

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 498/2011

State of Maharashtra,
 through Police Station Officer,
 Police Station, Dhantoli,
 Dist. Nagpur.

APPELLANT

VERSUS

1. Balya @ Manoj Madhukar Gudadhe,
 aged 22 years, Occ. Tea Vendor,

2. Sheela Madhukar Gudadhe,
 aged 45 years, Occ. Tea Vendor,

Both R/o. Behind Yeshwant Stadium,
 near Udasi Baba Shram, Police Station,
 Dhantoli, Nagpur.

3. Arun S/o. Haribhau Baraiyya,
 aged about 64 years, Occ. Retired,
 R/o. Beltarodi-Besa Road,
 Nagpur (Maharashtra).
**(Respondent No.3, newly added
 as per Court's order dated 22.11.2022)**

RESPONDENTS

4. Arvind S/o. Abhayraj Sharma,
 Age 52 years, Occ. Private,

5. Dharmendra S/o. Abhayraj Sharma,
 Age 55 years, Occ. Private,

6. Manoj s/o. Jaichand Sharma,
 Age 42 years, Occ. Private,

All R/o. Abhyankar Road, behind
 Yashwant Stadium Udasi Chawl,
 Patwardhan Ground, Dhantoli,
 Nagpur.

Criminal Application
 No. (APPA) 1143/2022
 Interveners 4 to 5.

7. Janardhan Mahadeorao Bire,
Age-72 years, Occ. Retired,
R/o. Plot No.7, Nehru Coloney,
Police Line Takli, Nagpur.
8. Kishor Gajananrao Dhole,
Age-59 years, Occ. Retired,
R/o. 395, Hanuman Nagar, Nagpur.
9. Devanand Ananta Dhawale,
Age 41 years, Occ. Service,
R/o. Plot No. 61, Tukdoji Nagar,
Narsala Road, Dighori, Nagpur.

Criminal Application
No. (APPA) 1145/2022
Interveners 7 to 9.

10. Mr. Ganeshsingh S/o. Rajaram
Parihar, Age-59 years, Occ. Retired,
R/o. Plot No. 10, Parvati Nagar,
Nagpur.
11. Mr. Rajesh S/o. Ramrao Yawale,
Age-49 years, Occ. Service,
R/o. 2/408, Rajat Heights,
Koradi Road, Mankapur,
Nagpur (Maharashtra)-
440030.

Criminal Application
No. (APPA) 1151/2022
Interveners 10 to 11.

12. Nilkanth S/o. Dheluji Uikey,
Age 59 years, Occ. Service,
13. Rajkumar S/o. Bodhram Shendre,
Age 60 years, Occ. Private,

Both R/o. Abhyankar Road,
behind Yashwant Stadium,
Udasi Chawl, Patwardhan Ground,
Dhantoli, Nagpur.

Criminal Application
No. (APPA) 1154/2022
Interveners 12 to 13.

.....**INTERVENERS**

Mr. Mayuri Deshmukh, APP for appellant/State.
Mr. R.S. Kurekar, Advocate for respondent Nos. 1 & 2.
Mr. R.K. Tiwari, Advocate for respondent No.3.
Mr. A.K. Madane, Advocate for intervener Nos. 4 to 6 & 12 to 13.
Mr. R.R. Vyas, Advocate for intervener Nos. 7 to 9.
Mr. A.M. Jaltare, Advocate for intervener Nos. 10 to 11.
Mr. H.V. Thakur, Advocate for informant.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES JJ.
JUDGMENT RESERVED ON : 30.01.2023
JUDGMENT PRONOUNCED ON : 03.02.2023

JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. While disposing the Petition for Special Leave to Appeal
(CrI.) No. 2847/2019 vide order dated 18.08.2022, the Supreme
Court of India was pleased to observe as below :-

“The main grievance in the present Special Leave Petitions is that before issuing the directions, directing the State of Maharashtra to file charge-sheet against the real culprit and also against petitioner herein P.S.I. Barraiyya and other erring police personnel, who had falsely implicated the accused/private respondents herein and also falsely deposed against them, no opportunity has been given to the petitioners.

It is required to be noted that the order of acquittal has been confirmed by this Court. However, as the direction in terms of the paragraph 28(vi) is issued by the High Court without giving an opportunity to the petitioners, we remand the matter to the High Court to pass an appropriate order on the aforesaid direction only, after giving an opportunity to the

petitioners. The aforesaid exercise be completed within a period of six months from the date of receipt of the present order.”

3. The above order has occasioned us to hear the aggrieved in disposed appeal. The scope of remand has been well defined and restricted to the extent of re-considering the direction issued in paragraph No. 28(vi) of the judgment and order dated 24.07.2018 passed by this Court in Criminal Appeal No. 498/2011.

4. It is necessary to set out a brief background for complying the above direction. Respondent No.1 Balya @ Manoj Gudadhe was charged for the offence punishable under Sections 294 and 302 of the Indian Penal Code, whilst respondent No.2 Sheela Gudadhe was charged for the offence punishable under Section 201 read with Section 302 of the Indian Penal Code. Both were tried for aforesaid charges in Sessions Trial No. 71/2005 which resulted into acquittal vide judgment and order dated 10.08.2007. Being aggrieved and dissatisfied by the judgment and order of acquittal, the State has preferred Criminal Appeal No. 498/2011. While dismissing the appeal, this Court has passed the following order:-

“Order

(i) The appeal is dismissed.

(ii) Appellant/State of Maharashtra shall pay compensation of

Rs.2,50,000/ each (rupees two lakh and fifty thousand only)

to accused/respondents. Total amount of compensation of Rs.5,00,000/ (rupees five lakhs only) shall be paid to the accused/respondents within a period of six months from today.

(iii) The appellant/State of Maharashtra is at liberty to recover the said amount of compensation of Rs.5,00,000/ (rupees five lakhs only) from the concerned guilty Officer who falsely implicated both the accused.

(iv) The trial Court is directed to preserve all the records (including B, C, D files etc.)

(v) Copy of this judgment be sent to the Commissioner of Police, the Superintendent of Police, Crime Investigation Department, Maharashtra State, Nagpur for information and to take necessary action on the report (Exh.66) submitted by Dy.S.P Shri Tayade, CID (Crimes), dated 02.06.2005.

(vi) State of Maharashtra is directed to file charge-sheet against the real culprit and also against PSI Barraiyya and other erring police personnel who had falsely implicated accused / respondents and also falsely deposed against them.

(vii) High Court Legal Services Authority is requested to consider and to quantify amount of compensation to be paid to the victim of crime namely, Kusum wd/o Sohan Yadav as per the provisions of Victim Compensation Scheme as contemplated under Section 357-A of the Code of Criminal Procedure.

(viii) Accused are on bail. Their bail bonds stand cancelled.

(ix) R and P be sent back to the trial Court."

5. Clause (vi) of the above order gave rise to the Investigating Officer to file Special Leave Petition to the Supreme Court challenging the said direction.

6. We feel it necessary to make brief reference of the facts of the case for better understanding. PW-2 Kusum Sohan Yadav (informant) was wife of deceased Sohan Yadav. Respondent No.1 Manoj Gudadhe (accused No.1) was son of respondent No. 2 Sheela Gudadhe (accused No.2). It is informant's case that on 28.09.2004, there was programme of immersion of idol of Lord Ganesh in the locality. Around 06.30 p.m., the people in the locality started procession of immersion. Deceased Sohan participated in the procession whilst informant did not. Around 09.00 p.m., all persons who participated in the immersion procession returned back. A dinner was arranged in pendal for the people who went for immersion. At that time, accused No.1 Manoj who was under influence of liquor started abusing in filthy language. He was saying as "*Saale Dawke Log Madarchod Rahate Hai*". Deceased Sohan belongs to "Dawke" community. Deceased Sohan asked Manoj as to why he was abusing them.

