

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRI PETITION (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

Badibhau

...Petitioner

Versus

The State of Madhya Pradesh & Anr.

...Respondents

With

I.A. No. _____ OF 2025

APPLICATION SEEKING EXEMPTION FROM FILING ORIGINAL TRANSLATION OF DOCUMENTS

With

I.A. No. _____ OF 2025

APPLICATION SEEKING PERMISSION TO FILE LENGTHY SYNOPSIS AND LIST OF DATES

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

Filed on: 14.01.2025

ADVOCATE FOR THE PETITIONER: Dubey and Chandra Law Chambers

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IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

BadiBhau

...Petitioner

Versus

State of Madhya Pradesh & Anr

...Respondents

OFFICE REPORT ON LIMITATION

1. The petition is/are within time.
2. The petition is barred by time and there is delay of days in filing the same against order dated and petition for condonation of days delay has been filed.
3. There is delay of days in refilling the petition and petition for condonation of..... days delay in refilling has been filed.

BRANCH OFFICER

Place: New Delhi

Date: 14.01.2025

PROFORMA FOR FIRST LISTING

The case pertains to (Pick tick / check the correct box):

•	Central Act:	N.A.
•	Section:	N.A.
•	Central Rule: (Title)	N.A.
•	Rule No(s):	N.A.
•	State Act (Ttitle)	N.A.
•	Impugned Judgement :(Date)	N.A.
•	High Court: (Name)	N.A.
•	Name Of Judges:	N.A.
•	Tribunal/Authority :(Name)	N.A.
1.	Nature of Matter:	Criminal
2.(a)	Petitioner/Appellant No.1	BadiBhau
(b)	E-mail ID:	N.A.
(c)	Mobile phone Number:	N.A.
3.(a)	Respondent No.1	The State of Madhya Pradesh
(b)	E-mail ID:	N.A.
(c)	Mobile Phone Number:	N.A.
4.(a)	Main Category Classification:	_____
(b)	Sub Classification:	
5.	Not to be Listed before:	N.A.
6A.	Similar pending matters with case details	No Similar matter is disposed of
6B.	Similar pending matter with case details	No similar matter is Pending
7.	CRIMINAL MATTER	
(a)	Whether accused / Convict has surrendered	N.A.

(b)	FIR Number	27/2019, 329/2023, and 197/2024
(c)	Police Station	Khurai Rural
(d)	Sentence Awarded	N.A.
(e)	Sentence Undergone	N.A.
8:	Land Accusation Matters:	N.A.
(a)	Date of Section 4 notification	N.A.
(b)	Date of section 6 notification	N.A.
(c)	Date of section 17 notification	N.A.
9.	Tax Matter: State the tax effect	N.A.
10.	Special Category (First Petitioner/ Appellant only)	
	i.(x) Senior citizen > 65	ii..(x) <u>SC</u> /ST
	iii. (x) Women/Child	iv. (x) Disabled
	v.(x) Legal Aid case	vi.(x) In Custody
11.	Vehicle Number (in case of Motor Accident Claim matter):	N.A.

Date: 14.01.2025

Filed By:

Dubey & Chandra Law Chambers

(AOR for the Petitioner)

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SYNOPSIS

Writ to transfer criminal proceedings

From Madhya Pradesh to Delhi

Former Home Minister behind killing of 3 family members makes it impossible for justice in Madhya Pradesh

1. This Petition is filed by the mother of Anjana, who has suffered the murder of 3 members of her Dalit family i.e. (1) Nitin her son, (2) Rajendra, her brother-in-law and (3) Anjana her daughter, and who fears that the former Home Minister of the State of Madhya Pradesh may wreck further vengeance on her family and herself for making complaints against members of the gang of the former Home Minister as well as the latter himself to the police.

2. One after the other 3 members of a family were killed with the police extending full assistance to the accused persons only because the former State Home Minister and his group was behind the killings. Resultantly, no prosecution of the accused persons is possible in the State of Madhya Pradesh.

**Petition seeking CBI/SIT investigation into the molestation
and murder of 20 year old Dalit woman
Politically powerful person behind the killing**

3. That the Present Petitioners have filed this Petition seeking an order for a C.B.I/SIT investigation into the molestation and murder of 20 year old Anjana on 26.05.2024.
4. **Three members of family killed** all were members of the Scheduled Caste community. The sabotage of the investigation and the killing of eyewitnesses were the result of a criminal conspiracy, which involved members of the village dominant community headed by the former home minister of the State of MP.
5. The former Home Minister, being a politically powerful figure, **is currently the MLA for the same district, Sagar.** He is influencing and threatening the witnesses. Due to the power and influence of the accused, **three family members, who were important witnesses in the criminal conspiracy against the Dalit family, have already been murdered in the span of 1 year.** The petitioners have filed this Writ Petition seeking an appropriate Writ, Order, or Direction for the **transfer of the case**

and investigations into the aforementioned murder of Anjana Ahirwar **to Delhi**. This request is made in light of the complete failure of the police authorities in Madhya Pradesh to conduct an unbiased and fair investigation, as well as to protect the witnesses.

Anjana beaten and molested on 26.1.19

6. The brief facts of the case is that on 26.01.2019, deceased Anjana Ahirwar who belongs to a Dalit community and was only 15 years old at that time, filed a written complaint before P.S. Village Station Khurai, District-Sagar, stating therein that one Azad Thakur, One Pushpendra Thakur, one Chotu Raikawar and one Vishal Thakur of her village **beat her and physically molested her** at around 8:30 PM when she went out for defecation.

