



2025:KER:64852

DSR Nos.6/2018 & Con.Cases

:1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

DSR NO. 6 OF 2018

AGAINST THE JUDGMENT DATED 25.07.2018 IN SC NO.917 OF 2012
OF SPE/CBI COURT, THIRUVANANTHAPURAM

PETITIONER/STATE:

STATE OF KERALA

RESPONDENTS/COMPLAINANTS:

1. JITHAKUMAR K.
S/O. KAMALASANAN NAIR PCT- 7256 R/O KAMALALAYAM,
VP 3- 555B, VILAVOORKAL, MALAYINKEEZH POST,
THIRUVANANTHAPURAM.
2. SREEKUMAR.S.V
S/O K.SHIVARAJAN, ARPC T- 1795, S.V.BUILDING,
CONVENT ROAD, NEYYATTINKARA, THIRUVANANTHAPURAM.

SPL. PUBLIC PROSECUTOR FOR CBI, DR. K.P.SATHEESAN
ASSISTED BY GOKUL D SUDHAKARAN AND BHARATH MOHA

THIS DEATH SENTENCE REFERENCE HAVING COME UP FOR FINAL
HEARING ON 27.08.2025, ALONG WITH CRL.A.940/2018, 959/2018
AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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DSR Nos.6/2018 & Con.Cases

:2:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR
WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

CRL.A NO. 940 OF 2018

AGAINST THE JUDGMENT DATED 25.07.2018 IN SC NO.917 OF 2012
(S.C.No.916/2012 CLUBBED WITH S.C.No.917/12) PASSED BY THE
COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.4:

T.AJITH KUMAR
AGED 54 YEARS
S/O.THANKAPPAN NAIR,
CIRCLE INSPECTOR OF
POLICE,R/O.PRASANNA BHAVAN,NEMOM,
PALLICHAL,THIRUVANANTHAPURAM.

BY ADVS.
SRI.S.RAJEEV
SHRI.ANAND KALYANAKRISHNAN
SRI.K.K.DHEERENDRAKRISHNAN
SRI.D.FEROZE
SRI.V.VINAY



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DSR Nos.6/2018 & Con.Cases

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RESPONDENT/STATE:

CENTRAL BUREAU OF INVESTIGATION
REP. BY STANDING COUNSEL, CBI,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031
(RC5(S)/2007/CBI/SCB/CHENNAI.

BY ADVS.

SPL. PUBLIC PROSECUTOR FOR CBI, DR. K.P.SATHEESAN
ASSISTED BY GOKUL D SUDHAKARAN AND BHARATH MOHAN

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
27.08.2025, ALONG WITH DSR.6/2018 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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DSR Nos.6/2018 & Con.Cases

:4:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

CRL.A NO. 959 OF 2018

AGAINST THE JUDGMENT DATED 25.07.2018 IN SC NO.917 OF 2012
(S.C.No.916/2012 CLUBBED WITH S.C.No.917/12) PASSED BY THE
COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO. 5:

E.K.SABU
AGED 59 YEARS, S/O.ISRAEL,
ASST.COMMISSIONER OF POLICE,R/O.K.P.BHAVAN,
VELLARDA JUNCTION,THIRUVANANTHAPURAM.

BY ADVS.
SRI.S.RAJEEV
SHRI.ANAND KALYANAKRISHNAN
SRI.K.K.DHEERENDRAKRISHNAN
SRI.D.FEROZE
SRI.V.VINAY
SRI.PIRAPPANCODE V.S.SUDHIR
SHRI. AKASH S.
SMT.V.S.VARALEKSHMI



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DSR Nos.6/2018 & Con.Cases

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RESPONDENT/STATE:

CENTRAL BUREAU OF INVESTIGATION
REP. BY STANDING COUNSEL, CBI, HIGH COURT OF
KERALA, ERNAKULAM - 682 031
(RC 5 (S)/2007/CBI/SCB/CHENNAI).

BY ADVS.

SPL. PUBLIC PROSECUTOR FOR CBI, DR. K.P.SATHEESAN
ASSISTED BY GOKUL D SUDHAKARAN AND BHARATH MOHAN

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
27.08.2025, ALONG WITH DSR.6/2018 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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DSR Nos.6/2018 & Con.Cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR
WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

CRL.A NO. 965 OF 2018

AGAINST THE JUDGMENT DATED 25.07.2018 IN SC NO.917 OF 2012
(S.C.No.916/2012 CLUBBED WITH S.C.No.917/12) PASSED BY THE
COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO. 6:

T.K. HARIDAS,
AGED 62 YEARS, S/O.KRISHNAN NAIR,
ASST.COMMISSIONER OF POLICE (RETD.),
SUPRABHA, TC.NO.34/1533, CHITTATINKARA,
VATTIYOORKAVAU, THIRUVANANTHAPURAM.

BY ADVS.
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.R.GITHESH
SHRI.AJAY BEN JOSE
SRI.MANJUNATH MENON
SHRI.SACHIN JACOB AMBAT
SHRI.M.A.MOHAMMED SIRAJ
SMT.ANNA LINDA EDEN



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SHRI.HARIKRISHNAN S.
SRI.S.SREEKUMAR (SR.)

RESPONDENT/STATE:

CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY STANDING COUNSEL, CBI,HIGH COURT OF
KERALA, ERNAKULAM - 682 031
(RC.5(S)/2007/CBI/SCB/CHENNAI) .

BY ADVS.

SPL. PUBLIC PROSECUTOR FOR CBI, DR. K.P.SATHEESAN
ASSISTED BY GOKUL D SUDHAKARAN AND BHARATH MOHAN

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING
ON 27.08.2025, ALONG WITH DSR.6/2018 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR
WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

CRL.A NO. 1057 OF 2018

AGAINST THE JUDGMENT DATED 25.07.2018 IN SC NO.917 OF 2012
(S.C.No.916/2012 CLUBBED WITH S.C.No.917/12) PASSED BY THE
COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.1:

JITHA KUMAR.K
AGED 53 YEARS
S/O KAMALASANAN NAIR, PCT-7256 R/O. KAMALALAYAM,
VP 3-555B VILAVOORKAL, MALAYINKEEZH POST,
THIRUVANANTHAPURAM

BY ADVS.
SHRI. P.VIJAYA BHANU (SR.)
SHRI.HARISH R. MENON
SRI.P.M.RAFIQ
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN
SRI.V.C.SARATH
SMT.POOJA PANKAJ
SRUTHY N. BHAT
SMT.PRAVEENA P.K.



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RESPONDENT/COMPLAINANT:

INSPECTOR OF POLICE
CENTRAL BUREAU OF INVESTIGATION, SCB CHENNAI,
REPRESENTED BY STANDING COUNSEL CBI,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

BY ADVS.
SPL. PUBLIC PROSECUTOR FOR CBI, DR. K.P.SATHEESAN
ASSISTED BY GOKUL D SUDHAKARAN AND BHARATH MOHAN

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING
ON 27.08.2025, ALONG WITH DSR.6/2018 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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:10:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR
WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

CRL.A NO. 1132 OF 2018

AGAINST THE JUDGMENT DATED 25.07.2018 IN SC NO.917 OF 2012
(S.C.No.916/2012 CLUBBED WITH S.C.No.917/12) PASSED BY THE
COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM

APPELLANT/2ND ACCUSED:

SREEKUMAR S.V.
AGED 42 YEARS
S/O K SHIVARAJAN, ARPCT-1795, S V BUILDING,
CONVENT ROAD, NEYYATTINKARA,
THIRUVANANTHAPURAM, PIN - 695121

BY ADVS.
SRI. ARUN V.G.
SRI.R.ANIL
SHRI.SUJESH MENON V.B.
SMT.INDULEKHA JOSEPH
SRI.NEERAJ NARAYAN

RESPONDENT/STATE/COMPLAINANT:

1 THE CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY ITS STANDING COUNSEL,
HIGH COURT OF KERALA, PIN - 682031



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:11:

2 THE STATE OF KERALA,
 REPRESENTED BY THE PUBLIC PROSECUTOR,
 HIGH COURT OF KERALA,ERNAKULAM,KOCHI-682031

BY ADVS.

SPL. PUBLIC PROSECUTOR FOR CBI, DR. K.P.SATHEESAN
ASSISTED BY GOKUL D SUDHAKARAN AND BHARATH MOHAN

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
27.08.2025, ALONG WITH DSR.6/2018 AND CONNECTED CASES, THE
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J U D G M E N T

[DSR Nos.6/2018, 940/2018, 959/2018, 965/2018, 1057/2018, 1132/2018]

Raja Vijayaraghavan. J.

Prelude:

Udayakumar, a 28-year-old man, was picked up by two police officers attached to the Fort Police Station, Thiruvananthapuram, on 27.09.2005 at around 2:15 a.m., while he was standing with his friend Suresh Kumar at Sreekandeshwaram Park, Thiruvananthapuram. He was taken to the Fort Police Station and thereafter to the nearby office of the Circle Inspector, where he was subjected to custodial interrogation involving the use of force and infliction of injuries. Later, on the same day, Udayakumar was declared dead at approximately 11:40 p.m. at the Medical College Hospital, Thiruvananthapuram. The post-mortem revealed severe crush injuries to both thighs, which were determined to be the cause of death. The prosecution case is that the death of Udayakumar was the result of custodial violence and torture inflicted under the shield of police uniform and authority, within the confines of a Police Station. The case also exposes the manner in which senior police officers colluded with their



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subordinates to suppress the truth and obstruct the course of justice. Following a prolonged investigation, initially by the CBCID and subsequently by the CBI, the trial was conducted before the learned Sessions Court. Accused Nos. 1 and 2 were found guilty of murder and were sentenced to death by hanging. The superior officers, arraigned as accused Nos. 4 to 6, were found guilty of conspiracy and of abusing their official position to fabricate records and cause the disappearance of evidence in an attempt to shield the perpetrators. They were accordingly convicted and sentenced to undergo lesser terms of imprisonment. Accused No. 2 passed away in the course of proceedings, and hence the proceedings against him were abated.

1.1. Crl. A. 1057 of 2018 has been preferred by the 1st accused, Crl.A. No. 940 of 2008 has been preferred by the 4th accused, Crl.A. No. 959 of 2018 has been preferred by the 5th accused and Crl. A. No. 965 of 2018 has been filed by the 6th accused assailing the finding of guilt, conviction and sentence passed by the SPE/CBI Court, Thiruvananthapuram.

1.2. The SPE/CBI Court, Thiruvananthapuram, has forwarded the entire case records to this Court for confirmation of the death sentence of the 1st accused as provided in Section 366 (1) of the Code of Criminal Procedure



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(hereinafter referred to as the 'Cr.P.C.').

2. The prosecution case:

2.1. At around 2:15 p.m. on September 27, 2005, Udayakumar (the deceased) and Suresh Kumar (PW1), who were together at Sreekanteswaram Park, were apprehended by Police Constables Jitha Kumar (A1) and Sreekumar (A2), members of the Crime Squad of the Fort Police Station. They found currency notes in the possession of Udayakumar and dissatisfied with his explanation, the Police Officers took Udayakumar and PW1 to Fort Police Station in an autorickshaw and they were initially entrusted with Thankamani (PW5) the officer in charge of the General Diary (GD).

2.2. After arrival at the Police Station, A1 and A2 took Udayakumar to the Office of the CI and after counting his money made him lie on a wooden bench and started torturing him. They lashed the soles of his feet repeatedly with a bamboo cane. While they were going about with this horrendous task Soman (A3), another Police Constable, joined them. A3 forcibly held Udayakumar's head while A1 and A2 forcibly kneaded a GI pipe (MO10) on his thighs, crushing his thigh muscles. It is alleged that the torture lasted approximately 1.5 hours.



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2.3. After the torture, a battered and injured Udayakumar was walked back by accused Nos. 1 and 2 to the Police Station and he was lodged in a cell. Thereafter, A1 and A2 took Suresh Kumar (PW1) to the CI's Office, stripped him, and started beating him. Hearing his cries, the personnel in the office intervened and asked them to spare him. PW1 was then made to stand outside Udayakumar's cell.

2.4. At about 10:15 p.m., PW5 asked the inmates of the cell whether they wanted dinner, but found Udayakumar unresponsive. He obtained instructions from the Circle Inspector E.K. Sabu (A5), and immediately thereafter, Udayakumar was rushed to the General Hospital, where he was seen by Dr. Sunitha (PW7). The Doctor found that his condition was critical and advised immediate transfer to the Medical College. Udayakumar was declared dead at 11:40 p.m. at Medical College by Dr. Premlal (PW8) due to the crush injuries sustained on his thighs.

2.5. Immediately after Udayakumar's death was confirmed around 11:45 p.m., S.I. T. Ajith Kumar (A4), C.I. E.K. Sabu (A5), and A.C.P. T.K. Haridas (A6) conspired to fabricate false documents with the intent to shield A1, A2, and A3 from legal consequences. Instructions were issued to divert all phone calls to



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the Circle Inspector's office in order to prevent information regarding the custodial death from leaking. False entries were made in the General Diary (Ext.P4), pursuant to instructions from A5, who directed that the diary entries be stopped at 7:30 p.m. to conceal the illegal detention. Subordinate Police Officers, including PW5, were coerced into making these entries.

2.6. A false FIR, Crime No.703 of 2005 (Ext.P17), was fabricated and backdated to 8:00 p.m. on 27/9/05, though it was in fact registered after 3:00 AM on 28/9/05. Crime SI Raveendran Nair (PW15) was compelled to register this false FIR under threat. Head Constable Mohanan dictated a fabricated mahazar (Ext.P18) to support a narrative of fictitious arrest, falsely claiming that Udayakumar and PW1 were arrested at Sreekanteswaram Park at 4:00 p.m..

2.7. Other official records were also manipulated to align with the concocted timeline, including the Register of Property Found in Search of Prisoners (Ext.P20), arrest memos (Exts.P22, P28(a), P28(b)), arrest registers (Ext.P27), inspection memos (Exts.P21, P24), and the remand application (Ext.P23). Although an arrest memo was prepared to evidence the alleged arrest of Udayakumar, his signature was absent, thus substantiating the fact that he had already succumbed to his injuries by then.



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2.8. A4, A5, and A6 threatened and coerced subordinate officers (PW5, PW15, PW16, PW17, PW18) into creating these false documents and later to depose falsely before the Trial Court.

2.9. The bamboo cane and bath towel (thorthu) allegedly used for the torture were intentionally destroyed by the accused to eliminate evidence.

3. Initial Investigation:

3.1. Initially, two crimes were registered. Crime No. 703 of 2005 was registered under Section 41(1)(d) and Section 102 of the Cr.P.C. against Udayakumar and PW1. Immediately thereafter, Crime No.704 of 2005 was registered under Section 174 of the Cr.P.C, on account of the death of Udayakumar. The investigation of these two cases were initially handed over to the Narcotic Cell Assistant Commissioner (PW43). Thereafter, the investigation was handed over to CBCID by the ADGP (Crimes) and accordingly, K.B.Balachandran (PW45), then Superintendent CBCID, S.I.G.I, took over the investigation. He was assisted by Dy. SP CBCID S.I.G. (PW 44). On completion of the investigation, CBCID submitted a refer report in Crime No. 703 of 2005 and final report in Crime No. 704 of 2005 for the offence punishable under Sections 323, 331, 302 r/w. Section 34 of the IPC against accused Nos. 1 to 3, viz., Jitha



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Kumar, Sreekumar, and Soman.

4. Earlier Trial

4.1. Committal proceedings were initiated by the Judicial Magistrate of First Class-II, Thiruvananthapuram by numbering the same as C.P.No. 21 of 2006 to the Principal Sessions Court, Thiruvanthapuram on 04.04.2006. The case was numbered as S.C.No.1542 of 2006 and the same was made over to the Additional Sessions Court (Fast Track-III), Thiruvananthapuram.

4.2. As many as 34 witnesses were examined before the Trial Court in S.C.No. 1542 of 2006 and several documents and material objects were marked. In the course of trial, the Additional Sessions Judge arraigned one Raveendran Nair, who was examined as PW11 in the said case under Section 319 of the Cr.P.C. The entire prosecution witnesses except for a few did not support the prosecution and the trial became a farce. This was bound to happen as the police officers who were privy to the incident did not speak against their colleagues and superiors.

5. Ordering of further investigation

5.1. Faced with the above scenario, the mother of deceased



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Udayakumar approached this Court and filed W.P.(C) No. 24258 of 2007 seeking various reliefs, including the handing over of the investigation to the CBI. CrI.R.P.No. 2902 of 2007 was filed by Raveendran Nair challenging the order passed by the learned Sessions Judge invoking powers under Section 319 of the Cr.P.C. and arraigning him as the 4th accused.

5.2. The learned Single Judge, before whom the matter had come up for consideration, referred the matter to the Division Bench as one of the questions that arose for consideration was whether further investigation can be handed over to a different agency other than the agency which carried out the initial investigation.

5.3. Their Lordships of the Division Bench, after considering the entire facts and circumstances and hearing the contentions, held that the learned Sessions Judge was justified on the basis of the evidence adduced before it in arraigning Raveendran Nair as the 4th accused and dismissed the Revision Petition. Insofar as the further investigation by the CBI is concerned, this Court held that it was a fit case in which CBI should conduct "further investigation". The court also held that further proceedings of the Trial Court need be started only after CBI files its report. Accordingly, the CBI was directed to conduct



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further investigation in Crime No. 704 of 2005.

5.4. In terms of the directions issued by this Court, Crime No. 704 of 2005 dated 27.09.2005 under section 174 of the Cr.P.C. was re-registered as Crime No. RC-10/S/2007-CBI/SCB/Chennai and the investigation was entrusted with K.Pradeep Kumar, Inspector of Police, CBI. The report was forwarded to the CJM Court, Ernakulam. It would be pertinent to note that while allowing the Writ Petition, the Division Bench had directed the CBI to conduct further investigation and the trial which had commenced before the Sessions Court, Thiruvananthapuram, was stayed so that supplementary/further report could be filed by the CBI.

5.5. While so, W.P.(C) No. 12365 of 2008 was filed with a prayer to transfer Crime No. 703 of 2005 of the Fort Police Station also to the CBI, in which case the police had submitted a refer report. The said Writ Petition was allowed by this Court by judgment dated 8.7.2008. Accordingly, K. Pradeep Kumar (PW47) took over investigation and renumbered Crime No. 703 of 2005 as RC-5/S/2008-CBI/SCB/Chennai and investigation was commenced linking it to Crime No.RC-10/S/2007-CBI/SCB/Chennai.



