IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 22ND DAY OF JULY 2020 / 31ST ASHADHA, 1942

WP(C).No.14316 OF 2020(S)

PETITIONER:

MICHAEL VARGHESE, AGED 50 YEARS,
S/O. VARGHESE, JOURNALIST, CHANGADAKARI,
ALAPPUZHA,CHERTHALA-688 531.

BY ADVS. SRI.MATHEWS J.NEDUMPARA
SRI. P. BIJIMON

RESPONDENTS:

1 HONOURABLE SHRI PINARAYI VIJAYAN,
CHIEF MINISTER OF KERALA, TRIVANDRUM.

2 SHRI M. SHIVSHANKARAN, IAS,
FORMER PRINCIPAL SECRETARY TO THE CHIEF MINISTER OF KERALA
AND SECRETARY TO THE GOVERNMENT OF KERALA,
DEPARTMENT OF INFORMATION TECHNOLOGY, SECRETARIAT,
TRIVANDRUM, ALSO THROUGH THE CHIEF SECRETARY TO THE
GOVERNMENT OF KERALA, TRIVANDRUM,
SINCE SHRI SHIVSHANKARAN IS SAID TO BE ON LEAVE.

3 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT OF KERALA, TRIVANDRUM.

4 THE SECRETARY IN THE DEPARTMENT OF INFORMATION TECHNOLOGY,
GOVERNMENT OF KERALA, TRIVANDRUM.

5 SWAPNA SURESH, SPACE PARK, KERALA STATE INFORMATION
TECHNOLOGY INFRASTRUCTURE LIMITED (KSITIL), TRIVANDRUM.

6 PRICE WATER HOUSE COOPER PVT LTD. (PWC),
THE MILLENIA TOWER D, # 1 AND 2 MURPHYROAD ULSOOR,
BANGALORE-560008, KARNATAKA, INDIA, ALSO AT,
BUILDING 8 TOWER B DLF CYBER CITY, GURGAON-122002,
HARYANA, INDIA.

7 COMMISSIONER OF CUSTOMS, ERNAKULAM, COCHIN.

8 THE SECRETARY TO THE GOVERNMENT,
MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI.

9 SECRETARY TO THE GOVERNMENT OF INDIA
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NEW DELHI.

10 DIRECTOR, NATIONAL INVESTIGATION AGENCY, NEW DELHI.

11 DIRECTOR, CENTRAL BUREAU OF INVESTIGATION, NEW DELHI.

12 DIRECTOR GENERAL OF POLICE, TRIVANDRUM.

13 DIRECTOR, VIGILANCE AND ANTI-CORRUPTION BUREAU, TRIVANDRUM.

14 UNION OF INDIA, REPRESENTED BY ITS HOME SECRETARY,
SOUTH BLOCK, NEW DELHI.

15 RAMESH CHENNITHALA, MLA,
LEADER OF THE OPPOSITION, TRIVANDRUM.

16 THE ADDL. DIRECTOR GENERAL OF POLICE,
CRIME BRANCH, POLICE HEADQUARTERS, TRIVANDRUM.

R3, R4, R12, R13 & R16 BY ADVOCATE GENERAL
SRI. C. P. SUDHAKARA PRASAD
SRI. K. K. RAVINDRANATH, ADDL.ADVOCATE GENERAL
SRI. P. NARAYANAN, SENIOR GOVT. PLEADER
SRI. V. MANU, SENIOR GOVT. PLEADER

R7, R8, R9, R11 & R14 BY ADVS. SRI. P. VIJAYAKUMAR, ASG OF INDIA
SRI. JAISHANKER V. NAIR, CGC

R10 BY SRI. ARJUN AMBALAPATTA, SR. PUBLIC PROSECUTOR FOR NIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-07-2020, THE COURT ON 22-07-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 22nd day of July, 2020

S. Manikumar, CJ

Instant public interest writ petition is filed for the following reliefs:

a) To issue a writ in the nature of mandamus, directing the State Government to hand over investigation of gold smuggling scam, the Sprinklr, BevQ App., and e-Mobility Consultancy scams, in which the Hon'ble Chief Minister Sri. Pinarayi Vijayan and Sri. M. Shivashankaran, IAS, Former Principal Secretary to the Hon'ble Chief Minister of Kerala and Secretary to the Government of Kerala, Department of Information Technology, (respondent Nos.1 and 2) respectively, are allegedly involved, to the Central Bureau of Investigation/National Investigation Agency (respondent Nos.11/10) and the latter to conduct a just, fair and impartial investigation into the crimes and further to direct all other agencies, the State Police, the Customs and the State Government, to fully cooperate with the CBI/NIA.

b) Without prejudice to the above said prayer, petitioner has also sought for a writ of mandamus or any other appropriate writ, order or direction, directing respondent Nos.12, 13 and 16 - Director General of Police, Trivandrum; Director, Vigilance and Anticorruption Bureau, Trivandrum; and The

Additional Director General of Police, Crime Branch, Trivandrum, to register an FIR based on the allegation that the Sri. M. Shivashankaran, Senior Officer of the Indian Administrative Service, Sri. Pinarayi Vijayan, Hon'ble Chief Minister of Kerala, and/or those who are close to them and involved in smuggling of gold to India using the diplomatic channel and the Sprinkler, BevQ App and e-Mobility Consultancy scams, and to conduct an effective, meaningful, independent and impartial enquiry, unmindful of the fact that those who could be involved in the crimes are in the helm of affairs of the State, and/or to further direct the State and Central Governments to facilitate such an investigation, nay, direct the State Government to handover the investigation to the CBI.

c) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing respondents 12, 13 and 16, namely, the CBI and/or the NIA and/or the Crime Branch to register an FIR, and conduct an effective, meaningful, independent and impartial enquiry into the smuggling of gold to India, by abusing the diplomatic channel and the Sprinklr, e-Mobility Consultancy scams, unmindful of the fact that those, who could be a part of the crimes, are in the helm of the affairs of the State, in matters which fall undoubtedly within their exclusive jurisdiction.

2. Short facts leading to the filing of the writ petition are that,- instant writ is the second petition, in the nature of '*qui tam action*' under Article 226 of the Constitution of India, which the petitioner is instituting for remedies by way of a writ of mandamus and, in particular, registration of an FIR, and thereby, setting of the criminal law in motion against Sri. Pinarayi Vijayan, the Hon'ble Chief Minister of Kerala and Sri. M. Shivashankaran, Secretary in-charge of the Hon'ble Chief Minister's office, for offences under the Conservation Of Foreign Exchange and Prevention Of Smuggling Activities Act, 1974, Indian Penal Code, 1860, Prevention of Corruption Act, 1988 and the Customs Act, 1962.

3. Petitioner has further stated that it is the fundamental principle of law that it is the duty of every citizen to initiate criminal law in motion, and where the authorities responsible for putting the criminal law in motion fail or abdicate the responsibility, to seek judicial redressal by initiating a '*qui tam action*'- *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, he, who sues in this matter for the king as well as for himself - and seek a remedy in the nature of writ of mandamus. In the

month of April, 2020, petitioner had to institute a petition under Article 226 of the Constitution of India, since police had failed to register an FIR against respondents 1 and 2, concerning the Sprinklr scam, in spite of a written complaint of the petitioner asserting that the allegations made against them, by him and others amount to criminal abuse of official position and power entailing in unjust enrichment which clearly constituted offences punishable under various provisions of the Prevention of Corruption Act, Indian Penal Code and IT Act. This Court admitted the writ petition and ordered notice to the 2nd respondent viz., Sri. M. Shivashankaran. The order passed in W.P.(C) (Temp.) No.129 of 2020 is extracted hereunder:

> "Admit. Learned Senior Government Pleader takes notice on behalf of respondents 3, 4, 11, 12 and 15; while the learned Assistant Solicitor General takes notice on behalf of the 9th respondent; Shri Sasthamangalam S. Ajithkumar, learned standing counsel takes notice on behalf of the 10th respondent. The petitioner will take out notice to respondents 2, 12 and 14 by speed post returnable in 15 days as also through email to his/their

> authorised email addresses. Notices to respondents 1, 5, 6, 7 and 8 are not being issued and will be considered in due course."

4. Petitioner has further stated that the fact that criminal law was not ordered to be set in motion, emboldened respondent Nos.1 & 2 and others to carry on their abuse of power to make quick money. According to the petitioner, Sprinklr scam was succeeded by two other scams, viz., BevQ App and e-Mobility Consultancy scams, and if the allegations of respondent No.16, the Leader of Opposition, are true and if the said allegations are to be believed, they constitute corruption and crime of a scale unheard in the history of Kerala, by any political leader/bureaucrats.

5. Petitioner has further stated that the allegation is that respondents Nos.2 and 3, viz., Sri.M Shivashankaran, IAS and Ms. Swapna Suresh, the Operation Manager at KSITIL, are involved in smuggling of 30 kgs of gold from UAE to India using the diplomatic channel. It is alleged that the customs went on to examine the baggage sent through the diplomatic channel since it received certain intelligence inputs to the effect that the

diplomatic channel is used by the international mafia for smuggling gold to India, without paying duty.

6. It is further alleged that the customs officers were threatened with dire consequences. According to the petitioner, it is in the public domain, the 5th respondent was appointed by the 2nd respondent, exercising his discretionary powers solely on the recommendations of respondent No.6-PriceWaterHouseCoopers Pvt. Ltd. (PwC), a consultancy firm involved in e-Mobility Consultancy scam.

7. It is further stated that respondent No.5 was instrumental in the fabrication of a false complaint of sexual harassment against an officer of Air India while she was working with AISATS. In March, 2015, Swapna Suresh allegedly made a false complaint forging the signatures of 17 female staffers against an Air India official, accusing him of sexual harassment at the workplace. It is stated that Swapna Suresh resigned from Air India SATS and joined the UAE consulate to evade police interrogation. The forgery committed by her was unearthed by the Crime Branch which found that the complaint was lodged to wreak vengeance

on the said officer, who had allegedly complained to the CBI and the CVC against certain irregularities in the contracts of Air India.

8. It is further alleged that Ms. Swapna Suresh, despite the criminal or questionable background, was appointed by the 2nd respondent, Secretary to the Hon'ble Chief Minister, in exercise of his discretionary powers as Operational Manager in KSITIL. It is further alleged that she was involved in the conduct of major events like the programme arranged for the honour of Sheikh of Sharjah on 24.09.2017. It is further alleged that she was one among the VIPs, who had the permission to speak to the Hon'ble Chief Minister and the Sheikh. It is also alleged that she was associated with the conduct of Kerala Lok Sabha and she is a friend of Speaker Mr. P.Sreeramakrishnan, who inaugurated the office of a company with which Swapna Suresh is associated. The petitioner further alleged that the Hon'ble Chief Minister knows her very well, that too, her background, for the Hon'ble Chief Minister is provided with intelligence inputs of those working in his office and those who closely interact with him. The 2nd respondent used to visit a flat of Mudavanmugal,

Trivandrum, where the 5th respondent resides and often used to leave the premises beyond midnight, in an inebriated state. It is alleged that he used to go there in the State car. The 2nd respondent Mr. M.Shivshankaran and the Hon'ble Chief Minister's family have certain common business interests of international ramifications. It is further alleged that the Hon'ble Chief Minister, though may not be directly involved in the nitty gritties of transactions involving companies of questionable credentials like Sprinklr, PwC, etc., he certainly is fully aware of the business worth hundreds of crores of rupees which was building and further promoted by abusing his official position as the Hon'ble Chief Minister of Kerala.

