



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2021

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE N.S.SANJAY GOWDA

WRIT PETITION No.51012/2019 (GM-RES)

C/W

WRIT PETITION Nos.52575/2019, 15828/2021, 16081/2021,
16088/2021 (GM-RES)

IN WP 51012/2019:

BETWEEN:

SRI BASAVARAJ SHIVAPPA MUTTAGI,
S/O SHIVAPPA MUTTAGI,
AGED ABOUT 37 YEARS,
R/O MANAGUNDI VILLAGE,
DHARWAD TALUK,
DHARWAD DIST. - 580 001.

...PETITIONER

(BY SRI SRIKANTH PATIL, ADVOCATE (PHYSICAL HEARING))

AND:

1 . STATE OF KARNATAKA,
THROUGH ADDL. CHIEF SECRETARY,

HOME DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU - 560 001.

- 2 . CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH,
NO.36, BELLARY ROAD,
GANGANAGAR,
BANGALORE - 560 032.

...RESPONDENTS

(BY SRI PRABHULING K NAVADGI, ADVOCATE GENERAL
ALONGWITH SRI H.R. SHOWRI, HCGP FOR R1 (PHYSICAL
HEARING)
SRI S.V. RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA
ALONGWITH SRI P. PRASANNA KUMAR, ADVOCATE FOR R2;
(VIDEO CONFERENCING)
SRI VIVEK S REDDY SENIOR COUNSEL FOR
SRI DEEPAK SHETTY, ADVOCATE FOR IMPEADING RESPONDENT
ON IA 1/2021 (PHYSICAL HEARING)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER
DATED 06.09.2019, PASSED BY THE R-1, ACCORDING SANCTION
TO THE CENTRAL BUREAU OF INVESTIGATION, TO CONDUCT
FURTHER INVESTIGATION WITH RESPECT TO CRIME NO.135/2016,
REGISTERED WITH THE DHARWAD SUB-URBAN POLICE STATION,
DHARWAD, VIDE ANNEXURE-A AND QUASH THE FIR DATED
24.09.2019 VIDE ANNEXURE-B.

IN WP 52575/2019:

BETWEEN:

MR. VINAYAK,
S/O SRI BASAVARAJA KATAGI,
AGED ABOUT 37 YEARS,
R/O DHARWAD BASAPPA CHOWK,

KURUBARA ONI,
DHARWAD-580029.

...PETITIONER

(BY SRI C.H. JADHAV, SENIOR COUNSEL FOR
SRI SHIVAYOGESH, ADVOCATE (VIDEO CONFERENCING))

AND:

- 1 . STATE OF KARNATAKA,
THROUGH ADDL. CHIEF SECRETARY,
HOME DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU - 560 001.
- 2 . CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH,
NO.36, BELLARY ROAD,
GANGANAGAR,
BANGALORE - 560 032.
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
BANGALORE-560001.

...RESPONDENTS

(BY SRI PRABHULING K NAVADGI, ADVOCATE GENERAL
ALONGWITH SRI H.R. SHOWRI, HCGP FOR R1 (PHYSICAL
HEARING)
SRI S.V. RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA
ALONGWITH SRI P. PRASANNA KUMAR, ADVOCATE FOR R2 (VIDEO
CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER
DATED 06.09.2019, PASSED BY THE R-1, ACCORDING SANCTION
TO THE CENTRAL BUREAU OF INVESTIGATION, TO CONDUCT

FURTHER INVESTIGATION WITH RESPECT TO CRIME NO.135/2016,
REGISTERED WITH THE DHARWAD SUB-URBAN POLICE STATION,
DHARWAD, VIDE ANNEXURE-A AND QUASH THE FIR DATED
24.09.2019 VIDE ANNEXURE- B.

IN WP 15828/2021:

BETWEEN:

VINAY KULKARNI,
S/O RAJSHEKARAPPA KULKARNI,
AGED ABOUT 52 YEARS,
R/AT NAYAKNUR, NAVALGUND TALUQ,
DHARWAD DISTRICT-580002.

...PETITIONER

(BY SRI MUKUL ROHTAGI, SENIOR COUNSEL FOR
SRI GIRISH GANAPATHRAO NILEGAR. ADVOCATE(VIDEO
CONFERENCING)

AND:

- 1 . STATE OF KARNATAKA,
THROUGH IT'S SECRETARY MINISTRY
OF HOME AFFAIRS, ,
VIDHANA SOUDHA,
BENGALURU - 560 001.
- 2 . CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH,
THROUGH ITS DIRECTOR,
NO.36, BELLARY ROAD,
GANGANAGAR,
BANGALORE - 560 032.

...RESPONDENTS

(BY SRI TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA
ALONGWITH SRI H.R. SHOWRI, HCGP FOR R1;(VIDEO
CONFERENCING)
SRI S.V. RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA
ALONGWITH SRI P. PRASANNA KUMAR, ADVOCATE FOR R2(VIDEO
CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED ORDER DATED 06.09.2019 BEARING NO. HD 48 PCB
2016, ENTRUSTING THE MATTER TO THE 2ND RESPONDENT,
UNDER SECTION 6 OF DELHI SPECIAL POLICE ESTABLISHMENT
ACT 1946, FOR FURTHER INVESTIGATION (ANNEXURE - A) AS
VOID AND CONSEQUENTLY AND QUASH THE FIR (RE-REGISTERED)
BY THE 2ND RESPONDENT DATED 24.09.2019 BEARING NO. RC
17(S)/2019/CBI/ACB/BLR AT ANNEXURE - H.

IN WP 16081/2021:

BETWEEN:

SHRI SOMASHEKAR,
S/O BASAPPA NYAMAGOUDA
AGED 53 YEARS,
OCC. GOVERNMENT SERVANT
(NOW UNDER SUSPENSION)
R/AT NO. KADAKOL VILLAGE AND POST,
JAMAKHANDI TALUK,
BAGALKOT - 587 119.

...PETITIONER

(BY SRI S.M. CHANDRASHEKAR, SENIOR COUNSEL FOR
SRI SHIVAPRASAD SHANTANAGOUDAR, ADVOCATE (PHYSICAL
HEARING)

AND:

- 1 . THE STATE OF KARNATAKA
DEPARTMENT OF HOME AFFAIRS
STATE OF KARNATAKA
VIDHAN SOUDHA
BENGALURU - 560 001
REPRESENTED BY ITS HOME SECRETARY.
- 2 . THE CENTRAL BUREAU OF INVESTIGATION
ATNI CORRUPTION BRANCH
NO.16, BALLARI ROAD
GANGANAGAR, BENGALURU - 560 032.
REPRESENTED BY ITS DIRECTOR

...RESPONDENTS

(BY SRI PRABHULING K. NAVADGI, ADVOCATE GENERAL
ALONGWITH SRI H.R. SHOWRI, HCGP FOR R1 (PHYSICAL
HEARING)
SRI S.V. RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA
ALONGWITH SRI P. PRASANNA KUMAR, ADVOCATE FOR R2(VIDEO
CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER
DATED 06.09.2019 PASSED BY R1 PRODUCED AT ANNEXURE-G
AND CONSEQUENTLY, QUASH THE FIRST INFORMATION REPORT
(RE-REGISTERED) BEARING NO.RC.17(S)/2019 DATED 24.09.2019
REGISTERED BY R2 AT ANNEXURE-H AND ORDER ON REMAND
APPLICATION DATED 08.07.2021 WHEREIN THE PETITIONER IS
ARRAIGNED AS ACCUSED NO.21 PRODUCED AT ANNEXURE-K IN
SO FAR AS THE PETITIONER IS CONCERNED FOR THE OFFENCES
PUNISHABLE U/S 120B, 302, 201, 143, 147, 148 R/W SECTION 149

OF IPC AND ALL PENDING AND FURTHER PROCEEDINGS PURSUANT
THERETO.

IN WP 16088/2021:

BETWEEN:

SRI CHANDRASHEKAR INDI,
S/O SHARANABASAPPA INDI,
AGED ABOUT 60 YEARS,
OCC: AGRICULTURE AND BUSINESS,
R/O NO.27, SHANKESHWAR VILLA,
II CROSS, ATHANI ROAD,
VIJAYAPURA, KARNATAKA -586103.
(NOW ON BAIL)

...PETITIONER

(BY DR. ASHWANI KUMAR, SENIOR COUNSEL FOR
SRI CHANDRAMOULI H. S., ADVOCATE(VIDEO CONFERENCING))

AND:

- 1 . THE STATE OF KARNATAKA
THROUGH THE
ADDL. CHIEF SECRETARY
HOME DEPT.
VIDHANA SOUDHA,
BENGALURU-560001.
- 2 . THE CENTRAL BUREAU OF INVESTIGATION
ANTI CORRUPTION BRANCH
NO.36, BELLARY ROAD,
GANGANAGAR,
BENGALURU-560032.

REPRESENTED BY THE
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560001

3 . THE STATE OF KARNATAKA
BY DHARWAD SUB URBAN P S
REP BY
THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNTAKA
BENGALURU-560001

...RESPONDENTS

(BY SRI PRABHULING K. NAVADGI, ADVOCATE GENERAL
ALONGWITH SRI H.R. SHOWRI, HCGP FOR R1;(PHYSICAL
HEARING)
SRI S.V. RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA
ALONGWITH SRI P. PRASANNA KUMAR, ADVOCATE FOR R2 (VIDEO
CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
SANCTION ORDER DATED 06.09.2019 IN ANNEXURE-F BEARING
NO.HD 48 PCB 2016 ACCORDING SANCTION TO CBI TO CONDUCT
FURTHER INVESTIGATION AND TO QUASH THE FIR BEARING NO.
RC 17(S)/2019/CBI/ACB/BLR REGISTERED BY R-2 QUA THE
PETITIONER AND ALL THE CONSEQUENT PROCEEDINGS ARISING
THERE FROM.

THESE WRIT PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF
ORDER THIS DAY, **B.VEERAPPA J.**, PASSED THE FOLLOWING:

ORDER

(i) Writ Petition No.51012/2019 is filed by Accused No.1 - Basavaraj Shivappa Muttagi;

(ii) Writ Petition No.52575/2019 is filed by Accused No. 5 - Vinayak;

(iii) Writ Petition No.15828/21 is filed by Accused No.15 - Vinay Kulkarni;

(iv) Writ Petition No.16088/21 is filed by Accused No.16 - Chandrashekar Indi; and

(v) Writ Petition No.16081/21 is filed by Accused No.21 - Somashekar.

I - Facts of the case

2. This is a classic case where the political parties and the Police authorities have tried to misuse their power to bury the truth in respect of an unnatural death of one Yogishgouda goudar.

3. These writ petitions are filed by the accused persons stated *supra* under Articles 226 and 227 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, praying for a

writ in the nature of certiorari to quash the Government Order dated 6.9.2019 made in HD 48 PCB 2016 as per Annexure-A, according sanction to the Central Bureau of Investigation ('**CBI**' for short), under Section - 6 of Delhi Special Police Establishment Act, 1946, to conduct further investigation with respect to Crime No.135/2016, registered with the Dharwad Sub-Urban Police Station, Dharwad for the offence punishable under Section 302 of IPC and writ in the nature of certiorari to quash the FIR dated 24.6.2019 bearing No.RC 17(S)/2019/CBI/ACB/BLR as per Annexure - B.

4. The genesis of the present case lies in FIR bearing No.135/2016, which came to be registered with the Dharwad Sub-Urban Police Station in pursuance to an information dated 15.6.2016, preferred by one Smt. Mallavva w/o Yogishgouda Goudar, wherein it was alleged that her husband i.e., deceased was actually involved in politics and due to his political activities, the deceased Yogishgouda Goudar had prior to 2 days from the date of incident, received an anonymous letter threatening him that, he would be murdered just like his elder brother - late Sri Udaygoud

Gowdar. It is further alleged that the deceased Yogishgouda Goudar had around 25 criminal cases pending in five Police Stations, which includes six murder cases. Further, he is also listed as 'Rowdy' in Dharwad Rural and other Police Stations and there were 12 criminal cases in Dharwad Rural Police Station, 6 criminal cases in Navalgund Police Station, one criminal case in Garaga Police Station, 2 criminal cases in Dharwad New Town Police Station and four criminal cases in Dharwad City Police Station for various offences registered against him.

5. It was further alleged that the deceased Yogishgouda Goudar had ignored threatening letter and had been going on with his day to day affairs, which included attending Gym at 7.30 am in the morning. It was further alleged that on 15.6.2016, when the deceased Yogishgouda Goudar, had proceeded to Gym, and when he was about to enter the Gym, some unknown persons had assaulted him with weapons and caused his death. On such allegation, the Dharwad Sub-Urban Police had registered the information dated 15.6.2016, as FIR No.135/2016 against unknown persons for the offence punishable under Section 302 of IPC. After

investigation, the Police filed the charge sheet against six accused persons for the offences punishable under Sections 143, 147, 148, 120B, 302, 201 r/w Section 149 of IPC and advanced the prosecution theory that, the petitioners/accused persons and the deceased Yogishgouda Goudar, were known to each other and were politically connected from rival parties. It was further alleged by the police that, the Accused No.1 (petitioner in W.P. No.51012/2019) had entered into an agreement to purchase the lands to an extent of 25 acres 08 guntas in Belligatti village. It was further alleged that, at that time, the deceased had interfered and threatened the Accused No.1 that, in the event of him purchasing the said lands, he would kill the Accused No.1. It was further alleged that on such premise, the Accused No.1 had entered into a conspiracy with Accused Nos.2 to 6 and on 15.6.2016, with a premeditated intention to kill the deceased, had alongwith Accused Nos.2 to 6 assaulted the deceased near the Gym and caused the death of the deceased.

6. It is further contended that subsequent to the filing of the final report by the jurisdictional Police, the mother of the deceased

i.e. Tungamma and brother of the deceased i.e. Gurunath Gouda, had filed W.P. No.58183-184/2017 before High Court of Karnataka, Dharwad Bench seeking writ of mandamus directing the investigation in respect of the information dated 15.6.2016, registered as FIR No.135/2016, with Dharwad Sub-Urban Police to be transferred and conducted by CBI. Such a prayer was sought for on the premise that, the jurisdictional Police had not conducted a fair and impartial investigation and hence the resultant final report was also defective and therefore further investigation into the said matter was necessary by an independent agency like CBI. The learned Single Judge of High Court of Karnataka, Dharwad Bench on consideration of the writ petition, was pleased to dismiss the same by the order dated 1.3.2019 and recorded a finding that mother of the deceased i.e., Tungamma and the brother of the deceased i.e., GurunathGouda, had not made out any grounds to refer the matter to CBI. Being aggrieved by the order dated 1.3.2019 passed in the writ petition, SLP (Crl) Nos.5760-61/2019 was filed by the mother and brother of the deceased before the Hon'ble Supreme Court and the same was dismissed by the order

dated 22.7.2019. Thus, the order dated 1.3.2019 passed in the writ petition has reached finality.

7. In the meanwhile, the said matter in FIR 135/2016, wherein, the final report was filed by the jurisdictional Police, had been committed to the Court of IV Additional District & Sessions Judge, Dharwad and was renumbered as S.C. No.50/2017 and 63 prosecution witnesses were examined (including the brother of the deceased i.e., GurunathGouda) and the statements of the accused persons under 313 of the Code of Criminal Procedure were recorded and the matter was at the stage of arguments on behalf of the accused. It is further contended that the brother of the deceased i.e., GurunathGouda, had filed an application under Section 319 of the Code of Criminal Procedure, seeking to include one Mr. Vinay Kulkarni and Mr. Manjunath Basannavar, as additional accused in the said case bearing S.C. No. 50/2017, pending on the file of the IV Addl. District & Sessions Judge, Dharwad. The learned Sessions Judge on consideration of the said application, has dismissed the same by the order dated 26.8.2019 and said order has reached finality.

8. It is further contended that when the situation was thus, the respondent - State in utter disregard to the mandate laid down by the Hon'ble Supreme Court in the case of **Vinay Tyagi -vs- Irshad Ali and others** reported in (2013)5 SCC 762 and the legislative mandate as laid down under Section 173(8) of the Code of Criminal Procedure and with an intent to undo the dictum of this Court in Writ Petition Nos.58183-184/2017 and the Hon'ble Supreme Court in SLP (Crl.) NOs.5760-61/2019, has accorded sanction to the CBI under Section 6 of the Delhi Police Special Police Establishment Act, 1946 to conduct further investigation in Crime No.135/2016, registered with the Dharwad Sub-Urban Police Station. Thereafter, the 2nd respondent CBI without application of mind and in gross negligence of the mandate as laid down by the Hon'ble Supreme Court in the case of **T.T. Anthony -vs- State of Kerala and others** reported in (2001)6 SCC 181, went ahead and registered a separate FIR bearing No.RC.17(S)/19/CBI/ACB/BLR, and is now indulging in investigating the subject matter of S.C. No.50/2017, pending on the file of the IV Addl. District & Sessions Judge, Dharwad.

9. The Accused No.1 had earlier filed Writ Petition No.43770/2019 and Accused No.5 has preferred Writ Petition No. 50468/2019 challenging the very order dated 6.9.2019 passed by the 1st respondent - State Government, referring the matter to the 2nd respondent CBI. When the matters were pending and being heard, the 2nd respondent had registered the FIR on 24.9.2019 in RC.17(S)/2019/CBI/ACB/BLR. When the matters stood thus, in view of the subsequent developments and since no interim order was granted, the petitioner in Writ Petition No.51012/2019 (i.e., Accused No.1) and petitioner in Writ Petition No.52575/2019 (i.e., Accused No.5) had filed memos to withdraw Writ Petition Nos.43770/2019 and 50468/2019, with liberty to challenge the impugned order dated 6.9.2019 as well as the FIR dated 24.9.2019 and the said writ petitions came to be dismissed as withdrawn with liberty to file fresh petitions, comprehensively, challenging the order dated 6.9.2019. Accordingly, the present writ petitions are filed for the reliefs sought for.

II - Common statement of objections filed by the State in W.P. No.51012/2019 c/w W.P. No.52575/2019

10. The state filed common objections in W.P. No.51012/2019 c/w W.P. No.52575/2019. It is stated in the objections that the State Government received a representation from the brother of the deceased Yogishgouda Goudar dated 6.8.2019, wherein serious allegations were made regarding tainted investigation, threatening of the witnesses by the Police Officer, political interference including transfer of Public Prosecutor and grave concerns were expressed. After considering the said representation and the order passed by High Court of Karnataka, Dharwad Bench in Writ Petition Nos.58183-184/2017 dated 1.3.2019 and considering the legal position in the matter, Government of Karnataka has decided to refer further investigation in Crime No.135/2016 of Dharwad Sub-Urban Police Station to CBI vide Government Order dated 6.9.2019, in exercise of powers under Section 6 of Delhi Special Police Establishment Act, 1946. Assailing the said order, the petitioner in W.P. 51012/2019 (i.e., Accused No.1) has preferred a Writ Petition No.43770/2019 and the petitioner in W.P. No.52575/2019 (i.e., Accused No.5) has

preferred Writ Petition No.50468/2019. Since no interim order was granted, said writ petitions were withdrawn on 4.11.2019 and 25.11.2019 respectively. The present writ petitions were filed seeking the very same prayer of writ of certiorari to quash the Government Order dated 6.9.2019.

11. It is further contended that the petitioners in Writ Petition Nos.51012/2019 and 52575/2019 are Accused Nos.1 and 5 respectively in Crime No.135/2016 of Dharwad Sub-Urban Police Station. After investigation, the Police filed the charge sheet against six accused persons in C.C. No.964/2016 on the file of the Principal Civil Judge and Principal JMFC, Dharwad for having committed the offences punishable under Sections 143, 147, 148, 120B, 302, 201 r/w Section 149 of IPC. After committal to the Sessions Court, it was renumbered as S.C. No.50/2017 and presently pending before the Special Court (CCH-82), Bengaluru in Special Case No.565/2020.

12. It is further contended that the learned Single judge of this Court was pleased to pass an interim order dated 21.11.2019, thereby staying the operation of Annexures 'A' and 'B' to the Writ

Petition No.51012/019. Being aggrieved by the said order passed by this Court, both the respondents have approached the Hon'ble Supreme Court and 2nd respondent/CBI filed Special Leave Petition (Criminal) No.1348/2020 and the Government of Karnataka has filed Special Leave Petition (Criminal) No.2534/2020 and the Hon'ble Supreme Court by an order dated 20.2.2020 was pleased to pass an interim order staying the operation of the order dated 21.11.2019 passed by the learned Single Judge of this Court.

13. It is further contended that in view of the interim order passed by the Apex Court, the investigation was conducted by the CBI and new facts came to light and the CBI has filed two additional charge sheets with new materials and arraying additional accused persons and so far, there are 21 accused persons in the said case. In view of the investigation material and since the report brought on record, new and shocking facts of the case, the learned Special Judge has taken cognizance of the additional materials as well. It is further stated in the objections that in the course of further investigation by CBI, it has come to light that some of the Police officials including previous Investigating Officer, are also found to

be involved in the said case and they have also been arrayed as Accused Nos.19 and 20. After considering the charge sheet material, the Government of Karnataka has accorded sanction to prosecute the said two accused persons as well and the departmental enquiry has also been initiated against them by the sanction accorded as per Government Order dated 9.8.2021. In view of the above, much water has flowed since passing of the order dated 6.9.2019 by the State Government (Annexure-A) and that the Executive Order has now merged with the subsequent material that came into light in the course of further investigation and the judicial notice of the same has already been taken by the Special Judge. Hence, the Government Order dated 6.9.2019 at Annexure-A to the writ petition cannot be looked in isolation and has to be considered keeping all the subsequent developments in mind. Therefore, the writ petitions are liable to be dismissed.

14. The State Government further stated in the objections that the representation dated 6.8.2019 given by brother of the deceased contained detailed facts that have taken place, expressing serious concern regarding loopholes in the investigation and also

tampering with the witnesses by Police authorities and suspecting the political vengeance as a motive behind the murder and the interference of the former Minister in the murder and also in the investigation and administration of justice including transferring of the Public Prosecutor, handling the case in a surprising manner by making a special request to replace or transfer of Public Prosecutor with a specific request to post a particular Public Prosecutor. The letter contained several facts which had taken place subsequent to dismissal order passed by High Court of Karnataka, Dharwad Bench in Writ Petition Nos.58183-184/2017 dated 1.3.2019.

15. It is further stated in the objections that the letter *prima facie* throws light on the fact that everything is not right in the present investigation and investigation has not been conducted in a fair manner and on being satisfied on the requirements of handing over the further investigation at the hands of an independent agency like CBI and on ascertaining the legal position about power of the State to refer the matter to other agency for further investigation even in the light of the order passed by High Court of Karnataka, Dharwad Bench in W.P. NOs.58183-84/2017, the order

at Annexure-A to the writ petition is passed. There is no infirmity or illegality or irregularity in the order passed by the State Government as per Annexure-A. The new facts which have come to light subsequent to the orders impugned in the writ petitions would certainly justify the decision of the State to refer the matter for further investigation to CBI and most of the concern expressed in the representation dated 6.8.2019 turns out to be a genuine concern. Therefore, the order at Annexure-A needs to be upheld and the writ petitions are liable to be dismissed.

16. It is further contended that there are several facts, which had taken place subsequent to filing of the writ petitions and not brought to the notice of this Court and which were brought to the notice of the State Government in the representation dated 6.8.2019, such as

- (a) Transferring of the Public Prosecutor, who has conducted the case just before the recording of statement of accused under Section 313 of the Code of Criminal Procedure;

- (b) Replacing the said Public Prosecutor with another Public Prosecutor, who has not at all conducted the case properly and such transfer having taken place at the instance of the then District in-charge Minister;
- (c) A representation given in that regard by the victims of the crime to the Home Minister requesting him to continue the previous Public Prosecutor on 17.7.2019;
- (d) The witness CW.32/PW32, Mr. Nagendra Todkar, deposing before the Court that there was no land dispute with the deceased.
- (e) All these aspects raising serious suspicion about the involvement of the former Minister in deviating the investigation and the Police officials acting under the influence of the Minister has been reflected in the investigation alleged.

Considering all these aspects, and since the alleged involvement of the former Minister in the murder of the local body representative had also got media attention, the Government of Karnataka has exercised the power vested under Section - 6 of the Delhi Special

Police Establishment Act, 1946 and Section 173(8) of the Code of Criminal Procedure. The power of the State to consider right of the victims of crime to approach the State and seek their remedy, cannot be curtailed and as such the State passed the order as per Annexure - A. Further, the investigation is a prerogative of the Executive and further investigation under Section 173(8) of the Code of Criminal Procedure is a statutory right as held by the Apex Court time and again. It is further contended that brother of the deceased filed Criminal Appeal No.100046/2019 in the High Court of Karnataka, Dharwad Bench against the order dated 9.1.2019 passed by the Sessions Judge in S.C. No.50/2017 rejecting the application under section 195A of the Code of Criminal Procedure and the said Criminal Appeal has been allowed directing the Court below to consider the application afresh and dispose of same on merits, thereby the State Government was compelled to take a decision referring the matter for further investigation as per Annexure - A. In support of its contentions, State Government relied upon several judgments of the Hon'ble Supreme Court.

III - Objections filed by the CBI in W.P. No.51012/2019

17. The 2nd respondent/CBI filed objections in Writ Petition No.51012/2019, wherein it is stated that on the basis of the information given on 15.6.2016 by Smt. Mallava Goudr w/o deceased Yogishgouda Goudar, Crime No.135/2016 came to be registered against unknown persons in the Dharwad Sub-Urban Police Station, Dharwad for the offence punishable under Section 302 of IPC and after investigation, the Investigating Officer filed the charge sheet against six accused persons in C.C. No.964/2016 for having committed the offences under Sections 143, 147, 148, 120B, 302, 201 r/w Section 149 of IPC. The prosecution, in all examined 63 witnesses in S.C No.50/2017 on the file of the IV Addl. District & Sessions Judge, Dharwad. During the course of the trial, Smt. Thungamma, mother of the deceased and Sri Gurunatha Goudr, brother of the deceased filed Writ Petition Nos.58183-184/2017 with a prayer to hand over investigation of the above case to CBI and the said writ petition came to be rejected on 1.3.2019 reserving liberty to invoke the provisions of Section 319 of the Code of Criminal Procedure. After the said order

passed by this Court, the brother of the deceased viz., Mr. Gurunath Goudr examined in S.C. No.50/2017 as PW.58 (CW.19). During the course of his evidence, he has stated that the Police have not investigated the case properly and that one more car which was involved in the incident has been left out from the investigation and 60 footages around the place of incident have not been obtained by the State Police, and that his mother Mallava Goudr has given complaint to the Government in that regard. He has also deposed about the involvement of Police Officers of the rank of Dy.SP and a senior politician in the incident and during the said period, he has also given a complaint to the State of Karnataka requesting for handing over of the above case for investigation by the CBI. The said complaint given by Gurunath Goudr would clearly indicate the involvement of the Police officials of the rank of Dy.SP and other officials in the entire incident and in filing final report without proper investigation. Based on the said complaint of Gurunath Goudar, the State of Karnataka by exercising its powers under Section 6 of the DSPE Act, has passed the impugned order at Annexure-A.