7. At the relevant time, accused Manoj caught hold the collar of deceased Sohan and dragged him inside his house. Informant Kusum, PW-3 Nilkanth Uike and PW-1 Arvind Sharma followed them to the doorstep of house of accused Manoj. They saw that accused Manoj gave fist blows at the nose and chest of deceased who fell down. Accused Manoj took out small sword (knife) kept beneath the mattress, and by holding it with his right hand, dealt a blow on the life armpit of

deceased. On assault, deceased fell down and started bleeding profusely. Informant raised alarm, on which Arvind Sharma, Sanjay Ambadare, Samir Yadav brought auto rickshaw, by which deceased was shifted to the hospital who died latter.

8. Further it is informant's case that after assault, accused No. 2 Sheela has washed the blood stained floor by pouring water. Informant Kusum went to the concerned Police and lodged report which was registered around 11.30 p.m. on the same day vide Crime No. 234/2004 for the offence punishable under Sections 302, 201, 294 read with Section 34 of the Indian Penal Code.

9. The investigation was handed over to PSI Barraiyya. During investigation, PSI Barraiyya went to the place of occurrence and prepared Panchanama of the scene of offence (Exh.44) on the very day. He has seized pieces of floor tiles, plaster on wall having blood stains vide Panchanama Exh. 45. He has also effected arrest of both accused. During course of investigation, accused Manoj made a disclosure statement (Exh. 52) expressing his willingness to show the place where the knife and blood stained clothes have been concealed. As per memorandum, Police have seized a knife and blood stained clothes vide Panchanama Exh. 53. PSI Barraiyya has recorded statements of few witnesses. After completion of investigation, PW-9 PI. Mr. Nandkishor

Chauhan has filed final report. On denial of charges, prosecution has examined in all ten witnesses which are as below:-

- (i) PW1 (Arvind Abhayraj Sharma) – Exh.13.
- (ii) PW2 (Kusum Sohan Yadav) – Exh.16.
- (iii) PW3 (Nilkanth Bheluji Uike) – Exh.26.
- (iv) PW4 (Sameer Ramdulare Yadav) – Exh.28.
- (v) PW5 (Deepak Ramkrushna Ahir) – Exh.30.
- (vi) PW6 (Subhash Shantaram Murkute) – Exh.31.
- (vii) PW7 (Ramvilas Sitasharan Pande) – Exh.33.
- (viii) PW8 (Dr. Manish Baburao Shrigiriwar) – Exh.34.
- (ix) PW9 (Nandkishor Ramkishan Chauhan) – Exh.38.
- (x) PW10 (Arun Haribhau Barraiyya) – Exh.43.

10. The defence of accused is of total denial and false implication. It was through out the defence that one Manoj Sharma has committed murder of Sohan, however they have been falsely implicated by PSI Barraiyya by fabricating false evidence. On appreciation of entire material, the Trial Court held that the prosecution has failed to prove the charges and thereby acquitted both accused (Manoj and Sheela).

11. During interregnum period, accused made several complaints, representations to different Police Authorities claiming false implication and thorough investigation into the matter. Initially, S.P, C.I.D, Nagpur has entrusted an inquiry to Police Inspector A.V.

Karmarkar, C.I.D. Nagpur. In turn, P. I. Karmarkar has inquired and submitted report (page 209) stating that the investigation conducted by PSI Barraiyya was proper. It was followed by another inquiry by Assistant Commissioner of Police Revate, Ajni Division, Nagpur. He has endorsed the correctness of the investigation conducted by PSI Barraiyya. In pursuance of direction issued by Deputy Inspector General of Police ('DIG') C.I.D. Maharashtra State, Pune. Dy.S.P. Tayade, C.I.D. has once again conducted an inquiry. In report dated 02.06.2005, Dy.S.P. Tayade gave clean chit to the accused whilst concluded that one Manoj Sharma and others have committed murder of Sohan. The accused procured said report under the provision of Right to Information Act. The accused have tendered said report in the Trial Court which has been admitted by the prosecution, hence marked as Exh. 66 in the Trial. Precisely, the said report makes out a contradictory version exonerating accused Manoj, Sheela and implicated some other, as real culprit. Diametrically opposite view was expressed by Dy.S.P. Tayade that the conclusion of investigation turned into the charge-sheet. The said report (Exh. 66) weighed the Trial Court in discarding the prosecution case resulting into acquittal of both accused.

12. The accused have filed Criminal Writ Petition No. 87/2006 seeking to quash First Information Report ('FIR') as well as charge-sheet. In pursuance of orders in writ petition, the Police Commissioner, Nagpur

again directed Crime Branch, Nagpur to carry further investigation. In accordance with that, the Police Inspector Sheikh attached to Crime Branch has conducted further investigation and concluding that the investigation carried out by PSI Barraiyya was proper.

13. After judgment of acquittal by the Trial Court dated 10.08.2007, accused have filed Criminal Writ Petition No. 179/2008 seeking compensation and inquiry. In the said petition, this Court has directed State to conduct further investigation and submit report. In pursuance of that, Dy.S.P K.M. Rajput, State C.I.D, Nagpur investigated and submitted report (page 224) concluding that the investigation carried out by Barraiyya was proper. Several affidavits have been filed by the Police Authorities in the writ petition supporting the prosecution case as initially made out against both accused.

14. In the wake of aforesaid background this Court heard the State's Criminal Appeal No. 498/2011 against acquittal. While deciding the appeal, Court has considered the report of Dy.S.P Tayade marked as Exh. 66. On the basis of said report, Court has observed that PSI Barraiyya has falsely implicated accused, fabricated evidence and left the real culprit Manoj Sharma free from the prosecution. The relevant observations of this Court made in para 20, 21 and 27 of the judgment in appeal reads as below:-

“20. From the perusal of contents of report (Exh.66), it is crystal clear that PSI Barraiyya falsely implicated accused Nos.1 and 2. He has made a false show of recovery of weapon etc. by showing confessional statement made by accused No.1-Manoj Gudadhe. In fact, as per the report (Exh.66), brother of PW-1 namely Manoj Sharma stabbed the deceased. When PW-1 found him with blood stained knife in his hand, he told him to run away immediately. Witnesses have stated this fact before Dy.S.P Shri Tayade.

21. As per the report of Shri Tayade (Exh.66), PSI Barraiyya got prepared knife. After the incident, PW1 and others reached to the Police Station. Both the accused also went to Police Station. Immediately, both the accused were arrested. Keys of the house were kept by the Investigating Officer. After getting the knife prepared, the said knife was hidden (planted) by some of the police constables in the house of accused and thereafter PSI Barraiyya took accused No.1 to his home, opened the lock and showed false recovery from the house of accused. It is noted in the report (Exh.66) that spot panchnama was prepared immediately after the incident. The room was of size of 8 x 9 ft. At that time, weapon etc. were not found. It appears from the report (Exh.66) that false seizure panchnama of knife and clothes of accused were shown. For the reason best known to PSI Barraiyya, he got falsely implicated accused Nos.1 and 2 and left the real culprit free from the prosecution.

27. It is proved by the report of Dy.S.P Shri Tayade vide Exh.66 that accused/respondents are falsely implicated by PSI Barraiyya by procuring false evidence against them. The accused had gone to lodge report in Police Station, Dhantoli after the incident took place on 28.09.2004. In stead of accepting the report of accused persons, they were arrested and detained in the Police Station. Since the time of arrest they were behind the bars more than a month. The

reputation of accused persons is lowered down in the public. They would have been convicted by the trial Court if the report of Dy.S.P. Shri Tayade was not placed before it. On the several requests of accused persons to the superior authorities, Dy.S.P. Shri Tayade re-investigated the crime and submitted his report (Exh.66). Dy.S.P. Shri Tayade recorded his findings that both accused Nos.1 and 2 are falsely implicated by PSI Barraiyya. The detailed report is recited supra. Therefore, there is no doubt that accused persons are falsely implicated by the prosecution. Both accused Nos.1 and 2 (son and mother respectively) came to be acquitted by the trial Court by relying on report (Exh.66). Report (Exh.66) is not challenged by the prosecution.”