9. Petitioner has further stated that the truth of the allegations regarding corruption, abuse of office, smuggling and other illegal activities, even involving international mafia, of which the Hon'ble Chief Minister's office is alleged to be nerve center, is required to be investigated effectively and all those, who are involved with the offence, are liable to be brought to book. However, considering the current realities of life, it is going to be a mere mirage. Political equations keep

changing, there is nothing wrong in that, but registration of an FIR, investigation of an offence, and bringing of an accused to book cannot be a matter of political equations. With utmost respect to the 15th respondent, the Leader of the Opposition, petitioner has submitted that the Leader of the Opposition, who had made serious demand for investigation into the Sprinklr scam and unearthing the truth, and that nobody shall be spared, when he instituted a writ petition, a so-called PIL, before this Court as the petitioner, did not even array Shri Pinarayi Vijayan, the Hon'ble Chief Minister as a party, much less seek the registration of crime. It is further submitted that the Leader of the Opposition and other political leaders may not be much concerned about the only issue which is justiciable, namely, a plea for mandamus at the hands of this Court for registration of an FIR, an investigation of the crime, which, to repeat, alone is justiciable.

10. In short, it is contended that the petitioner has instituted the instant writ petition as a person aggrieved, in the enforcement of his rights, qua as a citizen he has every right, nay, even a duty to demand

that crimes involving the mighty and the powerful, even putting to jeopardy national interest, which smuggling through diplomatic channels, undoubtedly constitutes to be, be investigated. It is incorrect to say that the instant petition is a PIL, for PIL is an action where a person who has not suffered any personal injury or has no vested right in him, takes up the cause of a third person, who out of his poverty, illiteracy and other like reasons, unable to approach the Court, invokes the jurisdiction of the court on his behalf. The petitioner herein is acting on his own, in the enforcement of his rights, seeking a writ in the nature of mandamus to compel the Police and other law enforcing authorities to discharge their duties, namely, investigation into the various criminal offences allegedly committed by a gang of people of which the 2nd respondent, Shivshankaran, IAS officer, is alleged to be kingpin, of which the gold smuggling scam is last in the long chain of corrupt deeds, namely, the Sprinklr, BevQ app and e-mobility consultancy scams. Petitioner, therefore, has locus standi to invoke the jurisdiction of this Court to compel the police to register an FIR and conduct a just and fair investigation, in other

words, to set the criminal law in motion and other remedies.

11. Petitioner has further stated that registration of FIR is the first step towards investigation of a crime. It entails in no adverse civil consequences in law, though in reality, it might be because of public perception. When considering investigation of crimes, bringing the criminals to book, and the resultant prevention of crimes, when contrasted with the damage, in terms of public perception, which an individual may suffer upon an FIR being registered, the former shall prevail. Registration of FIR is not a punishment. It is upto the *bona fide* discretion of the investigating agencies, to arrest an accused and seek his custody for interrogation. Wherever their innocence is established in the investigation, it is the duty of the investigating authorities to exonerate the person against whom an FIR was registered. CBI cannot take on the investigation of various scams of which the Hon'ble Chief Minister's office is allegedly the epicenter unless this Court, in exercise of its jurisdiction under Article 226 of the Constitution Commands so. No FIR is going to be registered against Shri Shivshankaran, unless this Court

issues a writ in the nature of mandamus commanding the police to register an FIR. It is because of the realities of life, which is in conflict with the requirement of law. Police under the penal laws are duty bound to register an FIR where commission of a cognizable offence is brought to its notice.

12. On the above pleadings, petitioner has raised the following grounds:

> (a) The Sprinklr scam, BevQ App scam, and the e-mobility consultancy scams, in all of which the 2nd respondent, sri M Sivasankaran IAS, is allegedly involved, of which it is alleged that the 15th respondent, Shri Pinarayi Vijayan, Hon'ble Chief Minister of Kerala, is fully aware of, amounts to offences punishable under Section 13 of the Prevention of Corruption Act, 1988 and Sections 405, 415, 420 and 378 of the Indian Penal Code, Customs Act and even COFEPOSA Act, for the said transfer was in furtherance of a design to unjustly enrich, nay, to be gratified at the cost of the revenue of the State and at the cost of the very right to life of the citizens for the right to privacy is an integral part of the very right to life (so far as the Sprinklr scam is concerned). The petitioners have no other efficacious alternative legal procedure available to secure justice than invoking the jurisdiction of this Court under Article 226

of the Constitution for a writ in the nature of mandamus and/or other remedies.

(b) The gold smuggling scam, Sprinklr, BevQ app, e-mobility consultancy scams in which the Chief Minister and his most trusted aid Shri M. Shivashankaran, a senior IAS officer are allegedly involved, are offences of grave nature, allegedly involving even international smuggling mafia, underworld. These scams pose a threat even to national security and require immediate registration of an FIR in respect of all these scams and a meaningful and effective investigation by the CBI, NIA, Revenue and Customs authorities in full cooperation with the State Police.

(c) The petitioner is unable to produce any evidence in support of his petition than to rely on the words of the leader of opposition in the State Assembly and other leaders of opposition parties. Collection of evidence and prosecuting the offenders are in the exclusive province of the police. Unlike a civil case, in a petition as the instant one, petitioner cannot in law be expected to produce evidence in support of his case. Interest of justice requires the court to call for all the records and evidence from the Governmental authorities and an interim application is that effect is made infra.

(d) Sanction as contemplated in the Code of Criminal Procedure/Prevention of Corruption Act, 1988 cannot be an impediment for setting the criminal law in motion. The reason is simple. Police are duty bound under Section 154 of the Cr.P.C to

register an FIR upon receipt of information concerning commission of a cognizable offence. It enjoys no discretion in that regard. However, the police being sovereign in its domain as much as the Judiciary is in its exclusive domain, has the freedom to decide the manner and extent to which an enquiry is to be conducted so long as they act bona fide and in the instant case, the police is duty bound to register an FIR and to investigate the various scams involving Shri Shivshankaran, nay, even Shri Pinarayi Vijayan. However, it is unrealistic to expect the police to conduct a meaningful, fair and impartial investigation because those involved are allegedly very close to the Hon'ble Chief Minister and the IT Secretary to the Government of Kerala. Therefore, the Petitioners are left with no other option but to seek a mandamus at the hands of this Court, commanding the Police to discharge their duty. To repeat, no sanction is required to register an FIR. No sanction for prosecution is also required, for recourse to corrupt practice does not amount to the discharge of one's official duty. Sanction is required where a public servant in the lawful discharge of duty is alleged to have committed an offence, to protect him from vexatious prosecution.

(e) Petitioner has finally contended that investigation by the CBI involves intricate Centre-State relationship which is politically too sensitive. Many serious crimes which have inter-state ramifications have remained, un-investigated because of the intricacies involved in the investigation. The CBI is established under the Delhi Special Police Act and is under the administrative control of the Central

> Government. The CBI cannot take up investigation of corruption allegedly involving the Chief Minister of a state and senior bureaucrats unless the State Government requests the Central Government to do so, which is too unrealistic in today's political environment. Therefore, the only option to secure a CBI investigation to bring the culprits to book is to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

13. At the outset, Mr. Mathews J. Nedumpara, learned counsel for the petitioner, referred to the definition of "public servant" in the Prevention of Corruption Act, 1988 and submitted that the Hon'ble Chief Minister is a public servant.

14. Learned counsel for the petitioner further submitted that the Hon'ble Chief Minister and the former Principal Secretary to the Hon'ble Chief Minister of Kerala, Department of Information Technology, Government of Kerala (respondent No.2) have committed an offence under Section 13(d) of the said Act. Both of them have committed offences under the Prevention of Corruption Act, 1988 as well as the Indian Penal Code, 1860. Ms. Swapna Suresh, respondent No.5, has been arrested and the customs department has registered an FIR for the

offences punishable under the provisions of the Customs Act, 1962.

15. Learned counsel for the petitioner further contended that the Code of Criminal Procedure is the only law which provides for registration of FIR and investigation, and his submission is to the fundamental aspect of setting the criminal law in motion i.e. by registration of FIR and not for monitoring, as the police has got a sovereign duty, so also the Court to ensure registration of an FIR.

16. Learned counsel for the petitioner further submitted that Hon'ble Chief Minister of the State is not above law. In the Sprinklr scam, his family members have contacts with the offenders. What is required under law is only information to the police and once it is furnished, police has to discharge their sovereign functions. However, police has not registered any case, because the Hon'ble Chief Minister is involved.

17. Learned counsel for the petitioner referred to an incident involving an actress mentioning the name of Ms. Swapna, in abduction. He also raised a question that it is for the learned Advocate General appearing for the State, to answer as to why FIR has not been registered

in spite of the complaint lodged by the petitioner way back in April, 2020.

18. Relying on the decision of the Hon'ble Supreme Court in **Lalitha Kumari v. Government of Uttar Pradesh** reported in (2014) 2 SCC 1, learned counsel for the petitioner submitted that registration of FIR is mandated under Sections 154, 155, 156 and 157 of the Cr.P.C. He further contended that despite submission of a complaint, not even a preliminary enquiry is conducted.

19. Learned counsel for the petitioner further submitted that the situation today is that the former Principal Secretary to the Hon'ble Chief Minister of Kerala, Department of Information Technology, Government of Kerala (respondent No.2), is summoned and interrogated for nine hours, in the matter of involvement of smuggling. He further submitted that the 2nd respondent has direct access and facilitated smuggling. According to him, involvement of the Hon'ble Chief Minister is naked and his family members are involved in Sprinklr scam. When the Hon'ble Chief Minister is the supreme head of the State, police is unable to act independently and, therefore, petitioner is entitled to seek for registration

of FIR, by the official respondents, and to proceed with the investigation.

20. Referring to the schedule under the National Investigation Agency Act, 2008, learned counsel for the petitioner submitted that the agency is empowered to exercise its jurisdiction of investigation into the violations, commissions of offences, insofar as the enumerated enactments are concerned and not otherwise. Referring to sub-section (4) of Section 6 of the Act, he submitted that the said provision does not take away the obligation of the State machinery, to register an FIR for the acts involving outside the jurisdiction of the National Investigation Agency. He also submitted that registration of an FIR under the Customs Act, can only be for recovery of amounts involved and that would not preclude the petitioner from seeking registration of FIR, in respect of offences under the Prevention of Corruption Act or India Penal Code, as the case may be. He further submitted that as a citizen, he has to discharge his duty under Section 39 of the Code of Criminal Procedure, 1973, to furnish information to the police and consequently, demand the duty to be discharged by the police, registering FIR.