18. It is further stated in the objections that a perusal of the said order would clearly indicate that the State Government after taking into account the position of law that the power to further investigate a criminal case under Sections 156 & 173(8) of the Code of Criminal Procedure is absolute right of the State and that the power under Section-6 of Delhi Special Police Establishment Act is an independent power of the State Government, was pleased to issue Government Order dated 6.9.2019 handing over investigation of the above case to the CBI. Accordingly, in accordance with the provisions of the CBI Manual, which mandates the CBI to re-register the FIRs of case transferred by other agencies as a regular case for administration and statistical purposes, the 2nd respondent re-registered the FIR as 17(S)/2019. As could be seen from the impugned order at Annexure-A dated 6.9.2019 passed by the State Government, it is clear that what was handed over to CBI is only further investigation of the case and as can be seen from the Memo filed by the CBI before the jurisdictional Court under Section 173(8) of the Code of Criminal Procedure, it was intimated to the jurisdictional Court about CBI conducting further investigation of the case. Therefore, the contention of the

petitioners that the 2nd respondent - CBI has registered 2nd FIR in respect of the same incident, is not correct.

19. It is further stated in the objections that as per clause 10.5 of the CBI Manual, in case of investigation being transferred to DSPE by local Police or any other law enforcement authority, the original First Information Report registered by them may be reproduced with all its details such as FIR number, date of registration, name of the police station, sections of law etc., Further, the Manual also clarifies that it must be remembered that it would not be treated as fresh FIR but a new number as per prevalent scheme of DSPE may be assigned for the purpose of maintaining uniformity in record keeping in CBI. Therefore, the FIR registered by the 2nd respondent/CBI does not amount to a second FIR for the same incident, but one registered for its administrative convenience and for statistical purpose.

20. It is further contended that in the judgment relied upon by the learned counsel for the petitioners in the case of **T.T. Anthony -vs- State of Kerala and others** reported in (2001)6 SCC 181, the Apex Court held that the Police authorities cannot

register multiple FIRs for the very same incident. The Apex Court in the said case was dealing with a scenario wherein the police authority had registered a 2nd FIR based on a subsequent information with regard to the same incident and sought to initiate fresh investigation. The said case relied upon by the petitioners, is not applicable to the present matter since the 2nd respondent/CBI registered FIR in RC No.17(S)/2019 based on the Government notification produced at Annexure-A. Further in the present case, the 2nd respondent/CBI has not initiated *de novo* investigation against the accused persons as the State has accorded sanction only to conduct further investigation, which is further fortified from the application filed by the CBI before the learned Magistrate under Section 173(8) of the Code of Criminal Procedure seeking to further investigate the matter. Therefore the contention raised by the petitioners in this regard, cannot be accepted.

21. It is further contended that soon after taking up the further investigation by the CBI, the involvement of one more car in the incident and involvement of other persons, who are actually not shown as accused in the case has been revealed. Further

investigation by the CBI has also disclosed criminal intimidation to the witnesses prior to the day of giving their evidence in trial before the jurisdictional court. The progress made in the further investigation conducted by the 2nd respondent is submitted before this court in a sealed cover. It is further stated that the accused has no *locus standi* to say which investigating agency has to investigate a criminal case. The power of the State Government and the Central Government under Sections 6 and 5 of the DSPE Act are vested powers of the Government independent to the power of the High Court and Supreme Court. In the circumstances, respondent - CBI sought to reject all the writ petitions.

IV- Additional objections filed by the CBI on 30th August, 2021

22. In continuation of the statement of objections filed on 17th December, 2019, it is contended by the 2nd respondent that the relief sought for quashing the FIR is not maintainable and admittedly, the 2nd respondent - CBI has filed supplementary charge sheets and the jurisdictional Court has taken the cognizance of the same. As there are subsequent developments upon registration of the main FIR, the present writ petitions challenging

the FIR do not survive for consideration and thereby the relief sought for in the present writ petitions are liable to be rejected. It is further contended that consequent upon sanction accorded by the 1st respondent-State Government, the 2nd respondent registered FIR numbered as RC No.17(S)/2019, conducted investigation, filed the first supplementary charge sheet on 20th May, 2020 before the jurisdictional Court and the Apex Court time and again has held that the accused has no choice with regard to mode of investigation or the agency which has to carry out investigation. It is further contended that in pursuance of the information of Smt. Mallava Goudar, wife of deceased dated 15.6.2016, the Dharwad Sub Urban Police Station registered a case in Crime No.135/2016 against unknown accused persons for the offence punishable under Section 302 of IPC and took up the investigation. The jurisdictional police after conducting investigation filed charge sheet against six accused persons for having committed the murder of the deceased. On filing of the charge sheet, the JMFC Court, Dharwad was pleased to take cognizance and register a criminal case in C.C.No.964/2016 for the offences punishable under Sections 143, 147, 148, 120B, 302, 201 r/w 149 of IPC., and the matter was committed to the Court of

Sessions numbering as S.C.No.50/2017. It is further contended that after framing of charges, the prosecution examined 63 witnesses and during the pendency of the trial, Smt. Thungamma (Mother of the deceased) and one Sri Gurunatha Goudar (brother of the deceased) filed Writ Petitions before this Court i.e., W.P.No.58183-184/2017 which were rejected. However liberty was reserved to the petitioners to move an application under Section 319 of Cr.P.C. During the course of evidence of the prosecution witnesses, the said Sri Gurunath Goudar, examined as P.W.58, deposed that the State Police had not investigated the case properly since the vital evidence was not considered. He further deposed that there was one more car that was involved in the incident and about 60 footages around the place of incident had not been collected since the police officers of the rank of Dy.S.P. and a Senior Politician were involved in the said case. During the said period, the said Gurunath Goudar also submitted a requisition to the State Government to transfer the case to the CBI categorically mentioning the involvement of the police officers in the said case.

23. The 2nd respondent further contended that acting on the said requisition, the 1st respondent-State Government accorded sanction under Section 6 of the Delhi Special Police Establishment Act (for short hereinafter referred to as 'DSPE Act') on 6.09.2019 to the 2nd respondent to conduct further investigation of the case in Crime No.135/2016. On receipt of the sanction order, the 2nd respondent filed a memo before the learned Principal Civil Judge (Jr. Division) and JMFC Court, Dharwad under Section 173(8) of Cr.P.C., intimating about the 2nd respondent undertaking further investigation in the said case as per Annexures-R2 and R3 produced along with additional statement of objections. The 2nd respondent further contended that, in accordance with the provisions of CBI Manual, for administrative and statistical purposes, FIR of the Dharwad Sub-Urban Police Station was re-registered as RC No.17(S)/2019 and thereafter, further investigation was commenced by the CBI. Accordingly, the accused persons, who were apprehended, approached this Court challenging the sanction order as well as the FIR filed against them.

24. It is further contended that, this Court by the order dated 21.11.2019 granted an interim stay of operation of the order according sanction as per Annexure-R4 and being aggrieved by the said stay order, the 2nd respondent approached the Apex Court by way of SLP (Crl) No.1348/2020 wherein by the order dated 20.2.2020, the Apex Court stayed the operation of the interim order dated 21.11.2019 granted by the learned Single Judge of this Court as per Annexure-R5 resulting in conducting further investigation by the 2nd respondent-CBI.

25. It is further contended that, in the further investigation carried out by the 2nd respondent, it was revealed that accused No.1- Basavaraj Shivappa Muttagi, a political worker and office bearer of various organizations like Jaya Karnataka Organisation and Nava Yuva Shakti with serious political ambitions acted as a prime conspirator of the murder of the deceased, who contested the Zilla Panchayat Election, Dharwad during 2016 and has won the election and therefore, accused No.1 conspired with others accused persons including accused No.5 and decided to eliminate the deceased on account of political reasons and to further his political

career. In furtherance of the same, accused No.1 decided to bring his associates from outside Dharwad to execute the murder of the deceased and surrender himself along with accused Nos.2 to 6 before the local police in place of the assailants. As such, accused Nos.8 to 14 together agreed to come to Dharwad and commit the murder of deceased. Accordingly, they visited Dharwad in the 1st week of June, 2016 and assembled in an old house bearing CTS No.4/39/L measuring 14 guntas situated at No.17, Saraswatpur, Dharwad, which possession was illegally taken by Sri Vinayak Katagi –accused No.5. All the accused persons stayed in the said residence and conspired for murder of the deceased. The tower locations of mobile numbers issued in the names of the accused persons via., accused Nos.1 to 7 showed their presence in the above said area during the above period. Accused Nos.8 to 14 went to Dandeli and again reached Dharwad on 13.6.2016 and stayed in the old house stated supra and accused persons conspired to commit murder of the deceased at the Uday Gym near Saptapur Post Office when the deceased used to go for training between 7.30 and 9.30 a.m. Accordingly on 14.6.2019 accused Nos.7 and 9 wearing red jackets, hiding weapons, came to the Uday Gym by

7.23 a.m. in a Hero Honda Splendor motor cycle bearing registration No.KA-25 EA 6230 driven by accused No.7; Accused No.11 wearing a green checks shirt came by waiking carrying a bag with weapons by 7.25 a.m; accused No.12 with two other accused persons came in a white scooter bearing registration No. KA 25 EU 2609 by 7.27 a.m; later accused Nos.8 and 13 also reached the spot. Further accused Nos.7 to 9 and 13 moved around the Uday Gym on the road on the two wheelers waiting for the deceased to arrive. Though the deceased arrived by 7.34 a.m. in his silver colour Innova, he returned immediately and the said attempt could not be made successful by the accused. After unsuccessful attempt, accused persons assembled at the old house at Saraswatpur, Dharwad and decided to commit the murder of the deceased on the next day.

26. In furtherance of their conspiracy, again on 15.6.2016 , accused Nos.7 and 9 reached the Uday Gym by 6.46 a.m. in a Hero Honda Splendor motor cycle equipped with weapons in their jackets and moved to and fro on the road around the Gym in the motor cycle and finally by 7.34 a.m. again came back to the Gym. After

parking the vehicle near the Gym, accused No.9 sat on the wall near the Gym holding a newspaper hiding his face while accused No.7 stood on the stairs waiting for the deceased to arrive. Accused Nos.10 to 12 and 14 reached the area in a white Tavera car bearing registration No.KA 25 D 0420 driven by accused No.4. After being dropped at the 1st cross Road, 60 meters right of the Gym building, accused No.11 carrying a bag with weapons and accused No.12 came near the Gym at 7.32 a.m. followed by accused Nos.10 and 14 at 7.33 a.m. waiting for the deceased to arrive. Accused Nos.1 to 3 and 5 waited near KCD Circle to co-ordinate the plan and they remained in touch through phone calls with accused No.6, who intimated about the movement of the deceased and with accused No.4, who was driving the Tavera vehicle carrying other accused and accused No.7, who was waiting at the spot. On arrival of the deceased at 7.36 a.m. in a silver colour Innova, when the deceased was about to enter the Uday Gym, accused No.7, who was waiting on the stairs, sprinkled chilli powder to the eyes of the deceased from a packet carried by him and stabbed him on his neck with dagger and unsettled the deceased, while accused No.9, who was holding newspaper

attacked him on his head with long mattchu and when the deceased fell down, accused Nos.8, 10 to 14 rushed to the Gym and dragged him to the Gym and attacked him on his head and other parts of the body with longs and other weapons carried in the bag by accused Nos.8 and 11 and thereby committed the murder of the deceased. After execution of the murder of the deceased by 7.38 a.m., accused Nos.7 to 14 left from the scene of crime, accused No.11 carrying his bag along with accused No.13 went running towards the Tavera vehicle parked at the 1st cross road, while accused No.10 carrying the weapon along with accused No.8 escaped on the white scooter driven by accused No.14. Accused Nos.12 and 9 escaped on the Hero Honda Splendor vehicle driven by accused No.7 and all accused fled from the spot. Accused No.1 along with other accused persons traveled in the Chevrolet car bearing registration No. KA 25 P 8526, reached near the Uday Gym by 7.42 a.m. to confirm execution of the murder of the deceased and thereafter fled from the scene of crime which facts were visible in the CCTV footage collected during the investigation and are corroborated by the evidence of the witnesses.

27. It is further contended that supplementary charge sheet filed revealed that in the further investigation was carried out by the 2nd respondent, where accused No.16, being resident of Bijapur and the maternal uncle of Vinay Kulkarni accused No.15, had participated in the larger conspiracy leading to murder of the deceased and he was arrested on 13.12.2020 as he was involved in arranging three country made pistols from Bijapur and in handing over the same to accused No.1 for the purpose of commission of murder of the deceased. Accused No.15 the Minister in the Government of Karnataka was previously MLA for the Dharwad Constituency and Proprietor of M/s Vinay Dairy situated at Hatti Kala Village near Dharwad City, had political rivalry and personal enmity with the deceased, who had refused to accept his request from contesting in the Zilla Panchayath Election 2016. There were serious verbal altercation between accused No.15 and deceased about a month prior to the murder. It was further revealed that during the Zilla Panchayath Meeting dated 23.4.2016 there were verbal altercations and heated exchanges between them and thereby, animosity generated and accused No.15 decided to eliminate the deceased on account of political and personal reasons.

28. It is further contended that, accused No.15 conspired with accused Nos.1 and 16 along with other accused persons in order to commit the murder of the deceased following the Zilla Panchayath Meeting dated 23.4.2016. Accused No.1 – Basavaraj Muttagi agreed to execute the crime on the assurance of accused No.15 and accused No.16, who had close acquaintance with accused No.1 and was in touch with him constantly between 26.1.2016 and 2.6.2016. Furthermore, tower locations of the mobile number of accused Nos.15 and 1 revealed that they were found at nearby locations for about six times between 23.4.2016 to 31.5.2016 and also were in constant touch with separate mobile phones or through their associates after 2.6.2016 ever since they conspired to commit the murder of the deceased. It is further contended that on the abovesaid findings, the second supplementary charge sheet was filed by the CBI before the trial Court against accused Nos.1, 15 to 17 for having committed the offences punishable under the provisions of Sections 120B, 302, 201, 143, 147, 148 r/w 149 IPC and Sections 25, 3, 5, 7 and 29 of the Arms Act. The investigation also revealed that public servants were also involved in the crime and after completion of the majority

of the investigations, the supplementary sheets were filed by the 2nd respondent-CBI as against 17 accused persons. However, the Hon'ble Supreme Court stayed the operation of the order dated 21.11.2019 passed by the learned Single Judge, consequence of which, the 2nd respondent proceeded to conduct the investigation and accordingly, the charge sheets are filed. Similar objections are filed by the state as well as Respondent No.2 in other Writ Petitions. Therefore, sought to dismiss the writ petitions filed by the accused.

29. We have heard the learned Counsel for the parties.

V - Writ Petition No.51012/2019 filed by accused No.1 –Basavaraj Shivappa Muttagi

Arguments advanced by Sri Srikanth Patil, learned Counsel for the petitioner

30. Sri Srikanth Patil, learned Counsel appearing for the petitioner-accused No.1-Basavaraj Shivappa Muttagi in Writ Petition No.51012/2019 contended that in view of the order dated 1st March, 2019 passed by this Court in Writ Petition Nos.58183-184/2017 and confirmed by the Hon'ble Supreme Court in SLP Nos.5760-61/2019 on 22.7.2019, the impugned order passed by

the State Government according sanction to CBI for further investigation on 6.9.2019 and registering the FIR on 24.9.2019 as per Annexures-A and B are not sustainable and therefore, are liable to be quashed. Since the impugned order Annexure-A is passed by the State Government in the absence of any request by the family members of the deceased, it is nothing but political motivation. He would further contend that powers to refer further investigation to different agency does not come under the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946 . In the statement of objections filed by the State Government, though paragraph-1 reveals that a representation dated 6.8.2019 was received from the brother of the deceased, but there is no reference in the order passed by the State Government and on that ground also, the impugned order passed by the State Government cannot be sustained. The learned Counsel would further contend that the 1st respondent-State Government ought not to have issued the Notification according sanction to conduct further investigation in Crime No.135/2016 by the CBI which was earlier investigated by the local police and the final report was filed before the jurisdictional Magistrate as well as the matter was committed to the

Sessions Court and the learned Sessions Judge after framing the charges in S.C.No.50/2017 and examining 61 witnesses has recorded the statement of the accused persons under Section 313 of Cr.P.C. Therefore, the impugned order of sanction for further investigation is contrary to law as it is passed without obtaining consent of the jurisdictional Court and cannot be sustained in view of the dictum of the Hon'ble Supreme Court in the case of **Vinay Tyagi -vs- Irshad Ali and Others reported in (2013) 5 SCC 762** particularly paragraph-6. He would further contend that the impugned order passed by the State Government referring the matter to the CBI is arbitrary, illegal and without authority of law amounting to abuse of process of the law only with a view to overcome the order dated 1.3.2019 passed by this Court in W.P.Nos.58183-184/2017 and confirmed by the Hon'ble Supreme Court by the order dated 22.7.2019 passed in S.L.P.(Crl) Nos.5760-61/2019. He further contended that the action of the 2nd respondent CBI registering the FIR is contrary to the dictum of the Hon'ble Supreme Court in **T.T. Anthony -vs- State of Keral and Others reported in (2001)6 SCC 181**. He would further contend that the order passed by the State Government is contrary to the

dictum of the Hon'ble Supreme Court and as such, the same cannot be sustained. In support of his contentions, he also relied upon the dictum of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu -vs- State of Kerala and Another reported in (2014) 12 SCC 696*** paragraph-126 with regard to separation of powers between the Legislature, Executive and Judiciary.

VI - Writ Petition No.52575/2019 filed by accused No.5 - Vinayak

Arguments advanced by Sri C.H. Jadhav, learned Senior Counsel for Sri Shivayogesh, advocate for accused No.5

31. Sri C.H. Jadhav, learned Senior Counsel for accused No.5 contended that the orders passed by the State Government - Annexure-A entrusting the matter to the CBI is mala fide exercise and cannot be sustained in view of the fact that it is passed only to circumvent or overcome the decision of this Court in W.P.Nos.58183-184/2017 and confirmed by the Hon'ble Supreme Court. He further contended that Annexure-A passed by the respondent according sanction to the CBI under the provisions of Section 6 of the DSPE Act for further investigation would amount to abuse of process of law and further tantamount to undoing the case

afresh, at the stage of arguments, which is not impermissible since the respondent cannot undo a trial which has already been completed, that too, when the matter is being posted for judgment after completion of the evidence of 63 witnesses as well as recording of the statement of the accused persons under Section 313 of Cr.P.C. and even prior to issuance of the impugned order and as such, the very entrustment and registering FIR cannot be sustained. He would further contend that if at all the impugned order was passed only to entrust 'further investigation' into the matter registered as FIR No.135/2016 with the jurisdictional police, the same would be a gross impropriety and would be without authority of law as the same was done without consent of the jurisdictional Court. The police will have to seek permission of the Court to continue 'further investigation' and file supplementary charge sheet as held by the Hon'ble Supreme Court in the case of ***Vinay Tyagi -vs- Irshad Ali and Others reported in (2013)5 SCC 762.***

32. The learned Senior Counsel further contended that issuing of Notification by the State Government is highly arbitrary

and illegal as the same has been issued only with a view to wreck political vengeance and the 1st respondent is trying to scuttle the investigation by political force by referring the matter to the 2nd respondent. He would further submit that the State Government headed by the current incumbent Chief Minister came to be formed on 26.7.2019 and immediately, thereafter, by means of impugned notification dated 6.9.2019, the matter was referred to the 2nd respondent-CBI which clearly depicts that immediately after change of Government, the impugned notification has been issued at the instance of Sri Gurunath Gowda and Smt. Thungamma, who have failed to succeed before this Court as well as the Hon'ble Supreme Court. Therefore, he sought to allow the writ petition.

33. In support of his contentions, the learned Senior Counsel relied upon the following dictums of the Hon'ble Supreme Court:

- a) P. Sambamurthy and Others -vs- State of Andhra Pradesh and Another reported in (1987)1 SCC 362 paragraphs-3 to 5;

- b) State of Punjab -vs- Bhag Singh reported in (2004)1 SCC 547 paragraph-5 with regard to binding precedent under Article 141 of the Constitution of India;
- c) State of Tamil Nadu -vs- State of Kerala and Another reported in (2014) 12 SCC 696 paragraphs-105 and 107;
- d) State of West Bengal and Others -vs- Committee for Protection of Democratic Rights, West Bengal and Others reported in (2010) 3 SCC 571, paragraphs-69 and 70 (Constitutional powers of the Court); and
- e) Kalabharati Advertising -vs- Hemant Vimalnath Narichania and Others reported in (2010)9 SCC 437 paragraphs-15 to 19, 19 to 23, 35 and 36 to the effect that once foundation fails, all other proceedings will be invalid.

VII - Writ Petition No.16081/2021 filed by accused No.21 –

Somashekar Nyamagouda

Arguments advanced by Sri S.M. Chandrashekar, learned Senior Counsel for Sri Sri Shivaprasad Shantanagoudar, Advocate for the petitioner

34. The learned Senior Counsel for accused No.21 contended that the impugned order passed by 1st respondent-State

Government is contrary to the material on record and cannot be sustained as accused No.21 joined the Government Service as Deputy Director, APMC at Tiptur and Byadgi in the year 2006 and thereafter, he was appointed as Private Secretary to Cabinet Minister - Shri Vinay Kulkarni in the Government of Karnataka in November, 2015. It is further contended that the impugned orders were stayed by the learned Single Judge of this Court on 21.11.2019 which was the subject matter of SLP filed by the State Government as well as the CBI wherein the Hon'ble Supreme Court stayed the order passed by the learned Single of this Court staying investigation conducted/carried out by the CBI. He would further contend that admittedly, the writ petitions filed by the mother and brother of the deceased for entrustment of matter to the CBI in Writ Petition Nos.58183-58184/2017 came to be dismissed on 1.3.2019 with certain observations that absolutely, there is no material for further investigation and the same was confirmed by the Hon'ble Supreme Court in SLP Nos.5760-61/2019 on 22.7.2019. However, an application under Section 319 of Cr.P.C., was filed by Smt. Tungamma, mother of the deceased on 16.7.2019 which came to be rejected on 26.8.2019. He would

further contend that there was change of Government on 26.7.2019 and the Government Order came to be passed on 6.9.2019 and in the note dated 13.8.2019 from the Chief Secretary to Government, the Government Order with reference to same has observed that no changed circumstance was shown to pass Annexure-A and therefore, the same cannot be sustained and is liable to be quashed.

35. The learned Senior Counsel further contended that the State Government ought not to have passed the impugned order under the provisions of Sub-section (8) of Section 173 for further investigation in Crime No.135/2016 for the offence punishable under Section 302 of IPC which is impermissible in view of the earlier order passed by this Court and confirmed by the Hon'ble Supreme Court. The State Government is not empowered to pass Annexure-A in view of the earlier orders passed by this Court and confirmed by the Hon'ble Supreme Court, as no permission was obtained from the concerned Court and as such, the same is contrary to the dictum of the Hon'ble Supreme Court in the case of ***T.T. Antony -vs- State of Kerala and Others reported in (2001)6***

SCC 181 at paragraph-21 and therefore, according sanction to the 2nd respondent to file second FIR on the same incident is impermissible.

36. The learned Senior Counsel further submitted that after filing of charge sheet, any further investigation should be preceded by discovery of new facts provided the same is approved by the Magistrate, who is the supervisory authority in such a situation dealing with further investigation as held by the Hon'ble Supreme Court in **Ram Lal Narang -vs- State (Delhi Administration) reported in (1979)2 SCC 322**. The observation made in the impugned order for further investigation under Sections 156 and 173(8) of Cr.P.C., is a statutory right and is completely misplaced. The authority to conduct further investigation should be backed by material emerging from records necessitating the same and not merely on the ground that such authority exists. Therefore, the impugned order passed by the State Government is opposed to fundamental principles of criminal jurisprudence and as such, it is liable to be quashed.

37. The learned Senior Counsel would further contend that the impugned order passed by the State Government entrusting the matter to CBI is impermissible and the said exercise done, without approval of the learned Magistrate also renders that the impugned final report filed by the CBI is *void ab initio*, and the orders passed by the State Government and all other subsequent proceedings are contrary to dictum of the Hon'ble Supreme Court in the case of ***Vinubhai Haribhai Malaviya and Others -vs- State of Gujarat and Another reported in (2019)17 SCC 1***. The emerging satisfaction of the State Government for further investigation that too at the stage when the trial was concluded, recording of the evidence and statement under Section 313 Cr.P.C., was also completed and thereafter, when the matter was posted for final arguments and even after hearing the public prosecutor in part as reflected in order sheet dated 12.7.2019, casts a shadow of suspicion over the bonafides of the impugned order passed by the State Government. Therefore, the impugned order passed by the State Government by incompetent persons for further investigation and pursuant proceedings cannot be sustained as they are blatant violation of Article 21 of the Constitution of India leading to illegal arrest of the

petitioner and depriving liberty of the petitioner without following the procedure established by law.