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6. Addition of accused and tendering of pardon to accused

6.1. After taking over the investigation, Ext.P149 report was filed by the Investigating Officer, CBI, seeking to incorporate Sri. George G. as A5, Sri.Mohanan as A6, Sri. K. Thankamani as A7, Sri. N. Ramachandran as A8, Smt.Sheela Kumari as A9 and Smt. Sajitha C.S. as A10 in CBI Case No. RC 10 (S)/2007 (Crime No. 704 of 2005 of Fort Police Station). Immediately thereafter, Ext.P151 report was submitted arraigning Sri.C.R. Heeralal as A11 and Sri.Sureshkumar @ Mani as A12, as accused in the above case. It needs to be noted that Sri. Sureshkumar, who was arraigned as A12, was the person who was caught along with deceased Udayakumar by accused Nos. 1 and 2 and was assaulted while at the Police Station. After arraigning them all as accused, they were all arrested on 18.09.2010, as is evident from Ext.P158 to P165. They were remanded to judicial custody. On the same day itself, the CBI filed Exts.P166 to P173, to tender pardon to the aforesaid Raveendran Nair (A4), K. Thankamani (A7), Sri. N. Ramachandran (A8), Smt. Sheela Kumari (A9), Smt.Sajitha (A10), Sri.C.R. Heeralal (A11), Sri.Suresh Kumar (A12) and Sri.George (A5). Raveendran Nair (A4) had been incorporated as accused by the learned Sessions Judge by invoking Section 319 of the Cr.P.C, which order had been upheld by this Court. All these applications were filed before the Chief Judicial Magistrate Ernakulam. It is



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stated in the said application that the case was registered pursuant to the directions issued by this Court in W.P.(C) No.24258 of 2007, and that on completion of investigation, a supplementary final report had been filed before the Chief Judicial Magistrate. By separate orders dated 11.10.2010, the Chief Judicial Magistrate tendered pardon to the aforesaid persons, on condition of them making a full and true disclosure of the whole of the circumstances and facts within their knowledge relating to the offence, and every other person concerned.

6.2. Insofar as Crime No. 703 of 2005 registered as RC 5/S/2008 is concerned, the Investigating Officer, CBI filed Ext.P176 Report before the Chief Judicial Magistrate, Ernakulam seeking to delete Section 41(1)(d) and Section 102 of the Cr.P.C, as mentioned in the original FIR, and to incorporate offences under Section 120B r/w. Sections 331, 348, 466 and 474 of the IPC. It is stated therein that the original FIR, connected documents and Material objects were in the Court of the CJM, Ernakulam. Thereafter, Ext.P177 report was submitted before the court seeking to arraign Jitha Kumar and Sreekumar as accused Nos. 1 and 2 respectively in the said crime and also for deleting from the array of the accused Sureshkumar @ Mani. Reports were then submitted seeking judicial remand of Accused Nos. 1 and 2, who were arrested on 20.04.2009. On



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19.05.2009, Ext.P181 report was submitted seeking to incorporate Sri.P.Raveendran Nair as the 3rd accused and Sri.Heeralal as the 4th accused in R.C.No.5/S/2008. Sri. Raveendran Nair and Heeralal were arrested on 18.05.2009 at 05.45 p.m. Ext. P184 application was then submitted for remand of the above accused and police custody was also sought. Immediately thereafter, Ext.P185 report was submitted before the Chief Judicial Magistrate seeking to incorporate Sri. Thankamani (A5), Sri.N Ramachandran (A6), Smt. Sheeja Kumari (A7) and Smt. Sajitha C.S (A8) as Accused Nos. 5 to 8.

6.3. Ext. P186 application was then filed by the Investigating officer, CBI, requesting that the Section 164 statement of Raveendran Nair (A3) in R.C. 5/S/2008 be recorded. The aforesaid accused was in custody then. Ext. P187 application was submitted requesting that Section 164 statement of Heeralal (A4) be recorded. Those applications were allowed by the CJM.

6.4. Thereafter, Ext.P189 report was submitted on 16.12.2009 seeking to incorporate T. Ajith Kumar as A9, Sri. E.K. Sabu as A10 and Sri. T.K. Haridas as A11 in R.C.No. 5/S/2008. Thereafter, separate applications were filed by the CBI seeking to tender pardon to Sri.P. Raveendran Nair, Sri.N. Ramachandran, Sri. D.R. Heeralal, Smt. Thankamani, Smt. Sheeja Kumari and Smt. Sajitha which



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applications were allowed by the learned Chief Judicial Magistrate. Ext.P198 application was then filed seeking to incorporate Ajith Kumar (A13) and E.K. Sabu (A14) as accused. The aforesaid accused were arrested on 18.08.2010 and were released on bail by the CBI themselves on the same day as is evident from Exts P200 to P204. They were then produced before the Chief Judicial Magistrate and Ext.P205 report was submitted to record the 161 statements of all the witnesses.

7. Submission of Final Report

7.1. After completion of the investigation, PW47 submitted the Final Report, and thereafter, R.C. No.5/S/2008 was renumbered as C.P.No.8 of 2010, and RC No.10/S/07 was numbered as C.P. No.9/2010 on the file of the Chief Judicial Magistrate Court, Ernakulam.

7.2. The cases were then committed to the Principal Sessions Court, Ernakulam on 12.12.2011. After removing the approvers from the array of the accused, in R.C.No 10/S/2007 the accused were Jitha Kumar (A1), Sreekumar (A2), Soman (A3), T. Ajith Kumar (A4), E.K. Sabu (A5). In R.C. No 5/S/2008, the accused were Jitha Kumar (A1), Sreekumar (A2), T. Ajith Kumar (A4), E.K. Sabu (A5) and T.K.Haridas (A5). The Principal Sessions Court made over the cases to



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the CBI Court, Ernakulam and the cases were numbered as S.C.No. 25 of 2012 and S.C.No. 26 of 2012, respectively. Thereafter, the cases were transferred to the Special Judge (SPE/CBI) at Thiruvananthapuram as per Order dated 14.03.2012 of this Court on the administrative side. The cases were accordingly numbered as S.C. No. 916 of 2012 and S.C.No. 917 of 2012. SC No. 916/2012 was clubbed with SC 917/2012.

8. Petition filed by CBI to quash charge laid by the CBCID and to eschew evidence

8.1. After the submission of the final report, the CBI approached this Court and filed Criminal M.C. No. 4957 of 2010, seeking to quash the charge framed by the learned Sessions Judge (Fast Track Court-III), Thiruvananthapuram, in S.C. No. 1542 of 2006, and to order a de novo trial based on the supplementary report filed in RC 10(S)/2007/CBI/SCB/Chennai. It was contended in the petition that a de novo trial ought to be ordered on the basis of the supplementary charge sheet filed by the CBI, with a direction that the evidence given by certain accused persons, who were subsequently accepted as approvers and examined as witnesses in the previous trial, as well as their statements recorded under Section 161 Cr.P.C by the local police and the CBCID,



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should not be considered in the fresh trial. The learned Single Judge rejected the prayer, holding that a de novo trial, as sought by the CBI, eschewing the evidence recorded in the previous trial and after quashing the charge framed in S.C. No. 1542 of 2006 by the Additional Sessions Court (Fast Track-III), Thiruvananthapuram, was not permissible in law. The Criminal M.C. filed by the CBI was dismissed.

9. Joint Trial of the cases ordered

9.1. Before the Sessions Court, the Special Public Prosecutor for the CBI filed Crl.M.P.No. 58 of 2014 and Crl.M.P.No. 59 of 2014 seeking joint trial of the two cases, and the said petition was allowed. The learned Sessions Judge ordered joint trial in S.C.No. 917 of 2012 by adding the 5th accused Haridas from S.C.No. 916 of 2012. The learned Sessions Judges was of the view that accused Nos. 1 to 3 in S.C.No. 917 of 2012 could be tried for the offences punishable under Sections 323, 331, 348 and 302 r/w. Section 34 of the IPC, and all accused in S.C.No. 917 of 2012 and A5 in S.C.No. 916 of 2012 could be tried for the offences punishable under Sections 120B r/w. Section 201, 167, 466 and 474 of the IPC. The court also ordered that the offences punishable under Section 120B r/w. Section 193 and 116 of the IPC could be considered after the disposal



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of S.C. No. 917 of 2012. Being aggrieved, Soman (A3) and Haridas (A6) filed CrI.M.C. No.3189 of 2014 and CrI. M.C.No.3083 of 2014 before this Court. This Court upheld the order of the trial court clubbing the charge and adding the 5th accused in S.C.No. 916 of 2012 as the additional 7th accused in S.C. No. 917 of 2012. However, the other part of the order relegating the trial of offences punishable under Section 120B r/w. Section 193 and 116 of the IPC, after disposal of S.C.No. 917 of 2012 was set aside, and directions were issued to consider the matter afresh.

9.2. Pursuant to the same, the 4th accused, Mohanan, filed an application seeking discharge, and the said petition was allowed, and the 4th accused was discharged of the offences punishable under Sections 120B r/w. Sections 193 and 116 of the IPC. The charge in S.C.No. 916 of 2012 was clubbed with S.C. No. 917 of 2012, and the 5th accused Haridas in S.C.No. 916 of 2012 was added as an additional 7th accused in S.C.No. 917 of 2012. Therefore, after the discharge of the 4th accused Mohanan, 6 persons are facing trial.

10. Evidence let in

10.1. Before the Court of Sessions, as many as 47 witnesses were examined by the prosecution as PWs 1 to 47 and through them Exts.P1 to P207



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were exhibited and marked. Material objects were produced and identified as MOs 1 to MO13 series. After the conclusion of the prosecution evidence, the accused Nos. 1, 2 and 4 to 6 were examined under Section 313 of the Cr.P.C. This is because the accused No. 3 had died pending trial. Thereafter, as there was no scope for acquitting the accused under Section 232 of the Cr.P.C, they were called upon to enter upon their defence. On the part of the 1st accused, DW 1 and DW2 were examined, and Exts.D1 to D15 were marked.

11. Findings of the learned Sessions Judge

11.1. The learned Sessions Judge found A1 (Jitha Kumar) and A2 (Sreekumar) guilty of custodial torture leading to murder, and of conspiracy to falsify records and cause disappearance of evidence. A4 (T. Ajith Kumar), A5 (E.K. Sabu), and A6 (T.K. Haridas) were found guilty of conspiracy to fabricate records and to suppress material evidence. However, all the accused were acquitted of offences under Sections 466 and 474 IPC relating to forgery.

11.2. In arriving at the finding of guilt, the learned Sessions Judge placed reliance on the evidence of PW1 (Suresh Kumar), a friend of Udayakumar, who was also detained by the police. Though he turned hostile during the trial, his initial complaint (Ext.P9) detailing the torture, as well as his early supportive



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testimony, were found credible by the court. His identification of A1 and A2 in the Test Identification Parade (TIP) was corroborated by PW38 (the learned Magistrate) and PW46 (Jailor).

11.3. The court also placed substantial reliance on the testimony of PW21 (Rajani), a Police Constable on VHF duty, who testified that A1 and A2 brought Udayakumar and PW1 to the station at around 2:30 p.m.. She further deposed that Udayakumar was taken to the Circle Inspector's office and later returned in a battered condition.

11.4. The court additionally relied on the evidence of DW2 (Mohan V.P.), who stated that he had heard individuals being interrogated in the Circle Inspector's office around 3:00–3:30 p.m..

11.5. Significant weight was given to the testimony of PW5 (Thankamani), PW15 (Raveendran Nair), PW16 (Sajitha), PW17 (Sheeja Kumari), and PW18 (Heeralal), police personnel who were tendered pardon and turned approvers. These witnesses had not supported the prosecution in the earlier trial but later deposed that A1 and A2 had brought Udayakumar and PW1 to the station, and that Udayakumar was taken to the Circle Inspector's office and brought back in a severely injured condition. Their explanation that they had



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been compelled to testify in accordance with the police records in the earlier trial under pressure from senior officers who were themselves accused was accepted by the court. The recovery of the GI pipe (MO10), which had bloodstains and was seized from the scene, and the presence of blood on MO11 (wooden bench) and MO12 (iron cot) found in the Circle Inspector's office, were found to corroborate the prosecution's case of custodial torture.

11.6. The learned Sessions Judge further held that a criminal conspiracy was hatched among A1, A2, A4, A5, and A6 after Udayakumar's custodial death on the night of 27.09.2005, with the intent to fabricate false records to shield A1, A2, and A3 from legal punishment. It was held that the evidence established, beyond any doubt, that A4, A5, and A6 gathered at the Fort Police Station after Udayakumar's death and orchestrated the cover-up by manipulating the General Diary (GD), fabricating the FIR (Ext.P17) and mahazar (Ext.P18), making false entries in the Property Search Register (PSR – Ext.P20), arrest memos [Exts.P22, P28(a), P28(b)], arrest register (Ext.P27), inspection memos (Exts.P21, P24), and remand application (Ext.P23), all of which were falsified to support the fabricated narrative.

11.7. Relying on the evidence of PW5, PW15, PW16, PW17, and PW18,



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the court held that A4, A5, and A6 had threatened and coerced them into making false entries in official records and personal notebooks, and into giving false testimony in court. It was also held that the accused managed to destroy key material objects used in the torture, including a bamboo cane and a towel (thorth).

12. Submissions of the learned counsel

12.1. Sri. P.Vijayabhanu, the learned counsel appearing for the 1st accused, advanced the following contentions:

- a) The material witnesses whose evidence was relied on by the learned Sessions Judge to arrive at a finding of guilt was earlier examined before the Additional Sessions Court (Fast Track -III), Thiruvananthapuram and had stated a different version before the court. The said version corresponded to the records maintained in the Police Station. However, after entrusting the investigation with the CBI, the bureau acted against the directions issued by the Division Bench and conducted re-investigation. The material witnesses were arrayed as accused and later giving them certain assurances, they were made approvers. Those witnesses under threat by the CBI and to escape being an accused



deposed a different version before the court in the subsequent trial which took place after almost 6 years. According to the learned counsel, as held by this Court in **Viswanathan v. State of Kerala and Ors.**¹, while evaluating the testimony of approvers the courts are required to consider the circumstances under which they were arrested, the specific role attributed to them in the charge, the actual role played in the commission of the offence and the timing and manner in which the said witness chose to turn approver.

- b) Relying on the law laid down by this Court in **State of Kerala v Anil Kumar @ Jacky**², it is argued that while considering the evidence of PW 5, PW15 to 18 who were initially arrayed as accused and later tendered pardon, the Court failed to satisfy the double test viz., whether their evidence was reliable and whether the evidence has been sufficiently corroborated. It was argued that the Court ought to have found corroboration of the approver's testimony from independent sources and one approver's testimony could not have been used to corroborate the testimony of another approver.

¹ [2025 :KER: 42302]

² [2024 (3) KLJ 995]



- c) The learned Senior Counsel would then refer to the court charge and it was argued that the specific charge against the 1st accused is that he had tortured Udayakumar for the purpose of extorting a confession and thereby causing death. It is submitted that the charge does not specifically state that the 1st accused had the intention of causing death or knowledge that by his act death would be caused to the deceased and if that be the case, he could not have been found guilty for the offence of murder.
- d) The learned Senior counsel would rely on the observations made by the Apex Court in **Shankar Kisanrao Khade v. State Of Maharashtra**³, wherein the Hon'ble Court had analysed all past precedents including **Bachan Singh v. State Of Punjab**⁴, **Machhi Singh v. State of Punjab**⁵, **Mohd. Chaman v. State (NCT Of Delhi)**⁶, **Surendra Pal Shivbalakpal v. State Of Gujarat**⁷, **State Of Maharashtra v. Mansingh**⁸ and **State Of Rajasthan v. Kashi Ram**⁹ and it was argued that in any view of the matter, the case would not fall under the rarest of

³ [(2013) 5 SCC 546]

⁴ [(1980) 2 SCC 684]

⁵ [(1983) 3 SCC 470]

⁶ [(2001) 2 SCC 28]

⁷ [(2005) 3 SCC 127]

⁸ [(2005) 3 SCC 131]

⁹ [(2006) 12 SCC 254]



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the rare category warranting capital punishment. It is submitted that if the prosecution case is accepted in its entirety, it can be seen that the evidence let in, which is purely circumstantial in nature, would not reveal that 1st accused had any intention to murder Udayakumar or that he had any knowledge in inflicting any injuries which are sufficient in the ordinary course of nature to cause death. It is further submitted that the 1st accused had no previous criminal record or is there any material to conclude that he would be a threat to the society. Neither the "Crime test" nor the "Criminal test" would be satisfied and under no circumstances can the case be put in the category of a rarest of rare case.

12.2. Sri.S Rajeev, the learned counsel appearing for the 4th accused, advanced the following submissions.

- a) The 4th accused had joined the Police Station as a Constable only a few days prior to the alleged incident and the evidence did not reveal that he was ever informed about the custody of Udayakumar.
- b) All the witnesses whose evidence was relied on for arriving at the finding of guilt were examined before the Sessions Court during the previous



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trial which was stayed by this Court. None of the witnesses deposed about the involvement of the 4th accused. After taking over the investigation pursuant to orders issued by this Court, the CBI, against the spirit of the directions, conducted a reinvestigation and filed a fresh final report before the Court. The witnesses who were earlier examined were arrayed as accused and they were then tendered pardon under threat that they shall narrate the case set up by the CBI. Thereafter, a fresh trial was conducted wherein all the witnesses came forward with a new case. Though while disposing of CrI.M.C. No. 4957 of 2010, filed by the CBI, this Court had opined that after the submission of the supplementary report by the CBI, the trial court may have to alter the charges and had ordered testimony of the witnesses previously examined will have to be appreciated in light of the evidence proposed to be adduced in the subsequent trial by the trial court, the learned Sessions Judge ignored this directive and proceeded to convict the accused solely relying on the evidence tendered in the subsequent trial.

- (c) The learned counsel criticised the manner in which the CBI chose to present its witnesses during trial. It was pointed out that the evidence on record unequivocally establishes that several other senior police officers



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were present in the Police Station after 7:30 p.m. on the relevant day. If that were indeed the case, there was no plausible justification for the non-examination of material witnesses who were expressly cited in the charge, namely CW9 (Anilkumar), CW11 (Satheesan), CW13 (Binukuttan), CW14 (Kamaludeen K.S.), CW15 (Arunkumar), CW33 (E.Shareefudeen), CW34 (Mohammed Shafi), CW37 (Xavier L. in RC 10/S/07/CBI/SCB/Chennai), and CW20 (Madhusoodhan), CW23 (Shibeerkhan P.K. in RC 5/S/08/CBI/SCB/Chennai, as well as one Mohannan Chettiar). Instead of initiating proceedings against PW5, PW15, PW16, and PW17, who are alleged to have manipulated official records and who were admittedly present in the police station at the relevant time, the CBI, it is contended, has deliberately fabricated evidence in an attempt to fasten culpability upon the superior officers for the unfortunate incident. This is more so because the persons who benefited by changing the time and manipulation of the records were the officers who were present at the Police Station and none else.