FIR 27/2019: Facts stated in complaint removed from FIR

On 26.01.2019 **FIR No. 27/2019 (at Annexure P-1,Page 50 to 54)** was filed u/s 294, 323, 506, 34 of IPC and Sections 3 (1) and 3 (2) of SC/ST Act, 1989. The FIR is as under:

I am posted as Head Constable in P.S. Khurai. Complainant Anjana D/o Raghuvir Ahirwar, Age- 15 Years, R/o Barodiya Naunagir, came to Police Station and submitted a written Application, on which, on finding the offence of Section 294, 323, 506, 34 IPC and Section 3(1)®, 3(1)(s), 3(2)(va) of SC &

*ST & ST Act from the contents of Application, crime was registered and taken into investigation. Copy of Application reads as under:- To, the SHO, P.S. Khurai Rural, District-Sagar. Subject:- Regarding slapping by hurling abuses and threatening to kill. Sir, it is submitted that I live in Village- Barodiya Naunagir. I am studying in class 10th. Today on 26.01.2019 at about 8.30 a.m. in the morning, I by carrying Lota, went to attend natures' call at Nursery. When I was alone, at the same time, villagers namely Azad Thakur, Vishal Thakur, Pushpendra Thakur ad Chhotu Raikwar came there, who on the issue of old enmity, **started abusing me with filthy language in the name of mother and sister, and Vishal Thakur slapped me on my left side cheek and ear, due to which, I am suffering pain.** When I raised hue and cry, then all the abovenamed persons fled away from there and while fleeing away from there, they were saying that Madarchod, **if you will lodge report, then we will kill you.** Thereafter, after reaching home, I told this incident to my mother, Badi Bahu and brother Vishnu, onwhich, I alongwith my brother and mother have come to lodge the report at Police Station. I submit Application. Kindly take action. Sd/- Anjana Ahirwar, Applicant Anjana D/o Raghuvir Ahriwar, R/o Barodiya Naunagir, Mobile No. 9294989275.*

7. It is submitted however that **none of the sections regarding molestation or POSCO Act were invoked** against the accused persons which clearly show that Police authorities have been biased towards the accused persons since the inception of the horrific incidents that befell Petitioner's family. It is further pertinent to note that three days before the lodging of the said complaint, the above said accused persons had **beaten up Vishnu Ahirwar who is the brother of deceased Anjana Ahirwar** and made him touch their feet. However, **instead of**

initiating proceedings/investigation against the accused persons, Police arrested Vishnu Ahirwar (brother of Anjana) himself on basis of a false case.

Murder of Nitin @ Lalu, brother of Anjana by Ankit

Accused Ankit's name removed from FIR

8. First, Nitin, the brother of Anjana was killed by the same group of persons that molested Anjana. **FIR No. 329/2023**, dated 25.08.2023 was registered on a compliant made by Anjana.
9. Secondly, the FIR was registered on 24.08.2023 and names the accused persons as **Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan Waheed Khan** and other unknown persons. The relevant extracts of the FIR is as under:

*..R/o Barodiya Naunagir, Place of Dehati Nalishi- General Ward, CHC, Khurai, Name & Address of Police Officer: SI Dinesh Kumre, P.S. Khurai Rural, Particulars – I live in village-Barodiya Naunagir, and do household works. Today on 24.08.2023 at about 8.30 p.m.in the night, I was present at home alongwith my mother. At the same time, villagers namely Vikram Thakur, Komal Thakur and Vijay Thakur being armed with sticks in their hands, came and on the issue of old enmity, **started abusing us with filthy language in the name of mother and sister, and by breaking the door of house, entered inside and by demolishing fridge and other items kept inside the house, scuffled with my mother and started say that where Madarchod Lalu has gone, I said that he is not available at home, then,***

thereafter those persons went towards the Bus Stand. When I heard loud noise of crying from that side, then, I myself and my mother Badi Bahu went there and saw that near Grameen Madhyanchal Bank, Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan Waheed Khan and three four other persons were beating my brother Lalu @Nitin with lathis and sticks with intention to kill him and were saying that today we will kill him. When I myself and my mother went there for rescue, then Lalu Khan also slapped me and someone's stick blow struck on my left hand finger, and my mother was also beaten with lathis and sticks, due to which, my mother sustained injuries on her both the hands and wrist and brother Lalu @ Nitin has sustained injuries on both the legs, hands and contusions on his back and chest, blood has oozed out due to fracture in both the hands. I lodge the report. Kindly take action. Sd/- Informant in English. illegible. Sd/- Police Officer, illegible 24.08.2023.

10. In this FIR, though it is stated in the complaint, that **the Petitioner was disrobed**, this is deliberately omitted in the FIR. Also the **29 serious injuries** on the body of Nitin was deliberately omitted. Further, though Anjana had stated in her complaint that after the accused persons killed her brother they came back to her house and **killed their pet parrot and horse**, this is deliberately not mentioned in the FIR.

11. Thirdly, most important, **police deliberately removed the name of Ankit Singh Thakur that was mentioned in the complaint.** Ankit Singh is the head of the youth wing of the political party at the State and a close confidante of the former home minister and

sitting MLA. The other names mentioned in the FIR are also closely connected to the said former home minister.

12. All the accused persons have been arrested and the Trial is going on. In this trial the mother of Anjana and the brother of Anjana are prosecution witnesses and their evidence has been recorded.