38. The learned Senior Counsel further contended that the State Government has passed impugned order under Section 6 of the DSPE Act without any authority of law as it can only exercised the powers under Section 173(8) of Cr.P.C. after obtaining permission from learned JMFC. He would further contend that the interim order granted by this Court on 21.11.2019 clearly depicts that the prayer sought in the writ petition was for quashing of the Government Order entrusting the matter to the CBI, according sanction to the CBI to conduct further investigation and all further proceedings since the orders passed by the State Government is nothing but re-investigation after arraying the Investigating Officers as accused No.19 to 21 and therefore, the provisions of Section 173(8) of Cr.P.C. would not attract. He further contended that the definition of 'Investigation' under Section 2(h) of Cr.P.C., includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorized by a Magistrate in this behalf and the

State Government absolutely has no power to refer the matter to the CBI as it has not assigned any reason for entrusting the matter to CBI. Therefore, absolutely there is no power for the State Government to refer the matter to CBI and no reasons are assigned by the Government for entrustment. He would further contend that in view of the dictum of the Hon'ble Supreme Court in the case of **Chandra Babu Alias Moses -vs- State Through Inspector of Police and Others reported in (2015)8 SCC 774**, the Court cannot reinvestigate the matter which has already been done and the impugned order passed by the State Government on the basis of the requisition made by the mother and brother of the deceased suppressing all the materials cannot be sustained. The learned Senior Counsel further contended that the decision of the State Government in the case of **State of Bihar -vs- J.A.C. Saldanha reported in (1980) 1 SCC 554** has no application to the facts and circumstances of the present case.

39. The learned Senior Counsel relying upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab vs. Davinder Pal Singh Bhullar and Others reported in (2011) 14 SCC**

770 contended that if the reach of the conclusion is illegal, all consequential proceedings in pursuance of Annexure-A also become invalid. The learned Senior Counsel further contended that the under the First Schedule of the Karnataka Government Transactions Business Rules, 1977, the decision of the Cabinet is mandatory and there is no Notification issued under Section 3 of the DSPE Act to investigate the crime already investigated by the local police. Since the provisions of Section 5 of DSPE Act, envisages only investigation of any offences or classes of offences specified in a notification under Section 3, the orders passed by the State Government entrusting the matter to CBI is totally without jurisdiction and contrary to the provisions of Section 6 of DSPE Act where it was without consent of CBI. He would further contend that the impugned order passed by the State Government in suo motu sanctioning to conduct further investigation and to transfer investigation to CBI is prima facie arbitrary, illegal and also violative of Articles 14 and 21 of the Constitution of India.

40. In support of his contentions, the learned Senior Counsel relied upon the following dictums of the Hon'ble Supreme Court:

- a) Pritam Singh and Another -vs- The State of Punjab reported in AIR 1956 SC 415, paragraphs 15 and 20 (Res judicata in criminal trials - Acquittal of accused on certain charge - Verdict binding in all subsequent proceedings);
- b) Bhagat Ram -vs- State of Rajasthan (in Crl. A. No.36/1969) and State of Rajasthan Vs. Ram Swaroop (in Crl. A.No.202/1970) reported in (1972)2 SCC 466, paragraph-13 (principle of Res Judicata is also applicable to criminal proceedings and is not permissible in the subsequent stage of the same proceedings or in some other subsequent proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. The plea of autrefois acquit as a bar to prosecution embodied in Section 403 of the Code of Criminal Procedure is based upon the above wholesome principle;
- c) Kunhayammed and Others -vs- State of Kerala and Another reported in (2000) 6 SCC

359, paragraph-44 (v) with regard to refusing leave to appeal is a speaking order i.e., gives reasons for refusing the grant of leave, then the order has two implications. But, this does not amount to saying that the order of the Court, Tribunal or Authority below has stood merged in the order of the Supreme Court rejecting the SLP or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties;

- d) Special Leave Petition (Criminal) Nos. 5760-61/2019 preferred by Tungamma and Another -vs- Union of India and Others filed against the order dated 1.3.2019 passed by the learned Single Judge of this Court in W.P.Nos.58183/2017 and 58184/2017 on perusal of the relevant material were dismissed on 22.7.2019;
- e) Khoday Distilleries Limited (now known as khoday India limited) and Others -vs- Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under liquidation) represented by the Liquidator reported in

(2019) 4 SCC 376 - paragraphs-22 and 23 with regard to Rule of Law;

- f) P. Sambamurthy and Others -vs- State of Andhra Pradesh and Another reported in (1987) 1 SCC 362 paragraphs-4 and 5 with regard to Rule of Law;
- g) Union of India -vs- K.M. Shankarappa reported in (2001) 1 SCC 582 paragraph-7;
- h) State of Tamilandu -vs- State of Kerala and Another reported in (2014) 12 SCC 696 paragraph-98;
- i) Delhi International Airport Limited -vs- International Lease Finance Corporation and Others reported in (2015) 8 SCC 446 paragraph-22;
- j) Hasanbhai Valibhai Qureshi -vs- State of Gujarat and Others reported in (2004) 5 SCC 347 paragraphs-12 and 13 - Section 173(8) of Cr.P.C. ;
- k) Vinubhai Haribhai Malaviya and Others -vs- State of Gujarath and Another reported in

(2019) 17 SCC 1 paragraphs-18, 22, 23, 29, 36(40) and 40;

- l) Suganthi Suresh Kumar -vs- Jagadeeshan reported in (2002) 2 SCC 420;
- m) Chandra Babu alias Moses -vs- State, through Inspector of Police and Others reported in (2015) 8 SCC 774 paragraph-22 - re-investigation cannot be done;
- n) M. Mahendra Kumar -vs- M. Mani and Others reported in (2015) 11 SCC 519 paragraphs-5 and 6;
- o) State of West Bengal and Others -vs- Committee for Protection Of Democratic Rights, West Bengal and Others reported in (2010) 3 SCC 571;
- p) Athul Rao -vs- State of Karnataka reported in (2018) 14 SCC 298; and
- q) Md. Ghouseuddin -vs- Syed Riazul Hussain and Another in Crl.A. 585/2021 (SC);

**VIII - Writ Petition No. 16088/2021 filed by accused No.16 –
Chandrashekar Indi**

**Arguments advanced by Dr. Ashwani Kumar, learned Senior
Counsel along with Sri H.S. Chandramouli, learned Senior Counsel
for petitioner**

41. Dr. Ashwani Kumar, learned Senior Counsel for the petitioner-accused No.16 contended that the impugned order dated 6.9.2019 passed by the State Government is manifestly arbitrary and an abuse of process of law since it is in violation of Articles 14 and 19 of the Constitution of India. He would further contend that the impugned order passed by the State Government is an mala-fide exercise of powers which is politically motivated and cannot be sustained. The entrustment of the matter to the 2nd respondent-Agency under Section 173(8) of Cr.P.C. for further investigation by the State Government is in derogation and utter disregard to the order dated 1.3.2019 passed by this Court in W.P.Nos.58183-184/2017 and confirmed by the judgment dated 22.7.2019 passed by the Hon'ble Supreme Court in SLP (Crl) Nos.5760-61/2019 and therefore, the same being illegal and void is liable to be quashed. He would further contend that accused No.16 was not a party to the

original FIR filed in Crime No.135/2016 and he has been falsely implicated in pursuance of the impugned order passed by the State Government and as such, the further investigation conducted by the CBI-2nd respondent is without any basis and cannot be sustained. He would further contend that in paragraph-3 of the Government Order dated 6.9.2019, neither any reason for handing over further investigation to the 2nd respondent - CBI nor any of its right to disprove the investigation is mentioned which was accepted by the learned Single Judge of this Court and confirmed by the Hon'ble Supreme Court. The State Government has no independent authority to pass any order for re-investigation as the same is impermissible since the application filed under Section 319 Cr.P.C. by the legal representatives of the deceased had been rejected. The provisions of Section 173(8) of Cr.P.C., cannot be exercised by the 2nd respondent-a new agency without the consent of the Court. When the new Government assumed the Office on 26.7.2019 and on a representation made by the kith and kin of the deceased to the then Hon'ble Chief Minister on 6th August, 2019, the impugned order has been passed on 6.9.2019 which clearly depicts that it is politically motivated. In spite of the opinion of the

Commissioner of Police that there is no reason for entrusting the matter to the CBI, the State Government has proceeded to pass an unreasonable order in violation of Section 300 of the Code of Criminal Procedure.

42. The learned Senior Counsel would further contend that in the original case, all the witnesses were examined and when the matter was posted for arguments, after recording the statement of the accused persons under Section 313 of Cr.P.C., at that stage, the impugned order has been passed and as it is politically motivated, the same cannot be sustained. He would further contend that accused No.15 was neither a Minister nor a MLA nor accused No.16 was in any position of authority to facilitate the murder. There is no suggestion that the State's investigating agencies have either misdirected themselves or were incapable of conducting fair investigation of the case. The Police Authorities of the State have infact opposed the transfer of the case to the CBI and also no request was received by the CBI for investigation of the case and therefore, the question of consent by the State Government in terms of Section 6 of the DSPE Act to the CBI does

not arise. He would further contend that prior approval of the concerned Court for further investigation is mandatory, but the same has not been done in the present case as held by the Hon'ble Supreme Court in the case of ***Vinay Tyagi stated supra [(2013)5 SCC 762]***. So also in the case of ***Hasanbhai Valibhai Quereshi -vs- State of Gujarat reported in (2004)5 SCC 347 at paragraph-13; Ram Lal Narang -vs- State (Delhi Administration) reported in (1979) 2 SCC 322 at paragraph-21 and T.T. Anthony -vs- State of Kerala and Others reported in (2001)6 SCC 181 at pagraph-27.*** Accordingly, the impugned order defeats the constitutional goal of fair and speedy trial and therefore infracts Article 21 of the Constitution of India.

43. The learned Senior Counsel would further contend that in respect of accused No.16, considering the facts of the present case, the impugned order, in effect, tantamounted to a reinvestigation/*de novo* investigation, which is impermissible in law except by the Constitutional Court for compelling reasons and in rare cases as held by the Hon'ble Supreme Court in the case of ***Dharam Pal -vs-***

State of Haryana and Others reported in (2016)4 SCC 160 and Vinay Tyagi (supra).

44. The learned Senior Counsel would further contend that the power of further investigation, either by the Court or investigating agencies can be exercised till the commencement of trial i.e, framing of charges by the Court. Admittedly, in the present case, the trial Court has already completed recording of statement of the accused under Section 313 of Cr.P.C. and therefore, the impugned order passed by the State Government entrusting the matter to CBI for further investigation is impermissible in view of the dictum of the Hon'ble Supreme Court in the case of ***Vinubhai Hirabhai Malaviya and Others -vs- State of Gujarat and Another reported in (2019) 17 SCC 1*** at paragraphs- 23, 25, 26 and 42. Therefore, he sought to allow the writ petition filed by accused No.16.

45. In support of his contentions, the learned Senior Counsel relied upon the following dictums of the Hon'ble Supreme Court:

- a) Sudipta Lenka -vs- State of Odisha reported in (2014) 11 SCC 527 paragraphs-13 to 15;

- b) State of West Bengal and Others -vs- Committee for Protection of Democratic Rights, West Bengal and Others reported in (2010) 3 SCC 571 paragraphs-28 and 35; and
- c) Chandra Babu Alia Moses -vs- State through Inspector of Police and Others reported in (2015)8 SCC 774 - paragraph-38.

IX - Writ Petition No.15828/2021 filed by accused No.15 – Vinay Kulkarni

Arguments advanced by Sri Mukul Rohtagi, learned Senior Counsel for Sri Girish Ganapathrao Nilegar, Advocate for the petitioner

46. Sri Mukul Rohtagi, learned Senior Counsel for accused No.15 contended with vehemence that the impugned order passed by the State Government is manifestly arbitrary, abuse of process of law and cannot be sustained since the impugned order entrusting the matter to CBI for further investigation is impermissible. He would further contend that the incident of murder occurred on 15.6.2016, trial commenced on 12.7.2017 and FIR was filed on 9.9.2016 that too after completion of recording of evidence of 63 witnesses, as well as the statement of the accused persons under

the provisions of Section 313 of Cr.P.C. and at that stage, the impugned order is passed without application of mind which cannot be sustained. He would further contend that on 26.8.2019, though an application under Section 319 of Cr.P.C. was filed by the brother of the deceased seeking to array the petitioner and another as accused persons in S.C.No.50/2017, the same was dismissed by the trial Court which has reached finality. Hence, the impugned order passed by the State Government entrusting the matter to the 2nd respondent Agency under the provisions of Section 173(8) of Cr.P.C., for further investigation is derogatory and utter disregard to the judgment dated 1.3.2019 passed by this Court in W.P.Nos.58183-184/2017 and confirmed by the Hon'ble Supreme Court on 22.7.2019 in SLP (Crl) Nos.5760-61/2019 when the same has reached finality and therefore, the State Government has no jurisdiction to hand over the case to CBI as it is contrary to the orders passed by this Court and Apex Court and on that ground also the impugned order is liable to be quashed.

47. The learned Senior Counsel further contended that the State Government has no power to over reach the order passed by

this Court and affirmed by the Hon'ble Supreme Court in SLP stated supra as there is no necessity for fresh investigation or re-investigation as the trial has already been concluded. Once the trial has commenced, there cannot be further investigation conducted on 6.9.2019 by new agency after completion of trial as it is impermissible and thereby Annexures-A and B are null and void in the eye of law. He would further contend that the 2nd respondent –CBI has filed three charge sheets – i.e., on 20.5.2020 in which, the name of accused No.15 was not found; second charge sheet on 31.1.2021 implicating the petitioner –accused No.15; and in the third charge sheet filed on 15.9.2021 accused Nos.18 to 21 were included after obtaining the sanction from the Government without obtaining prior permission from the Court as held by the Hon'ble Supreme Court in the case of ***Vinay Tyagi reported in (2013)5 SCC 762*** which is not permissible.

48. The learned Senior Counsel would further contend that the executive power of the State does not have right to change the basis of judicial order to nullify the effect of final adjudication on an issue which assumes the status of judgment and decree and

thereby, the impugned order passed by the State Government is nullity and the same cannot be note for any purpose to prejudice the life and liberty of the petitioner-accused No.15. It is further contended that accused No.15 was arrested in pursuance of the proceedings as per the impugned order and taken into custody from 5.11.2020 to 21.8.2021 and as such, the custody of the petitioner is nothing but illegal detention. Hence, in order to uphold the majesty and rule of law, the impugned order dated 6.9.2019 is liable to be quashed as it is *void ab initio*. It is further contended that the impugned order passed by the State Government on the advice of the learned Advocate General to entrust the matter to the 2nd respondent for further investigation is an exercise of statutory power under Section 156 r/w 173(8) of the Criminal Procedure Code which is not available with the Executive and hence, the impugned order is in derogation of the judgment and decree under Article 142 of the Constitution of India.

49. The learned Senior Counsel further contended that the State Government exercise of powers under Section 6 of the DSPE Act is arbitrary, capricious and violative of Articles 14 and 21 of the

Constitution of India as the victim's family had already failed in all remedies available under Criminal Procedural Code. The State Government ought not to have entrusted the matter to the 2nd respondent for further investigation as the same is impermissible and the same has been done with political vengeance and hence, the same cannot be sustained. Therefore, he sought to allow the writ petition.

50. In support of his contentions, the learned Senior Counsel relied upon the following dictums of the Hon'ble Supreme Court:

- a) Vinay Tyagi -vs- Irshad Ali Alias Deepak and Others reported in (2013)5 SCC 762 paragraphs-22, 23 and 40 with regard to further investigation not permissible;
- b) Vinubhai Haribhai Malaviya and Others -vs- State of Gujarat and Others reported in (2019)17 SCC 1 paragraph-36 - de nova or further investigation not permissible after commencement of trial;
- c) State of Punjab -vs- Davinder Pal Singh Bhullar and Others reported in (2011)14 SCC

770 - paragraphs, 101, 111, 115 and 116 where initial action is not in consonance with law, held all other subsequent and consequential proceeds will automatically become invalid; and

d) Hardeep Singh -vs- State of Punjab reported in (2014)3 SCC 92 - paragraphs-15 and 17.

X - ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENTS

51. Sri Tushar Mehta, learned Solicitor General of India appearing for the Government in Writ Petition No. 15828/2021 contended that on 2.5.2020 a report came to be filed before the Court under the provisions of Section 173(8) of Cr.P.C. Admittedly a charge sheet had been filed after further investigation by the 2nd respondent and cognizance of the offences stated in the charge sheet had been taken by the competent Court on 7.6.2021 in exercise of its judicial power and since the said order was not at all challenged, the present writ petitions could not be maintained. He would further contend that the exercise of judicial power rejecting the prayer of the CBI by the learned Single Judge of this Court and confirmed by the Hon'ble Supreme Court are totally different and

were in no way relatable to the executive power of the State Government for according sanction to the CBI for further investigation. The Hon'ble Supreme Court by the order dated 20.2.2020 stayed the order passed by the learned Single Judge of this Court at the instance of CBI-2nd respondent and State Government, had filed SLP challenging the interim order of stay granted by the learned Single Judge of this Court, wherein the investigating officer was permitted to proceed with further investigation. Though an application was filed for vacating the interim order before the Hon'ble Supreme Court, no orders were passed and the interim order was continued from 20th February, 2020 till 11.8.2021 and even after disposal of SLP, the interim order of stay of operation of the judgment passed by the learned Single Judge was still in force and consequently, the first charge came to be filed against accused Nos.8, 10 to 14 on 2.5.2020 and on 30.1.2021 and accused No.15 was arrested on 5.11.2020, cognizance was taken by the competent Court after application of mind on 7.6.2021. Supplementary charge sheet came to be filed against accused Nos.18 to 21 by the 2nd respondent-CBI on 15.9.2021, among whom, accused No.19 was the earlier

Investigating Officer of the case, who was found part of the conspiracy and accused No.20, who was the immediate Supervisory Officer to accused No.19 had carried out defective investigation of the case and since they both (accused Nos.19 and 20) were found to have taken illegal gratification to scuttle the investigation. The State Government has accorded sanction to prosecute accused Nos.19 and 20 on 9.8.2021 as per Annexures-R6 and R7 to the statement of objections filed by the State. He further contended that under the provisions of Section 319 Cr.P.C., an application was filed by the complainants to implead accused No.19, the investigating officer in the case, who had subsequently conspired to dilute the case. Since at that time, as no evidence or material was placed before the Court against accused No.19, the learned Single Judge of this Court dismissed the writ petition holding that there is no material for further investigation by the CBI and as such, the application filed under Section 319 Cr.P.C., was also rejected.

52. The learned Solicitor General of India further drew the attention of the Court to *List II Entry 2 of Seventh Schedule of the*

Constitution of India referring to Police (including railway and village police) subject to the provisions of Entry 2A of List I.] Entry 8 of List I of the Seventh Schedule to the Constitution of India refers to Central Bureau of Intelligence and Investigation. Further Section 6 of the Delhi Special Police Establishment Act envisages consent of the State Government to exercise powers and jurisdiction i.e., willingness. He further contended that Section 2 (2) of the DSPE Act stipulates Constitution and Powers of Special Police Establishment. The State power under Section 6 of the said Act is an ordinary exercise of executive powers. The investigation is against the State and not against any individual to dig out the truth.

53. The learned Solicitor General of India further contended that Constitution rests on the balance between three organs of the State viz., Executive, Legislature and Judiciary. The balance is maintained under the Constitution under several provisions. Article 245 of the Constitution of India is one such provision which demarcates power of Parliament and the power of State Legislature. Article 73 and Article 162 of the Constitution of India respectively

provide that the executive power of the Central Government and the State Government shall extend to matters relating to the subject which form a part of the List in the Seventh Schedule and in respect of which the legislature and the Central Government (Parliament) and of such State has the power to make law.

54. The learned Solicitor General of India further contended that whenever, the question of investigation by a central investigating agency into criminal offences taking place within States comes up, the essential question to be answered is whether there is any imbalance in the federal structure and whether the central agency can encroach upon the field of criminal investigation reserved for the State agencies under List II read with Article 73 of the Constitution of India as held by the Hon'ble Supreme Court in the case of *State of West Bengal -vs- Committee for Protection of Democratic Rights* reported in (2010) 3 SCC 571.

55. The learned Solicitor General of India further contended that the provisions of Section 6 of the Delhi Special Police Establishment Act balances the power of the Central Government to get offences investigated through central agency despite the

exclusive domain of the State Government for such investigation being covered by Entry 2 of List II. The provisions of Section 6 of DSPE Act permits a central agency to investigate an offence having taken place in the said territory with the consent of the State Government. In other words, if the State Government agrees that central agency be permitted to investigate an offence falling within its jurisdiction, it is an "ordinary exercise of executive powers" by the State Government. This ordinary exercise of executive power is an independent power which can be exercised at any stage by the State Government and will not have any impact or create any imbalance in the *federal* structure.

56. It is further contended that separation of powers is a part of the basic structure of the Constitution, the 'ordinary' executive power of the State Government under Section 6 and 'extraordinary judicial power' of the constitutional courts are mutually exclusive and are not interdependent. There is no particular form to give consent under Section 6 of DSPE Act as held by the Hon'ble Supreme Court in the case of ***M. Balakrishna Reddy -vs- CBI reported in (2008) 4 SCC 409 (paragraph-71)***. He further

contended that the parameters for exercise of both these distinct powers are naturally different and it is always possible and permissible, that even after the constitutional court declines to exercise its extraordinary judicial power holding that the case does not involve circumstances which are rare or exceptional, the State Government can exercise its ordinary executive powers under Section 6 in granting consent and the Central Government can, thereafter, exercise its power by accepting the investigation entrusted to it by the State Government. The said process is uninhibited by the high prerogative judicial powers of entrustment of inquiry to CBI and the same is independent and does not have any fetters with regard to whether extraordinary judicial power is or is not exercised as the constitutional court did not find the matter to be extraordinary and containing such facts which justify exercise of jurisdiction which is to be exercised 'cautiously, sparingly and under certain circumstances only'. Therefore, the power of the State Government is not curtailed by such higher standards.

57. The learned Solicitor General of India further contended that powers can be exercised by the trial Court under Section 319

of Cr.P.C., is only when it appears from the evidence placed before the trial Court. In a fact situation, where the investigating officers, who collected the evidence, which is before the trial Court, are themselves found to be accused, subsequently, inter alia, for shielding the real offenders, ignoring the relevant evidence etc., the order of the competent court rejecting application under Section 319, cannot be pleaded as a bar against further investigation conducted by CBI as held by the Hon'ble Supreme Court in the case of **Hardeep Singh -vs- State of Punjab reported in (2014) 3 SCC 92.**

58. It is further contended that after exercising of powers by the State Government under Section 6 of the DSPE Act, the CBI after investigation has filed charge sheets. Most importantly, the Court of competent jurisdiction has already taken cognizance under Chapter XIV of the Code of Criminal Procedure. Neither the charge sheets are challenged nor the judicial order of the competent court taking cognizance is under challenge either in these proceedings or anywhere else. Hence, there are abundant materials against the accused persons for further investigation and this Court, in exercise

of power under Articles 226 and 227 of the Constitution of India r/w Section 482 Cr.P.C., cannot interfere with the impugned order passed by the State Government in pursuance of which the CBI has further investigated, Court has taken cognizance and accused persons, who were also arrested are on bail granted by the Hon'ble Supreme Court in Criminal Appeal No.887/2021 on 11.8.2021.

59. It is further contended that the interim order dated 21.11.2019 granted by the learned Single Judge of this Court in the present writ petitions prevented the CBI from conducting further investigation and the said interim order was stayed by the Hon'ble Supreme Court on 20th February 2020 in SLP Nos.5760-61/2019 and the same is ordered to be continued till the writ petitions are decided. The action taken by the CBI are not the subject matter of outcome of the present writ petitions. Therefore, the challenge to the order of the State Government under Section 6 of the DSPE Act has become infructuous by virtue of the subsequent intervening facts and the petitioners are not entitled to any relief. He would further contend that, since the competent court found the evidence collected by the CBI to be enough to take cognizance and failure of

justice or prejudice is not even pleaded by the accused, the only stage, now left is to proceed and with all post cognizance stages as per the Code of Criminal Procedure as held by the Hon'ble Supreme Court in the cases of ***H.R. Rishbud -vs- State of Delhi reported in (1955)1 SCR 1150; Sailendra Nath Bose -vs- State of Bihar reported in (1968) 3 SCR 563; and Fertico Marketing & Investment (P) Ltd. -vs- CBI reported in (2021) 2 SCC 525.***

60. It is further submitted that further investigation into any criminal offence is a statutory right of the police. It is, in fact, a right coupled with duty not only in the interest of the victim, but also in the interest of the accused as in a given set of facts, it might transpire that either wrong persons were implicated or real culprits were left out either by default or by design, which is impermissible in view of the dictum of the Hon'ble Supreme Court in the case of ***Ram Lal Narang -vs- State (Delhi Administration) reported in (1979)2 SCC 322*** as well as in ***Ram Chaudhary -vs- State of Bihar reported in (2009) 6 SCC 346.***

61. It is further contended that the judgment in ***Vinubhai Haribhai Malaviya -vs- State of Gujarat reported in (2019) 17 SCC***

1 merely considers and examines the power of the Magistrate to 'direct' further investigation under Section 173(8) of Cr.P.C. The Hon'ble Supreme Court in the said case of **Vinubhai (supra)** neither examined the power of investigating agency to conduct further investigation nor recorded any finding on the said proposition. As such a contingency did not arise in the said case and the said case has no application to the facts and circumstances of the present case.

62. The learned Solicitor General of India further contended that the provisions of Section 173(8) of Cr.P.C. is in absolute terms and stipulates no fetters to its exercise. Article 21 which brings within its ambit a free, fair and neutral investigation also mandates an obligation to unearth the truth and therefore, any restricted or truncated interpretation on the power of the investigating agency to conduct further investigation under Section 173(8) will be violative of Article 21 of the Constitution. The stage at which the investigating agency can conduct further investigation depends upon the facts of each case. The only test to decide the correct

stage for further investigation is the test of Article 21 of the Constitution of India i.e., to unearth the truth at any stage.

63. It is further contended that if the provisions of Section 6 of the DSPE Act, Section 173(8) of Cr.P.C. and other provisions are to be read in the context of rights and obligations flowing from Article 21 of the Constitution of India, no stage in the process can be said to have vitiated even if it is assumed (for the sake of arguments) that the investigation conducted by the CBI was irregular either on the ground of legality of the order under Section 6 or on the ground of stage at which the further investigation took place.

