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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 12TH DAY OF DECEMBER 2019 / 21ST AGRAHAYANA, 1941

Crl.MC.No.8616 OF 2019(F)

AGAINST THE ORDER/JUDGMENT IN SC 1114/2011 OF SPE/CBI COURT, TRIVANDRUM

PETITIONER/S:

SR.SEPHY
AGED 57 YEARS
D/O JOSEPH,ST.JOSEPH'S GENERALATE,
S.H.MOUNT,KOTTAYAM,KERALA.(KANGRATHUMOOTHY HOUSE,KURUMALLOOR,
KOTTAYAM).

BY ADVS.
SRI.SOJAN MICHEAL
SRI.CHACKO SIMON

RESPONDENT/S:

CENTRAL BUREAU OF INVESTIGATION
KOCHI,REPRESENTED BY ITS STANDING COUNSEL,HIGH COURT OF KERALA,
KOCHI-31.

OTHER PRESENT:

SRI.SASTHAMANGALAM S.AJITHKUMAR, SPL.PUBLIC PROSECUTOR FOR CBI,
SRI.M.SHAJU PURUSHOTHAMAN(AMICUS CURIAE)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12.12.2019, ALONG WITH Crl.MC.8617/2019(F), THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 12TH DAY OF DECEMBER 2019 / 21ST AGRAHAYANA, 1941

Crl.MC.No.8617 OF 2019(F)

AGAINST THE ORDER/JUDGMENT IN SC 1114/2011 DATED 19-10-2019 OF SPE/CBI COURT, TRIVANDRUM

PETITIONER/S:

FR. THOMAS KOTTOOR,
AGED 70 YEARS
S/O LATE K.T. MATHEW, KOTTOOR HOUSE, KIDANGOOR,
KOTTAYAM, KERALA.

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SMT.S.LAKSHMI SANKAR
SHRI.MAHESH BHANU S.

RESPONDENT/S:

CENTRAL BUREAU OF INVESTIGATION,
KOCHI, REPRESENTED BY ITS STANDING COUNSEL, HIGH
COURT OF KERALA, KOCHI - 682 031.

R1 BY SRI. SASTHAMANGALAM S. AJITHKUMAR, SPL.P.P.
FOR C.B.I.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12.12.2019, ALONG WITH Crl.MC.8616/2019(F), THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ALEXANDER THOMAS, J.

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Crl.M.C.Nos.8617/2019 & 8616/2019

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Dated this the 12th day of December, 2019

ORDER

The sole petitioner in Crl.M.C.No.8617/2019 and the sole petitioner in Crl.M.C.No.8616/2019 have been initially arrayed as accused 1 and 3 among the three accused in the instant Sessions Case, S.C.No. 1114/2011 on the file of the Court of the Addl. Sessions Judge cum Special Judge (SPE/CBI), Thiruvananthapuram, ("Special Court" for short), in which the offences alleged therein are those punishable under Secs. 449, 302, 201 read with Sec. 34 of the I.P.C. The case arose out of a crime (Crime No.187/1992 of Kottayam West Police Station), which was later transferred to the respondent Central Bureau of Investigation (CBI) for further investigation and CBI reregistered said crime as Regular Case (RC No.8(S)/1993-SPE/KER. The respondent investigating agency (CBI) has filed the final report/charge sheet on 17.7.2009, which later led to the pendency of aforecaptioned Sessions Case, S.C.No. 1114/2011 on the file of the abovesaid Special Sessions Court dealing with the CBI cases.

2. The brief of the prosecution case is that on 27.3.1992, one Sister Abhaya, a nun, who belongs to a monastic order of the Roman

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Catholic community, was found dead in the well of the St. Pious Xth Convent Hostel, Kottayam, and a crime was thereupon registered as Crime No. 187/1992 of Kottayam West Police Station, in accordance with the provisions contained in Sec. 174 of the Cr.P.C.

3. Among the 3 accused persons, accused No.2 has been discharged in the abovesaid criminal proceedings as per common order (produced as Anx. III in Crl.M.C.No. 8616/2019) dated 7.3.2018 rendered by the abovesaid Special Court on Crl.M.P.No.12/2011 filed in the said Sessions Cases, S.C.No. 1114/2011. The said order of discharge has been confirmed by this Court as well as by the Apex Court. Pursuant to the said discharge, the aforementioned accused No.3 has been re-arrayed as accused No.2. The petitioner in Crl.M.C.No.8617/2019 and the petitioner in Crl.M.C.No. 8616/2019 will be hereinafter referred for short as A-1 and A-2 respectively. A-1 is a priest of the Roman Catholic community and A-2 is a Catholic nun, belonging to a monastic order of nuns of the Roman community. Long before all the aforementioned 3 accused persons were arraigned in the accused array in this case, A-3 was subjected to polygraph test on 7.11.1997, 11.11.1997 and 12.11.1997, brain mapping test between 22.9.2002 &

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29.9.2002 and psychological assessment and polygraph test on 4.1.2003 and narco analysis test on 31.8.2010. A-1 was subjected to polygraph test on 2.4.1996 and 3.4.1996, narco analysis on 4.8.2007, brain mapping on 4.9.2007. Again he was subjected to polygraph test on 30.1.2008 and 31.1.2008. According to the respondent CBI, the abovesaid persons were then subjected to the abovesaid tests, including narco analysis, on the basis of the consent given by them.

4. The trial in this case has already commenced and is in the mid way. The trial in this case has progressed much and the prosecution evidence is almost at the fag end. Based on the requisition made by the respondent prosecution agency, the Special Court has issued summons to CW-100 (Sri.N.Krishnaveni) and CW-101, (Sri.Pravin Parvathappa) to be examined as prosecution witnesses, as they are said to be the persons, who had conducted the abovesaid narco analysis test. Pursuant thereto, the Special Court has issued summons to CW-100 and CW-101 to tender evidence as prosecution witnesses. The petitioner in Crl.M.C.No. 8617/2019 has filed Crl.M.P.No. 150/2019 praying not to permit the prosecution to adduce inadmissible evidence relating to narco analysis and other scientific tests and the petitioner in Crl.M.C.No. 8616/2019 has filed

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Crl.M.P. No.149/2019 in the abovesaid sessions case before the Sessions Court praying that the abovesaid witnesses cannot be examined and that the respondent prosecution agency may be restrained from examining CW-100 and CW-101 as the evidence proposed by them is inadmissible and would hit the prohibition contained in the judgment of the Apex Court in the celebrated case in ***Selvi & Ors. v. State of Karnataka*** [(2010) 7 SCC 263], more particularly the latter portion of para 264, which has laid down the authoritative pronouncement of the Apex Court on the scope and ambit of constitutionally guaranteed fundamental right as per Art.20(3) of the Constitution of India. The Special Court after hearing both sides, has now passed the impugned order dated 19.10.2019 on Crl.M.P.Nos.149/2019 and 150/2019, whereby the abovesaid pleas of the accused persons have not been allowed and on the other hand, the court below has held that when those persons are examined before the said court, it is open to the petitioners to raise the issue of admissibility and relevance of the evidence attempted to be brought through those witnesses, and the matters the prosecution intends to bring in, in evidence shall be strictly scrutinized in the light of the legal provisions, etc. A copy of the said common impugned order

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19.10.2019 on the abovesaid criminal miscellaneous petitions in the sessions case has been produced as Anx.II in both the abovesaid Criminal Miscellaneous Cases.

