

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**W.P.A. No. 35802 of 2013**

**Latika Ghose  
-Versus-  
The State of West Bengal & Ors.**

For the Petitioner : Mr. Kalyan Bandopadhyay, Sr. Adv.,  
Mr. Raghunath Chakraborty, Adv,  
Mr. Mahaboob Ahmed, Adv,  
Ms. Nandini Chatterjee, Adv.,  
Mr. Rahul Singh, Adv.,  
Mr. S.K. Faridullah, Adv.

For the State : Mr. Jayanta Samanta, Jr. Govt. Advt.,  
Mr. Manas Sadhu, Adv.,  
Mr. Sanatan Panja, Adv.

For Respondent No.10  
(In person) : Tapasbroti Chakraborty

**Heard On : 19.09.2025**

**Judgement On : 18.12.2025**

**Tirthankar Ghosh, J.:-**

The present writ petition was preferred by the wife of the deceased  
praying for the following reliefs:

**“(a)** *A writ of Mandamus or in the nature of Mandamus commanding the respondent authorities their servants, agents and/or assigns to show cause as to why:*

*i) the Central Bureau of Investigation or any other appropriate body should not directed to initiate an investigation into the Jangipara P.S. Case no. 25/10 dated 14/02/10 u/s 304 I.P.C. and upon completing the same submit the said report before this Hon'ble Court,*

*ii) Alternatively the respondent authorities should not be directed to make a proper and comprehensive investigation into the case, in terms of the direction of the Addl. Chief Judicial Magistrate, Serampore in his order dated 28/09/11 passed in G. R. Case No. 131 of 2010.*

**(b)** *A writ of Mandamus or in the nature of Mandamus commanding the respondent authorities their servants, agents and/or assigns to show cause why upon receiving the aforesaid report of the Central Bureau of Investigation the said respondent authorities should not be directed to take action on the basis of the same in accordance with law.*

**(c)** *A writ of and/or in the nature of Mandamus do issue commanding the respondents and each one of them, their men, agents and/or assigns to show cause why an order should not be passed directing awarding of commensurate compensation to the petitioner herein for the brutal slaying of her husband.*

*(d) A writ in the nature of Certiorari commanding the respondent authorities to transmit the entire records of the case and certify the same and on being so certified quash the same so that conscionable justice may be done.”*

The allegations made in the FIR relating to Jangipara P.S. Case No. 25/2010 dated 14.02.2010 were to the effect that the informant along with others were standing outside the school premises where an election booth was erected. At around 2.00 P.M., the Officer-in-Charge, Tapasbroti Chakraborty along with 10-15 CPIM supporters entered the school and without any provocation started assaulting the supporters of Trinamool Congress. At that time, one of the supporters of Trinamool Congress was present when the Officer-in-Charge, Tapasbroti Chakraborty fired, as a result of which Rabin Ghose, a supporter of Trinamool Congress sustained bullet injury at his rib and fell down on the ground. Rabin Ghose died after receiving such bullet injury and the police present there removed his body. The informant alleges that it was at the provocation of Tapasbroti Chakraborty, the CPIM supporters entered and ransacked the school. The informant therefore prayed for registering a murder case against Tapasbroti Chakraborty.

The present writ petition was preferred in the year 2013. In the meantime, apart from the initial final report submitted, an exhaustive direction was passed by a Co-ordinate Bench of this Hon'ble Court in its order dated 24.12.2019, directing DIG, CID, West Bengal to investigate the

case. The reasons which were recorded by the Co-ordinate Bench to direct the DIG, CID, West Bengal are as follows:

*“(i) Petitioner who is the widow of the victim alleged to have been killed in false encounter has grievance against the impugned investigation report mainly on the ground of biasedness which has some substance for the reason that the accused who was the officer-in-charge was not transferred and allowed to remain in the same police station where FIR was lodged against him and initially investigation was made by his immediate superior officer and these allegations could not be denied and defended by the respondents with any material.*

*(ii) Post mortem report tallying with the ocular evidence and earlier expert opinion opining that the husband of the petitioner was shot dead from a very close range by a revolver while respondents intend to rely on a subsequent contradictory opinion suggesting cause of death from a long distance by a gun who was taken into account in course of investigation and final report in a proper and logical manner instead of taking into consideration earlier expert opinion. There is conflicting opinion on the nature of arms used, nature of shot and wound causing death as to the distance of firing and wound was of revolver or gun.*

*(iii) Investigation report has ignored to take into consideration some vital witnesses who were present at the place and time of incidents and whose statements were judicially rerecorded before the ACJM under Section 164 Cr.P.C and at one point of time the ACJM himself in his order dated 28.09.2011 has already expressed that this case should have been entrusted to higher agency like Central Bureau of Investigation (CBI) but he has no such power under the law. Learned Counsel for the state respondents in his written notes of arguments has also submitted that the investigation in this case*

*may be entrusted to higher officers but not to Central Bureau of Investigation (CBI).*

*(iv) Allegation in this case is against a senior police officer who is supposed to uphold the law and serious allegations of violation of Police Regulation of Bengal (PRB) is involved in this case.*

*(v) Petitioner herself has made prayer in the Writ Petition for investigation by the Central Bureau of Investigation (CBI) and in the alternate by any other agency.”*

Mr. Bandopadhyay, learned Senior Advocate appearing on behalf of the petitioner submitted that a complaint was lodged on behalf of the present petitioner, Latika Ghose through one Ashoke Porel at Jangipara Police Station in respect of the murder of her husband, Rabin Ghose. The accusations were that the Officer-in-Charge of Jangipara Police Station namely, Tapasbroti Chakraborty (Respondent No. 10) on 14.02.2010 at about 2.00 P.M. at Bamunpara More, Mouza and P.S. Jangipara, District Hooghly, fired with his revolver upon the deceased resulting in his death. A formal FIR was drawn up under Section 304 of the Indian Penal Code against the Officer-in-Charge, leading to registration of Jangipara P.S. Case No. 25/2010 for investigation. There were two other FIRs which were instituted at Jangipara Police Station, one at the instance of Police Authority being Jangipara P.S. Case No. 23/2010 and another by Basu Bhumij being Jangipara P.S. Case No. 24/2010. It was contended that the present case was entrusted to the Circle Inspector of Uttarpara, Hooghly who was the immediate superior of the Officer-in-Charge and surprisingly, the Officer-in-Charge continued in his office during the course of

investigation. As such, the investigating officer deliberately did not examine the material witnesses, thereby shielding the Officer-in-Charge and submitted a final report before the Learned ACJM, Serampore. The said final report was challenged by the complainant on multiple issues.

It was pointed out that the Investigating Officer highlighted the post-mortem report as well as the medical expert's opinion which was contrary and vague, and failed to provide adequate justification for discarding the conclusions of the two Autopsy Surgeons i.e., Dr. Ranjan Kr. Chakraborty and Dr. Jayanta Sanyal, who performed the post-mortem examination of the deceased. On the strength of conflicting opinion of the experts about the distance from which the firing was effected, the Investigating Officer submitted the investigation report in final form with the sole purpose of providing an escape route to the Officer-in-Charge in an unfair and partisan manner. It was contended that the investigating officer intentionally disregarded the testimony of credible eyewitnesses and prepared the final report on generalized expert opinion. The Executive Magistrate who held the enquiry sought to justify the police firing, relying upon the report of the Forensic Expert. There were overwhelming materials to substantiate the biased and unfair manner in which the investigation was carried out by first Investigating Officer of the case, as also the conclusions reached by the Executive Magistrate. The reasons assigned by the Executive Magistrate as also the police authorities were lacking logical reasoning for covering up the offence of murder committed by an accused police officer and vital pieces of evidence which were available were deliberately suppressed. The second

Investigating Officer of the case recorded statements of different witnesses under Section 164 of Cr.PC which portrayed the involvement of the Officer-in-Charge but the said statements were completely ignored. Learned ACJM, Serampore criticized the entire investigation including the report of the Executive Magistrate and the expert opinion, and by an order dated 28.09.2014 allowed the 'Naraji petition' directing for investigation to be conducted by the CID.

The second Investigating Officer attached with the CID, Government of West Bengal examined several witnesses and their statements were recorded under Section 164 of Cr.PC before the Learned Judicial Magistrate. The said witnesses provided ocular testimony to the effect that the Respondent No. 10 fired upon the victim without any justifiable cause. On behalf of the petitioner, it was argued that ocular evidence is the best form of evidence and the same being available on record, it was sufficient to arraign the accused. Reference was made in respect of the testimony of certain eyewitnesses as also the report of the Forensic Expert and it was claimed that intentionally the same was ignored by the second Investigating Officer also. The petitioner being frustrated, preferred the present writ petition wherein on or about 11.12.2013, clarification was sought for as to whether the bullet was fired from the service revolver or otherwise. The authority concerned instead of providing a clear response confused the entire issue in respect of the distance of firing. During the pendency of the writ petition, CID, West Bengal submitted its final report after 4 (four) years before the Learned ACJM, Serampore in the year 2015. Petitioner again filed

'Naraji Petition' for the second time against the report filed by the CID. The present writ petition was again listed in the year 2017 when directions were passed for exchange of affidavits. The State took time for about a year to file the affidavit-in-opposition and intended to frustrate the proceedings. Petitioner questioned the contents of the affidavit-in-opposition particularly, the documents which were relied upon therein and argued that the report prepared by the investigating agency was inconsistent with the materials which were collected and the report ignored credible ocular evidence as well as the expert opinion. The investigation conducted was with a preconceived notion and the same is unfair as it violates the right guaranteed under Article 20 and 21 of the Constitution of India. On or about 16.12.2020, the Hon'ble High Court after examining the second final report submitted by the investigating agency, directed the DIG, CID to undertake further investigation of the case and submit a progress report on or about February, 2021, and to complete the investigation by 31<sup>st</sup> March, 2021. Surprisingly, the DIG, CID filed a final report before the Learned ACJM, Hooghly instead of filing the report before the Hon'ble High Court. The main purpose of the investigating agency was to avoid the scrutiny of the Hon'ble High Court and in an evasive manner filed the final report before the Learned ACJM, Serampore, Hooghly. The conduct of the police agency reflects deliberate efforts to flout the order of the Hon'ble High Court and to prepare a report ignoring the materials gathered in course of investigation. Such conduct prima facie reflects that the purpose was to protect an erring police official from the criminal justice system.

Learned Senior Advocate relied upon the statements of four witnesses namely, Sukumar Pakhira, Hiralal Bhar, Amar Mashat and Samsher Mallick, who before the Learned Judicial Magistrate in their statements under Section 164 of Cr.PC unequivocally stated that the Officer-in-Charge of Jangipara Police Station being Respondent No. 10 at the time of the incident on 14.02.2010 fired from a revolver after taking it out from his socks and directly aimed at the deceased, Rabin Ghose from a very close range. Such view was corroborated by the Medical Board which opined that firing was 'a near shot'. The police officers in successive investigation submitted their statutory reports, bypassing the ocular as well as the medical evidence. The third phase of investigation deviated from the main stream and focused on the issue of non-recovery of the fired bullet from the place of occurrence and absence of confirmed report of the experts regarding the nature of bullet used in commission of the offence. The chronology of events establishes a nexus suggesting involvement of the superior police officers in shielding the Respondent No.10, notwithstanding the fact that independent witnesses supported the contention that the deceased was fired from a close range. Non-filing of the charge-sheet in the case according to the petitioner is wilful. Consequently, it has been prayed that appropriate orders be passed for unearthing the truth. On the aspect of withdrawal of prosecution in respect of Jangipara P.S. Case No. 23 of 2010 and Jangipara P.S. Case No. 24 of 2010, it was contended that there were inherent infirmities in such withdrawal of the prosecution, despite the same no steps were taken by the persons who had set the criminal law into motion.