15. With above observation, this Court has dismissed the appeal against acquittal and directed State to pay compensation to the accused as well as the aforesaid direction under Clause (vi) has been issued. The order of acquittal has been confirmed by the Supreme Court. The said direction reads as below:-

(vi) State of Maharashtra is directed to file charge-sheet against the real culprit and also against PSI Barraiyya and other erring police personnel who had falsely implicated accused / respondents and also falsely deposed against them.

16. Above direction gave rise to the Police to file two charge-sheets in compliance with the order. Crime No. 60/2019 was registered for the offence punishable under Sections 167, 193, 194, 120-B, 218 read with Section 34 of the Indian Penal Code against six Police Officers namely Arun Barraiyya (PSI), Janardan Bire (ASI), Ganeshsingh Parihar (PC), Rajesh Yawale (PC), Devanand Dhawale (PC), Kishore Dhole (PC). In the said crime, charge-sheet has been filed numbered as Sessions Case

No. 698/2019 which is pending in the Court of Additional Sessions Judge, Nagpur. Similarly, Crime No. 234/2004 was registered against five persons namely Rajkumar @ Raj Bodhiram Shendre, Nilkanth @ Chhotu S/o. Dheluji Uikey, Arvind @ Guddu Abhayraj Sharam, Dharmendra @ Minder Abhayraj Sharam and Manoj Jayshyam Sharma for the offence punishable under Sections 143, 144, 147, 148, 149, 504, 304 read with Section 34 of the Indian Penal Code. It was culminated into Sessions Case No. 805/2019, similarly pending in the Court of Additional Sessions Judge, Nagpur.

17. Being aggrieved by direction issued in Clause (vi), PSI Barraiyya has filed Special Leave Petition. In said petition vide order dated 18.08.2022, the Supreme Court issued limited directions which are already reproduced above in para 2 of this order. In pursuance of that, the petitioner of the Special Leave Petition PSI Barraiyya has been added as respondent No. 3 in Criminal Appeal No. 498/2011 and notice was issued. In the meantime, intervention applications (Criminal Application Nos. 1143/2022, 1445/2022 and 1151/2022) have been filed by the accused of subsequent charge-sheet i.e. by the Police Officers. All the intervention applications were allowed and they have been heard. Similarly intervention application of newly made accused for murder of Sohan (Criminal Application No. 1154/2022) is also allowed and intervenor therein are heard. Moreover, original informant

of Crime No. 234/2004 has also been heard with a view that nobody shall be left unheard.

18. Heard Mr. R.K. Tiwari, the learned counsel appearing for PSI Barraiyya (respondent No. 3), Mr. Vyas, and Mr. Jaltare, learned counsel for intervenors, (Police Officers) and Mr. Madane, the learned counsel for intervenors (newly made accused). So also, heard Mr. H.V. Thakur, the learned counsel for the original informant. It is brought to the notice that newly added accused had also filed SLP Diary No(s). 30574/2019 (II-A) raising a challenge to the same direction of para 28(vi) of this Court. The said SLP was tagged with SLP filed by PSI Barraiyya bearing SLP (CrI) No. 2847/2019, wherein the matter has been remanded for limited exercise. In SLP Diary No(s). 30574/2019, the Supreme Court has stayed the proceeding in Sessions case No. 805/2019 whilst no charges have been framed in another Sessions Case No. 698/2019.

19. The first set of the learned counsel appearing for the Police Officers have strenuously argued that the original accused of the Sessions Case No. 71/2005 (Accused No.1 Manoj and Accused No.2 Sheela) have misled the Trial Court, as well as this Court while deciding Criminal Appeal No. 498/2011. It is submitted that accused No.2 Sheela made several representations to the State C.I.D. and Commissioner of

Police, Nagpur complaining about false implication and for fresh investigation through C.I.D. They have expressed serious doubt about the mode and manner of investigation conducted by PSI Barraiyya. It is also alleged that PSI Barraiyya has intentionally left the original assailants free, but falsely implicated them in the said crime. In pursuance of several representations and orders of this Court, time to time different Police Authorities made inquiries on the basis of allegations levelled in various representations.

20. Notably, in-all five inquiries have been held so far, by the different Police Authorities at the behest of the original accused. Except inquiry report of Dy.S.P. Tayade, rest four indicates that initial investigation carried by PSI Barraiyya was fair and proper. It is submitted that the rest inquiry reports favouring PSI Barraiyya have been suppressed by the original accused from this Court while deciding Criminal Appeal No. 498/2011. Inquiry report of Dy.S.P. Tayade, was only placed before the Trial Court which resulted into miscarriage of justice. It is submitted that report of Dy.S.P. Tayade, (Exh. 66) does not carry evidentiary value. Neither Dy.S.P. Tayade was examined nor any witness has been examined in support of said report. It is argued that the Trial Court erred in considering the report of Dy.S.P. Tayade, against the substantial evidence led in the Court. It is argued that if rest of the inquiry reports affirming the correctness of investigation carried by

Dy.S.P. Barraiyya has been placed before this Court, then the impugned direction would not have been issued, while deciding criminal appeal.

21. Mr. Madne, the learned Advocate appearing for newly added accused/intervenor reiterates the said submission. He would contend that Dy.S.P. Tayade, was misdirected by the original informant and members of rival group which resulted into doubting the investigation carried by PSI Barraiyya. It is submitted that other inquiry reports ought to have been produced at the time of hearing of appeal, but were suppressed. Besides that, both batch of the learned Advocates took us through different inquiry reports to contend that the investigation conducted by PSI Barraiyya was fair and proper. They also took us through the observations made by Dy.S.P. Tayade, to state that the conclusion drawn in the said inquiry was erroneous. We have heard Mr. Thakur, the learned counsel appearing for original informant who has nothing to say but simply solicited for appropriate orders. We have also heard the learned Additional Public Prosecutor in the matter.

22. We were also taken through affidavits filed by Higher Police Authorities filed in Criminal Writ Petition No. 179/2008, wherein the investigation carried by PSI Barraiyya was stated to be fair and proper.

23. The chronological events can be stated in tabular form as below:-

Sr. No.	Date	Particular
1	28.09.2004	One Sohan Yadav was murdered around 09.30 to 10.00 p.m. Wife of deceased namely Kusum (PW-2) lodged report with the Police Station, Dhantoli alleging that accused No.1 Manoj had committed murder of Sohan, and accused No.2 Sheela had caused to disappear the evidence. Crime No. 234/2004 was registered against both the accused and investigation was handed over to PSI Barraiyya. Panchanama of the scene of offence was conducted by PSI Barraiyya. Both accused (Manoj and Sheela) were arrested.
2.	04.10.2004	At the instance of memorandum statement made by accused No.1, Manoj, knife and blood stained clothes were seized by PSI Barraiyya in presence of two Panch witnesses from the house of accused No.1 Manoj vide Panchanama (Exh.53).
3.	23.11.2004	Accused No. 2 Sheela after releasing on bail made representations to State C.I.D. and the Commissioner of Police, Nagpur seeking investigation through C.I.D.
4.	30.12.2004	The Superintendent of Police, C.I.D. Nagpur directed PI. A. V. Karmarkar, C.I.D, Nagpur to inquire and report.
5.	05.01.2005	PI.Chaushan has filed charge-sheet against accused Nos. 1 and 2 (Manoj and Sheela).