21. Learned counsel for the petitioner further submitted that the petitioner has filed an interlocutory application, enclosing a copy of the complaint dated 9.7.2020 submitted to the Director General of Police, Thiruvananthapuram, and other respondents, for registration of an FIR in respect of gold smuggling scam, Sprinklr, BevQ App., e-Mobility Consultancy scams, in which the Hon'ble Chief Minister, respondent No.2 and others are alleged to have committed offences under the Prevention of Corruption Act and Indian Penal Code.

22. Responding to the above submissions and inviting our attention to the DO letters dated 8.7.2020 sent to the Hon'ble Prime Minister, as well as to the Finance Minister, Government of India, respectively, Mr. C. P. Sudhakara Prasad, learned Advocate General, submitted that no sooner an attempt to smuggle huge quantity of gold was brought to the notice of the Government, the Hon'ble Chief Minister has immediately sent a letter dated 8.7.2020 stating that the said allegation has serious implications undermining the economy of a nation and, therefore, requested a thorough investigation in more than one angle. The Hon'ble Chief Minister has also

requested that an effective and coordinated investigation into the above said incident by all the Central Agencies concerned is the need of the hour. The Hon'ble Chief Minister has also stated that the scope of the probe should cover all aspects from the source to the end utilization and every link of this crime should be unravelled so that such incidents do not recur.

23. Learned Advocate General further submitted that the State has assured to provide all necessary assistance and support to the agencies involved in the investigation. Thus, he had sought for immediate intervention for an effective and coordinated investigation to the above said incident.

24. Learned Advocate General further submitted that thereafter, the Central Government has issued an order directing the National Investigation Agency to investigate and that consequently, an FIR has been registered and investigation is being conducted. Referring to Section 8 of the NIA Act, 2008, learned Advocate General submitted that the National Investigation Agency, while investigating any Scheduled Offence, may

also investigate any other offence, which the accused is alleged to have committed, if the offence is connected with the Scheduled Offence.

25. Referring to the averments in paragraph (3) of the Statement of facts, learned Advocate General submitted that except to state that Sprinklr scam was succeeded by two other scams, viz., BevQ App and e-Mobility Consultancy scams, no details have been given in the statement of facts about the specific instances of involvement of, either the Hon'ble Chief Minister or others. According to the learned Advocate General, the averments are bereft of any materials and do not fall within the definition of corruption and on these bald averments, even an FIR cannot be registered.

26. Referring to the averments in paragraph (13) of the Statement of facts, learned Advocate General submitted that the petitioner has solely relied on the allegations made by the Leader of the Opposition, respondent No.15, in the print and electronic media, and sought for registration of FIR. He further submitted that no document supporting the contention that the Leader of the Opposition, respondent No.15, has made

a statement in the electronic media, has been filed along with the statement of facts submitted by the petitioner.

27. Referring to paragraph (19) of the Statement of facts, learned Advocate General submitted that it is the candid admission of the petitioner that he has no evidence in support of his petition, except relying on the words of the Leader of the Opposition in the State Assembly and other leaders of the opposition parties. It is also his contention that even the petitioner is not very sure about the statement made by the Opposition Leader and on that basis, sought for registration of FIR.

28. Taking us through the other paragraphs of the Statement of facts, Mr. C.P.Sudhakara Prasad, learned Advocate General, submitted that the allegations are only relating to smuggling of gold and that NIA has already started investigating the crime. Insofar as other allegations are concerned, there is absolutely no material/document/evidence with the petitioner, even to *prima facie* substantiate the same.

29. Referring to sub-section (6) of Section 6 of the NIA Act, 2008, learned Advocate General submitted that if any direction has been given

under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence, shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

30. Referring to prayer No. l sought for by the petitioner, learned Advocate General submitted that the Central Government have already ordered the National Investigation Agency, respondent No.10, to conduct investigation and nothing survives insofar as the said prayer is concerned.

31. In respect of the other prayers sought for by the petitioner, directing registration of FIR, learned Advocate General reiterated that the petitioner has just mentioned the names of the alleged scams and there is absolutely no material or evidence alleging involvement of the Hon'ble Chief Minister or others mentioned in the statement of facts.

32. Learned Advocate General further submitted that though this Court observed that the writ petition instituted in the form of a person aggrieved is not correct, and directed that an affidavit satisfying requirements of the Rules of the High Court of Kerala, 1971 to be made,

except filing an affidavit under Rule 146A of the said Rules, petitioner has not changed the averments in the statement of facts. In this context, he referred to paragraph (2) of the Affidavit filed under Rule 146A of the Rules, 1971, wherein the petitioner has contended that averments in paragraphs (1) to (21) are based on his knowledge and legal contentions raised are upon the advice of his counsel. He also took us through the averments contained in paragraphs 8, 10 etc., wherein contentions that the writ petition is instituted, as a person aggrieved, still continued.

33. According to the learned Advocate General, except mentioning the name of the scams, no factual details are furnished by the petitioner. Allegations are vague and general, solely based on the statement of the Opposition Leader. Placing reliance on the decision of the Hon'ble Apex Court in **Laxmibai Kshetriya v. Chand Behari Kapoor and Ors.** reported in (1998) 7 SCC 469, learned Advocate General submitted that writ petition should not be entertained without proper pleadings and substantive material on record.

34. Learned Advocate General further submitted that for a writ of

mandamus to be entertained, it is fundamental that there must be a right, a demand, and consequently, failure of duty, by the authorities. According to him, the foundation of the petitioner's case is only the statement of the Opposition Leader, respondent No.15. He further submitted that what is handed over to this Court is not a complaint lodged by the petitioner, but it is only a legal notice issued by the petitioner's counsel to some of the respondents, to register an FIR. Legal notice cannot be treated as a complaint and, therefore, there is no demand and refusal on the part of the authorities in registering an FIR.

35. Relying on the decision of this Court in **Rajasthan State Industrial Development and Investment Corporation and Another** v. Diamond and Gem Development Corporation Ltd. and Another [2013 KHC 4116], learned Advocate General submitted that there must be a right under any Statute, a demand and refusal warranting exercise under Article 226 of the Constitution of India. It is further submitted that the writ court must take every effort to ensure from the averments as to whether there exists proper pleadings.

36. Referring to prayer No.1 in the writ petition, learned Advocate General submitted that petitioner has sought for a mandamus directing the State to handover investigation of gold smuggling scam, Sprinklr, BevQ app and e-mobility consultancy scams, in which the Hon'ble Chief Minister and the 2nd respondent are allegedly involved, to the CBI/NIA, and to conduct a fair and impartial investigation, and the same cannot be ordered in a writ petition.

37. On the parameters required to be satisfied for a CBI investigation, the Advocate General relied on the decision in **Kunga Nima Lepcha and Ors. v. State of Sikkim and Ors.** reported in (2010) 4 SCC 513. That apart, reliance has been made to the decision of the Hon'ble Apex Court in **Common Cause (A Registered Society) and Ors. v. Union of India (UOI) and Ors.** [(2017) 11 SCC 731] to substantiate his contention that the PIL, on the averments set out in the statement of facts, is liable to be dismissed.

38. Inviting our attention to the averments in paragraph (11) of the Statement of facts, learned Advocate General further contended that the

allegation is only with respect to smuggling and appointment of 5th respondent - Ms. Swapna Suresh, and there are no materials, relevant or cogent, alleging involvement of the Hon'ble Chief Minister, on the above.

39. Learned Advocate General further submitted that even taking it for granted that a complaint has been filed before the police, but not registered, writ of mandamus is not the appropriate remedy and the issue, as to whether the provisions under the Cr.P.C. have to be followed or not, is answered by the Hon'ble Apex Court in **Sakiri Vasu v. State of U.P. and Ors.** [(2008) 2 SCC 409], wherein it is held that writ petition under Article 226 of the Constitution of India is not the appropriate remedy.

40. Placing reliance on the decision of the Hon'ble Apex Court in the State **of West Bengal and Ors. v. The Committee for Protection of Democratic Rights, West Bengal and Ors.** [(2010) 3 SCC 571], learned the Advocate General submitted that necessary and proper facts are not pleaded and the writ petition is politically motivated, based on the alleged statement of the Opposition Leader. On the above contentions, he submitted that the writ petition does not merit any consideration.

41. By way of reply, Mr. Mathews J. Nedumpara, learned counsel for the petitioner, submitted that when the Hon'ble Chief Minister himself has written letter dated 8.7.2020 to the Hon'ble Prime Minister of India and the Hon'ble Minister of Finance, Government of India, that the allegations have serious implications and have to be investigated in more than one angle, that statement itself would amount to an admission that there is an offence committed. If the allegations are so serious, involving an effective and coordinated investigation, by all the Central Agencies concerned, the State Government ought to have registered an FIR and that would have been a *bona fide* action. Instead, Government has refused to do so. Letter dated 8.7.2020 addressed to the above, is only a ruse to the failure in discharging duty. Till date, no FIR has been registered.

42. On the submission of the learned Advocate General that the petitioner in the statement of facts has stated that he cannot believe even the version of the Opposition Leader, in his reply, Mr. Mathews J. Nedumpara, learned counsel for the petitioner, submitted that it is not the case of the petitioner that he did not believe the statement of the Leader of

the Opposition, but the petitioner only made a statement that if the statement of the Opposition Leader is true, then it requires a thorough investigation by registering an FIR. In this context, he referred to paragraph (19) of the Statement of facts.

43. It is also his submission that in a matter of the above magnitude and nature, petitioner cannot be expected to produce evidence, which is in the custody of the police and other departments, and that is why the petitioner has sought for an interim prayer directing Inspector General of Police/the Director, Vigilance and Anti Corruption Cell, to take custody and/or produce before this Court as and when required, the entire papers, proceedings, correspondence and communications, all electronic data, including records of video and telephonic calls concerning the aforesaid scams, and in particular, the gold smuggling scam, involving respondent Nos.2 and 5.

44. According to the learned counsel for the petitioner, if it is a civil case, it is his bounden duty to produce the material, and that the burden casts on him. Whereas, in the case on hand, all the documents are

in the exclusive domain of the Government and it is preposterous on the part of the learned Advocate General, to require the petitioner to produce the material documents, thereby converting the instant writ petition as a civil case. According to him, such an exercise is not required when the petitioner has sought action on the principles of '*qui tam action*'- *qui tam pro domino rege quam pro se ipso in hac parte sequitur*.

45. On the aspect of reference to good faith, learned counsel for the petitioner submitted that the instant writ petition cannot be said to be an abuse and, therefore, the decisions relied on by the learned Advocate General are not applicable.

46. Once again, referring to paragraph (123) of the ***Lalitha Kumari's*** case (cited supra), learned counsel for the petitioner submitted that it is simple and the only premise of the petitioner is, as to why FIR has not been registered, despite submission of complaint on 28.03.2020, and why a preliminary enquiry has not been conducted.

47. Learned counsel for the petitioner further submitted that, if reference is made to Section 8 of the NIA Act, 2008, to contend that all

other offences can be investigated, State could have made it specifically in writing that all the scams and corruption charges can also be included in the investigation by NIA, which they have not done. He reiterated that NIA can investigate only with reference to the offences mentioned in the enactments to the schedule.