**CCTV footage given to police by the family
deliberately suppressed in the charge-sheet**

13. The **CCTV footage** whose screenshots (Page 83) are provided in the fact finding report **at Annexure P-3** shows all the accused persons beating Nitin and yet the police **did not include it in their charge sheet.**

3 applications to the police to include Ankit's name

14. According to Anjana, the said Ankit Singh Thakur was one of the main accused in the murder of her brother. The **Police refused to include the name of Ankit Singh Thakur.** Anjana sent **repeated applications on 08.09.2023, 29.09.2023 and 21.10.2023** to the Superintendent of Police as well as the Director General of Police. These applications are at Annexures P-4, P-5 and P-6 However, **no**

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action has been taken. Relevant parts of the abovementioned applications are as under:

15. The application dated 08.09.202, submitted by Anjana to the Superintendent of Police, Madhya Pradesh, is as under:

Subject: Regarding adding name of Non-Applicant Ankit Singh S/o Rajkumar Thakur as main accused.

Sir,

- 1. It is submitted that the Applicant is permanent resident of Village- Barodiya Naunagar, Tehsil- Khura, District- Sagar. On 24.08.2023 at about 8.30 p.m. in the evening, Non-Applicant Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Ankit Singh Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Waheed Khan, and other accused persons by forming common intention, killed my brother Nitin @Lalu Ahriwar by beating him. Moreover, they also committed marpeet with my mother and misbehaved with her and they also abused and beaten me, regarding which, a Report is registered in P.S. Khurai Rural, whose 'Crime No. is 329/23*
- 2. That, in the said case, Accused Ankit Singh S/o Sh. Rajkumar had beaten my brother very badly by iron rod. Aforesaid incident took place in front of me, and I have seen Accused Ankit Thakur committing marpeet with my brother by iron rod, but, the Police of P.S. Khurai Rural has not mentioned the name of Ankit Singh Thakur as main accused in the present case. He is still absconding and may temper the witnesses of present case. I also have threat to my life from Ankit Singh. Police has not got recorded my statements u/s 164 Cr.P.C. till date, and Khurai Police is deliberately causing delay in the matter.*
- 3. Therefore, you are humbly prayed that kindly register the name of Accused Ankit Singh S/o Rajkumar Thakur, R/o Barodiya Naungar, as main accused in the present case and*

kindly ensure his immediate arrest and kindly also record my statement under Section 164 Cr.P.C

16. The application dated 29.09.2023 submitted by Anjana to the I.G.

Sagar, Madhya Pradesh, is as under:

Subject: Regarding Complaint against Investigating Officer of Crime No. 329/2023 of P.S. Khurai Rural.

Sir,

It is submitted that in Crime No. 329/23 u/s 302, 307, 147, 458, 427 IPC of P.S. Khurai, my brother Lalu @ Nintin was murdered by the Accused Persons, in which, I myself and my mother were also beaten by the accused persons, in which, the hand of my mother could not have been cured till date. Accused persons are very influential and under their pressure, Doctor did not conduct proper treatment of my mother and also sacked her out from the Hospital. We complained to the Police several times, but, due to the political pressure, they submitted the Chargesheet in haste, whereas, on 08.09.2023, I also made a complaint to the Superintendent of Police that name of main Accused Ankit Singh Thakur S/o Rajkumar Thakur is not mentioned in the FIR, whereas, in Dehati Nalishi, I got written the name of Ankit, and Police also did not get recorded my statements u/s 164 Cr.P.C.. In the complaint lodged by me, I had also complaint about my mother being stripped in the incident, but, neither the Police added name of Ankit Singh and nor got done full treatment of my mother. Moreover, the 10 points assurance which was given in writing by the Collector, Sagar, that has also not been fulfilled till date. On the other hand, the relatives of Accused Persons are constantly forcing my family members to do compromise, and are threatening that if you won't do compromise, then, after coming out of jail, we won't let you live in the village. In future, we have threat to our lives from the relatives of accused persons as well as accused persons.

Sir, it is requested that the Investigating Officer of present case i.e. SDOP and SHO have deliberately saved an Accused in the serious offence like murder and did not allow to get proper treatment of my mother and even after several oral and written complaints, my statement u/s 164 Cr.P.C. was not recorded and they by helping accused persons in the investigation, and by making the acquaintances of accused persons in the Seizure Memos, have conducted investigation by favouring the accused persons, due to this reason, kindly pass orders to add the name of Accused Ankit Singh Thakur S/o Rajkumar Thakur, and to conduct treatment of my mother and to take action against the Investigating Officer, so that justice could be done with us.

17. The application dated 21.10.2029, submitted by Anjana to the DGP of Madhya Pradesh, is as under:

Date: 21.10.2023

Subject:- Regarding conducting enquiry of Applicant's Complainant dated 08.09.2023 through impartial officer and changing Investigating Officer.

Sir,

- 1. It is submitted that the Applicant is permanent resident of Village- Barodiya Naunagir, Tehsil- Khura, District- Sagar. On 08.09.2023, a written Complaint was lodged by Applicant against Non-Applicants Vikram Singh, Vijay Singh, Azad Singh, Komal Singh, Ankit Singh, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Waheed Khan and other accused persons, in which, Applicant's brother Nitin @ Lalu was murdered and Applicant was also beaten and abused.*
- 2. That, in the aforesaid case, Accused Ankit Singh S/o Sh. Rajkumar had beaten my brother very badly*

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with iron road, but, name of Ankit Singh Thakur was not mentioned by the Khurai Police as main accused, due to this reason, as a result of not conducting proper proceedings by Khurai Police and SDOP, Khurai, I had made an Application before your good faith for conducting impartial enquiry and to add the name of Ankit Singh as main accused.