5. The petitioners would vehemently contend that if the abovesaid impugned order is allowed to stand, then it would be as good as allowing the prosecution to introduce inadmissible items on record, which is constitutionally prohibited by the guarantee contained in Art.20(3) of the Constitution of India and this would inevitably lead to creating great prejudice in the mind of the court. Further the stand taken by the Special Court in the impugned order that it will take a decision on the admissibility of the scientific evidence at the appropriate stage, is illegal and improper in the facts of this case, as it is flagrant violation of the dictum laid down by the Apex Court in ***Selvi's case supra***. In that regard, it is pointed out that, as a matter of practice, since witnesses mount the box and the matter needs a detailed hearing, regarding the objections on the admissibility and relevance, etc. and more often than not, the court will leave the issue to be decided at the time of final hearing and then to proceed to examine the witnesses and mark the documents subject to objection and that if such procedure is allowed in the instant case

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pursuant to the impugned order, then it would amount to entering into evidentiary areas, which are prohibited by the Constitution in terms of Art.20(3) thereof and would also give undue benefit to the prosecution in bringing in inadmissible evidence on record and thus to create great prejudice in the mind of the court against the accused persons, which would cause irreparable injury and damage to the petitioners and it would amount to flagrant violation of the elementary cannons of due process of trial in criminal jurisprudence.

6. The prayers in Crl.M.C.No. 8616/2019 is as follows:

> *".... to call for the records leading to Annexure -II Common Order of the Hon'ble Addl. Session's Judge/Special Judge (SPE/CBI), Thiruvananthapuram in Crl.M.P.No.149/2019 dated 19.10.2019 in S.C.No.1114/2011 and quash the same and further may be pleased to allow the applications and also pass such other orders as are necessary in the facts and circumstances of the case."*

The prayers in Crl.M.C.No. 8617/2019 is as follows:

> *".... to call for the records leading to Annexure -II (Crl.M.P.No. 150/19 in S.C.No. 1114/11) Common Order and quash the same and further may be pleased to allow the applications and also pass such other orders as are necessary in the facts and circumstances of the case."*

7. When the matter had come up for consideration on the previous occasions, this Court, after hearing all the parties concerned, had passed an interim order deferring further proceedings in the above said Sessions case only in relation to matters regarding the examination of the abovesaid charge witnesses and liberty was given

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to the Special Court to proceed further with the examination of other witnesses, etc. This Court, then with the consent of all the learned Advocates appearing on both sides, had also found it fit to appoint Sri.M.Shaju Purushothaman, learned Advocate of this Court, as Amicus Curiae to assist this Court in the task of resolution of the issues posed in these petitions, in view of the constitutional dimensions involved in this matter and also in view of the substantial importance of the questions raised in this matter.

8. Heard Sri.B.Raman Pillai, learned Senior Counsel instructed by Sri.V.B.Sujesh Menon, learned counsel appearing for the petitioner in Crl.M.C.No.8617/2019, Sri.Sojan Micheal, learned counsel appearing for the petitioner in Crl.M.C.No.8616/2019, Sri.Sasthamangalam S.Ajithkumar, learned Standing Counsel for the CBI, appearing for the respondent and Sri.M.Shaju Purushothaman, learned Amicus Curiae.

9. At the outset, it has to be noted that the narco analysis tests have been conducted on all the accused persons at a time, when they were not arraigned as accused and at a time when they were not under Police custody, as envisaged in Sec. 27 of the Indian Evidence Act. It is much thereafter that the petitioners and other person

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concerned were arraigned as accused persons in the instant case. Further original accused No.2 had been duly discharged by the Sessions Court as per the aforementioned order dated 7.3.2018 on Crl.M.P.No.12/2011 in S.C.No. 1114/2011 rendered by the said Special Court, copy of which has been produced as Anx. III in Crl.M.C.No. 8616/2019. The plea for discharge then made in the case of the present petitioners were repelled and only the plea in the case of A-2 (original accused No.2) was allowed by the court as per the abovesaid order 7.3.2018. It is common ground that, as indeed discernible from a reading of the said order dated 7.3.2018, more particularly para No.30 thereof (see page 43 of the paper book of Crl.M.C.No. 8616/ 2019), that the prosecution then sought to place serious reliance on the narco analysis tests, brain mapping tests and polygraph tests conducted on the said accused persons in order to buttress their contentions that there are materials which would justify the framing of charges against the accused persons and for repelling their plea for discharge. A reading of paras 30 and 31 of the above Anx.III order would also indicate that the accused persons had then taken up a plea that the narco analysis tests were not done with their consent. But the court below has noted that they were subjected to narco

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analysis test on the basis of their consent at a time, which was before the rendering of the judgment dated 5.5.2010 by the Apex Court in ***Selvi's case***. However, the Special Court has repelled the plea of the respondent CBI for placing reliance on the said narco analysis test results, to decide on the issue as to whether the accused persons are entitled for discharge or consequently as to whether charges have to be framed against them or not. In paragraph 32 on internal page 25 of Anx.III order (see page 45 of the paper book of Crl.M.C.No. 8616/2019), the Special Court has categorically held that, in the light of the conclusive legal position declared by the Apex Court in ***Selvi's case*** supra, more particularly para 264 thereof, the testimonies of the accused persons obtained through narco analysis testing process, can only be used for the purpose under Sec. 27 of the Indian Evidence Act, ie., for the discovery of facts made in consequence of the disclosure statement and further that there should also be subsequent confirmation of the statement by the discovery of facts stated and without which it is not possible to act upon the statement of the accused persons, recorded by way of narco analysis test. On this basis, the Sessions Court had then conclusively and categorically repelled the plea of the respondent CBI for placing reliance on the so-called

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evidentiary materials pursuant to the disclosure of the accused persons, which they had made pursuant to narco analysis test. Indeed the respondent CBI does not have a case either in Anx.III proceedings or in any of the prosecution materials now on record, which have led to the framing of the charges and even thereafter, that they have duly and legally secured any information or materials that were subsequently discovered with the help of the voluntarily administered test results, which could be admitted in evidence in accordance with the provisions contained in Sec.27 of the Indian Evidence Act, 1872. Further, it has to be borne in mind that the abovesaid Anx. III order passed by the court below has been confirmed by this Court in the order dated 9.4.2019 in Crl.R.P.No. 627/2018 and order 11.7.2019 in Crl.R.P.No. 826/2019. Further it is also common ground that very recently, the Apex Court has passed order dated 9.12.2019 in S.L.P. (Crl) No.11060/2019 dismissing the challenge against the order dated 9.4.2019 in Crl.R.P.No. 627/2018 rendered by this Court.

10. The Apex Court has in the abovesaid decision in ***Selvi's case supra*** [(2010) 7 SCC 263] has categorically declared that compulsory administration of the impugned scientific techniques like narco analysis, brain mapping, polygraph test, etc. would violate the

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right against self incrimination guaranteed in Art.20(3) of the Constitution of India. Further in paragraph 264 thereof the Apex Court has held that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise and to do so, would amount to an unwarranted intrusion into personal liberty. However, the Apex Court has held that if sufficient room is left for voluntary administration of impugned techniques in the context of criminal justice, provided, there are safeguards. In that regard the Apex Court has categorically held in the latter portion of paragraph 264 thereof as follows:, "*Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence, because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted in accordance with Sec. 27 of the Evidence Act, 1872*". The sheet anchor of the case of the petitioners is that even if it is assumed that the narco analysis tests were undergone by the petitioners voluntarily, the respondent prosecution agency will not be able to satisfy the abovesaid cardinal requirements imposed by the Apex Court in the latter portion of paragraph 264 of the ***Selvi's case***

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supra.

11. In that regard, it is pertinent to refer to the provisions in Art.20(3) of the Constitution of India, which reads as follows:

> "***Art.20. Protection in respect of conviction for offences.-***
> (1)....
> xxx xxx xxx
> (3) No person accused of any offence shall be compelled to be a witness against himself.