- d) The evidence adduced will not establish that the 4th accused took part in any conspiracy or that the alleged weapons, namely the 'cane' and 'thorthu' alleged to have been used by the accused Nos. 1 and 2 were



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destroyed by anyone. Furthermore, the manipulation, if any of the documents were committed by the responsible officers themselves and if that be the case, the offence under Section 167 of the IPC will not be made out.

- e) The failure of the trial court to evaluate the evidence of the witnesses who were examined during the earlier trial is fatal.
- f) Reliance was placed on the evidence of PW3 and PW5 and it is pointed out that the fact that Udayakumar was sick was brought to the notice of the 5th accused only after 10.30 p.m.. The notebooks of the officers including the sentry were in fact collected by PW5 and none else. PW5 has no case that he had occasion to inform the superior officers about the health condition of Udayakumar at any point of time. It is submitted that a proper evaluation of the evidence would not reveal that the 4th accused was aware of the illegal custody of Udayakumar and the records also will not reveal that he was informed about the incident through VHF or otherwise.
- g) It is urged that the ingredients of Section 167 or Section 120B of the IPC have not been made out.



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- h) The charge framed by the learned Sessions Judge is not in order. In order to elucidate the principles reliance was placed on a judgment of this Court rendered by a Division Bench in **Rajappan v. State of Kerala**¹⁰.
- i) To highlight the procedural flaws committed by the learned Sessions Judge in ignoring the final report laid by the Crime Branch and the evidence recorded reliance is placed on the judgments in **Vinay Tyagi v Irshad Ali Alias Deepak & Ors.**¹¹ and **Vinubhai Haribhai Malaviya v State of Gujarat**¹².

12.3. Sri. Pirappanagode Sudheer, learned counsel for the 5th accused, advanced the following submissions:

- a) The records disclose that Crime No.703 of 2005 of Fort Police Station was registered at 8:00 p.m. on 27.09.2005 by Sub-Inspector Raveendran Nair (PW15) under Sections 41(1)(d) and 102 of the Cr.P.C against Udayakumar and Suresh Kumar, based on Exts. P18 and P19. Raveendran Nair investigated the matter on 28.09.2005, questioned

¹⁰ (1981 KLT 41)

¹¹ (2013) 5 SCC 762

¹² (2019) 17 SCC 1



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several witnesses, and thereafter the investigation was taken over by the Narcotic Cell. At no stage, either before the Narcotic Cell or the CBCID on 10.10.2005, did he state that the case registration, General Diary entries, or other documents, including the remand application of Suresh Kumar, were prepared at the instigation of the 5th accused along with the Circle Inspector and Assistant Commissioner of Police.

- b) PW15, Raveendran Nair, admitted preparing Ext. P23 remand application dated 27.09.2005 and entrusting Udayakumar and Suresh Kumar at 8:30 p.m. to sentry P.C. Ramachandran, who was on duty from 8:00 p.m. to 10:00 p.m. Ext. P4 General Diary (MO5 in S.C. No. 1542/2006) records that Udayakumar and Suresh Kumar were interrogated at the Circle Inspector's office until 8:00 p.m., and that he remained at the Police Station until 9:00 p.m. on 27.09.2005. This would go against the entire case set up by the prosecution.
- c) As regards further investigation, the learned counsel contended that pursuant to the directions of this Court, the CBI was empowered only to conduct further investigation in both Crime No.704 of 2005 and Crime No.703 of 2005. In both cases, report had been laid before the



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jurisdictional Magistrate. The trial had commenced in Crime No. 704 of 2005 and as many as 34 witnesses had been examined. Since both crimes arose from the same transaction and were inseparable, the only lawful course was to file a supplemental report after such investigation in Crime No. 704 of 2005 before the Additional Sessions Court (Fast Track-III), Thiruvananthapuram, and likewise file a supplemental report under Section 173(8) Cr.P.C. in Crime No. 703 of 2005 (RC 5/S/2008/CBI/SCB/Chennai) before the Magistrate Court where the refer report was laid. However, contrary to the aforesaid mandatory requirement, the CBI filed the charge sheet in RC 10/S/2007/CBI/SCB/Chennai before the Chief Judicial Magistrate, Ernakulam under Section 173(8) CrPC, alleging offences under Sections 323, 331, 348, 302 r/w. Section 34 IPC and Section 120B r/w. Sections 201, 116, and 193 IPC as against A1 to A3, and under Sections 120B r/w. Sections 201, 331, 348, 302, 116, and 193 IPC as against A4 to A14. The appellant and the 4th accused were arrayed as accused Nos. 13 and 14, while Raveendran Nair figured as the 4th accused along with other subordinate Police Officers of the Fort Police Station, Assistant Sub Inspectors, Head Constables, and Women Constables, who were



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responsible for making entries in the Station records connected with Crime No. 703 of 2005. The CBI, in a calculated move to fabricate evidence and falsely implicate the appellant, initially arrayed A4 to A14 in addition to the principal offenders, A1 to A3 (Jithakumar, Sreekumar, and P.C. Soman), against whom the core allegation was custodial torture and murder of Udayakumar. Despite the absence of even a prima facie case against the 5th accused, the CBI included various officers as accused, first adding P. Raveendran Nair and C.R. Heeralal on 19.05.2009; then Thankamani, Ramachandran, Sheeja Kumari, and Sajitha on 22.07.2009 in RC 5/S/2008/CBI/SCB/Chennai; and subsequently, on 23.07.2009, again including P. Raveendran Nair, Heeralal, and Suresh Kumar, followed by George, V.P. Mohanan, Thankamani, Ramachandran, Sheeja, and Sajitha in RC 10/S/2007. Statements under Section 164 Cr.P.C were then procured from these persons, who were coerced into falsely deposing that the Station records were manipulated at the instance of the 4th and 5th accused, with the object of screening the principal offenders. These coerced statements formed the sole foundation of the charges levelled against the 4th and 5th accused. It is submitted that the course adopted by the CBI is against the directions issued by this Court while ordering



further investigation and the principles of law laid down by the Apex Court in **Vinay Tyagi** (supra), **Dharam Pal v. State of Haryana**¹³ and **Vinubhai** (supra).

- d) When the supplementary report was required to be filed before the Additional Sessions Judge (Fast Track Court- III), Thiruvananthapuram, and when that court alone possessed the lawful authority to adjudicate upon the two conflicting reports, one submitted by the CBCID and the other by the CBI, the very transfer of the case to the Special Court (SPE/CBI), Thiruvananthapuram, was patently illegal. Once the latter court lacked jurisdiction to entertain the matter, all proceedings undertaken thereafter, subsequent to the valid committal pending before the Additional Sessions Judge (Fast Track-III), Thiruvananthapuram, stand vitiated and are void ab initio.
- e) The learned counsel argues that there cannot legally be two or more committals in respect of the same case, even where further investigation has been conducted, irrespective of the status or identity of the investigating agency. According to him, the Special Judge (SPE/CBI) had no authority to prosecute the accused, let alone act upon orders granting

¹³ [(2014) 3 SCC 306]



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pardon that were issued by an incompetent court. The entire process of granting such pardon, according to the learned counsel, was vitiated by procedural illegality, lack of jurisdiction, and absolute non-application of mind.

- f) It is submitted that, apart from the tainted, false, and fabricated oral versions extracted under Section 164 Cr.P.C., there is nothing on record to even prima facie suggest the involvement of the appellant or accused Nos. 4 to 6. No documentary evidence worth the name exists to corroborate these allegations. Significantly, these statements were made after a long delay during which period the very same persons had given multiple statements to successive investigating officers in the same crime and had deposed on oath during the trial of S.C. No. 1542 of 2006, without once alleging any instigation or influence in connection with the registration of Crime No. 703 of 2005.
- g) It is forcefully argued that the conduct of the CBI in implicating the accused Nos. 4 to 6 is a gross abuse of process. Initially, subordinate police officers were arrayed as accused; some were even remanded to custody. Under the threat of continued implication in the Sessions Case,



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and succumbing to such coercive tactics, they were compelled to make statements under Section 164 Cr.P.C falsely implicating the appellant and others. Once the CBI secured these manufactured statements, it moved applications under Section 306 CrPC to tender pardon to these witnesses, converting them into approvers and ensuring their testimony would be tailored to the CBI's version. The mala fides in this course of action are writ large, revealing that the entire exercise was driven by oblique motives rather than a genuine quest for truth.

- h) The learned Chief Judicial Magistrate had no jurisdiction or authority to entertain petitions under Section 306 CrPC, much less to grant pardon to the aforesaid persons. Once the matter had been committed to the Sessions Court and the trial commenced on the basis of the final report filed under Section 173(2) Cr.P.C by the CBCID, the power to tender pardon vested exclusively with the Sessions Judge under Section 307 Cr.P.C. Consequently, the orders passed by the Chief Judicial Magistrate granting pardon are without jurisdiction, null, and void ab initio. At any rate the CBI could not have sought to grant pardon to Raveendran, who was arrayed as accused No 4, because he was already made an accused invoking Section 319 Cr.P.C. by the Trial Court, which order was upheld



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by this Court.

13. Sri. S. Sreekumar, the learned counsel, as instructed by Sri. Martin Jose, the learned counsel, who appeared for the 6th accused, took us through the materials and record and also the evidence tendered by the witnesses in the case and made the following submissions:

- a) Taking us through the depositions of PW1, PW5, and PW15 to PW18, and PW21, it is urged by Sri.Sreekumar that the CBI had thrown established procedure to the winds and fabricated a false narrative wholly at variance with the final report submitted by the CBCID. He drew specific attention to the manner in which PW15, Raveendran, who had earlier been examined as PW11, was subsequently arrayed as an accused by invoking Section 319 of the Cr.P.C., which order was confirmed by this Court in W.P.(C) No. 24258 of 2007. He further argued on the legal implications of the order passed by a learned Single Judge of this Court, dismissing the CBI's petition seeking to efface the earlier records and evidence. According to him, the order permitted only a "further investigation" and not a "fresh investigation" or "reinvestigation," whereas the CBI, in the present case, had in fact proceeded to conduct



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what was effectively a reinvestigation, thereby acting in excess of its authority and in contravention of the Court's directions.

- b) The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in **State through Central Bureau of Investigation v. Hemendhra Reddy & Another**¹⁴, to emphasise the well-recognised distinction between "further investigation" and "reinvestigation." It was argued that, contrary to the directions issued by this Court, the CBI had, in fact, undertaken a reinvestigation in the matter, thereby acting in excess of its mandate and in breach of the judicial order governing the scope of its powers.
- c) Relying on the observations of the Hon'ble Supreme Court in **A. Devendran v. State of Tamil Nadu**¹⁵, the learned Senior Counsel contended that, as only a further investigation had been ordered and the trial pending before the Sessions Court had been stayed, the CBI was legally bound to file any application under Section 307 of the IPC before the Additional Sessions Court (Fast Track III) Thiruvananthapuram, and not before the Chief Judicial Magistrate, Ernakulam. It was urged that

¹⁴ [2023 SCC ONLINE SC 515]

¹⁵ [(1997) 11 SCC 720]



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the grant of pardon in the present case, having been made by a court lacking jurisdiction, stands vitiated and constitutes a defect which is not a mere curable irregularity but a substantive illegality going to the root of the matter.

- d) The learned counsel further referred to the cross-examination of PW5, wherein it was elicited that he was not present when the 6th accused allegedly had a conversation with PW15, and that his knowledge of the same was purely hearsay. According to the learned counsel, neither PW5 nor PW15, in their testimonies before the Court, made any reference to the involvement of A6, thereby rendering the allegation against the 6th accused unsubstantiated by direct evidence.
- e) Non-examination of Shaheer, the officer who had gone to fetch Raveendran Nair and Mohanan Chettiyar, who was summoned to prepare the draft FIR, is fatal, contends the learned counsel.
- f) Lack of corroboration of the evidence given by approvers by independent evidence is yet another argument advanced by the learned counsel.
- g) The learned counsel would then take us through the evidence of PW5, 15, 16, 17, 18, 21 and 47, and it is argued that the evidence pointing to



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the involvement of the 6th accused is shaky and could not have been relied upon.

14. Sri. K.P. Satjeesam, the learned Senior Counsel appearing for the CBI, advanced the following submissions:

- a) This is a case wherein a person was taken into custody by accused Nos. 1 and 2 and was tortured brutally with the assistance of A3 resulting in his death on the same day at the Medical College Hospital. Since the incident took place within the four walls of the office of the Circle Inspector, the prosecution had to rely on the evidence of Police Officers to bring out the truth. However, all measures were taken by the officers to screen the offender and to manipulate the records maintained in the police station. The investigation conducted earlier by the CBCID was a farce and it was after taking note of the same that this Court had entrusted the investigation with the CBI. The CBI conducted a comprehensive investigation and found the involvement of the Senior Police Officers and the passive involvement of the officers who were on duty. As many as 8 Officers who were on duty approached the CBI and requested that they be made approvers and undertook that they would



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speak the truth. It was in the said circumstances that applications were filed to tender pardon to the said accused which was allowed by the Court on conditions. It is submitted that the approvers who were examined as PW1, PW3, PW5, PW15 to PW18 came before court and stated in detail the manner in which the accused Nos. 1 and 2 had taken into custody of Udayakumar and was tortured by A1 to A3. They had also stated the manner in which accused Nos. 4 to 6 threatened and forced their subordinate Police Officers to narrate a false version in tune with the fabricated records prepared at their instance. According to the learned counsel, the learned Sessions Judge had rightly relied upon their evidence to arrive at the finding of guilt.

- b) The contention advanced by the learned counsel appearing for the appellants that the CBI had violated the directions issued by this Court and conducted a re-investigation was vehemently denied. According to the learned counsel, after taking over investigation as ordered by this Court, the CBI, as per the procedure, is required to re-register the crime and submit a report before the CJM, Ernakulam, which is the designated court as per Government Notification dated 2.12.1974. After completing the investigation, the final report was laid and the CJM Ernakulam



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committed the case to the Court of Session, Ernakulam. The Sessions Court made over the case to the CBI Special Court, Ernakulam. After establishment of the CBI Court at Thiruvananthapuram, the Case was transferred to the CBI, Special Court, Thiruvananthapuram by order dated 14.3.2012.

- c) Insofar as the contention that the CBI had erred in not submitting the Supplementary report before the Court where S.C.No.1542/2005 was pending, it is submitted that this Court had stayed the proceedings to avoid conflict of decisions. It is submitted that when investigation was handed over to the CBI, they can only follow their procedure, which was done in the instant case.
- d) There is no irregularity in the procedure followed by the Special Judge (SPE/CBI) in trying the matter on the case being committed by the CJM, Ernakulam. The accused Nos. 4 and 5 had approached this Court and had preferred CrI.R.P.No. 1170 of 2015 challenging the procedure followed by the CBI in registering a Crime and in submitting a supplementary final report before the CJM, Ernakulam. The committal of the case to the Court of Session, Ernakulam, was also challenged. This



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Court rejected the prayer, taking note of the law laid down in **Vinay Tyagi** (supra) and held that the practice of the CBI to register a fresh FIR and the filing of the final report before the Chief Judicial Magistrate, Ernakulam, was legal. In view of the said order, the appellants cannot be heard to contend that any prejudice has been caused.

- e) It is further submitted that the 3rd accused, one Soman, had approached this Court and had filed CrI.M.C.Nos.3189 of 2014 and 3083 of 2014 challenging the order passed by the learned Sessions Judge ordering joint trial of S.C.No.916 of 2012 and S.C.No.917 of 2012 and also the order arraigning him as the 7th accused in S.C.No.917 of 2012. This Court, after considering the facts and circumstances, disposed of the matter by judgment dated 09.01.2015 with specific directions to the learned Special Judge to proceed with the matter in terms of the directions issued in the order. Thereafter, the accused No. 4 (Ajith Kumar) and accused No.5 (Sabu) had approached this Court and had filed CrI.R.P.No.1170 of 2015 seeking to quash the committal proceedings and for quashing the charge. This Court, by judgment dated 31.3.2016 in CrI.R.P.No.1170 of 2015, repelled the contentions, holding that the registration of crime by the CBI and the submission of the final report



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before the Jurisdictional Magistrate is legal.

- f) According to the learned counsel, the principles of law laid down in **Devendran** (supra) were not violated as the reports were filed before the CJM, Ernakulam, and as the stage was before committal, only the CJM could have considered the application for tender of pardon.
- g) It is urged that the learned Sessions Judge had evaluated the evidence in a proper manner and has arrived at the finding of guilt. It is also argued that the offence committed by the 1st accused is so heinous that an innocent man was taken into custody and his thighs kneaded with an iron rod, that the offence would fall into the rarest of rare category and no interference is warranted.

15. We have carefully considered the submissions advanced and have carefully gone through the records.

16. **Whether the trial can be held to be vitiated**

16.1. We shall first deal with the contention advanced by the counsel appearing for the accused that the CBI has acted against the directions issued by this Court while ordering further investigation and the trial and conviction has



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been vitiated. We shall also consider the contention as regards the legality of registering a fresh FIR and submitting final report before the Sessions Court, Ernakulam when what was ordered was further investigation in a case where trial had commenced before the Sessions Court which was stayed for submission of the supplementary report.

16.2. As stated earlier, final report was filed by the CBCID in Crime No. 704 of 2005 registered at the Fort Police Station before the Judicial Magistrate of First Class-III, Thiruvananthapuram and committal proceedings was initiated as C.P.No 21 of 2006. The accused were Jitha Kumar (A1), Sreekumar (A2) and Soman (A3). They were charged for having committed offences punishable under Sections 331, 302 r/w. Section 34 of the IPC. The case was committed to the Court of Session, Thiruvananthapuram and the same was made over to the Court of the Additional Sessions Judge (Fast Track-III), Thiruvananthapuram. In Crime No.703 of 2005, a refer report was filed by the police.