To that effect, reference was made to the judgment of the Hon'ble Supreme Court in *Sheonandan Paswan v. State of Bihar* reported in (1987) 1 SCC 288. Reliance was placed on paragraphs 90 and 91 which reads as follows:

**“90.** *Section 321 CrPC is virtually a step by way of composition of the offence by the State. The State is the master of the litigation in criminal cases. It is useful to remember that by the exercise of functions under Section 321, the accountability of the concerned person or persons does not disappear. A private complaint can still be filed if a party is aggrieved by the withdrawal of the prosecution but running the possible risk of a suit of malicious prosecution if the complaint is bereft of any basis.*

**91.** *Since Section 321 does not give any guidelines regarding the grounds on which a withdrawal application can be made, such guidelines have to be ascertained with reference to decided cases under this section as well as its predecessor Section 494. I do not propose to consider all the authorities cited before me for the reason that this Court had occasion to consider the question in all its aspects in some of its decisions. Suffice it to say that in the judgments rendered by various High Courts, public policy, interests of the administration, inexpediency to proceed with the prosecution for reasons of State and paucity of evidence were considered good grounds for withdrawal in many cases and not good grounds for withdrawal in certain other cases depending upon the peculiar facts and circumstances of the cases in those decisions. *Giribala Dasi v. Mader Gazi* [AIR 1932 Cal 699] , *Emperor v. Milanmal Hardasmal* [AIR 1943 Sind 161] , *Harihar Sinha v. Emperor* [AIR 1936 Cal 356] , *King v. Moule Bux* [AIR 1949 Pat 233] , *A.N. Mathur v. State of Rajasthan* [AIR 1952 Raj 42] and *Bawa Faqir**

*Singh v. Emperor [AIR 1938 PC 266] are some of the cases which were brought to our notice.”*

In order to substantiate the contention relating to withdrawal of prosecution, petitioner relied upon in *State of Kerala v. K. Ajith* reported in (2021) 17 SCC 318 and attention of the Court was drawn to paragraph 25 which is as follows:

**“25.** *The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321CrPC can now be formulated:*

**25.1.** *Section 321 entrusts the decision to withdraw from a prosecution to the Public Prosecutor but the consent of the court is required for a withdrawal of the prosecution.*

**25.2.** *The Public Prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice.*

**25.3.** *The Public Prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution.*

**25.4.** *While the mere fact that the initiative has come from the Government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the Public Prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons.*

**25.5.** *In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:*

- (a) The function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;*
- (b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;*
- (c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;*
- (d) The grant of consent subserves the administration of justice; and*
- (e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the Public Prosecutor is duty-bound to maintain.*

**25.6.** *While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinising the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated.*

**25.7.** *In a situation where both the trial Judge and the Revisional Court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial Judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.”*

Petitioner also relied upon *Bairam Muralidhar v. State of A.P.* reported in (2014) 10 SCC 380. Emphasis was made on paragraphs 18, 19 and 22 which is as follows:

*“18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in Abdul Karim case [Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 : 2001 SCC (Cri) 59 : AIR 2001 SC 116] , is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.*

**19.** *In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and whether such withdrawal of the prosecution would serve public interest and how he has formed his independent opinion. As we perceive, the learned Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The learned trial Judge as well as the High Court has observed that it is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is also noticeable that the Anti-Corruption Bureau has found there was no justification of withdrawal of the prosecution.*

**22.** *We have referred to these authorities only to show that in the case at hand, regard being had to the gravity of the offence and the impact on public life apart from the nature of application filed by the Public Prosecutor, we are of the considered opinion that view expressed by the learned trial Judge as well as the High Court cannot be found fault with. We say so as we are inclined to think that there is no ground to show that such withdrawal would advance the cause of justice and serve the public interest. That apart, there was no independent application of mind on the part of the learned Public Prosecutor, possibly thinking that the court would pass an order on a mere asking.”*

Petitioner also relied upon paragraph 37 of *Afjal Ali Sha v. State of West Bengal and Ors.* reported in 2022 SCC Online Cal 4460 which reads as follows:

*“37. The law is clear on the subject. Paswan's case was undoubtedly a landmark judgment on the scope of Section 321, CrPC and laid down the roadmap for the PP as well as the court. The principles set out in the said judgment have not only been reiterated but explained and elaborated further by the Supreme Court in several subsequent and more contemporary judgments. Judicial opinion has somewhat crystallized to lay down certain cardinal principles governing the withdrawal of prosecution under Section 321 of the CrPC. Those may be summarized as follows:*

- (i) The withdrawal should be only in the interest of justice and subserve public interest;*
- (ii) The PP does not act as a mere postbox or act on the dictates of the State Government but has to act objectively as he is also an officer of the court;*
- (iii) Even if the Government directs the PP to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice.”*

Learned Senior Advocate thereafter emphasised on the issue relating to ocular evidence and to that effect emphasised on paragraph 303 of the judgment of the Hon'ble Apex Court in *Manu Sharma v. State (NCT of Delhi)* reported in (2010) 6 SCC 1. The said paragraph reads as follows:

***“303. Summary of our conclusions:***

- (1) The appellate court has all the necessary powers to re-evaluate the evidence let in before the trial court as well as the conclusions*

*reached. It has a duty to specify the compelling and substantial reasons in case it reverses the order of acquittal passed by the trial court. In the case on hand, the High Court by adhering to all the ingredients and by giving cogent and adequate reasons reversed the order of acquittal.*

*(2) The presence of the accused at the scene of crime is proved through the ocular testimonies of PWs 1, 2, 6, 20, 23, 24 and 70 corroborated by Ext. PW 12/D-I as well as three PCR calls, Exts. PW 11/A, B and C.*

*(3) The phone calls made immediately after an incident to the police constitutes an FIR only when they are not vague and cryptic. Calls purely for the reason of getting the police to the scene of crime do not necessarily constitute the FIR. In the present case, the phone calls were vague and therefore could not be registered as the FIR. The FIR was properly lodged as per the statement of Shyan Munshi, PW 2.*

*(4) Delay in recording the statement of the witnesses do not necessarily discredit their testimonies. The court may rely on such testimonies if they are cogent and credible.*

*(5) The laboratory reports in the present case are vague and ambiguous and, therefore, they cannot be relied upon to reach any specific conclusion regarding the incident.*

*(6) The evidence regarding the actual incident, the testimonies of witnesses, the evidence connecting the vehicles and cartridges to the accused Manu Sharma, as well as his conduct after the incident prove his guilt beyond reasonable doubt. The High Court has analysed all the evidence and arrived at the correct conclusion.*

*(7) The Public Prosecutor is under a duty of disclosure under CrPC, the Bar Council Rules and relevant principles of common law. Nevertheless, a violation of this duty does not necessarily vitiate the entire trial. A trial would only be vitiated if non-disclosure amounts to a material irregularity and causes irreversible prejudice to the accused. In the present case, no such prejudice was caused to the accused, and therefore the trial is not vitiated.*

*(8) No prejudice had been caused to the right of the accused to a fair trial and non-furnishing of the copy of one of the ballistic reports had not hampered the ends of justice. The right of the accused to disclosure has not received any setback in the facts and circumstances of the case.*

*(9) The High Court has rightly convicted the other two accused, namely, Amardeep Singh Gill @ Tony Gill and Vikas Yadav after appreciation of the evidence of PWs 30 and 101.*

*(10) Normally, the judgment/order should be set aside or affirmed as the case may be but preferably without offering any undesirable comments, disparaging remarks or indications which would impinge upon the dignity and respect of judicial system.*

*(11) Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible.”*

Attention of the Court was also drawn to the judgment of the Hon'ble Supreme court in *Piara Singh v. State of Punjab* reported in (1977) 4 SCC

452 and emphasis was made on paragraph 6 of the judgment which reads as follows:

*“6. We find ourselves in complete agreement with the observations made by the Calcutta High Court in the aforesaid case and hold that where the opinion of a medical witness is contradicted by another medical witness both of whom are equally competent to form an opinion the opinion of that expert should be accepted which supports the direct evidence in the case. Apart from this, in the instant case it appears that Dr Jatinder Singh had the initial advantage of examining the deceased and holding his post-mortem and observing the nature of the injuries on the body of the deceased. His opinion is therefore based on first hand knowledge and would be in any event preferable to Dr Paramjit Singh who did not have the advantage of seeing the deceased or the injuries on his body but deposed purely on the basis of the description of the injuries given by Dr Jatinder Singh. For all these reasons therefore we would prefer the evidence of Dr Jatinder Singh to the evidence of Dr Paramjit Singh.”*

Learned Senior Advocate thereafter canvassed on the issue that sanction by the State Government is not necessary to prosecute the erring police officer and submitted that the provision under Section 197 of the Cr.PC is not attracted in the present case. To that effect, attention of the Court was drawn to paragraph 10 of *Nagraj v. State of Mysore* reported in 1963 SCC OnLine SC 249 which reads as follows:

*“10. We are not satisfied that the appellant, the Sub-Inspector can be dismissed by the State Government alone. Section 4(c) of the Mysore Police Act, 1908 (Act 5 of 1908) hereinafter called “the Act”, provides that unless there be something repugnant in the subject or*

*context, the word “inspector” in the Act, subject to such rules and orders as the Government may pass, includes “Sub-Inspector”. Section 8 states that the appointment of Inspectors of such grades as Government may from time to time prescribe shall be made by Government and the dismissal of Inspectors of all grades shall vest in Government. It is on the basis of these two provisions that it is submitted for the appellant that it is the Government which can dismiss him as he, though a Sub-Inspector, is an Inspector for the purposes of Section 8 of the Act. The contention is not sound. It is the dismissal of Inspectors of all grades which vests in the Government. It appears there are Inspectors of various grades. Inspectors of some grades were appointed by the Government but the dismissal of Inspectors of all grades is vested in the Government. In this context, the word “Inspector” in Section 8 will not include Sub-Inspector as he could not possibly be an Inspector of any grade. Sub-section (1) of Section 26 of the Act further provides that any officer authorised by sub-section (3) in that behalf may dismiss any police officer below the grade of Assistant Superintendent and sub-section (3) provides that subject to the provisions of Section 8, the Inspector-General shall have authority to punish any Police Officer below the grade of Assistant Superintendent. It follows that the Inspector-General of Police can dismiss a Sub-Inspector who is a police officer below the grade of Assistant Superintendent. No sanction, therefore, of the State Government for the prosecution of the appellant was necessary even if he had committed the offence alleged while acting or purporting to act in the discharge of his official duty.”*

It was submitted that the same principle was reiterated by the Hon’ble Supreme Court in the judgment of *Fakhruzamma v. State of Jharkhand* reported in (2013) 15 SCC 552 and paragraphs 6 and 7 of the said judgment are relevant which reads as follows:

**“6.** *The scope of Section 197 CrPC has to be examined in the light of the Jharkhand Police Manual. Section 197 CrPC is extracted hereinbelow for an easy reference:*

**“197. Prosecution of Judges and public servants.**—(1) *When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction—*

*(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*

*(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:*

*Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression ‘State Government’ occurring therein, the expression ‘Central Government’ were substituted.*

*(2) No court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.*

*(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for*

*the expression 'Central Government' occurring therein, the expression 'State Government' were substituted.*

*(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.*

*(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.*

*(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the court before which the trial is to be held.”*

*The abovementioned provision clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government.*

*7. Rule 824 of the Jharkhand Police Manual prescribes different departmental punishments, including the punishment of dismissal and removal, to be inflicted upon the police officers up to the rank of Inspector of Police. The relevant rule for our purpose is Rule 825, which is given below:*

**“825. Officers empowered to impose punishment.**—(a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in Rule 825.

(c) \*\*\*

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in Rule 824 except dismissal; removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it.