3. *That, due to not conducting impartial investigation by Khurai Police and SDOP, Khurai, I had submitted an application on 08.09.2023, in which, SDOP, Khurai issued Letter No.144/23 dated 11.10.2023, which was received by me on 20.10.2023, in which, I appeared before the SDOP, Khurai on 20.10.2023.*
4. *That, since, I had made complaint against Khurai Police and SDOP for not conducting impartial investigation, due to this reason, how can the SDOP, Khurai conduct the enquiry of Complaint lodged against SDOP, Khurai himself, if it happens, then, how would I get justice. **How can a persons accused of allegations, can do the enquiry of Complaint lodged against him, and how can he take impartial decision by conducting impartial enquiry.***
5. *Therefore, you are humbly prayed that kindly get done the enquiry of Complaint lodged by me on 08.09.2023 through any Senior and Impartial Additional SP, so that I could get justice.*

Sd/-

Applicant

Anjana D/o Raghuvir Ahriwar

Murder of eyewitness Rajendra, uncle of Anjana

Once again the police protect the accused

18. On 24.5.24 one of the eye witnesses to Nitin's murder, **Rajendra Ahirwar, uncle of Anjana** was himself murdered by persons belonging to the same group of accused as abovementioned. **FIR No. 197/2024** was registered on 26.05.2024 on the basis of information given by Anjana to the police. Relevant extracts of the abovementioned FIR are as under:

I, Constable 143 Lokendra Parmar am posted in P.S. Khurai Rural. On 25.05.2025, on receipt of information of fight in village- Barodiya Naiagir, I alongwith SHO departed for verification of information, and on reaching village- Barodiya Nainnagir, brought injured Rajendra Ahirwar to Civil Hospital, Khurai for treatment, from where, on referring the injured to Sagar, the injured was taken to BMC Hospital, Sagar. In BMC, the SHO by preparing Dehati Nalishi of Crime No. 00/24 u/s 147, 148, 149, 307 IPC and Section 3(2)(v), 3(2)(va) of SC & ST Act, has set the same for registration at original number. Therefore, I produce the same. Kindly register the crime at original number. Copy of Dehati Nalishi reads as under:- Copy of Dehati Nalishi, P.S, Khurai Rural, District- Sagar, Crime No. 0/24 u/s 147, 148, 149, 307 IPC ad Section 3(2)(v0, 3(2)(va) of SC & ST Act, Date and time of Incident: 25.05.2024 at 20.45 Hrs., Place of Occurrence: House of Pappu Rajak, Village- Barodiya Naiagir, Date and Time of Report: 26.05.2024 at 01.40 p.m., Name & Address of Informant: Ramsewak S/o Adhar Ahirwar, Age- 57 Years, R/o Village- Barodiya Naunagir, P.S. Khurai Rural, Name & Address of Accused: Ashiq Quraishi, Babula Benam, Israel Benna, Faheem Khan, Tantu Qureshi, all Rr/o Village- Barodiya Naunagir, Place

*of Dehati Nalishi, BMC, Sagar, Name and Address of Police Officer: SI Dhanendra Yadav, P.S. Khurai Rural, Contents:- I reside in village- Barodiya Naunagir and do labour work. This incident is of 25.05.2024 at about 8.45 p.m., when I was present at my home, at the same time, I came to know that my son Rajendra had fight and on getting injured in the marpeet, he has been taken to Khurai Hospital, from where, he has been referred to Sagar. Thereafter, when I reached in BMC Hospital, Sagar, then, grand-daughter of my family namely Anjana Ahirwar told that on 25.05.2024 at about 8.45 p.m., we received phone call of Rajendra uncle, on which, he said that fight is occurring, Ashiq Qureshi, Bablu Bena, Israel Bena, Faheem Khan, Tantu Qureshi are committing marpeet with us. Thereafter, Vikas made a phone call to me and told that fight of Rajendra uncle is being taken place in the house of Pappu Rajak. Ashiq Qureshi, Bablu Bena, Israel Bena, Faheem Khan, Tantu Qureshi all are beating them with axe and sticks. Vikas was telling that I myself and Majhla Kori have seen that Ashiq Qureshi etc. are committing marpeet at the house of Pappu Rajak. There was dispute between Ashik Qureshi and Rajendra uncle on the old report which was registered in P.S. Khurai City. Thereafter, I informed the Police on phone. After arrival of Police, Rajendra uncle was taken to Government Hospital, Khurai for treatment, from where he has been referred to Sagar. **Rajendra uncle has sustained injuries on his head, both the ears, mouth, both the armpits, claws of both the legs and blood is oozing out from head and ear. Ashiq Qureshi, Bable Bena, Israel Bena, Faheem Khan, Tantu Qureshi have beaten Rajendra uncle with axe and sticks with intention to kill him.** In the said marpeet, mobile phone of Rajendra uncle has also been broken. Israel Khan has beaten him on the issue of old report registered u/s 302 IPC. I lodge the report. Kindly take action. Sd/- Complainant in Hindi, Ramsewak, Signatures of Police Officer in English, Sd/- illegible 26.05.2024.*

Anjana killed by the police
while travelling in the ambulance with police

19. When Anjana was coming back with the dead body of Rajendra Ahirwar who was her uncle in the ambulance on 26.05.2024, **she was killed by the police while travelling in the ambulance with the police.**

20. It is pertinent to note that in the said ambulance, apart from the driver and police constables, the father and mother of deceased Rajendra were also present with Anjana. It is submitted that according to the father and mother of deceased Rajendra, the Police constables gave them water. After drinking the said water, they fell asleep. Thereafter, Policemen woke them up and told them that Anjana had fallen off the ambulance. When Anjana was brought back to the ambulance, she was unconscious. It is pertinent to note that after Anjana was brought back to the ambulance, only Rajendra's mother who is deaf, was allowed to sit with Anjana.