16.3. Trial commenced in S.C.No.1542 of 2006, and as many as 34 witnesses were examined. Raveendran Nair, who was examined as PW15 in this case, was examined as PW11 in S.C.No.1542 of 2006. The learned Sessions Judge invoked Section 319 of the Cr.P.C. and felt that he was also intimately



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involved in the commission of the offence. The Sessions Court proceeded to array him as the 4th accused in the case. This order was challenged by Raveendran Nair before this Court by filing Crl.R.P. No.2902 of 2007. In the meantime, the mother of the deceased approached this Court and filed W.P.(C) No.24258 of 2007, requesting to hand over the investigation to the CBI. Both these matters came up before a learned Single Judge who felt that though the case was one which the CBI ought to carry out investigation, in view of certain precedents that only the agency which carried out the earlier investigation could carry further investigation referred the matter for an authoritative pronouncement. The matter was heard by a Division Bench of this Court. The relevant portion of the judgment in **J. Prabhavathiamma v State of Kerala**¹⁶ reads as under:

"17.....After going through the evidence already on record, we have already held that the Court was justified on evidence adduced before it in impleading the review petitioner as an accused. We see no infirmity in the order passed under S.319. It cannot be stated that there is no prima facie case against him. Hence, Crl. RP is dismissed. But, we are not expressing any opinion on the merits of the matter as it is for the Trial Court to decide the matter after considering the evidence. We have already found that this case is a fit case which CBI should conduct further investigation as police

¹⁶ (2008 (1) KLJ 9)



officers are accused in the case and from the available materials, we are of the prima facie opinion that in this case colleagues in the police force are more interested in protecting the accused instead of doing justice or conducting proper investigation according to law. It is true that in all cases where CBI enquiry is ordered it is not necessary to stay the trial which is in progress. But, in the nature of the case, it is necessary that further proceedings of the Trial Court need be started only after CBI files further report and it is a fit case to allow the writ petition filed by the mother of the deceased by referring the matter to CBI. Hence, we direct the CBI to conduct further investigation as expeditiously as possible.” (emphasis supplied)

16.4. For clarity, we shall summarise the general observations made by this Court in the above judgment:

- a) If the facts warrant, to do justice and to install confidence in the public mind, in appropriate cases, the High Court can allow the C.B.I. to further investigate the crime.
- b) There is no infirmity in the order passed under section 319 of the Cr.P.C.arraying Raveendran Nair as the 4th accused.
- c) Though ordinarily, in cases where CBI enquiry is ordered, it is not necessary to stay the trial which is in progress, in the nature of the case, it is



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necessary that further proceedings of the trial court need be started only after CBI files further report.

17. This Court, in clear terms, directed the CBI to carry out further investigation and not re-investigation. While passing the judgment this Court was guided by the observations in **Gudalure M.J Cherian And Others v. Union Of India And Others**¹⁷, wherein in identical circumstances, further investigation was ordered in a case pending before the Sessions Court and the Apex Court also rejected the prayer to transfer the criminal case from the file of IX Additional Sessions Judge, Moradabad to some other court. In the light of the above, all that the CBI could have done is to conduct further investigation and submit a supplementary report before the Additional Session Judge (Fast Track-III), Thiruvananthapuram, where S.C.No.1542 of 2006 was pending.

18. Instead of complying with the directions issued by this Court, the CBI reregistered fresh FIR and then proceeded to array the officers who were present in the Police Station on the said day and who had allegedly manipulated the records as accused. Thereafter, applications were filed before the Magistrate Court to tender pardon to them on condition that they make a full and true disclosure of the events and the involvement of the present accused. Pardon was

¹⁷ [(1992) SCC 1 397]



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granted by the CJM Ernakulam, and thereafter the investigation was completed and a final report styled as a supplementary report was laid before the CJM, Ernakulam arraying additionally the accused Nos. 4 to 6 in this Case. Committal proceedings were initiated by the CJM, Ernakulam by numbering R.C.5/S/2008 as C.P.No.8/2010 and R.C.10/S/2007 as C.P.No.9/2010 on the file of the Chief Judicial Magistrate Court, Ernakulam and the cases were committed to the Court of Session.

19. It was after ignoring the earlier committal that a fresh committal order was passed by the CJM, Ernakulam. The Sessions Court, Ernakulam, made over the case to the Special Judge, CBI, Ernakulam. While so, in terms of O.M. No. 61340/2009 dated 14.03.2012 of this Court, the case was made over to the newly established Special Court, CBI, Thiruvananthapuram. It was when the case was taken up for framing charges that the learned Sessions Judge noted that the main case viz S.C.No.1542 of 2006, was still pending before the Additional Sessions Court (Fast Track-III), Thiruvananthapuram. The learned Sessions Judge found that the only material available before the court was the supplementary chargesheet filed by the CBI after conducting further investigation. The learned Sessions Judge noted that the prosecution had not taken any effort whatsoever to get S.C.No.1542 of 2006 transferred to the Court



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of the Special Judge, CBI, Thiruvananthapuram. In the said circumstances, a request was made to the High Court to consider the feasibility of transferring S.C.No.1542 of 2006 pending before the Additional Sessions Court (Fast Track-III), Thiruvananthapuram, to the Special Judge (SPE/CBI), Thiruvananthapuram. On receipt of the request, the case was made over to the CBI court as per O.M. dated 27.08.2013 on the administrative side. The question is whether the committal of the case yet again is in order.

20. In **Dharam Pal** (supra), a reference was made by a Bench of Three Judges to the Constitution Bench and one of the questions that was referred was whether the judgment in **Ranjit Singh v. State of Punjab** ¹⁸, which set aside the decision in **Kishun Singh and Others v. State of Bihar** ¹⁹, was rightly decided or not. The facts of the case were that an FIR was registered against one Nafe Singh and certain others for commission of offences under Sections 307 and 323 r/w. Section 34 of the IPC. The Police, after investigation, submitted its report under Section 173(2) of the Cr.P.C. before the Magistrate sending only Nafe Singh for trial while including the names of the others in Column 2 of the report. On receipt of such police report, the Magistrate did not straightaway commit the case to the Sessions Court but, on an objection being

¹⁸ [(1998) 7 SCC 149]

¹⁹ [(1993) 2 SCC 16]



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raised by the complainant, issued summons to the accused who were left out to face trial with Nafe Singh as the Magistrate was convinced that a prima facie case to go for trial had been made out against the appellants as well. Among various questions that was posed before the Constitution Bench was the question as to whether the Sessions Judge could issue summons under Section 193 Cr.P.C. as a court of original jurisdiction after committal. Another question was whether on the case being committed to the Sessions Court, could the Sessions Judge issue summons separately under Section 193 Cr.P.C. or would he have to wait till the stage under Section 319 Cr.P.C was reached in order to take recourse thereto. The Apex Court, after noting the provisions of the Cr.P.C. observed as follows in paragraph Nos. 38 and 39 of the judgment:

"38. Section 193 of the Code speaks of cognizance of offences by the Court of Session and provides as follows:

"193.Cognizance of offences by Courts of Session.—Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

The key words in the section are that "no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this



Code". The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor



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can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge. (emphasis supplied by us)

21. In terms of Section 193 of the Cr.P.C., once a case is committed to the Court of Session, the Sessions Court assumes cognizance of the offence as a Court of original jurisdiction. Upon such assumption, the Sessions Court is vested with all the powers that accompany the exercise of original jurisdiction. Clearly, the power to direct further investigation falls within the scope of such jurisdiction. The conferment of original jurisdiction necessarily includes supervisory powers over investigation, which is precisely the power exercised while ordering further investigation. The Sessions Court could have ordered further investigation by the same agency in an appropriate case and the investigating officer also could have sought permission from the Sessions Judge. In view of Section 209 of the Cr.P.C., the role of a Magistrate after the committal of the case is limited as after commitment, the Magistrate would become functus officio and is not entitled to pass any orders on the case which has been committed.

22. It cannot be said that the CBI was unaware of the consequences of not abiding by the provisions of the Cr.P.C. and not complying with the directions



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issued by the Division Bench in **Prabhavathiamma** (supra). They proceeded with the investigation as if it was a fresh investigation ignoring the directives and then proceeded to file a final report before the CJM Ernakulam. After submission of the final report as aforesaid in both cases, the CBI approached this Court and filed CrI.M.C. No. 4957 of 2010. In the petition filed under Section 482 of the Cr.P.C., the prayer sought by the CBI was to quash the charge framed by the Sessions Court in S.C.No.1542 of 2007 and to efface the entire evidence which had already been recorded in the Sessions Court and the 161 statements of the witnesses who, according to them, did not support the prosecution. It would be profitable to refer to the relevant portions of the judgment of the learned Single Judge in **Central Bureau of Investigation v. Jitha Kumar and others**²⁰ to understand the attempts made by the CBI to clear the mess they had created.

The above petition has been filed under Section 482 of the Code of Criminal Procedure, for short, the 'Code' to quash Annexure-A2 charge framed by the learned Sessions Judge, Fast Track-III, Thiruvananthapuram in S.C.No.1542 of 2006 and to order de novo trial in the case on the basis of the report filed in RC.10/S/07/CBI/SCB/Chennai.

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4. Learned Standing Counsel appearing for the CBI adverting

²⁰ [(2012:KER:25748)]



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to the circumstances under which investigation over the death of Udayakumar was handed over to that agency by order of this Court in a writ petition, contended that this Court has to exercise its inherent powers to grant the reliefs canvassed in the petition to preserve the justice delivery system. A de novo trial on the basis of the supplementary charge filed by the C.B.I in the case, with direction that the evidence given by some of the accused persons, who have been later accepted as approvers when examined as witnesses in the previous trial, and also their 161 statements previously recorded by the local police and C.B.C.I.D, are not to be considered in the trial to be proceeded afresh, is the submission of the Standing counsel. Reliance is placed by the counsel in Dinesh Dutt Joshi v, The State of Rajasthan and another 2001 SCC 8 570, Zahira Habibulla H. Sheikh and another v, State of Gujarat and others (2004 CrLLJ 2050) and Joseph v Antony (2012 (2) KLT 517) to contend that to do real and substantial justice and to prevent abuse of process of the court, this Court has to invoke its inherent power to order de novo trial with direction as aforesaid.

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5. There is no dispute that what was ordered in the writ petition filed by the mother of the victim by this Court is further investigation of the crime by the C.B.I while the trial of the case was in progress. Now after further investigation, a retrial of the case on the basis of the report filed by the C.B.I eschewing from consideration whatever evidence collected during the previous trial and also the 161 statements recorded by the previous investigating agency has to be ordered is the case of the petitioner/C.B.I invoking



the inherent jurisdiction of this Court under Section 482 of the Code. Even assuming that there were latches and perhaps even reason to hold that the previous investigation done in the crime was faulty for one reason or other, it does not follow that 161 statements of the witnesses questioned during the previous investigation and the evidence recorded before the court can be totally discarded from consideration. This Court has ordered only further investigation of the crime and not re-investigation of the crime. A de novo trial of the case eschewing the evidence recorded in the previous trial canvassed by the C.B.I is not allowable. Some of the accused named by the C.B.I after investigation have turned to be approvers and previously they had given conflicting versions in their evidence before the court as against the evidence as approvers, is the plea canvassed for ordering such de novo trial. After further investigation ordered by this Court, when a report has been filed including additional accused; whether they have become approvers or not, and other offences not included earlier are also levelled against accused persons framing/altering of charges afresh by the court is inevitable. As rightly contended by the learned counsel for the respondents, a trial has to commence afresh on fresh charges so framed. What, if any, is the value to be attached to the evidence recorded from any witnesses previously examined in relation to evidence to be let in through him in the trial to be proceeded with after framing of charges on the basis of the supplementary report filed by the C.B.I is a matter which falls within the appreciation of evidence by the court. Similarly, 161 statements recorded from any of the witnesses during the course of investigation previously done by the local police can be used only for the purpose of contradiction if the maker of such statement is



examined as a witness before the court by the prosecution. None of the decisions cited by the counsel has any application to the facts of the case. In Zahira Habibulla H. Sheikh's case, cited supra, where retrial was ordered, the Apex Court has held that the above case was one without parallel and stood on its own as an exemplary one demanding a retrial of the case. In cases where further investigation is ordered by this Court, it cannot be contended that since there was defective investigation earlier evidence, if any, collected before the court previously, and also 161 statements recorded from the persons questioned during the previous investigation, should be eschewed from consideration in the trial proceeding on the supplementary report. In Dinesh Dutt Joshi's case, cited supra, what has been dilated upon is only the ambit and scope of powers enjoined by this Court under Section 482 of the Code, which, in the given facts of the case, would no way assist the petitioner C.B.I to sustain the case canvassed of. Similarly, Joseph's case, referred to supra, rendered by this Court ordering further investigation with some directions how it is to be proceeded with is totally inapplicable to the questions involved in the present petition. There is no merit in the petition filed by the C.B.I, and the Crl.M.C. is dismissed (emphasis supplied)

23. This Court, while dismissing the prayer, observed as under:

- a) What has been ordered by the Division Bench in W.P.(C) No.24258 of 2007 is further investigation of the crime by the C.B.I, while the trial of the case was in progress and not re-investigation of the crime.



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- b) Even assuming that there were latches and perhaps even reason to hold that the previous investigation done in the crime was faulty for one reason or other, it does not follow that 161 statements of the witnesses questioned during the previous investigation and the evidence recorded before the court can be totally discarded from consideration.
- c) A de novo trial of the case, eschewing the evidence recorded in the previous trial as canvassed by the C.B.I is not allowable.
- d) After further investigation ordered by this Court, when a report has been filed including additional accused, whether they have become approvers or not, and other offences not included earlier are also levelled against accused persons, framing/altering of charges afresh by the court is inevitable. The trial has to commence afresh on fresh charges framed.
- e) The value to be attached to the evidence recorded from any witnesses previously examined in relation to evidence to be let in through him in the trial to be proceeded with after framing of charges on the basis of the supplementary report filed by the C.B.I is a matter which falls



within the appreciation of evidence by the court.

- f) The principles of law laid down in **Zahira Habibulla H. Sheikh and another v. State of Gujarat and others**²¹ has no application.

24. This view taken by the learned Single Judge is clearly in tune with the observations of the Apex Court in **Vinay Tyagi** (supra), wherein the entire case law with regard to the procedure to be followed while ordering further investigation and re-investigation was considered and laid down. Reference to paragraph Nos. 22 and 23 of the judgment would be profitable.

"22. 'Further investigation' is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further

²¹ (2004) 4 SCC 158



investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation.

23. However, in the case of a "fresh investigation", "reinvestigation" or "de novo investigation" there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct "fresh investigation". This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of "fresh"/"de novo" investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by



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another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a "fresh investigation".

25. In **Vipul Shital Prasad Agarwal v. State Of Gujarat And Another**²², the Apex Court, referring to the observations in **Narmada Bai v. State of Gujarat**²³ acknowledged the practice of the CBI in registering a fresh FIR in a case wherein further investigation was ordered. It was observed as follows in the judgment;

22. Therefore, the submission of Mr Sushil Kumar, learned Senior Advocate appearing for the petitioner, that the directions given by this Court earlier in **Narmada Bai v. State of Gujarat (2011) 5 SCC 79** would necessarily mean that the charge-sheet submitted by the police stood implicitly rejected is without any basis in law and misconceived. Even the fact that CBI purported to have registered a "fresh FIR", in my opinion, does not lead to a conclusion in law that the earlier report or the material collected by Gujarat Police (CID) on the basis of which they filed the charge-sheet ceased to exist. It only demonstrates the administrative

²² [AIR 2013 SC 73]

²³ [(2011) 5 SCC 79]



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practice of CBI.

23. In my view, notwithstanding the practice of CBI to register a "fresh FIR", the investigation undertaken by CBI is in the nature of further investigation under Section 173(8) CrPC pursuant to the direction of this Court."

26. In the light of the law laid down in **Dharam Pal** (supra), **Vinay Tyagi** (supra), **Vipul Shital Prasad Agarwal** (supra) and the directions issued by this Court in **Prabhavathiamma** (supra) and in **Central Bureau of Investigation** (supra), the filing of further report or supplementary charge sheet could only have been in the nature of an incidental proceeding to the filing of the main charge sheet and its filing process is expected to be in conformity with the earlier process for consistency. It is a settled principle that the court takes cognizance of the offence and not the offender (See: **Anil Saran v. State Of Bihar and Another**²⁴; **Kallu Nat alias Mayank Kumar Nagar V. State of U.P. and Another**²⁵). Cognizance of an offence can only be taken once. Applying the principles above, a case once committed and pending before the Court of Session, and trial having commenced, there could not have been another committal of the very same case. There is no question of taking fresh cognizance of the very same offence and thereafter proceeding to issue

²⁴ [1996 AIR SC 204]

²⁵ [2025 SCC OnLine SC 1606]



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summons. The language of Section 193 of the Cr.P.C. very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. If that be the case, in the light of the observations made by this Court while ordering further investigation and the observation of the Apex Court in paragraph No. 41 of **Vinay Tyagi** (supra), the CBI could only have filed a supplementary report which ought to have been treated as part of the primary report. The provisions of 173(3) to 173(6) of the Cr.P.C. would be applicable to such reports in terms of Section 173(8) of the Cr.P.C.. As held in paragraph No.42 of **Vinay Tyagi** (supra), both these reports have to be read conjointly, and it is the cumulative effect of the reports and the documents annexed thereto which the court will be expected to apply its mind to determine whether there exists sufficient grounds to presume that the accused has committed the offence. As held by this Court, the fact that there were lapses and perhaps even reason to hold that the previous investigation done in the crime was faulty for one reason or other, a de novo trial of the case, eschewing the evidence recorded could not have been the course that could have been adopted. The Additional Sessions Judge (Fast Track-III), Thiruvananthapuram, where S.C.No.1542 of 2006 was pending, was in seisin of



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the case after the case was committed to the said Court. This Court had stayed the proceedings in the said case to enable the CBI to submit supplementary reports after further investigation before the said court. No other court could have tried the offence in view of the express directions issued by this Court on more than one occasion. The progress of the case could only have been controlled and determined by the Additional Sessions Judge (Fast Track-III), Thiruvananthapuram.

27. In **Ram Lal Narang v. State (Delhi Administration)**²⁶, it was observed by the Apex Court that further investigation is not altogether ruled out merely because cognizance has been taken by the court. When defective investigation comes to light during the course of trial, it may be cured by further investigation, if circumstances so permitted. It was further explained that the police should inform the court where the case is pending and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. The mere fact that there may be further

²⁶ [(1979) 2 SCC 322]



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delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. Going by the principles above, there cannot be any doubt that the supplementary report after conducting further investigation can be filed only before the Court where the case is pending and not before a different court.