48. According to the learned counsel, scams involve investigation by multiple agencies. When the Hon'ble Chief Minister himself has written a letter to the Hon'ble Prime Minister, as well as the Hon'ble Minister of Finance and Corporate Affairs, considering the nature and magnitude of the offences involved, remedy under Article 226 of the Constitution of India is maintainable, since the police have refused to register FIR. According to the learned counsel, each case has to be considered and decided on its own merits. At this stage, he submitted that the prayer of the petitioner is only with regard to registration of an FIR.

49. On the aspect that a specific complaint has not been filed by the petitioner and that lawyer's notice dated 9.7.2017 cannot be treated as a complaint, referring to Order I Rule 8(5) of the Code of Civil Procedure,

learned counsel for the petitioner submitted that he is an agent of the petitioner and, therefore, competent to lodge a complaint. Learned counsel further submitted that he can sue or defend a litigant.

50. Replying to the submission of the learned Advocate General that the alleged defects pointed out in the averments continued even after the observation of this Court that the instant writ petition ought to have been instituted as a public interest writ petition, learned counsel for the petitioner submitted that the objections are technical in nature and should not be taken as a ground to reject the prayers sought for by the petitioner. If there is any defect, within a given time, the petitioner can even correct the same. On above said contentions, petitioner sought for registration of FIR.

51. Mr. Arjun Ambalapatta, learned Senior Public Prosecutor for National Investigation Agency (respondent No.10), submitted that acting on a letter dated 8.7.2020, the Central Government has issued an order directing investigation by the National Investigation Agency, and a case in Crime No. R.C.2/2020 has been registered under Sections 16, 17 and

18 of the Unlawful Activities (Prevention) Act, 1967, and the investigation is in the preliminary stage.

52. Mr. Jaishankar V. Nair, learned counsel for the Customs/ Central Government, submitted that as regards the offences under the provisions of the Customs Act, 1962, investigation is taken up by the Customs (Preventive) Commissionerate, Cochin, in O.R. No.7 of 2020. He further submitted that two agencies are now investigating the matters relating to the alleged commission of offences under the Customs Act, 1962 and NIA Act, 2008.

53. On the pleadings, submissions, and the decisions relied on by the learned counsel for the respective parties, we deem it fit to address the following points:

a) Whether the petitioner, as a matter of right, in a writ petition can seek for registration of FIR. Is there any remedy available to the petitioner to ventilate his grievance, when the police does not register an FIR and whether the writ petition is maintainable?

b) Whether the petitioner can seek a direction to handover investigation to CBI or any other Central Agency as a matter of right?

c) Whether the petitioner can seek registration of a crime by the Director of National Investigation Agency or the Director, CBI, respondent Nos.10 & 11 respectively?

d) Even taking it for granted that the prayers are maintainable on the pleadings and materials, whether the petitioner has made out a strong case for issuing any directions as prayed for?

e) Whether the petitioner has made out a case for issuance of a writ of mandamus?

54. From the prayers extracted above, it could be deduced that at one stage, in respect of smuggling of gold, Sprinklr, BevQ App and e-Mobility Consultancy scams, in prayer (3), the petitioner has sought for a direction to respondents 12, 13 and 16, viz., the CBI, NIA and the Crime Branch, to register an FIR, and in respect of very same allegations, the petitioner has sought for a direction against the respondents 12 and 13 - Central Agencies, and also included the Additional Director General of Police, Crime Branch, Trivandrum, respondent No.16, to handover investigation of Sprinklr, BevQ App and e-Mobility Consultancy scams to the CBI/NIA, and conduct an effective, meaningful, independent and impartial enquiry into the smuggling of gold to India, by abusing the

diplomatic channel. However, no investigation has been ordered by the police and, therefore, the question of handing over investigation to the above said agencies does not arise.

55. Prayer No.2 is to direct the Director General of Police, Trivandrum (respondent No.12), the Director, Vigilance and Anticorruption Bureau, Trivandrum, (respondent No.13), and the Additional Director General of Police, Crime Branch, Trivandrum (respondent No.16), to register an FIR based on the allegation that Sri. M. Shivashankaran, Senior Officer of the Indian Administrative Service, Sri. Pinarayi Vijayan, Hon'ble Chief Minister of Kerala, and/or those who are close to them and involved in smuggling of gold to India using the diplomatic channel and the Sprinkler, BevQ App and e-Mobility Consultancy scams, and to conduct an effective, meaningful, independent and impartial enquiry, unmindful of the fact that those who could be involved in the crimes are in the helm of affairs of the State, and/or to further direct the State and Central Governments to facilitate such an investigation, nay, direct the State Government to handover the investigation to the CBI.

56. Letters dated 8.7.2020 addressed to the Hon'ble Prime Minister and Hon'ble Minister of Finance and Corporate Affairs, New Delhi, are extracted hereunder:

"GOVERNMENT OF KERALA
Pinarayi Vijayan
CHIEF MINISTER

D.O.No.1130/2020/CM, Dated 08.07.2020

Dear Shri. Modi ji,

I invite you kind attention to the seizure of about 30 kg of gold by the Customs Officials, Trivandrum International Airport on July 5, 2020. The fact that the attempt to smuggle huge quantity of gold was concealed in diplomatic baggage makes the matter extremely serious. It is learnt that customs officials are conducting inquiry into the incident. The case has serious implications as this undermines the economy of the Nation. In fact, it has more than one angle warranting a thorough investigation.

It is requested that an effective and coordinated investigation into this incident by all concerned is the need of the hour. The scope of the probe should cover all aspects from the source to the end utilization. Every link of this crime should be unravelled so that such incidents do not recut.

I assure you that the State Government will provide all necessary assistance and support to the agencies involved in the investigation.

I request your immediate intervention for an effective and coordinated investigation into this crime.

Yours Sincerely,
Sd/-
(Pinarayi Vijayan)

Shri. Narendra Modi,
Hon'ble Prime Minister of India,
152, South Block,
Raisina Hill, New Delhi-110 001."

"**D.O. No.1131/2020/CM, Dated 08.07.2020**

Dear Smt. Nirmala Sitharaman ji,

I invite your kind attention to the seizure of about 30 kg of gold by the Customs Officials Trivandrum International Airport on July 5, 2020. The fact that the attempt to smuggle huge quantity of gold was concealed in diplomatic baggage makes the matter extremely serious. It is learnt that customs officials are conducting inquiry into the incident. The case has serious implications as this undermines the economy of the Nation. In fact, it has more than one angle warranting a thorough investigation.

In this regard I have addressed a letter to the Hon'ble Prime Minister requesting an effective and coordinated investigation into this incident.

I have assured the Hon'ble Prime Minister that the State Government will provide all necessary assistance and support to the agencies involved in the investigation.

A copy of the letter is enclosed for your kind perusal and necessary action.

Yours Sincerely

Sd/-
(Pinarayi Vijayan)

Smt. Nirmala Sitharaman,
Hon'ble Minister of Finance and Corporate Affairs,
Government of India,
134, North Block,
New Delhi - 110 011."

57. Letter dated 9th July, 2020, issued by the Under Secretary to the Government of India, Ministry of Home Affairs, to the Director General NOIA, New Delhi, Chief Secretary, Government of Kerala and to the DGP, Kerala is extracted hereunder:

"No.11011/49/2020NIA
Government of India
Ministry of Home Affairs
CTCR Division
****

North Block, New Delhi
Dated the 9th July, 2020

ORDER

Whereas, the Central Government has received information regarding registration of O.R. No.07/2020 of Customs (Preventive) Commissionerate, Cochin, relating to seizure of 30 kg of 25 karat gold worth Rs.14,82 crores at Trivandrum International Airport on 5th July, 2020 by the Customs officers.

And whereas, the aforesaid consignment was camouflaged in diplomatic baggage from UAE that is exempted from inspection as per the Vienna Convention.

And whereas, the above consignment was to be received by one Shanth P.S. S/o. Shn Sadana Kumar, MUDRA, TC65/2055, HRA-48, Thiruvallom, Thiruvananthapuram, Kerala who had worked in the UAE Consulate earlier as Public Relations Officer in complicity with Swapna Suresh, Sandeep Nair & others.

And whereas, initial enquiries have revealed that the proceeds of the smuggled gold could be used for financing terrorism in India.

And whereas, section 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 are attracted in this case.

And whereas, the Central Government is of the opinion that provisions of Scheduled Offence under National Investigation Agency Act, 2008 are attracted in this case and having regard to the gravity of the offence and its national and international linkages, it is required to be investigated by the National Investigation Agency in accordance with the National Investigation Agency Act, 2008.

Now, therefore, in exercise of the powers conferred under sub-section (6) of Section 6 read with section 8 of the National Investigation Agency Act, 2008, the Central Government hereby directs the National Investigation Agency to take up investigation of the aforesaid case.

Sd/-
(Dharmender Kumar)
Under Secretary to the Government of India

To

1. The Director General, National Investigation Agency, CGO Complex, Lodha Road, New Delhi
2. Chief Secretary, Government of Kerala
3. DGP, Kerala”

58. National Investigation Agency Act, 2008 is an act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations, and for matters connected therewith or incidental thereto. Chapter III of the Act deals with investigation by the National Investigation Agency and Section 6 of the Act reads thus:

> "**6. Investigation of Scheduled Offences**.- (1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.
>
> (2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.
>
> (3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other

sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation."

59. Section 8 of the Act deals with the power to investigate offences and the same reads thus:

> "**8. Power to investigate connected offences**.- While investigating any Scheduled Offence the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence."

60. As per Section 2(1)(g) - Scheduled offence in the said Act, unless the context otherwise requires, means an offence specified in the schedule. The Schedule to Section 2(1)(g) of the Act reads thus:

> "1. The Atomic Energy Act, 1962 (33 of 1962);
>
> 2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
>
> 3. The Anti-Hijacking Act, 1982 (65 of 1982);
>
> 4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);
>
> 5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
>
> 6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
>
> 7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
>
> 8. Offences under—
>
> (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
>
> (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860)."

61. Let us consider the allegations made against the Hon'ble Chief Minister, individually and jointly with Mr. M. Shivshankaran, IAS, Secretary to the Government of Kerala, Department of Information Technology, Trivandrum. In paragraph (2), the petitioner has stated that in the month of April, 2020, he had instituted a petition under Article 226 of the Constitution of India, since the police failed to register an FIR against respondents 1 & 2, concerning the Sprinklr scam, in spite of his written complaint asserting that the respondents have abused their official position and power, entailing in unjust enrichment, which clearly constituted an offence punishable under the various provisions of Prevention of Corruption Act, Indian Penal Code, and the I.T. Act.

62. In paragraph (4), the petitioner has stated that Sprinklr scam was succeeded by two other scams viz., BevQ App. and E-mobility consultancy scams. If the allegations of the 16th respondent, Leader of the Opposition, are true and to be believed, they constitute corruption and crime of a scale unheard in the history of Kerala by any political leader/bureaucrats.

63. In paragraph (6), it is further alleged that Ms. Swapna Suresh was the girl Friday of the 2nd respondent, Principal Secretary to the Hon'ble Chief Minister, and she was involved in the conduct of major events like the programme arranged to honour the Sheikh of Sharjah on 24th September, 2017. It is further alleged that she is a friend of Speaker P.Sreeramakrishnan and it was the Speaker, who inaugurated the office of a company with which Swapna Suresh is associated.