6.	20.01.2005	PI. Karmarkar submitted his inquiry report stating that the investigation conducted by PSI Barraiyya was proper.
7.	06.02.2005	Assistant Commissioner of Police Revate in pursuance of direction of Commissioner of Police Nagpur, made inquiry and submitted his report stating the investigation conducted by PSI Barraiyya was correct.
8.	28.03.2005	DIG, CID (MS), Pune directed Dy.S.P. Tayade, C.I.D. to make fresh inquiry.
9.	02.06.2005	Dy.S.P. Tayade, submitted his report to the Superintendent of Police, Crime Branch, Nagpur stating that accused have been falsely implicated whilst the murder was committed by one Manoj Sharma and his associates.
10.	01.03.2006	Both accused filed Criminal Writ Petition No. 87/2006 for seeking to quash charge-sheet.
11.	12.04.2006	The Commissioner of Police Nagpur re-directed the Crime Branch to hold fresh inquiry.
12.	29.04.2006	PI. Sheikh, Crime Branch, Nagpur conducted fresh inquiry and submitted report stating that investigation made by PSI Barraiyya was proper.
13.	10.08.2007	The Trial Court acquitted both the accused in Sessions Case No. 71/2005.
14.	01.04.2008	Both accused filed Criminal Writ Petition No. 179/2008 seeking compensation and inquiry.
15.	27.08.2008	Direction issued in Criminal Writ Petition No. 179/2008 to carry further investigation.
16.	01.01.2009	Dy.S.P K.M. Rajput,. State C.I.D. conducted inquiry and submitted report stating that the investigation carried by PSI Barraiyya was proper.
17.	31.10.2011	The State has challenged the order of acquittal passed by the Sessions Court in Sessions Case

		No. 71/2005 by filing Criminal Appeal No. 498/2011.
18.	24.07.2018	Criminal Appeal was dismissed with directions. (reproduced in para 15 of above.)
19.	08.02.2019	SLP filed by State bearing SLP (Criminal) Diary No(s). 2964/2019 challenging the order of this Court in Criminal Appeal No. 498/2011 was dismissed.
20.	2019	PSI Barraiyya has filed SPL (Cri.) No. 2847/2019 challenging the direction issued by this Court to prosecute him.
21	18.08.2022	The Supreme Court remanded the matter back to the limited extend for passing appropriate orders in respect of direction issued in para 28(vi) in Criminal Appeal No. 498/2011 after hearing PSI Barraiyya.

24. PSI Barraiyya and intervenors are aggrieved by the direction issued by this Court primly on the ground that report submitted by Dy.S.P. Tayade, (Exh. 66) cannot be treated as an evidence to conclude that the Police Officers have fabricated false evidence against the original accused. It is submitted that though the Court is empowered to direct further investigation but cannot direct to file charge-sheet. More stress has been given on the aspect that while deciding the Criminal Appeal No. 498/2011, this Court has only considered the enquiry report of Dy.S.P. Tayade, in judgment dated 24.07.2018. It is submitted that the inquiry reports of Assistant Commissioner of Police Revate, PI. Karmarkar, PI. Sheikh have not been placed before this Court while

deciding the appeal. Moreover, it is submitted that the last inquiry report of Dy.S.P Rajput, though post decision of appeal, however, has re-affirmed the investigation carried by PSI. Barraiyya. Our attention has been invited to the affidavit of Mr. Pravin Dikshit, Commissioner of Police, Nagpur filed in Criminal Writ Petition No. 179/2008, whereby it has been stated that in view of contradictory report, no action is warranted against PSI Barraiyya. Our attention has also been invited to the affidavit sworn by Sarbdeep Singh Virk, Director General of Police, dated 23.06.2009 filed in Writ Petition No. 179/2008. After going through all inquiry reports and making necessary inquiry, he has concluded as below:-

“4. I say and submit that having gone through the papers placed before me including the reports submitted by Shri Tayade, the then Dy.S.P, C.I.D., Nagpur and Shri K.M. Rajput, present Dy.S.P, C.I.D., Nagpur and after discussing the matter with the officers, I have come to the conclusion that there are manipulations and attempts to abuse the process of law at several stages. Some of the important lacunae are as given below:-

(a) Firstly, it is seen that the application filed by the Petitioner under Right to Information Act seeking a copy of inquiry report conducted by Dy.S.P Shri Tayade could not have been furnished due to pendency of the criminal proceedings before the Hon’ble Trial Court, in accordance with the provision of Section 8(1)(h) of the said Act, which has influenced the trial and also under section 8(1)(e) and (j) of the said Act as the disclosure of said information had served only the personal interest of the petitioners herein and not the public interest at large as envisaged under the said provisions.

(b) Once charge-sheet has been filed on 20.1.2005, the subsequent enquiry conducted by Shri Tayade, then Dy.S.P, C.I.D., has no legal force.

(c) It is clear that all investigations or enquiries corroborated the investigation carried out by the first I.O. i.e. P.S.I. Baraiyya except the enquiry conducted by Shri Tayade, then Dy.S.P, C.I.D.

(d) The enquiry done by Shri Tayade, Dy.S.P shows that certain infirmities, contradictions and doubts were introduced to help the petitioners. Dy.S.P Tayade had not examined number of important witnesses and seems to have examined various witness which had no concern with the present case. On the contrary Shri K.M. Rajput, present Dy.S.P, C.I.D., Nagpur has brought on record some important witnesses throwing light upon the case, which were left out by the then Dy.S.P, C.I.D., Shri Tayade.

(e) The petitioner seemed to be aware of the contents of the enquiry conducted by Shri Tayade and went on to procure its copy under the Right to Information Act, 2005.

5. I say and submit that in the background above mentioned factual position, the re-investigation conducted by Shri K.M. Rajput, Dy.S.P, C.I.D., Nagpur appears to be bona fide and hence instructions are being issued to scrutinize the judgment and order of acquittal of the trial court and take an appropriate steps/action, strictly on merits about filing of Appeal against the order of the Hon'ble Trial Court. Addl.D.G., C.I.D., Pune has been asked to look into the conduct of Shri Tayade, Dy.S.P and seek his explanation."

25. Reverting to the facts, on the date of occurrence itself at around 10.10 p.m. the information was reached to the Police and within an hour, Crime No. 234/2004 was registered against both original accused at the instance of report lodged by widow of deceased namely Kusum (PW-2). We may clarify that we are undertaking the whole exercise to the limited extent to find out justness of the direction issued by this Court.

26. Informant Kusum (PW-2) lodged report within an hour with Police alleging that accused No.1 Manoj has stabbed deceased Sohan at his house, whilst accused No. 2 Sheela has cleaned the blood stains by pouring water to screen the offence.

27. The gist of report (FIR) (Exh.40) in brief is as under:-

“Today, on 28.09.2004 around 05.00 p.m., I returned from my work. My husband Sohan along with other people went for Lord Ganesh immersion procession. Around 09.15 p.m, all the people participated in the procession returned back. Diner was arranged in the vicinity. Accused No.1, Manoj came under influence of alcohol and started to give abuses. Deceased Sohan asked him as to why he is abusing particularly in the name of community. At that time, accused Manoj caught hold collar of deceased and dragged him inside the house. Informant and two other followed them. Accused Manoj gave fist blow at the person of deceased. He took out one small sword concealed beneath the carpet and by his right hand, gave blow at the left armpit of the deceased. She raised alarm, on which Sanjay Ambadare, Samir Yadav, Arvind Sharma brought auto-rickshaw and took Sohan to the Medical College Hospital, where he was declared dead. She saw that accused Sheela has washed the blood stains lying on floor. She stated that since deceased questioned accused Manoj as to why he is abusing, therefore accused Manoj dealt a knife blow and killed her husband and therefore the report.”