28. Though unrelated to the case on hand, it would be profitable to note that under section 193(9) of Bharatiya Nagarik Suraksha Sanhita, while retaining the earlier provision pertaining to further investigation as contained in Section 173(8) of the Cr.P.C. of 1973, a new incorporation has been made by way of a proviso to the effect that further investigation during trial may be permitted with the permission of the Court trying the case. This provision gives such power to order further investigation to the Court trying the case, which in Sessions triable cases would be the Sessions Court. The proviso, thus, also supports the reasoning that repository of power to order further investigation upon committal of a case would be the Court of Session, where trial is pending, and the supplementary report, if any, to be filed only before the same Sessions Court.

29. We shall now proceed to examine the fatal procedural irregularities



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that have arisen as a direct consequence of the actions of the CBI. Despite being entrusted with the mandate of conducting further investigation, the CBI has failed to adhere to the explicit directions of this Court. We shall also consider whether such non-compliance strikes at the very root of the investigative process, rendering the proceedings fundamentally flawed and vitiating the legitimacy of the investigation undertaken by them.

- a) Instead of filing a supplementary report pursuant to further investigation in S.C.No.1542 of 2006 pending before the Additional Sessions Court (Fast Track-III), Thiruvananthapuram, a final report styling it as a supplementary report was submitted before the CJM, Ernakulam, which court had no jurisdiction to take the case on file. This is clearly against the directives issued by this Court in **Prabhavathiamma** (supra), **Central Bureau of Investigation** (supra) and the law laid down in **Dharam Pal** (supra). Merely because some of the accused approached this Court challenging the legality of the committal and obtained adverse orders will not be sufficient to wipe off the directions issued by a Division Bench of this Court relying on the precedents laid down by the Apex Court.
- b) After taking over the investigation, what the CBI did was array



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Sri. Thankamani, Sri. N Ramachandran, Smt. Sheeja Kumari, Smt. Sajitha C.S. and Heeralal as the accused. Sri. Raveendran had already been arraigned as accused No.4 by the Sessions Court by invoking Section 319 of the Cr.P.C. After roping the above persons as accused, they were arrested and immediately thereafter, separate applications were filed to tender pardon to those accused. The said application was filed before the CJM, Ernakulam. In fact, what had to be done by the CBI was to submit the application under Section 307 of the Cr.P.C. before the Additional Sessions Court (Fast Track-III), Thiruvananthapuram, where S.C.No.1542 of 2006 was pending, the trial of which was stayed by this Court. The Apex Court in **A. Devendran** (supra) has held that after commitment of the proceedings only the jurisdictional Sessions Court will be entitled to consider the application for tendering of pardon under Section 307 of the Cr.P.C., and the CJM, which had committed the case, will not have jurisdiction to grant pardon. It was further observed that if the Chief Judicial Magistrate tenders pardon, then that would not be a curable irregularity within the ambit of clause (g) of Section 460 of the Cr.P.C.. In the case on hand, as it was the CJM, Ernakulam, who had granted pardon, in a case which had already been committed, and as observed by the Apex Court, it is not a curable



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irregularity within the ambit of clause (g) of Section 460 of the Cr.P.C..

- c) As far as Raveendran Nair is concerned, he was already added as accused No. 4 by the Additional Sessions Court (Fast Track-III), Thiruvananthapuram in S.C. No.1542 of 2006 while the trial was pending. The said order was confirmed by this Court. Without moving the Sessions Judge with an application to tender pardon, an application was filed before the learned CJM, Ernakulam, which goes against the principles of law laid down in **Devendran** (supra) and **Dharam Pal** (supra). Only the Sessions Judge where S.C. No. 1542 of 2006 was pending could have considered the application for tender of pardon.
- (d) The evidence recorded in S.C. No.1542 of 2006 was not looked into by the learned Sessions Judge while evaluating the evidence in S.C.No.917/2012. In other words, the proceedings in S.C. No.1542 of 2006 was not pursued. It was only when the learned Sessions Judge noticed that, apart from the supplementary final report, no other documents had been submitted before the Special Court for CBI cases in S.C. No.917 of 2012 and S.C. No.916 of 2012, that a request was made on the administrative side to call for the records in S.C. No. 1542 of 2006 to the CBI Court. Even thereafter, fresh



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evidence was recorded in the matter, and the evidence earlier taken in S.C. No.1542 of 2006 was completely disregarded. This is evident from the fact that the learned Sessions Judge, while trying S.C. No.917 of 2012, proceeded to hold that all the witnesses had turned hostile, which conclusion was incorrect. The proper course of action ought to have been the submission of the supplementary final report before the Additional Sessions Court (Fast Track-III), Thiruvananthapuram, where S.C. No.1542 of 2006 was pending. The evidence, too, ought to have been recorded in that very case, which had only been stayed pending investigation by the CBI. Instead, S.C. No. 916 of 2012 and S.C. No. 917 of 2012 were clubbed together, and evidence was recorded afresh in S.C. No. 917 of 2012. Such a course of action was wholly impermissible. The CBI, having sought directions from this Court as to the proper procedure to be followed, could not have unilaterally resorted to such an exercise. As a matter of fact, this Court, while dismissing the petition filed by the CBI, had categorically ordered that after completion of further investigation and filing of the report, the framing or alteration of charges afresh by the Court was inevitable, and the trial had to commence de novo on the basis of such fresh charges.



30. The next question is whether the above actions would result in failure of justice and prejudice the accused.

31. In **State Of M.P v. Bhooraji And Others**²⁷, the Apex Court had occasion to delve into the question as regards irregular proceedings. The question raised was whether the absence of a committal order to the Special Court would vitiate the entire trial as one conducted without jurisdiction. Another question was whether Section 465 of the Code of Criminal Procedure, 1973 would bar an Appellate court from quashing a trial for such a procedural irregularity when "failure of justice" is demonstrated. It was observed as under:

"12. Section 465 of the Code falls within Chapter XXXV under the caption "Irregular Proceedings". The Chapter consists of seven sections starting with Section 460 containing a catalogue of irregularities which the legislature thought were not enough to axe down concluded proceedings in trials or enquiries. Section 461 of the Code contains another catalogue of irregularities which in the legislative perception would render the entire proceedings null and void. It is pertinent to point out that the former catalogue contains the instance of a Magistrate, who is not empowered to take cognizance of offence, taking cognizance erroneously and in good faith. The provision says that the proceedings adopted in such a case, though based on such erroneous order, "shall not be set aside merely

²⁷ [2001 INSC 393]



on the ground of his not being so empowered”.

13. It is useful to refer to Section 462 of the Code which says that even proceedings conducted in a wrong sessions division are not liable to be set at naught merely on that ground. However, an exception is provided in that section that if the court is satisfied that proceedings conducted erroneously in a wrong sessions division “has in fact occasioned a failure of justice” it is open to the higher court to interfere. While it is provided that all the instances enumerated in Section 461 would render the proceedings void, no other proceedings would get vitiated ipso facto merely on the ground that the proceedings were erroneous. The court of appeal or revision has to examine specifically whether such erroneous steps had in fact occasioned a failure of justice. Then alone the proceedings can be set aside. Thus the entire purport of the provisions subsumed in Chapter XXXV is to save the proceedings linked with such erroneous steps, unless the error is of such a nature that it had occasioned a failure of justice.

14. We have to examine Section 465(1) of the Code in the above context. It is extracted below:

“465. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the



prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.”

15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned “a failure of justice” the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by “a failure of justice” occasioned on account of such error, omission or irregularity? This Court has observed in *Shamnsaheb M. Multtani v. State Of Karnataka* (2001) 2 SCC 577 thus:

“23. We often hear about ‘failure of justice’ and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression ‘failure of justice’ would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd. v. Deptt. of the Environment* (1977) 1 All ER 813, 1978 AC 359, (1977) 2 WLR 450 (HL)). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.”



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21. The expression "a court of competent jurisdiction" envisaged in Section 465 is to denote a validly constituted court conferred with jurisdiction to try the offence or offences. Such a court will not get denuded of its competence to try the case on account of any procedural lapse and the competence would remain unaffected by the non-compliance with the procedural requirement. The inability to take cognizance of an offence without a committal order does not mean that a duly constituted court became an incompetent court for all purposes. If an objection was raised in that court at the earliest occasion on the ground that the case should have been committed by a Magistrate, the same specified court has to exercise a jurisdiction either for sending the records to a Magistrate for adopting committal proceedings or return the police report to the Public Prosecutor or the police for presentation before the Magistrate. Even this could be done only because the court has competence to deal with the case. Sometimes that court may have to hear arguments to decide that preliminary issue. Hence the argument advanced by the learned counsel on the strength of the aforesaid decisions is of no avail.

22. The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the court concerned is "a court of competent jurisdiction", e.g. courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a court took cognizance of such offences, which were later found to be without valid sanction, it would not become the test or standard for deciding whether that court was "a court of competent jurisdiction". It is now well settled that if the



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question of sanction was not raised at the earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the court concerned is "a court of competent jurisdiction".

32. In the case on hand, the CBI could have submitted the supplementary report only before the Additional Sessions Court (Fast Track-III), Thiruvananthapuram, where S.C. No. 1542 of 2006 was pending. No fresh committal order could have been passed by the CJM, Ernakulam. The Trial could have been conducted only by the Additional Sessions Court (Fast Track-III), Thiruvananthapuram in view of the principles laid down in **Prabhavathiamma** (supra), **Vinay Tyagi** (supra) and **Dharam Pal** (supra). The tender of pardon by the CJM to PW1, PW5, and PW15 to PW18 is also not in order, as such an application could only have been entertained by the Trial Court and not by the CJM.

33. Sri. K.P. Satheesan, the learned counsel appearing for the CBI, submitted that as per notification dated 10.12.1974 issued by the Government, the Chief Judicial Magistrate, Ernakulam, has been appointed and conferred with the powers of a Judicial Magistrate of the First Class for all districts of Kerala, with headquarters at Ernakulam. The said notification authorises the Chief



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Judicial Magistrate, Ernakulam, to try, enquire into, and commit to the Court of Session all such cases arising within the State of Kerala in which investigations are conducted, or charge-sheets filed, by the Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946. The learned counsel further referred to the subsequent notification dated 14.07.2014, wherein it was noted that although a Special Court under the Special Police Establishment/CBI has since been established at Thiruvananthapuram, the committal proceedings were still to be undertaken before the Chief Judicial Magistrate, Ernakulam, as it continued to remain the only designated Magistrate's Court in the State for such purposes. To address this anomaly, this Court had concurred with the Government's proposal to establish a Special Court of Judicial Magistrate of the First Class at Thiruvananthapuram, to act as a committal court for the CBI Special Court at Thiruvananthapuram, with the same territorial jurisdiction. According to the learned counsel, in light of the above notifications, once the investigation was taken over by the CBI, it could only have re-registered the crime and submitted further reports and supplementary reports before the Chief Judicial Magistrate, Ernakulam, and nowhere else. We are, however, unable to accept the said contention. The notifications referred to above pertain only to fresh crimes registered by the CBI and not to instances of further investigation



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ordered by a Constitutional Court under Article 226 of the Constitution of India, wherein specific directions were issued to the CBI to submit supplemental reports before the trial court. It is also pertinent to note that during this period, the proceedings in the Sessions Case had remained stayed. Hence, the said notifications can have no application in matters of further investigation. In such circumstances, the principles laid down by the Hon'ble Supreme Court in **Vinay Tyagi** (supra) and **Dharam Pal** (supra) must necessarily apply. As observed by the Apex Court in **Vipul Shital Prasad Agarwal** (supra) the mere fact that CBI purported to have registered a "fresh FIR", will not lead to a conclusion in law that the earlier report or the material collected by CBCID had been wiped out. By following the practice of CBI to register a "fresh FIR", in a case wherein further investigation was ordered, the procedure as laid down by the Apex Court, as well as this Court, will govern the field.

34. In view of the foregoing discussion, we are of the considered view that the intentional course adopted by the CBI in submitting a final report before the Chief Judicial Magistrate, Ernakulam, in a matter where further investigation had already been ordered and the trial had been stayed, and thereafter securing a committal of a case which stood committed, thereby managing to conduct a de novo trial before the Court of the Special Judge, CBI, Thiruvananthapuram,



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wholly unconnected with the proceedings in S.C. No. 1542 of 2006, constitutes a fatal irregularity. Such a procedure, by its very nature, causes serious prejudice to the accused and consequently amounts to a failure of justice.

35. Notwithstanding the various procedural irregularities which we have held as fatal, we deem it appropriate to also deal with the evidence adduced before the learned Special Judge, CBI, on the basis of which the finding of guilt was ultimately recorded with a view to consider whether the finding of guilt has been arrived at on the basis of legal evidence.

36. Witness testimony

The prosecution has mainly relied upon the testimony of PW1, PW3, PW5, PW15 to PW18, and PW21 to prove the incident of custodial torture and the fabrication of Police Station records by accused Nos. 4 to 6, allegedly to shield accused Nos. 1 to 3 from the legal consequences of their acts.

37. PW1, Sreekumar, is an injured witness who was picked up by the police along with Udayakumar. In the previous trial in S.C. No. 1542 of 2006, he was examined as a prosecution witness, but he did not support the prosecution case. After the CBI took over the investigation, PW1 was arraigned as an accused. The specific allegation against him, however, was not related to the



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incident involving the death of Udayakumar. Rather, he was implicated for the purpose of allegedly tendering false evidence during the trial of S.C. No. 1542 of 2006. This is a questionable act. As to whether a person can be made an approver merely on the ground that he had not deposed in tune with the prosecution case during trial, particularly when he had no role in the commission of the offence under investigation, is something that needs to be looked into. The principle of tendering pardon to an accomplice is to unravel the truth in a grave offence so that guilt of the other accused persons concerned in commission of crime could be brought home. When such a person is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. There cannot be any doubt that PW1 is the victim of the crime, and no one, not even the CBI, has a case that he was complicit in the murder of Udayakumar. It is in this context that the contention advanced by the appellants assumes relevance. They have asserted that, upon taking over the investigation, the CBI adopted a practice of arraying even prime witnesses as accused and shielded the offenders who were actually in the Police Station and pressured them to turn approvers so as to depose in



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support of the story set up by the CBI. This was under the threat of being roped in as accused if they failed to do so. Curiously enough in Ext. P172 application filed by the CBI for tendering pardon to PW1, it is stated that Suresh Kumar (A12) committed offences punishable under Sections 120B, 201 r/w. Section 331, 348, 302, 116 and 193 of the IPC and that he was arrested and released on bail on 18.9.2010 on the order issued by the learned Sessions Judge. As observed by us earlier, if the application was filed before the Trial Court in S.C.No.1542 of 2007, we doubt whether such an application would have been entertained.

37.1. Be that as it may, when examined in the present case, PW1 deposed in his chief-examination that he had met Udayakumar earlier that day at about 11 a.m. at Killipalam, while Udayakumar was proceeding on his bicycle towards Palayam. As they could not proceed due to traffic congestion, both of them stayed at Sreekanteswaram Park, where they were taken into custody by accused Nos. 1 and 2 and brought to the police station. He further deposed that Udayakumar was thereafter taken to the CI's office by the said accused and later returned in a battered condition. PW1 himself was also taken for questioning, and he claimed that he was physically assaulted. He, however, refused to identify the officer who physically assaulted him. Subsequently, however, PW1 resiled from the prosecution case. He stated that none of the police personnel had



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tortured him. He nevertheless maintained that Udayakumar was taken to the hospital in a battered condition and that he later came to know of his death at the Medical College Hospital. In cross-examination, PW1 stated that the officer in charge of the General Diary had remarked that "there was no point in Udayakumar living any longer." He further pleaded ignorance regarding what transpired inside the police station after he was taken there. He denied that, when making his statement before the Magistrate on the following day, he had disclosed the names of the officers who abused him, asserting instead that he was not aware of their identity. He further stated in cross-examination that the police officers standing in the dock had not physically assaulted him. His version was that it was after 4:30 p.m. on 27.09.2005, that he and Udayakumar were taken from Sreekanteswaram Park to the police station. He then professed ignorance of the identity of the police officers who had picked them up. He also maintained that he had given a truthful statement before the Fast Track Court. When confronted with his previous testimony before the Fast Track Court, it was revealed that he had not made any statement regarding physical assault by police officers. PW1 added that he was threatened by CBI officers to depose in tune with their version, under threat of being arraigned as an accused. According to him, Exts. P44 and P46, being statements recorded under Section 164 of the



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Cr.P.C., were not his voluntary statements but were prepared as per the instructions of CBI officers. He asserted that he was tutored by the CBI to give a false version before the Magistrate. He further alleged that, prior to the test identification parade, the photographs of the accused were shown to him. He also categorically stated that he had not given any incriminating statement against the accused when he was earlier examined before the Fast Track Court.

37.2. When PW1 was examined in S.C. No. 1542 of 2006, he had stated that he was a neighbour and close friend of the deceased. On the day in question, he and the deceased had gone together on a bicycle to Sreekandeshwara Park. While they were sitting in the park, two police officers approached them, took money from their pockets, and compelled two auto drivers to sign a document. Thereafter, the police took both PW1 and the deceased in an auto-rickshaw to the police station. At the station, the deceased was taken to the office of the Circle Inspector (CI) for questioning. PW1 stated that he did not hear the conversation between the police and the deceased. Subsequently, PW1 was also taken for questioning. He stated that the police did not inflict any physical harm on him and that he was unaware of whether the deceased had been subjected to any physical assault by the police. Ext.P2 contradiction was brought out when he denied his earlier statement that he saw



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the police assaulting the deceased. However, it was brought out that in Ext. P4 statement recorded under Section 164 Cr.P.C., PW1 had stated before the Magistrate that Udayakumar (the deceased) was assaulted by the police. While deposing in court, PW1 claimed that he had made such a statement before the Magistrate under the instructions of a Sub-Inspector (SI) and a CI, whose names he could not recall. PW1 further stated that he had been tutored in preparation for the Test Identification Parade and that he had identified individuals as instructed by others. Ext.P1(a) was marked when he denied making a prior statement that the deceased had complained of pain in his legs and stomach. Similarly, Ext. P2(c) was marked when he denied having previously stated that he saw the police officers returning after 3:00 p.m. It was brought out during cross-examination that PW1 had access to newspapers and television before the Test Identification Parade. PW1 admitted that many of the statements he gave during his examination before the Magistrate were based on what he had been tutored to say. PW1 further deposed that officers at the Fort Police Station had threatened to kill him around midnight. PW1 was recalled and was further examined on 14.09.2015. PW1 affirmed that the statement he gave before the Fast Track Court was truthful, and clarified that his earlier deposition before the Judicial First Class Magistrate (JFCM), Thiruvananthapuram, was made at the



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instance of the police. He further stated that his second statement was given under threat and coercion by the police. PW1 deposed that he did not recall Soman hitting him on his back. However, this was contradicted by his earlier statement recorded under Section 161 of the Cr. P.C., wherein he had stated that Soman had struck him on the back. He further stated that Udayakumar did not request water at any point. When questioned whether the female Police Officer had given water to the deceased, he responded in negative. Additionally, PW1 denied witnessing the bottle fall from the hand of the deceased while being given water to drink.