64. It is further alleged that the Hon'ble Chief Minister knows her very well, that too of her background, for the Hon'ble Chief Minister is provided with intelligence inputs of those working in his office and those who closely interact with him.

65. It is further alleged that the Hon'ble Chief Minister, though may not be directly involved nitty-gritties of transactions involving companies of questionable credentials like Sprinklr, PwC, etc., he certainly is fully aware of the business worth hundreds of crores of rupees which was building and further promoted by abusing his official position as the Hon'ble Chief Minister of Kerala.

66. In paragraph (7), the petitioner has stated that the truth of the allegations regarding corruption, abuse of office, smuggling and other illegal activities, involving international mafia, of which the Hon'ble Chief Minister's office is alleged to be nerve center, is required to be investigated effectively and all those, who are involved with the offence, are liable to be brought to book.

67. In the grounds, the petitioner has stated that the Sprinklr, BevQ App and e-Mobility Consultancy scams, in which the 2nd respondent, Sri. M. Shivashankaran, IAS is allegedly involved, and it is alleged that the 1st respondent, Hon'ble Chief Minister of Kerala, is fully aware that, it amounts to offences punishable under Section 13 of the Prevention of Corruption Act, 1988 and Sections 405, 415, 420 and 378 of the Indian Penal Code, Customs Act, and even COFEPOSA Act, for, the said transfer was in furtherance of a design to unjustly enrich, nay, to be gratified at the cost of revenue of the State. These scams pose a threat even to national security and require immediate registration of an FIR in respect of these scams, and a meaning and effective investigation by the

CBI, NIA, Revenue and Customs authorities, in full cooperation with the State Police.

68. Let us consider the individual allegations made against the 2nd respondent Mr. M. Shivshankaran, IAS.

69. Petitioner in paragraph (8) has stated that he is acting on his own, in the enforcement of his rights, seeking a writ in the nature of mandamus to compel the police and other law enforcing authorities, to discharge their duties, namely, investigation into various criminal offences allegedly committed by a gang of people, of which the 2nd respondent is alleged to be a kingpin, and the gold smuggling scam is last in the long chain of corrupt deeds.

70. In paragraph (8), the petitioner has stated that the 2nd respondent was removed from the office of the Secretary to the Hon'ble Chief Minister's office and the Principal Secretary to the IT Department, in the light of the allegation that the 5th respondent, his girl Friday, whom he had allegedly appointed, exercising his discretionary powers as the Operational Manager at KSITIL, was involved in smuggling of 30 kgs of

gold through the diplomatic channel.

71. Petitioner has further stated that the scams in which the Hon'ble Chief Minister and his most trusted aid Shri M.Shivashankaran, a senior IAS officer, are allegedly involved, are offences of grave nature, and involve international smuggling mafia, underworld.

72. Insofar as prayer No.1 is concerned, the Hon'ble Chief Minister, Government of Kerala has already written a letter dated 8.7.2020 to the Hon'ble Prime Minister of India and the Hon'ble Minister of Finance and Corporate Affairs, requesting for an effective and coordinated investigation into the alleged incident. Accordingly, the Central Government, in exercise of their powers under Sections 6 and 8 of the National Investigation Agency Act, 2008, have passed an order dated 9.7.2020 directing the National Investigation Agency to take up investigation. A case in Crime No. R.C.2/2020 has been registered under Sections 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967, and the investigation is under progress. As regards the violations of provisions of the Customs Act, investigation has been taken up by the

Customs (Preventive) Commissionerate, Cochin, in O.R. No.7 of 2020. Even as per the version of learned counsel for the petitioner, Mr. Shivshankaran, IAS, Secretary to the Government, Department of Information Technology, has been summoned and interrogated. In both cases, two central agencies have already taken up investigation.

73. The other allegations pertain to Sprinklr, BevQ App, and e-Mobility Consultancy scams, where the family of the Hon'ble Chief Minister is alleged to have been involved. For the above said allegations, petitioner has solely relied on the statement of the Leader of the Opposition, respondent No.15, which is stated to have been made in the State Assembly, print and electronic media. As rightly pointed out by the learned Advocate General, no document has been produced by the petitioner along with the writ petition to substantiate the same. Even taking it for granted that such a statement is made, the question to be considered is whether that alone is sufficient to direct registration of FIR by the police?

74. It is the submission of the petitioner that in a matter of this

nature and magnitude, it is not possible for him to produce evidence, and that is why he has sought for an direction to the Inspector General of Police and/or the Director, Vigilance and Anti Corruption Cell, to take custody and/or produce before this Court as and when required, the entire papers, proceedings, correspondence and communications, all electronic data, including records of video and telephonic calls concerning the aforesaid scams, and in particular, the gold smuggling scam, involving respondent Nos.2 and 5.

75. In ***Lalitha Kumari*** (cited supra), relied on by the learned counsel for the petitioner, the Hon'ble Supreme Court at paragraphs 120 & 121 held thus:

> "120. In view of the aforesaid discussion, we hold:
>
> (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain

whether cognizable offence is disclosed or not.(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in

reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

121. With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits."

76. In **Aleque Padamsee and Others v. Union of India and Others** [(2007) 6 SCC 171], petitions therein were filed under Article 32

of the Constitution of India, 1950 (in short the 'Constitution'). The petitioners therein have approached the Court aggrieved by the inaction on the part of the official respondents, in not acting on the report lodged by two persons namely, Sumesh Ramji Jadhav and Suresh Murlidhar Bosle. Their basic grievance is that though commission of offences punishable under the Indian Penal Code, 1860 (in short the 'IPC') was disclosed, the police officials did not register the FIR and, therefore, directions should be given to register the cases and wherever necessary accord sanction in terms of Section 196 of the Code of Criminal Procedure, 1973 (in short the 'Code'). After considering the provisions of the Code of Criminal Procedure, 1973, and a catena of decisions, the Hon'ble Supreme court held thus:

> "5. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered

to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused. These aspects have been highlighted by this Court in **All India Institute of Medical Sciences Employees' Union (Reg) through its President v. Union of India and Ors.** [(1996) 11 SCC 582]. It was specifically observed that a writ petition in such cases is not to be entertained.

6. The above position was again highlighted in **Gangadhar Janardan Mhatre v. State of Maharashtra** [2004CriLJ4623], **Minu Kumari and Anr. v. State of Bihar and Ors.** [2006CriLJ2468], and **Hari Singh v. State of U.P.** [2006CriLJ3283].

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in **All India Institute of Medical Sciences's case** (supra) and re-iterated in **Gangadhar's case** (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in **All India Institute of Medical Sciences's case** (supra), **Gangadhar's case** (supra), **Hari Singh's** case (supra), **Minu Kumari's** case (supra) and **Ramesh Kumari's** case (supra), we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In **Ramesh Kumari's case** (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re- iterated in **Lallan Chaudhary and Ors. v. State of Bihar**

> AIR2006SC3376 . The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), **Gangadhar's case** (supra), **Hari Singh's case** (supra) and **Minu Kumari's cas**e (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24.2.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions."

77. In **Sakiri Vasu v. State of U.P. and Ors.** [(2008) 2 SCC 409], the Hon'ble Supreme Court considered several issues, inter alia, as to whether power under Articles 32 and 136 of the Constitution of India could be invoked, to order investigation by CBI, and whether High Court, in exercise of powers under Article 226 of the Constitution of India and Section 482 of the Cr.P.C, can order investigation, where an alternative remedy under Section 154(3) r/w. Section 36 or Section 156(3) or Section 200 of the Cr.P.C has not been exhausted. The Hon'ble Apex Court has also considered when the powers under Articles 32, 136, and 226 of the Constitution of India can be exercised by ordering investigation by CBI, and the remedies open to an aggrieved person against improper

investigation; interference in the process of investigation.

78. Facts of the decision in ***Sakiri Vasu*** (cited supra), in nutshell are that the finding of Court of Inquiry conducted by the Army that the appellant's son was murdered and not committed suicide, and by filing a writ petition, sought for a CBI investigation. High court rejected the prayer. Addressing the plea, considering the provisions of the Code of Criminal Procedure, and decisions answering the issues 1 and 2, at paragraphs 10 to 28, the Hon'ble Apex Court held thus:

> "10. It has been held by this Court in *CBI and Anr. v. Rajesh Gandhi and Anr*. (1997 CriLJ 63) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.
>
> 11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that

either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in Mohd. Yousuf v. Smt. Afaq Jahan and Anr. [2006 CriLJ 788], this Court observed:

> "The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because

> that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

13. The same view was taken by this Court in Dilawar Singh v. State of Delhi [2007CriLJ4709] (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

14. Section 156(3) states:

> "Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

The words `as above mentioned' obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the Police Station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power of the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide State of Bihar v. A.C. Saldanna [1980CriLJ98].

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it

impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his 'Statutory Construction' (3rd edn. Page 267):

> "If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission."

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21. An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in ITO, Cannanore v. M.K. Mohammad Kunhi (AIR 1969 SC 430), this Court held that the income tax appellate tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.

22. Similar examples where this Court has affirmed the doctrine of implied powers are Union of India v. Paras Laminates [1990] 186 ITR 722 (SC), Reserve Bank of India v. Peerless

General Finance and Investment Company Ltd. [1996] 1 SCR 58, Chief Executive Officer and Vice Chairman Gujarat Maritime Board v. Haji Daud Haji Harun Abu (1996) 11 SCC 23, J.K. Synthetics Ltd. v. Collector of Central Excise 1996 (86) ELT 472(SC), State of Karnataka v. Vishwabharati House Building Co-op Society [2003] 1 SCR 397 etc.

23. In Savitri v. Govind Singh Rawat (1986 CriLJ 41), this Court held that the power conferred on the Magistrate under Section 125 Cr.P.C. to grant maintenance to the wife implies the power to grant interim maintenance during the pendency of the proceeding, otherwise she may starve during this period.

24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is

not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the

investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

79. As to whether, proper investigation is done and on monitoring, the Hon'ble Apex Court at paragraphs 29 and 30 in ***Sakiri Vasu*** (cited supra), ordered thus:

"29. In Union of India v. Prakash P. Hinduja and Anr. (2003 CriLJ 3117), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision

would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).

30. It may be further mentioned that in view of Section 36 Cr.P.C. if a person is aggrieved that a proper investigation has not been made by the officer-in-charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer-in-charge of the police station and such superior officer can, if he so wishes, do the investigation vide CBI v. State of Rajasthan and Anr. (2001 CriLJ 968), R.P. Kapur v. S.P. Singh [1961] 2 SCR 143 etc. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence registered at a police station vide State of Bihar v. A.C. Saldanna (supra)."

80. On the aspect as to when the Supreme court and High Court under Articles 136 or 226 of the Constitution can order investigation by

CBI, the Hon'ble Apex Court at paragraphs 31 and 33 in ***Sakiri Vasu*** (cited supra), ordered thus:

> "31. No doubt the Magistrate cannot order investigation by the CBI vide CBI v. State of Rajasthan and Anr. (Supra), but this Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.
>
> "33. In Secretary, Minor Irrigation & Rural Engineering Services U.P. and Ors. v. Sahngoo Ram Arya and Anr. (2002 CriLJ 2942), this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation."