(e)-(f) \*\*\*”

*Rule 825 clauses (a) and (b) confers power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government.”*

Petitioner also referred to the judgment of *B. Saha v. M.S. Kochar* reported in (1979) 4 SCC 177 and relied upon paragraphs 17 to 20 which reads as follows:

*“17. The words “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty” employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, “it is no part of an official duty to commit an offence, and never can be”. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, **directly and reasonably** connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J., in **Bajnath v. State of M.P.** [AIR 1966 SC 220, 227 : (1966) 1 SCR 210 : 1966 Cri LJ 179] , “it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted”.*

*18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.*

*19. While the question whether an offence was committed in the course of official duty or under colour of office, cannot be answered hypothetically, and depends on the facts of each case, one broad test for this purpose, first deduced by Varadachariar, J. of the Federal Court in **Dr Hori Ram v. Emperor** [1939 FCR 159 : AIR 1939 FC 43] , is generally applied with advantage. After referring with approval to those observations of Varadachariar, J., Lord*

Simonds in **H.H.B. Gill v. King** [AIR 1948 PC 128] tersely reiterated that the “test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office”

**20.** Speaking for the Constitution Bench of this Court, Chandrashekhar I Aiyer, J., restated the same principle, thus: [Matogoj Dobey case (Supra), p 49]

[I]n the matter of grant of sanction under Section 197, the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty .... There must be a **reasonable connection** between the act and the discharge of official duty; the **act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.**

(emphasis supplied)”

The Hon’ble High Court following from CRR 3071 of 2016 (Haraprasad Ghosh v. State of West Bengal) observed as follows:

“..Issue of sanction affects a substantial right of parties to a lis. Access to justice to a victim of crime is not only a substantive right but a fundamental right. [See Imtiyaz Ahmad vs. State of Uttar Pradesh & Ors, (2012) 2 SCC 688 (Para-25)]. Prayer for retrospective application of the said notification was also rejected by the Hon’ble High Court. It was held that ‘As sanction to prosecute, being a jurisdictional fact, clothes a Court with requisite jurisdiction to take cognizance of an offence and affects vital substantive rights of parties to a proceeding, I am of the opinion, any amendment of law incorporating the requirement of sanction must operate prospectively

*until and unless such retrospective operation is expressly stated in law or can be inferred by necessary implication.”*

Learned Senior Advocate submitted that sanction at all is not required in the present case. It was argued by the Learned Senior Advocate that the wrath faced by the victim in the present case, who is a widow of the deceased at the hands of the state authorities, makes out a case which entitles the victim to be compensated. Learned Advocate relied upon *D.K. Basu v. State of W.B.* reported in (1997) 1 SCC 416 and referred to paragraphs 40 to 54 which reads as follows:

**“40.***Ubi jus, ibi remedium.—There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.*

**41.***Some punitive provisions are contained in the Penal Code, 1860 which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330,*

therefore, directly makes torture during interrogation and investigation punishable under the Penal Code, 1860. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

**42.** Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that “anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation”. Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 and made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] ; *Sebastian M. Hongray v. Union of India* [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 and (1984) 3 SCC 82 : 1984 SCC (Cri) 407] ; *Bhim Singh v. State of J&K* [1984 Supp SCC 504 : 1985 SCC (Cri) 60 and (1985) 4 SCC 677 : 1986 SCC (Cri) 47] ; *Saheli, A Women's Resources Centre v. Commr. of Police* [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] .) There is indeed no express provision in the Constitution

*of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See Nilabati Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] )*

**43.** *Till about two decades ago the liability of the Government for tortious acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In Nilabati Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] the decision of this Court in Kasturilal Ralia Ram Jain v. State of U.P. [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus : (SCC p. 761, para 14)*

*“In this context, it is sufficient to say that the decision of this Court in Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC*

*(Cri) 798] and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] related to the value of goods seized and not returned to the owner due to the fault of government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] is, therefore, inapplicable in this context and distinguishable.”*

**44.** *The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.*

**45.** *The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the*

*protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.*

**46.** *In Nilabati Behera case [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] , it was held : (SCC pp. 767-68, para 32)*

*“Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve ‘new tools’ to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title ‘Freedom under the Law’ Lord Denning in his own style warned:*

*‘No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do : and will not do*

*things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence.... This is not the task of Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.’ ”*

**47.** *A similar approach of redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental rights of the citizen has been adopted by the Courts of Ireland, which has a written constitution, guaranteeing fundamental rights, but which also like the Indian Constitution contains no provision of remedy for the infringement of those rights. That has, however, not prevented the Courts in Ireland from developing remedies, including the award of damages, not only against individuals guilty of infringement, but against the State itself.*

**48.** *The informative and educative observations of O'Dalaigh, C.J. in State (At the Prosecution of Quinn) v. Ryan [1965 IR 70] (IR at p. 122) deserve special notice. The Learned Chief Justice said:*

*“It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at nought or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires.”*

*(emphasis supplied)*

**49.** *In Byrne v. Ireland [1972 IR 241] Walsh, J. opined at p. 264:*

*“In several parts in the Constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizens and, unless some contrary provision appears in the Constitution, the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed.”*

*(emphasis supplied)*

**50.** *In Maharaj v. Attorney General of Trinidad and Tobago (No. 2) [(1978) 2 All ER 670 : (1978) 2 WLR 902 : 1979 AC 385, PC] the Privy Council while interpreting Section 6 of the Constitution of Trinidad and Tobago held that though not expressly provided therein, it permitted an order for monetary compensation, by way of “redress” for contravention of the basic human rights and fundamental freedoms. Lord Diplock speaking for the majority said:*

*“It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in Jaundoo v. Attorney General of Guyana [1971 AC 972 : (1971) 3 WLR 13, PC] . Reliance was placed on the reference in the sub-section to ‘enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections’ as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships’ view an order for payment of compensation when a right protected under Section 1 ‘has been’ contravened is clearly a form of ‘redress’ which a person is entitled*

*to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction ‘to hear and determine any application made by any person in pursuance of sub-section (1) of this section’. The very wide powers to make orders, issue writs and give directions are ancillary to this.”*

*Lord Diplock then went on to observe (at p. 680):*

*“Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.”*

**51.** *In Simpson v. Attorney General [1994 NZLR 667] (Baigent case) the Court of Appeal in New Zealand dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violates the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided, Hardie Boys, J. observed:*

*“The New Zealand Bill of Rights Act, unless it is to be no more than an empty statement, is a commitment by the Crown that those who in the three branches of the government exercise its functions, powers and duties will observe the rights that the Bill affirms. It is I consider implicit in that commitment, indeed essential to its worth, that the Courts are not only to observe the Bill in the discharge of their own duties but are able to grant appropriate and effective*

*remedies where rights have been infringed. I see no reason to think that this should depend on the terms of a written constitution. Enjoyment of the basic human rights are the entitlement of every citizen, and their protection the obligation of every civilised State. They are inherent in and essential to the structure of society. They do not depend on the legal or constitutional form in which they are declared. The reasoning that has led the Privy Council and the Courts of Ireland and India to the conclusions reached in the cases to which I have referred (and they are but a sample) is in my opinion equally valid to the New Zealand Bill of Rights Act if it is to have life and meaning.”*

*(emphasis supplied)*

**52.** *The Court of Appeal relied upon the judgments of the Irish Courts, the Privy Council and referred to the law laid down in Nilabati Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] thus:*

*“Another valuable authority comes from India, where the Constitution empowers the Supreme Court to enforce rights guaranteed under it. In Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] , the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to “forge new tools”, of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. (at p. 2912 of Cri LJ) may be noted : (SCC p. 768, paras 33 and 34)*

*‘The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The*

*courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. ... The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.’ ”*

**53.** *Each of the five members of the Court of Appeal in Simpson case [1994 NZLR 667] delivered a separate judgment but there was unanimity of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Rights Act, notwithstanding the absence of an express provision in that behalf in the Bill of Rights Act.*

**54.** *Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages*

*which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”*

Attention of the Court was drawn to the judgment of *Hindustan Paper Corpn. Ltd. v. Ananta Bhattacharjee* reported in (2004) 6 SCC 213 and it was submitted that public law remedy for the purpose of grant of compensation can be resorted to when the Fundamental Right under Article 21 of the Constitution is violated. Emphasis was made on paragraph 8 which holds as follows:

**“8.** *The question which arises for consideration is as to whether in exercise of its jurisdiction under Article 226 of the Constitution of India such a direction was permissible in law. We are of the opinion that it was not. Public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of a citizen under Article 21 of the Constitution is violated and not otherwise. It is not every violation of the provisions of the Constitution or a statute which would enable the court to direct grant of compensation. The power of the court of judicial review to grant compensation in public law remedy is limited. The instant case is not one which would attract invocation of the said rule. It is not the case of the respondents herein that by reason of acts of*

*commission and omission on the part of the appellant herein the fundamental right of the respondents under Article 21 of the Constitution has been violated.”*

On the issue relating to award of compensation against the state for redressal of an established infringement of Fundamental Right under Article 21 of the Constitution of India at the behest of the public servant, Learned Advocate relied upon *S. Nambi Narayanan v. Siby Mathews* reported in (2018) 10 SCC 804 and attention was drawn to paragraphs 34 and 41 to 43 which reads as follows:

**“34.** *As stated earlier, the entire prosecution initiated by the State Police was malicious and it has caused tremendous harassment and immeasurable anguish to the appellant. It is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State Police was dealing with an extremely sensitive case and after arresting the appellant and some others, the State, on its own, transferred the case to the Central Bureau of Investigation. After comprehensive enquiry, the closure report was filed. An argument has been advanced by the learned counsel for the State of Kerala as well as by the other respondents that the fault should be found with CBI but not with the State Police, for it had transferred the case to CBI. The said submission is to be noted only to be rejected. The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardised as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity.*

**41.** *In Sube Singh v. State of Haryana [Sube Singh v. State of Haryana, (2006) 3 SCC 178 : (2006) 2 SCC (Cri) 54] , the three-Judge Bench, after referring to the earlier decisions, has opined : (SCC pp. 198-99, para 38)*

*“38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.”*

**42.** *In Hardeep Singh v. State of M.P. [Hardeep Singh v. State of M.P., (2012) 1 SCC 748 : (2012) 1 SCC (Cri) 684] , the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted [Hardeep Singh Anand v. State of M.P., 2008 SCC OnLine MP 501 : 2008 Cri LJ 3281] compensation of Rs 70,000. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.*

**43.** *In the instant case, keeping in view the report of CBI and the judgment rendered by this Court in K. Chandrasekhar [K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223 : 1998 SCC (Cri) 1291] , suitable compensation has to be awarded, without any trace of doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay a sum of Rs 50 lakhs towards compensation to the appellant and, accordingly, it is so ordered. The said amount shall be paid within eight weeks by the State. We hasten to clarify that the appellant, if so advised, may proceed with the civil suit wherein he has claimed more compensation. We have not expressed any opinion on the merits of the suit.”*

With regard to the scope of Article 226 of the Constitution of India, Learned Senior Advocate submitted that Article 226 is deliberately couched in comprehensive language so that it confers wide power on the High Court to 'reach injustice wherever it is found'. On this quote, reference was made to *Cannanore District Muslim Educational Assn. v. State of Kerala* reported in (2010) 6 SCC 373 and emphasis was made on paragraphs 35 to 40 which reads as follows:

**“35.** *In Dwarka Nath v. ITO [AIR 1966 SC 81] a three-Judge Bench of this Court commenting on the High Court's jurisdiction under Article 226 opined that this article is deliberately couched in comprehensive language so that it confers wide power on the High Court to “reach injustice wherever it is found”. Delivering the judgment Justice Subba Rao (as His Lordship then was) held that the Constitution designedly used such wide language in describing the nature of the power. The learned Judge further held that the High Court can issue writs in the nature of prerogative writs as understood in England; but the learned Judge added that the scope of these writs in India has been widened by the use of the expression “nature”.*

**36.** *The learned Judge in Dwarka Nath [AIR 1966 SC 81] made it very clear that the said expression does not equate the writs that can be issued in India with those in England but only draws an analogy from them. The learned Judge then clarifies the entire position as follows: (AIR p. 85, para 4)*

*“4. ... It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court*

*under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”*

**37.** *The same view was also expressed subsequently by this Court in J.R. Raghupathy v. State of A.P. [(1988) 4 SCC 364 : AIR 1988 SC 1681] Speaking for the Bench, Justice A.P. Sen, after an exhaustive analysis of the trend of Administrative Law in England, gave His Lordship's opinion in para 29 at p. 1697 thus: (SCC p. 386, para 30)*

*“30. Much of the above discussion is of little or academic interest as the jurisdiction of the High Court to grant an appropriate writ, direction or order under Article 226 of the Constitution is not subject to the archaic constraints on which prerogative writs were issued in England. Most of the cases in which the English courts had earlier enunciated their limited power to pass on the legality of the exercise of the prerogative were decided at a time when the courts took a generally rather circumscribed view of their ability to review ministerial statutory discretion. The decision of the House of Lords in Padfield case [Padfield v. Minister of Agriculture, Fisheries and Food, 1968 AC 997 : (1968) 2 WLR 924 : (1968) 1 All ER 694 (HL)] marks the emergence of the interventionist judicial altitude that has characterised many recent judgments.”*

**38.** *In the Constitution Bench judgment of this Court in LIC v. Escorts Ltd. [(1986) 1 SCC 264] this Court expressed the same opinion that in Constitutional and Administrative Law, law in India forged ahead of the law in England (SCC p. 344, para 101).*

**39.** *This Court has also taken a very broad view of the writ of mandamus in several decisions. In Comptroller and Auditor General of India v. K.S. Jagannathan [(1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1 : AIR 1987 SC 537] a three-Judge Bench of this Court referred to Halsbury's Laws of England, 4th Edn., Vol. I, para 89 to illustrate the range of this remedy and quoted with approval the following passage from Halsbury about the efficacy of mandamus:*

*“89. Nature of mandamus.— ... is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy, for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.” (See SCC p. 692, para 19 of the report)*

*In SCC para 20, in the same page of the report, this Court further held: (K.S. Jagannathan case [(1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1 : AIR 1987 SC 537] , p. 693)*

*“20. ... and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”*

**40.** *In a subsequent judgment also in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [(1989) 2 SCC 691 : AIR 1989 SC 1607] this Court examined the development of the law of mandamus and held as under: (SCC p. 701, para 22)*

*“22. ... mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: ‘To be enforceable by mandamus a public duty does not necessarily have*