12. Before getting into the heart of the present controversy, it may be pertinent to refer to some of the elementary and cardinal aspects of the "*right against self incrimination*" guaranteed to an accused and "*right to remain silent*", guaranteed to an accused person in the adversarial-accusatorial system followed in Common Wealth legal systems.

13. It is pertinent to note that the Apex Court in the celebrated case in ***Nandini Satpathy v. P.L.Dani & anr.,*** reported in 1978 (2) SCC 424, has held that the expression "*accused of an offence*" occurring in Article 20(3) of the Constitution of India, no doubt includes a person, who has been formally brought into police diary as an accused person but it also includes a suspect. Further His Lordship Justice V.R.Krishna Iyer in his inimitable style has held in para 34 of the ***Nandini Satpathy's case*** supra (see SCC report) that Art.20(3) *is a human article, a guarantee of dignity and*

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integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic ante-chamber of a police station and in the long run, that investigation is best which uses stratagems least, that policeman deserves respect who gives his fists rest and his wits restlessness. The police are part of us and must rise in people's esteem through firm and friendly, not foul and sneaky strategy. Explaining the scope of the Fifth Amendment in the U.S Constitution, in the case in ***Murphy v. Waterfront Commission of New York Harbor,*** the U.S Supreme Court has held that the right against self incrimination is matter of fundamental values and it reflects the *unwillingness of the legal system to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt and the our preference for an accusatorial rather than an inquisitorial system of criminal justice, etc.*

14. This Court in the decision in the ***Joseph v State of Kerala*** [2017(4) KLT 1203] has dealt with various facets and dimensions of Art.20(3) and it may be pertinent to refer to paragraph 13 thereof, which reads as follows:

> *"13. The historical origins of the "right against self-incrimination" has been dealt with succinctly in paras 92 to 101 of the SCC report in the judgment in **Selvi's** case (supra). It has been observed that very followers have identified the origins of this right in the medieval period and that it was a response to the procedure*

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*followed by English Judicial bodies such as the Star Chamber and the High Commissions which required the defendants and suspects to take ex officio oaths. That those bodies mainly decided cases involving religious non-conformism in a protestant dominated society, as well as offences like treason and sedition and under an ex officio oath, the defendant was required to answer all questions posed by the Judges and prosecutors during the trial and the failure to do so would attract punishments that often involved physical torture. It was the resistance to this practice of compelling the accused to speak which led to demands for a "right to silence" for an accused. The use of the ex officio oath by the ecclesiastical courts in medieval England had come under criticism from time to time and the most prominent cause for discontentment came with its use in the Star Chamber and the High Commissions. In the sedition trial of John Lilburne, who was a vocal critic of the then monarch in 1637, Lilburne had refused to answer questions put to him on the ground that he had not been informed about the contents of the written complaint against him, John Lilburne went on to vehemently oppose the use of ex official oaths and the Parliament of the time relented by abolishing the Star Chamber and the High Commission in 1641 and that event is regarded as the most important landmark in the evolution of the "right to silence". Later in 1648, a Special Committee of Parliament conducted an investigation into the loyalty of Members whose opinions were offensive to the army leaders and the Committee's inquisitional conduct and its requirement that witnesses take an oath to tell the truth provoked opponents to condemn what they regarded as a revival of the Star Chamber tactics. John Lilburne had once again raised up the issue and he invoked the spirit of the Magna Carta as well as 1628 petition of right to argue and contended that even after common law indictment and without oath, he did not have to answer questions against or concerning himself and he drew a connection between the right against self-incrimination and the guarantee of a fair trial by invoking the idea of "due process of law" which had been stated in the Magna Carta. Speaking for the Bench in **Nandini Satpathy'**s case (supra) V.R.Krishna Iyer (J) has held as follows: (see SCC report p. 442 para 34).*

> *"34. .... And Article 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic ante-chamber of a police station. And in the long run, that investigation is best which uses stratagems least, that policeman deserves respect who gives his fists rest and his wits restlessness. The police are part of us and must rise in people's esteem through firm and friendly, not foul and sneaky strategy."*

*Further in **Nandini's** case (supra) reliance was also placed on the judgment of the U.S Supreme Court in Brown v. Walker reported in 40 L.Ed 819 = 161 US 591 (1896), which was later relied on by the U.S Supreme Court in **Miranda v. Arizona** [16 L.Ed 2d 694 = 384 US 436 (1965)] and in that regard, it will be pertinent to refer to para 31 of the SCC report in **Nandini's** case (supra) p.p.438-439 para 31, which reads*

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as follows:

> *"31. ... 'The maxim nemo tenetur seipsum accusare had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which have long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, were not uncommon even in England. While the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, if an accused person be asked to explain his apparent connection with a crime under investigation, the ease with which the questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions, which is so painfully evident in many of the earlier State trials, notably in those of Sir Nicholas Throckmorton, and Udal, the Puritan Minister, made the system so odious as to give rise to a demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded upon no statute and no judicial* 320 *opinion, but upon a general and silent acquiescence of the courts in a popular demand. But, however adopted, it has become firmly embedded in English, as well as in American jurisprudence. So deeply did the inequities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed in this country with the impregnability of a constitutional enactment.' ...."*

The Apex Court has conclusively held in ***Selvi's*** case (supra) that the right against "*self-incrimination*" is now viewed as an essential safeguard in criminal procedure and its underlying rationale broadly corresponds with two objectives.; firstly, that of ensuring reliability of the statements made by an accused and secondly, ensuring that such statements are made voluntarily. That it is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage and when such a person is compelled to testify on his/her own behalf, there is a higher likelihood of such testimony being false and false testimony is undesirable since it impedes the integrity of the trial and the subsequent verdict. That the purpose of the "*rule against involuntary confessions*" is to ensure that the testimony considered during the trial is reliable and the premise is that involuntary statements are more likely to mislead the Judge and the prosecutor thereby resulting in a miscarriage of justice, etc. Further that concerns about the "*voluntariness*" of statements allow a more comprehensive account of this right and if voluntary statements were readily given weightage during trial, investigators would have a strong incentive to compel such statements often through methods involving coercion, threats, inducement or deception and even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the

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person being examined. In this sense, "*the right against self-incrimination*" is a vital safeguard against torture and other "*third-degree methods*" that could be used to elicit information and it serves as a check on police behaviour during the course of investigation and the exclusion of compelled testimony is important, otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such "*short cuts*" will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the "*right against self-incrimination*" is a vital protection to ensure that the prosecution discharges the said onus. Lord Hailsham of St. Marylebone has observed in ***Wong Kam-ming v. R*** reported in (1979) 1 AII ER 939 (PC) = 1980 AC 247 that any civilised system of criminal jurisprudence must accord to the judiciary some means of excluding confessions or admissions obtained by improper methods and this is not only because of the potential unreliability of such statements, but also, and perhaps mainly, because in a civilised society it is vital that persons in custody or charged with offences should not be subjected to ill treatment or improper pressure in order to extract confessions and it is therefore of very great importance that the courts should continue to insist that before extra-judicial statements can be admitted in evidence the prosecution must be made to prove beyond reasonable doubt that the statement was not obtained in a manner which should be reprobated and was therefore in the truest sense voluntary, etc. Explaining the Fifth Amendment in the U.S Constitution, in ***Murphy v. Waterfront Commission of New York Harbor,*** the U.S Supreme Court has observed as follows in 378 US 52 (1963) p.55 = 12 L.Ed 2d 678 pp. 681-682.