Former Home Minister and present MLA threatening witnesses

21. It is pertinent to note that after Nitin @ Lalu's murder Anjana was called to the house of the former Home Minister where he

threatened her not to give evidence against him. He also **offered Rs. 2 crore** to Anjana to compromise in the murder of Nitin. Anjana refused. The transcript of the video testimony of the petitioner is as under:

Female Report in Background :- Ahirwar Family who has faced deaths of their son and daughter within a period of one year, was scared, but, Anjana's mother is leveling allegation of offer of Rs. 2 Crores for settlement in the murder case.

Interview of Anjana's Mother:-My daughter Anjana went to Bungalow, and Bhupendra Singh spoken that only I am the Leader, I am the Minister and I am the Government, you speak in our favour, do settlement, we will give you Rs.2 Crores.

Complaint made to the SP by Anjana

Accused threatening witnesses

22.It is submitted that Anjana Ahirwar had given a complaint dated **26.02.2024 to the Superintendent of Police, Madhya Pradesh** in which she had stated that the accused had been trying to influence and threaten the family members of the deceased to compromise in the matters.

23.The relevant part of the complaints made to the SP is as under:

*It is submitted that, I live in village- **Barodiya Naunagir.**
On 24.08.2023, Vikram Thakur, Komal Thakur, Vijay*

Q

Thakur, Azad Thakur, Waheed Khan, Islam Khan, Nafees Khan, Anees Khan, Golu Khan, Lalu Khan, Golu Soni, Abhishek Rikwar, Arbaz Khan had killed my brother Nitin @ Lalu and had vandalized the household articles after entering inside the house, and when sister and mother of deceased tried to rescue deceased, Police had arrested them. At present, all the accused persons of murder are confined in Sagar Jail since last 05 months. Family members of Accused persons are constantly crating pressure for settlement. The family members of Vikram Thakur and Komal Thakur namely Ankit Thakur; Jyoti Ss/o Komal Ahirwar, Kalabai W/o Komal Ahriwar are threatening to falsely implicate my brother Vishnu Ahirwar in the case of molestation and marpeet. Ankit Singh Thakur has said that if you won't do settlement, then, we will send you jail by implicating you in the case of molestation and marpeet. On 25.02.2024 in the evening, Ankit Thakur came to our house and said that do settlement in murder case, otherwise, you won't be able to reside in this village, we will get killed your parents and will send your brother Vishnu to Jail in the case of molestation and marpeet. Ankit Singh was saying that since the bail of my family members is not being allowed and if you won't do settlement, then, not only in this village, in fact, we won't let you stay in entire District, and will get out our brother ishnu Ahirwar from District in collusion with Police.

Therefore, you are requested that if the family member of accused persons who are confined in jail, namely Ankit Singh Thakur lodges report of any molestation, marpeet with any woman or girl against my brother Vishnu Ahirwar, then, it's impartial enquiry should be conducted because we are scared of the threats of implication of false case and he has also threatened us to get us displaced from district. The family members of accused persons are trying to get us out from the village forever because we have refused to do settlement in murder case. Therefore, by taking the application serious, kindly do just with us i.e. poor people.

Police creating false criminal records against Anjana's family

24. Right from the beginning the former minister has been working closely with the police to create **false criminal records** against the members of Anjana's family including the 3 deceased members. For example, **Nitin, the younger brother of Anjana, aged 18 at the time of his death has been shown by the police to have many criminal cases against him.** Similarly, **Vishnu, the elder brother of Anjana has been falsely implicated in several cases and the police label him as a "habitual offender".**

25. The former cabinet minister and presently M.L.A from Sagar from the ruling party at the State has been **trying to influence the investigation** since the inception through his various media interactions wherein he refers to the false criminal records of the family members of Anjana that has been prepared by the police on the instructions of the aforesaid MLA. One such media report dated 29.05.2024 is **at Annexure P-11**, hereto and the relevant part is as under:

"Anjana Ahirwar's deceased relative had a criminal background. Congress is doing politics of lies. According to police records, the deceased Rajendra Ahirwar was a terror in the village. Rajendra Ahirwar has been involved in crime at the behest of Imran Khan."

Mother of Anjana sends letters for independent investigation**Also seeks police protection: No response**

26. Representations were submitted by the mother of Anjana Badi Bahu to the DM, IG, and SPS of district Sagar, MP, on **01.07.2024, (at Annexure P-12)**, which is for an **impartial inquiry** into the murders of Anjana, Nitin, and Rajendra Ahirwar, as well as the **constant harassment** of their family by the Lambardars of the village and their associates. Additionally, concerns were raised about the suspicious death of her daughter following the murders of her son, Nitin, and brother-in-law, Devendra Ahirwar. The death, which was initially deemed an accident, is alleged to be a murder. the abovementioned representation is reproduced herein:

I, Badi Bahu W/o Raghuvir Ahirwar, am resident of Village Barodiya Naunagir and our family depends on labour work. In the year 2019, some influential villagers (Lambardars) had committed marpeet and molested with my daughter namely Anjana Ahirwar, regarding which after registration of report, the Lambardar of village started constantly harassing us for the compromise and started threatening us. Report could also be registered very hardly and at that time my daughter was 15 years old minor, but, Police did not add relevant Section.