*to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.’ (Judicial Review of Administrative Action, 4th Edn., p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available ‘to reach injustice wherever it is found’. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.”*

*(emphasis supplied) (See AIR p. 1613, para 21.)”*

On the jurisdiction of Article 226 of the Constitution of India for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted upon them, Learned Advocate relied upon *Benedict Denis Kinny v. Tulip Brian Miranda* reported in (2021) 12 SCC 780 and referred to paragraph 21 which reads as follows:

**“21.** *We need to first notice the nature and extent of the jurisdiction of the High Court under Article 226 of the Constitution of India. The power of judicial review vested in the High Courts under Article 226 and this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under Article 226 is original, extraordinary and discretionary. The lookout of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or an authority within the meaning of Article 12 of the Constitution. The judicial review is designed to prevent cases of abuse of power or*

*neglect of a duty by the public authority. The jurisdiction under Article 226 is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice wherever it is found. The High Court and the Supreme Court are the constitutional courts, which have been conferred right of judicial review to protect the fundamental and other rights of the citizens. Halsbury's Laws of England, Fifth Edn., Vol. 24 dealing with the nature of the jurisdiction of superior and inferior courts stated that no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so. In para 619, Halsbury's Laws of England states:*

*“The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendence in certain classes of claims, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular claim.”*

Learned Advocate also relied upon paragraph 52 of *Central Council for Research in Ayurvedic Sciences v. Bikartan Das* reported in (2023) 16 SCC

462 for canvassing the issue relating to preconditions of issuance of Certiorari. The said paragraph is as follows:

*“52. Relying on T.C. Basappa [T.C. Basappa v. T. Nagappa, (1954) 1 SCC 905 : AIR 1954 SC 440] , the Constitution Bench of this Court in Hari Vishnu Kamath [Hari Vishnu Kamath v. Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233] , laid down the following propositions as well established : (Hari Vishnu Kamath case [Hari Vishnu Kamath v. Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233] , SCC p. 899, para 24)*

*“24. ... 24.1. “Certiorari” will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.*

*24.2. “Certiorari” will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.*

*24.3. The court issuing a writ of “certiorari” acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.””*

On behalf of the petitioner, it was further urged that a case has been made out for transfer of the investigating agency as repeatedly the police authorities have in an evasive manner filed the reports ignoring the materials which are available on record.

Learned Senior Advocate relied upon *Ramesh Kumari v. State (NCT of Delhi)* reported in (2006) 2 SCC 677 and referred to paragraphs 8 and 9 which is as follows:

**“8.** Mr Vikas Singh, learned Additional Solicitor General although vehemently opposed registration of the case but he fairly concedes that if at all the case be registered and investigation is to be carried out, CBI would be an appropriate authority to register a case and investigate. We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI.

**9.** We, accordingly, direct that CBI shall now register a case and investigate the complaint filed by the appellant on 9-9-1997 and 13-9-1997. CBI can collect the complaint from SHO, Police Station Kapashera dated 9-9-1997 and 13-9-1997. The complainant will also provide photocopies of the complaint dated 9-9-1997 and 13-9-1997 in case the original complaint is not traceable in the police station. Since the matter is pending from 1997 CBI is directed to register the case and complete investigation within a period of three months from today. We further clarify that by the aforesaid directions we are not entering into the merits of the controversy of the case nor casting aspersions on anybody including the local police.”

Submitting that in cases where accusations against the local police personnel is made, it would be desirable in the larger interest of Justice to entrust the investigation to CBI for ensuring credibility in the investigation. Reliance was placed upon *R.S. Sodhi v. State of U.P.* reported in 1994 Supp

(1) SCC 143. The relevant paragraphs relied upon by the learned counsel is quoted below:

*“1. This writ petition brought under Article 32 of the Constitution concerns the incident which had taken place at Pilibhit on September 12/13, 1991 in which 10 persons were reported to have been killed in what were described as ‘encounters’ between the Punjab Militants and the local police. The news item in connection therewith appeared in The Times of India on the basis whereof this petition was filed. The issue was raised in the Parliament and teams of MPs belonging to the Congress(I) and BJP also visited the places of occurrence to make an on-the-spot inquiry. Their reports are on record. We have also perused the report of the ACJM, Pilibhit in which it is pointed out that the identity of the persons killed in the encounters was not correctly stated. The investigation in regard to the incident was handed over to an officer of the Inspector General's level and we are told that the local police officers suspected to be concerned with the incidents were also transferred to enable the officer to carry on the inquiry unhindered. Subsequently, the State Government also appointed a one-member commission headed by a sitting judge of the Allahabad High Court to inquire into the matter but it appears that in some writ petition filed in the High Court of Allahabad (Lucknow Bench) a stay has been granted restraining the commission from functioning. Be that as it may, the fact remains that three incidents in which as many as 10 lives (now stated to be eleven) were lost had admittedly taken place and the need for an independent investigation can hardly be disputed. Since the local police was involved in the said encounters, a request has been made that an independent agency may be asked to inquire/investigate into the matter in accordance with the Code of Criminal Procedure with a view to bringing the offenders, if any, to book. Mr Sodhi contends that the investigation may be directed to be*

carried out by the Central Bureau of Investigation having regard to the fact that the accusations are levelled against the local police. He points out that even the State Government has seen the need for inquiry by an independent commission. As against this the learned counsel for the respondent-State submits that the State Government has taken prompt action in the matter by appointing a high level officer to inquire into the incidents and by promptly transferring the concerned local police so that there may be no possibility of any tampering or interference by them. He further points out that the State Government has also taken the next step of appointing a commission headed by a sitting High Court Judge to probe the incidents and to arrive at the truth and hence there is no need for directing the Central Bureau of Investigation to investigate into the matter. In support of this contention he invited our attention to the observations made by this Court in *Chaitanya Kalbagh v. State of U.P.* [(1989) 2 SCC 314 : 1989 SCC (Cri) 363] In that case this Court observed that in the facts and circumstances presented before it there was an imperative need of ensuring that the guardians of law and order do in fact observe the code of discipline expected of them and that they function strictly as the protectors of innocent citizens. This Court refrained from saying anything further in the matter so that no prejudice is caused to anyone in the course of the inquiry/investigation that may be undertaken. Counsel emphasised that once the State Government has shown its bona fides by taking prompt action in the matter it must be left to the State Government to complete its function under the Code of Criminal Procedure without any interference from outside agency. Emphasis was laid on the observation that matters which properly fall within the domain of the State Government should be left to that Government and that Government should be petitioned first before any interference by the court is called for.

*2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.”*

In support of the aforesaid contentions made in respect of change of investigating agency, Learned Senior Advocate referred to *Prakash Kadam v. Ramprasad Vishwanath Gupta* reported in (2011) 6 SCC 189 and emphasis was made on paragraphs 20,24,25,27 and 28 which reads as follows:

**“20.** *This is a very serious case and cannot be treated like an ordinary case. The accused who are policemen are supposed to uphold the law, but the allegation against them is that they functioned as contract killers. Their version that Ramnarayan Gupta was shot in a police encounter has been found to be false during the investigation. It is true that we are not deciding the case finally as that will be done by the trial court where the case is pending, but we can certainly examine the material on record in deciding whether there is a prima facie case against the accused which disentitles them to bail.*

**24.** *In fact, the prosecution material collected during the investigation prima facie indicates that Ramnarayan Gupta was abducted during the daytime and was taken to D.N. Nagar Police Station and from there he was taken to some unknown place where he was shot dead. At 9 p.m. some police officers came back to the police station and deposited their weapons and kept their bloodstained clothes.*

**25.** *In our opinion this is a very serious case wherein prima facie some police officers and staff were engaged by some private persons to kill their opponent i.e. Ramnarayan Gupta and the police officers and the staff acted as contract killers for them. If such police officers and staff can be engaged as contract killers to finish some person, there may be very strong apprehension in the mind of the witnesses about their own safety. If the police officers and staff could kill a person at the behest of a third person, it cannot be ruled out that they may kill the important witnesses or their relatives or give threats to them at the time of trial of the case to save themselves. This aspect has been completely ignored by the learned Sessions Judge while granting bail to the accused persons.*

**27.** *We are of the view that in cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. Fake “encounters” are nothing but cold-blooded, brutal murders by persons who are supposed to uphold the law. In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should*

*be given to them because they do an act totally contrary to their duties.*

**28.** *We warn policemen that they will not be excused for committing murder in the name of “encounter” on the pretext that they were carrying out the orders of their superior officers or politicians, however high. In the Nuremburg trials the Nazi war criminals took the plea that “orders are orders”, nevertheless they were hanged. If a policeman is given an illegal order by any superior to do a fake “encounter”, it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death. The “encounter” philosophy is a criminal philosophy, and all policemen must know this. Trigger-happy policemen who think they can kill people in the name of “encounter” and get away with it should know that the gallows await them.”*

Learned Senior Advocate also relied upon the judgment of the Hon’ble Calcutta High Court in *Association for Protection of Democratic Rights v. State of West Bengal* reported in 2007 SCC OnLine Cal 672 and referred to paragraph 92 of the said judgment which reads as follows:

**“92.** *On the perusal of the Regulations it would appear that the Police Regulations provide a series of checks and balances for the use of firearms by the police force for the dispersion of unlawful assemblies. Regulation 151 provides that when a Magistrate is present with an armed party, employed for the suppression of a riot or the dispersion of unlawful assemblies, he shall give the warning prescribed by Regulation 153(c)(h). Regulation 154 provides for general rules relating to the use of firearms. Regulation 155 specifies that the Magistrate may himself give the order to open fire or may direct officer in command to issue the order. In case the Magistrate is not present the officer himself can issue the order provided he considers it to be necessary. Regulation 156 provides*

*for action to be taken after the police have used firearms. A detailed report is to be submitted to the District Magistrate. Regulation 157 provides that whenever the police have used firearms a full executive enquiry to ascertain whether the firing was justified and whether the Regulations were obeyed, shall be held as soon as it can possibly be arranged. Thus, it appears that the Regulations provide a comprehensive guide for the control of the use of firearms. We are unable to accept the submission of the learned Advocate General that since the Regulations 152 to 154 were complied with, the police cannot be accused of indiscriminate firing at the Nandigram “unlawful assembly”. We are of the considered opinion, that if Regulations 151, 152, 153 and 154 are strictly complied, there would be no scope for indiscriminate firing into a huge crowd. The Regulations permit only target specific shooting, which would be impossible when the police is faced with a crowd of thousands. Firstly it would be very difficult to identify the targets. Even if they are identified, they would have to be isolated before they could be shot. Therefore, detailed provisions have been made in these Regulations about the method and manner of firing. The object is clearly to minimise the injuries. Regulation 151 gives the power to the Magistrate when present to direct the Officer-in-Command to use force or open fire. Regulation 152 specifically provides for the precautions which have to be observed by a police officer in command of an armed party for the suppression of a riot or the dispersal of an unlawful assembly. The Regulation is as under:*

*“152.—(i) he should so dispose it that it has effective a field of fire as circumstances permit;*

*(ii) he shall not bring it so close to a mob as to risk either its being overwhelmed by a sudden rush or its being forced to inflict heavy casualties;*

*(iii) if, in order to minimise injuries from missiles, the party is extended, he shall not allow it to extend so far as to affect his ability to exercise strict fire control;*

- (iv) he should order bayonets to be fixed;*
- (v) he shall give orders to the party to load, when he thinks fit loading without such orders it strictly forbidden;*
- (vi) for the purposes of fire control he shall ordinarily divide his force into sections of not more than ten men each and place each section under a responsible commander;*
- (vii) if the party is, or is likely to be, attacked from two directions, he shall post the men in two ranks, each facing one of those directions, with sufficient space between such ranks to enable him to move between the ranks and to control the firing; and*
- (viii) generally he should follow the riot drill instructions as closely as circumstances permit.””*

The Respondent No.10 appeared in person and submitted that in connection with the incident of police firing on 14.02.2010 at Prosadpur, Brahmanpara More, he was discharging his official duties as the Officer-in-Charge of Jangipara Police Station. Admittedly, there was police firing. On the basis of a Suo-moto complaint, a case being Jangipara P.S. Case No. 23/2010 dated 14.02.2010 under the relevant provisions of Indian Penal Code, Arms Act, Indian Explosives Act and Maintenance of Public Order Act was registered. He contended that police had to open fire as the situation warranted and the FIR itself would speak for the same. To substantiate his claim, he argued that violent attack by the miscreants resulting in 14 persons sustaining injuries by bombs, arrows, brickbats, bamboo sticks, etc. compelled police to open fire. To that effect a list of about eight injured persons have been named i.e., Rajesh Ruidas, Sikha Ruidas, Bhaskar Dewan, Netai Dewan, Tapas Chatterjee, Basu Bhumij, Shyama Bhumij and Ranjit Malik. Additionally, Sub-Inspector Samir Sarkar, Amitabha Ghosh,

Assistant Sub-Inspector Haranath Hazra, Constable Lalchand Hansda, Robert Lepcha and Sudanshu Karmaker sustained injuries in course of the incident.