28. The above report was lodged before PW-9 PI. Mr. Chauhan who has also signed the report (Exh.38). On the basis of said report, he has registered Crime No. 234/2004. Immediately, he has entrusted investigation to PSI Barraiyya who in turn went to the place of occurrence and drawn Panchanama of the scene of offence in between 11.00 to 11.40 p.m. in presence of Panch witnesses. During Panchanama of the scene of offence, Police have seized one piece of floor tile having blood stains, a piece of clean tile, bed-sheet having blood stains, a

broom with blood stains and iron net with blood stains. Both accused were arrested on the same day. As per charge-sheet, while accused No.1 Manoj was in custody, he made a memorandum statement on 04.10.2004 in presence of Panchas (Exh.52) expressing his willingness to show the place where he has concealed knife and blood stained clothes. In pursuance of that, the weapon and blood stained clothes worn by Manoj were seized under Panchanama carried by PSI Barraiyya in between 11.25 to 11.35 p.m. on the same day (Exh.52).

29. During course of investigation, PSI Barraiyya has recorded statement of several witnesses. Some of the witnesses have stated that they have witnessed the accused No. 1 Manoj while stabbing deceased by means of knife. The prosecution has examined some of the eye-witnesses out of which PW-1 Arvind Sharma, PW-3 Nilkanth Uike have supported the prosecution case i.e. stick to their Police statement recorded by PSI Barraiyya. Precisely, they stated as per the prosecution case that accused No.1 Manoj had dealt knife blow at the person of deceased. During trial, informant PW-2 Kusum did not supported her Police report stating that she has not seen the occurrence. Eye-witness PW-6 Subhash Murkute did not support the prosecution case, but gave contradictory version. He deposed that at relevant time Manoj Sharma, Munna Sharma, Manindar Sharma and Sohan started assaulting to the accused No.1 Manoj. Accused Sheela came to the rescue of her son

Manoj, at that time, Manoj Sharma took out a small sword and dealt blow towards Manoj, however it was avoided which landed at the person of deceased Sohan causing him bleeding injury. Moreover, PW-5 Deepak Ahir turned hostile, meaning thereby did not support the prosecution case.

30. In above context, we have gone through the inquiry report of Dy.S.P. Tayade, (Exh. 66) which resulted into entire further episode. Report of Dy.S.P. Tayade is in Marathi language of which this Court while deciding the appeal has reproduced the translated gist in para 18 of the judgment. The said report carries significance, hence we have reproduced the same which reads as below:-

“Sir,

it is humbly submitted as under :-

Enquiry was held into the application under reference as per the order mentioned in reference No.2 above. For the purpose of the said enquiry, I obtained from Police Station, Dhantoli, the case diary, xerox copies of the documents enclosed with the charge sheet. ...

As the Deputy Inspector General of Police, Crime Investigation Department, Maharashtra State, Pune had issued orders to me to hold fresh re-enquiry (into the said matter). During the course of enquiry, I have recorded statements of 25 witnesses.

Shri B.P. Chate, Assistant Police Inspector of Police Station Dhantoli executed Inquest Panchanama on the body of deceased Sohan Hiralal Yadav during the course of investigation of C.R. No. 234/04 under Sections 302, 201 read with Section 34 of the I.P.C., registered with Police Station Dhantoli Police SubInspector Shri Baraiyya carried out investigation of the said crime from 28/9/2004 to 4/1/2005 i.e. from case diary No.1 to case diary No.30 Shri Patil, Assistant Police Inspector carried out further investigation (of the said crime) from 19/1/2005 to

20/1/2005 i.e. case diary Nos. 31 and 32 and submitted a chargesheet in the court on 20/1/2005. Statement of Police SubInspector Shri Baraiyya was recorded.

On 4/5/05, during the course of recording statement of Police Sub-inspector Shri Baraiyya, he (Police Sub-inspector Baraiyya) produced before me, photographs (2) of the incident of taking out and producing the weapon before us by accused Manoj Gudadhe after his statement of admission. As we had sent for examination, to the Chemical Analyser, the weapon seized as per the statement of admission given by accused Manoj Gudadhe, I personally went to the Regional Forensic Science Laboratory Nagpur and verified the photographs and weapon.

Deceased Sohan Yadav had sustained the injury below his left armpit portion which was responsible for his death. As it became clear that force of the said injury was from the left to the right on the lateral side. Hence it becomes clear that deceased Sohan Hiralal Yadav was attacked with right hand. However it is found that Manoj Madhukar Gudadhe, the accused arrested by the local police, is left handed.

Complainant Kusum Sohan Yadav is a wife of deceased Sohan Yadav. The crime was registered on the basis of her report. The said report contains facts that accused Manoj Gudadhe caught hold of the collar of shirt of Sohan Yadav (the deceased) near Hanuman temple dragged him up to a distance of about 1520 feet inside the house, took out a knife from under the cot and delivered a blow thereof on Sohan Yadav as a result of which he (Sohan) got injured and died. On perusing statements of the witnesses enclosed with the charge sheet i.e. 1) Complainant Kusum Yadav, the deceased's wife 2) Rahul Puran Uike 3) Nilkanth Bheluji Uike 4) Arvind Abhayraj Sharma and 5) Subhash Shantaram Murkute are found to be the eye witnesses whereas the remaining witnesses stated that they had heard about the incident.

As per the statement of the said witnesses, the incident of crime with its background occurred as under :-

Every year, 'Sarvajanik Navyuvak Ganeshotsav Mandal' celebrates Ganeshotsav (festival of Lord Ganesh) in Sangam Chawl near Udasi Mandir behind Yashwant Stadium within the area of Police Station Dhantoli. As per the statement of Manoj Gudadhe, the son of applicant Sheela Gudadhe, in the year 2003, he was the active member of the said Mandal and he himself had collected subscriptions for the Ganeshotsav Mandal. He himself had given an amount of Rs. 500/- also for incurring expenses on (musical) band for the procession of immersion of Lord Ganesh. However Raj Shendare spent the said amount for

consuming liquor instead of spending it on band. Hence in the year 2004 he did not take part in 'Sarwajanik Ganeshotsav Mandal'.

In the intervening period i.e. in the month of June 2004 prior to three months of the incident, Shatru Shendare and Kishor Bhagat from Patwardhan hutments beside Sangam Chawl had beaten Raj Shendare and Guddu Sharma from Sangam Chawl. Hence Raj Shendare had asked Manoj Gudadhe to accompany him by a vehicle, along with other accomplices. However Manoj Gudadhe had refused it. Over this reason, relations between Manoj Gudadhe (on one side) and Raj Shendare and his accomplices (on the other side) were strained. Since then Manoj Gudadhe was not on talking terms with Raj Shendare and his accomplices. As Raj Shendare was the active member of 'Navyuvak Ganesh Mandal', Manoj Gudadhe did not take active part in the Ganeshotsav Mandal.

There was a programme of immersion of the idol of Lord Ganesh on 28/9/04. For the said purpose, Dharmendra Sharma had brought 407 matador (four wheeler) of a person named Gedam (for procession of immersion). The idol was carried by the said four wheeler with procession and it was immersed. Manoj Gudadhe had not taken part in the procession women and children from Sangam Chawl hailing from Chhattisgarh had gone in the procession. As stated by complainant Kusum Yadav, she had gone from Sangam Chawl to Bank of Maharashtra in the immersion procession. Women and Children had returned home from there. The herein non-applicant and others had gone to Futala tank with procession.

The procession for immersion started on 28.9.04 at 19.30 hours and after immersion of the idol of Lord Ganesh they came back to Sangam Chawl at about 21.00 hours at night. Thereafter a programme of dinner was arranged for 10 to 12 workers of the Mandal in the lane of Rahul Uike near the house of Nilkanth Uike just near Udasi Mandir.