64. It is further contended that this Court is exercising its extraordinary discretionary of the prerogative writ jurisdiction. It is settled position in law that even if it is assumed that petitioners have made out a case, it is not obligatory for the Court to entrust them with the writ of this Court, if issuance of a writ would result in miscarriage of justice which is apparent from the facts of the present case as held by the Hon'ble Supreme Court in the case of ***Ramesh Chandra Sankla -vs- Vikram Cement reported in (2008)***

14 SCC 58 and **Shiv Shankar Dal Mills -vs- State of Haryana reported in (1980) 2 SCC 437**. Therefore, the impugned order is passed by the State Government and in pursuance of the same, the investigation is carried out by the 2nd respondent-CBI and charge sheet is filed in view of the interim order dated 20.2.2020 granted by the Hon'ble Supreme Court and is being continued till today and is ordered to be continued till these writ petitions are decided and hence, the petitioners are not entitled for any relief before this Court under Articles 226 and 227 of the Constitution of India.

65. The learned Solicitor General further contended that the accused is not entitled to say what agency should investigate him and investigation by CBI is permissible even after filing of charge sheet by the local police as held by the Hon'ble Supreme Court in the case of **CBI -vs- Rajesh Gandhi reported in (1996) 11 SCC 253 at paragraph-8**. As is in the present case, where there are allegations against police officers, investigation has been transferred or entrusted to the CBI and where there exists a credible allegation/accusation against the local police personnel, it would be desirable in the larger interest of justice to entrust the

investigation to CBI forthwith so as to assure investigation credibility as held by the Hon'ble Supreme Court in the cases of ***Rubabbuddin Sheikh -vs- State of Gujarat reported in (2010)2 SCC 200 paragraphs-53, 60, 82*** and ***R.S. Sodhi -vs- State of U.P. and Others reported in 1994 Supp.(1) SCC 143***. Therefore, he sought to dismiss the writ petitions filed by the accused persons.

66. In support of his contentions, the learned Solicitor General of India relied upon the following decisions of the Hon'ble Supreme Court:

- a. State of West Bengal -vs- Committee for Protection of Democratic Rights reported in (2010)3 SCC 571 - paragraphs-13, 16, 17, 21, 36, 39, 43, 68 and 70;
- b. H.N. Rishbud -vs- State of Bihar reported in AIR 1955 SC 196 - paragraph-9;
- c. Sailendra Nath Bose -vs- State of Bihar reported in AIR 1968 SC 1292 - paragraph-7;
- d. Fertico Mktg & Investment (P) Ltd. -vs- CBI reported in (2021)2 SCC 525 - paragraphs-5, 7 and 12;

- e. Hardeep Singh -vs- State of Punjab reported in (2014) 3 SCC 92- paragraphs-22, 23, 24 and 26;
- f. Rama Chaudhary -vs- State of Bihar reported in (2009) 6 SCC 346 - paragraphs-3, 4, 15, 16, 17 and 22;
- g. State of Orissa -vs- Mahima reported in (2007) 15 SCC 580 paragraphs-8 and 9;
- h. Ram Lal Narang -vs- State (Delhi Admn.) reported in (1979) 2 SCC 322 - paragraphs-12, 13, 15 and 20;
- i. Ramesh Chandra Sankla -vs- Vikram Cement reported in (2008) 14 SCC 58 - paragraphs-19;
- j. Saurashtra Paper and Board Mills Pvt. Ltd., -vs- State of Gujarat reported in (1992) SCC Online Guj 328;

67. Sri Prabhuling K. Navadgi, learned Advocate General appearing for respondent No.1/State Government in other writ petitions while justifying the order passed by the State Government

contended that in pursuance of the interim order dated 20.2.2020 granted by the Hon'ble Supreme Court staying operation of the order dated 19.11.2010 passed by the learned Single Judge of this Court in writ petitions and permitting the investigating officer to proceed with the investigation, after completion of investigation, supplementary charge sheets are filed and there are abundant materials against accused Nos.8, 10, 14, 15 and other new accused persons. Admittedly, cognizance taken by the competent Court and charge sheets filed are not at all challenged. Therefore, he sought to dismiss the writ petitions by adopting the arguments advanced by the learned Solicitor General of India.

68. Sri S.V. Raju, learned Additional Solicitor General along with Sri P. Prasanna Kumar, learned Counsel for respondent No.2- CBI contended that once the Court has taken cognizance, defects if any in the investigations stood cured and the Court cannot quash the entrustment of case to the CBI for further investigation in view of subsequent developments that have taken place pursuant to the interim order passed by the Hon'ble Supreme Court staying the orders passed by the learned Single Judge of this Court. He would

further contend that even after arrest of accused Nos.15 and others, this Court rejected the bail petition and ultimately, the Hon'ble Supreme Court granted bail with stringent conditions and the interim order granted by the Hon'ble Supreme Court still continues and therefore, the petitioners are not entitled to any relief, at this stage, when the CBI, after further investigation, has filed supplementary final reports in view of subsequent developments and as such, no prejudice would be caused to the accused persons in facing trial. He would further contend that in pursuance of the order passed by the learned Single Judge dismissing the writ petitions for entrustment of the crime for further investigation to the 2nd respondent-CBI, at the instance of the complainants, confirmed by the Hon'ble Supreme Court, an application came to be filed by the complainants under Section 319 of Cr.P.C. in S.C.No.50/2019 which came to be dismissed on 26.9.2019 and the same was the subject matter of Criminal Petition No.101725/2019 wherein this Court allowed the petition and remanded the matter for reconsideration and after reconsideration, an application came to be rejected against which, W.P.No.51012/2019 came to be filed and in view of the

entrustment of the matter to the CBI and after investigation, the writ petition came to be dismissed as having become infructuous.

69. The learned Additional Solicitor General further contended that the provisions of Section 173 of Cr.P.C., does not preclude the police from conducting a further investigation in respect of an offence after a report under sub-section (2) of Cr.P.C., has been forwarded to the Magistrate and, where upon such further investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he is required to forward to the Magistrate a further report or reports regarding such evidence in the form prescribed. The powers of the State Government to entrust the matter is independent. He further contended that after entrustment of the matter, before undertaking further investigation, two memos under Section 173(8) of Cr.P.C. came to be filed before the jurisdictional Court soon after the 2nd respondent communicated the aforesaid order to the 1st respondent under the provisions of Section 5 of the DSPE Act intimating the Court that the CBI-2nd respondent taking up further investigation of the crime in question. Since the jurisdictional Court has not

rejected the memo, it was presumed that prior permission was accorded for necessary investigation. Therefore, no statutory permission was required for further investigation in view of the provisions of Section 173(8) of Cr.P.C. He would further contend that the petitioners are challenging only the orders passed by the State Government and registering the FIR, but not the cognizance taken by the jurisdictional Court as well as subsequent final reports filed and the same was taken cognizance by the Hon'ble Supreme Court while disposing of the Special Leave Petitions and specifically referring the same in the final order.

70. The learned Additional Solicitor General further contended that the judgment relied upon by the learned Counsel for the accused persons in the case of ***Vinubhai case reported in (2002)4 SCC 638*** particularly paragraph-7 has no application to the facts and circumstances of the present case. Therefore, he sought to dismiss the writ petitions.

71. The learned Additional Solicitor General further contended that as there was change of Public Prosecutor and in view of involvement of accused No.19, who was the Investigating

Officer and Supervisory Officer-accused No.20, who received illegal gratification, the State Government, in the interest of justice, thought it fit to entrust the matter to the 2nd respondent-CBI and no prejudice would be caused to the accused persons in facing the trial as the investigation has already been completed and the investigating authorities have found that there is material against the accused persons. Since in all the writ petitions, the accused having not made out any case as to how they would be prejudiced, if they face the trial, the same are liable to be dismissed.

72. In support of his contentions, learned Additional Solicitor General relied upon the following dictums of the Hon'ble Supreme Court:

- a) (2008)2 SCC 383 - paragraphs-4 and 17 (granting permission for necessary implication);
- b) Fertico Mktg & Investment (P) Ltd. -vs- CBI reported in (2021) 2 SCR 525 - paragraph-12; and

c) Pradeep Ram -vs- State of Jharkhand,
(2019) 17 SCC 326 - paragraph 45 with
regard to continuation of FIR.

73. Sri Vivek Reddy, learned Senior Counsel appearing on behalf of Sri Deepak Shetty, learned Counsel for impleading applicants i.e., the original complainants in W.P.No.51012/2019 contended that in view of the fact that the applicants were not in a position to produce any material documents, their application filed under Section 319 of Cr.P.C., came to be rejected by the trial Court. He also contended that earlier writ petitions filed by the complainants against accused Nos.19 and 20, who were the investigating authorities as well as investigating officers and supervisory authority, colluded in the crime and due to non-availability of material documents, they could not produce the same, thereby the learned Single Judge dismissed the writ petitions which was confirmed by the Hon'ble Supreme Court. He further contended that the trial Court by the order dated 9.1.2019 rejected the application filed under Section 195 of Cr.P.C., for summoning of the witnesses which was the subject matter of Criminal Appeal

No.10046/2019 and the same came to be allowed and remanded and after remand, the jurisdictional police have filed FIR ending in filing of 'B' report and the same was the subject matter of PCR 236/2019 pending before the Principal Civil Judge, Dharwad. He would further contend that after entrusting the matter to the 2nd respondent-CBI by the State Government, CBI arrested accused persons as they found material against them and consequently, after investigation charge sheets are filed, Court has taken cognizance and now at this stage, it is not open for this Court to interfere with the impugned order, Annexure-A passed by the State Government registering FIR by the CBI in exercise of powers under Articles 226 and 227 of the Constitution of India. He also submitted that he would also adopt the arguments advanced by the learned Solicitor General of India as well as Additional Solicitor General and sought to dismiss the writ petitions.

XI - Points for determination

74. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration in these writ petitions are:

- i) Whether the petitioners - Accused Nos.1,5,15,16 and 21, in these writ petitions have made out a case to quash the impugned Government Order bearing No.HD 48 PCB 2016, Bengaluru, dated 6.9.2019, by which sanction has been accorded to the Central Bureau of Investigation, under Section (6) of Delhi Special Police Establishment Act, 1946 for further investigation of Crime No.135/2016 under Section 302 of IPC lodged in Dharwad Sub-Urban Police Station, Dharwad, and to quash the FIR dated 24.9.2019 made in Bangalore/CBI/ACB/BLR 2019 RC 17(S)/2019, by the Superintendent of Police, Central Bureau of Investigation, in the facts and circumstances of the present case ?
- ii) Whether the Investigating Officer of the 2nd respondent/CBI is empowered to proceed with the investigation, in view of the interim order passed by the Hon'ble Supreme Court dated 20.2.2020 in SLP (Criminal) No.1348/2020 (from 20.2.2000 to 11.8.2021) staying the operation of the order passed by the learned Single Judge of this Court dated 21.11.2019 made in W.P. No.51012/2019, in the peculiar facts and circumstances of the present case ?

XII - Consideration

75. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record including the original records maintained by the Government, which culminated in the passing of the Government Order bearing No.HD 48 PCB 2016, Bengaluru, dated 6.9.2019.

76. It is the case of the applicant Nos.1 and 2, who filed impleading application – I.A. No.1/2021 in Writ Petition No.51012/2020 that they are mother and brother of the deceased Yogishgouda Goudar respectively and that Accused No.15 – Vinay Kulkarni was the Sitting Member of Karnataka Legislative Assembly from Dharwad-Rural Constituency and the Minister for Mines & Geology, Government of Karnataka and also in-charge Minister of Dharwad district as on the date of commission of the offence i.e., on 15.6.2016. Both the deceased Yogishgouda Goudar and Accused No.15 – Vinay Kulkarni are political rivals and their rivalry escalated to personal level in the recent past and one such incident took place on 23.4.2016 in the Taluka Level Meeting for supply of

drinking water and Draught Management, which was presided over by Mr. Vinay Kulkarni (Accused No.15) since he was district in-charge Minister. The deceased Yogishgouda Goudar also attended the said meeting as he was the Member of Zilla Panchayat at the relevant point of time. In the said meeting, there was a serious altercation between Mr. Vinay Kulkarni (Accused No.15) and the deceased Yogishgouda Goudar regarding supply of drinking water in the district.

77. It is alleged in the present writ petitions that though there was threat to the deceased Yogishgouda Goudar, he had ignored the threatening letters and had been going on with his day to day affairs, which included attending Gym at 7.30 a.m. in the morning. It was further alleged that, on 15.6.2016, when the deceased had proceeded to Gym which was located within the jurisdiction of Dharwad Sub-Urban Police Station and when he was about to enter the Gym, certain unknown persons assaulted him with weapons and caused his death. On the basis of the information received, Dharwad Sub-Urban Police registered Crime No.135/2016 on 15.6.2016 against unknown persons for the offence punishable

under Section 302 of IPC and after investigation, the Investigating Officer filed the final report against six accused persons (Accused No.1 is the petitioner in W.P. No.51012/2019) for the offences punishable under Sections 143, 147, 148, 120B, 302, 201 r/w 149 of IPC. After registering the case, the jurisdictional court taken cognizance and committed the matter to the Sessions Court. The Sessions Court proceeded for the trial and also recorded the statements of the accused persons under the provisions of Section 313 of the Code of Criminal Procedure.

78. At that stage, Smt. Tungamma and Gurnnathagouda, the mother and brother of the deceased filed Writ Petition Nos.58183-184/17 for a writ of mandamus directing the CBI to investigate the murder of Yogishgouda Goudar and submit report and to take action as per law and direct the Respondent Nos.4 and 5 therein (State of Karnataka, Represented by its Chief Secretary and the Secretary, Home Department, Government of Karnataka respectively) to initiate action against all erring police officials who shielded respondent No.10 therein i.e., Mr. Vinay Kulkarni and other culprits in the conspiracy of murder of Yogishgouda Goudar.

79. It was alleged in the said writ petition that the incident of murder of Yogishgouda Goudar had taken place on 15.6.2016 between 7.37 a.m and 7.38 a.m. and that Accused Nos.1 to 6 gathered before the Uday Gym, Saptapur, Dharwad and killed the deceased Yogishgouda Goudar mercilessly and there was recorded CCTV footage of next building of the place where the offence committed. The investigation only relied upon 3 minutes footage. The murder may be there at the spot prior to the said incident. But taking into consideration of the CCTV footage of 3 minutes is wholly suspicious. Even there is ATM in the said building, where incident took place and investigating Officer relied upon the CCTV footage of next building, which creates doubt on the investigation. The CCTV footage relied upon by the police authorities also reveals that the Hyundai Accent Car (Black) was involved in the said murder. Accused persons gave signal to the said car which comes from the KCD towards Saptapur circle and surprisingly, the said car again returned back towards KCD circle within 70-75 seconds. But, the Police official did not enquire about the said car, even though it is important clue in this case. Surprisingly, the driver and

conductor of the bus belonging to BTS was examined by the Police, but they have failed to examine the car, which is part of the said murder.

80. It was further alleged in the said writ petition that FIR was registered in Crime No.135/2016 on 15.6.2016 at 9.30 a.m. and within a span of one hour, the Home Minister statement was published in the News channel immediately that the murder was due to the land disputes and it shows it was fully planned murder with political influence and accused were not traced till 17.7.2016, Even the Investigating Officer confirmed on 15.6.2016 that still no reason was found about the murder. The fact that the Home Minister could make such a statement itself created a doubt about the fair investigation and Accused Nos.1 to 5 were arrested on 17.6.2016 at 6.30 a.m. and Accused No.6 was arrested on 20.6.2016. Recoveries were made and there is no *mahazar* drawn by the Investigating Officer of the place of arrest of the accused persons nor the exact place of their arrest was mentioned anywhere.

81. It was further alleged that the resident of Vikasa Nagar, Dharwad, informed the Police that one unattended black colour Hyundai Accent car was parked in the locality since a week prior to the incident and the Police came to the spot and taken car and promptly returned the said car to its owner without any enquiry. It is further contended that the presence of the widow of the deceased was secured before the court and she has been examined and the trial judge did not record her statement which actually deposed and further alleged that Respondent No.10 therein i.e., Accused No.15 is the master mind in the conspiracy to murder her husband and trial Judge initially refused to mark the caution letter as Exhibit and after serious efforts made by the Public Prosecutor, the letters are marked as Ex.P1 and P2.

82. It is further contended in the said writ petition that respondent No.11 therein viz., Mr. Tulajappa Sulfi, who was working as Deputy Superintendent of Police in the office of Inspector General, Belgavi, visited the residence of petitioner No.2 therein i.e., Gurunathagouda on 27.10.2017 around 11.15 a.m. and threatened him to settle the matter with Minister – Vinay Kulkarni

and give evidence in favour of the accused of his brother's murder and again he visited the residence of Gurunathagouda at about 6.00 p.m. and asked him to speak to Minister - Vinay Kulkarni over his mobile. Reluctantly, the 2nd petitioner therein did speak to Minister and he was told to settle the case by compromising with the accused. The said Deputy Superintendent of Police was very close to the said Minister and even though he is not at all related to the case in the official capacity, he tried to help the accused as well as the Minister from escaping the clutches of law by forcing the witnesses to give evidence in favour of accused and same raised doubt on fair trial as well as on the fair investigation. Accordingly, the petitioners therein lodged a complaint to the then Hon'ble Chief Justice of Karnataka on 3.11.2019 seeking change of Court of trial, specifically stating in an affidavit about no-confidence in the trial Judge. It is further contended that even though all these efforts are made by the petitioners therein and approached the concerned department Minister and Chief Minister, no steps are taken and therefore without any other alternative and efficacious remedy, the petitioners therein approached this Court

invoking writ jurisdiction. The State opposed the said writ petition by filing objections.

83. Considering the entire material on record, the learned Single Judge has recorded a finding in the said writ petition that it is not a case to order for CBI investigation and there must be some material on record to show that the Investigating Officer has committed an error in conducting the investigation and shabby investigation is conducted and in the absence of prima facie material to come to the conclusion that there was unfair investigation, this Court cannot exercise its writ jurisdiction to order for CBI investigation. Ultimately, this Court held that there is no material to invoke Section 173(8) of the Code of Criminal Procedure asking the Investigating Officer to investigate and file additional charge sheet and having considered the contention of the petitioners therein, only the scope of Section 319 of the Code of Criminal Procedure can be invoked if CW.19 who did not appear before the Court place any material before the court to array the real culprit. Accordingly, dismissed the said writ petition.

84. It is also not in dispute that against the said order passed, the mother and brother of the deceased filed Petition for Special Leave to Appeal (crl.) Nos.5760-61/2019 and the Hon'ble Supreme Court dismissed the said SLP on 22.7.2019.

85. It is an undisputed fact that an application filed under section 319 of the Code of Criminal procedure came to be dismissed by the trial Court by an order dated 26.8.2019. Against the said order, the brother of the deceased i.e., Gurnathgouda filed Criminal Petition No.101725/2019 before this Court. In the said criminal petition, learned counsel for the petitioner therein submitted that the petition may be dismissed as having become infructuous in the light of the subsequent developments. Accordingly, the said criminal petition came to be dismissed by the order dated 7.6.2011.

86. It is also not in dispute that thereafter the impleading applicant No.2 - Gurnathagouda gave representation dated 6.8.2019 to the Chief Minister of Karnataka narrating all the facts including those which are happened after dismissal of Writ Petition Nos.58183-58184/2017 with regard to shabby investigation

conducted by the Investigating Officers i.e., Tulajappa Sulfi, Dy.SP, I.G. Office, Belgavi and Chandrashekhar, Dy.S.P., Dharwad and Ex-Minister Vinay Kulkarni threatening the witnesses to give evidence favouring the accused etc., It is also brought to the notice of Government regarding observations made by this Court in Criminal Appeal No.100046/2019.

87. Considering the entire material on record and taking into consideration the opinion expressed by the learned Advocate General of Government of Karnataka and considering the provisions of Sections 156 and 173(8) of Criminal Procedure Code, Government was satisfied that the further investigation of Crime No.135/2016 of IPC of Dharwad Sub-Urban Police Station, Dharwad was needed to be handed over to CBI, in order to meet the ends of justice. Accordingly, by the impugned Government Order dated 6.9.2019, sanction has been accorded to the CBI, under Section 6 of Delhi Special Police Establishment Act, 1946 for further investigation of Crime No.135/2016 of Dharwad Sub-Urban Police Station, Dharwad. The same was issued by order and in the name of the Governor of Karnataka after applying its mind and taking into

consideration the peculiar facts and circumstances of the present case. Accordingly, the FIR came to be registered on 24.9.2019 as per Annexure-B. In these writ petitions, the petitioners have sought for writ in the nature of certiorari for quashing the Government Order dated 6.9.2019 and the FIR dated 24.9.2019.

88. It is also not in dispute that the learned Single Judge of this Court in Writ Petition No.51012/2019 by the order dated 21.11.2019, while issuing notice to the 2nd respondent – CBI, has granted interim relief staying all further proceedings pursuant to Government Order dated 6.9.2019 and FIR dated 24.9.2019, till the next date of hearing. Subsequently, the interim order was extended from time to time. Aggrieved by the said interim order passed by the learned Single Judge of this Court, the CBI filed SLP (Crl.) 1348/2020 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by the order dated 20.2.2020 while issuing notice in the Special Leave Petition, as an interim measure, directed that there would be stay of operation of the order passed by the learned Single Judge of this Court. Resultantly, the investigation was conducted and carried out by the CBI. The Investigating

Officer of the CBI filed the 1st supplementary charge sheet on 20.5.2020 adding Accused Nos.7 to 14 to the array of the accused and same was taken cognizance of by the Court. Thereafter on 30.1.2021 2nd supplementary charge sheet was filed adding Accused Nos.15 to 17. Further, since Accused Nos.19 and 20 were public servants, sanction to prosecute them has also been obtained by the CBI. The concerned court took the cognizance of all the additional charge sheets filed by the order dated 7.6.2021, thereby the case stands registered as against Accused Nos.15 to 17 as well.

89. The Hon'ble Supreme Court while disposing of Petition for SLP (CrI.) 1348/2020 on 11.8.2021, has made certain observations, which are as under:

"By order dated 20.02.2020, this Court issued notice in the Special Leave Petition and as an interim measure, directed that there would be stay of operation of the order passed by the High Court. Resultantly, the investigation was conducted and carried out by the CBI.

We have been given to understand that after such investigation was carried out, a Challan was filed by the CBI on 02.05.2020 adding Accused Nos.7 to 14 in the

array of the accused. Cognizance in respect of first Challan filed by the CBI was taken on 02.05.2020 itself.

Thereafter, further Challans have been filed on behalf of the CBI adding four more persons as accused. Since Accused Nos.19 and 20 are public servants, sanction to prosecute them has also been obtained by the CBI.

Cognizance in respect of said Challans has been taken by the concerned Court vide order dated 07.06.2021 and the case now stands registered as against Accused Nos.15 to 17 as well.

It thus emerges:

- a) The main issue as raised in the writ petition is not yet gone into by the High Court.
- b) The matter in this Court arises from an interim order.
- c) As a result of the interim order passed by this Court, the aforesaid developments have already taken place.
- d) The interim order passed by this Court on 20.02.2020 continues to operate.

In the aforesaid circumstances, without going into the merits or demerits of the rival contentions, we request the High Court to take up Writ Petition No.51012 of 2019 for disposal as early as possible and preferably within two months from the receipt of copy of this order. Considering the issues raised in the matter, we request the Chief Justice of the High Court to assign the matter to a Division Bench of the High Court, if the relevant Rules so permit.

Pending such consideration, the interim order passed by this Court on 20.02.2020 shall continue to operate.

We shall not be taken to have expressed any opinion on the merits of the matter and all contentions as are available to the parties are left open to be advanced before and considered by the High Court.

With these observations, the Special Leave Petition (Crl.) No.1348 of 2020 stands disposed of.

Pending applications, if any, also stand disposed of.” (emphasis supplied)

The said order passed by the Hon'ble Supreme Court binds all the parties.

90. On careful perusal of the material documents including the objections filed by the respondents, it clearly depicts that the deceased Yogishgouda Goudar was a member of the Zilla Panchayath from Bharatiya Janatha Party ('BJP') and the accused, especially Accused No.15 was in the congress party and there was a verbal altercation between the deceased and accused in the meeting held on 24.4.2015, thereby the Accused No.15 and other accused have developed vengeance. Accordingly, after entering into conspiracy, on 15.6.2016 the deceased was killed near the Gym within the jurisdiction of Dharwad Sub-Urban Police Station and the Police registered the case for the offence punishable under the provisions of Section 302 of IPC in Crime No.135/2016 against unknown persons. During the course of examination of the prosecution witnesses in SC 50/2017, mother and brother of the deceased approached the then Chief Minister with a representation requesting to refer the matter to CBI and the said representation was not fructified into action. It is further alleged that Gurunathgouda, brother of the deceased has been examined as PW.58 and during the course of his evidence, he has stated that the police have not investigated the case properly and that one more

car which was involved in the incident has been left out from the investigation and CCTV footages around the place of incident has not been obtained by the State Police, and that mother of the deceased also given complaint to the Government in that regard. During the said period, the said Gurnathgoudar had also given a complaint to the State of Karnataka requesting for handing over of the case for investigation by the CBI. The said complaint would clearly indicate the involvement of the police offices of the rank of Deputy Superintendent of Police and a senior politician in the incident and filing of the final report without proper investigation. Therefore, mother and brother of the deceased filed Writ Petition Nos. 58183-58184/2017 with a prayer to hand over the case to the CBI. The Government opposed the said writ petition filed by mother and brother of the deceased to refer the matter to CBI, in order to shield the Accused No.15 and other accused persons, who are the members of the congress party and thereby the writ petition came to be dismissed and same is upheld by the Hon'ble Supreme Court. It is contended that thereafter new Government was established and one more representation was made by mother and brother of the deceased to the Chief Minister and based on

their representation, the present Government proceeded to entrust the matter to the CBI, the 2nd respondent on 6.9.2019 after obtaining opinion from the learned Advocate General of the State of Karnataka. It is further contended in the grounds of the writ petition that the impugned Government Order dated 6.9.2019 is malicious and politically motivated only in order to take vengeance against the Accused No.15 - Vinay Kulkarni, who was the then Minister of Congress party and keeping in mind that the deceased Yogishgouda Goudar was a member of the Zilla Panchayath from BJP. It is further contended that the State Government has no authority to issue the impugned Government Order, in view of the order passed by this Court dated 1.3.2019 in the earlier writ petition rejecting the prayer for entrustment of the matter to CBI and confirmed by the Hon'ble Supreme Court. There is a allegation and counter allegation between the two political parties. Admittedly Accused No.15 and other accused persons belong to Congress party as alleged by the respondents in the Statement of objections as well as in the submissions made by the learned counsel for the parties and the deceased Yogishgouda Goudar belong to BJP as alleged in the grounds of the present writ petition

and as contended by the learned counsel for the petitioners/accused persons, which clearly indicates that the political parties are trying to settle the scores against each other taking the advantage of the judicial process.