It was further contended by the Respondent No. 10 that on the basis of a complaint of an injured namely, Basu Bhumij another case being Jangipara P.S. Case No. 24/2010 dated 14.02.2010 was registered for investigation under the relevant provisions of Indian Penal Code, Arms Act and Indian Explosives Act. In the said FIR, allegations were made that by the miscreants belonging to the then opposition political party violent attacks were perpetrated upon innocent people and also upon police personal. Respondent No. 10 also drew the attention of the Court to certain documents indicating that 5 live bombs, remnants of bombs, 11 arrows, 1 bow, 11 brickbats and 8 bamboo sticks were seized from the place of occurrence. Subsequently, two arrow heads were seized which were surgically removed by doctors from the abdomen of injured Shyama Bhumij and from the left leg of Ranjit Malik.

It was submitted that a Magistrate's inquiry was conducted for the incident of police firing on 14.02.2010 at Prosadpur, Brahmanpara More and on conclusion, the Magistrate recorded a finding which held that the police firing at Prosadpur, Brahmanpara More was justified. During such inquiry, the statements of the injured persons, prime eyewitnesses and disinterested persons were duly considered. It was further contended that over the same issue after three hours of the incident, at the instance of one of the opposition political leader of the locality, a complaint signed by a third

person namely, Ashoke Porel against Officer-in-Charge, Jangipara Police Station and others was addressed to the SDPO, Serampore. The SDPO forwarded the complaint to Jangipara Police Station with a note appended at the top of the complaint. Upon receipt of the complaint, Jangipara P.S. Case No. 25 dated 14.02.2010 was registered for investigation under Section 304 of the Indian Penal Code against him (Officer-in-Charge, Jangipara Police Station i.e., Respondent No. 10). It was argued that the contents of the complaint were drafted by an expert and the same would be evident from the handwriting of the contents and the signature of the complainant. The author of the complaint did not reveal his identity and during examination by the Investigating Officer, the complainant stated that he had no knowledge as to who prepared the complaint. Investigation was done thrice from 14.02.2010 to 30.03.2021 and till date it is unknown as to who is the author of the complaint.

The Respondent No.10/Officer-in-Charge, Jangipara Police Station argued that the complainant alleged that on 14.02.2010, during School Managing Committee election at Prosadpur High School at around 2.00 P.M., suddenly, he entered the school premises being accompanied by 10/15 ruling party supporters and fired upon the then opposition party supporter Rabin Ghose from his revolver without any provocation. The bullet struck on his ribs and he was killed. It was alleged that the ruling party supporters ransacked the school after being instigated by O.C., Jangipara P.S. however, within few days when the investigating officer examined the complainant, he represented that the incident happened at

Prosadpur, Brahmanpara More which is about 250 meters away from the school premises and at the time of the incident, Rabin Ghose fled away. It was further submitted that the complainant alleged that the Officer-in-Charge, Jangipara Police Station fired at the back of Rabin Ghose resulting in his death. The said statement is in contradiction to the allegations of the complainant in the FIR and the complainant had no knowledge in respect of the contents of the complaint which was filed where he only affixed his signature.

Respondent No. 10 argued that despite repeated investigation, no prima-facie charge was established against him. On the other hand, over the same incident two other cases were registered which are Jangipara P.S. Case No. 23/2010 and Jangipara P.S. Case No. 24/2010. Both the cases were charge-sheeted against 27 and 24 persons respectively, all of whom were supporters of the opposition political party who actively participated in the violence. Respondent No. 10 submitted that in connection with Jangipara P.S. Case No. 25/2010, the complainant misled the Police Authorities and the Judicial Authority by furnishing inconsistent statements concerning the place of occurrence as well as the particulars of the incident. The actual place of occurrence was not within the knowledge of the complainant. It was stated that after completion of the School Managing Committee election, the Headmaster of Prosadpur High School and the Presiding Officer of the said election submitted a written declaration affirming that the Election was conducted peacefully on 14.02.2010 and no untoward incident had taken place within 100 meters of the school premises

during the polling process or during the counting of votes. The same was also recorded in the Final Report No. 48 dated 30.03.2021 submitted by the DIG, CID West Bengal before the Learned ACJM, Serampore, Hooghly and the Learned ACJM, Serampore vide order dated 13.04.2022 accepted the said report.

There was lot of provocation created by the miscreants of the then opposition political party during the incident. Acts of violence included firing, hurling bombs, throwing arrows and brickbats at police and innocent civilians, as also blocking the main bus route which was the only way of communication between Jangipara and Howrah. As a result, 14 persons, including six police personnel sustained injury, such fact was suppressed in the complaint of Jangipara P.S. Case No. 25/2010 but such fact was established in the investigation of Jangipara P.S. Case No. 23/10, 24/10 and 25/10.

By resorting to the provisions of Section 321 of the Code of Criminal Procedure in the year 2013 both Jangipara P.S. Case No. 23/2010 and Jangipara P.S. Case No. 24/2010 were withdrawn under instructions of the Legal Remembrancer, West Bengal and upon submission made by the public prosecutor in charge of Serampore Court on 04.07.2013 and 03.09.2013 orders were passed.

It was pointed out that Jangipara P.S. Case No. 25/2010 was not withdrawn, though it was registered over the same incident. The case was again and again litigated till 30.03.2021 and the Respondent No. 10

therefore contends that the act of the State Government is violating the provision of Article 14 of the Constitution of India. No prima-facie evidence against the Respondent No. 10 ever emerged on the basis of which charge-sheet could have been submitted against him and he being discharged from the case had to face mental harassment owing to successive investigations.

Arguments were advanced by the Respondent No. 10 that with regard to the cause of death of Rabin Ghose, the medico legal evidences of Jangipara P.S. Case No. 25/10 under Section 304 of Indian Penal Code are inconsistent. In the post-mortem report, the Medical Officer opined that the death resulted due to a single gunshot injury on the chest and it was from close range.

However, another expert being the Professor and Head, Department of Forensic and State Medicine, IPGME&R, Kolkata opined that death was due to gunshot injuries and the projectile was fired from a long-barrelled service rifle and the firing was from a distant range of more than 50 yards from the striking surface over victim's body. Lastly, a Medical Board was formed by three doctors of RG Kar Medical College, Kolkata. This Board confirmed that death was due to gunshot, and the firing was from near range, approximately six inches to four feet distance from backside of the victim.

The Final Report dated 30.03.2021 submitted by DIG, CID West Bengal, concluded that the sound of firing was also heard from the side of the agitators who assembled behind Rabin Ghose, which was also referred in FIRs of Jangipara P.S. Case No. 23/2010 and Jangipara P.S. Case No.

24/2010. Thus, the possibility of some of the agitators firing by directing towards the police from behind the deceased Rabin Ghose cannot be ruled out.

The Magisterial inquiry also affirmed the fact that one of the witness who was returning found a mob of about 150 people armed with bombs, sticks, bricks, bow and arrow near the house of Kanshi Pramanik. The witness stated regarding hurling of bombs and firing being directed towards the police authorities. The Police fired tear gas shells and the mob was barely 50 to 60 feet away from the Police. It was submitted that the final report which was submitted in connection with Jangipara P.S. Case No. 25/2010 being FRT No. 48/21 dated 30.03.2021 by the DIG, CID West Bengal prayed for discharging the Respondent No. 10 from the case as no prima-facie charge could be made out against him. Learned ACJM, Serampore examined the de-facto complainant on dock with regard to the final report submitted by the investigating officer who stated that he has no objection against the report of the investigating officer being accepted. Consequently, on 13.04.2022 the Respondent No. 10 was discharged from Jangipara P.S. Case No. 25/2010. The Respondent No. 10 therefore, prayed for dismissal of the present writ petition.

Learned advocate representing the State opposed the reliefs advanced in the present writ petition and submitted that there has been a change of circumstance since the writ petition was preferred and the order which was passed by a Co-ordinate Bench on 16.12.2020 wherein the DIG (Special), CID, West Bengal was directed to complete the investigation and submit the

report before the Court by 31.03.2021. Pursuant to the direction passed in the writ petition, the final report was submitted before the Learned ACJM, Serampore who proceeded in accordance with law and as the de-facto complainant did not intend to pursue the criminal case being Jangipara P.S. Case No. 25/10, the final report was accepted and the accused was discharged. It was submitted that when there are statutory remedies available, ordinarily the High Court should not interfere by invoking the powers under Article 226 of the Constitution of India and the factual matrix of the case wherein there has been successive investigation do not establish a case against the Officer-In-Charge of Jangipara Police Station i.e., Respondent No. 10 and the present petitioner being the wife of the deceased is vindicating the public servant for settling personal scores.

Learned advocate referred to the case diary and the materials collected by the prosecution in course of investigation and submitted that no stone has been kept unturned in course of the investigation and the specialized investigating agency of the State collected materials by way of obtaining opinion of the experts, and thereafter arrived at a finding which exonerates the Respondent No. 10 from the charges. It was also submitted that the incident complained of is of the year 2010, more than 15 years have passed and there has been successive investigations. In respect of the other cases on the self-same incident, the State Government decided to withdraw the prosecution as the Executive Magistrate's report along with the other attending circumstances do support and justify the action of the police authorities. As such no useful purpose would serve for interfering and/ or

continuing with the investigation of the present case. Consequently, the writ petition should be dismissed.

In order to fortify his arguments, learned advocate appearing on behalf of the State has relied upon a series of judgments on different aspects which are dealt with herein below.

On the issue relating to further investigation, learned advocate has referred to paragraph 85.2 of *State of T.N. v. Hemendhra Reddy*, reported in (2023) 16 SCC 779 which reads as follows:

*“85.2. Prior to carrying out further investigation under Section 173(8) CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.”*

Reference was also made to the judgment of *K. Vadivel v. K. Shanthi* reported in 2024 SCC OnLine SC 2643 for establishing that the further investigation should not be permitted for conducting a fishing and roving inquiry when the police authority has already arrived at their opinion. Emphasis was made on paragraphs 31, 32 and 33 of the said judgment which reads as follows:

*“31. In the present case, though the Trial Judge rejected the application, the High Court has ordered further investigation. Considering the fact that we are inclined to set aside the order of the High Court, on merits, we deem it unnecessary to discuss the issue of jurisdiction.*

*32. Ultimately, the contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to*

*decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties (see Pooja Pal v. Union of India, (2016) 3 SCC 135, para 83). As noticed in Ram Lal Narang v. State (Delhi Administration), (1979) 2 SCC 322, (para 20) where fresh materials come to light which would implicate persons not previously accused or absolve persons already accused or where it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, it may be the duty of the investigating agency to investigate the genuineness of the same and submit a report to the court.*

**33.** *However, the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation, in this case respondent no. 1, has not whispered about anything new in her evidence as is now sought to be averred in the application. There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction that ends of justice require the ordering/permitting of further investigation. In Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347, this Court held as under:—*

**“13.** *In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322] 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.”*

Learned advocate thereafter, dealt with the authority and powers of the High Court while exercising Article 226 of the Constitution of India and to that effect relied upon *Ajay Singh v. Khacheru*, reported in (2025) 3 SCC 266. Emphasis was made on paragraphs 16, 17 and 18 which holds as follows:

**“16.** *It is a well-established principle that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot reappreciate the evidence and arrive at a finding of facts unless the authorities below had either exceeded its jurisdiction or acted perversely.*

**17.** *On the said settled proposition of law, we must make reference to the judgment of this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447] . The relevant portion thereof reads as under : (SCC p. 458, para 16)*

*“16. ... It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was*

*perverse in law. This principle is well settled. In D.N. Banerji v. P.R. Mukherjee [D.N. Banerji v. P.R. Mukherjee, (1952) 2 SCC 619] it was laid down by this Court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.”*

*(emphasis supplied)*

**18.** *The abovesaid proposition of law was reiterated in Shamshad Ahmad v. Tilak Raj Bajaj [Shamshad Ahmad v. Tilak Raj Bajaj, (2008) 9 SCC 1] , wherein it was observed that : (SCC pp. 10-11, para 38)*

*“38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.”*

While arguing on the issue relating to the adherence of the principles of natural justice, reference was made to *Board of Mining Examination and*

*Chief Inspector of Mines v. Ramjee* reported in (1977) 2 SCC 256 and attention of the Court was drawn to paragraph 13 which states as follows:

*“13. The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Regulation 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt — that is the conscience of the matter.”*