81. When there is a law and procedure envisaged under the Code of Criminal Procedure, the question whether the registration of a criminal

case under Section 154(1) of the Cr.P.C. *ipso facto* warrants setting in motion of an investigation in Chapter XII Cr.P.C. is provided by Sections 157(1) proviso, and 157(2) of the Cr.P.C. Section 156(3) Cr.P.C. enjoins a discretionary power on a Magistrate under Section 190 of the Cr.P.C., to order investigation by a Police Officer. At this juncture, we deem it fit to consider what Sections 156(3), 157(1) proviso, and 157(2) of the Cr.P.C state.

> "**156. Police officer' s power to investigate cognizable case**.
> (1) xxxxx
> (2) xxxxx
> (3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned."
>
> **157. Procedure for investigation preliminary inquiry**.
> (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being

below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender;

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

82. In this context, this Court deems it fit to consider the decision of the Hon'ble Apex Court in **Anandwardhan and Another v.**

Pandurang and others, reported in (2005) 11 SCC 195, wherein it is held as follows:

> "We do not wish to make any comments about the investigation of the case or the result of the investigation. The law provides that if the police fails to investigate a case arising from a first information report lodged before it disclosing commission of a cognizable offence, it is open to the informant/ complainant to move the Magistrate concerned for appropriate order under Section 156 CrPC, or may file a complaint and obtain appropriate orders from him for issuance of process against the accused for trial. If the grievance of the respondent was that the police was not properly investigating his case, or that the report made by the police was wrong or based on no investigation whatsoever, it was open to him to move the Magistrate concerned. Having failed to do so, he found the novel device of moving the High Court under Article 227 of the Constitution. Such a writ petition should not have been entertained by the High Court when remedy is provided to the aggrieved party under the Code of Criminal Procedure in accordance with the procedure established by law."

83. In **Divine Retreat Centre v. State of Kerala and others,** reported in AIR 2008 SC 1614, no information was given to the police by any informant, alleging commission of any cognizable offence by the

appellant and the persons associated with the appellant institution. It is a peculiar case of its own kind where an anonymous petition was sent directly in the name of a learned Judge of the Kerala High Court, which was *suo motu* taken up as a proceeding under Section 482 of the Code. The Hon'ble Apex Court considered several issues, including the scope and nature of Section 482 of Cr.P.C, and, at para 42, held thus:

> "42. Even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Sections 190, 200 Code of Criminal Procedure but a writ petition in such a case is not to be entertained. This Court in **Gangadhar Janardan Mhatre v. State of Maharashtra** (2004) 7 SCC 768: 2005 SCC (Cri.) 404 held: (SCC pp. 774-75, para 13).
>
> > "13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facies case, instead of issuing process to the accused, he is under

> Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/ evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in **All India Institute of Medical Sciences Employee's Union (Regd.) v. Union of India** (1996) 11 SCC 582: 1997 SCC (Cri) 303. It was specifically observed that a writ petition in such cases is not to be entertained."

84. When the High Court can interfere, in excise of powers under Article 226 of Constitution of India, the Hon'ble Apex Court in ***Divine Retreat Centre*** (cited supra), at para 41, held thus:

> "41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and noncompliance with the provisions falling under Chapter XII

> of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code."

85. It is worthwhile to consider the decision in **All India Institute of Medical Sciences Employees' Union through its President v. Union of India (UOI) and Ors.,** reported in 1996 (11) SCC 582, referred to in **Divine Retreat Centre** (cited Supra), wherein a special leave petition was filed against the order of the Delhi High Court on May 14, 1996 in CWP No. 1946/96 directing institution proceedings against one, Dr. S.K. Kacker, former Director of the All India Institute of Medical Sciences for the alleged cognizable offence punishable under Section 409, Indian Penal Code. The Hon'ble Division Bench refused to issue mandamus to the police to investigate into the allegations made against the said doctor. The Hon'ble Supreme Court, at paragraphs 3 to 6, held thus:

> "3. The Code of Criminal Procedure, 1973 (for short, the 'Code') prescribes the procedure to investigate into the cognizable offences defined under the Code. In respect of cognizable offence, Chapter XII of the Code prescribes the procedure:

information to the police and their powers to investigate the cognizable offence. Sub-section (1) of Section 154 envisages that "every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant: and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf," On such information being received and reduced to writing, the officer in charge of the police station has been empowered under Section 156 to investigate into the cognizable cases. The procedure for investigation has been given under Section 157 of the Code, the details of which are not material. After conducting the investigation prescribed in the manner envisaged in Chapter XII, charge--sheet shall be submitted to the court having jurisdiction to take cognizance of the offence. Section 173 envisages that: (1) Every investigation under this Chapter shall be completed without unnecessary delay. (2) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report in the form prescribed by the State Government giving details therein. Upon receipt of the report, the Court under Section 190 is empowered to take cognizance of the offence. Under Section 173(8), the investigating officer has power to make further investigation into the offence.

4. When the information is laid with the police but no action in that behalf was taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to inquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the concerned police to investigate into the

> offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complain/ evidence recorded prima facie discloses offence, he is empowered to take cognizance of the offence and would issue process to the accused.
>
> 5. In this case, the petitioner had not adopted either of the procedure provided under the Code. As a consequence, without availing of the above procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence. The High Court, therefore, though for different reasons, was justified in refusing to grant the relief as sought for.
>
> 6. The special leave petition is accordingly dismissed. It, however, does not preclude the petitioner to follow either of the procedure as indicated above, if so advised and deemed appropriate."

86. In **Kunga Nima Lepcha and Ors. v. State of Sikkim and Ors.** (cited supra), a writ petition was instituted by way of Public Interest Litigation under Article 32 of the Constitution of India, the petitioners therein have levelled some allegations against an incumbent, Hon'ble Chief Minister of the State of Sikkim, who was impleaded as respondent No. 2 therein. The crux of the allegations is that he has misused his public office to amass assets, disproportionate to his known sources of income.

The petitioners have further alleged that respondent No.2 has misappropriated a large volume of public money at the cost of Government of India and Government of Sikkim. The prayers sought for by the petitioners were as follows:

> "(a) issuance of an appropriate writ in the nature of Mandamus commanding the Director, Central Bureau of Investigation to investigate the awarding of government contracts and/or work orders by the Respondent No. 1 State of Sikkim during the tenure of the Respondent No. 2 as the Chief Minister of the State of Sikkim viz a viz amassing of huge assets and/or wealth by the Respondent No. 2 and his relatives with a direction upon it to submit its report before this Hon'ble Court within a time frame fixed by this Hon'ble Court;
>
> (b) issuance of an appropriate writ in the nature of mandamus commanding the Director, Central Bureau of Investigation to investigate the matter against the Respondent No. 2, his relatives and other guilty officials and take appropriate legal action by way of registration of FIR under the general provisions of law and the provisions of Prevention of Corruption Act, 1988;
>
> (c) order for rule nisi in terms of the prayers above;
>
> (d) pass such further order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper."

87. The Hon'ble Apex Court, after considering the above prayers, in ***Kunga Nima Lepcha*** (cited supra), held thus:

"13. However, the remedies evolved by way of writ jurisdiction are of an extraordinary nature. They cannot be granted as a matter of due course to provide redressal in situations where statutory remedies are available. It is quite evident that the onus is on the petitioners to demonstrate a specific violation of any of the fundamental rights in order to seek relief under writ jurisdiction.

14**.** In the present petition, the petitioners have made a rather vague argument that the alleged acts of corruption on part of Shri Pawan Chamling amount to an infringement of Article 14 of the Constitution of India. We do not find any merit in this assertion because the guarantee of "equal protection before the law" or "equality before the law" is violated if there is an unreasonable discrimination between two or more individuals or between two or more classes of persons. Clearly, the alleged acts of misappropriation from the public exchequer cannot be automatically equated with a violation of the guarantee of "equal protection before the law".

15. Furthermore, we must emphasis the fact that the alleged acts can easily come within the ambit of statutory offences such as those of "possession of assets disproportionate to known sources of income" as well as "criminal misconduct" under the Prevention of Corruption Act, 1988. The onus of launching an investigation into such matters is clearly on the investigating agencies such as the State Police, Central Bureau of Investigation (CBI) or the

Central Vigilance Commission (CVC) among others. It is not proper for this Court to give directions for initiating such an investigation under its writ jurisdiction.

16. While it is true that in the past, the Supreme Court of India as well as the various High Courts have indeed granted remedies relating to investigations in criminal cases, we must make a careful note of the petitioners' prayer in the present case. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific violation of fundamental rights is shown, which could be the consequence of apathy or partiality on the part of investigating agencies among other reasons. In some cases, judicial intervention by way of writ jurisdiction is warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in the domain of the executive and it is up to the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation.

17. It must also be borne in mind that there are provisions in the Code of Criminal Procedure which empower the courts of first

instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for the writ courts to interfere with criminal investigations in the absence of specific standards for the same.

> "18. Hence, it is our conclusion that the petitioners' prayer cannot be granted. This Court cannot sit in judgment over whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a constitutional court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of this Court may have far-reaching persuasive effect on the court which may ultimately try the accused. It is always open to the petitioners to approach the investigative agencies directly with the incriminating materials and it is for the investigative agencies to decide on the further course of action. While we can appreciate the general claim that the efforts to uncover the alleged acts of corruption may be obstructed by entrenched interests, in this particular case the petitioners would be well advised to rely on the statutory remedies. It is only on the exhaustion of ordinary remedies that perhaps a proceeding can be brought before a writ court and in any case the High Court of Sikkim would be a far more appropriate forum for examining the allegations made in the present petition."

88. In **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage** [(2016) 6 SCC 277], by the order impugned therein, the Hon'ble Bombay High Court, at paragraph 9 of its order, changed the Investigating Officer and appointed a Special Investigating Officer, to investigate into the alleged offence. Testing the correctness of the same, an appeal was filed in the Hon'ble Apex Court, following the ***Sakiri Vasu's*** *case* (cited supra)**.** The Hon'ble Apex Court, at paras 8 to 11, held thus:

> "8. This Court has held in **Sakiri Vasu v. State of U.P. and Ors.**, reported in AIR 2008 SC 907, that if a person has a grievance that his F.I.R. has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the concerned Magistrate Under Section 156(3), Code of Criminal Procedure. If such an application Under Section 156(3), Code of Criminal Procedure. is made and the Magistrate is, prima facie, satisfied, he can direct the F.I.R. to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the Investigating Officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu's case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other

> work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the concerned Magistrate Under Section 156(3), Code of Criminal Procedure, and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.
>
> 9. In view of the settled position in Sakiri Vasu's case (supra), the impugned judgment of the High Court cannot be sustained and is hereby set aside. The concerned Magistrate is directed to ensure proper investigation into the alleged offence Under Section 156(3), Code of Criminal Procedure, and if he deems it necessary, he can also recommend to the S.S.P./S.P. concerned change of the Investigating Officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police).
>
> 10. Parties may produce any material they wish before the concerned Magistrate. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.
>
> 11. The Appeals are allowed in the above terms."