On 24.08.2023 in the evening, Lambardars of village and their associates beaten my 18 years old son namely Nitin very badly to this extent that he got died in the same night. When I tried to rescue him, then they also beaten me, due to which, my one

hand got fractured and I also sustained injury in other, my entire Saree was opened and I got naked. They also beaten my daughter. On the same day they vandalized our house and looted all household items and broken the leg of our hose and in fact, they also killed our parrot. In the murder case of my son Nitin, on the complaint of my daughter, FIR No. 329/2023 was registered, but, even after the information by my daughter, name of Accused Ankit Singh Thakur has not been added. In this regard, on the next day, my daughter also made a written complaint to the Collector and SP, but, his name was not added. Even thereafter, my daughter on 08.09.2023, 29.09.2023, 21.10.2023 and 26.02.2024, also made written Complaints to SP and IG regarding not adding name of Ankit Singh, and repeatedly forcing us by the relatives of accused persons to do compromise. We also made Complaint regarding not conducting impartial enquiry in the matter by SDOP, Khurai, but, no action was taken on the same. The proper investigation of murder of Nitin and other incidents happened on 24.08.2024, was not conducted properly.

In the Dead Body Vehicle, Anjana was also sitting alongwith Rajendra. Thereafter we received information from Police regarding Anjana that Anjana has got died by falling from the vehicle.

Anjana was constantly raising voice for justice for Nitin and Rajendra. The Lambardars of village constantly threatened our family for compromise, tried to evict us from village, threatened us to kill and constantly forced us to do compromise, but, even thereafter, we did not turn up or do compromise, due to this reason, Rajendra and Anjana were killed.

When Anjana sat in the vehicle, at that time, she was fully fit. As it is being stated that she fell down or jumped down from the vehicle, is not trustworthy. We have doubt that Lambardars of village by hatching conspiracy on the issue of murder of Nitin and old case, have got killed Anjana.

Therefore, you are humbly prayed that kindly conduct impartial enquiry regarding the murder of Anjana, Nitin and Rajendra. Sir, we have already lost our three family members,

and we also demand from you that kindly provide security to our family from further harassment, so that rest of family could live peacefully.

27. Another representation was submitted by the petitioner on 01.07.2024 (at Annexure P-12) to DM, IG and SP of district Sagar MP which is as under :

I, Badi Bahu W/o Raghuvir Ahirwar, vide this letter demand for registration of FIR and impartial enquiry regarding the murder of my daughter Anjana Ahirwar, because:-

In the year 2019, villagers namely Azad Thakur, Vishal Thakur, Pushpendra Thakur and Chhotu Raikwar had committed marpeet and molested my daughter Anjana Ahirwar. In this regard, Anjana also lodged a Report in P.S. Khurai in the year 2019. Immediately after registration of FIR, the Lambardars of village started putting pressure on Anjana and on our entire family.

In the month of August, 2023, Lambadars of village and Ankit Singh Thakur and their associates killed my son Nitin @ Lalu Ahirwar by beating him with lathis and sticks in the village. When, I tried to rescue my son then they also beaten me and undressed me. On the same day Vikram Thakur, Azad Thakur, Komal Thakur and their associates also attacked on our house and vandalized our all household items. Also in this regard, the Anjana had lodged FIR. In the murder case of Nitin, my daughter Anjana and family member namely Rajendra were the main witnesses.

In the murder case of Nitin, Anis Khan, Azad Khan, Sushil @ Golu Soni, Vikram Thakur, Arbaz, Faheem Khan, Abhishek Raikwar, Islam Bena, Mubarak Khan, Wahid Khan, Komal Thakur and Vijay Thakur were arrested. But, Ankit Singh was not arrested, whereas, Anjana also made complaint regarding him. After the arrest, all the Lambardars of our village started putting immense pressure on our family and started threatening us to kill.

Rajendra Ahiwar was the witness in murder case of Nitin. The arrested Accused persons were also repeatedly forcing and threatening him to make false statement in their favour. When Rajendra refused to make false statement, then, they killed Rajendra by assaulting with lathi, sticks and sharp edged weapons in the house of Pappu Rajak.

My daughter Anjana was the main witness in the murder case of Rajendra. Rajendra also informed her on phone regarding the assault. But, when, Ajnana was returning to village alongwith the dead body of Rajendra, then, she also got died. It is being informed by the Police that she got died due to falling from the vehicle, but, we are not able to believe this story.

Anjana was not only the main witness in the murder case of Nitin and Rajendra, in fact, she was super active for justice in these case. Only she was a educated person in our family and in all causes, she used to talk with Government-Administration and used to handle documentary proceedings. Regarding the murder case of Nitin, Anjana had also protested the bail of Accused persons in High Court. In this manner, Anjana was making all possible efforts for justice in both the cases. Even after being confined in jail, the accused persons were putting pressuring on our family to do compromise. But, we refused to from the compromise.