38. PW3 was a Head Constable of the Fort Police Station at the relevant time. He deposed that he was on duty on the date of the incident and was present in the police station throughout. According to him, the office of the Circle Inspector was situated adjacent to the Police Station. During the relevant period, Ajith Kumar (A4) was the Sub-Inspector of Police, and E.K. Sabu was the Circle Inspector. Accused Nos. 1 and 2 were members of the Crime Squad. PW3 stated that the General Diary (GD) charge on that day was with Thankamani (PW5). When PW5 was entrusted with the duty to prepare an inquest in another case, PW3 was directed to take charge of the GD. He was also requested to look after the persons in custody. The sentry on duty at that time included Ramachandran



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and Sajitha (PW16). When the sentry reported to him that the health condition of one of the detainees in the lock-up was bad, he informed the Sub-Inspector, but the latter did not respond. Since PW3 did not support the case of the prosecution, he was declared hostile and the learned Public Prosecutor was permitted to put leading questions. He, however, admitted that the condition of Udayakumar worsened and that he was taken to the Medical College, where he was declared dead.

39. PW4 was another Police Constable of the Fort Police Station cited to prove that Udayakumar was taken to the hospital on the fateful day when he fell ill.

40. PW5 was in charge of the GD of the Fort Police Station on 27.09.2005. He stated that on that day, Constable Ramachandran, Sheeja Kumari (PW17), Sajitha (PW16) were on sentry relief duty, while Rajani (PW21) was on VHF duty. Vijayakumar (PW3) and Police Constable Surendran were also present. At about 2:15 p.m., accused Nos. 1 and 2 brought two persons into the Police Station, and they were Udayakumar and Sureshkumar (PW1). PW5 was informed that they had been picked up from Sreekanteswaram Park for questioning in connection with a case. They were made to stand behind his chair. He added



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that accused Nos. 1 and 2 were Crime Squad members attached to the CI, and that the CI had given instructions that other Police Officers shall not interfere with the work of the Crime Squad. After some time, accused Nos. 1 and 2 took Udayakumar to the office of the CI. Shortly thereafter, A4, the Sub-Inspector of Police, came to the Station, and he was informed about the taking into custody of the two persons. Later, PW5 saw accused Nos. 1 and 2 bringing Udayakumar back in a battered condition, and he found that Udayakumar was not able to walk properly. He was made to sit in the cell. Sureshkumar (PW1) was then taken to the CI's office for questioning, and he was brought back after five minutes. He was then made to stand outside the cell. PW5 stated that instructions were given that the PW1 and Udayakumar should not be permitted to interact with each other. At about 4:15 - 4:30 p.m., PW5 was directed by the Sub-Inspector to proceed to conduct an inquest in a case of suicide. He entrusted the GD charge to PW3 and returned at about 7:00 p.m. When he returned, he found three detainees in the Station. He then went to the CI's office and found that accused Nos. 4 and 5 were present. The CI instructed him to register a case on the basis of a complaint. Accordingly, he registered Crime No. 702 of 2005 at 7:00 p.m. Immediately thereafter, the CI directed him to stop GD entries at 7:30 p.m., after recording the details of the three detainees. He further



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stated that the CI instructed that no further entries were to be made in the GD without his permission. He identified his endorsement in the GD as Ext. P4(a), with the GD was marked as Ext. P4. At about 9:30 p.m., PW15 Raveendran Nair (Crime SI) came to the station after duty but soon left by calling it a day. At about 10:15 p.m., PW5 enquired with the detainees whether they wanted food. All except Udayakumar declined. As Udayakumar did not respond, PW5 entered the cell and found him sitting unresponsive. He sprinkled water on his face, but there was no reaction. He immediately called the CI (accused No. 5) and informed him of Udayakumar's condition. The CI instructed him to shift Udayakumar to the hospital. Accordingly, Udayakumar was taken in the office jeep, and PW3 (Vijayakumar), PW4 (Surendran), and one Anilkumar went with him. Sometime later, the CI telephoned to enquire about Udayakumar and directed PW5 to release the three persons brought by him to one Kamaludheen, which PW5 did. At about 11:45 p.m., PW5 received a call from the Medical College Hospital informing him that Udayakumar had died. He further stated that earlier, he had received a call from the General Hospital informing him that Udayakumar's condition was serious. At midnight, A4 came to the Fort Police Station, and PW3 and others who had gone to the hospital also returned. On receiving information of Udayakumar's death, the Sub-Inspector asked PW5



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about the GD entries, and PW5 informed him that no entries had been made after 7:30 p.m., as per CI's instructions. Subsequently, the City Control Room Assistant Commissioner, Sharafudhin and CI Shafi came to enquire about the death. Thereafter, A6 (Haridas), the Assistant Commissioner, also came, followed by A5 (C.I., E.K. Sabu). Accused No. 5 then asked PW5 to route all telephone calls from the Station to the CI's office. The Sub-Inspector enquired about the whereabouts of PW15 Raveendran Nair, who was then summoned to the Station at about 3:00 a.m. PW5 deposed that PW15 later told him that the A6 and A5 had forced him to prepare an FIR showing the arrest of Udayakumar and PW1 at 8:00 p.m. on 27.09.2005. Accordingly, Crime No. 703 of 2005 was registered, with the time of registration incorrectly shown as 8:00 p.m. To assist in the preparation of the case, PW18 (Heeralal) of the CI's office and the Assistant Writer of the Fort Police Station were also involved. PW5 further stated that accused No. 5 asked him to insert an entry in the GD about Udayakumar being sent to the hospital, which he did only after Crime No. 703 of 2005 was registered, as per the directions of SI Ajith Kumar and CI Sabu. He affirmed that accused Nos. 1 to 3 were present in the Station throughout this time. After this, Ajith Kumar registered Crime No. 704 of 2005 under Section 174 of the Cr.P.C., concerning the death of Udayakumar.



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40.1. On the next day, the CI called all officers who had been on sentry duty on the previous day and instructed them to ensure that any statement given to any authority must be in conformity with the records prepared in relation to Crime No. 703 of 2005. PW5 stated that A4 also threatened and intimidated them to depose in accordance with the false entries. He further deposed that during the earlier sessions trial, he had given evidence in tune with the police records, as directed by Ajith Kumar and E.K. Sabu. However, after the CBI took over, he stated the true facts before the Judicial Magistrate of the First Class, Thiruvananthapuram (Ext.P5) and before the Chief Judicial Magistrate, Ernakulam (Ext.P6). According to him, the statements in Ext.P6 reflected the true facts. He admitted that the entries in Ext.P4 GD from 8:30 p.m. on 27.09.2005 were false and were made under the direction of A4 (Ajith Kumar). His notebook was marked as MO6. The Sentry Relief Book of the Fort Police Station was marked as Ext.P7, with the false entry regarding the registration of Crime No. 703 of 2005 being marked as Ext.P7(a). He went on to identify all the accused standing in the dock.

40.2. In cross-examination, PW5 admitted that accused Nos. 1 to 3 were his subordinates. It was brought out that although his statement had earlier been recorded by a Superintendent of Police and later in the Sessions Court, he



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had not mentioned at that time that he was threatened or intimidated by any officer. He admitted that prior to 10:15 p.m., he had no conversation with the detainees and denied the suggestion that Udayakumar and Sureshkumar were brought to the Police Station only after 4:30 p.m. In cross-examination by accused No. 2, PW5 admitted that he himself had been arraigned as an accused in the case and was arrested by the CBI and taken to their office. He was later released on bail by CBI officers. He also admitted that he had not filed any application to be treated as an approver. PW5 maintained that he was on GD duty from 8:00 a.m. to 8:00 a.m. the next day, except for the brief period when he went for the inquest. He claimed that until 10:30 p.m., he did not hear any cries or moans from Udayakumar, nor was he told that Udayakumar's health was deteriorating. He added that if he had been informed, he would have shifted him to the hospital. He admitted that he did not mention Udayakumar's condition to the Sub-Inspector over wireless communication. He confirmed that his statement was recorded by the CBI on 27.06.2009 by Pradeep Kumar, and that his earlier deposition before the Fast Track Court was marked as Ext.D3. He admitted that after the CBI took over, he visited the CBI office at Ernakulam on several occasions, knowing that he was likely to be made an accused for the offences under Sections 302 and 342 IPC. His sureties had accompanied him. He stated



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that he was arrested twice by the CBI. When asked whether, as GD officer, it was his duty to take care of prisoners, he denied responsibility and denied that he and PW15 had manipulated the records to evade liability. In the cross-examination by A6, he admitted that he was not personally aware of the conversation PW15 had with senior officers. During re-examination, he was asked as to why he was made the approver when he had no complicity in the offence. His response was that since he was in GD charge, under the impression that he also had something to do with the incident, he was roped in as an accused.

40.3. When examined in S.C. No. 1542 of 2006 as PW5, Thankamani deposed that he assumed charge of the General Diary (GD) by 8:00 a.m. on 27.09.2005. According to him, Raveendran Nair returned to the Police Station after completing election duty and arrived by 8:00 p.m. An entry was made by Raveendran Nair in MO5 at 8:00 p.m., which is in his own handwriting and bears his signature. Based on the report submitted by Jitha Kumar, Crime No. 703 of 2005 was registered under Sections 41(1)(d) and 102 of the Cr.P.C by Raveendran Nair at 8:30 p.m.. The individuals involved were kept under the supervision of the officer on Paravu duty. PW5 stated that, upon enquiry as to whether they required food, the deceased, Udayakumar, did not respond.



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Observing that he appeared unwell, PW5 instructed other Police Officers to take him to the hospital. Udayakumar was immediately sent for medical attention. The Circle Inspector arrived at the Station after 10:00 p.m.. Ajith Kumar reached the Station after midnight. PW5 also clarified that he was not present at the Police Station between 5:00 p.m. and 7:00 p.m. on 27.09.2005, as he had gone with PW4 to conduct an inquest. He affirmed that the deceased and PW1 were brought to the Station by 8:00 p.m. and asserted that neither of them was assaulted by anyone while in the Police Station. During cross-examination, he stated that no visible injuries were noticed on Udayakumar's body at the time he was taken into custody. Similarly, no injuries were observed while he was being taken to the hospital, as the priority was to ensure he received medical treatment promptly. However, he stated that the uneasiness of the deceased was evident from his facial expressions and demeanor, which were clearly visible due to adequate lighting at the Station.

41. PW15, Raveendran Nair, was the Crime Sub-Inspector of the Fort Police Station. He was arraigned as an accused by the Trial Court under Section 319 of the Cr.P.C., and the said order was confirmed by this Court in W.P.(C) No. 24258 of 2007. Thereafter, when the investigation was taken over by the CBI, he was arrested on allegations of committing offences punishable under Sections



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120B, 201, 331, 348, 302, 116, and 193 of the IPC. He was arrested and remanded. Thereafter, the Investigating Officer filed Ext.P166 before the Chief Judicial Magistrate, stating that the evidence of Raveendran Nair was vital and crucial for unravelling the criminal conspiracy and further noting that his role was only minimal. Based on this application, the learned Chief Judicial Magistrate, by Ext.P166 (a) order, granted pardon. When examined in court, PW15 deposed that he was summoned to the Fort Police Station at about 3:00 a.m. by Ajith Kumar (A4), Sabu (A5), and Haridas (A6). As per their instructions, he first met A5, and thereafter A6 (Haridas), who directed A4 (Ajith Kumar) to brief him about the incident that had occurred a few hours earlier in the Station. He was asked to register a crime detailing the arrest of Udayakumar and PW1 Sureshkumar. Since he had not seen either of them and was not present in the Station earlier, he expressed his reluctance. According to him, A4 and A5 threatened him with dire consequences, telling him that as he had only a few months left before retirement, he would be denied pension benefits unless he complied. A6 (Haridas) then handed over to him a draft FIR, prepared by Mohanan Chettiar (Head Constable, Karamana Police Station), under Sections 41(1)(d) and 102 of the Cr.P.C. Based on this draft, PW18 (Heeralal) prepared Crime No. 703 of 2005, and PW15 was forced to sign the FIR at about 3:30 a.m.



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41.1. PW15 further deposed that he came to know about the death of Udayakumar only around 4:30 a.m. on the next day. On 28.09.2005, he was directed to sign the remand application of Udayakumar and Sureshkumar, which had been prepared by Assistant Writer, Mathusudhanan. He was also forced to sign the arrest memo, inspection memo, and custody memo of Udayakumar and Suresh Kumar. Ext.P17 is the FIR of Crime No. 703 of 2005, which was identified by him. Ext.P18 is the mahazar prepared by Jithakumar, and Ext.P19 is the report submitted by Jitha Kumar. He stated that Ext.P17 FIR falsely shows registration of the Crime at 8:00 p.m. on 27.09.2005, though PW15 admitted he was not in the Station at that time and the accused were not before him. He admitted to making a false entry in Ext.P4 General Diary, and the relevant entry was marked as Ext.P4(b). According to him, the entries were made only at about 3:00 a.m. on 28.09.2005.

41.2. The Register of Property found on Searching Prisoners (PSR) of the Fort Police Station was marked as Ext.P20. He stated that false entries were made regarding the registration time of Crime No. 703 of 2005 and the bringing of the accused were made, which portions were marked as Exts.P20(a) and P20(b). He admitted that he signed those entries with the knowledge that they were false. He also stated that Ext.P4 entry showing FIR registration at 8:00 p.m.



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and completion at 8:30 p.m. was false. Ext.P21 (inspection memo of Sureshkumar), Ext.P22 (arrest memo of Sureshkumar), and Ext.P23 (remand report of PW1) all bore his signature, which he stated was put at the instance of accused Nos. 4 to 6. His notebook was marked as Ext.P25, and he admitted that Ext.P25(a) false entries therein were also made after 3:00 a.m. on 28.09.2005, as per the directions of his superior officers.

41.3. PW15 further stated that during the earlier trial before the Fast Track Court, he had testified in tune with the records prepared by the CBCID, at the instance of his superiors. He explained that ₹4,020, produced along with Ext.P19 report, was submitted to the court by preparing Ext.P26 property list. The Arrestee Register of the Fort Police Station was marked as Ext.P27, wherein false entries were made regarding the arrest of PW1 and Udayakumar. Ext.P28 is the arrest memo book; its carbon copy concerning Udayakumar (Ext. P28(b)) was also produced. He admitted that the endorsement in Ext.P4(a), claiming that the arrest had been informed to the relatives, was false.

41.4. PW15 further stated that the Crime Branch officials did not record his statement correctly. On 28.09.2005, PW1 was taken to Vanchiyoore Police Station. During CBI's investigation, PW15 gave 164 statement before the



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Magistrate, marked as Ext.P29, and after being made an approver, gave another statement, marked as Ext.P30.

41.5. In cross-examination, he admitted that while tendering evidence before the Fast Track Court, he had not complained of threats from his superior officers. He had, however, filed a revision against the Sessions Court order arraigning him as an accused. He confirmed that he was arrested by the CBI on 18.05.2009 and was remanded till 09.06.2009, and spent 22 days in custody. After being released, he gave Ext.P29 statement before the CJM, Ernakulam. At that time, he was aware that CBI was filing an application to tender pardon and make him an approver. He admitted that his statement before court was made with the intention to avoid prosecution for his own role in the crime. During cross-examination, Ext.D4 contradiction was marked, where he had denied his earlier statement that he reached the police station at 7:45 p.m., and not after 9:30 p.m. as stated by him in his evidence. Ext.D5 contradiction was marked where he denied his earlier statement that he returned at 9:00 p.m., informed PW1's arrest to his brother-in-law, and left the station, and had returned back only at 7:00 a.m. the next day. Ext.D6, was marked concerning a statement allegedly given on 06.12.2005, which he denied. He admitted that in the Fast Track Court, he had stated that Udayakumar and Sureshkumar were brought in



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without injuries, and that he himself had noted in Ext.P24 that Udayakumar bore no injuries. PW15 admitted that on 27.09.2005, it was his duty to register a crime. He further stated that he gave evidence before the Fast Track Court after his retirement. He claimed that from 8:00 a.m. to midnight on 27.09.2005, he had not committed any illegal act, nor was he asked to do so. According to him, he had 34 years of experience in the police department and added that if a person was kept in lock-up without proper records, responsibility would lie with the GD in charge and sentries, and if anything untoward happened, only then would the Sub-Inspector, CI, Assistant Commissioner, and City Police Commissioner be informed. His deposition before the Sessions Court was marked as Ext.D7. He stated that he is not aware of the fact that it was on the basis of above testimony that the learned Sessions Judge had invoked Section 319 of the Cr. P.C. to array him as an accused, which order was later confirmed by the High Court. He admitted that while in custody in the Sub-Jail, Ernakulam, he was asked whether he would give a 164 statement. After consenting, he was released on bail within 3 - 4 days. He admitted that the evidence tendered by him in the instant case was in tune with his previous statement. He further admitted that it was the duty of Station Officers to register a crime immediately when Udayakumar and Sureshkumar were brought to the Police Station. He



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confirmed that the Sub-Inspector and CI were not present in the station at that time. He also admitted that from 5:30 p.m. to 11:30 p.m. on 27.09.2005, A6 (Haridas) was on election duty. When asked whether A6 had come to the station only after Udayakumar's death, he pleaded ignorance.