89. Though much reliance has been placed on ***Lalitha Kumari's*** *case* (cited supra), for registration of an FIR, in **Fr. Sebastian Vadakkumpadan v. Shine Varghese and Ors.** (2018 (3) KLT 177), a Hon'ble Division Bench of this Court held that ***Lalitha Kumari's*** *case* (cited supra) is not a precedent as to the procedure to be followed if, FIR is not registered. This Court, observed thus:

"50. One of the age-old maxims of organic law is that "[w]hat is not judicially presented cannot be judicially considered, decided, or adjudged.

51. As seen above, Lalita Kumari concerns the statutory compulsion on the police to register an FIR if they are presented with a written complaint making out a cognizable offence. It does not, at any rate, mandate that the aggrieved complainant could rush to High Court on the police's refusing to register a crime. Much less has it enabled the suitors to ignore the other statutory safeguards available to them and insist on a public-law remedy--especially a remedy under Art. 226, at that.

52. In other words, that issue--what are the courses open to a complainant if the police refuse to register an FIR?--has neither been raised nor answered in Lalita Kumari. Granted, sub silentio is an established legal doctrine in ascertaining the precedential value of a decision. But, unless the court left undecided an issue that ought to have been decided, this doctrine has no place.

53. Once an issue, though present by implication, has not been expressly dealt with and pronounced upon, the judgment on that issue remains sub silentio. Any issue, thus, rendered sub silentio cannot be treated as a precedent.

54. The concept of sub silentio has been explained by Salmond on Jurisprudence, 12th Edn. as follows:

> 11.[A] decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of Point A, which it considers and

> pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the Court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio.

55. In **B. Shama Rao v. UT of Pondicherry** AIR 1967 SC 1480, the Supreme Court has observed that a decision is binding not because of its conclusions but because of "its ratio and the principles, laid down therein". In **Arnit Das (1) v. State of Bihar,** (2000) 5 SCC 488 the Supreme Court has further observed that a decision not expressed, not accompanied by reasons, and not based on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. And this is the rule of sub silentio.

56. Lalitha Kumari, however, had no occasion to consider the issue we have now been confronted with: The alternative statutory remedies available to a complainant after the police's refusing to register an FIR. So we may safely conclude that Lalita Kumari does not obliterate, as it were, the alternative statutory remedies available to the aggrieved complainant.

…….

71. We have already discussed Lalita Kumari and extracted its holding. We have also held that Lalita Kumari has not dealt with the remedies available to an aggrieved person on whose complaint about a

cognizable offence the police have not acted. In fact, Lalita Kumari has only dealt with the issue whether the police could exercise their discretion and indulge in any preliminary enquiry before they register a crime. Therefore, the precedents speaking on a complainant's alternative remedies have not been set at naught. They still hold the field. That said, we must now examine the precedential position on that issue.

…….

75. The writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. The writ court, however, will not initiate an investigation. That function clearly lies in the domain of the executive, and it is up to the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation. It must also be borne in mind that there are provisions in the Code of Criminal Procedure which empower the courts of the first instance to exercise a certain degree of control over ongoing investigations. So held a three-Judge Bench of the Supreme Court in **Kunga Nima Lepcha v. State of Sikkim.** (2010) 4 SCC 513.

76. Clear and compelling are the judicial directions vis-à-vis an aggrieved person's approaching the High Court. But, disregarding the efficacious alternative-remedies under the Code, the complainants insisted that in Lalitha Kumari, a Constitution Bench has cleared the complainant's path of all statutory hurdles to approach the High Court, straight away.

76(a). That apart, on facts, Shine's conduct leaves much to be desired. The record reveals that he complained in writing to the police on 15th January 2018; he filed the

writ petition on 16th January, the next day. In fact, the learned Public Prosecutor maintains that Shine approached the police only on 16th January, the complaint bearing the date of 15th January notwithstanding. Without waiting even for the receipt, the Public Prosecutor further contends, Shine rushed to the Court.

76(b). Shine, however, counters the Public Prosecutor's assertion. He insists that he had approached the police on 15th January and that they refused to acknowledge his complaint. So Shine would have us view his approaching the Court the next day as perfectly justified--not to be taken amiss. Elementary is the legal principle that for a writ of mandamus to be maintained, the suitor must establish before the Court these: (a) that there existed a right; (b) that it has been infringed or threatened to be infringed; (c) that the person aggrieved complained to an authority; and (d) that the authority concerned refused to act.

76(c). Here, Shine seemed to have rushed to the Court posthaste, before the ink dried on the paper, as if it were. So, we find it hard to believe that there was proper demand and refusal, the essential elements for a mandamus.

77. Authoritative as Lalitha Kumari is, it has not disturbed the proposition of law that this Court while exercising its jurisdiction under Article 226 does ensure that the suitor has no other efficacious, alternative remedy. So the precedential value of Aleque Padamsee, All India Institute of Medical Sciences, Gangadhar, Sudhir Bhaskarrao Tambe, Sakiri Vasu, Kunga Nima Lepcha, just to list out a few, remains undisturbed and undiminished."

(emphasis supplied)

90. In **Sunil Gangadhar Karve v. State of Maharashtra and others** [(2014) 14 SCC 48], the Hon'ble Apex Court, at para 4, held thus:

> "4. We have noted this submission of Mr Rohatgi. There are, however, two difficulties in his way. Firstly, that if the police officers decline to look into the complaint, the ordinary procedure under the Criminal Procedure Code is available to the complainant as held by a Bench of three Judges of this Court in **Aleque Padamsee v. Union of India (**supra**)**. Besides, apart from the rights of the complainant, the rights of the accused also have to be safeguarded, and the accused has a right of appeal against any such determination if the complainant chooses to approach the Magistrate concerned. The right of appeal has been held to be a very important right of the accused by this Court in **A.R. Antulay v. R.S. Navak** (1988) 2 SCC 602."

91. In **State of West Bengal and Ors. v. The Committee for Protection of Democratic Rights, West Bengal and Ors.** reported in (2010) 3 SCC 571, the Hon'ble Apex Court held thus:

> "70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on

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

71. In Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Ors. v. Sahngoo Ram Arya and Anr. (2002) 5 SCC 521, this Court had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case

calling for an investigation by the CBI or any other similar agency. We respectfully concur with these observations."

92. In **Common Cause (A Registered Society) and others v. Union of India and others** reported in (2017 (11) SCC 731, the Hon'ble Supreme Court, while considering the question whether Special Investigation Team should be constituted for investigation into incriminating material seized in raids conducted on a group of companies, at paragraph 283, held thus:

"283. We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of accounts but on random

papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily. We find the materials which have been placed on record either in the case of Birla Group or in the case of Sahara Group are not maintained in regular course of business and thus lack in required reliability to be made the foundation of a police investigation."

93. In **State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and Others** [(2010) 3 SCC 571], a five member Bench of the Hon'ble Apex Court while

considering the question as to whether a direction can be issued under Articles 32 and 226 of the Constitution of India by the High Court to investigate a cognizable offence in a State without the consent of the State Government, at paragraph 70, held thus:

> "70. Before parting with the case, we deem it necessary to emphasis that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and

> enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

94. In **Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others v. Sahngoo Ram Arya and Another** [(2002) 5 SCC 521], the Hon'ble Supreme Court, on consideration of the question as to whether High Court can direct enquiry by CBI under Article 226 of the Constitution, held that the High court must reach a conclusion based on the pleadings and material on record that a prima facie case made out against a person and merely because a party made allegations against a person, High Court cannot direct CBI to investigate as to whether a person committed an offence as alleged or not. Paragraph 6 is relevant to the context and it reads thus:

> "6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by CBI against

> a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of "ifs" and "buts" and thought it appropriate that the inquiry should be made by CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause."

95. As rightly contended by the learned Advocate General, the petitioner has only mentioned about the names of the alleged scams, viz., Sprinklr, BevQ App. and e-Mobility Consultancy. There are no details in the Statement of facts as to what they are. Except stating that the Hon'ble Chief Minister is involved, abused his position, and his office is alleged to be nerve center, there is nothing in the Statement of facts indicating, which action or inaction of the Hon'ble Chief Minister or the others,

against whom allegations have been levelled, have indulged in corruption, attracting the provisions of Prevention of Corruption Act, 1988 as well as the Indian Penal Code, 1860. Although the writ petition has been directed to be instituted as a Public Interest Litigation, the averments remain the same.

96. In **Guruvayur Devaswom Managing Committee & Anr. v. C.K.Rajan & Others** reported in (2003) 7 SCC 546, the Hon'ble Supreme Court has summarised the principles with respect to filing a Public Interest Litigation and they are reproduced:

> "(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.
>
> The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises. [See S.P. Gupta v. Union of India, People's Union for Democratic Rights v. Union of India (1982) 2 SCC 494, Bandhua Mukti Morcha v. Union of India and Others (1984) 3 SCC 161 and

Janata Dal v. H.S.Chowdhary (1992) 4 SCC 305)]

(ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-a-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. [See Charles Sobraj v. Supdt., Central Jail, Tihar, New Delhi (1978) 4 SCC 104 and Hussainara Khatoon and Others v. Home Secretary, State of Bihar (1980) 1 SCC 81)]

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial. In Mrs. Maneka Sanjay Gandhi v. Rani Jethmalani (AIR 1979 SCC 468), it was held:

> "2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the

> complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances." (See also Dwarka Prasad Agarwal (D) By Lrs. and Anr. v. B.D. Agarwal and Ors. (2003) 5 SCALE 138)

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the depraved (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, AIR 1981 SC 344, S.P. Gupta (supra), People's Union for Democratic Rights (supra), Dr. D.C. Wadhwa (Dr) v. State of Bihar (1987) 1 SCC 378 and BALCO Employees' Union (Regd.) v. Union of India and Others [(2002) 2 SCC 333]

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the

nature of the petition as also facts and circumstances of the case. [See Rural Litigation and Entitlement Kendra v. State of U.P., 1989 Supp (1) SCC 504 and Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri and others (1986) 1 SCC 100]

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi v. Union of India and Others 1989 Supp (1) SCC 251)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Others (1987) 1 SCC 227).

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See Bandhua Mukti Morchai, Rakesh Chandra Narayan v. State of Bihar (1989) Suppl 1 SCC 644 and A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999) 2 SCC

718). In Sachidanand Panday and Another v. State of West Bengal and others [(1987) 2 SCC 295], this Court held,-

> "61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extent its jurisdiction under all available provisions for remedying the hardships and miseries of the need, the underdog and the neglected. I will be second to none in extending help when such is required. But this does mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

97. This Court in the unreported judgment dated 30.06.2020 in **B. Radhakrishna Menon v. State of Kerala and Ors.** [W.P.(C) No.12109 of 2020], at paragraph 45, held thus:

> "45. Placing reliance on the above decisions, the learned Senior Government Pleader submitted that a public interest writ petition which lacks bona fides, lack of particulars satisfying the requirements of a PIL, deserves to be dismissed with costs. Having regard to decisions considered in ***Mythri Residents Association v.***

Secretary, Tripunithura Municipality and Others, *[2019 KHC 832]*, it has been summarised by the journal thus:

"(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

(9) The misuse of public interest litigation is a serious matter of concern for the judicial process.