> *"... It reflects many of our fundamental values and most noble aspirations: our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates 'a fair State-individual balance by requiring the Government to leave the individual alone until good cause is shown for disturbing him and by requiring the Government in its contest with the individual to shoulder the entire load'; our respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life'; our distrust of self-deprecatory statements; and our realisation that the privilege, while sometimes 'a shelter to the guilty', is often 'a protection to the innocent'."*

Their Lordships of the Supreme Court in ***Nandini's*** case (supra) has placed heavy reliance on the judgment of the U.S. Supreme Court in ***Miranda v. Arizona*** reported in (1965) 384 US 436, pp. 706-07, which reads as follows:

> *"...... the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege*

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against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned."

In the celebrated case of the U.S Supreme Court in ***Miranda's*** *case (supra), majority opinion (by Earl Warren, C.J) has laid down that custodial statements chould not be used as evidence unless the police officers had administered warnings about the right of the accused to remain silent and the judgment has also recognised the right to consult a lawyer prior to and during the course of custodial interrogations and the underlying rationale for this view is that only if a person has "knowingly and intelligently" waived of these rights after receiving a warning that the statement made thereafter can be admitted as evidence. These safeguards were designed by the U.S Supreme Court to mitigate the disadvantages faced by suspect in a custodial environment and emphasis was placed on the ability of the person being questioned to fully comprehend and understand the content of the stipulated warning. Majority opinion also explained the significance of having a counsel present during a custodial interrogation. It would be relevant to note the following paragraphs in the celebrated case in* ***Miranda's*** *case (supra). [see report in 384 US 436 (1965) pp. 457-58].*

> *"In these cases, we might not find the defendant's statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect the precious Fifth Amendment right is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. .... It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. (Professor Sutherland, Crime and Confession.) The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are*

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employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."

[see report in 384 US 436 (1965) pp. 469-70]

"The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere warning given by the interrogators is not alone sufficient to accomplish that end. Prosecutors themselves claim that the admonishment of the right to remain silent without more 'will benefit only the recidivist and the professional'. (Brief for the National District Attorneys Association as amicus curiae, p. 14.) Even preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. (Cited from Escobedo v. Illinois, US at p. 485....) Thus, the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires."

*The majority decision in **Miranda's** case (supra) was not a sudden development in the US constitutional law and the scope of the privilege against self-incrimination had been progressively expanded in several prior decisions and the notable feature was the recognition of the interrelationship between the Fifth Amendment and the Fourteenth Amendment's guarantee that the Government must observe the "due process of law" as well as the Fourth Amendment's protection against "unreasonable search and seizure". Their Lordships of the Supreme Court in para 119 in **Selvi's** case (supra), have observed that, while it is not necessary for us to survey these decisions, it will suffice to say that after **Miranda's** case (supra) administering a warning about a person's right to silence during custodial interrogations as well as obtaining a voluntary waiver of the prescribed rights has become a ubiquitous feature in the US criminal justice system and in the absence of such a warning and voluntary waiver, there is a presumption of compulsion with regard to the custodial statements thereby rendering them inadmissible as evidence, etc."*

15. So the core issue to be considered in this case is as to whether the respondent prosecution agency has been able to establish that they have duly secured information or material that has been

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subsequently discovered with the help of the voluntary administered narco analysis test results which is to be admitted strictly in accordance with the parameters of Sec. 27 of the Evidence Act. If the requirements of the said parameters are duly satisfied by the respondent prosecution agency, then they are entitled to examine the charge witnesses in question. On the other hand, if the abovesaid threshold requirements, as laid down in the latter portion of para 264 of the ***Selvi's case*** supra, are not duly fulfilled by the respondent prosecution agency, then there is no question of letting in evidence by examining the abovesaid charge witnesses. To do so, would be as good as court permitting the prosecution agency to enter into constitutionally prohibited areas of evidence.

16. Sri.M.Shaju Purushothaman, learned Amicus Curiae has also made submissions regarding the various aspects dealt with in the judgment of the Apex Court in the celebrated case in ***Selvi's case*** supra. In that regard it is pertinent to refer to paragraphs 194 and 252 of ***Selvis case*** supra (see SCC report), wherein it has been held that one must also account for circumstances where a person who undergoes the said tests is subsequently exposed to harmful consequences, though not of a penal nature. The Apex Court with

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concern had observed therein that there could be situations where the contents of the test results could prompt investigators to engage in custodial abuse, surveillance or undue harassment and further that there have been instances where the investigating agencies have leaked the video recordings of narco analysis interviews to media organisations and that this is a highly worrisome practice since the public distribution of these recordings can expose the subject to undue social stigma and specific risks and that it may even encourage acts of vigilantism in addition to a "trial by media". Further it has also been held therein (see para 252) that reliance on scientific techniques like narco analysis test could cloud human judgment on account of an "aura of infallibility" and that while Judges are expected to be impartial and objective in their evaluation of evidence, one can never discount the possibility of undue public pressure in some cases, especially when the test results appear to be inculpatory. Further their Lordships have also expressed great concerns with situations where media organisations have either circulated the video recordings of narcoanalysis interviews or broadcasted dramatised reconstructions, especially in sensational criminal cases. It will be pertinent to refer to paras 194 and 252 of Selvi's case supra, which

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read as follows (see SCC report):

> ***"194.*** *We must also account for circumstances where a person who undergoes the said tests is subsequently exposed to harmful consequences, though not of a penal nature. We have already expressed our concern with situations where the contents of the test results could prompt investigators to engage in custodial abuse, surveillance or undue harassment. We have also been apprised of some instances where the investigating agencies have leaked the video recordings of narcoanalysis interviews to media organisations. This is an especially worrisome practice since the public distribution of these recordings can expose the subject to undue social stigma and specific risks. It may even encourage acts of vigilantism in addition to a "trial by media.*
>
> *xxx xxx xxx*
>
> ***252.*** *Furthermore, we echo the concerns expressed by the Supreme Court of Canada in R. v. Beland [(1987) 36 CCC 3d 481] where it was observed that reliance on scientific techniques could cloud human judgment on account of an "aura of infallibility". While Judges are expected to be impartial and objective in their evaluation of evidence, one can never discount the possibility of undue public pressure in some cases, especially when the test results appear to be inculpatory. We have already expressed concerns with situations where media organisations have either circulated the video recordings of narcoanalysis interviews or broadcasted dramatised reconstructions, especially in sensational criminal cases."*

In that regard it is also relevant to refer to para 251 of the decision in ***Selvi's case*** supra, wherein their Lordships of the Apex Court have noted that though India does not have a jury system, the use of the impugned techniques could impede the fact-finding role of a trial Judge and this is a special concern in our legal system, since the same Judge presides over the evidentiary phase of the trial as well as the guilt phase. That the consideration of the test results or their fruits for the purpose of deciding on their admissibility could have a prejudicial effect on the Judge's mind even if the same are not eventually

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admitted as evidence. In that regard it is pertinent to refer to para 251 of the Selvi's case supra, which reads as follows:

> *"251. Even though India does not have a jury system, the use of the impugned techniques could impede the fact-finding role of a trial Judge. This is a special concern in our legal system, since the same Judge presides over the evidentiary phase of the trial as well as the guilt phase. The consideration of the test results or their fruits for the purpose of deciding on their admissibility could have a prejudicial effect on the Judge's mind even if the same are not eventually admitted as evidence."*

17. Sri.M.Shaju Purushothaman, learned Amicus Curiae, has submitted before this Court that this Court may take into account the various facets and dimensions of the constitutional right against self incrimination and the right of silence of an accused person guaranteed under Art.20(3) as illuminated in the abovesaid Selvi's case supra and that in that context, this Court may also bear in mind the impact of, not only para 264 of the ***Selvi's case*** supra, but also the aforementioned paras 194, 251 and 252 of the said case.