91. "It is well settled that the State Government acting under the Constitution, is under constitutional duty coupled with power. Every Government is a trustee of the society and in all facets of public administration, every Government has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. Government is entrusted with duty and power to implement constitutional policy under Articles 14, 21 and 300A and all inter-related directive principles of state policy under the Constitution, should exhibit transparency in implementation and of accountable for due effectuation of constitutional goals. Unfortunately, even after lapse of 75 years of independence of our country, no political party is fighting to protect the rights of every citizen of the country and every political party have their own

agenda and design to continue in the power for ever and every political party is trying to take advantage of the judicial process and misuse their power including the Investigating Officers, Police officials and official missionary."

92. It is well settled that criminalization of politics is an anathema to the sacredness of democracy. Commenting on criminalization of politics, the Hon'ble Supreme Court lamented the faults and imperfection which have impeded the country in reaching the expectations which heralded its conception. The growth and spread of crime indicates Indian society has been pervading and criminal elements developed an extensive network of contacts and the nexus between the politicians, bureaucrats and criminal elements in our country has been on rise, the adverse effects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his Addresses to the Nation on the eve of Republic day in 1996 as well as in 1997 and hence it required to be handled with extreme care and circumspection.

93. The Hon'ble Supreme Court while considering the criminalization of politics in the case of **Anukul Chandra Pradhan v. Union of India**, reported in (1997) 6 SCC 1, has held at paragraph-5 as under:

5. There are provisions made in the election law which exclude persons with criminal background of the kind specified therein, from the election scene as candidates and voters. The object is to prevent criminalisation of politics and maintain probity in elections. Any provision enacted with a view to promote this object must be welcomed and upheld as subserving the constitutional purpose. The elbow room available to the legislature in classification depends on the context and the object for enactment of the provision. The existing conditions in which the law has to be applied cannot be ignored in adjudging its validity because it is relatable to the object sought to be achieved by the legislation. Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order which are the essence of

democracy must, therefore, be so viewed. More elbow room to the legislature for classification has to be available to achieve the professed object.

94. It is high time for the judiciary to protect the fundamental rights of the citizens of this country to ensure justice must not only be done but must be seen to be done and majesty of rule of law is to be upheld and it is to be ensured that guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed. This Court being the protector of the civil liberties of the citizens, has not only power and jurisdiction but also an obligation to protect the fundamental rights guaranteed by part III in general and Article 21 of the Constitution in particular, zealously and vigilantly.

95. Keeping in mind the aforesaid principles, it is relevant to consider at this stage whether the State Government is justified in entrusting the matter to the CBI in pursuance of the impugned Government Order dated 6.9.2019, in view of the representation made by the kith and kin of the deceased. A careful perusal of the records which culminated into passing of the impugned Government

Order dated 6.9.2019 clearly indicates that the State Government was aware of the fact that the complainant had earlier approached this Court requesting to hand over the case to the CBI and this Court has dismissed the said writ petition. After considering the entire material on record, the State Government was of the opinion that the matter has to be entrusted to the CBI for further investigation, which is an independent authority and there is no bar for the State Government to exercise its sovereign power to entrust the matter to the CBI under Section 6 of the Delhi Special Police Establishment Act, 1946 for further investigation in Crime 135/2016 for the offence under section 302 IPC, in order to meet the ends of justice, Accordingly, the Central Government also issued notification on 23.9.2019 extending the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Karnataka for further investigation of Crime No.135/2016 under Section 302 IPC lodged in in Dharwad Sub-Urban Police Station, Dharwad.

96. It is also not in dispute that the present writ petitions are filed challenging the validity of the Government Order dated

6.9.2019 entrusting the matter for further investigation to CBI and for quashing of FIR dated 24.9.2019. The learned Single Judge of this Court granted the interim order on 21.11.2019 staying all further proceedings pursuant to the Government Order dated 6.9.2019 and FIR dated 24.9.2019, till the next date of hearing and the said interim order was extended from time to time. It is also not in dispute that the CBI filed SLP (crl.) 1348/2020 challenging the order dated 21.11.2019 passed in W.P. No.51012/2019. The Hon'ble Supreme Court by the order dated 20.2.2020 issued notice in the SLP and as an interim measure, directed that there would be stay of operation of the order dated 21.11.2019 passed by this Court. Resultantly, the investigation was conducted and carried out by the CBI. After investigation, filed the supplementary charge sheet on 20.5.2020 adding Accused Nos.7 to 14 in the array of accused and the cognisance was taken by the competent Court. Thereafter, another supplementary charge sheet was filed on 30.1.2021 adding Accused Nos.15 to 17. Cognizance in respect of the said charge sheets were taken on 7.6.2021. Since Accused Nos.19 and 20 are public servants, sanction to prosecute them has also been obtained by the CBI. In these writ petitions,

none of the petitioners have challenged the charge sheets filed against the accused persons nor challenged the cognizance taken by the Court after applying its judicial mind.

97. It is also relevant to state that soon after Government Order dated 6.9.2019 issued by the State Government handing over the matter to the CBI, the 2nd respondent filed memo dated 27.9.2019 before the Principal Civil Judge (Jr.Division) & JMFC, Dharwad under the provisions of Section 173(8) and also one more memo dated 27.9.2019 filed on the file of the learned IV Addl. District & Sessions Judge, Dharwad under provisions of Section 173(8) of the Code of Criminal Procedure intimating the Court about CBI taking up the matter for further investigation.

98. The 2nd charge sheet filed depicts that the further investigation conducted has revealed that Accused No.1 had arranged accused outside Dharwad to execute the murder of the deceased Yogishgouda Goudar and the said accused persons were not arrested by the local police in their investigation and Accused No.1 surrendered voluntarily during the investigation as a part of larger conspiracy. The analysis of CCTV footage and the

confrontation of the same with witnesses and the charge-sheeted accused led to the identification of eight other accused persons who were arrested by CBI. The accused were taken to police custody and later remanded to judicial custody. A supplementary charge sheet was filed by the CBI on 20.5.2020 under section 173(8) of the Code of Criminal Procedure against Accused Nos.1 to 14 including the eight accused persons arrested by the CBI (Accused Nos.7 to 14) in addition to six accused charge sheeted by the local police (Accused Nos.1 to 6). Accordingly, the Court has taken cognizance of the same as 352/2020 and the CBI continued with the further investigation. The further investigation revealed the participation of Shri Vinay Kulkarni (Accused No.15) in the conspiracy leading to the murder of Yogishgoud Goudar and he was arrested on 5.11.2020. The further investigation revealed participation of Shri Chandrashekar Indi (Accused No.16), who is the maternal uncle of Accused No.15. Accused No.16 is a business man by profession running a dealership of toilet cleaning materials and he used to visit Dharwad regularly to meet Accused No.15 and Accused No.16 was arrested on 13.12.2020 for his involvement in arranging three country made pistols from

Bijapur and handing over to Accused No.1 with a purpose to use it to execute the murder of Sri Yogishgoud Goudar. The further investigation has revealed that there was personal enmity between Accused No.15 and the deceased as the deceased declined the request of the Accused No.15 to step back from the Zilla panchayat election of 2016. The further investigation has revealed that a serious verbal altercation had occurred between the deceased Yogishgoud Goudar and Accused No.15, in a Zilla Panchayat meeting, a month and half prior to the murder. The said Zilla Panchayat meeting was held on 23.4.2016 and it was chaired by Mr. Vinay Kulkarni (Accused No.15), as in-charge Minister of Dharwad district. It is revealed that the deceased YogishGoudar has also attended the said meeting representing his constituency. The said fact has been confirmed by the witnesses (CW.41 to CW.43) who attended the meeting. The further investigation revealed that Mr. Vinay Kulkarni (Accused No.15) had conspired with his close associates – Accused Nos.1 and 16 and others for the murder of the deceased Yogishgouda Goudar following the Zilla Panchayat meeting on 23.4.2016. The accused persons acted as prime conspirators of the murder of the deceased Yogishgouda

Goudar. The investigation further revealed that for a period from January 2016 to June 2016, CDR of the personal mobile number of Mr. Vinay Kulkarni (Accused No.15) (9663406677) showed that he was in touch with Shri Basavaraj Muttagi (Accused No.1) in his mobile number (9538659906) on 57 occasions. Further, Accused No.1 was also in touch with the mobile number registered in the name of wife of the petitioner (9611683099) and the CDR indicates 54 calls made between 16.4.2016 to 30.5.2016 a total of 94 calls from January 2016 till 30.5.2016. Apart from those calls, the tower locations of the mobile numbers registered in the name of Mr. Vinay Kulkarni (Accused NO.15) and Shri Basavaraj Muttagi (Accused No.1) were found at near locations for six times from the period 23.4.2016 to 31.5.2016 suggesting that they met several times prior to the murder.

99. The further investigation revealed in pursuance of the conspiracy, Sri Vinay Kulkarni (Accused No.15) made arrangements for the surrender of Accused Nos.1 to 6 in place of the accused who executed the crime (Accused Nos.7 to 14). The Accused Nos.1 to 5 surrendered before the then ACP Shri Vasudev Rama Nilkeni

whose arrest was recorded by then Investigating Officer Shri C. Tingerikar on 17.6.2016. Later, the arrest of Accused No.6 was also recorded on 20.6.2016. The further investigation revealed that Accused No.15 had interfered in the legal process during trial, which resulted in the witnesses turning hostile. The further investigation revealed that Accused No.15 who was the then Minister misused the political power to intimidate the eye witnesses including a lady witness who were common people of the society so as to prevent them from deposing the entire truth before the trial Court. The further investigation also revealed that the panch witnesses were also intimidated to prevent them from deposing the truth on the directions of Accused No.15. It is also revealed that Accused NO.16 used to visit Dharwad to attend and monitor the trial proceedings in S.C. No.50/2017 and he used to stay at Hotel Central Park, near court circle, Dharwad and Hotel Ankita Residency located near to Dharwad Sessions Court complex at Dharwad. The above overt acts and circumstances disclose the commission of offence by Accused Nos.1,15, 16 and 17 under the provisions of Sections 120B r/w 302, 201, 143, 147, 148 r/w 149 of IPC and under Section 25 r/w Section 3, 5, 8 and 29 of the Arms Act. The

further investigation conducted by the 2nd respondent revealed that 88 witnesses were examined and 75 documents were produced, which depicts the involvement of the accused persons in the homicidal death of the deceased.

100. The material on record depicts that the Public Prosecutor, who was in-charge of the crime was changed during trial. The material also revealed that during the course of further investigation by CBI, it has come to light that some of the Police officials including previous Investigating Officer are also found to be involved in the case, were found to have taken gratification to scuttle the investigation and they have been arrayed as Accused Nos.19 and 20. Accused No.19 is the previous Investigating Officer and Accused No.20 is the Supervisory Officer of Accused No.19. After considering the charge sheet material, the Government of Karnataka has accorded sanction to prosecute the said accused persons as well and departmental enquiry has also been initiated against them. The material on record clearly depicts that there are overt acts against the accused persons in the supplementary charge sheets and the competent Court took cognizance of the additional

charge sheets. Therefore, the contention of the learned counsel for the petitioners that the investigation is defective, *malafide* and there is no permission obtained from the Court, cannot be accepted and same is devoid of any merit.

101. It is relevant to consider the provisions of 173(8) of the Code of Criminal Procedure, which reads as under:

"173. (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

102. A careful reading of the said provisions, makes it clear sub section (8) of Section 173 of the Code of Criminal Procedure does talk about "further investigation". The term, "further investigation" has, however, not been defined in the Code and

must therefore depend on the facts of each case as culled from the record. The further investigation conducted by the 2nd respondent revealed that 88 witnesses were examined and 75 documents were produced, which depicts the overt acts against the additional accused persons and accordingly filed the supplementary charge sheets before the Court, which clearly indicates that the nature of the investigation conducted by the 2nd respondent amounts to continuation of further investigation in Crime No.135/16 and not re-investigation as contended by the learned counsel for the petitioners.

103. The Hon'ble Supreme Court while considering the provisions of Section 173(8) of the Code of Criminal Procedure in the case of **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj –vs- State of A.P.** reported in 1999 CrI.J. 3661, held at paragraph-10 as under:

10. *Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open*

to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] . The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

104. Admittedly, in the present case, the 2nd respondent has informed the Court by filing a memo and subsequently supplementary charge sheets also filed and the competent Court took the cognizance, thereby a permission was granted by the Court by necessary implication as held by the Hon'ble Supreme Court in the case of **State of A.P. v. A.S. Peter**, reported in (2008)2 SCC 383 at paragraphs 4 and 17, which reads as under:

4. *Before carrying out the said investigation, the Inspector of Police, CID filed a memo in the said court with the prayer that the matter be adjourned. Although it does not appear that any express permission was granted for carrying out further investigation, the prayer of adjournment was allowed in terms of the said memo. Further investigation was carried out whereafter an additional charge-sheet was filed against Accused 1*

to 3 in the Court of the IVth Additional Munsif Magistrate, Chittoor for offences under Sections 199, 200, 204 and 120 of the Penal Code. More accused persons were also added in the charge-sheet in the category of the accused. Indisputably, the case was transferred from the Tirupati Court to a Designated Court at Chittoor.

17. *It is not a case where investigation was carried out in relation to a separate conspiracy. As allegations had been made against the officer of a local police station in regard to the mode and manner in which investigation was carried out, a further investigation was directed. The court was informed thereabout. Although, no express permission was granted, but evidently, such a permission was granted by necessary implication as further proceeding was stayed by the learned Magistrate. It is also not a case where two charge-sheets were filed before two different courts. The court designated to deal with the matters wherein investigation had been carried out by CID, is located at Chittoor. It is in the aforementioned situation, the Sessions Judge transferred the case pending in the Tirupati Court to the Designated Court at Chittoor. Cognizance of further offence had also been taken by the Chittoor Court.*

105. By careful perusal of the provisions of Section 173(8) of the Code of Criminal Procedure, it is clear that it does not prohibit the Police for conducting further investigation nor does it impinge on the power of the State Government to entrust the matter to CBI for further investigation under of Section - 6 of the Delhi Special Police Establishment Act, 1946. The Hon'ble Supreme Court while considering the provisions of Section 173(8), 36 and 156 of the Code of Criminal procedure in the case of **State of Bihar v. J.A.C. Saldanha** reported in (1980) 1 SCC 554, held at paragraphs – 13, 14, 17 and 19 as under:

13. It was, however, contended that State Government has no power to direct further investigation, that being the power of the officer in charge of a police station under sub-section (8) of Section 173 of the Code, or the power of the Magistrate to direct further investigation under sub-section (3) of Section 156, and, therefore, the State Government under orders of the Chief Minister was not competent to direct further investigation in the case.

14. The State of Bihar is governed by the Indian Police Act, 1861, ("Act" for short), because it has not enacted

any Police Act of its own. In Section 1 of the Act the word "Police" is defined to include all persons who shall be enrolled under the Act and the words "general police district" are defined to embrace any presidency, State or place, or any part of any presidency, State or place, in which the Act shall be ordered to take effect. Section 3 of the Indian Police Act provides as under:

3. The superintendence of the police throughout a general police district shall vest in and, shall be exercised by the State Government to which such district is subordinate; and except as authorised under the provisions of this Act, no person, officer or court shall be empowered by the State Government to supersede or control any police functionary.

Section 12 confers power on the Inspector General of Police, subject to the approval of the State Government, to make rules and it was stated that the Bihar Police Manual, 1978, has been issued in exercise of the power conferred by Section 12. Section 22 provides that every police officer shall, for all purposes in the Act contained, be considered to be always on duty, and may at any time be employed as a police officer in any part of the

general police district. The Act, as its long title shows, was enacted to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime. Investigation comprehends detection of the crime. General police district covers the entire State. Inspector General, Vigilance, being appointed for the whole of the State, is a police officer considered to be on duty for all purposes of the Act in the whole of the State and it is open to the State Government to employ him as police officer in any part of the general district. This would effectively answer the contention of Respondent 1 that Inspector General, Vigilance, being only in charge of bribery and corruption cases, could not be directed by the State Government in exercise of its executive administrative function to take over investigation of a cognisable offence registered at railway police station because when he was directed to take over the investigation it would mean that he was employed as a police officer in that police station for the detection of the crime.

17. The High Court construed the expression "superintendence" in Section 3 of the Act to mean "general supervision of the management of the police department and does not vest the State Government with authority to decide what the police alone is

authorised to decide". There is nothing in the Act to indicate such a narrow construction of the word "superintendence". Nothing was pointed out to us to put a narrow construction on this general power of superintendence conferred under the Act on the State Government and there is no justification for limiting the broad spectrum of power comprehended in power of superintendence. Accordingly superintendence would comprehend the power to direct further investigation if the circumstances so warrant and there is nothing in the Code providing to the contrary so as to limit or fetter this power. Sub-section (8) of Section 173 was pressed into service to show that the power of further investigation after the submission of a report under Section 173(2) would be with the officer in charge of a police station. Sub-section (8) of Section 173 is not the source of power of the State Government to direct further investigation. Section 173(8) enables an officer in charge of a police station to carry on further investigation even after a report under Section 173(2) is submitted to court. But if State Government has otherwise power to direct further investigation it is neither curtailed, limited nor denied by Section 173(8), more so, when the State Government directs an officer superior in rank to an officer in charge of police station thereby enjoying all powers of an officer in charge of a

police station to further investigate the case. Such a situation would be covered by the combined reading of Section 173(8) with Section 36 of the Code. Such power is claimed as flowing from the power of superintendence over police to direct a police officer to do or not to do a certain thing because at the stage of investigation the power is enjoyed as executive power untrammelled by the judiciary. It was incidentally submitted that it is an undisputed dictum of law that when a statute requires a thing to be done in a certain manner it shall be done in that manner alone and the court would not expect its being done in some other manner (see State of Gujarat v. Shantilal Mangaldas [(1969) 1 SCC 509 : (1969) 3 SCR 341, 372]). Expounding the submission it was stated that sub-section (8) of Section 173 clearly indicates the power of further investigation after submission of a report and that power is conferred on the officer in charge of a police station only and, therefore, the State Government was incompetent to direct further investigation. It was further contended that in view of the provision contained in Section 173(8) it would not be open to the court to so interpret the word "superintendence" in Section 3 of the Police Act as to empower the State Government to direct investigation being done by some one other than the statutory authority envisaged by Section 173(8)

because such an interpretation would derogate from the principle that where a thing is required by a statute to be done in a particular way it shall be deemed to have prohibited that thing being done in any other way. In Ex parte Stephen [(1876) 3 Ch D 659] the principle is stated that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. Subba Rao, J. in Patna Improvement Trust v. Smt Lakshmi Devi [AIR 1963 SC 1077 : 1963 Supp 2 SCR 812, 823 : (1965) 1 SCJ 119] spelt out the combined effect of the aforementioned principles thus:

"A general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way."

19. *The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after*

submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1.

106. A careful reading of the impugned Government Order dated 6.9.2019 clearly depicts that considering the entire material on record, the Government was satisfied that further investigation of Crime No.135/2016 under Section 302 of IPC of Dharwad Sub-

Urban Police Station, Dharwad was needed to be handed over to CBI in order to meet the ends of justice. The order also depicts that sanction accorded by the Government to the CBI under Section – 6 of Delhi Special Police Establishment Act, 1946 only for further investigation and therefore, the contention of learned counsel for the petitioners that it was for re-investigation of the entire matter, cannot be accepted. The Government Order clearly depicts that it is only a further investigation, in continuation of the 1st FIR filed. The contention that absolutely there is no reason for disapproval of the investigation by the local police and Government has no independent power, cannot be accepted. As already stated supra, the entire original records maintained by the Government culminating into passing of the impugned order clearly depicts that the representation made by the kith and kin of the deceased requesting for entrustment of the matter to CBI for further investigation, has been scrupulously considered in accordance with the provisions of Business Transaction Rules by the concerned authorities of the Government and the Home Minister and the Chief Minister and after application of mind and after being satisfied that it is a fit case to refer the matter to CBI, it has issued the impugned

Government Order by order and in the name of the Governor of Karnataka. Therefore, it is a clear case of further investigation and not re-investigation as alleged.

107. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of **Pradeep Ram v. State of Jharkhand** reported in (2019) 17 SCC 326, wherein at paragraph-45 it is held as under:

45. Sub-section (6) of Section 6 prohibits the State Government or any police officer of the State Government to proceed with the investigation. In the present case, when Order was issued by the Central Government on 13-2-2018, it was not competent for the police officer of the State Government to proceed with the investigation. We, thus, are of the opinion that FIR, which was re-registered by NIA on 16-2-2018 cannot be held to be second FIR of the offences rather it was re-registration of the FIR to give effect to the provisions of the NIA Act and re-registration of the FIR is only procedural Act to initiate the investigation and the trial under the NIA Act. The re-registration of the FIR, thus, is neither barred nor can be held that it is second FIR.

108. It is relevant to state at this stage that Entry 2 of List II of the Seventh Schedule of the Constitution of India refers to Police (including railway and village police) subject to the provisions of Entry 2-A of List I. Entry 8 of List I of the Seventh Schedule refers to CBI. Section 6 of the Delhi Special Police Establishment Act states that nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, without the consent of the Government of that State. As already stated supra, on the basis of the entrustment, the Central Government issued notification on 23.9.2019 extending the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Karnataka for further investigation of Crime No. 135/2016 under Section 302 IPC lodged in Dharwad Sub-Urban Police Station, Dharwad. The provisions of Section 6 of the Delhi Special Police Establishment Act, balances the power of the Central Government to get offences investigated through central agency despite the exclusive domain of the State Government for such investigation being covered by a Entry 2 of List II.

109. The Hon'ble Supreme Court while considering the provisions of Section 6 of the Delhi Special Police Establishment Act and Lists under the Seventh Schedule of the Constitution of India, in the case of **State of W.B. v. Committee for Protection of Democratic Rights**, reported in (2010) 3 SCC 571, has held at paragraphs - 13, 16, 17, 21 36 39 43 68(ii) (v) (vi) and (vii) and 70 as under:

13. *Learned counsel went to the extent of arguing that even when the State police is not in a position to conduct an impartial investigation because of extraneous influences, the Court still cannot exercise executive power of directing the police force of another State to carry out investigations without the consent of that State. In such a situation, the matter is best left to the wisdom of Parliament to enact an appropriate legislation to take care of the situation. According to the learned counsel, till that is done, even such an extreme situation would not justify the Court upsetting the federal or quasi-federal system created by the Constitution.*

16. *Shri Goolam E. Vahanvati, learned Attorney General for India, appearing on behalf of the Union of India,*

submitted that the entire approach of the State being based on an assumption that the alleged restriction on Parliament's legislative power under Entry 80 of List I of the Seventh Schedule to the Constitution and restriction on the power of the Central Government under Section 6 of the Special Police Act to issue a notification binds the constitutional courts i.e. the Supreme Court and the High Courts is fallacious, inasmuch as the restrictions on the Central Government and Parliament cannot be inferentially extended to be restrictions on the constitutional courts in exercise of their powers under Articles 32 and 226 of the Constitution as it is the obligation of the superior courts to protect the citizens and enforce their fundamental rights.

17. *Learned counsel vehemently argued that the stand of the appellants that the exercise of power by the Supreme Court or the High Courts to refer investigation to CBI directly without prior approval of the State Government concerned would violate the federal structure of the Constitution is again misconceived as it overlooks the basic fact that in a federal structure it is the duty of the courts to uphold the constitutional values and to enforce the constitutional limitations as an ultimate interpreter of the Constitution. In support of the proposition, learned counsel placed reliance on the decisions of this Court in State of Rajasthan v. Union of*

India [(1977) 3 SCC 592] , S.R. Bommai v. Union of India [(1994) 3 SCC 1] and Kuldip Nayar v. Union of India [(2006) 7 SCC 1] .

21. *In order to appreciate the controversy, a brief reference to some of the provisions in the Constitution would be necessary. The Constitution of India is divided into several parts, each part dealing in detail with different aspects of the social, economic, political and administrative set-up. For the present case, we are mainly concerned with Part III of the Constitution, which enumerates the fundamental rights guaranteed by the State primarily to citizens and in some cases to every resident of India and Part XI thereof, which pertains to the relations between the Union and the States.*

36. *Having noticed the scope and amplitude of Sections 5 and 6 of the Special Police Act, the question for consideration is whether the restriction imposed on the powers of the Central Government would apply mutatis mutandis to the constitutional courts as well. As stated above, the main thrust of the argument of Shri K.K. Venugopal, learned Senior Counsel, is that the course adopted by the High Court in directing CBI to undertake investigation in the State of West Bengal without the*

consent of the State is incompatible with the federal structure as also the doctrine of separation of powers between the three organs of the State, embodied in the Constitution even when the High Court, on the material before it, was convinced that the State police was dragging its feet insofar as investigation into the 4-1-2001 carnage was concerned.

39. *It is trite that in the constitutional scheme adopted in India, besides supremacy of the Constitution, the separation of powers between the legislature, the executive and the judiciary constitutes the basic features of the Constitution. In fact, the importance of separation of powers in our system of governance was recognised in Special Reference No. 1 of 1964 [AIR 1965 SC 745 : (1965) 1 SCR 413] , even before the basic structure doctrine came to be propounded in the celebrated case of Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225] , wherein while finding certain basic features of the Constitution, it was opined that separation of powers is part of the basic structure of the Constitution. Later, similar view was echoed in Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1] and in a series of other cases on the point. Nevertheless, apart from the fact that our Constitution does not envisage a rigid and strict separation of powers between the said three organs of the State, the*

power of judicial review stands entirely on a different pedestal. Being itself part of the basic structure of the Constitution, it cannot be ousted or abridged by even a constitutional amendment. (See L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] .) Besides, judicial review is otherwise essential for resolving the disputes regarding the limits of constitutional power and entering the constitutional limitations as an ultimate interpreter of the Constitution.