Even after the threats, we did not agree to change our statement and for compromise. Anjana was being forced continuously from the date of FIR lodged in the year 2019, even thereafter, she never stepped back and kept demanding justice from the Government/ Administration and continuously contested legal proceedings. It is being informed by the Administration that Anjana got died by jumping down from the vehicle, which is not appearing to be true. Our daughter could not do so. We have doubt that the Lambardars of village had hatched conspiracy to kill Anjana who was main witness in the both the murder cases of Nitin and Rajendra, due to which, she was killed. Due to the death of Anjana, now, the people we were pressurizing our family have become more confident and we are also apprehending assault on our family in future.

Therefore, we demand from your goodself that after registering FIR regarding the murder of Anjana, kindly conduct enquiry regarding the conspiracy behind the murder of Anjana, and after arresting the guilty persons, they be send to jail immediately.

28. Anjana's brother wrote to the DGP (**at Annexure P-13 Page 121 to 125**) about the pressure being exerted by former Home Minister is as under:

*To,
The Director General of Police
Police Headquarter, Bhopal, M.P.*

Subject: Regarding take legal action on luring and threatening by Khurai MLA to make statement in favour of murderers in Court and changing statements regarding Applicant's brother Nitin @ Lallu Murder Case and death (murder) of sister Anjana in suspicious circumstances within the limits of P.S.Khurai, District- Sagar.

*Sir,
In reference to the above subject matter, it is submitted that I i.e. Applicant Vishnu Ahirwar S/o Raghuvir Ahirwar, am resident of Village- Barodiya Naunagir. On 24.08.2023, my villagers by hatching criminal conspiracy with other unknown **accused persons had killed my brother Nitin @ Nitin in Village-Barodiya Naunagir, and aforementioned accused persons had also killed our another relative namely Rajendra Ahirwar and previously, my sister Anjana was also died in the suspicious circumstances, and complaint regarding her murder was also lodged by me and my family members. My sister Anjana was the main witness of Lallu murder case, who was called by MLA Bhupendra Singh at his bungalow situated in Sagar and threatened her for settlement and she was also lured with money, whose' video got viral on social media, but, my sister did not agree with his proposal, and after few days thereof, my sister Anjana got died (killed) in suspicious circumstances,***

whereas my sister Anjana was main witness in Lalu murder case and was contesting legal fight against the accused persons of village.

Sir, in Lalu @ Nitin murder case, my mother Smt. Badi Bahu and I myself are witnesses. Statement of my mother had to be recorded in Court on 27.09.2024 and before 02-03 days thereof, real nephew of MLA Bhupendra Singh and his MLA Representative Lakhan Singh called me and my mother at his Crusher, thereafter, Kallu Councilor came to call us and took us to the Crusher of Lakhan Singh, whereupon, Lakhan Singh by threatening us said that statement of yourself and your mother have to be recorded in Lalu murder case. And make statement as we say, otherwise, you also will have to sustain gunshot, thereafter, before few days of the date of hearing, MLA Bhupendra Singh called me and my mother at his Bungalow and said that whatever Lakhan has spoken to you, make statement accordingly, and he also threatened that make statement in Lalu Murder Case as per our instructions, we were also lured for money by him and moreover, were also threatened and said that if you won't make statement as per our wishes, then your fate will be same as of Lalu, Rajendra and Anjana. Thereafter, he directly sent us to meet the Advocate for accused persons in his vehicle, whereupon, Advocate explained us to make statement in favour of Accused Persons, and taught the statement to my mother. But, my mother after visiting Court, stated the truth and made correct statement and did not follow his instructions, due to this reason, now, I myself and mother and other family members are apprehending threat to life from MLA Bhupendra Singh and his associates. These people have threatened us that if you won't make statement in our favour, then, they would also kill me, my mother and other family members, like my brother Lalu @ Nitin, Rajendra Ahirwar and my sister Anjana. Therefore, if any accident/ incident occurs with me or my mother or any other family members/ witnesses, and if murder/ attempt to murder is committed, then for that, only Khurai MLA Bhupendra Singh and his goons will be responsible.

Therefore, it is requested to your good self that for the purpose of suppressing the murder case of my brother Lalu @ Nitin, murder

of Rajendra Ahirwar and suspicious death of my sister Anjana, and for getting released his relatives from the murder case, the constant pressure is being made by MLA Bhupendra Singh and we are also beating threatened. Due to his such conduct, I have apprehension that MLA Bhupendra may get killed me at any point of time, due to which, kindly provide security to me and my family and after registering case against the MLA Bhupendra Singh who is creating pressure on us to change statement in murder case, kindly take legal action against him. I shall be highly grateful.

Date:04.11.2024

-Sd

Applicant

Vishnu Ahirwar S/o Sh. Raghuvir Ahirwar

R/o Village- Barodiya Naunagir

P.S. Khurai, District- Sagar,M.P., Mobilee No.9294585275

Copy to:-

The Hon'ble Chief Minister, Madhya Pradesh.

Hon'ble Chairman, Human Rights Commission, Bhopal.

The Inspector General of Police, Sagar Range, Sagar.

29.No action was taken by the authorities.