18. In this connection, it is pertinent to note that the Apex Court has summarized various legal principles in the matter of administration of scientific tests like narco analysis, in paras 262 to 265 of Selvi's case supra, which read as follows:

> ***"262.*** *In our considered opinion, the compulsory administration of the impugned techniques violates the "right against self-incrimination". This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure,*

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1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible "conveyance of personal knowledge that is relevant to the facts in issue". The results obtained from each of the impugned tests bear a "testimonial" character and they cannot be categorised as material evidence.

263. *We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of "substantive due process" which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases i.e. the Explanation to Sections 53, 53-A and 54 of the Code of Criminal Procedure, 1973. Such an expansive interpretation is not feasible in light of the rule of "ejusdem generis" and the considerations which govern the interpretation of statutes in relation to scientific advancements. We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to "cruel, inhuman or degrading treatment" with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the "right to fair trial". Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the "right against self-incrimination".*

264. *In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted in accordance with Section 27 of the Evidence Act, 1872.*

265. *The National Human Rights Commission had published Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused in 2000. These Guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the*

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“narcoanalysis technique” and the “Brain Electrical Activation Profile” test. The text of these Guidelines has been reproduced below:

(i) No lie detector tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a lie detector test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.”

19. Sri.B.Raman Pillai, learned Senior Counsel and Sri.Sojan Micheal, learned counsel appearing for the abovesaid respective accused persons concerned have raised following contentions in support of their plea that the impugned order is liable to be quashed and that consequently their prayer for restraining the adducing of evidence through the abovesaid charge witnesses may be allowed, etc.

20. The said contentions are as follows:

(i) The legal principles laid down by the Apex Court in the celebrated Selvi's case supra, more particularly in para 264 and the other relevant paragraphs.

(ii) Applying the said legal principles, more particularly the one in the latter portion para 264 of ***Selvi's case*** to the facts of the present case, it is pointed out that the court below has discharged

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original accused No.2 and while considering discharge plea of the accused persons the court below has categorically overruled the plea made by the respondent CBI to place reliance on the abovesaid so-called additional materials pursuant to the narco analysis test results for considering the plea, as to whether the accused persons are to be discharged or not and that the court below has already taken a view that such evidentiary materials are inadmissible even for considering the issue as to whether the accused persons are to be discharged or not and consequently as to whether charges are to be framed against them or not and these findings have been confirmed by this Court as mentioned herein above and in turn, the abovesaid Anx. III order as well as the aforementioned revisional order of this Court have now been confirmed by the Apex Court by the dismissal of the S.L.P. Therefore it is pointed out that the respondent CBI cannot rake up the very same issue, which has been concluded in Anx. III order.

(iii) That it is too elementary a proposition of criminal jurisprudence that a material that could not be even considered for the purpose of framing of charge cannot be brought in during trial as evidence.

(iv) The requirements for attracting Sec.27 of the Evidence Act

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are absent in this case. In that regard it is urged that there is no mention about any disclosure statement made by any of the accused persons even in the final report or at least at the time of considering the discharge petition. That the respondent CBI has never had any such case at any point of time prior to the impugned order that the petitioners herein have made any disclosure pursuant to the narco analysis test, which would attract strict requirement of Sec. 27 of the Evidence Act. In that regard the learned Advocates would place fine tuned argument that the requirements of Sec. 27 of the Evidence Act are not in any manner satisfied in the facts and circumstances of the case due to the following reasons;

(A) The petitioners herein were never accused at the time when they were subjected to scientific tests.

(B) The petitioners herein were never in the custody of Police officer or they were not even in any Police surveillance at the time when they were subjected to the narco analysis test.

(C) There is no mention in the final report or any of the accompanying prosecution records of the case to even remotely suggest that any fact has been discovered by the investigation agency in consequence of the information received from the petitioners

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herein while they were subjected to the abovesaid scientific test.

21. Per contra, Sri.Sasthamangalam S. Ajithkumar, learned Standing Counsel appearing for the respondent CBI would argue that the impugned order does not deserve any interdiction, as the court below has not passed any order which prejudicially or finally rejecting the abovesaid pleas of the petitioners and on the other hand, those issues have been explicitly left open to be raised and decided at the appropriate stage in the trial and that in view of the mandate contained in Sec. 231 of the Cr.P.C., the court is bound to "proceed to take all such evidence as may be produced in support of the prosecution" and that consequently, the court is also bound to follow the mandate of Sec.5 and Sec. 137 of the Indian Evidence Act, by which the court is bound not to admit any evidence which is not otherwise relevant or barred.

22. Further, the learned Standing Counsel for the respondent CBI has also raised the following contentions at para 9 of their objection.

a) From the Narco results, CBI has discovered that A-1 to A-3 are responsible for the brutal murder of the deceased Sister Abhaya.

b) Narco gave the factum of involvement of weapon and its nature for causing the death of the deceased notwithstanding that the weapons

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could not be recovered. In this case, the previous Investigating Agency and the accused persons had destroyed the weapons, MOs and documents to hush up the criminality involved in it.

c) Narco threw lights to show that the accused persons had destroyed the evidence which also showed that Crime Branch officials had made the evidence tampered with.

d) The most crucial fact which has come out through Narco was that the petitioner A-1 was a permanent visitor of the Convent and he was present in the Convent on the faithful day. Also it established that A-1 to A-3 were resorted to immoral activities in the Convent and on the faithful day also both A-1 & A-2 along with A-3 were involved in the immoral activities which ultimately led to the murder of Sister Abhaya in this case.

e) The revelation made by the accused in Narco corroborates the scientific evidence of experts that Sister Abhaya was succumbed to death due to the impact of blunt weapon on her head which disproves that Sister Abhaya committed suicide as claimed by the accused persons. That, in **Bibin Shantilal Panchal V/s. State of Gujarat and another,** 2001, the Hon'ble Apex Court has held that it is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence, the Court does not proceed further without passing order on such objections. Suppose the Trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the Appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the Trial Court. In such case, the higher Court may have to send the case back to Trial Court for recording that evidence and then to dispose of

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the case afresh. The Court held that such practice will impede steady and swift progress of trial proceeding. Hence, the prosecution should be allowed to adduce the material (Narco evidence) notwithstanding the fact that is admissibility can be looked into later.

23. In reply thereto, the learned Senior Advocate and learned Advocate appearing for the respective accused persons have fervently urged that the abovesaid contentions now duly raised by the respondent CBI for the first time, as if they have obtained subsequent facts in pursuance of the information conveyed through the narco analysis test strictly in accordance with Sec. 27, etc., are absolutely bereft of any merit and are untenable due to the following reasons:

(a). A1 to A3 are responsible for the brutal murder of the deceased Sister Abhaya – This is only the allegation of the Respondent in this case. A mere allegation cannot be considered as a fact that has been discovered in consequence of any information received from the Petitioner. It is unfortunate that the Respondent is making such a submission despite the Order of discharge of A2 (Fr. Jose Puthrukkayil) by the Court below which was subsequently confirmed by this Hon'ble Court as well as the Hon'ble Supreme Court of India.

(b). Factum of involvement of weapon and its nature for causing the death of the deceased – Admittedly, no such fact has been discovered by the Respondent. It is preposterous for the Respondent to make such a submission when even according to the Respondent, no such weapon has been recovered yet. It is also pertinent to note that even in the Memorandum of Objection, the Respondent has not specified the weapon allegedly used in this regard. This itself shows that there was

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not even any information (let alone a discovery of the same) regarding the weapon that was allegedly used.