43. *Having discussed the scope and width of the doctrine of separation of powers, the moot question for consideration in the present case is that when the fundamental rights, as enshrined in Part III of the Constitution, which include the right to equality (Article 14); the freedom of speech [Article 19(1)(a)] and the right not to be deprived of life and liberty except by procedure established by law (Article 21), as alleged in the instant case, are violated, can their violation be immunised from judicial scrutiny on the touchstone of doctrine of separation of powers between the legislature, executive and the judiciary.*

68(ii) *Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives*

and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(v) *Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.*

(vi) *If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional*

courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) *When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.*

70. *Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing*

any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

110. The Hon'ble Supreme Court while considering the scope of the provisions of Sections 5 and 6 of the Delhi Special Police Establishment Act, 1946 in the case of **Fertico Mktg. & Investment (P) Ltd. v. CBI**, reported in (2021) 2 SCC 525, has held at paragraphs 5, 7 and 12 and 16 and 17 and 22

5. The learned Single Judge of the High Court vide his order dated 24-2-2015 [Fertico Mktg. & Investment (P) Ltd. v. CBI, 2015 SCC OnLine All 5339] , framed the following four questions for determination : [Fertico Mktg. & Investment (P) Ltd. case [Fertico Mktg. & Investment (P) Ltd. v. CBI, 2015 SCC OnLine All 5339] SCC OnLine All para 46]

"46. ... Q. No. 1.—Whether the investigation conducted by CBI in these bunch of cases is illegal and without jurisdiction for non-compliance with Section 6 of the DSPE Act? If so, its effect?

Q. No. 2.—Whether the cases are overwhelmingly and predominatingly of civil nature as purely bases on breach of contract (FSA) and the criminal prosecutions are liable to be quashed?

Q. No. 3.—Whether CBI did not follow the doctrine of parity in filing the criminal prosecutions against the petitioners? If so, its effect?

Q. No. 4.—Whether in absence of officers/official of NCL, charge of criminal conspiracy under Section 120-B IPC could be made out?"

7. *The learned Single Judge vide his detailed order dated 24-2-2015 [Fertico Mktg. & Investment (P) Ltd. v. CBI, 2015 SCC OnLine All 5339] , referred the following two questions to the Division Bench : [Fertico Mktg. & Investment (P) Ltd. case [Fertico Mktg. & Investment (P) Ltd. v. CBI, 2015 SCC OnLine All 5339] , SCC OnLine All para 83]*

"83. ... 1. Whether investigation of such cases having involvement of public servant under control of the State Government of U.P. as well as private individuals for offences punishable under the Prevention of Corruption Act, 1988 (49 of 1988), and attempts, abetments and conspiracies in relation to all or any of the offence or offences mentioned above and any other offence or offences committed in the course

of the transaction and arising out of the same facts under the G.O. of the State Government dated 15-6-1989 can be investigated by CBI assuming suo motu jurisdiction under Section 6 of the DSPE Act without the previous permission or consent of the State Government?

2. Whether total non-compliance/absence of previous consent of the State Government under Section 6 of the DSPE Act could be cured by grant of prosecution sanction under Section 197 CrPC or under Section 19 of the PC Act by the State Government or competent authority?"

12. *Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellants submitted that in the absence of the consent of the State Government under Section 6 of the DSPE Act, the DSPE (CBI) had no powers to conduct investigation in view of the provisions contained in Section 6 of the DSPE Act. He submitted that the consent of the State Government is mandatory as is seen from Section 6 of the DSPE Act. The learned Senior Counsel would submit that failure in obtaining the consent prior to registration of the FIR would go to the root of the matter and vitiate the entire*

investigation. He submitted that the appellants-private individuals have been charged with the offences punishable under Sections 120-B and 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. He submitted that an offence under the provisions of the Prevention of Corruption Act can be registered only against public servant.

16. *It will be relevant to refer to Sections 5 and 6 of the DSPE Act as under:*

5. Extension of powers and jurisdiction of Special Police Establishment to other areas.—

(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union Territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction

of members of the said Police Establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be

deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.”

17. *It could thus be seen that though Section 5 enables the Central Government to extend the powers and jurisdiction of Members of the DSPE beyond the Union Territories to a State, the same is not permissible unless a State grants its consent for such an extension within the area of the State concerned under Section 6 of the DSPE Act. Obviously, the provisions are in tune with the federal character of the Constitution, which has been held to be one of the basic structures of the Constitution.*

22. *As early as in 1955, the question arose for consideration before this Court, as to whether an investigation carried out by a police officer below the rank of Deputy Superintendent of Police, under Section 5(4) of the Prevention of Corruption Act, 1947, without the order of the Magistrate of First Class, was mandatory or directory? While holding that the provision is mandatory, this Court considered a question as to whether and to what extent, the trial which follows such investigation, is vitiated. The Court in H.N. Rishbud v. State of Delhi [H.N. Rishbud v. State of Delhi, (1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 Cri LJ 526] , observed as under : (AIR p. 204, para 9)*

"9. ... If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in

Parbhu v. King Emperor [Parbhu v. King Emperor, 1944 SCC OnLine PC 1 : (1943-44) 71 IA 75 : AIR 1944 PC 73] and Lumbhardar Zutshi v. R. [Lumbhardar Zutshi v. R., 1949 SCC OnLine PC 64 : (1949-50) 77 IA 62 : AIR 1950 PC 26]

These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

It could thus be seen that this Court has held that the cognizance and the trial cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice. It has been held that the illegality may have a bearing on the question of prejudice or miscarriage of justice but the invalidity of the investigation has no relation to the competence of the court.

111. Admittedly, in the present case the State Government by the impugned Government Order has granted its consent and accordingly, the Central Government also ordered for the extension of the provisions of the DSPE Act by issuing a notification. Therefore, the order passed by the State Government entrusting the matter to CBI for further investigation, is in accordance with law.

112. It is not in dispute that W.P. Nos.58183-184/2017 filed before Dharwad Bench of High Court of Karnataka, seeking writ of mandamus directing the investigation in respect of the information dated 15.6.2016, registered as FIR No.135/2016, with Dharwad Sub-Urban Police to be transferred and conducted by CBI, came to

be dismissed by the order dated 1.3.2019. The same has been confirmed by the Hon'ble Supreme Court in SLP (Crl.) Nos.5760-5761/2019 by the order dated 22.7.2019. It is also not in dispute that after dismissal of the Writ Petition for entrustment of the matter to CBI and confirmation of the same by the Hon'ble Supreme Court, the brother of the deceased i.e., GurunathGouda, had filed an application under Section 319 of the Code of Criminal Procedure, seeking to include one Mr. Vinay Kulkarni and Mr. Manjunath Basannavar, as additional accused in S.C. No. 50/2017, pending on the file of the IV Addl. District & Sessions Judge, Dharwad. The learned Sessions Judge on consideration of the said application, has dismissed the same by the order dated 26.8.2019. Against the said order, Criminal Petition No.101725/2019 has been filed before this Court and same came to be dismissed as having become infructuous, in view of the subsequent developments.

113. It is also relevant to state at this stage that an application came to be filed by Mr. Gurunathagouda Goudar (CW.19) under Section 195A of the Code of Criminal Procedure praying to register the complaint and FIR and refer the matter to

Magistrate for investigation against the Police Officers i.e., Tulajappa Sulfi, Dy.SP. I.G. Office, Belgavi; Chandrashekar, Dy.S.P., Dharwad; and Ex-Minister – Vinay Kulkarni, alleging that they threatened the witness to give evidence favouring the accused. The said application came to be rejected by the order dated 9.1.2019. Against the said order, the Gurnathagouda, brother of the deceased filed Criminal Appeal No.100045/2019 before the Dharwad Bench of High Court of Karnataka. The learned Single Judge of this Court while allowing the appeal, has made an observation, which reads as under:

“When such application is filed by CW.19 who is charge sheet witness with the allegation of telephonic conversation made with him and caused threat. The said application is also filed through Public Prosecutor and surprisingly, the Government is opposing the same before this Court and the Court below by rejecting the application washed of its hand on technicality and now considered the application on merits and nothing is discussed in the order regarding the substance of the application and not passed the reasoned order and hence, it requires the application has to be considered afresh on merits and requires for reconsideration.”

Accordingly, this Court set aside the order of rejection dated 9.1.2019 and directed the court below to consider the application afresh in view of the observations made in the judgment and dispose of the same on merits and not on technicality and proceed in accordance with law. In pursuance of the same, the jurisdictional Police filed the FIR and the same ended in filing the B report. That is the subject matter of PCR 236/2019 pending before the Prl. Civil judge, Dharwad for adjudication between the parties.

114. The Hon'ble Supreme Court in the case of **Satishkumar Nyalchand Shah v. State of Gujarat**, reported in (2020)4 SCC 22 while considering the provisions of Sections 156(3) and 173(8) of the Code of Criminal Procedure, has held that the power of the Court to direct the police to conduct further investigation cannot have any inhibition and at paragraphs 10, 11 and 12 of the judgment, observed as under:

10. *Having heard the learned counsel appearing on behalf of the respective parties and the private respondent herein, we are of the opinion that as such no error has been committed by the High Court*

dismissing the application submitted by the appellant herein to implead him in the special criminal application filed by the private respondent herein challenging the order passed by the learned Chief Judicial Magistrate rejecting his application for further investigation under Section 173(8) CrPC with respect to one other accused, namely, Shri Bhaumik against whom no charge-sheet has been filed till date. Therefore, it is not at all appreciable how the appellant against whom no relief is sought for further investigation has any locus and/or any say in the application for further investigation under Section 173(8) CrPC. How he can be said to be a necessary and a proper party. It is required to be noted that, as such, even the proposed accused Shri Bhaumik shall not have any say at this stage in an application under Section 173(8) CrPC for further investigation, as observed by this Court in W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] ; Narender G. Goel [Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] and Dinubhai Baghabhai Solanki [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] . In Dinubhai Baghabhai Solanki [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] after considering another decision of this Court in Sri

Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , it is observed and held that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In Sri Bhagwan Samardha [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , this Court in para 11 held as under : (Sri Bhagwan Samardha case [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , SCC p. 743)

"11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.

As the law does not require it, we would not burden the Magistrate with such an obligation."

11. *Therefore, when the proposed accused against whom the further investigation is sought, namely, Shri Bhaumik is not required to be heard at this stage, there is no question of hearing the appellant, one of the co-accused against whom the charge-sheet is already filed and the trial against whom is in progress and no relief of further investigation is sought against him. Therefore, the High Court is absolutely justified in rejecting the application submitted by the appellant to implead him as a party-respondent in the special criminal application.*

12. *Now, so far as the reliance placed upon Rule 51 of the Gujarat High Court Rules by the learned Senior Advocate appearing on behalf of the appellant is concerned, we are of the opinion that in the facts and circumstances of the case, Rule 51 shall not have any application for further investigation under Section 173(8) CrPC. Proceedings arising out of an application under Section 173(8) CrPC cannot be equated with the appeal or application against the order passed in criminal case as stated in Rule 51. Therefore, Rule 51 of the Gujarat High Court Rules has no application at all.*

115. It is not in dispute that the Investigating Officer of the 2nd respondent/CBI, who conducted further investigation filed the supplementary charge sheets against the accused persons to the jurisdictional Magistrate, who took the cognizance of the offences as stated in the supplementary charge sheets and committed the case to the Sessions Court. It is also not in dispute that the learned Sessions Judge framed the charge against the accused persons and posted the matter for trial. Though the learned counsel for the both the parties were heard at length on different dates, they were unable to show how a miscarriage of justice has occurred in the taking cognizance of the supplementary charge sheets filed by the 2nd respondent/CBI by the competent authority. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which result from an investigation as provided under the provisions of Section 190 of the Code of Criminal Procedure, is the material on which the cognizance was taken. Admittedly the present petitioners have admitted the entrustment of the matter to CBI for conducting further investigation. It is not in dispute that the CBI filed the supplementary charge sheets and the

learned Magistrate has taken cognizance of the said supplementary charge sheets. Admittedly, either filing of the supplementary charge sheets or taking cognizance by the competent court, is not challenged by the petitioners (accused persons) in the present writ petitions. Therefore, the contention of learned counsel for the petitioners that once the initial action is not in consonance with law, all subsequent developments including filing of the supplementary charge sheets after investigation by the CBI and taking cognizance are invalid, cannot be accepted.

116. It is well settled that even if the investigation is not conducted by the authorized officer, the trial is not vitiated unless prejudice is shown. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of **R.A.H. Siguran v. Shankare Gowda**, reported in (2017)16 SCC 126, wherein at paragraphs 9 and 10 it is held as under:

9. *In H.N. Rishbud v. State (UT of Delhi) [H.N. Rishbud v. State (UT of Delhi), AIR 1955 SC 196 : (1955) 1 SCR 1150 : 1955 Cri LJ 526] the question considered by this Court was whether after the court takes cognizance, trial can be held to be vitiated merely on the ground*

that investigation was invalid. Answering in the negative, this Court held that if the plea of invalidity of investigation is raised at sufficiently early stage, the court, instead of taking cognizance, direct reinvestigation by competent investigating officer. But, after cognizance is taken, the trial cannot be quashed for invalidity of investigation.

10. *The observations in the said judgment are : (H.N. Rishbud case [H.N. Rishbud v. State (UT of Delhi), AIR 1955 SC 196 : (1955) 1 SCR 1150 : 1955 Cri LJ 526] , AIR pp. 203-05, paras 9-10)*

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality

vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either

under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

'Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice.'

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to

have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well settled as appears from the cases in Parbhu v. King Emperor [Parbhu v. King Emperor, 1944 SCC OnLine PC 1 : AIR 1944 PC 73] and Lumbhardar Zutshi v. R. [Lumbhardar Zutshi v. R., 1949 SCC OnLine PC 64 : AIR 1950 PC 26] These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a

mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case. When the attention of the Court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 537 of the Code of Criminal Procedure of making out that such an error has in fact occasioned a failure of justice. It is relevant

in this context to observe that even if the trial had proceeded to conclusion and the accused had to make out that there was in fact a failure of justice as the result of such an error, Explanation to Section 537 of the Code of Criminal Procedure indicates that the fact of the objection having been raised at an early stage of the proceeding is a pertinent factor. To ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused. It is true that the peremptory provision itself allows an officer of a lower rank to make the investigation if permitted by the Magistrate. But this is not any indication by the legislature that an investigation by an officer of a lower rank without such permission cannot be said to cause prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy

underlying it. In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined."

117. It is alleged by the petitioners that there is a defect or illegality committed by the CBI during the course of investigation. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. Admittedly in the present case, what is challenged is only entrustment of the matter by the State government to CBI and filing of FIR by the 2nd respondent/CBI. Admittedly, the filing of charge sheets and taking cognizance of the charge sheets by the jurisdictional competent Court, is not challenged. The competent

Court taken cognizance and case has been proceeded with and at this stage, it is not open for this Court to interfere unless the miscarriage of justice caused has been shown by the petitioners. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of **Lumbhardar Zutshi and Another -vs- The King** reported in AIR 1950 Privy Council 26, wherein it is held as under:

"When leave to appeal was granted to the appellants it was still an open question whether sanction under s. 197 of the Criminal Procedure Code was necessary before a public servant could be prosecuted for an offence under s. 161 of the Indian Penal Code. It has now been settled by their Lordships' judgment in Gill v. The King [(1948) L.R. 75 I.A. 41.] that sanction is not necessary and accordingly the appellants cannot succeed on the grounds of appeal set out in their petitions for leave to appeal. Their counsel argued this appeal on an entirely different ground which is not even referred to in the judgments of the High Court, although a preliminary objection raising a somewhat similar point was taken unsuccessfully before the Chief Presidency Magistrate. Their Lordships would only be

prepared to allow such an argument in an exceptional case. In the present case it was argued that the new ground of appeal raised a question of jurisdiction, and their Lordships permitted the argument to proceed. The argument was that the trial and conviction of the appellants were void because the police investigation which led up to the trial was conducted illegally. This was a non-cognizable case and s. 58(2) of the Bombay City Police Act, 1902, provides that no police officer shall investigate a non-cognizable case without the order of a Presidency Magistrate. There was an order by the Chief Presidency Magistrate in this case, but it was submitted that this order was invalid because the magistrate was bound before making such an order to comply with the requirements of s. 202(1) of the Criminal Procedure Code and he had not done so."

118. The illegality in investigation is curable under the provisions of Section 460 of the Code of Criminal Procedure. The invalidity of the precedent investigation, does not vitiate the result, unless miscarriage of justice has been caused thereby, as held by the Hon'ble Supreme Court in the case of **Vinubhai Haribhai**

Malaviya and others –vs- State of Gujarath and Another

reported in (2019)17 SCC, wherein at paragraph-29 it is held as under:

29.*Ram Lal Narang v. State (Delhi Admn.) [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] , is an early judgment which deals with the power contained in Section 173(8) after a charge-sheet is filed. This Court adverted to the Law Commission Report and to a number of judgments which recognised the right of the police to make repeated investigations under the Code of Criminal Procedure, 1898. It then quoted the early Supreme Court judgment in H.N. Rishbud v. State of Delhi [H.N. Rishbud v. State of Delhi, AIR 1955 SC 196 : 1955 Cri LJ 526 : (1955) 1 SCR 1150] case as follows : (Ram Lal Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] , SCC pp. 335-36, para 17)*

"17. In H.N. Rishbud v. State of Delhi [H.N. Rishbud v. State of Delhi, AIR 1955 SC 196 : 1955 Cri LJ 526 : (1955) 1 SCR 1150] this Court contemplated the possibility of further investigation even after a court had taken cognizance of the case. While noticing that a

police report resulting from an investigation was provided in Section 190 CrPC as the material on which cognizance was taken, it was pointed out that it could not be maintained that a valid and legal police report was the foundation of the jurisdiction of the court to take cognizance. It was held that where cognizance of the case had, in fact, been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result unless miscarriage of justice had been caused thereby. It was said that a defect or illegality in investigation, however serious, had no direct bearing on the competence of the procedure relating to cognizance or trial. However, it was observed:

'It does not follow that the invalidity of the investigation is to be completely ignored by a court during trial. When the breach of such mandatory provision is brought to the knowledge of the court at a sufficiently early stage, the court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.'

This decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the court; defective investigation coming to light during the course of a trial may be cured by a further investigation, if circumstances permit it."

The Court then went on to hold : (SCC pp. 337-38, paras 20-21)

"20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private

individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the

court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

21. As observed by us earlier, there was no provision in CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate.

Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation."

119. It is to be noted that when the competent Court has already taken the cognizance of the supplementary charge sheets filed by CBI in pursuance of the impugned Government Order dated 6.9.2019 passed by the State Government entrusting the matter to CBI for further investigation and the petitioners having not shown as to how they are prejudiced by miscarriage of justice, the entire

proceedings cannot be said to be vitiated. Though it is a procedural irregularity, such procedural irregularity is curable and it should have been either brought to the notice of the concerned Magistrate who took cognizance of the charge sheets or ought to have been challenged before the appropriate forum. The same has not been done. After cognizance has been taken by the learned Magistrate and the case was committed to the court of sessions, now it is not open for the petitioners to contend that in the event the very entrustment of the matter by the State to CBI as per the Government Order dated 6.9.2019 is held to be invalid, all consequential procedures are invalid, in view of the final order dated 11.8.2021 passed by the Hon'ble Supreme Court in SLP (Criminal) 1348/2020.

120. At this stage, it is relevant to state that petitioners filed these writ petitions challenging the Government Order dated 6.9.2019, in terms of which case relating to the murder of one Yogesh Gowda, Member of Dharwad Zilla Panchayat was made over by the State Government to the CBI. While issuing notice in said writ petition, the learned Single Judge of this Court by the order

dated 21.11.2019, has granted interim stay of the operation of the Government Order dated 6.9.2019. In effect, despite the matter having been made over, the CBI could not go ahead with the investigation. Being aggrieved, CBI filed SLP (Crl) 1348/2020 before the Hon'ble Supreme Court challenging the interim order dated 21.11.2019 passed by this Court. By the order dated 20.2.2020, the Hon'ble Supreme Court issued notice in the SLP and as an interim measure, directed that there would be stay of operation of the order passed by this Court. Resultantly, the investigation was conducted and carried out by CBI. The Hon'ble Supreme Court also observed that after such investigation was carried out, a Challan was filed by the CBI on 20.5.2020 adding Accused Nos.7 to 14 in the array of accused. Cognizance in respect of first challan filed by the CBI was taken 20.5.2020 itself. Thereafter, further challans have been filed on behalf of the CBI adding other accused persons. Ultimately, the SLP was disposed off by the Hon'ble Supreme Court with certain observations by the order dated 11.8.2021. In the said order, it is observed that the interim order dated 20.2.2020 passed in the SLP shall continue to operate.

121. As already stated supra, there are materials against the accused persons including Accused NO.15 – Vinay Kulkarni in the supplementary charge sheet filed after examining 88 witnesses and considering more than 75 documents and now, the learned Judge has taken cognizance and the matter is committed to the Court of Sessions and the matter is posted for further trial. It is not open to contend that the State has no jurisdiction to entrust the matter to CBI and there cannot be further investigation and once the trial commenced, there is no further investigation under the provisions of Section 173(8) of the Code of Criminal Procedure, cannot be accepted.

122. The Hon'ble Supreme Court while considering the provisions of Section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India, in the case of **State of Haryana v. Bhajan Lal** reported in 1992 SC Crimes 426, has held at paragraphs 102, 103 and 139 as under:

102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court*

in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.*

139. *In the light of the above decisions of this Court, we feel that the said observations made in the impugned judgment are unwarranted and the historical anecdote is out of context and inappropriate. We are afraid if such a view is to be judicially accepted and approved, then it will be tantamount to laying down an alarming proposition that an incoming government under all circumstances, should put its seal of approval to all the commissions and omissions of the outgoing*

government ignoring even glaring lapses and serious misdeeds and the deleterious and destructive consequences that may follow therefrom. Hence we are constrained to express our disapproval since the text, tenor and tone of the above observations leave us with the feeling that such misplaced sympathy indicated therein appears to have considerably weighed with the learned Judges in taking the extreme step in quashing the first information report. We do not like to make any more comment except saying that as we have pointed out in our exordial note, in our democratic polity where the 'Rule of Law' reigns no one — however highly placed he may be — can claim immunity, much less absolute immunity from the Law, but he is always under the law.

123. In the present case, the allegations made in the first information report, prima facie constitute cognizable offence and make out a case against the accused persons. After investigation, the Investigating Officer of the 2nd respondent/CBI filed supplementary charge sheets and the competent Court took cognizance of the supplementary charge sheets and the matter is committed to the court of Sessions. The accused persons have not made out an express legal bar engrafted in any of the provisions of

the Code to the institution and continuance of the proceedings in Crime No.135/2016. The accused persons have also not made out that a criminal proceeding is manifestly attended with mala fide and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the absence of any prejudice shown for continuation of the further investigation, it is not open for the petitioners/accused persons to seek for quashing the impugned Government Order dated 6.9.2019 and the FIR filed by the CBI, on the ground that the State Government has no power for entrusting the matter to CBI, that too after much water has flown under the bridge culminating into further investigation, recording the statements 88 witnesses, collection of more than 75 documents and filing of the supplementary charge sheets and taking cognizance by the competent Court etc. On that ground also the petitioners are not entitled for grant of any relief.

124. The Hon'ble Supreme Court while considering the provisions of Section 482 of the Code of Criminal Procedure in the

case of **Ganga Dhar Kalita v. State of Assam** reported in (2015) 9 SCC 647, ha held at paragraph-11 as under:

11. Having considered the law laid down by this Court, as above, and further considering the facts and circumstances of the case and seriousness of the allegations made against the accused, particularly that one of the persons said to have executed the power of attorney was minor, and another was away from India, in our opinion, even if the civil suit was instituted by the complainant, the High Court committed no error of law in declining to interfere with the criminal proceedings initiated against the appellant in the present case.

125. While considering the provisions of section 482 of the Code of Criminal Procedure, similar view is taken by the Hon'ble Supreme Court in the case of **Rishipal Singh v. State of U.P.**, reported in (2014) 7 SCC 215, wherein at paragraphs 10 and 17 it is held as under:

10. Before we deal with the respective contentions advanced on either side, we deem it appropriate to have a thorough look at Section 482 CrPC, which reads:

"482.Saving of inherent powers of High Court.—Nothing in this Code shall be

deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

A bare perusal of Section 482 CrPC makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of court and to secure ends of justice. There are no hard-and-fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straitjacket formula nor defined parameters to enable a court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The courts have to be very circumspect while exercising jurisdiction under Section 482 CrPC.

17. *It is no doubt true that the courts have to be very careful while exercising the power under Section 482 CrPC. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at*

the threshold. A clear reading of the complaint does not make out any offence against the appellant Branch Manager, much less the offences alleged under Sections 34, 379, 411, 417, 418, 420, 467, 458 and 477 IPC. We are of the view that even assuming that the Branch Manager has violated the instructions in the complaint in letter and spirit, it all amounts to negligence in discharging official work, at the maximum it can be said that it is dereliction of duty.

126. In the present case, it is the allegation by the mother and brother of the deceased that the Police Officers involved had colluded with Accused No.15 and other accused persons and they had conducted an improper and an unfair investigation and this had resulted in a gross infringement of their fundamental rights. Admittedly, in the present case, during the course of further investigation by CBI, it has come to light that some of the Police officials including previous Investigating Officer, are also found to be involved in the case and are found to have taken gratification to scuttle the investigation and they have been arrayed as Accused Nos.19 and 20. Accused No.19 is the previous Investigating Officer and Accused No.20 is the Supervisory Officer of Accused No.19.

Therefore, the Government is justified in entrusting the matter to the CBI, an independent agency to conduct a fair trial and investigation. When there is an improper investigation by state police and high Police officials are involved, in order to do complete justice, direction for investigation by an independent and specialized agency like CBI, is warranted.