Learned advocate on the same issue also referred to *SBI v. Ram Lal Bhaskar*, reported in (2011) 10 SCC 249 and drew the attention of the Court to the relevant paragraphs 12,13 and 14 which reads as follows:

*“12. This Court has held in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] : (AIR pp. 1726-27, para 7)*

*“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice*

*are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.”*

**13.** *Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct.*

**14.** *We, therefore, set aside the impugned order of the High Court and allow the appeal with no order as to costs.”*

Reiterating his contention, learned advocate for the State relied upon *State of U.P. v. Labh Chand*, reported in (1993) 2 SCC 495 and referred to paragraph 20 which reads as follows:

**“20.** *When a Judge of Single-Judge Bench of a High Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already by another Single-Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternate remedy. Second writ petition cannot*

*be so entertained not because the learned Single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognised power. Besides, if a learned Single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed in limine by another learned Single Judge or a Division Bench of the same court, it would encourage an unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the court refusing to entertain a writ petition. It is why, the rule of judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject-matter respecting which the first writ petition of the same person was dismissed by the same court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary rule in exercise of writ jurisdiction of courts.”*

Attention of the Court was also drawn to paragraphs 21 to 26 of *State of A.P. v. Chitra Venkata Rao*, reported in (1975) 2 SCC 557 which holds:

*“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25 : (1964) 2 LLJ 150] . First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities*

*are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.*

**22.** Again, this Court in *Railway Board, representing the Union of India, New Delhi v. Niranjana Singh* [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjana Singh* case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

**23.** The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that

*in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64]*

**24.** *The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.*

**25.** *The respondent raised another contention that the State did not give the respondent a document described as 'B' Report and Investigation Report of the Anti-Corruption Bureau. The ground advanced by the respondent in the petition before the High Court was that 'B' Report and Investigation Report to which the reference*

is made by the Tribunal in its report and which are relied on to support the charges, were not made available to the respondent. The High Court did not express any opinion on this question because the High Court set aside the dismissal on the ground that there was no evidence for the Tribunal to come to that conclusion. The State in the affidavit filed in the High Court in answer to the respondent's petition said that 'B' Report and Investigation Report are secret reports which are intended for the reference of the Tribunal of Disciplinary Proceedings and the Government and, therefore, these reports are not supplied to the officers. We need not express any opinion on that answer of the State in the affidavit. The respondent in answer to the affidavit of the State said that the Tribunal used the 'B' Report and the Investigation Report against the respondent and did not supply copies. It is because the respondent alleged in the writ petition that the Tribunal relied on 'B' Report and Investigation Report, we looked into the Inquiry Report of the Tribunal to find out whether that was a correct statement. We find that there is a reference to 'B' Report by the Tribunal only because the respondent challenged the genuineness and authenticity of Exhibit P-45. The respondent's case was that if he made a statement like Exhibit P-45, the Investigating Officer would have sent it along with his report. The Inquiry Officer says that the Investigating Officer recorded the statement of the respondent. The Tribunal has not relied on 'B' Report or Investigation Report. The respondent never demanded 'B' Report and Investigation Report. The respondent was interested before the Tribunal to displace Exhibit P-45 by doubting its genuineness. The Tribunal found that Exhibit P-45 was genuine and was a statement made and signed by the respondent in the presence of the Investigating Officer. It does not appear that the Tribunal based its finding only on Exhibit P-45.

**26.** For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and

*reassessing the evidence. The appeal is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.”*

On the issue relating to the powers under Article 226, reference was also made to *Daryao v. State of U.P.*, reported in 1961 SCC OnLine SC 21 and reliance was placed on paragraphs 8, 10, 18 and 19 of the said judgment which holds as follows:

*“8. There can be no doubt that the fundamental right guaranteed by Article 32(1) is a very important safeguard for the protection of the fundamental rights of the citizens, and as a result of the said guarantee this Court has been entrusted with the solemn task of upholding the fundamental rights of the citizens of this country. The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself. It is because of this aspect of the matter that in *Romesh Thappar v. State of Madras* [(1950) SCR 594] in the very first year after the Constitution came into force, this Court rejected a preliminary objection raised against the competence of a petition filed under Article 32 on the ground that as a matter of orderly procedure the petitioner should first have resorted to the High Court under Article 226, and observed that “this Court is thus constituted the protector and guarantor of the fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain*

*applications seeking protection against infringements of such rights". Thus the right given to the citizen to move this Court by a petition under Article 32 and claim an appropriate writ against the unconstitutional infringement of his fundamental rights itself is a matter of fundamental right, and in dealing with the objection based on the application of the rule of res judicata this aspect of the matter has no doubt to be borne in mind.*

**10.** *In considering the essential elements of res judicata one inevitably harks back to the judgment of Sir William B. Hale in the leading Duchess of Kingston case [2 Smith Lead Cas 13 Ed. pp. 644, 645] . Said Sir William B. Hale "from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true : First, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose". As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation [Halsbury's Laws of England, 3rd Edn., Vol. 15, paragraph 357, p. 185] ". Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a Court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause (p. 187, paragraph 362). "Res judicata", it is observed in Corpus Juris, "is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause — nemo debet bis vexari pro eadem causa" [Corpus Juris, Vol. 34, p. 743] . In this sense the recognised*

basis of the rule of *res judicata* is different from that of technical estoppel. “Estoppel rests on equitable principles and *res judicata* rests on maxims which are taken from the Roman Law” [ *Ibid* p. 745] . Therefore, the argument that *res judicata* is a technical rule and as such is irrelevant in dealing with petitions under Article 32 cannot be accepted.

**18.** The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: “subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences” [Halsbury's Laws of England, 3rd Edn., Vol. 22, p. 780, paragraph 1660] . Similar is the statement of the law in *Corpus Juris*: “the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction [ *Corpus Juris Secundum*, Vol. 50 (Judgments), p. 603] ”. This rule is subject to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction [ *Corpus Juris Secundum*, Vol. 50 (Judgments), p. 603] . “It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon” [ *Ibid* p. 608] . In other words, an original petition for a writ under

*Article 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Article 226. There can be little doubt that the jurisdiction of this Court to entertain applications under Article 32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Article 226. Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.*

**19.** *This Court had occasion to consider the application of the rule of res judicata to a petition filed under Article 32 in M.S.M. Sharma v. Dr Shree Krishna Sinha [AIR 1960 SC 1186]. In that case the petitioner had moved this Court under Article 32 and claimed an appropriate writ against the Chairman and the Members of the Committee of Privileges of the State Legislative Assembly. The said petition was dismissed. Subsequently he filed another petition substantially for the same relief and substantially on the same allegations. One of the points which then arose for the decision of this Court was whether the second petition was competent, and this Court held that it was not because of the rule of res judicata. It is true that the earlier decision on which res judicata was pleaded was a decision of this Court in a petition filed under Article 32 and in that sense the background of the dispute was different, because the judgment on which the plea was based was a judgment of this Court and not of any High Court. Even so, this decision affords*

*assistance in determining the point before us. In upholding the plea of res judicata this Court observed that the question determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which are substantially the same. In support of this decision Sinha, C.J., who spoke for the Court, referred to the earlier decision of this Court in Raj Lakshmi Dasi v. Banamali Sen [(1952) 2 SCC 219 : (1953) SCR 154] and observed that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of the dispute was not exactly the same in the two proceedings. We may add incidentally that the Court which tried the earlier proceedings in the case of Raj Lakshmi Dasi [(1952) 2 SCC 219 : (1953) SCR 154] was a court of exclusive jurisdiction. Thus this decision establishes the principle that the rule of res judicata can be invoked even against a petition filed under Article 32.”*

Learned advocate for the State also argued regarding the issue relating to identification of the accused and to that effect referred to *Jadunath Singh v. State of U.P.*, reported in (1970) 3 SCC 518 and reliance was placed on paragraphs 16 to 18 which reads as follows:

**“16.** *In the present case, however, it is clear that PW Mahesh Chandra knew the accused persons for about four years for he said:*

*“I know the accused persons, Jadunath Singh and Girand Singh for about 4 years. They live at Village Garhiya lying at a distance of three furlongs from Bewar. Girand Singh is reading at the Amar Shaheed Inter College, Bewar.”*

*No cross-examination was directed on this point. PW 3, Dwarka Prasad, stated:*

*"I had seen Girand visting Bewar before that but I had seen Jadunath at Bewar only once or twice before that day. Identifies both the accused persons in the dock. Lays hand correctly on Jadunath; and also lays hands correctly on Girand in the dock."*

*In cross-examination he stated:*

*"I had seen Jadunath accused at Bewar at the shop of one Chhakku once or twice before the occurrence. I had seen him 2 or 2½ years back."*

**17.** *It seems to us that the reason given by the public prosecutor in the report and the reason given by the Additional District Magistrate (Judicial) in the order directing that identification requested for be not held were not valid. The fact that a charge-sheet had been received and the accused had been named by PWs was no justification for not having ordered the test identification. But on the facts of this case it is clear that PW 2 at least knew the accused from before. As regards PW 3, although he claims to have known the accused, it is clear that his knowledge of the accused was very scant and if it had not been for the evidence of PW 2 we would not have placed reliance on the evidence of PW 3 in view of the fact that the police did not ask him to identify the appellant.*

**18.** *It is stated in Phipson on the Law of Evidence, 9th Edn., p. 415, as follows:*

*"In criminal cases it is improper to identify the accused only when in the dock; the police should place him, beforehand, with others and ask the witness to pick him out. Nor should the witness be guided in any way, nor asked 'Is that the man?' "*

*We consider that the same is the law in India, if the identity is in doubt. ""*

By drawing the attention of the Court to the earlier FIR's being Jangipara P.S. Case No. 23/10 and Jangipara P.S. Case No. 24/10, learned advocate relied on the judgment of *T.T. Antony v. State of Kerala*, reported in

(2001) 6 SCC 181 and reference was made to paragraphs 17, 18, 19 and 20 which states as follows:

*“17. Sub-section (1) of Section 154 CrPC contains four mandates to an officer in charge of a police station. The first enjoins that every information relating to commission of a cognizable offence if given orally shall be reduced to writing and the second directs that it be read over to the informant; the third requires that every such information whether given in writing or reduced to writing shall be signed by the informant and the fourth is that the substance of such information shall be entered in the station house diary. It will be apt to note here a further directive contained in sub-section (1) of Section 157 CrPC which provides that immediately on receipt of the information the officer in charge of the police station shall send a report of every cognizable offence to a Magistrate empowered to take cognizance of the offence and then proceed to investigate or depute his subordinate officer to investigate the facts and circumstances of the case. Sub-section (2) entitles the informant to receive a copy of the information, as recorded under sub-section (1), free of cost. Sub-section (3) says that in the event of an officer in charge of a police station refusing to record the information as postulated under sub-section (1), a person aggrieved thereby may send the substance of such information in writing and by post to the Superintendent of Police concerned who is given an option either to investigate the case himself or direct the investigation to be made by a police officer subordinate to him, in the manner provided by CrPC, if he is satisfied that the information discloses the commission of a cognizable offence. The police officer to whom investigation is entrusted by the Superintendent of Police has all the powers of an officer in charge of the police station in relation to that offence.*

**18.** *An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term*

is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 CrPC. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed

*by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H — the real offender — who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.*

**19.** *The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.*

**20.** *From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an*

*incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.”*

Over the issue relating to recovery of weapon in course of investigation, along with medical evidence and ocular evidence, learned advocate relied upon *Ram Singh v. State of U.P.*, reported in (2024) 4 SCC 208 and referred to paragraph 34 therein which is set out hereunder:

**“34.** *Thus, what can be deduced from the above is that by itself non-recovery of the weapon of crime would not be fatal to the prosecution case. When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime. Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. When there is direct eyewitness account which is found to be credible, omission to obtain ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.”*

Reiterating the earlier contention, reference was also made to *Abdul Sayeed v. State of M.P.*, reported in (2010) 10 SCC 259 and reliance was placed on paragraphs 39, 40 and 60 of the said judgment which reads as follows:

**“39.** *Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.*

**40.** *In the instant case as referred to hereinabove, a very large number of assailants attacked one person, thus the witnesses cannot be able to state as how many injuries and in what manner the same had been caused by the accused. In such a fact situation, discrepancy in medical evidence and ocular evidence is bound to occur. However, it cannot tilt the balance in favour of the appellants.*

**60.** *In view of the above, we are of the view that the instant case does not present special features warranting review of the impugned judgment. Thus, there is no cogent reason to interfere with the impugned judgment and order dated 12-1-2006 passed by the High Court of Madhya Pradesh. The appeals lack merit and are accordingly dismissed.”*