41.6. However, while examined as PW11 in S.C. No. 1542 of 2006, Raveendran Nair deposed that at the relevant time he was working as a Sub-Inspector in the Crime Bureau. On the date of the incident, he had been assigned law and order duty in connection with the counting of election votes. He returned to the Police Station around 8:00 p.m., by which time the deceased and PW1 had already been brought in by A1 and A2. A mahazar and report regarding the seizure of ₹4020/- from them was prepared by A1. He stated that he informed the Circle Inspector about the arrest and the seizure, and thereafter, as directed by the CI and based on the mahazar, Crime No. 703 of 2005 was registered against the deceased and PW1. He stated that at about 4:15 p.m., when A1 and A2 approached the deceased and PW1 in Sreekandeshwaram Park, both attempted to run away. A1 and A2 pursued them. Suresh Kumar was apprehended first and kept under the custody of Sreekumar, while Jitha Kumar caught the deceased by applying force. He further stated that he was told the sum of ₹4020/- was seized from the deceased. The registering of the FIR



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commenced at 8:00 p.m. and was completed by 8:30 p.m.. After registering the FIR, the deceased and PW1 were handed over to the guard (PC 8571), and he then left for his residence. He stated that no one had told him that the deceased or PW1 had been assaulted. However, he was told that until 8:00 p.m., they had been questioned in the CI's office. During cross-examination, he admitted that he came to know that the deceased had been apprehended only after a chase and that he had custody of them only from 8:00 p.m., onwards. He further admitted that he did not conduct a body search of either of them, even though they had been chased and arrested, because both appeared normal when brought in as they had walked in without blood stains, visible injuries, or signs of exhaustion. He stated that he returned to the Police Station only by 7:30 a.m. on the following morning, and until then, he had no direct knowledge as to the cause of death of the deceased. He stated that it was only when the crime was formally registered that he came to know that A1 and A2 had allegedly inflicted injuries on the deceased during questioning in the CI's office, which subsequently led to his death. When it was suggested to him that he had not seen the deceased or PW1 at the time of arrest, he denied the suggestion. He also denied the suggestion that the FIR was not filed at 8:00 p.m. and that the timing noted was a false entry, thereby reaffirming that Crime No. 703 of 2005 had indeed been



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registered at 8:00 p.m. He denied having conducted a direct body search of A2 in Crime No. 703 of 2005. He stated that he did in fact conduct the body search of the deceased and PW1 before handing them over to Guard (PC 8175), in compliance with the directions of the Hon'ble Supreme Court. He categorically denied that any of the entries in the Registers were made after the death of Udayakumar. He stated that during the body search, he noticed that the deceased appeared tired. The deceased was asked whether he wished to be taken to a hospital, to which he replied in the negative. He asserted that it was only because of this response that the deceased was not immediately taken to the hospital.

41.7. What is discernible from the evidence of the said witness is that in the course of the trial in S.C. No. 1542 of 2006, he was added as accused by the learned Sessions Judge by invoking Section 319 of the Cr.P.C. The said order was confirmed by this Court. Thereafter, the investigation was taken over by the CBI. They arrested him and remanded him without seeking permission from the Sessions Judge. Later, his 164 statement was recorded after keeping him in custody for about 22 days. Thereafter, an application was filed to tender pardon before the CJM, Ernakulam. As observed by us earlier, the application ought to have been filed before the Additional Sessions Court (Fast Track-III),



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Thiruvananthapuram, where S.C. No. 1542 of 2006 was pending. Only the learned Sessions Judge could have considered whether it was proper to tender pardon to the said accused. The prosecution has no case that the order passed by the learned Sessions Judge was varied or set aside. The Trial was only stayed, and the reports were to be filed before the Trial Court. The action of the CBI in arresting and remanding a person and thereafter obtaining a statement under Section 164 of the Cr.P.C. and on the assurance given by the witness that he would parrot the story by making in an approver is strongly challenged by the appellants. It cannot be said that the challenge raised is baseless.

42. PW16, Sajitha, deposed that in 2005 she was serving as a Woman Police Constable at the Fort Police Station, Thiruvananthapuram. On 27.09.2005, she was assigned sentry and turn duties in different shifts, sentry duty from 10:00 a.m. to 12:00 p.m., turn duty from 12:00 p.m. to 2:00 p.m., rest time from 2:00 p.m. to 4:00 p.m., turn duty from 4:00 p.m. to 6:00 p.m., and again sentry duty from 6:00 p.m. to 8:00 p.m. She stated that at about 4:30 p.m., she saw accused Nos. 1 and 2 bringing in a person, by holding him on his shoulders, and making him sit inside the cell. Another person was seated outside the cell. Accused Nos. 1 and 2 took this second person away for questioning and brought him back within 5–10 minutes, and he was made to sit outside the cell. She



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asked fellow sentry Sheejakumari (PW17) about their identity, and she was told that the person inside the cell was Udayakumar and the one seated outside was Sureshkumar. She further stated that around 7:00 p.m., Udayakumar asked for water and was crying, complaining of leg pain. A jug of water was handed over to Udayakumar by PW21 Rajini. Seeing him cry, she asked PW3 Vijayakumar whether he should be taken to the hospital. PW3 went to the Sub-Inspector's office and sought permission, but the SI did not respond. At about 7:15 p.m., three more persons were brought to the Station by Pushparajan, one of whom she knew. While conversing with him, the CI arrived and warned her for speaking to the detainees. At 8:00 p.m., after completing her duty, she went to the restroom. Her duty notebook was marked as Ext.P31. After 10:00 p.m., she resumed turn duty and sought permission from the GD to have dinner, and returned by 10:30 p.m. At that time, PW21 rushed to her and said that Udayakumar was unwell. When she came downstairs, she saw that Udayakumar had already been taken in a jeep to the hospital. Around midnight, PW5 Thankamani informed the Station that Udayakumar had died. She stated that this fact was noted in Ext.P31, and the entry was marked as Ext.P31(a). She added that entries made after 10:30 p.m. in her notebook were written under the instructions of the SI and CI, as directed by them. She confirmed that she had



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earlier given evidence before the Fast Track Court. Ext.P32 and P33 are the statements recorded under Section 164 of the Cr.P.C. in both the crimes. She admitted that the C.I. had told her that since she was on sentry duty, she would also be held responsible.

42.1. In cross-examination, she admitted that it was only about 4-5 days after 27.09.2005 that the CI was suspended, and it was thereafter that she gave a statement to the Dy.S.P, CBCID. She confirmed that she gave evidence before the Fast Track Court without fear. She stated that the CBI questioned her 4-5 years after the incident. She was aware that SI Raveendran Nair had been arraigned as an accused and arrested, and that PW18 (Heeralal) had also been arrested. She admitted that after the CBI took over, she was afraid that she, too, would be arraigned as an accused. She denied that she had requested the CBI not to include her name in the array of accused. She confirmed that she was arraigned as an accused later and had to go to the CBI office in Ernakulam to secure bail. After her statement was recorded, she was asked if she would depose before the Magistrate, and it was thereafter that she was released on bail. She admitted that although she claimed she had not committed any offence, she had made wrong entries in her duty diary. She added that all the officers' notebooks were taken by PW5 after Udayakumar was shifted to the hospital.



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Ext.P170 is the CBI's application before the Chief Judicial Magistrate, Ernakulam, seeking pardon for her. In the application it is stated that her evidence was crucial to unravel the conspiracy hatched to fabricate false evidence before the Trial Court in order to shield Jitha Kumar and Sreekumar from legal punishment.

42.2. When examined as PW19 in S.C.No.1542 of 2005, Sajitha stated that she was assigned guard duty at the Police Station on 27.09.2005 from 6:00 p.m. to 8:00 p.m.. She clarified that the role of the guard is to stand at the entrance of the Police Station, armed with a weapon, to provide security.

43. PW17, Sheeja Kumari, was also a Woman Police Constable on sentry duty at the Fort Police Station on 27.09.2005. She stated that at about 2:15 p.m., accused Nos. 1 and 2 brought two persons to the Police Station and made them stand near the GD. Thereafter, accused Nos. 1 and 2 went out and returned around 2:30 p.m., taking one of the persons away, who she later identified as Udayakumar. At about 4:00 p.m., she resumed sentry duty. Around 4:30 p.m., accused Nos. 1 and 2 brought Udayakumar back to the Station and made him sit on the floor. They then took PW1 Sureshkumar to the CI's office for questioning and brought him back later. At about 6:00 p.m., she completed her sentry duty, but remained in the Station until 7:00 p.m. At about 6:30 p.m.,



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Udayakumar asked for water, which was given to him by PW21 Rajini. The bottle slipped from his hand, and she noticed him crying. She asked PW3 (Vijayakumar) to take him to the hospital. PW3 informed the SI, but the SI scolded him. At about 10:00 p.m., she resumed sentry duty. She heard the GD officer asking Udayakumar if he wanted food. As he did not respond, PW5 went inside the cell, sprinkled water on him, and realised he was unresponsive. He was then taken to the hospital in a jeep along with Anilkumar and others. Later, the CI was informed. Around midnight, they received news that Udayakumar had died. PW17 further stated that the next day, she was called to the Station by the SI and CI. She was directed to make entries in her notebook accordingly. When she initially refused, she was threatened and forced to comply. Ext.P35 was her notebook, with Ext.P35(a) being the entry in question. She admitted that the entry marked as Ext.P35(b) was false. She added that her statement was recorded by the Narcotic Cell, Assistant Commissioner. However, in her statement, she did not state that the false entries were made at the instance of her superior officers. She admitted that the CI and SI had instructed her to stick to the fabricated records. Ext.P36 was her statement before the learned Magistrate, and Ext.P37 was another statement dated 28.09.2009. She admitted that the CBI filed an application to tender her pardon, and she was made an



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approver.

43.1. In cross-examination, she admitted that her statement was recorded earlier by a Superintendent of Police. She confirmed that in the previous trial, she had met the Public Prosecutor and thereafter gave evidence in tune with the records, as instructed. She stated that she later realised that persisting with her earlier testimony would put her in difficulty after the CBI took over. On legal advice, she chose to depose in conformity with her statement before the Magistrate, under which she had been tendered pardon. She admitted that she was not personally aware of what transpired in the Police Station between 7:00 p.m. and 8:00 p.m. on 27.09.2005. She also admitted that before her arrest, the CBI had recorded her statement, and that she was later arrested and released on bail. She confirmed that it was only after her arrest that she was taken to the Magistrate and her statement was recorded.

44. PW18, Heeralal, deposed that in 2005 he was working as a Constable at the Fort Police Station, Thiruvananthapuram. His duty was in the office of the Circle Inspector. Along with him, there was Head Constable, George, Mohanan, and several Assistant Sub-Inspectors. Accused Nos. 1 and 2 also worked in the same office. According to him, on 27.09.2005, after completing his duty at about



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8:30 p.m., he returned home. On 28.09.2005, at about 2:30 a.m., one Chandramohanan knocked at his door and informed him that C.I. Sabu was calling him. He was directed to report immediately at the office. PW18 reached the office at about 3:00 a.m., where he found A6 (Haridas) sitting and writing something. C.I. Sabu, and S.I. Ajithkumar were also present in the same room. When he reported, C.I. Sabu told him that a custodial death had occurred. On asking who had died, the officer said that one of the persons brought by the squad had died. On further enquiry as to how he died, PW18 was told that only a postmortem examination would reveal the cause of death. He then went to his office and saw A2 (Sreekumar) writing something, with Mohanan Chettiar standing beside him. After some time, the Assistant Commissioner brought a paper written by him, handed it to Ajithkumar, and told him to copy it in his handwriting. Ajithkumar refused, saying that he was due for promotion, which led to some altercation between them. At about 3:30 a.m., PW15 [Raveendran Nair (Crime SI)] arrived. The Assistant Commissioner, Haridas, directed him to register a crime. Initially, Raveendran Nair refused and went out of the office, but returned about ten minutes later. The Assistant Commissioner handed the paper to him and told him that since he was the Crime SI, he must register the case. Raveendran, along with Mohanan Chettiar, then approached PW18 and asked



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him to prepare an FIR in the name of Raveendran. As instructed by the Assistant Commissioner, a crime was registered showing the time of registration as 8:00 p.m. on 27.09.2005, though in fact the FIR (Ext. P17) was written and registered at about 4:00 a.m. on 28.09.2005. After the registration of the FIR, the Assistant Commissioner left the office. PW18 thereafter returned to his office and took rest. On the following morning, at about 7:00 a.m., he was called to the CI's office. Along with one Jalaludheen, he was sent for preparing the inquest over the dead body. After inquest and postmortem, the body was handed over to the relatives, and they returned. PW18 further stated that in the crime registered by the CBCID, he was cited as CW19. He was specifically instructed not to disclose that the FIR was actually registered in the morning, but to state instead that it had been registered at 8:00 p.m. on 27.09.2005 by the CI and SI. He later disclosed these facts in Ext.P39 statement given before the Magistrate on 29.05.2009. Ext.P40 is the application filed for tendering pardon on 28.09.2010.

44.1. In cross-examination, PW18 admitted that when he was examined before the Fast Track Court, he had not supported the prosecution case. He stated that in connection with Crime No.703 of 2005, his statement was initially recorded by a Dy.S.P. and later by a Superintendent of Police. He further admitted that when the CBI took over the investigation, he and PW15



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Raveendran Nair were both arrayed as accused and were arrested. He was remanded to custody and remained in prison for 20 days. After furnishing Ext.P39 statement, he remained in prison for another 8 days, and thereafter was released on bail. According to him, when he was taken to the Magistrate, he was under the impression that he was giving a statement, but was unaware that it was for tendering of pardon.

44.2. While examined as PW21 in S.C.No. 1542 of 2006, Heeralal stated that his work at the Police Station was limited to writer duties. He deposed that he had seen A1 and A2 leaving in the Circle Inspector's jeep in the morning, but did not know whether they had gone for election duty. According to PW21, Raveendran Nair called Heeralal at around 8:00 p.m. and instructed him to write the First Information Report (FIR) in his own handwriting. He stated that he had neither seen the deceased nor PW1. His knowledge that the deceased was allegedly kept in the lock-up is purely based on hearsay. He denied having told the police that a bench and cot, along with a GI pipe, were lying on the floor of the restroom. He stated that he did not hear any sounds of crying or assault on the day in question. He specifically denied having made the statement to the police that "after some time, sounds of someone crying and beating were heard." This portion is marked as Ext.P20(a). He denied witnessing A1 beating the sole



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of the deceased with a wooden stick (chooral) and denied having made such a statement to the police. This contradiction was marked as Ext.P20(b). He denied stating that he saw the deceased lying inside the lock-up with Sureshkumar standing outside which portion was marked as Ext.P20(d). He denied having stated that, upon hearing the cries of Udayakumar, he went to the location and saw the deceased lying in a supine position while A1, A2, and A3 were kneading a GI pipe into his thighs, causing excruciating pain, which portion was marked as Ext.P20(c). He denied having identified the bench where the injuries were allegedly inflicted on the deceased, which portion was marked as Ext.P20(f). PW21 stated that apart from having written the FIR in his own handwriting, he had no further involvement in the case.

44.3. While being examined as PW18 in S.C. No. 1542 of 2006, Sheeja Kumari deposed that she was on guard duty at Fort Police Station on the date of the incident and was assigned duty from 10:00 p.m. to 12:00 midnight. At the time she took charge of guard duty, she observed that Udayakumar (the deceased) was inside the lock-up, and Sureshkumar was standing outside the lock-up. PW18 confirmed that PW5 was the General Diary (GD) Charge Officer during this time. She further stated that PW5 had asked the deceased whether he wanted food, but the deceased did not respond. Concerned by the lack of



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response, PW5 looked inside the lock-up, found the deceased to be unwell, and consequently arranged for him to be taken to the hospital.

45. PW21, Rajani, was a Police Constable at the Fort Police Station in 2005. She deposed that she first saw Udayakumar at about 2:30 p.m. He was brought to the station by A1 and A2, along with Suresh. After some time, A1 and A2 took Udayakumar to the CI's office. At that time, SI Ajithkumar was not present in the station. The SI came back at about 3:30 p.m., about 1½ hours later, Udayakumar was brought back by A1 and A2. He was being held by them, and was put inside the lock-up. Thereafter, Suresh was also taken to the CI's office by A1 and A2 and was brought back after some time. In the evening, Udayakumar asked for water, and she gave him a bottle to drink. At about 7:30 p.m., she went for dinner and returned by 9:30 p.m. At that time, she saw the GD officer asking Udayakumar whether he wanted food, but he did not respond. Just before she went for dinner, at about 7:30 p.m., CI Sabu had arrived at the station and was seen talking to PW16 (Sajitha). At about 10:00–10:30 p.m., since Udayakumar was unwell and not responding, he was taken to the hospital by PW3 Vijayakumar and Surendran. Later, she received information that he had been admitted to the Medical College Hospital, where he passed away around midnight. She further deposed that the duty notebooks of the Police Officers



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were collected by PW5 Thankamani, on the instructions of the SI and CI. She stated that both the SI and CI directed her to state that Udayakumar and Sureshkumar were brought to the station only at 8:00 p.m. and that a crime was registered accordingly. She admitted that she had accordingly given such a statement to the CBCID Investigating Officer. However, after the investigation was taken over by the CBI, she gave a statement under Section 164 of the Cr.P.C on 21.08.2009 before the Magistrate, Thiruvananthapuram.

Approvers evidence:

46. Before carrying out an exercise of evaluation of the evidence tendered by the above witnesses, all except one are approvers, the broad principles with regard to an accomplice and approver and the matter of appreciation of their evidence need to be borne in mind.

46.1. Section 133 of the Evidence Act, 1872 declares that an accomplice is a competent witness and further that a conviction based on the uncorroborated testimony of an accomplice is not illegal only on account of it being so. Section 133 reads as follows:

"133. Accomplice.—An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an



accomplice.”

46.2. Under Section 114 of the Evidence Act, Illustration (b), the court may presume:

“(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars.”

46.3. In **Sarwan Singh v. State of Punjab**²⁸, the dichotomy between Section 133 and Section 114(b) was lucidly explained by a Three Judge Bench of the Supreme Court through the words of Gajendragadkar J; as follows:

“7. ... On behalf of Harbans Singh, it has been urged before us by Mr Kohli that the judgment of the High Court of Punjab suffers from a serious infirmity in that, in dealing with the evidence of the approver, the learned Judges do not appear to have addressed themselves to the preliminary question as to whether the approver is a reliable witness or not. The problem posed by the evidence given by an approver has been considered by the Privy Council and courts in India on several occasions. It is hardly necessary to deal at length with the true legal position in this matter. An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious stain in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by

²⁸ [AIR 1957 SC 637]



other independent evidence. It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true. But it must never be forgotten that before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver. ..(emphasis supplied by us)

46.4. In **Haroon Haji Abdulla v. State of Maharashtra**²⁹, the principles were further elaborated as under:

"8. ... The law as to accomplice evidence is well settled. The

²⁹ [AIR 1968 SC 832]



Evidence Act in Section 133 provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The effect of this provision is that the court trying an accused may legally convict him on the single evidence, of an accomplice. To this there is a rider in Illustration (b) to Section 114 of the Act which provides that the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence because an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that courts, before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice. In this way the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law."

46.5. **K. Hashim v. State of T.N**³⁰, the Apex Court had occasion to expatiate further on the manner and mode of appreciation of evidence tendered

³⁰ [(2005) 1 SCC 237]



by an approver, and it was observed as under:

38. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says:

“Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case; it would be merely confirmatory of other and independent testimony.” (Baskerville case [(1916) 2 KB 658])

39. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.

40. Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identification must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be



independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

"A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all.... It would not at all tend to show that the party-accused participated in it."

41. Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

42. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, "many crimes which are usually committed between accomplices in secret, such as incest, offences with females" (or unnatural offences) "could never be brought to justice". (See M.O. Shamsudhin v. State of Kerala [(1995) 3 SCC 351])



46.6. The principles that can be culled from the oft-quoted judgments above are as follows:

- a) An accomplice is one who has participated in the commission of the crime.
- b) The very fact that he has participated in the commission of the offence introduces a serious stain in his evidence
- c) It is possible that the approver may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true.
- c) Courts would be reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence despite the fact that an accomplice is a competent witness under the Indian Evidence Act.
- d) It cannot be expected that such independent corroboration should cover the whole of the prosecution story or even all the material particulars, as such an insistence would make evidence of the



accomplice wholly superfluous.

- e) At the same time, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details, because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.
- f) The approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness, and that is a test which is common to all witnesses. If this test is satisfied, the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence, like that of the approver. In other words, before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to be considered is whether, even as an accomplice, the approver is a reliable witness. If the answer to this question is against the approver, then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered.



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46.7. In the light of the law above, we shall evaluate the evidence of the witnesses who are all approvers to come to a conclusion whether the same can be relied upon to arrive at a finding of guilt.

47. PW1 was an injured witness taken into custody along with the deceased, Udayakumar. In the first trial (S.C.No. 1542 of 2006), he did not support the prosecution and made no allegations of police assault. After the CBI assumed the investigation, PW1 was arraigned as an accused and thereafter tendered pardon, thereby becoming an approver. However, PW1 cannot be treated as an accomplice, for that term, in law, refers only to a person who knowingly or voluntarily co-operates with, or aids another in, the commission of a crime. The expression encompasses principals in the first and second degree, as well as accessories after the fact, subject to three well-established conditions: (i) the felony must have been completed, (ii) the accessory must have knowledge that the principal committed the felony, and (iii) the accessory must harbour or assist the principal felon. PW1, though projected as the star witness of the prosecution, cannot be deemed an accomplice merely because he failed to support the prosecution in the earlier proceedings. He neither participated in the murder nor rendered any assistance to the perpetrators. Fundamentally, therefore, PW1 did not qualify as an accomplice in law, and the very basis for



treating him as an approver was legally unsound. Further, PW1's testimony is fraught with contradictions. In one version, he alleged that Udayakumar had been returned to the Station in a battered condition, yet in another, he refused to identify any officer as responsible and reiterated that the accused officers had not assaulted him. He also alleged that the CBI coerced and tutored him, showed him photographs prior to the Test Identification Parade, and compelled him to make involuntary statements under Section 164 of the Cr.P.C. These assertions cast a serious shadow over the voluntariness of his testimony. Despite legal evidence adduced before court, this Court will not be justified in relying on his earlier statement before the Magistrate and marked as Ext.P9 which was profusely relied upon by the learned Sessions Judge. The same is not substantive evidence.

48. PW3 deposed that he was on duty at the Police Station on the relevant date, and although he admitted to the deteriorating health of Udayakumar and his eventual removal to the hospital, he did not implicate any of the accused officers in inflicting injuries. As he did not support the prosecution on the essential issue of police assault and he was declared hostile. His evidence, even if those acceptable portions are considered as such, provides only background circumstances of custody and hospitalisation, without connecting any



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accused to acts of torture.

49. PW5 initially deposed in S.C.No. 1542 of 2006 that the deceased and PW1 were brought to the Station around 8:00 p.m. and that he had no occasion to witness the assault. However, after the CBI took over, he admitted to having made false entries in the General Diary under pressure from superior officers and narrated that the FIR was fabricated and back-dated. He also identified several accused as being involved in directing such falsification. However, the fact remains that he was the officer who was present in the Police Station from the moment Udayakumar was brought in. It was after turning himself into an approver that he had confessed to falsifying official records. Another problem with his evidence is that he does not admit that he has committed any crime and places the burden on the senior officers. His shift from exonerating testimony to incriminating deposition was after he was arraigned as an accused and thereafter tendered pardon. He admitted in cross-examination that he was fearful that he would be arraigned as an accused by the CBI after the investigation was taken over by them. It is clear as daylight that he was persuaded by the urge of extricating himself from being tried as an accused in this case. Moreover, the court has to rely on the evidence of the other approvers to obtain corroboration of the evidence of PW5.



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50. PW15 was examined as PW11 in S.C.No. 1542 of 2006 and did not support the case of the prosecution. The learned Sessions Judge, after evaluating the evidence, came to the conclusion that he is to be added as an accused and Section 319 of the Cr.P.C was invoked. The same was challenged before this Court and the said order was confirmed, and his appeal before the Apex Court was also rejected. After the investigation was taken over by the CBI, he was arrested and remanded. After spending over three weeks in custody, his statement was initially recorded under Section 164 of the Cr.P.C. where he stated a different version. According to him, he was forced by his superiors to speak as per the Police Station records when he was earlier examined as a witness in the Fast Track Court. An application was filed under Section 306 of the Cr.P.C. before the learned CJM, Ernakulam and was tendered pardon. He deposed that the FIR (Crime No. 703 of 2005) was in fact registered only around 3:30–4:00 a.m. on 28.09.2005, though shown as 8:00 p.m. on 27.09.2005, and admitted to make false GD entries, custody memos, and arrest documents under pressure from senior officers. The fact remains that he was being added as an accused by the learned Sessions Judge in S.C. No. 1542 of 2006 in the course of trial. Only the Sessions Court could have entertained the application for tendering pardon in view of the law laid down in **Devendran** (supra). Furthermore, PW15 had



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candidly admitted that he was in prolonged custody, and he had aligned his evidence with the prosecution in order to escape from being roped in as an accused. We are therefore unable to rely on the evidence of PW15 as a reliable piece of evidence to support the case of the prosecution.

51. PW16 initially deposed in tune with the police records in the first trial and did not connect the accused to any torture. Later, when arraigned as an accused and tendered pardon, she shifted her stance to say that A1 and A2 brought Udayakumar to the Station around 4:30 p.m., that he complained of leg pain, asked for water, and that her notebook contained false entries made at the direction of superiors. She admitted fear of being arraigned as an accused and confessed to making false entries. The corroboration for her later incriminating version again comes only from other approvers, not from independent evidence. Under **Haroon Haji Abdulla** (supra), such tainted inter se corroboration is insufficient.

52. PW17 also followed a similar trajectory as PW16. Initially, her evidence did not connect the accused with the crime. Subsequently, after her arrest and pardon, she deposed that A1 and A2 brought Udayakumar at 2:15 p.m. and later returned him in a weakened condition, and that she was forced to



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make false notebook entries under the CI's instructions. She admitted that in the first trial she had deposed in conformity with records after meeting the Public Prosecutor. She further admitted that her incriminating version emerged only after CBI's intervention and her own pardon. Such shifting positions and confessed falsifications destroy the intrinsic reliability of her testimony.

53. PW18 initially, when examined in S.C.No.1542 of 2006, downplayed his role and denied knowledge of any assault, admitting only to writing the FIR at Raveendran's request. Later, after arrest and pardon, he stated that the FIR was actually written around 4:00 a.m. on 28.09.2005 but falsely dated 27.09.2005 at 8:00 p.m. He narrated in detail the presence of senior officers, and they had ordered the fabrication of the records. This witness, too, is discredited by his own contradictory accounts and by the circumstances of his pardon following custodial pressure. He also stated that he was arrested and remanded and it was after several days that his application for tendering of pardon was considered and he was made an approver. His evidence is tainted and cannot be acted upon without independent corroboration.

54. Yet another disconcerting aspect that is borne out from the evidence of the prime witnesses above who were all examined as approvers will



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be evident from the chart below.

Name of witness	SC 1542/2006	Arrested by the CBI	164 statement recorded	Application under Section 306 before CJM EKM	Tender of pardon	Bail granted	Examined in Court as PW on in 917/2012 before CBI Court Thiruvananthapuram
Suresh Kumar	Examined as PW1 on 3/07/2007 before the Additional Sessions Judge Thiruvananthapuram Recalled on 14.09.2015 before Special Judge CBI	Arrested in RC 10/07 on 18.9.2010 (Ext. P165)	In Crime 703/2005,Before JFCM Thiruvananthapuram, on 20.10.2005 Ext.P43	18.09.2010 Ext.P 172	11.10.2010 Ext.P. 172(a)	18.09.2010	Examined as PW1 on 21/06/2017
			In Crime 703/2005,Before JFCM V Thiruvananthapuram, on 28.08.09 Ext.P44				
			In Crime 703/2005, before JFCM V on 28/09/2005 Ext.P9				
Thankamani	Examined as PW5 on 5/07/2007 before the Additional Sessions Judge Thiruvananthapuram	In RC 5 18.08.2010 (Ext P200)	In RC 5, before JFCM Thiruvananthapuram, on 29/08/2009 Ext. P 5		In RC 5 30.09.2010 Ext.P.195	18.8.2010 Ext.P200	Examined as PW5 on 24/06/2017
		In RC 10 18.09.2010 (Ext.P160)	In RC 10, before JFCM Thiruvananthapuram, on 26/08/2009 Ext. P 8	In RC 10 18.09.2010 Ext. 172	In RC 10 11.10.2010 Ext. 172(a)		
Raveendran Nair	Examined as PW 11 on 6/07/2007 before the Additional Sessions Judge Thiruvananthapuram	In RC 5 18.05.2009 (Ext. P183)	JFCM II Kochi 2/06/2009 Ext.P.29	In RC 5 19.08.2010 Ext.P190	In RC 5 28.09.2010 Ext.P194	18.09.2010	Examined as PW15 on 16/11/2017
		In RC 10 18.09.2010 (Ext. P158)		In RC 10 18.09.2010 Ext. P167	In RC 10 18.09.2010 Ext.P166		



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Sajitha	Examined as PW 19 on 10/07/2007 before the Additional Sessions Judge Thiruvananthapuram	In RC 5 18.08.2010 (Ext. 203)	For Crime 703/2005 Before JFCM V Thiruvananthapuram on 25/08/2009 Ext.P 32		In RC 5 30.09.2010 Ext.P 197	18.8.2010 Ext.204	Examined as PW 16 on 8/11/2017
		In RC 10 18.09.2010 (Ext. 162)	For Crime 704/2005 Before JFCM V Thiruvananthapuram on 21/08/2009 Ext.P 33	In RC 10 30.09.2010 (Ext. P34)	In RC 10 11.10.2010 Ext.P 170(a)		
Sheeja Kumari	Examined as PW 18 on 10/07/2007 before the Additional Sessions Judge Thiruvananthapuram	In RC 5 18.08.2010 (Ext.P 203)	For Crime 703/2005 Before JFCM V Thiruvananthapuram on 27/08/2009 Ext.P 36		In RC 5 30.09.2010 Ext 196	18.8.2010 Ext.P200	Examined as PW 17 on 10/11/2017
		In RC 10 18.09.2010 (Ext.163)	For Crime 704/2005 Before JFCM V Thiruvananthapuram on 22/08/2009 Ext.P37	In RC 10 19.08.2010 (Ext.169)	In RC 10 11.10.2010 Ext 169(a)		
Heeralal	Examined as PW 21 on 10/07/2007 before the Additional Sessions Judge Thiruvananthapuram	In RC 10/2007 On 18.5.2009 (Ext. P182)	In RC 10, before JFCM Thiruvananthapuram On 29/05/2009 Ext. P 39 (After 306 CrPC)		In RC 5 On 28.09.2010 Ext.P40	18.09.2010	Examined as PW18 on 14/11/2017
				In RC 10 On 18.09.2010 Ext.P 171	In RC 10 On 11/10/2010 Ext.P 171(a)		



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55. After having been examined as prosecution witnesses and their evidence recorded in the earlier trial in S.C.No.1542 of 2006, they were subsequently re-arrested after several years, and their statements were recorded under Section 164 of the Cr.P.C. Immediately thereafter, an application was filed seeking the tender of pardon, pursuant to which they were again examined in Court. At that stage, all of them were apparently made aware of the mandate of Section 308 of the Cr.P.C., which provides that where a person who has accepted a tender of pardon under Section 306 or Section 307 fails to comply with the condition on which the pardon was granted, the person concerned may be tried for the offence in respect of which the pardon was tendered, or for any other offence connected with the same matter, in addition to the offence of giving false evidence. From the evidence, it can be seen that all the approvers had expressly stated that they acted under fear of being arraigned as accused by the CBI.

56. Then all that remains is the evidence of PW21 Rajani. She stated that Udayakumar was brought to the station by A1 and A2 at about 2:30 p.m., along with Suresh, that they took him to the CI's office and about 1½ hours later, he was brought back. In the evening, Udayakumar asked for water, and she gave him a bottle to drink. At about 7:30 p.m., she went for dinner and returned by 9:30 p.m. At that time, she saw the GD officer asking Udayakumar whether



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he wanted food, but he did not respond. At about 10:00–10:30 p.m., since Udayakumar was unwell and not responding, he was taken to the hospital by PW3 Vijayakumar and Surendran. Later, she received information that he had been admitted to the Medical College Hospital, where he passed away around midnight. She further deposed that the duty notebooks of the police officers were collected by PW5 (Thankamani), on the instructions of the SI and CI. She stated that both the SI and CI directed her to state that Udayakumar and Sureshkumar were brought to the station only at 8:00 p.m. and that a crime was registered accordingly. This evidence by itself cannot be the sole basis for conviction.

57. Our conclusion:

In view of the above discussion, we conclude that:

- (i) Where further investigation was ordered in a case which was already committed to the Court of Session and Trial had commenced, the procedure adopted by the CBI in conducting investigation in variance to the direction issued by this Court in **Prabhavathiamma** (supra), **Central Bureau of Investigation** (supra), **Vinay Tyagi** (supra) and **Dharampal** (supra) and in filing final report before a Magistrate having



no jurisdiction has resulted in serious failure of justice and has violated the rights of the accused to have a fair trial flowing from Article 21 of the Constitution of India.

- ii) PW1, who was an eyewitness to the occurrence, was improperly branded as an accomplice and turned into an approver, contrary to well-established tenets of law.
- iii) The evidence of all witnesses had already been recorded in S.C. No. 1542 of 2006, and such evidence ought to have been duly considered by the learned Sessions Judge while assessing the reliability of their testimony as an approver. Despite the specific directions issued by this Hon'ble Court as to the manner in which the trial was to proceed and the evidence to be appreciated, those binding directions were disregarded, and the earlier evidence was not taken into account.
- iv) The procedure adopted by the CBI in seeking the tender of pardon, in a case which had already been committed and trial was pending, by filing an application before the Chief Judicial Magistrate, is ex facie illegal, being in violation of the mandatory provisions of Sections 306 and 307 of the Cr.P.C., as well as the binding precedent laid down in



Devendran (supra). The evidence of PW1, 5, 15, 16, 17 and 18 cannot therefore be relied upon to aid the case of the prosecution.

- v) Even otherwise, the testimony tendered by the approvers, when evaluated in the light of the evidence already adduced in S.C. No.1542 of 2006, is wholly unreliable and cannot be made the foundation of conviction.
- vi) PW15 (Raveendran), who was initially examined as PW11 before the Additional Sessions Court (Fast Track -III), Thiruvananthapuram and was later added as an accused under Section 319 of the Cr.P.C., and was made an approver by way of an application under Section 306 of the Cr.P.C. before the learned Magistrate. Such an application could only have been entertained and decided by the Fast Track Court. The adoption of a contrary procedure is not a mere curable irregularity, but a fundamental illegality, as categorically held in **Devendran** (supra).
- vii) The high-handed and wholly illegal procedure adopted by the CBI, of converting an eyewitness, who had no real connection with the incident, into an approver; of indiscriminately arraying all witnesses and coercing them at gunpoint into becoming approvers; of extracting their



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assent on the condition that they parrot the CBI's version of events; of filing applications for tender of pardon before a Court lacking jurisdiction to entertain the same; and of laying a supplementary report before a Court equally devoid of jurisdiction, amounts to nothing short of a tainted and vitiated investigation.

58. In a criminal trial involving a serious offence of a brutal nature, the court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the court that its case has been proved beyond reasonable doubt.

59. There are major contradictions in the testimonies of the prosecution witnesses, most of whom are approvers, accompanied by glaring investigative defects. It cannot be said that the prosecution has established the charge beyond reasonable doubt. At the cost of repetition we may state that the standard of proof is an absolutely strict requirement and cannot be tinkered with. We are compelled to hold that a flawed and tainted investigation has eventually



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led to the failure of the prosecution case involving the gruesome death of Udayakumar. The evidence adduced before the Court, if shorn of its taint and illegalities, is not sufficient to hold the accused guilty of the offence. The findings recorded in the impugned judgment holding the appellants guilty of charges framed against them are based on conjectures and surmises and hence, the same is unsustainable under law.

60. Before parting, we would like to reiterate the words of the Apex Court in **Ashish Batham v. State Of M.P**³¹ wherein it was observed that realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and unless the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise. We cannot merely be carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should

³¹ [2002 AIR SC 3206]



constantly remember that there is a long mental distance between “may be true” and “must be true” and this basic and golden rule only helps to maintain the vital distinction between “conjectures” and “sure conclusions” to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.

61. Therefore, given the facts and circumstances of the case and in the light of the above discussion, we cannot bring ourselves to hold the accused appellants guilty of the charged offence as their guilt has not been proved beyond a reasonable doubt.

62. **Resultantly:**

- a) CrI.A.No 940 of 2018, CrI.A.No. 959 of 2018, CrI.A.No. 965 of 2018 and CrI.A.No.1057 of 2018 are allowed.
- b) CrI.A.No.1132 of 2018 is closed as the appellant had expired during the pendency of the proceedings.
- c) We reject the request for confirmation of the death sentence and dismiss DSR.No.6 of 2018.
- d) The finding of guilt, conviction and sentence passed against accused Nos. 1, 4, 5, 6, are set aside.



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- e) The 1st accused shall be set at liberty if his continued detention is not required in connection with any other case.
- f) The appellants in Crl.A.No.940 of 2008, Crl.A.No.959 of 2018, Crl.A.No.965 of 2018, being on bail, their bail bonds will stand cancelled, and they are set at liberty.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

Sd/-

**K. V. JAYAKUMAR
JUDGE**

PS/APM/27.08.2025