The non-applicant and other persons came back after immersion of idol of Lord Ganesh. At that time, Manoj Gudadhe was sitting with Mukund Yadav on a cement chair fitted by N.M.C. near Yashwant Stadium. Vijay Raotele, a boy from Sangam Chawl was sitting near them Manoj Gudadhe was under the influence of liquor. When the non-applicant and other persons came after immersion of the idol of Lord Ganesh. Manoj Gudadhe, unnecessarily uttered words, "Dauke Log Aa Gaye Sale" (Sale (an abuse term) Dauke people have come) which would hurt the nonapplicant. There started altercation and

exchange of abuses between them over the said reason Kuvarvatibai Uike who was present there immediately went to the house of applicant Sheela Gudadhe and narrated the said incident to her. Hence Sheela Gudadhe took home her son Manoj Gudadhe. Distance between the house of Sheela Gudadhe and the spot where first altercation between Manoj Gudadhe and non-applicants had taken place is about 3040 meters.

After Sheela Gudadhe brought home Manoj Gudadhe, she served him food in a plate. At that time, Subhash Murkute who was working on her tea stall was taking meal at her house. Manoj came near the tap near entrance door for washing hands before taking meals. At that time, the non-applicants who were prepared to go for taking meal were present near Hanuman temple at a distance of 1015 feet from the tap. On seeing them, Manoj Gudadhe again uttered words “Dauke Log Sudhareng Nahin” (There will be no improvement in the people belonging to Dauke community). Thereupon including Sohan Yadav (the deceased) all the non applicants i.e. 1) Raj Bodhiram Shendare 2) Arvind alias Guddu Abhayaraj Sharma 3) Manoj Jaisham Sharma 4) Dharmendra alias Mindar Sharma and 5) Nilkanth Bheluji Uike entered the applicant's house. The applicant tried to obstruct them in the door itself. However by pushing aside the applicant, the non applicants went in and started beating Manoj Gudadhe. Out of the non-applicants, Manoj Sharma took out a knife and brandished it to assault Manoj Gudadhe with it. By presence of mind Subhash Murkute pulled back Manoj Gudadhe due to which the said knife blow on Manoj Gudadhe came to be warded off and Sohan Yadav came to be hit with it below his left armpit portion. Thereupon immediately Sohan Yadav shouted as, “Are Mar Gaya Re” (oh ! I am dying) and fell down in prone condition. On knowing gravity of the situation, all the non-applicants hurriedly came out of the applicants house. In the said hurry, the non-applicant happened to push the bucket near the tap as a result of which water fell in the house. Out of them, chappals of two persons slipped from their feet at the spot of occurrence itself and they remained there itself. At that time, Abhayaraj Sharma, on seeing the stains of blood on the clothes on Manoj Sharma's person and knife in his hand, drove him to his house, by saying to him, “Run away from here immediately”. 1) Nikki Balvindarsingh Saddyal 2) Simranjit Kaur Saddyal 3) Durga Naresh Trivedi and 4) Manjit Kaur Saddyal are the witnesses who have stated to have seen Manoj Sharma fleeing with the knife in his hand with blood stained clothes (on his person) Non applicant Raj Shendare went away with Dharmendra alias

Mindar Abhayraj Sharma on the Scooty of Pramod Mishra.

After the non-applicant who were accompanying Sohan Yadav ran away when he fell down in prone condition, by shouting, “Are! Mara Re !” (Oh! I am dying) soon on getting injured, Sheela Gudadhe turned him in supine condition asked his accomplice who was running away to take the deceased to the hospital and with Manoj Gudadhe, (she) lifted him and brought him near the entrance. In the mean time, on hearing Sohan Yadav's shout as “Are ! Mara Re”(Oh! I am dying) a boy named Nandu Shahu, aged 12 years, went to Sohan Yadav's house and informed Sohan Yadav's wife Kusum that Sohan was being assaulted. On hearing this, when Kusum Yadav came in front of the applicant's house, she saw that the applicant and her son Manoj Gudadhe were keeping Sohan Yadav near the door by lifting him. Sanjay Ambadare, Raju Thakur and Sameer Yadav who were present there lifted Sohan Yadav and kept him in 407 matador standing there. After some time when non-applicant Arvind Sharma came with an auto rickshaw there, Sanjay Ambadare, Arvind Sharma and Sameer Yadav took him out of 407 matador and kept him in the autorickshaw and then carried him to Police Station Dhantoli.

After Sohan Yadav was lifted from in front of the house of the applicant and put in 407 matador, Sheela Gudadhe wiped with a broom, the water from the bucket near the entrance, of the house that had spread in the house as the said bucket had come to be pushed by the nonapplicant while going away therefrom hurriedly after Sohan Yadav had got injured and fallen down. Blood had fallen in the said water while carrying Sohan Yadav by lifting while Manoj Gudadhe and Sheela Gudadhe were carrying Sohan Yadav by lifting, stains of blood had stuck to their clothes. Manoj Gudadhe put off the blood stained pant and kept it at home. After wiping the water and chaining the house, Sheela Gudadhe went to the Police Station on foot. Prior to that, Raj Shendare and Dharmendra were present at the Police Station when she went to Police Inspector Shri Chavan for lodging a report, he (Shri Chavan) said to her, “you only committed his murder” and asked the Policeman to arrest her without recording her any complaint whatsoever.

Raj Shendare accompanied by Dharmendra Sharma immediately went to Police Station Dhantoli on the Scooty of Pramod Mishra and they only gave there information about the quarrel that was being taken place at Udasi Mandir. Accordingly the Police went to the spot

of occurrence, took Kusum Yadav in the jeep and brought her to the Police Station.

I interrogated Kusum Yadav and recorded her detailed statement in which she did not state to have personally witnessed the said incident as mentioned by her in the complaint of the said crime. In her statements recorded by Shri Revate, Assistant Commissioner of Police, Ajni Division Nagpur and Shri Karmarkar, Police Inspector, Crime Investigation Department Nagpur. She did not state to have witnessed the incident personally. Kusum Yadav has stated in her statement before me to have informed Dhantoli Police about whatever she had witnessed and that Arvind Sharma had informed the Police about the remaining facts mentioned in the complaint of the crime. However, Arvind Sharma has refused it.

During the course of enquiry into the application carried out by me, following facts have come to light about the weapon seized as per the statement of admission of accused Manoj Gudadhe recorded by Investigation Officer Police Sub-inspector Shri Baraiyya on 4/10/04.

(i) On 4/10/04 at about 9.00 O'clock in the morning Shri Bire, Incharge of D.B. Squad called Balvindarsingh Saddyal to Police Station Dhantoli, Nagpur and showed to him, cover of the card board box having red coloured cloth fitted to it and asked him to prepare a weapon of that shape. Hence Balvindarsingh Saddyal went to Avtarsingh Jabbal along with a policeman named Dhale and got prepared through him, a weapon of iron sheet fitting in the cover given by Bire Policeman and handed over it to Policeman Dhale.

(ii) On the same day at about 13.00 or 13.30 hour, Police (men) Devanand, Rajesh and Ganeshsingh came on motorcycle and Scooter, opened the applicants house and entered it. When they were keeping something below the almirah in the house, Kamal Pande, Proprietor of Pande opticals nearby followed them and he saw the said incident. Thereafter within a short time, Shri Baraiyya came to the spot of occurrence along with the accused, staff and photographer and (they) got the said weapon taken out and produced through Manoj Gudadhe, took its photographs and seized it from him. Balvindarsingh Saddyal saw Police Inspector Baraiyya taking away Manoj Gudadhe from the house, with the weapon and he got confirmed that the Police had falsely implicated Manoj Gudadhe by seizing from him the weapon got prepared by him. He stated this in his statement recorded on 11/4/05 before me.

(iii) Thereafter on 4/5/05, Police Sub-inspector Shri Baraiyya handed over to me, the photographs taken at the time of recovery of weapon. On showing the said photographs to Balvindarsingh Saddyal, he stated that he had got prepared the weapon shown in the photographs. As the said weapon was sent to the Regional Forensic Science Laboratory Nagpur for Chemical examination, I, on 07/5/05, made contact with Chemical Analyser Shri Kadukar and collected information from him about the weapon. Thereupon it is found that the said weapon is as described in the statement given by Balvindarsingh Saddyal on 11/4/05.

