
- (iv) The SIT constituted on 22.04.2020, shall now be presided over/headed by an office other than Sh. R.S. Khatra IPS, in terms of what has been observed in paragraph 65 hereinabove;
- (v) Consequent upon the statement made on behalf of the State of Punjab and the directions given hereinbefore by this court for handing over all

evidence and other necessary material including case diaries, by the CBI to the Punjab Police, the Punjab Police shall submit a supplementary report to the court at Faridkot, which court would then, in its wisdom, examine such report and all evidence gathered by both agencies, as is presented before it, and pass an appropriate order thereupon;

- (vi) Consequently, as such supplementary report is to be considered by the learned court at Faridkot, the impugned order passed by that court, summoning the petitioner and other accused to appear before it is set aside, along with any other orders that would have been subsequently passed, pursuant to the impugned order (on or after July 06, 2020).

69. Naturally, in view of the fact that all material and evidence gathered by both agencies is to be considered by the learned Judicial Magistrate at Faridkot upon submission of a report under Section 173 (8) of the Cr.P.C., the contents of neither the impugned report dated 06.07.2020, nor any evidence gathered by the CBI, is being commented upon by this court in any manner whatsoever, with the competent court at Faridkot to go through such evidence in its own wisdom and to thereafter pass orders as it considers appropriate.

The petition is disposed of as above; it being partly allowed to the extent of the impugned order, Annexure P-15 dated 06.07.2020, being set aside, but with arguments raised on behalf of the petitioner and the CBI, to allow the Bureau to continue investigation in the matter, rejected.

January 04, 2021

dharamvir/vcgarg/nitin

(AMOL RATTAN SINGH)
JUDGE

Whether Speaking/reasoned Yes

Whether Reportable Yes

CRM-M-19785 of 2020

Sukhjinder Singh @ Sunny vs. State of Punjab and another

Present: Mr. Vinod Ghai, Sr. Advocate, with
Ms. Kanika Ahuja, Advocate,
for the petitioner.

Mr. Harin P. Raval, Sr. Advocate, with
Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab,
Ms. Anusha Nagarajan, DAG, Punjab and
Mr. Karan Bharihoke, Advocate.

Mr. Sumeet Goel, Sr. Standing Counsel for the CBI.

Mr. Gagan Pradeep Singh Bal, Advocate,
for the complainant.

All replies as may not have, inadvertently, been earlier ordered to be
taken on record, including the additional reply dated 16.11.2020 filed on behalf of
the CBI, are ordered to be taken on record.

January 04, 2021

Nitin

**(AMOL RATTAN SINGH)
JUDGE**