127. Our view is fortified by the judgment in the case of Narmada Bai v. State of Gujarat, reported in (2011)5 SCC 79, wherein the Hon'ble Supreme Court held at paragraphs 27, 59 63, 64 and 65 held as under:

27. Analysis as to Issue (A)

The first issue i.e. Issue (A) as in the case on hand also arose in Rubabbuddin Sheikh [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] . The factual details therein will be discussed in the later paragraphs. With regard to the similar objection as to further investigation by CBI, this Court considered the following cases:

(i) Vineet Narain v. Union of India [(1996) 2 SCC 199 : 1996 SCC (Cri) 264] ,

(ii) Union of India v. Sushil Kumar Modi [(1998) 8 SCC 661 : 1999 SCC (Cri) 84] ,

(iii) *Rajiv Ranjan Singh 'Lalan' (8) v. Union of India* [(2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125] ,

(iv) *Hari Singh v. State of U.P.* [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] ,

(v) *Aleque Padamsee v. Union of India* [(2007) 6 SCC 171 : (2007) 3 SCC (Cri) 1] ,

(vi) *M.C. Mehta v. Union of India* [(2008) 1 SCC 407 : (2008) 1 SCC (Cri) 216] ,

(vii) *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] ,

(viii) *Ramesh Kumari v. State (NCT of Delhi)* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678] ,

(ix) *Kashmeri Devi v. Delhi Admn.* [1988 Supp SCC 482 : 1988 SCC (Cri) 864] ,

(x) *Gudalure M.J. Cherian v. Union of India* [(1992) 1 SCC 397] , and

(xi) Punjab & Haryana High Court Bar Assn. v. State of Punjab [(1994) 1 SCC 616 : 1994 SCC (Cri) 455]

and concluded in paras 60-61 as under: (Rubabbuddin Sheikh case [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] , SCC pp. 216-17)

"60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered,

in an appropriate case, to hand over the investigation to an independent agency like CBI.

61. Keeping this discussion in mind, that is to say, in an appropriate case, the court is empowered to hand over the investigation to an independent agency like CBI even when the charge-sheet has been submitted, we now deal with the facts of this case whether such investigation should be transferred to the CBI Authorities or any other independent agency in spite of the fact that the charge-sheet has been submitted in court. On this ground, we have carefully examined the eight action-taken reports submitted by the State police authorities before us and also the various materials produced and the submissions of the learned counsel for both the parties."

It is clear that in an appropriate case, particularly, when the Court feels that the investigation by the State police authorities is not in the proper direction as the high police officials are involved, in order to do complete justice, it is always open to the Court to hand over the investigation to an independent and specialised agency like CBI.

59. *It is not in dispute that it is the age-old maxim that justice must not only be done but must be seen to be done. The fact that in the case of murder of an associate of Tulsiram Prajapati, senior police officials and a senior politician were accused may shake the confidence of public in investigation conducted by the State police. If the majesty of the rule of law is to be upheld and if it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust the investigation to CBI.*

63. *In both these decisions, this Court refrained from expressing any opinion on the allegations made by either side but thought it wise to have the incident investigated by an independent agency like CBI so that it may bear credibility. This Court felt that no matter how faithfully and honestly the local police may carry out the investigation, the same will lack credibility as allegations were directed against them. This Court, therefore, thought it both desirable and advisable and in the interest of justice to entrust the investigation to CBI so that it may complete the investigation at an early date. It was clearly stated that in so ordering, no reflection either on the local police or the State*

Government was intended. This Court merely acted in public interest.

64. *The above decisions and the principles stated therein have been referred to and followed by this Court in Rubabbuddin Sheikh [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] where also it was held that considering the fact that the allegations have been levelled against high-level police officers, despite the investigation made by the police authorities of the State of Gujarat, ordered investigation by CBI. Without entering into the allegations levelled by either of the parties, we are of the view that it would be prudent and advisable to transfer the investigation to an independent agency. It is trite law that the accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them.*

65. *In view of our discussions and submission of the learned counsel on either side and keeping in mind the earlier directions given by this Court, although, charge-sheet has been filed by the State of Gujarat after a gap of 3½ years after the incident, that too after pronouncement of judgment in Rubabbuddin case [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] and*

considering the nature of crime that has been allegedly committed not by any third party but by the police personnel of the State of Gujarat, we are satisfied that the investigation conducted and concluded in the present case by the State police cannot be accepted. In view of various circumstances highlighted and in the light of the involvement of police officials of the State of Gujarat and police officers of two other States i.e. Andhra Pradesh and Rajasthan, it would not be desirable to allow the Gujarat State Police to continue with the investigation, accordingly, to meet the ends of justice and in the public interest, we feel that CBI should be directed to take the investigation.

128. It is not in dispute that separation of powers is a part of the basic structure of the Constitution, the "ordinary" executive power of the State Government under Section 6 and 'extraordinary judicial power' of the constitutional courts are mutually exclusive and are not interdependent and there is no particular form to give consent under Section 6 of Delhi Special Police Establishment Act as held by the Supreme Court in the case of M. BALAKRIHNA REDDY - vs- DIRECTOR, CENTRAL BUREAU OF INVESTIGATION, NEW DELHI

reported in (2008) 4 SCC 409, wherein at paragraph-71 it is held as under:

71. *A closer scrutiny of the relevant provisions of the Delhi Act also add credence to the view which we are inclined to take. Section 3 refers to "notification" and requires the Central Government to issue notification specifying offences or class of offences to be investigated by Special Police Establishment. Section 5 uses the term "order" and enables the Central Government to extend powers and jurisdiction of Special Police Establishment to other areas not covered by the Act. Section 6 which speaks of consent of the State Government for the exercise of powers and jurisdiction of the Special Establishment neither refers to "notification" nor "order". It merely requires consent of the State Government for the application of the Delhi Act. Parliament, in our considered opinion, advisedly and deliberately did not specify the mode, method or manner for granting consent though in two preceding sections such mode was provided. If it intended that such consent should be in a particular form, it would certainly have provided the form as it was aware of different forms of exercise of power. It,*

therefore, depends on the facts of each case whether the consent required by Section 6 of the Delhi Act has or has not been given by the State Government and no rule of universal application can be laid down.

129. The parameters for exercise of both the distinct powers of Government and Courts are naturally different and it is always possible and permissible, that even after the constitutional court declines to exercise its extraordinary judicial power holding that the case does not involve circumstances which are rare or exceptional, the State Government can exercise its ordinary executive powers under section 6 of the Delhi Special Police Establishment Act, 1946 in granting consent and the Central Government can, thereafter exercise its power by accepting the investigation entrusted to it by the State Government. The said process is uninhibited by the high prerogative judicial powers of entrustment of inquiry to CBI. The same is independent and does not have any fetters with regard to whether extraordinary judicial powers are not exercised as the constitutional court did not find the matter to be extraordinary and containing such facts which justify exercise of jurisdiction which is

to be exercised "*cautiously, sparingly and under certain circumstances only*". The power of the State Government therefore is not curtailed by such high standards.

130. As already supra, the mother and brother of the deceased earlier filed W.P Nos.58183-184/2017 before this Court making allegations against the Accused Nos.7 to 15, in particular against Accused No.15, who was then the Minister of the State Government. In that petition, Accused Nos.19 and 20, who are Investigating Officer and Supervisory Officer of the Investigating Officer filed objections on behalf of the State Government and opposed the writ petition. The learned Single Judge of this Court found that the petitioners therein have not made out a case to exercise judicial powers for entrustment of the matter to CBI and the accordingly, the said writ petition came to be dismissed and the same has been confirmed by the Hon'ble Supreme Court.

XIII - Regarding Notes sheets of the original Government record

131. We have gone through the original Government records, which are made available by the Government Advocate. A careful

perusal of the note sheet in C.No.505227, HD 48 PCB 2016 maintained in the Home Department depicts that, in pursuance of the letter received from the local M.P. addressed to the then Chief Minister, in the matter relating to suspicious murder of Sri Yogishguda, Zilla Panchayath member, Dharwad, the same was forwarded to the opinion of DG & IGP, on 24.8.2016. Since opinion was not received from DG & IGP, a reminder was also issued on 27.12.2016.

As per paragraph-8 of the order sheet, the report was received from DG & IGP vide Acknowledgment No.17780/2017, wherein it is stated that the Police Commissioner, Hubballi opined that on the basis of the complaint lodged by Smt. Mallavva, wife of the deceased Yogishgouda, six accused persons were arrested on 17.6.2016 and they were handed over to judicial custody on 20.6.2016 and therefore, question of handing over the matter to the CBI would not arise at all. Accordingly, the matter was referred to the higher authorities in the Government.

At paragraph-11 of the order sheet, the Deputy Secretary, Home Department (Law & Order) and the Principal Secretary to the

Government (PCAS), Home Department, have opined that the report of the DG & IGP has been received and the matter may be closed.

At paragraph-23 of the order sheet, it is stated that one Smt. Thungamma and Sri Gurunatha Gowda have filed Writ Petition No.58183/2017 before the Dharwad Bench of High Court of Karnataka, praying to hand over the further investigation in the matter, to the CBI. After hearing at length, the writ petition came to be dismissed by the order dated 1.3.2019, holding that since the matter is pending adjudication before the trial Court, it is not proper to hand over the investigation to the CBI.

At paragraph-30 of the order sheet, it is stated that before the IV Additional District & Sessions Judge, Dharwad, the matter has been posted to 26.8.2019 for orders on the application filed under Section 319 of the Code of Criminal Procedure. Since the Hon'ble High Court dismissed the writ petition holding that no grounds made out to refer the matter to CBI, the Law Department opined that the order passed by the Hon'ble High Court is appealable order and hence, it is appropriate to take the opinion of

the Advocate General. Accordingly, the Principal Secretary to Government, Law Department, by the order dated 30.08.2019, forwarded the file for obtaining the opinion of the learned Advocate General.

The learned Advocate General, State of Karnataka, in his opinion dated 3.9.2019 has stated that right of investigation is a statutory right under Section 156 Cr.PC and the power of further investigation under Section 173(3) Cr.PC is also a statutory right. On the question of law, it would be open for the State Government to hand over the matter to CBI, if it is satisfied that the matter is to be investigated by the CBI. The exercise of the power of entrustment of the matter to CBI is an independent power to be taken by the State Government. The fact that the Hon'ble Court dismissed the writ petition, is not a bar for the State Government to exercise its power.

Paragraph-39 of the order sheet depicts that on the basis of the opinion of the learned Advocate General, on 4.9.2019, the file was forwarded to be placed before the Hon'ble Home Minister and

the Hon'ble Chief Minister for necessary orders in the matter of entrusting the case to CBI.

At paragraph Nos.41 and 42 of the order sheet, the Hon'ble Home Minister and Hon'ble Chief Minister directed to entrust the matter to CBI. Accordingly, draft Government Order was prepared and placed for approval on 5.9.2019 and the same was approved on 6.9.2019.

The Government records also depicts that Sri Rakesh Ranjan, Inspector of Police, CBI: ACB, Bengaluru, addressed letter dated 21.01.2020 to the Additional Chief Secretary to Government, Home Department, requesting to provide certified copy of the representation submitted to State Government by Sri Gurunath Gouda Ningana Gouda Goudar regarding conducting CBI investigation in the matter of murder of his brother late Yogesh Gouda, in Crime No.135/2016 dated 15.06.2016, of Sub Urban Police Station, Dharwad. Accordingly, the same was furnished to him.

The records maintained by the Government clearly depicts that the representation of the complainant, request made by the local M.P. for referring the matter to CBI, opinion of the learned Advocate General and all other materials are considered by the Government by applying its mind and after satisfying that further investigation in Crime No.135/2016, registered for the offence punishable under Section 302 of IPC in Dharwad Sub-Urban Police Station, need to be handed over to the CBI, in order to meet the ends of justice, the impugned Government Order dated 6.9.2019 came to be issued by order & in the name of the Governor of Karnataka, which reads as under:

"PROCEEDINGS OF GOVERNMENT OF KARNATAKA

Subject: Entrusting the Investigation of Murder Case of Sri Yogish Gowda, Member of Zilla panchayat, Dharwad to Central Bureau of Investigation.

Read: Note No. CS/642063/2019, dated: 13.08.2019 from Chief Secretary.

Preamble:

1. A Complaint was lodged in Dharwad Sub-Urban Police Station vide Crime No.135/2016 u/s 302 of Indian Penal Code regarding murder of Sri Yogish Gowda,

Member of Zilla Panchayat, Dharwad on 15.06.2016. Investigation was carried out by Jurisdictional Police and based on evidence collected during investigation a Charge sheet has been submitted to Jurisdictional Court, under C.C.No.964/2016 On 14.09.2016. The case is under trial in District and Session Court, Dharwad vide No. SC/0000050/2017.

2. Smt. Tungamma, w/o Yogish Gowda, approached Hon'ble High Court, Dharwad Bench filing Writ Petition No. 58183/2017 to handover the case to CBI for investigation. Hon'ble High Court in its order dated:01.03.2019 has disposed off the above petition stating that as the case is under trial in subordinate Court, there is no need to entrust the case to CBI for further investigation.

3. The matter has been considered by Government in consultation with learned Advocate General of Karnataka, The power of further investigation is a statutory right under section- 156 & 173(8) of Criminal Procedure Code, which is also held to be an absolute right. Further, based on various rulings of Hon'ble Supreme Court of India, the cases under trial in subordinate court may also be entrusted to CBI for further investigation. Hence exercise of the power of entrustment of investigation to CBI is an independent power, of the State Government. The fact that Hon'ble Court dismissed the Writ Petition directing CBI enquiry is not a bar for the State Government to exercise its power.

4. In view of the above, the government is satisfied that further investigation of Crime No. 135/2016 u/s 302 of IPC of Dharwad Sub-Urban Police Station, Dharwad need to be handed over to Central Bureau of Investigation in order to meet the ends of justice.

Hence the following order,

GOVERNMENT ORDER NO. HD 48 PCB 2016,
BENGALURU, DATED: 06/09/2019.

Government of Karnataka hereby accords sanction to the Central Bureau of Investigation, under Section (6) of Delhi Special Police Establishment Act, 1946 for further investigation of Crime No. 135/2016 under section 302 of Indian Penal Code lodged in Dharwad Sub-Urban Police Station, Dharwad.

The concerned department officers/official/others shall hand over data/information/records as and when required by the Central Bureau of Investigation and co-operate in the investigation.

The status report on the progress of the enquiry investigation may be furnished to the State Government periodically.

By Order & in the name of the
Governor of Karnataka

-Sd-
(B.S. SRINIVASA)
Deputy Secretary to Government,
Home Department, (Crimes)"

At paragraph-49 of the order sheet, orders are obtained for intimating with regard to issuance of Government Order dated 6.9.2019 to the IV Addl. District & Sessions Judge, Dharwad, where the matter is pending for trial.

132. No prejudice has been caused to the petitioners, for the reason that they can certainly contest the veracity of the documents and also cross-examine the additional witnesses sought to be examined on behalf of the prosecution. It cannot be in dispute that a fair trial envisages production of all relevant material before the court for unearthing the truth of the matter and this objective cannot be scuttled by taking a narrow view of the matter at the instance of the accused. The petitioners are not put to any prejudice by supplementary charge sheets and additional documents produced. In the present case, the witnesses relevant to such documents are permitted to be examined. Therefore, the contention of the learned counsel for the petitioners that it amounts to *res judicata*, in view of the earlier order passed by the learned Single Judge of this Court, rejecting the request of the complainants to refer the matter to CBI, cannot be accepted. It is

relevant to state at this stage that the said writ petition came to be filed by mother and brother of the deceased during the pendency of the trial and what was refused by the learned Single Judge of this Court was only request to refer the matter to CBI based on the material produced by the petitioners therein and the objections filed by the State Government at the instance of the concerned Investigating Officer and the Supervisory Officer of the Investigating Officer. In fact, the said Investigating Officer and Supervisory Officer of the Investigating Officer subsequently found to be accused and they have been arrayed as Accused Nos.19 and 20 for taking illegal gratification and therefore, the State Government passed sanction order to prosecute them, thereby it is not the case of the petitioners that all the accused persons have been acquitted and their rights have been decided on merits. The provisions of section 173(8) of the Code of Criminal Procedure envisages that nothing in the said section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section 2 has been forwarded to the Magistrate and where upon such investigation, the officer in charge of the Police Station obtains further evidence, oral or documentary, he shall

forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section 2 and 6 shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded, under sub-section (2). Therefore, in the peculiar facts and circumstances of the present case and in view of the provisions of Section 173(8) of the Code of Criminal Procedure, question of res judicata as alleged by the counsel for the petitioners would not arise.

133. It is also not in dispute that the brother of the deceased filed the application under Section 319 of the Code of Criminal Procedure, which was rejected by the trial Court. That was the subject matter of Criminal Petition No.101725/2019 filed before this Court and the same was dismissed by this Court as having become infructuous, in view of the subsequent developments. It is not in dispute that the interim order dated 21.11.2019 passed by the learned Single Judge of this Court was stayed by the Hon'ble Supreme Court by the order dated 20.2.2020. Resultantly, the investigation was conducted and carried out by the CBI. In fact, the Investigating Officer of the 2nd respondent/CBI continued

further investigation, collected the evidence and filed the supplementary charge sheets and the competent Court took the cognizance and all the petitioners and others found to be accused persons. The investigation done by the local Investigating Officers, ignoring the relevant evidence on record and subsequently, they themselves become Accused Nos.19 and 20 in the case. This cannot be pleaded as bar for further investigation of Accused, in view of rejection of the application by the learned Single Judge under Section 319 of the Code of Criminal Procedure.

134. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of **Hardeep Singh v. State of Punjab** reported in (2014) 3 SCC 92, wherein at paragraph -117.1, it is held as under:

117.1. *In Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : AIR 2013 SC 3018] , the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance*

can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

135. Since the competent Court found the evidence collected by the CBI to be enough to take cognizance and failure of justice or prejudice is not even pleaded by the accused in the present writ petitions, the only stage now left is to proceed with all post cognizance stages as per the Code of Criminal Procedure.

136. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of **H.N. Rishbud v. State of Delhi**, reported in (1955)¹ SCR 1150, wherein at paragraph-9 it is held as under:

9. *The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the*

effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and

is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to

have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in Prabhu v. Emperor [AIR 1944 Privy Council 73] and Lumbhardar Zutshi v. King [AIR 1950 Privy Council 26]. These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

137. Our view is also fortified by the judgment of the Hon'ble Supreme Court in the case of **Sailendra Nath Bose v. State of Bihar** reported in (1968)3 SCR 563, wherein at paragraph-7 it is held as under:

7. The object of the legislature in enacting Section 5-A was to see that the investigation of offences punishable under Sections 161, 165 or 165-A, IPC as well as those under Section 5 of the Prevention of Corruption Act should be done ordinarily by officers of the rank of Deputy Superintendent or above. No doubt Section 5-A also provides for an alternative procedure. An officer below the rank of Deputy Superintendent can investigate those offences if he obtains the previous permission of a first-class Magistrate. The legislature proceeded on the basis that except for good reasons the Magistrate would not accord permission for officers below the rank of a deputy superintendent to investigate those offences. But exigencies of administrative convenience may require that some of those cases have to be investigated by officers below the rank of Deputy Superintendents. For that reason it was provided that 'in such circumstances the permission of a Magistrate of the first class should be obtained. This Court has laid down in State of Madhya Pradesh v. Mubarak Ali, that the statutory safeguards under Section 5-A must strictly be complied with for they are conceived in public interest and were provided as a guarantee against frivolous and vexatious proceedings. A Magistrate cannot surrender his discretion to a police officer but must exercise it having regard to the

relevant material made available to him at the stage of granting permission. He must also be satisfied that there is reason owing to exigencies of the administrative convenience to entrust a subordinate officer with the investigation. It is further observed therein that it is desirable that the order giving the permission should ordinarily in the face of it disclose the reasons for giving permission. The order giving permission under Section 5-A in this case does not give any reason. On the application submitted by PW 17 the learned Magistrate merely ordered "Permission granted". PW 17 did not mention in his application any special reason for permitting him to investigate the case unless we consider the statement in the application "Today is the date fixed for issuing the fit certificate: after receiving a bribe money of Rs 5 from him" as impliedly a ground in, support of his application. It is surprising that even after this Court pointed out the significance of Section 5-A in several decisions there are still some Magistrates and police officers who continue to act in a casual manner. It is obvious that they are ignorant of the decisions of this Court. But the legality of the investigation held in this case does not appear to have been challenged in the trial court. The charge levelled against the appellant is established by satisfactory evidence and therefore all that we have

now to see is whether the accused was prejudiced by the fact that investigation of this case was made by an officer below the rank of a Deputy Superintendent, as laid down by this Court in Munnalal v. State of Uttar Pradesh [AIR 1964 SC 28] and State of Uttar Pradesh v. Bhagwant Kishore Joshi. No prejudice was pleaded much less established. An illegality committed in the course of an investigation does not affect the competence and jurisdiction of the court for trial and where cognisance of the case has in fact been taken and the case has proceed to termination the invalidity of the preceding investigation does not vitiate the result unless the miscarriage of justice has been caused thereby, see Rishbud and Inder Singh v. State of Delhi.

138. It is well settled that the accused/petitioners are not entitled to say what agency investigates him. The investigation by CBI is permissible even after filing of charge sheet by the local police as held by the Hon'ble Supreme Court in the case of **CBI v. Rajesh Gandhi** reported in (1996) 11 SCC 253, wherein at paragraph-8 it is held as under:

8. *There is no merit in the pleas raised by the first respondent either. The decision to investigate or the*

decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. The notification dated 2-6-1994 is issued by the Government of Bihar (Police Department) by which in exercise of powers under Section 6 of the Delhi Special Police Establishment Act, 1946, Governor of Bihar was pleased to consent and extend the power and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar in connection with investigation of the concerned Police Station case No. 159 of 9-3-1993 in the District of Dhanbad, under Sections 457, 436, 427, 201 and 120-B, Penal Code, 1860 and conspiracy arising out of the same and any other offence committed in course of the same. The notification of 26-10-1994 is issued by the Government of India, Ministry of Personnel in exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 whereby the Central Government with the consent of the State Government of Bihar in their notification dated 2-6-1994 extended the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of

Bihar for investigation of offences under Sections 457, 436, 427/120-B and 201 IPC and Section 4 of the Prevention of Damage to Public Property Act, 1984 registered at Dhanbad Police Station, Dhansar, Bihar in their case No. 159 dated 9-3-1993 and any other offences, attempts, abetment and conspiracy in relation to or in connection with the said offence committed in the course of the same transactions or arising out of the same fact or facts in relation to the said case. There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, the CBI has been directed to further investigate the offences registered under the

said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) of the CrPC 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.

139. Admittedly in the present case, the complainants made allegations against the police officer and during the course of the trial, Public Prosecutor was changed/transferred. The allegations made by the complainants against the Investigating Officer and Supervisory Officer of the Investigating Officer and they have been arrayed as Accused Nos.19 and 20 alleging that they are involved in receipt of illegal gratification. This clearly depicts that the local Police personnel have not conducted the investigation to unearth the real truth in accordance with law and thereby they shielded the real accused and filed the charge sheet against accused who surrendered before them. Therefore, it would be desirable in the larger interest to refer the matter to CBI.

140. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of **Rubabbuddin Sheikh v. State of**

Gujarat, reported in (2010)2 SCC 200, wherein at paragraphs 53, 60 and 82, it is held as under:

53. *It is an admitted position in the present case that the accusations are directed against the local police personnel in which the high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.*

60. *Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.*

82. *Accordingly, in the facts and circumstances even at this stage the police authorities of the State are directed to hand over the records of the present case to the CBI Authorities within a fortnight from this date and thereafter the CBI Authorities shall take up the investigation and complete the same within six months from the date of taking over the investigation from the State police authorities. The CBI Authorities shall*

investigate all aspects of the case relating to the killing of Sohrabuddin and his wife Kausarbi including the alleged possibility of a larger conspiracy. The report of the CBI Authorities shall be filed in this Court when this Court will pass further necessary orders in accordance with the said report, if necessary. We expect that the Police Authorities of Gujarat, Andhra Pradesh and Rajasthan shall cooperate with the CBI Authorities in conducting the investigation properly and in an appropriate manner.

XIV - Regarding the dictums of the Hon'ble Apex Court under Section 173(8) of the Code of Criminal Procedure

141. The Hon'ble Supreme Court while considering the provisions of Section 173(8) of the Code of Criminal Procedure in the case of **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.**, reported in (1999)5 SCC 740, held at paragraph-11 as under:

11. *In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such*

obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.

142. The Hon'ble Supreme Court in the case of **Rama Chaudhary v. State of Bihar**, reported in (2009)6 SCC 346 while considering the provisions of Section 173(8) of the Code of Criminal Procedure held at paragraphs - 15 to 22 as under:

15. *Among the other sub-sections, we are very much concerned about sub-section (8) of Section 173 which reads as under:*

"173. (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form

prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

A mere reading of the above provision makes it clear that irrespective of the report under sub-section (2) forwarded to the Magistrate, if the officer in charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The abovesaid provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited.

16. *The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.*

17. *From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to "further" investigation under sub-section (8) of Section*

173 but not "fresh investigation" or "reinvestigation". The meaning of "further" is additional, more, or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

18. *Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not a fresh report regarding the "further" evidence obtained during such investigation.*

19. *As observed in Hasanbhai Valibhai Qureshi v. State of Gujarat [(2004) 5 SCC 347 : 2004 SCC (Cri) 1603] the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of the investigating agency for further investigation should not be tied down on the ground of mere delay. In other words*

"[t]he mere fact that there may be further 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." (SCC p. 351, para 13)

20. *If we consider the above legal principles, the order dated 19-2-2008 of the trial court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with.*

21. *It is true that after the enquiry and investigation, charges were framed on 11-3-2004 and thereafter in the course of the trial about 21 witnesses were examined. In the meantime, the police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge-sheet, the prosecution filed an application on 12-1-2008 in the pending Sessions Trial No. 63 of 2004 before the trial court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial court by an order dated 19-2-2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.*

22. *The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the police (vide K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291]). The material collected in further investigation cannot be*

rejected only because it has been filed at the stage of the trial. The facts and circumstances show that the trial court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 CrPC that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet.