(iv) Applicant Sheela Gudadhe had just chained the house at the time of going to the Police Station for lodging a complaint. At that time, she and Manoj Gudadhe were detained there itself. The police had not brought them to the spot of occurrence at the time of executing the panchanama of the spot of occurrence. After executing the panchanama of the spot of occurrence Police Sub Inspector Shri Baraiyya locked the applicant's house with their lock only. Key of the lock of the applicant's house was with Police Sub Inspector Shri Baraiyya only up to 12/10/2004. As Kamal Pande had stood as a surety for the applicant, Police Sub Inspector Shri Baraiyya handed over to Kamal Pande, the said key for giving it to the applicant.

(v) In the Panchanama executed by the local police on 28/9/2004, it is mentioned 'one drum of tin sheet partly filled with wheat is kept in a room admeasuring 9x4.4 feet'. The clothes which were on the person of the accused at the time of incident were seized from the said drum of tin sheet on 4/10/2004, as per his statement of admission.

(vi) In the intervening period i.e. on 4/10/04, Isha Sanjay Bangalkar, the applicant's daughter wanted to seek bail for the applicant. As the papers of medical prescription for the applicants illness were in the house, Isha Bangalkar had met Police Sub-inspector Shri Baraiyya and as per his direction one Police Constable had opened the applicants house. Isha had taken the papers of medical prescription for the illness of her mother Sheela Gudadhe, in the presence of the said Police Constable. Thereafter the Policeman had locked the applicant's house and retained its key with himself.

(vii) Subhash Murkute is the eye witness and independent and important witness to the incident mentioned in the application. He has personally witnessed the incident. The statement of the said

witness recorded by Police Sub Inspector Baraiyya bears facts as mentioned in the complaint of the crime. However, in his statement recorded by Assistant Commissioner of Police Shri Revate and Police Inspector Shri Karmarkar during the course of enquiry into the application, has denied the fact from the statement recorded by Police SubInspector Shri Baraiyya. As Subhash Murkute is an independent and important witness it was necessary to record his statement on oath under Section 164 of Criminal Procedure Code. However, Police Sub-inspector Shri Baraiyya, did not record his statement on oath. Regarding this he stated in his statement that he had not recorded (his) statement under Section 164 of Criminal Procedure Code as Police Inspector Shri Chavan had said that it was not necessary.

(viii) Subhash Murkute is a witness in the grave offence of murder. It is necessary for the officer visiting the spot of occurrence to verify the statement of important witness personally. However, in the instant case, Assistant Commissioner of Police Shri Revate and Police Inspector Shri Chavan who had visited the spot of occurrence had not verified the statements of any witness whatsoever in the said case. As there is no signature of any senior officer on the statement of any of the witnesses in token of having verified it, it cannot be said that Police Sub-inspector Shri Baraiyya has recorded the statement of witness Subhash veraciously.

(ix) Assistant Police Inspector Shri Patil took over the investigation (of the said crime) from Police Sub Inspector Shri Baraiyya on 19/01/05 Police Inspector Patil, without verifying (statements) of any witness whatsoever, submitted a charge-sheet in the said crime, in the court on 20/01/05, on the basis of the papers prepared by Police Sub Inspector Shri Baraiyya statements of complainant Kusum Yadav and eye witness Subhash Murkute recorded by Assistant Commissioner of Police Shri Revate during the course of enquiry into the application prior to that were totally contrary to their statements recorded by Police SubInspector Shri Baraiyya.

(x) District Government Pleader Shri Satiyanathan has given his report about submitting a charge-sheet in the court after scrutinizing the papers on 7/1/2005 before preparing a charge sheet in the crime. Therein he has stated that the incident has taken place in the house of Sheela Madhukar Gudadhe and Manoj Madhukar Gudadhe and that they have defended themselves as mentioned in the application and that the Court would decide whether they are guilty or innocent. However in the instant

case it is not only the point whether the accused are guilty or innocent. Even if accused Sheela and Manoj under arrest in connection with the crime are found innocent, real culprits are different. Under such circumstances though the local Police have submitted a charge sheet in the Court, under Sections 302, 201 read with 34 of the I.P.C. against applicant Sheela Gudadhe and Manoj Gudadhe I think that it will be proper to state before the Hon'ble Court, detailed facts about the said crime and withdraw the case against them. As the incident in the said crime, has occurred under Sections 143, 147, 148, 149, 323, 352, 452, 304, 302 of the I.P.C. read with Sections 3, 25 of Arms Act and Section 135 of Bombay Police Act, I think that it will be proper to register the said sections against 1) Raj Bodhiram Shendare 2) Arvind alias Guddu Abhayaraj Sharma 3) Manoj Jaisham Sharma 4) Dharmendra alias Mindar Sharma and 5) Nilkanth Bheluji Uike hold investigation into the said crime submit a chargesheet in the Court and similarly bring participation of guilty Policemen to notice during investigation (of the crime). It is submitted.

Sd/ S.D. Tayade,

Dt. 10/5/05

(S.D. Tayade)

Dy. Supdt. of Police

State Crime Investigation Department, Nagpur."

31. Admittedly, the report of Dy.S.P. Tayade, was produced in Trial Court by accused. The learned Additional Public Prosecutor gave no objection to exhibit the report which caused the Trial Court to consider the same. This Court has also considered the report of Dy.S.P. Tayade while deciding the appeal. Though Dy.S.P. Tayade, has recorded various statements putting contrary version, however neither Dy.S.P. Tayade, nor witnesses have been examined in the Trial Court to support the same. We are failing short to understand how the said report can be treated as an evidence in trial. Be that as it may, Dy.S.P. Tayade in his report drawn

his own conclusions and some logical inferences to state that PSI Barraiyya has falsely implicated the original accused.

32. The report states that deceased Sohan sustained injury below his left armpit and thus, it was clear that force of said injury was from the left to the right, meaning thereby attack was from right handed person. It is stated that accused Manoj was left handed person and the said circumstance weighed in favour of Manoj about his false implication. As a matter of fact, it was a pure imaginary conclusion drawn by Dy.S.P. Tayade, without opinion of expert. There are variety of reasons depending upon the position of victim and assailant to infer about the direction of force. Contextually, we may refer that P.I. Sheikh in his report dated 29.04.2006 stated that during inquiry he found that accused Manoj though left handed person, was also swift in using his right hand.

33. Dy.S.P. Tayade in his report has considered the statement of both accused Manoj and Sheela. We may say that naturally they being accused, it is obvious for them to state the story otherwise round. Dy.S.P. Tayade, was impressed by a statement of PW-6 Subhash Murkute recorded during his inquiry. He has stated the contrary version, but in other inquiry report, it has come that Subhash Murkute was working on the Tea Stall run by accused Sheela, which is matter of concern.

34. Dy.S.P. Tayade, primly expressed that the recovery of weapon carried by PSI Barraiyya was false and fabricated. In order to arrive said conclusion, he has recorded a statement of two persons who allegedly prepared a similar type of weapon at the instance of Police. Moreover, it is expressed that after drawing Panchanama of the scene of offence, the house was kept under lock and key with PSI Barraiyya. There are some witnesses who have seen some Police entering into room during interregnum period and therefore, he expressed that at the instance of PSI Barraiyya a fabricated weapon has been shown to be seized.