(10) Both this Court and the High Courts are flooded with litigations and are burdened by arrears.

(11) Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes.

(12) This Court has a long list of pending cases where the personal liberty of citizens is involved.

(13) Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice.

(14) It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda.

(15) This has spawned an industry of vested interests in litigation.

(16) There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention.

(17) Worse still, such petitions pose a grave danger to the credibility of the judicial process.

> (18) This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law.
>
> (19) This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services.
>
> (20) Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office.
>
> (21) Courts resolve disputes about legal rights and entitlements.
>
> (22) Courts protect the rule of law.
>
> (23) There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space.

98. In the light of the principles of law laid down by the Hon'ble Supreme Court as well as this Court, instant writ petition does not satisfy the requirements of a Public Interest Litigation.

99. On the last issues as to whether, the petitioner has made out a strong case for issuance of a writ of mandamus, the learned Advocate General, in order to substantiate his arguments discussed above, relied on various judgments of the Hon'ble Apex Court especially to canvass the proposition that, in order to grant the reliefs as sought for by the petitioner, the materials made available and the pleadings made should

instill confidence in the Court. In **Rajasthan State Industrial Development and Investments Corporation and Another v. Diamond and Gem Development Corporation Ltd. and Another** [(2013) 5 SCC 470], the Hon'ble Apex Court while considering a question as to the circumstances under which reliefs can be granted in a writ petition, held that the discretion must be exercised by the Court on the grounds of public policy, public interest and public good, that the writ is equitable in nature and thus, its issuance is governed by equitable principles.

100. It was further held that, while granting such a writ, the Court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings and that, in order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be a frivolous, and must be filed in good faith. It was also held that the authority against whom mandamus is issued, should have rejected the demand earlier and therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with

respect to the enforcement of his legal right. But at the same time it was held that a demand may not be necessary when the same is manifest from the facts of the case.

101. With respect to the contention advanced by learned counsel for petitioner that a close relative of the Hon'ble Chief Minister of Kerala, who is running an information technology infrastructure company, has real and intrinsic connections in the matter of collation of data, in the contract with Sprinklr, learned Advocate General submitted that the said allegation is vague and, therefore, cannot be taken note of by this Court, while discharging the discretionary powers under Article 226 of the Constitution of India. In this connection, he relied on the decision of the Hon'ble Apex Court in **Rani Lakshmibai Ksheptpriya, Gramin Bank v. Chand Behari Kapoor and Others** [(1998)7 SCC 469] wherein, at paragraph 8, the Hon'ble Apex Court held thus:

> "8. * * * * We, however, are unable to sustain this line of reasoning of the High Court. The writ petitioners not having made any averments alleging resigning of six of the Field Supervisors after being appointed, the Bank had no obligation

> to give any reply. In the course of hearing, if a contention had been raised and supporting material produced, then the Bank might have been obliged to file the specific reply but no such material appears to have been produced by the writ petitioners before the High Court and in such context, absence of reply by the Bank does not ipso facto establish the contention raised. It is too well settled that the petitioner who approaches the court invoking the extraordinary jurisdiction of the court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in the writ petition or even in the rejoinder-affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in the course of hearing. The High Court, therefore, in our view committed serious error in coming to the conclusion that there existed vacancies in the post of Field Supervisor on the materials produced before it."

102. In **Raj Kumar Soni and Ors. v. State of U.P. and Ors.** reported in [(2007) 10 SCC 635], the Hon'ble Apex Court, at paragraph (11), held thus:

> "8.....It is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article

> 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put- forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinize the nature and content of the right alleged to have been violated by the authority."

103. Indeed that Section 39 of the Cr.P.C enables the public to set the criminal law in motion, but if the officer in-charge, fails to register an FIR, the Hon'ble Supreme Court as well as this Court, in the above decisions have considered whether the only remedy open to the complainant or the first informant or the member of public to approach the High Court under Article 226 of the Constitution of India and that there is no other remedy provided under any other law, and answered that writ is not the remedy.

104. It is clear from the above provisions in the Cr.P.C., that if the police did not register a case on the basis of a complaint filed by the complainant, then he has got a remedy in the Code of Criminal Procedure, by approaching the jurisdictional Magistrate under Section 156(3) of the Code or even file a private complaint under Section 190 read with Section

200 of the Code, and when a complaint is filed, then the Magistrate has to conduct enquiry under Sections 200 and 202 of the Code, and if the Magistrate is satisfied on the basis of the materials produced before that court that commission of an offence has been prima facie made out, then the Magistrate can take cognizance of the case and issue process to the accused under Section 204 of the Code. If the Magistrate is not satisfied with the materials produced and if he is satisfied that no offence has been made out, then the Magistrate can dismiss the complaint under Section 203 of the Code.

105. Even if the Station House Officer commits a mistake in arriving at the conclusion that the allegations are not sufficient to attract the ingredients of commission of a cognizable offence, even this Court cannot invoke the power under Article 226 of the Constitution of India, go into the question as to whether non satisfaction by the Station House Officer is proper or not, to issue a writ of mandamus or other writs directing the Station House Officer to register a crime as it is a matter to be considered by the Magistrate under Section 190 read with Section 200

of the Code on a complaint filed by the aggrieved party on account of the inaction on the part of the police in not registering case in such cases. If an enquiry has to be conducted for satisfaction regarding the commission of offence, then it is not proper on the part of the High Court to invoke the power under Article 226 of the Constitution of India and parties must be relegated to resort to their statutory remedy available under the Code in such cases. After lodging the complaint before the concerned police and if the police is not registering the case, the aggrieved person/complainant can approach the Superintendent of Police with written application under Section 154(3) of the Code of Criminal Procedure, and even in a case the Superintendent of Police also does not register an FIR or no proper investigation is done, the aggrieved person can approach the Magistrate concern under Section 156 (3) of Cr.P.C. Without resorting to the procedure as contemplated in the Cr.P.C, the petitioner has approached this Court under Article 226 of the Constitution of India.

106. In view of the discussions made above, since the petitioner has got an efficacious and alternate remedy available under the Code, if there

is inaction on the part of the Station House Officer in not registering a case on the basis of the complaint given by him, the petitioner cannot take recourse to this Court for issuance of writ of mandamus or other writ, to the Station House Officer to register a crime and to investigate the case as claimed by the petitioner.

107. In **Harbanslal Sahnia and Anr. v. Indian Oil Corporation Ltd. and Ors.** [(2003) 2 SCC 107], enumerating the contingencies in which the High Court could exercise its writ jurisdiction in spite of availability of the alternative remedy, the Hon'ble Supreme Court observed thus:

> "7..... that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

108. In **Union of India v. Mangal Textile Mills (I) (P) Ltd,** [(2010) 14 SCC 553], the Hon'ble Supreme Court held thus:-

> "6. The learned counsel appearing for the appellants submits that since the issues, subject-matter of the writ petition, not only involved the valuation of plant and machinery, even the question of disclosure or non-inclusion of some of the machines like stenters, etc. was also required to be gone into for determining whether the assessee was entitled to the relief claimed and these being questions of fact, the High Court erred in exercising its jurisdiction under Article 226 of the Constitution. According to the learned counsel, since an alternative statutory remedy by way of appeal before the Customs, Excise and Service Tax Appellate Tribunal (for short "CESTAT") was available to the assessee, the writ petition should have been dismissed at the threshold."
>
> 7. We find substance in the contention of the learned counsel for the appellants. It is true that power of the High Court to issue prerogative writs under Article 226 of the Constitution is plenary in nature and cannot be curtailed by other provision of the Constitution or a statute but the High Courts have imposed upon themselves certain restrictions on the exercise of such

> power. One of such restrictions is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction under Article 226 of the Constitution. But again, this rule of exclusion of writ jurisdiction on account of availability of an alternative remedy does not operate as an absolute bar to entertaining a writ petition but is a rule of discretion to be exercised depending on the facts of each case."

109. The petitioner has solely relied on the statement of the Leader of the Opposition and contended that if it is true, the matter requires investigation. As such, he has no evidence or material, and that is why he has prayed for an interim direction, as stated above. Investigation is the function of the police and writ court cannot be converted as an investigation agency.

110. Instant writ petition has been filed on 8.7.2020. Office has made an objection. Petitioner has sent the legal notice to the respondents on 9.7.2020. We have called for the file relating to W.P.(C) No. 9531 of 2020. Complaint dated 20.04.2020 has been sent to the Director General of Police, Trivandrum; the Inspector of Police, Museum Police Station;

and the Director of Vigilance and Anti-corruption Bureau, Trivandrum. For the first time, after the filing of the instant writ petition, legal notice has been sent to the Director, Central Bureau of Investigation, New Delhi; Director, Enforcement Directorate, New Delhi; and the Director, NIA, New Delhi. Before seeking for a prayer for mandamus against the CBI and NIA to register an FIR, no complaint has been made.

111. Remedy under Article 226 of the Constitution of India is extraordinary. Exercise of power to entertain a writ petition arises if only the person, who alleges inaction on the part of the statutory authorities, has no other alternative and efficacious remedy under the Statute. True, the Hon'ble Apex Court has also held that there is no fetters in entertaining a writ petition under Article 226 of the Constitution of India, whether a person complains of violation of his fundamental or statutory right, but at the same time, it should be borne in mind that if there is an adequate and efficacious remedy available to such person, to vindicate his grievance, then the self imposed restraint on the writ court to exercise the extraordinary jurisdiction shall be applied and such person should be

relegated to avail the statutory remedy.

112. Merely because allegations are levelled against the Hon'ble Chief Minister and others and in as much as the allegations relate to abuse of power, it cannot be contended that the nature and magnitude require issuance of a writ as the only remedy available to the petitioner. However, intricate the magnitude and the nature of the offences alleged, the Code of Criminal Procedure has envisaged a procedure to be followed and, therefore, the same cannot be given a go-by, and a writ petition is not the proper remedy.

113. In the light of the decisions of the Hon'ble Supreme Court as well as this Court, and our conclusion that no writ of mandamus can be issued, we do not propose to delve into other rival contentions as to whether, the State Government could have written to the Central Government to include the allegations relating to corruption also.

114. As the writ petition itself is not maintainable, there is also no need to go into the issue as to whether, National Investigation Agency while investigating any Scheduled Offence may also investigate any other

offence which the accused is alleged to have committed, if the offence is connected with the Scheduled Offence. Therefore, judged from any angle, we are of the view, petitioner has not made out a case for issuance of a writ of mandamus.

In the result, the writ petition is dismissed. No costs.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly
Judge

krj

APPENDIX

PETITIONER'S EXHIBITS:

P1:- COPY OF THE COMPLAINT DATED 9.7.2020 SENT TO THE DIRECTOR GENERAL OF POLICE, TRIVANDRUM.

RESPONDENTS' EXHIBITS:-NIL

//TRUE COPY//

P.A. TO C.J.