(c). Accused persons had destroyed the evidence which also showed that Crime Branch officials had made the evidence tampered with – This is also only a mere allegation of the Respondent in this case. No such fact has been discovered by the Respondent in consequence of any information received from the Petitioner and a mere allegation cannot be considered as a fact that has been discovered.

(d). A1 was a permanent visitor of the Convent and he was present in the Convent on the fateful day. Also, A1 to A3 were resorted to immoral activities in the Convent and on the fateful day also both A1 and A2 (now discharged) along with A3 were involved in the immoral activities which ultimately led to the Murder of Sister Abhaya in this case - No such fact has been discovered by the Respondent and a mere allegation/information cannot be considered as a fact that has been discovered. Again, it is unfortunate that the Respondent is making such a submission despite the Order of discharge of A2 by the Court below which was subsequently confirmed by this Hon'ble Court as well as the Hon'ble Supreme Court of India.

(e). Sister Abhaya was succumbed to death due to the impact of blunt weapon on her head which disproves that Sister Abhaya committed suicide as claimed by the accused persons – A mere theory propounded by the Respondent cannot qualify as a fact that has been discovered. No such fact has been discovered by the Respondent in consequence of any information received from the Petitioner.

24. After hearing both sides, this Court would take the view that the abovesaid new contentions raised by the respondent prosecution agency for the first time, as if they have discovered new

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factual materials pursuant to the information conveyed by the accused persons, etc. do not appear to be tenable. It is by now too well settled to require the citation of any judicial authority that one of the cardinal requirements for placing reliance on Sec. 27 of the Indian Evidence Act, which in turn is an exception to the general rule engrafted in Sec. 26 thereof, is that the information in question should have been conveyed by the persons concerned after at a time, when they have already been arraigned as accused and at a time when they were in the custody of the Police. To a specific query, Sri.Sasthamangalam S. Ajithkumar, learned Standing Counsel for the respondent CBI has fairly submitted that all the 3 accused persons concerned, ie., the 2 petitioners herein and the person, who has secured favourable order of discharge, were never arraigned in the accused array and they were never in Police custody at the time when the narco analysis tests were done.

25. Secs.26 and 27 of the Indian Evidence Act, 1872 read as follows:

> *"Sec.26: Confession by accused while in custody of police not to be proved against him.-- No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.*
>
> *Sec. 27: How much of information received from accused may be proved.-- Provided that, when any fact is deposed to as discovered in*

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consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

26. In that regard, it will be pertinent to refer to the decision rendered by the Privy Council in the celebrated case in ***Pulukuri Kottaya v. Emperor*** [AIR(34) 1947 PC 67], wherein it has been held that it is indeed fallacious to treat the "fact discovered" within Sec. 27 as equivalent to the object produced. The fact discovered embraces the place from where the object is produced and the knowledge of the accused as to this and the information given, must relate distinctly to this fact. Para 20 of the above decision in Pulukuri Kottaya v. Emperor [AIR(34) 1947 PC 67] para 10, reads as follows:

"10. Section 27 which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were

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stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

27. The Apex Court has held in ***Manoranjan Singh v. State of Delhi*** [(1998) 3 SCC 523 para 3 thereof], that when the person concerned was not on the accused array at the time when he had made the disclosure statement, nor was he in custody of the Police, then Sec. 27 of the Indian Evidence Act cannot be pressed into service and the recovery claimed to have been made by the prosecution agency cannot be treated as having been made on the basis of the disclosure statement of the person concerned in strict conformity with the parameters in Sec. 27 of the Indian Evidence Act.

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It will be pertinent to refer to para 3 of the decision ***Manoranjan Singh's case***, which reads as follows:

> ***"3.*** *It was contended by the learned counsel for the appellant that the trial court committed a grave illegality in relying upon the disclosure statement alleged to have been made by the appellant as the appellant was not an "accused" when he had made that statement nor was he in custody of the police when he made that alleged statement. We find that no offence was registered against the appellant when he was taken to the police station for interrogation nor was any accusation made against him. He was not in custody of the police when he made the disclosure statement. The learned counsel is, therefore, right in his submission that Section 27 was not applicable in this case and recovery should not have been treated as having been made on the basis of the disclosure statement of the appellant."*

28. Therefore, on this elementary aspect of the matter, since it is the admitted case of the prosecution agency that the petitioners were never even arraigned in the accused array, nor were they in Police custody at the time when the alleged disclosures were made by them at a time when they were subjected to narco analysis test, then there is no question of even crossing the very threshold of the strict requirements of Sec. 27 of the Evidence Act.

29. Hence on this short ground, even if it is assumed that the narco analysis tests were conducted on the basis of their consent, since the subject does not exercise conscious control over the responses during the administration of such tests, unless the prosecution agency satisfies the vital requirement that the information materials that subsequently discovered with the help of

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voluntary administration of test results can be admitted in evidence in accordance with Sec. 27 of the Evidence Act, etc., there is no question of letting any evidence in that area. To do so, would be as good as the court permitting the prosecution to enter into the constitutionally forbidden areas of evidence and also would lead to the directly infringing and invading the constitutionally guaranteed right of an accused against self incrimination and right to remain silent as envisaged in the golden provisions of Art.20(3) of the Constitution of India.

30. In that regard it is also pertinent to note that in the case in ***Rajesh Talwar & Anr. v. Central Bureau of Investigation & Anr***. [(2014) 1 SCC 628] it was the accused person therein who had taken up the plea that evidence should be let in regard to narco analysis test, which was conducted in respect of certain persons who were originally arraigned in the accused array, but later they were deleted from the accused array. Curiously enough, the said plea has been made by the accused appellant therein. It is very interesting to note that the respondent CBI had then vehemently urged that to allow the plea of the accused persons would be as good as entering into the constitutionally inhibited area of evidence and would be

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illegal and unconstitutional, as can be seen from a reading of para 7 thereof. It will be pertinent to refer to paragraphs 6, 7 and 11 of ***Rajesh Talwar's case*** supra, which read as follows:

> *“**6.** Before us, Shri U.U. Lalit, learned Senior Counsel for the petitioners submitted that the production of the reports pertaining to the abovenamed three persons is absolutely essential and relying on Section 91 CrPC, submitted that the production of these reports being relevant, the prayer ought to have been allowed by the High Court. According to Shri Lalit, the reports, if produced, would not breach either Article 21 read with Article 20(3) which protects the accused from self-incrimination and/or would not be hit by Section 21 of the Evidence Act since the persons in respect of whom those reports have been prepared are not accused anymore. In any case, according to the learned counsel, the reason given by the High Court that such reports having been prepared on the basis of statements and data collected in contravention of Article 20 are premature and this could only have been found after the reports were produced in courts.*
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> ***7.** Shri Sidharth Luthra, learned ASG vehemently opposed the prayer and submitted that the production of these reports is pointless in view of the law laid down by this Court in Selvi v. State of Karnataka[(2010) 7 SCC 263], wherein such reports are held to be inadmissible in evidence. The learned ASG further submitted that the timing of the application and the stage at which it was made clearly shows that the applications are vexatious and intended to delay the proceedings which are at a concluding stage. In support of his contention, Shri Luthra relied on the sequence of events which according to him show that the petitioners have at every stage tried to delay the proceedings by making one application after the other. The learned counsel further submitted that even the present special leave petition is delayed in view of the fact that it is preferred on the file on 18-9-2013 against the judgment of the Allahabad High Court which was passed on 19-7-2013. The order of the trial court was, in fact, passed on 18-6-2013.*
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> *xxx xxx xxx*
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> ***11.** This Court in Selvi J. Jayalalithaa v. State of Karnataka[(2014) 2 SCC 401] decided on 30-9-2013, after referring to its earlier judgments in Triveniben v. State of Gujarat [(1989) 1 SCC 678], Zahira Habibullah Sheikh (5) v. State of Gujarat [(2006) 3 SCC 374], Amarinder Singh v. Parkash Singh Badal [(2009) 6 SCC 260], Mohd. Hussain v. State (Govt. of NCT of Delhi) [(2012) 2 SCC 584] and Natasha Singh v. CBI[(2013) 5 SCC 741], dealt with the issue of fair trial observing: (Selvi J. Jayalalithaa [(2014) 2 SCC 401], SCC paras 28-30)*
>
> > *“28. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the*

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interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution….

30. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights."

31. The Apex Court categorically upheld the abovesaid considered stand of the respondent CBI therein and rejected the plea of the accused persons in the matter of adducing evidence relating to narco analysis test results of persons who were subsequently, deleted from the accused array.

32. It is also pertinent to bear in mind that the respondent CBI had never taken up a contention that at any previous point of time that they had duly discovered any facts or materials pursuant to

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the disclosures made by the accused persons in the voluntarily administered narco analysis test and in conformity with the requirements of Sec. 27 of the Evidence Act. In that regard it is also pertinent to bear in mind that the abovesaid contention raised by the respondent CBI in their objection at para 9 about the alleged discovery of facts is not tenable for the simple reason that as the said alleged information therein said to have been disclosed by the accused persons in the course of the narco analysis test results, have not directly led to the discovery of any materials or facts in conformity with Sec. 27 of the Evidence Act.

33. Lastly it may be pertinent to deal with the contentions respondent CBI regarding the applicability of Sec.231 of the Cr.P.C., etc. In that regard it will be pertinent to refer to the provisions contained in Sec. 231 of the Cr.P.C., Secs. 5 and 136 of the Indian Evidence Act, which read as follows:

Sec. 231 of the Cr.P.C. reads as follows:

> *"Sec. 231: Evidence for prosecution.-(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.*
> *xxx xxx xxx"*

Sec.5 of the Indian Evidence Act reads as follows:

> *Sec. 5: Evidence may be given of facts in issue and relevant facts.-- Evidence may be given in any suit or proceeding of the existence of non-*

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existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.--*This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.*

Sec.136 of the Indian Evidence Act reads as follows:

"Sec. 136: Judge to decide as to admissibility of evidence.- *When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.*

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact firstmentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact."

34. It is true that Sec. 231 mandates that the court is bound "*to proceed to take all such evidence as may be produced in support of the prosecution*". However, the core aspect of the matter is that the expression, "*take all such evidence*" should necessarily be understood as to take all evidence, which is in consonance with the Constitution and the laws. The said aspect of the matter is too elementary to require any over-emphasis or reiteration. However, it will be relevant to bear in mind that this Court has held in decisions as in the order dated 11.11.2019 in Crl.M.C.No. 7085/2019, para 9, that it is also now

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well established that the liberty of an accused can be curtailed only in accordance with due procedure and it is also trite that predominantly the due procedure is prescribed by the Parliament in terms of Code of Criminal Procedure or as per the relevant procedural aspects, engrafted in the special laws concerned. But it is also an elementary constitutional position of law that the said constitutional rights and liberties can be curtailed only in accordance with the procedure which is just fair and reasonable. Therefore the entire provisions of the Code of Criminal Procedure engrafted by the Parliament would also be informed by the all pervasive provisions of the Constitution of India. Suffice to say that the rejection of the defence plea on untenable grounds would amount to violation of due process which has to be strictly adhered to all the organs of the State including the judicial organ. This Court has also held therein that illegal rejection of the defence plea on untenable ground by the criminal courts concerned would certainly amount to violation of the said due process and that the vital requirement of due process has to be strictly adhered to by all organs of the State including the judicial wing.

35. It will be profitable to refer to para 17 of the judgment of the Apex Court in ***Vinubhai Haribhai Malaviya & Ors. v.***

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State of Gujarat & Anr. [2019 (5) KHC 352 (SC)], which reads as follows:

> *"17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Art.21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Art.21 over the CrPC that must needs inform the interpretation of all the provisions of the CrPC, so as to ensure that Art.21 is followed both in letter and in spirit.".*

36. As succinctly held by His Lordship, the Hon'ble Justice Rohinton Nariman, that "after all, in India's trust with destiny, we have chosen to be wedded to the rule of law as laid down by the Constitution of India. Let every person remember that the "holy book' is Constitution of India and it is with this book in hand that the citizens of India march together as a nation, so that they may move forward in all spheres of human endeavour to achieve the great goals set out by this "Magna Carta' or Great Charter of India" (see para 64 of the order dated 14.11.2019 in the case in Review Petition (Civil) No.3359/2018 [arising out of W.P.(C).No. 373/2006 and connected cases].

37. It is also by now too well established that the accused persons have the right to face fair trial in criminal proceedings. It will be profitable to refer to paras 28, 29 and 30 of the case in ***J.***

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Jayalalithaa v. State of Karnataka, [2014 (2) SCC 401], which read as follows:

> ***"28.*** *Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the "majesty of the law" and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.*
>
> ***29.*** *Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution. "No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison d'être in prescribing the time frame" for conclusion of the trial.*
>
> ***30.*** *Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by the rule of law. Denial of fair trial is crucifixion of human rights. [Vide Triveniben v. State of Gujarat [(1989) 1 SCC 678], Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225] Raj Deo Sharma (2) v. State of Bihar[(1999) 7 SCC 604], Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230], K. Anbazhagan v. Supt. of Police [(2004) 3 SCC 767], Zahira Habibullah Sheikh (5) v. State of Gujarat [(2006) 3 SCC 374], Noor Aga v. State of Punjab[(2008) 16 SCC 417], Amarinder Singh v. Parkash Singh Badal [(2009) 6 SCC 260], Mohd. Hussain v. State (Govt. of NCT of Delhi) [(2012) 2 SCC 584], Sudevanand v. State [(2012) 3 SCC 387], Rattiram v. State of M.P. [(2012) 4 SCC 516] and Natasha Singh v. CBI [(2013) 5 SCC 741]}"*

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38. It has been held by the Apex Court in the decisions as in ***Maneka Sanjay Gandhi v. Rani Jethmalani,*** *[(1979) 4 SCC 167* = AIR 1979 SC 468] that assurance of fair trial is the first imperative of the dispensation of the justice. It will be pertinent to refer to Menaka Sanjay Gandhi's case supra [AIR 1979 SC 468, p.470= (1979) 4 SCC 167, p.170, para 5, which reads as follows:

> *"**5.** A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are bring disturbed by rude hoodlums and unruly crowds, jostling,-jeering or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of court is obstructive of the course of justice and must surely be stamped out. Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a Court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquillity at the trial. Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer. In a decision cited by the counsel for the petitioner, Bose, J., observed:*
>
> > *. . . . But we do feel that good grounds for transfer from Jashpur-nagar are made out because of the bitterness of local communal feeling and the tenseness of the atmosphere there. Public confidence in the fairness of a trial held in such an atmosphere would be seriously undermined, particularly among reasonable Christians all over India not because the Judge was unfair or biassed but because the machinery of justice is not geared to work in the midst of such conditions. The calm detached atmosphere of a fair and impartial judicial trial would be wanting, and even if justice v.'ere done it would not be "seen to be done".*

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39. As has been reiterated by the Apex Court in the aforecited celebrated Selvi's case supra, para 225 thereof, that the theory of interrelationship of various rights conferred under Part III to the Constitution of India mandates that the right against self-incrimination guaranteed in Art.20(3) should also be read as a component of “personal liberty” under Article 21 of the Constitution of India and also that “right to privacy” should also account for its intersection with Article 20(3). It has been held therein that an individual’s decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy, especially in circumstances where the person faces exposure to criminal charges or penalties. Reference in this connection is made to para 225 of Selvi's case supra, which reads as follows:

> *“**225.** So far, the judicial understanding of privacy in our country has mostly stressed on the protection of the body and physical spaces from intrusive actions by the State. While the scheme of criminal procedure as well as evidence law mandates interference with physical privacy through statutory provisions that enable arrest, detention, search and seizure among others, the same cannot be the basis for compelling a person “to impart personal knowledge about a relevant fact”. The theory of interrelationship of rights mandates that the right against self-incrimination should also be read as a component of “personal liberty” under Article 21. Hence, our understanding of the “right to privacy” should account for its intersection with Article 20(3). Furthermore, the “rule against involuntary confessions” as embodied in Sections 24, 25, 26 and 27 of the Evidence Act, 1872 seeks to serve both the objectives of reliability as well as voluntariness of testimony given in*

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a custodial setting. A conjunctive reading of Articles 20(3) and 21 of the Constitution along with the principles of evidence law leads us to a clear answer. We must recognise the importance of personal autonomy in aspects such as the choice between remaining silent and speaking. An individual's decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy, especially in circumstances where the person faces exposure to criminal charges or penalties."

40. In the ordinary course of things, this Court would have remitted the matter to the Special Court concerned for consideration and decision afresh after hearing both sides. But the issues in this case are of such nature that it do not require any remit and it is rather too conspicuous that there cannot be any two opinions on this simple issue, more particularly in the light of the specific aspect that the strict requirements of Sec.27 of the Evidence Act are not even remotely attracted in the facts of this case, inasmuch as the petitioners were never arraigned as accused or were never in the custody of the Police at the time when the alleged disclosures were made by them in the course of the narco analysis test done in this case. Since there is no scope for any remit and since the trial is now almost in the fag end, this Court is constrained to take a considered decision on the merits of the matter.

41. Accordingly, it is ordered and declared that the impugned order passed by the court below concerned is illegal and ultra vires,

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inasmuch as, allowing the plea made by the prosecution agency even to that extent, as indicated in the impugned order, would amount to flagrant violation of the dictum laid down by the Apex Court in the celebrated case in ***Selvi & Ors. v. State of Karnataka*** [(2010) 7 SCC 263] and that therefore it amounts to a direct invasion of the constitutionally guaranteed right against self incrimination and right to remain silent guaranteed to the accused persons concerned. As observed by this Court hereinabove, the provisions of laws like Cr.P.C, Evidence Act, etc. are also informed by the all pervasive provisions and the brooding spirit and substance of the Constitution of India. Therefore, the "*due procedure*" contemplated in Art.21 of the Constitution of India should be a procedure established by law, which is just fair and reasonable. Hence, it is the bounden constitutional and legal obligation of the courts to ensure that, while passing orders in this nature, the constitutionally guaranteed rights and other statutory rights of the affected persons concerned, are duly respected and treated with all sanctity.

42. The upshot of the above discussion is that the impugned order would require interdiction. Accordingly, it is ordered that the impugned Anx.II order dated 19.10.2019 rendered by the Court of the

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Addl. Sessions Judge & Special Judge, CBI, Thiruvananthapuram on Crl.M.P.Nos.149 and 150 of 2019 in S.C.No.1114/2011 will stand quashed. Consequently, it is ordered that the plea made by the petitioners in those Crl.M.P.Nos.149 & 150 of 2019 in S.C.No. 1114/ 2011 will stand allowed. It is brought to the notice of this Court by the petitioners that, not only charge witnesses, CW-100 and CW-101, but also certain other witnesses have also been proposed by the respondent CBI to adduce evidence with respect to the matters in relation to narco analysis test and other tests. If that be so, it is ordered that adducing of evidence of all such witnesses, including CW-100 and CW-101 and any other proposed witnesses, which are in matters in relation to alleged disclosures said to have been made by the petitioners in relation to narco analysis tests, brain mapping tests, polygraph tests, etc. shall not be allowed to be adduced in evidence by the Special Judge concerned.

43. Before parting with this case it may be useful to refer to some of the observations made by the Supreme Court of *Israel in the* judgment rendered by Justice Aharon Barak, President of the Supreme Court of Israel, in the case in Public Committee Against Torture in Israel v. State of Israel [(1999) 7 BHRC 31 : HC 5100/94

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(1999) (SC of Israel)], wherein it has been held that the use of physical means (such as shaking the suspect, sleep deprivation and enforcing uncomfortable positions for prolonged periods) during interrogation of terrorism suspects was illegal. Among the various issues raised in that case, it was also held that the “necessity” defence could be used only as a post-factum justification for past conduct and that it could not be the basis of a blanket pre-emptive permission for coercive interrogation practices in the future. Ruling against such methods, Justice Aharon Barak, President of the Supreme Court of Israel, has as follows:

> *“... This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the ‘rule of law’ and recognition of an individual’s liberty constitutes an important component in its understanding of security.”*

44. The Apex Court in the aforecited celebrated case in Selvi's case supra has placed reliance in para 261 thereof, on the abovesaid observations made by Justice Aharon Barak, President of the Supreme Court of Israel in the aforecited case.

45. Before parting with case, this Court is obliged to place on record its sincere appreciation for the high quality of assistance rendered to this Court by all the Advocates concerned, viz.,

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Sri.B.Raman Pillai, learned Senior Counsel, instructed by Sri.V.B.Sujesh Menon, learned counsel appearing for A-1, Sri.Sojan Micheal, learned counsel appearing for A-2, Sri.Sasthamangalam S. Ajithkumar, learned Standing Counsel appearing for the respondent CBI, and Sri.M.Shaju Purushothaman, learned Amicus curiea.

With these observations and directions, the above Criminal Miscellaneous Cases will stand finally disposed of.

Sd/-

sdk+ **ALEXANDER THOMAS, JUDGE**

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APPENDIX OF Crl.MC 8616/2019

PETITIONER'S/S EXHIBITS:

ANNEXURE I	**TRUE COPY OF CRL.M.P.NO.149/2019 IN S.C.NO.1114/2011 BEFORE THE HON'BLE ADDL.SESSIONS JUDGE/SPECIAL JUDGE(SPE/CBI),THIRUVANANTHAPURAM DATED 14.10.2019.**
ANNEXURE II	**TRUE COPY OF THE COMMON ORDER OF THE HON'BLE ADDL.SESSION'S JUDGE SPECIAL JUDGE (SPE/CBI),THIRUVANANTHAPURAM IN CRL.M.P.NO.149/2019 AND CRL.M.P.NO.150/2019 DATED 19/10/2019.**
ANNEXURE III	**TRUE COPY OF THE COMMON ORDER OF THE HON'BLE COURT OF THE SPECIAL JUDGE(SPE/CBI),THIRUVANANTHAPURAM DATED 07.03.2018 IN CRL.M.P.NO.12/2011 IN S.C.114/2011 AND CONNECTED PETITIONS.**

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APPENDIX OF Crl.MC 8617/2019

PETITIONER'S/S EXHIBITS:

ANNEXURE I TRUE COPY OF CRL. M.P. 150/2019 IN S.C. NO. 1114/2011 BEFORE THE HON'BLE ADDL.SESSION'S JUDGE/SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM.

ANNEXURE II CERTIFIED COPY OF THE COMMON ORDER OF THE HON'BLE ADDL.SESSION'S JUDGE/SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM IN CRL. M.P. 149/2019 AND CRL. M.P. 150/2019 DATED 19-10-2019.