35. In that context, we have seen other inquiry reports which materially contradicts said conclusion. PI.Sheikh, stated in his report that the same seizure Panch PW-5 Deepak Ahir has conceded about seizure of clothes and weapon at the instance of accused No. 1. Manoj. During inquiry, P.I. Sheikh found that the house of accused was under lock, and key was with the sister of accused Manoj namely Nisha Bangadkar. At the time of Panchanama, Nisha has opened the door, on which seizure was effected. The report says that on 29.04.2004 itself entry was taken in case diary vide Entry No. 2/2004 that a key was kept with Nisha. Moreover, he stated that the persons who have allegedly prepared similar weapon, are deposing falsely out of enmity. Therefore, he concluded that the inference drawn by Dy.S.P. Tayade, about planting

weapon by Policy is baseless. On the other hand, he stated that memorandum and seizure has been effected by PSI Barraiyya as per the events occurred. Finally, he informed to the Trial Court vide communication dated 29.04.2006 that he did not found any other material during the course of further investigation.

36. Dy.S.P. Tayade has made a novel experiment, requiring one Balvindarsingh Saddyal to prepare a similar weapon by showing cover and as Saddyal was able to prepare a weapon fitting in the cover, he concluded that the seized weapon must have been prepared by him at the instance of Police. During inquiry, Dy.S.P. Tayade has shown the photographs of weapon to Saddyal, on which Saddyal allegedly stated that he had prepared a weapon seen in the photograph. The said exercise carries no meaning, nor it could be worth to be acted upon. By and large, the report of Dy.S.P. Tayade is nothing but his own imaginary product based on surmise and the statement of one-sided persons.

37. We have gone through the initial inquiry report of PI Karmarkar dated 21.05.2005. It is highlighted that witness Subhash Murkute who gave contrary story is not reliable as he was serving on the Tea Stall owned by accused Sheela. He stated that the contrary version has come only from both accused and their servant Subhash Murkute. He has also seen the statement of witnesses who have seen

original accused while committing offence. He expressed that there was no reason for the Investigating Officer (PSI Barraiyya) to mislead the direction of investigation. He concluded that since the occurrence took place in the residential house of accused, in order to escape from the charges, they have concocted a false story and thus there is no necessity to hand over investigation to the State CID.

38. We have minutely gone through the inquiry report of P.I. Sheikh dated 29.04.2006. During his further investigation in terms of Section 173 (8) of the Code, he has recorded statement of several witnesses. He stated that PW-6 Subhash Murkute, on which Dy.S.P. Tayade heavily relied, was servant of accused Sheela staying at her house and thus not worthy of credit. It was transpired during further investigation that after release of Sheela on bail, she has threatened and pressurized the witnesses. P.I. Sheikh has assigned several reasons to justify his conclusion that the report of Dy.S.P. Tayade, was one-sided and improper. Precisely, it is expressed that there was no eye-witness to say that alleged assailant Manoj Sharma was seen while leaving the place with small sword. There is no material to show alleged role of all five assailants. It is stated that PSI Barraiyya has recorded statements of all near by residents. He noted that in chemical analysis report, human blood was found on the weapon seized at the instance of accused No. 1 Manoj. He has expressed impossibility of five persons assailing deceased

in a small room admeasuring 8 x 10 ft. Only. He has recorded statement of one Saddal who as per Dy.S.P Tayade's report, prepared weapon, but he said nothing about that. He has also verified in the vicinity and found that accused No. 1 Manoj was swift in playing by his right hand which contradicts the conclusion of Dy.S.P Tayade.

39. Inquiry report of P.I. Sheikh is quite exhaustive while carrying further investigation. He has recorded statement of several witnesses of which we have taken a note. He has highlighted that during interregnum period a key of the house of accused was with their sister and thus, the story of plantation of weapon is improper. He has emphasised on the point of that after release on bail, accused Sheela and her friend Kamal Pande have threatened the witnesses. According to him, Dy.S.P Tayade by stressing on some technicalities, gave one-sided report which is not worthy of credit. He himself has visited the place of occurrence and noted impossibility of committing assault by so many persons in a small size room. On the basis of various factors, he concluded that the investigation carried by PSI Barraiyya was proper.

40. We have also gone through one another inquiry report of Dy. S.P Rajput, State C.I.D. He has again inquired and recorded statement of total 18 persons. He noted that inconsistent version has been stated by various witnesses. He stated that a person namely Kamal

Pande has brought the witnesses before Dy.S.P. Tayade and Pande was master mind in floating another story. By and large, he has blamed one Kamal Pande compelling some people to give contradictory version on the say of accused Sheela. In-short, he has justified the investigation carried by PSI Barraiyya and strongly criticized one-sided report of Dy.S.P. Tayade. He has also given his logical conclusions as to how the report of Dy.S.P. Tayade was incorrect for variety of reasons. Finally, he transpired during inquiry that the allegation made by accused No. 2 Sheela against Police are baseless and thus, stated that investigation carried by PSI Barraiyya was proper.

41. We have gone through all these inquiry reports as they were not placed before the Trial Court as well as this Court which deciding the appeal. Apart from the admissibility of the report of Dy.S.P. Tayade, we have considered his conclusion vis-a-vis the conclusion drawn by other inquiring officers. The conclusions drawn by Dy.S.P. Tayade are his own inferences based on conjecture and surmises.

42. Pertinent to note that within one hour from the occurrence, informant Kusum has lodged report specifically alleging the assault by accused No. 1 Manoj and screened evindence by accused No. 2, Sheela. On the very day, they were arrested and produced before the Magistrate, but they did not put any grievance about false implication. Everything

erupted after release of accused No. 2 Sheela on bail, and then she started to make grievance to various Police Officers. It requires to be noted that as per record, alleged assailants went to Police Station at the time of lodging First Information Report. It requires consideration whether they would go to the Police Station after assaulting by dangerous weapon.

43. Accused Manoj and Sheela were put on trial for the charge of committing murder of Sohan. Core issue in the trial was whether prosecution has proved the offence against them with requisite standard of proof. It is entirely a different matter that charges are not proved than directing to file charge-sheet against some one prejudging his guilt. Normally, the Court can issue direction to investigate only, but not in particular angle prejudging the result of investigation. It reveals that the complaints made by accused caused Police Officers to make multiple inquiries which in-fact has created a mess. There is no uniformity or coordination in the different wings of Police who as and when receives a complaint, initiated one more inquiry. The direction issued under para 28(vi) of the judgment and order dated 24.07.2018 of this Court is primly based on inquiry report of Dy.S.P. Tayade. The report of Dy.S.P. Tayade appears to be tailored investigation under unprincipled conclusions which has no sanctity or credibility in the eyes of law. We

also note that at the relevant time other contrary inquiry reports were not placed before this Court.

44. Having regard to all contradictory reports, it is matter of serious doubt about conclusions drawn by Dy.S.P. Tayade. Therefore, it cannot be said in definite terms that PSI Barraiyya has fabricated the evidence and falsely implicated the original accused. Therefore, the direction to file charge-sheet against PSI Barraiyya and other Police person would not sustain in the eyes of law. Likewise, the other inquiry reports gave different version than the report of Dy.S.P. Tayade, pointing the guilt towards original accused only. In the circumstances, direction to file charge-sheet against some other also runs contrary to the law. This Court cannot decide the result of investigation or the result of re-investigation, nor state that it should result in particular manner. At the most, the Court can issue direction to carry re-investigation or further investigation and not more than that. It is the domain of Investigating Agency to reach to the particular conclusion. While parting with the order, we may advert towards the powers of the Appellate Court in appeal against acquittal in terms of Section 386(a) of the Code of Criminal Procedure. It empowers the Appellate Court to reverse the order of acquittal and direct further inquiry or re-trial or the other course available therein. Normally, the orders of re-investigation are passed after reversal of initial order of acquittal. Herein, the order of

acquittal is maintained, but direction to the extent of filing charge-sheet has been issued which has no legal basis.

45. In conclusion, we are of the considered opinion that for aforesaid reasons, direction issued in Clause (vi) issued in para 28 of the judgment is not sustainable in law. In view of that, we hereby recall the said direction contained in Para 28 (vi) of the judgment and order dated 24.07.2018 passed in Criminal Appeal No. 498/2011.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)