Additionally, reference was also made to *Solanki Chimanbhai Ukabhai v. State of Gujarat*, reported in (1983) 2 SCC 174 and emphasis was made on paragraph 13 which reads as follows:

*“13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.”*

On the same issue, learned counsel for the State relied upon *Neeraj Dutta v. State (NCT of Delhi)* reported in (2023) 4 SCC 731 and referred to paragraphs 50 to 54 which reads as follows:

*“50. In criminal cases, the facts in issue are constituted in the charge, or acquisition, in cases of warrant or summon cases. The proof of facts in issue could be oral and documentary evidence. Evidence is the medium through which the court is convinced of the truth or otherwise of the matter under enquiry i.e. the actual words of witnesses, or documents produced and not the facts which have to be proved by oral and documentary evidence. Of course, the term evidence is not restricted to only oral and documentary evidence but also to other things like material objects, the demeanour of the witnesses, facts of which judicial notice could be taken, admissions of parties, local inspection made and answers given by the accused to questions put forth by the Magistrate or Judge under Section 313 of the Criminal Procedure Code, 1973 (CrPC).*

**51.** Further, according to *Sarkar on Law of Evidence*, 20th Edn., Vol. 1, “direct” or “original” evidence means that evidence which

*establishes the existence of a thing or fact either by actual production or by testimony or demonstrable declaration of someone who has himself perceived it, and believed that it established a fact in issue. Direct evidence proves the existence of a fact in issue without any inference of presumption. On the other hand, “indirect evidence” or “substantial evidence” gives rise to the logical inference that such a fact exists, either conclusively or presumptively. The effect of substantial evidence under consideration must be such as not to admit more than one solution and must be inconsistent with any explanation that the fact is not proved. By direct or presumptive evidence (circumstantial evidence), one may say that other facts are proved from which, existence of a given fact may be logically inferred.*

**52.** *Again, oral evidence can be classified as original and hearsay evidence. Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses. Hearsay evidence is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate observation of his own bodily senses, but what he has learnt in respect of the fact through the medium of a third person. Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible vide Mukhtiar Singh [Mukhtiar Singh v. State of Punjab, (2017) 8 SCC 136 : (2017) 3 SCC (Cri) 607] .*

**53.** *Evidence that does not establish the fact in issue directly but throws light on the circumstances in which the fact in issue did not occur is circumstantial evidence (also called inferential or presumptive evidence). Circumstantial evidence means facts from which another fact is inferred. Although circumstantial evidence does not go to prove directly the fact in issue, it is equally direct.*

*Circumstantial evidence has also to be proved by direct evidence of the circumstances. Further, letting in evidence should be in accordance with the provision of the Evidence Act by the examination of witnesses i.e. examination-in-chief, cross-examination, and re-examination.*

**54.** *Section 59 of the Evidence Act states that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Oral evidence means the testimony of living persons examined in the presence of the court or Commissioners appointed by the court, deaf and dumb persons may also adduce evidence by signs or through interpretation or by writing, if they are literate.”*

Learned advocate for the State also argued on the issue of the power of the Court to change the opinion of the investigating officer by relying upon *Nitesh Bhardwaj v. State of Punjab and another* in CRM (M) 39693/2021 and referred to paragraph 10 therein which states as follows:

**“10.** *It is true that the Magistrate while accepting or rejecting the cancellation report cannot compel investigating agency to change its opinion or to form a particular opinion or to submit challan, but certainly Court can give reasons for directing the police to undertake further investigation. While rejecting the cancellation report, the Magistrate is duty bound to record its own satisfaction instead of accepting mere dis-agreement of the complainant. It is not the satisfaction of the complainant which would ultimately matter, but it is the satisfaction of the Court which would be relevant factor for acceptance or rejection of the cancellation report. Ratio laid down in **Prithvi Raj Sehgal's case (supra)**, **Tarlochan Singh Sethi's case (supra)** and **Ravinder Kumar's case (supra)** can be relied in the aforesaid context.”*

On the issue relating to withdrawal of prosecution under Section 321 of the Cr.PC, reference was made to *State of Punjab v. Union of India*, reported in (1986) 4 SCC 335 and attention of the Court was drawn to paragraph 1 which reads as follows:

*“1. We are satisfied on hearing learned counsel for the parties that the judgment of the High Court cannot be sustained. It is the duty of the Court while granting permission to the Public Prosecutor to withdraw from the prosecution under Section 494 of the Code of Criminal Procedure, 1898 to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to withdraw. The Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice, and such broad ends of public justice may well include appropriate social, economic and political purposes.”*

On the same issue, learned counsel relied upon *S.K. Shukla v. State of U.P.*, (2006) 1 SCC 314 and reference was made to paragraph 32 which holds as follows:

*“32. This petition is filed against the order passed by the State Government dated 29-8-2003 whereby the Public Prosecutor was directed to withdraw the POTA cases against the accused persons.*

*An application was moved by the Public Prosecutor for withdrawal of these cases before the Special Judge, though no order was passed permitting withdrawal of these cases. However, in view of our finding in SLP (Crl.) No. 5609 of 2004, we cannot affirm the order of the State Government for withdrawal of these cases and consequential application made by the Public Prosecutor for withdrawal of these cases. The order passed by the Government dated 29-8-2003 as well as the application moved by the Special Public Prosecutor before the Special Judge, Kanpur Nagar cannot be sustained and accordingly the order passed by the State Government and the application moved by the Special Public Prosecutor before the Special Judge at Kanpur, both are rejected. In this connection our attention was invited to Sheonandan Paswan v. State of Bihar [(1983) 1 SCC 438 : 1983 SCC (Cri) 224] , Rajender Kumar Jain v. State [(1980) 3 SCC 435 : 1980 SCC (Cri) 757] , R.M. Tewari v. State (NCT of Delhi) [(1996) 2 SCC 610 : 1996 SCC (Cri) 361] , Ayyub v. State of U.P. [(2002) 3 SCC 510 : 2002 SCC (Cri) 673] In these cases it has been laid down that the Public Prosecutor has to shoulder a greater responsibility for withdrawal of the cases under Section 321 CrPC. In Sheonandan Paswan v. State of Bihar [(1983) 1 SCC 438 : 1983 SCC (Cri) 224] it was held : (SCC p. 440)*

*“The settled law laid down by the Supreme Court has been that the withdrawal from the prosecution is an executive function of the Public Prosecutor and the ultimate decision to withdraw from the prosecution is his. Before an application is made under Section 321, the Public Prosecutor has to apply his mind to the facts of the case independently without being subject to any outside influence. The Government may suggest to the Public Prosecutor that a particular case may not be proceeded with, but nobody can compel him to do so.*

*However, Section 321 of the Code does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Prosecutor receives such instructions, he cannot be said to act under extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government, since a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government. Unlike the Judge, the Public Prosecutor is not an absolutely independent officer. He is appointed by the Government for conducting in court any prosecution or other proceedings on behalf of the Government concerned. So there is the relationship of counsel and client between the Public Prosecutor and the Government.*

*If the Government gives instructions to a Public Prosecutor to withdraw from the prosecution of a case, the latter after applying his mind to the facts of the case may either agree with the instructions and file a petition stating grounds of withdrawal or disagree therewith having found a good case for prosecution and refuse to file the withdrawal petition. In the latter event the Public Prosecutor will have to return the brief and perhaps to resign, for, it is the Government, not the Public Prosecutor, who is in the know of larger interest of the State.”*

*(emphasis supplied)*

*The Public Prosecutor cannot act like a postbox or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by that. The courts are also free to assess whether a prima face case is made or not. The court, if satisfied, can also reject the prayer. However, in the present case we have examined the matter and found that there is a prima facie case to proceed against the*

*accused persons under Section 4(b) of the Act and the other provisions of the Explosives or Arms Acts, therefore, the sanction granted by the Government and application moved by the Public Prosecutor for withdrawal of the cases cannot be sustained. Hence Writ Petitions Nos. 132-34 of 2003 are accordingly allowed and the order of the State Government dated 29-8-2003 withdrawing the cases against the accused persons is quashed, likewise direction to the Public Prosecutor for withdrawing the cases from the court.”*

I have heard the learned counsel appearing on behalf of the petitioner, State as well as the Respondent No. 10, appearing in person. However, there have been certain change of circumstances as the writ petition was filed in the year 2013 and in the meantime, by an order dated 24.12.2019 the Co-ordinate Bench was pleased to transfer the investigation to the DIG, CID Government of West Bengal.

Pursuant to the aforesaid direction, the case was investigated and the DIG (Special) CID, West Bengal conducted investigation and submitted a final report under Section 173 of Cr.PC on or about 30.03.2021. In the said report, the investigating agency after narrating the steps which they had taken in course of such investigation under the heading ‘the facts which revealed during further investigation’ observed as follows:

*“During re-investigation of the case it revealed that a tense situation prevailed within the vicinity of Prasadpur High School in c/w managing committee election was on 14.02.2010. Police party from Jangipara PS was present there to maintain law and order under the leadership of the then O/C SI Tapas Broty Chakraborty. TMC supporters gathered in a camp in front of Prasadpur Kalyan Parisad Club at Bhagabatitala approx. 350 feet from the School premises*

*while CPIM supporters camped at Gobindapur approximately 300 yards away from the TMC camp office. Polling started peacefully as per schedule at 09.00 hrs.*

*At around 13:00 hrs problem erupted for the first time outside the school premises near the Bamunpara More. Police under the leadership of SI Tapas Broti Chakraborty rushed to the spot and found supporters of CPIM & TMC were gathered there and at around 13:30 hrs both party attacked each other. At that time as per order of O/C, 1718 Parimal Majhi fired total 08 rounds of gas shell and police managed to disperse the mob.*

*At around 14.00 hrs, trouble started again and the mob became riotous. Then again the Police party under the leadership of SI Tapas Broti Chakraborty rushed to the spot from the school premises and found rioting was going on between two groups of people. At first SI Tapas Broti Chakraborty gave cautions to the mob and asked them to disperse peacefully but they hurled bombs targeting Police party. As a result SI Amitava Ghosh and Const Robert Lepcha got injury from splinters of bombs. Some other police persons also sustained injury. The furious mob then advanced towards the Police party ignoring the cautions given by Tapas Broti Chakraborty. Then SI Tapas Broti Chakraborty ordered gas firing and as per instruction Const. 1563 Robert Lepcha and Const. 753 Sudhanshu Karmakar in two installments fired total 9 rounds of free way gas grenade but the mob paid no heed to the cautions given by SI Tapas Broti Chakraborty.*

*Then in between 14:20 hrs and 14:30 hrs in order to save the lives and property of Police party and in exercise of the right of private defence, SI Tapas Broti Chakraborty himself fired two rounds from his service revolver in the air, still the furious mob continued attack upon the Police party. Then SI Tapas Broti Chakraborty at 14:30 hrs*

*gave order for firing of two rounds of bullets each to Const. 1563 Robert Lepcha and Const/199 Nibakar Halder from SAP 8th Bn (rifle no 368 & 599) to the riotous mob and they executed the order. When the mob dispersed, Police party detected one person is lying on the road with bullet injury, that person on way to hospital succumbed to his injuries and latter on identified as Rabin Ghosh (47yrs) S/O Lt. Pannalal Ghosh of Kamdebpur, PS-Jangipara, Dist Hooghly”*

The reasons assigned by the superior officer of police for discharging the accused and submitting the final report were also quoted in the said report which are as follows:

*“Investigation and PM examination revealed that the death of Rabin Ghosh was caused by a gunshot injury. But in course of investigation, no pellet or bullet could be recovered neither from the body of the deceased Rabin Ghosh (as the bullet left mark of entry and exit on the body including the wearing apparels) nor from the place of occurrence. So the nature of bullet could not be directly ascertained by the Ballistic Expert or by the Medical Board.*

*Medical Board opined that firing was "a near shot" i.e approx from 6 inches to 4 feet distance from the body. But distance of firing was physically measured by the Surveyors of Office of the BL& LR.O, Jangipara, placing the public eye witnesses & Police eye witnesses and it was established that the distance between the place of firing (location of SI Tapas Broti Chakraborty, the then O/C Jangipara PS) and its striking surface (location of deceased Rabin Ghosh), was 40 feet.*

*Medical Board opined that firing was done from the backside of the victim (deceased Rabin Ghosh) while it was stated by eye witnesses and previous FSM Expert that the firing was from the front side.*

*SI Tapasbrati Chakraborty, OC Jangipara PS admitted in his suo-moto FIR vide Jangipara PS Case No 23/10 dt.14.02.10 U/S 147/148/149/323/324/325/326/307/353/332/333 IPC, 25/27 Arms Act, 9(b)(ii) I.E.Act & 9 MPO Act that to disperse the violent unruly mob, the circumstances compelled him to open fire from his service revolver and by his accompanying constables from their rifles as per his order respectively to save the life of the public and police and in exercise of the right of private defence after application of lathi charge and tear gas. SI Tapas Broti Chakraborty opened fire 02 rounds from his service revolver and as per his direction accompanying 02 constables opened fire 4 rounds from their services (02 rounds each).*