143. The Hon'ble Supreme Court in the case of ***Dharam Pal v. State of Haryana***, reported in (2016)4 SCC 160 while considering the provisions of Section 173(8) of the Code of Criminal Procedure held that power of the Police Officer under Section 173(8) is unrestricted and that the Magistrate has no power to interfere, but it would be appropriate on the part of the Investigating Officer to inform the Court. In the said judgment, at paragraph-21 it is held as under:

21. *In this context, we may notice the statutory scheme pertaining to investigation. Section 173 CrPC empowers the police officer conducting investigation to file a report on completion of the investigation with the Magistrate empowered to take cognizance of the offence. Section 173(8) CrPC empowers the officer-in-charge to conduct further investigation even after filing*

of a report under Section 173(2) CrPC if he obtains further evidence, oral or documentary. Thus, the power of the police officer under Section 173(2) CrPC is unrestricted. Needless to say, the Magistrate has no power to interfere but it would be appropriate on the part of the investigating officer to inform the Court. It has been so stated in Rama Chaudhary v. State of Bihar [2009] 6 SCC 346 : (2009) 2 SCC (Cri) 1059] .

144. In the light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, the contention of learned counsel for the petitioners that the impugned Government Order issued by the State Government for re-investigation, cannot be accepted and infact the impugned Government Order has been issued for 'further investigation' only.

145. In pursuance of the order passed by the Hon'ble Supreme Court, the 2nd respondent/ CBI further investigated the matter and filed the supplementary charge sheets against additional accused persons as there are overt acts against them. A criminal trial is required to be fair to all the stake holders i.e, the accused, the prosecution and the victim. The purpose of a criminal trial is to ascertain the truth about the allegations levelled against the

accused persons and it is not just about over technicalities and over-zealous protection of rights available to the accused. A criminal trial is to be conducted in a fair manner and has to be undertaken as an objective and unbiased search for the truth so that justice is done to the stake holders i.e., the accused, the prosecution and the victim, avoiding injustice in the process and also in the interest of justice and in furtherance of search of truth that such materials are placed before the learned Sessions Judge.

146. It is relevant to quote the words from the case of JENNISON -vs- BAKER reported in 1972(1) All.ER.997, wherein it is held that:

“the law should not be seen to sit by limply,
while those who defy it go free, and
those who seek its protection lose hope”

147. It is well settled that the trial should not be victim centric, forgetting the valuable rights available to the accused, but, when the relevant material becomes available in accordance with law before the trial Court, the accused cannot be heard to say that the same cannot be looked into for a fair trial. The administering

criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. Therefore, it becomes clear that a fair trial envisages production of all relevant material before the trial Court for discovering the truth of the matter. It is not as if the petitioners/accused persons would be put to any prejudice if two supplementary charge sheets and the additional documents are examined by the Sessions Court in the present case and the witnesses relevant to such documents are permitted to be examined.

148. All the learned senior counsel for the petitioners heavily relied upon the dictum of the Hon'ble Supreme Court in the case of **VINUBHAI HARIBHAI MALAVIYA AND OTHERS -vs- STATE OF GUJARAT AND ANOTHER** reported in (2019)17 SCC 1, wherein the 3-Judge Bench of the Hon'ble Supreme Court held that the Police Department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate and quite obviously, this power continues until the trial can be said to commence in a criminal case.

In paragraph-10 of the above judgment, the Hon'ble Supreme Court raised a question of law, which reads as under:

10. *The learned counsel for the petitioner, Ms Nitya Ramakrishnan, did not raise any argument concerning the merits of the case, however raised only the following two arguments, firstly, that the trial court had not given the petitioner a separate hearing while awarding the sentence, in direct contravention of Section 235(2) of the Code of Criminal Procedure (in short "CrPC"), which provides for the right of pre-sentencing hearing as affirmed by this Court in Bachan Singh v. State of Punjab [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] and a plethora of other decisions; and secondly, that the award of the death sentence to the petitioner is contrary to the ratio of the three-Judge Bench decision of this Court in Shatrughan Chauhan v. Union of India [Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1 : (2014) 2 SCC (Cri) 1] , followed in a four-Judge Bench decision of this Court in Navneet Kaur v. State (NCT of Delhi) [Navneet Kaur v. State (NCT of Delhi), (2014) 7 SCC 264 : (2014) 3 SCC (Cri) 24] , which held that the execution of persons suffering from mental illness or insanity violates Article 21 of the Indian Constitution*

and that such mental illness or insanity would be a supervening circumstance meriting commutation of the death sentence to life imprisonment.

In paragraph-20 of the above judgment, the Hon'ble Supreme has recorded a finding which reads as under:

20. *The aforesaid ruling came to be questioned in Dagdu v. State of Maharashtra [Dagdu v. State of Maharashtra, (1977) 3 SCC 68 : 1977 SCC (Cri) 421] , wherein a similar question came before this Court. This Court, while repelling the submission of the counsel for the accused therein, who argued that the ratio in Santa Singh case [Santa Singh v. State of Punjab, (1976) 4 SCC 190 : 1976 SCC (Cri) 546] mandated compulsory remand of the case to the trial court, held as under : (SCC p. 89, paras 79-80)*

"79. But we are unable to read the judgment in Santa Singh [Santa Singh v. State of Punjab, (1976) 4 SCC 190 : 1976 SCC (Cri) 546] as laying down that the failure on the part of the court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that court in order to afford to the accused an opportunity to be heard on the question of sentence. The

Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that court to remedy the breach by giving a hearing to the accused on the question of sentence. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the court or he may, on affidavit or otherwise, place in writing before the court whatever he desires to place before it on the question of sentence. The Court may, in appropriate cases, have to adjourn the matter in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court.

80. Bhagwati, J. has observed in his judgment that care ought to be taken to ensure that the opportunity of a hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings."

At paragraphs 42 and 43 of the judgment, the Hon'ble Supreme Court while considering the position of law in the context of the said specific question raised, has held as under:

42. *The trial court heard the petitioner on the aspect of imposition of sentence separately, which is amply clear from paras 79 to 87 of the judgment of the trial court. Hence, based on the material on record we are satisfied that the trial court has fully complied with the requirement of Section 235(2) CrPC. While coming to its conclusion, the court held that the aggravating circumstances of the crime i.e. the magnitude and manner of commission of the crime in the form of the kidnapping, rape and murder of two minor girls, outweighed the mitigating circumstances of the accused i.e. the dependency of his aged mother on him, and his young age. The court also gave weightage to the prior convictions of the accused for the same kind of offence*

i.e. for the offence of rape of a nine-year-old girl child under Sections 376 and 506 IPC and Section 57 of the Bombay Children Act, as well as for the kidnapping and rape of a seven-year-old girl child under Sections 363 and 366 IPC. It may be noted here itself that in light of his two prior convictions, the trial court also gave him an opportunity to be heard on the question of Section 75 IPC, which pertains to enhance punishment for certain offences under Chapter XII or XVII IPC after previous conviction, but the factum of these convictions was also not contested by the petitioner.

43. *Before the High Court as well, further material was brought on record by the petitioner regarding his discharge in one case related to offences of the same nature, which the Court found to not be in the nature of a mitigating circumstance. The High Court was of the opinion that the dependency of aged parents could also not be considered as a mitigating circumstance to begin with, and that the accused was not young enough for his age to be considered as a mitigating circumstance. The High Court noted the absence of any extreme mental or emotional disturbance leading to the commission of the offence, and observed that given the past offending history of the accused, there was no hope of his reform or rehabilitation. The Court also noted the barbaric nature of the offence, inasmuch as*

the petitioner had cold-bloodedly raped and murdered two innocent and defenceless girls by abusing the faith that they had reposed in him as their neighbour, and concluded that he would pose a threat to society even if released for the smallest period of time, and might commit similar acts in the future. On this basis, the High Court affirmed the death penalty awarded to the accused.

149.. On careful perusal of the said judgment, it clearly depicts that though reference was made to Section 173(8) of the Code of Criminal Procedure, the Hon'ble Supreme Court proceeded to consider the powers of the Magistrate after the final report submitted. With due respect, the said case in no way assists the case of the present petitioners/accused persons in the facts and peculiar circumstances of the present case. In the present case, the supplementary charge sheets were filed against additional accused persons and infact the Investigating Officer has been arrayed as Accused No.19 and Supervisory Officer of Investigating Officer has been arrayed as Accused No.20, when the interim order dated 21.11.2019 passed in the writ petition No.51012/2019 has been stayed by the Hon'ble Supreme Court in SLP by the order dated

20.2.2020. In fact in the case of *Vinubhai Haribhai Malaviya* case stated supra, the Hon'ble Supreme Court though overruled judgments in *Amruthbhai Shambhubhai Patel* - (2017)4 SCC 177; *Athul Rao* - (2018)14 SCC 298; and *Bikash Ranjan Rout* - (2019)5 SCC 542, the dictum of the Hon'ble Supreme Court in the case of *Hasanbhai Valibhai Quereshi -vs- State of Gujarat* reported in (2004)5 SCC 347 and *Rama Chaudhary -vs- State of Bihar* reported in (2009)6 SCC 346, were not overruled.

150. In the case of **Hasanbhai Valibhai Quereshi -vs- State of Gujarat** reported in (2004)5 SCC 347, the Hon'ble Supreme Court held that when defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effect justice. In the said judgment, the Hon'ble Supreme Court held at paragraphs 11, 12 and 13 as under:

11. *Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.*

12. *Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.*

13. *In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court 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. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further 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. We make it clear that we have not expressed any final opinion on the merits of the case.

151. While considering the powers of the High Court under Articles 226 and 227 of the Constitution of India, the Hon'ble Supreme Court in the case of **Ramesh Chandra Sankla vs. Vikram Cement reported in (2008) 14 SCC 58** at paragraphs 19 and 98 has held as under:

"19. Order of the Division Bench

In view of the above order passed by this Court, intra-court appeals were filed by the Company.

The Division Bench of the High Court, as stated above, disposed of the appeals by an order dated 31-10-2006. It was held by the Division Bench that the writ petitions filed by the Company were under Article 227 of the Constitution and the learned Single Judge was exercising supervisory jurisdiction and intra-court appeals were not maintainable and were liable to be dismissed."

"98. *From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in Shiv Shankar Dal Mills v. State of Haryana [(1980) 2 SCC 437 : (1980) 1 SCR 1170] courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience."*

152. In view of the fact that subsequent investigation was conducted in pursuance of the Government Order passed by the State Government entrusting the matter to the CBI, filing of the supplementary charge sheets and taking cognizance of the final report submitted by the investigating officer by the Court after application of mind and overt acts against the accused persons particularly accused No.15, this is not a fit case to exercise discretionary powers under Articles 226 and 227 of the Constitution of India to interfere with the Government Order entrusting the matter for further investigation by the CBI and on that ground also, the writ petitions filed by the accused persons are liable to be rejected.

153. Though the learned Senior Counsel for accused No.1 relied upon the dictum of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu -vs- State of Kerala and Another reported in (2014) 12 SCC 696*** with regard to separation of powers, wherein it was held that the legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects to the effect that the order

passed by the State Government entrusting the matter to the CBI is indirectly nullifying the declaration made by this Court on earlier occasion rejecting the writ petitions filed by the complainants for entrusting the matter to CBI. Admittedly, during the course of trial, P.W.58, who is the brother of the deceased, has specifically deposed that the investigating officer has not conducted the trial in a fair manner, thereby injustice has been caused to him and on the request made by the complainant, the State Government thought it fit to entrust the matter to the CBI to dig out the truth and in terms of the provisions of Section 6 of the DSPE Act the investigation has been completed by the Investigating Officer of the CBI during the pendency of the appeal in SLP filed by the CBI before the Hon'ble Supreme Court from 20th February, 2020 till 11.8.2021 and in the meanwhile, the investigating officer has also filed three supplementary charges and thereby the cognizance of the said offences has been taken. Therefore, the said judgment relied upon by the learned Senior Counsel for accused No.1 has no application to the facts and circumstances of the present case.

154. Another judgment relied upon by the learned Senior Counsel for accused No.1 is ***P. Sambamurthy and Others -vs- State of Andhra Pradesh and Another reported in (1987)1 SCC 362*** is with regard to Government having no power to modify or annul the order of the Court since it is violative of basic structure doctrine. We have no quarrel with the law laid down by the Hon'ble Supreme Court in the said case, but in the present case, the Government has not modified or annulled the orders passed by this Court, but has entrusted the matter to the CBI during the pendency of the trial for further investigation as contemplated under Section 173(8) of the Code of Criminal Procedure in order to unearth the truth and now the investigating officer has filed supplementary charge sheets against the accused persons particularly accused No.15 - the then Minister; accused No.19, who was the local investigating officer and accused No.20 - immediate Supervisory Officer of the local police depicting their involvement in the crime in question and as such, there was no proper and fair investigation conducted by the investigating officer. Therefore, the said judgment has no application to the facts and circumstances of the present case.

155. Another judgment relied upon by the learned Senior Counsel for accused No.5 is ***State of Punjab -vs- Bhag Singh reported in (2004)1 SCC 547*** with regard to maintaining judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950. The proposition in the said case is in consonance with Article 141 of the Constitution of India. Therefore, any decision rendered by the Hon'ble Supreme Court under Article 141 of the Constitution of India is binding on the citizens including the High Court and we have no quarrel with the same, but the facts of the said case are entirely different and the said decision has no application to the facts and circumstances of the present case.

156. With regard to reliance placed by the learned Senior Counsel for accused No.5 in the case of ***State of West Bengal -vs- Committee for Protection of Democratic Rights reported in (2010) 3 SCC 571*** we have no quarrel with the laid down by the Hon'ble Supreme Court holding that the High Courts or Supreme Court, being the protectors of the civil liberties of the citizen, have not

only the power and jurisdiction, but also an obligation to protect the fundamental rights guaranteed by Part III in general and under Article 21 of the Constitution of India. Admittedly, in the present case, the complainants though had filed writ petitions praying for entrustment of the matter to the CBI, the same were dismissed by the learned Single Judge of this Court for want of sufficient material at the instance of the investigating officer, who is now arraigned as accused No.19. Therefore, the said judgment has no application to the facts and circumstances of the present case.

157. Another judgment relied upon by the learned Senior Counsel for accused No.5 in the case of ***Kalabharati Advertising vs Hemant Vimalnath Narichania & Ors reported in (2010)9 SCC 437*** at paragraph-21 in respect to administrative law in general, the Hon'ble Supreme Court has held that once the basis of a proceeding is invalid, all consequential acts, action, orders would fall to the ground automatically. The said judgment has no application to the facts and circumstances of the present case, since in pursuance of the impugned order passed by the State Government entrusting the matter to the CBI, the CBI-2nd respondent has filed FIR and

after conducting further investigation, has filed supplementary charge sheets before the competent Court and the competent Court after application of mind has taken cognizance of the offences. Admittedly, neither the supplementary charge sheets filed after due investigation by the investigating officer of the CBI nor the cognizance taken by the competent Court is not at challenged in the present writ petitions. Therefore, the said judgment is of no help to the petitioners' case.

158. The reliance placed by the learned Senior Counsel for accused No.21 in the case of ***Pritam Singh And Another -vs- The State Of Punjab reported in AIR 1956 SC 415*** wherein the Hon'ble Supreme Court has held that the effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial, is impermissible on the ground of res judicata. Admittedly, in the present case, during the pendency of trial, a writ petition came to be filed before this Court with a prayer to entrust the matter to the CBI on the ground of improper investigation which was not good to the real culprits and this Court dismissed the writ petition holding that no such material was made by the

petitioners-complainants which was upheld by the Hon'ble Supreme Court. As such, the case was adjudicated on merits of the case in Crime No.135/2016. Merely because the prayer sought for in Writ Petition Nos.58183-184/2017 which was for entrustment of the matter to the other agency was rejected by the learned Single Judge of this Court and confirmed by the Hon'ble Supreme Court, that does not mean that, on the subsequent request made by the complainants, the State Government should not exercise its sovereign powers in the interest of justice in order to prevent abuse of law. Therefore, the said judgment has no application to the facts and circumstances of the present case.

159. In the case of ***Bhagat Ram vs State Of Rajasthan reported in (1972) 2 SCC 466*** particularly paragraph-13 relied upon by the learned Senior Counsel for accused No.5 to the effect that the principles of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings or in some other subsequent proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. We have no quarrel with

the law laid down in the said case. But in the present case, it is not the case of the accused persons that after completion of trial, they were honourably acquitted and subsequently in the same proceedings, the State Government wants to proceed with further investigation against them. As such, the said case has no application to the facts and circumstances of the present case.

160. Another judgment relied upon by the learned Senior Counsel for the accused in the case of ***Khoday Distilleries Limited (now known as khoday india limited) and Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under liquidation) represented by the Liquidator (2019) 4 SCC 376*** particularly paragraphs-22 and 23 with regard to rule of law, the law laid down in the said case is not applicable to the facts and circumstances of the present case. So also the judgments relied by the learned Senior Counsel for accused No.21 in the case of ***Union of India vs. K.M. Shankarappa reported in (2001) 1 SCC 582*** particularly paragraph-7 as well as ***State of Tamilandu vs. State of Kerala and Another reported in (2014) 12 SCC 696*** have no application to the facts and circumstances of the present case.

161. Though the learned Senior Counsel for accused No.21 relied upon the dictum of the Hon'ble Supreme Court in the case of ***Delhi International Airport Ltd vs International Lease Finance reported in (2015)8 SCC 446*** with regard to paragraph 23(72) to the effect that the State Government has not followed the mandate of the provisions of the First Schedule of the Karnataka Government Business Transaction Rules, 1977 while passing the impugned order. On careful perusal of the impugned order passed by the State Government, the authorities of the State Government have not only applied the procedure as contemplated, but also have obtained approval from the Hon'ble Home Minister as well as the Hon'ble Chief Minister and thereafter, His Excellency, the Governor and have proceeded to issue the Government Notification. As such, the same is in accordance with law and also with the Karnataka Government Business Transaction Rules, 1977. Therefore, the said judgment has no application to the facts and circumstances of the present case.

162. The learned Senior Counsel appearing for accused Nos.21, 16 and 15 further relied upon the judgment of the Hon'ble

Supreme Court in the case of ***Vinay Tyagi vs. Irshad ali alias Deepak and Others reported in (2013)5 SCC 762*** particularly paragraphs-22 and 23 with regard to further investigation where it is held that there is no question of fresh investigation or re-investigation or *de nova* investigation under the provisions of Section 173(8) of the Code of Criminal Procedure. Admittedly, in the present case, the entrustment of the case to the 2nd respondent-CBI for "further investigation" was handed over by the State Government by the impugned order dated 6.9.2019 only for the purpose of further investigation and the same is permissible in terms of the provisions of Section 173(8) of the Code of Criminal Procedure, in view of the fact that, during the pendency of the trial, it has come into light that some of the material witnesses-police officials, including previous investigating officers, and documents have been ignored by the investigating Officer and real culprits have been left out. Admittedly, after investigation, the supplementary charge sheets are already filed and the matter is now posted for further trial. Therefore, the said judgment has no application to the facts and circumstances of the present case.

163. All other judgments relied upon by the learned Senior Counsel for the petitioners-accused are not at all applicable to the facts and circumstances of the present case.

164. It is well settled that, if a prima facie case is made out, disclosing the ingredients of the offences as alleged against the accused, the Court cannot quash the criminal proceedings as admittedly in the present case, when the trial is half way charge sheets are filed by impleading the new accused persons, cognizance of the offences already taken by the competent Court and now the matter is being posted for further trial. Therefore, this Court cannot quash the impugned order passed by the State Government as well as the FIR culminating into filing of supplementary charge sheets, taking of cognizance by the competent Court and that too when the matter is now being posted for further trial in exercise of powers under the provisions of Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***Rajeev Kourav -vs- Baisahab and Others reported in 2020 SCC Online SC 168*** wherein at paragraph-8 it is held as under:

"8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."

165. The Hon'ble Supreme Court while considering the powers of the High Courts under the provisions of Section 482 Cr.P.C. in the case of **Kaptan Singh -vs- State of Utter Pradesh and Others**

reported in 2021 SCC OnLine SC 580 at paragraphs 12, 13, 25 and 26 has held as under:

"12. *It is submitted that as held by this Court in the case of XYZ (Supra) when there are serious triable allegations in complaint it is improper to quash the FIR in exercise of inherent powers of High Court under Section 482 Cr.P.C.*

13. *It is further submitted that the High Court has failed to appreciate and consider that the civil proceedings were initiated initially by Munni Devi and thereafter the accused no. 2 filed the suit only for permanent injunction and no suit for specific performance has been filed. It is submitted that as such there are very serious allegations of forgery of the joint notarized document dated 27.10.2010 by which the accused have alleged to have given Rs. 25 lakhs to Munni Devi. It is submitted that the High Court has failed to appreciate and consider the fact that in the present case there are two documents of the very date i.e. 27.10.2010, one is registered one in which the sale consideration is stated to be Rs. 25 lakhs and in another document of same date dated 27.10.2010, the sale consideration is stated*

to be Rs. 35 lakhs and it is stated that Rs. 25 lakhs have been paid to Munni Devi. It is submitted that the payment of Rs. 25 lakhs and even the existence of joint notarized agreement dated 27.10.2010 is to be considered at the time of trial. It is submitted that therefore, when there are serious triable issues, the High Court is not justified in quashing the criminal proceedings.

25. *The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarized affidavit of Mamta Gupta - Accused No. 2 and Munni Devi under which according to Accused no. 2 -Ms. Mamta Gupta, Rs. 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27.10.2010, the sale consideration is stated to be Rs. 25 lakhs and with no reference to payment of Rs. 25 lakhs to Ms. Munni Devi and no reference to handing over the*

possession. However, in the joint notarized affidavit of the same date i.e., 27.10.2010 sale consideration is stated to be Rs. 35 lakhs out of which Rs. 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No. 2. Whether Rs. 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs. 25 lakhs as mentioned in the joint notarized affidavit dated 27.10.2010. It is also required to be considered that the first agreement to sell in which Rs. 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs. 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

26. *Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarized affidavit dated 27.10.2010 is seriously disputed, however as per the High*

Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarized affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs. 25 lakhs as mentioned in the joint notarized affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs. 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time

of trial only. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C."

166. On meticulous consideration of all the pleadings, objections and the arguments advanced by the learned Counsel for the parties as well as the material on record, it clearly depicts that the local investigating officers have not conducted the investigation in a fair and proper manner to both victim as well as accused persons, thereby some of the accused persons have been shielded to escape from the clutches of law and the subsequent supplementary charge sheets filed clearly illustrates that the very investigating officers – accused Nos.19 and 20 have colluded with accused persons by receiving gratification in order to dilute the investigation and there are abundant material on record and overt acts against the said accused persons. Now the matter is being posted for further trial and the accused persons have to face the trial. The petitioners-accused have not made out a case as to how

they are prejudiced by facing trial. Ultimately after trial, the truth always prevails and hence, no injustice would be caused to the accused persons in facing the trial. In the circumstances, this is not a fit case where this Court can interfere with the impugned order passed by the State Government in exercise of discretionary powers under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. in entrusting the case to the 2nd respondent-CBI for further investigation culminating into filing of FIR and resultantly, the investigation is carried out by the investigating officers of the 2nd respondent-CBI during the pendency of the interim order of stay granted by the Hon'ble Supreme Court staying operation of the learned Single Judge of this Court with effect from 20th February, 2020 till the disposal of the SLP on 11.8.2021 and even after disposal of SLP, the Hon'ble Supreme Court has continued the stay order to operate.

XIV - Conclusion

167. For the reasons stated above and in the light of the principles enunciated in the judgments of the Hon'ble Supreme

Court stated supra, the points raised in these writ petitions are answered as follows:

- a) The 1st point raised in these writ petitions is answered in the **negative** holding that the petitioners - Accused Nos.1,5,15,16 and 21, in these writ petitions have not made out a case to quash the impugned Government Order bearing No.HD 48 PCB 2016, Bengaluru, dated 6.9.2019, by which sanction has been accorded to the Central Bureau of Investigation, under Section (6) of Delhi Special Police Establishment Act, 1946 for "further investigation" of Crime No.135/2016 under Section 302 of IPC lodged in Dharwad Sub-Urban Police Station, Dharwad, and to quash the FIR dated 24.9.2019 made in Bangalore/CBI/ACB/BLR 2019 RC 17(S)/2019, by the Superintendent of Police, Central Bureau of Investigation, in the facts and circumstances of the present case.
- b) The 2nd point is answered in the **affirmative** holding that the Investigating Officer of the 2nd respondent/CBI is empowered to proceed with the investigation, in view of the interim order passed by the Hon'ble Supreme Court dated 20.2.2020

in SLP (Criminal) No.1348/2020 (from 20.2.2020 to 11.8.2021) staying the operation of the order passed by the learned Single Judge of this Court dated 21.11.2019 made in W.P. No.51012/2019, in the peculiar facts and circumstances of the present case.

XV - Result

168. In view of the above, we pass the following order:

- (i) Writ Petition No.51012/2019 filed by Accused No.1 - Basavaraj Shivappa Muttagi;

Writ Petition No.52575/2019 filed by Accused No. 5 - Vinayak,

Writ Petition No.15828/21 filed by Accused No.15 - Vinay Kulkarni;

Writ Petition No.16088/21 filed by Accused No.16 - Chandrashekar Indi; AND

Writ Petition No.16081/21 filed by Accused No.21 - Somashekar,

are hereby **dismissed** as devoid of merits.

- (ii) In view of dismissal of these writ petitions, the impleading application filed in W.P. No.51012/2019, is also **disposed off**.

- (iii) The learned LXXXI Addl. City Civil and Sessions Judge, Bengaluru (CCH 82), is hereby directed to expedite the trial in SPI.C No.565/2021 (which was earlier pending before the IV Addl. District & Sessions Judge, Dharwad in S.C. No.50/2017), without being influenced by any of the observations made in this order, and proceed strictly in accordance with law.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Pages 1 - 29 .. gss/-
30 - 89 .. nsu/-
90- 235 .. gss/-
236 - 255 .. nsu/-
256 - end ..gss/-