*Executive Enquiry Report reflected that Police firing was justified in order to disperse the unruly and furious mob from the PO but did not reveal that any injury has been sustained by victim Rabin Ghosh caused due to Police firing.*

*From the statement of witnesses and other evidence e g expert opinion it is clear that F.I.R. named accd S.I Tapasbraty Chakraborty fired from his revolver, subsequently two constables also fired from their respective riffle two rounds each, but it is not clear that whose bullet dealt the fatal blow to the victim. However the Medical Board opined that the gun shot injury was from 4-6 ft range and most likely from riffled small arms, but the direction was reversed ie. the previously treated entry wound on chest is later treated as exit wound. Other witnesses stated that they were attacking police in deadly weapons from long distance.*

*The opinion of the Medical Board suggested that the injury was inflicted due to firing from "...most likely a small rifled firearms like revolver/ pistol, not a service rifle". But there is no mention of specific bore / caliber of the firearm. The caliber / bore of most commonly used revolvers are 0.38 inches, 0.32 inches and pistols are 9 mm & 765 mm. No clear conclusion could be drawn regarding the nature of bullet or caliber/bore of the pistol/revolver.*

*According to FIR, place of occurrence was inside the Prosadpur High School where SI- Tapas Broti Chakraborty, the then O/C, Jangipara PS entered into the School along with 10/15 men of a certain political party, directly fired at Rabin Ghosh from his revolver and caused ransacking. But Shri Suvasish Singha Roy, the then Headmaster, Prosadpur High School, Prasadpur, Hooghly and Shri Dulal Chandra Mukherjee, Headmaster, Dilakash S.C. Pal High School, Dilakash, Hooghly as well as Presiding Officer of the said Managing Committee Election, both declared in writing that Managing Committee Election of Prosadpur High School was held on 14.02.2010 and the entire procedure of election was performed peacefully in accordance with the Rule at WBBSE. No awkward or undesirable incident took place inside the School premises or within 100 mts of School boundary during the period of MC Election and vote counting.*

*FIR of the case by Sri Ashok Porel reflected that the incident of firing was caused in Prasadpur High School premises while the investigation revealed that the incident was caused at Prasadpur Brahmanpara More outside the School premises.*

*Experts authorized to pass opinion differed from the opinion of other Experts regarding nature of bullet/firearms and entry/exit wounds in the dead body on the basis of which no inference could be drawn.*

*The Arrow head recovered from the body of Ranjit Malik shows the use of bows and arrows and the furious intention of the mob to kill him. As mentioned in the executive enquiry report that the way it was pushed into his body left no doubt that the mob tried to kill him and it also corroborated the allegation of the police that the mob was a frenzied and furious one.*

*That sounds of firing were also heard from the side of the agitators who assembled behind Rabin Ghosh is also mentioned in FIRs of Jangipara PS case 23/10 & 24/10. Hence there is also possibility that while some of the agitators were firing aiming towards the police from the back side of deceased Rabin Ghosh, any of their fired bullets hit Rabin Ghosh on his backside.*

*Investigation has revealed that though the complainant of the case viz Ashok Porel has put his signature in the complaint, the same was not written by him. Neither there is any mention of the scribe who has written it nor does he has any knowledge about the person who has written it.*

*No witness could name any miscreant other than O/C Jangipara PS responsible for unnatural death of victim at the IPO (Prasadpur, Brahmanpara More).*

*In course of previous investigation, some eyewitnesses viz-(1) Shri Sukumar Pakhira @ Sukai s/o Lt. Biswanath Pakhira of Sitapur Ganeshbati, PO Jagatballavpur, PS-jangipara, Dist Hooghly. (ii) Shri Hiralal Bhar s/o Paritosh Bhar of Prasadpur, Ps Jangipara, Dist Hooghly & (iii) Shri Amar Mashat s/o Lakshmi Kanta Mashat of Prasadpur Bramhanpara, PS- Jangipara Hooghly have stated in their judicially recorded statements u/s 164 CrPC, that S.I Tapas Broti Chakraborty fired from a gun after collecting it from his socks and directly aimed at the deceased Rabin Ghosh. On the contrary there exist several contradictions/discrepancies owing to non availability of fired bullet in either PO or in the body and non*

*availability of confirmed report from either EXPERT over nature of bullet and range of firing as also nature of firearms.*

*Considering the facts and circumstances enumerated above, it cannot be firmly/conclusively established beyond any doubt that the bullet that caused death of victim Rabin Ghosh was actually the bullet fired from the service revolver of O/C Jangipara PS, S.I Tapasbrati Chakraborty. The allegation against O/C Jangipara PS, 51 Tapasbrati Chakraborty could not be substantiated beyond any doubt and ne prima facie charge could be made out against him.*

*Hence I am submitting report in final form as Final Report True in this Case vide Jangipara PS F.R.T No. 48/21 dt. 30.03 21 u/s-304 IPC in obedience to the kind order of Hon'ble High Court for completing the investigation and submitting report by 31 March, 2021. If any further clue is obtained in future, the case may be reopened after taking proper permission from the court of law.*

*As the allegation against SI-Tapas Broti Chakraborty, the then OC, Jangipara PS could not be substantiated beyond any doubt and no prima facie charge could be made out against him, he may kindly be discharged from this case.”*

I have taken into account the materials appearing in the case diary which were collected by the investigating agency so far as it relates to the statement of the eyewitnesses. The statements of some of the witnesses namely, Samser Mallick, Sukumar Pakhira, Chinmay Dinghanji, Nibakar Halder (C-670), Narendra Bhowmick (C-652), Hiralal Bhar and Amar Mashat do portray a picture regarding the involvement of the Respondent No. 10 firing towards the mob/deceased. As such if a comparison is made between the conclusion arrived at by the investigating agency in its final report dated

30.03.2021, it is seen that excess emphasis has been made on the opinion of the medical experts which included the Post Mortem doctor, Forensic expert and also the Medical Board. The report accords undue emphasis on the findings of the Ballistic Expert and the conclusion is entirely based upon the expert opinion. The ocular evidence was totally ignored and also not evaluated by the investigating agency for unearthing the truth. It has been held by the Hon'ble Supreme Court that a medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is of an advisory character given on the basis of the symptoms found on examination. In fact, it has been also held by the Hon'ble Apex Court that even at the stage of framing of the charges the Court should not be swayed away by the medical opinion and should take into account with sincerity the ocular evidence and other material collected by the investigating agency. The aforesaid propositions were dealt with by the Hon'ble Apex Court in *Ghulam Hassan Beigh v. Mohd. Maqbool Magrey*, reported in (2022) 12 SCC 657, paragraph 31 of the said judgment reads as follows:

**“31.** *To put it in other words, whether the cause of death has any nexus with the alleged assault on the deceased by the accused persons could have been determined only after the recording of oral evidence of the eyewitnesses and the expert witness along with the other substantive evidence on record. The post-mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence. The post-mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement*

*in the witness box under Section 145 of the Evidence Act, 1872. A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.”*

The report submitted by the DIG, CID, Government of West Bengal relies exclusively on the opinion of the medical expert as well as Ballistic Expert, which do not justify the conclusion. The ocular evidence which has emerged corroborate in material particulars, the letter of complaint which was submitted and treated to be the first information report of the instant case. It is needless to state that the wife of the deceased was not the complainant of the instant case however, she is a victim within the meaning of the proviso clause to Section 372 of Cr.PC. She has been pursuing justice since the year 2010. Ordinarily a litigant under such circumstances could have been relegated to the regular criminal Court for advancing prayers in the nature of further investigation. But having considered the period of time which has passed in the meantime and the powers under Article 226 of the Constitution of India which can be invoked by exercising its discretion in exceptional cases, I am of the considered view that at this belated stage after

15 years, it would not be wise to direct the present petitioner to approach the Learned Magistrate.

In *Neha Chandrakant Shroff and Another v. State of Maharashtra and Others*, reported in 2025 SCC OnLine SC 777, the Hon'ble Supreme Court has been pleased to hold in paragraph 11 as follows:

***“11. The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. There can be many contingencies in which the High Court may be justified in exercising its writ jurisdiction inspite of availability of an alternative remedy.”***

In light of the principles enunciated by the Hon'ble Supreme Court, I am persuaded to hold that the same reasoning should govern the present case. The petitioner is a widow and had been knocking the doors of the Court for the last 15 years without any relief, while the police authorities are consistently arriving at similar findings on repeated occasions. Needless to state that the deceased Rabin Ghose died after sustaining bullet injury and it is an admitted fact that there was considerable commotion. There are materials on record indicating that certain individuals have witnessed the police firing at the deceased. To disregard such factual circumstances and to exclusively rely upon medical evidence for discharging the Respondent No. 10 amounts to depriving the petitioner of her right to have a fair investigation. This constitutes violation of Fundamental Rights. As substantial time has lapsed and the petitioner has been left without any meaningful remedy from the Courts of law.

It was open to this Court to think in terms of directing the Learned Magistrate to take cognizance on the materials which were collected in course of the investigation as there are sufficient materials to hold that the eyewitnesses have seen the Respondent No. 10 to fire upon the deceased and the evidence which has emerged from such witnesses do reflect that it was the bullet which was fired by the Respondent No. 10 resulted in the death of Rabin Ghose. However, such evidence have been disorganisedly collected by the investigating agencies while submitting each of the reports under section 173 of Cr.PC. So, even if the Magistrate takes cognizance, the whole process would be frustrated because of the disorganised and indisciplined manner in which the documentation has been made in this particular case in course of the investigation. There are provisions and precedents which allows the Court of law to disregard the opinion of the Investigating Officer and take cognizance of the offence. Such principles have been set out in the case of *Abhinandan Jha v. Dinesh Mishra* reported in 1968 AIR SC 117 in paragraph 17 which reads as follows:

*“17. We have to approach the question, arising for consideration in this case, in the light of the circumstances pointed out above. We have already referred to the scheme of Chapter XIV, as well as the observations of this Court in Rishbud and Inder Singh case [(1955) 1 SCR 1150] that the formation of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack nor can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he*

still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under Section 190(1)(c) of the Code. That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190(1)(c), on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under Section 170, being a 'charge-sheet', or under Section 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the

*police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under Section 169, or under Section 170, depending upon the nature of the decision. Such a function has been left to the police under the Code.”*

Adopting such a step is likely to cause substantial hardship to the Criminal Court, since the non-availability of a proper report in conformity with Section 173 of the Code of Criminal Procedure would necessitate the Court’s continual effort to locate and scrutinize the relevant material throughout the progress of the case.

Although the records have not been placed before this Court, it has been informed by the parties that the final report which was submitted by the DIG (Special), CID, Government of West Bengal was accepted by the Learned ACJM, Serampore on 13.04.2022. In view of the information furnished, if the said order has been passed by the Learned ACJM, Serampore accepting the final report in connection with Jangipara P.S. Case No. 25/10 dated 14.02.2010, the same is deemed to be set aside.

In view of the foregoing circumstances, I am persuaded that, in the interest of justice, a further investigation is warranted. The petitioner, who has tragically lost her husband, has yet to receive any clarity regarding the cause of his death. The manner in which the investigation has been conducted has failed to satisfy this Court, as previously observed. It is pertinent to note that the Investigating Officers, at successive stages, sought to undermine the ocular testimony by invoking conflicting expert opinions as a means to shield Respondent No. 10.

In light of the petitioner's relentless pursuit of justice spanning fifteen years, coupled with the fact that the accusations are squarely levelled against a designated police officer, this Court, notwithstanding the submission of three reports, remains unconvinced and dissatisfied with the manner in which the investigation has been conducted.

For the reasons already assigned, I am persuaded to order the transfer of the investigation of Jangipara P.S. Case No. 25/10 dated 14.02.2010 to the Central Bureau of Investigation. The DIG (Special), CID, who has lastly conducted the investigation, is directed to hand over the case records, original diaries, materials collected, and alamats to the officer of the CBI entrusted with the task. The Zonal Director of the CBI shall allocate the investigation to an officer in the rank of Additional Superintendent of Police and shall ensure that the case is diligently monitored so that truth is unearthed.

Accordingly, the writ petition being W.P.A. No. 35802 of 2013 is allowed with the aforesaid directions.

Pending connected application(s), if any, are also disposed of.

Case dairies be returned to the Learned Advocate appearing on behalf of the State.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Tirthankar Ghosh, J.)**