PUCL fact-finding report dated July 2024

30.The fact-finding team that investigated the tragic events surrounding the lynching of 18-year-old Dalit youth Nitin Ahirwar and subsequent incidents in Sagar district, Madhya Pradesh, in 2023, was composed of several concerned citizens and experts. The team included Advocate Mohan Dixit, independent journalists Rohit and Sadaf Khan, Advocate Aditya Rawat, Neelu from Eka Collective, Madhuri from the People's

Union for Civil Liberties (PUCL), Anjali from the All India Feminist Alliance (ALIFA) and NAPM, and Nitin from the Jagrit Adivasi Dalit Sangathan. The members of this team engaged with the victims' families, local police, administrative officials, journalists, and lawyers, examined documents and media reports, and conducted in-depth research to understand the ongoing violence and the suspicious deaths of Nitin, his uncle Rajindra and his sister Anjana, who had bravely sought justice. The fact finding report is **at Annexure P-3** and the relevant extracts are reproduced as under:

According to her family, around three months after Nitin's murder, former minister, former MP and senior BJP leader, Shri Bhupendra Singh summoned them to tell them to stop pursuing this case any further, and to tell the media that they were getting complete support from the the minister and were satisfied with the administrations' actions. Anjana was even handed a typed copy of the statement to be made by her before the media, however Anjana refused to give such a statement. A few months later, another attempt was made on behalf of Shri Bhupendra Singh to engineer a "compromise" but Anjana and her family refused.

26-year-old Rajendra Ahirwar was a key witness in Nitin's murder case. He was attacked with lathis and axes at the house of Pappu Rajak, and had to be taken to Khurai Community Health Center, then to Sagar District Hospital, and then was referred to Bhopal. He died on the way to Bhopal. Anjana Ahirwar was with him since he was brought to Khurai. After Rajendra's post-mortem in Sagar, Anjana gave this statement to the media:

*“Uncle Rajendra was a witness in the 302-murder case. Israel Khan, whose sons **Golu and Lalu Khan**, who are in jail, **threatened him (Rajendra) to turn hostile and testify in their favour in Nitin’s murder case, and threatened to kill him if he did not do so** Around 8:45 at night, I phoned my uncle, and heard a lot of commotion at the other end. Uncle said, '**Anju, these people are beating me,**' he mentioned some names and said that a fight has broken out. Then they broke his mobile. I then called my uncle Mohan Ahirwar, his son Vikas Ahirwar and Machla, and they went to where Rajendra chacha was...they said that - Israel Khan, Ashiq Qureshi, Tantu Qureshi, Faheem Khan and Bablu Khan were attacking Rajendra chacha. After that we informed the police. **We had reported threats against us, the police had registered an FIR**, I don't know what action they took...**Ashiq Qureshi said that we will kill you, we will chop you to pieces, we will slit your throat to pieces for reporting against us, and that is what they did...** If the government had demolished the houses of the accused in my brother's murder, if proper action had been taken against them..Uncle Rajendra would have been alive today, he would still be with us...”*

Rajendra's family said that Rajendra was not afraid of the Thakurs, which irritated them. They believe that the Thakurs had him killed. Rajendra's father Ramsevak says - "On the day of Nitin's murder, Komal Thakur, Vikram Thakur, Azad Thakur, Vishal Thakur and their associates came to our house looking for Rajendra. When they didn't find Rajendra at home, they beat me up and smashed everything in the house. They threatened us to leave the village if we wanted to stay alive. My leg was injured in the attack and I couldn't walk properly for two months. But out of fear, I was not able to complain about this anywhere. I thought that if I complained, they would only cause more harm to my family.” Everyone in the family claimed that if Rajendra had been at home at the time of the attack, he would have been murdered that day itself.

*Rajendra's grandmother recounted an incident a few days before his murder - “**The Thakurs were farming our land on rent for a few years. This year they had sown the field without paying us anything.** When I went to Govind Singh Thakur to ask for the money he owed me, he abused me and sent me away. A few days later, I went to Govind Singh again with Rajendra, and he abused us again. But on Rajendra's insistence, he threw the money at us and said, 'take your money and see what happens to you. You have testified against the Thakurs...You better change your testimony, otherwise you won't survive.’”*

The family also reported that the accused in Nitin's murder were continuously pressuring Rajendra to compromise, even while they were in jail. Pappu Rajak, at whose house Rajendra was attacked, has filed a counter-FIR in the matter of the attack on Rajendra. According to the FIR, Rajendra, Amir, and Faizal came to Pappu Rajak's house and started beating him to demand a compromise in some previous incident. Pappu Rajak received injuries in his hand and on his head, and was later admitted for treatment in Hamidia Hospital, Bhopal. In this case, FIR No. 198/24 was registered at 5:42pm on 26.05.24, the day after the incident and several hours after Rajendra and Anjana's death. The Dehati Nalsi report was also only made at 7:30 AM on the morning after the alleged incident. We were told that Pappu Rajak works for the lambardars and is close to them. An FIR under sections 307, 458, 294, 34 of the IPC has been registered against Rajendra, Amir and Faizal. Amir and Faizal have been arrested.

*Anjana's Death under extremely suspicious circumstances After Rajendra's post-mortem in Sagar, **Anjana was bringing Rajendra's body back to the village accompanied by the police. It was then that she died under extremely suspicious circumstances on Khurai bypass road.** The police claim that Anjana died due to “either falling or jumping” out of the vehicle but that the matter is “still under investigation”. **Rajendra's parents were also in the vehicle, along with one policeman and a driver.** According*

to Rajendra's parents there was a police vehicle in front, and possibly one behind as well. **They say that the police had given them some water to drink, after which they fell asleep. They were woken up by the police to see Anjana lying about 20-30 feet away on the road.** When the police brought Anjana back to the vehicle, she was already unconscious. Another police vehicle arrived on the scene, and Anjana along with Rajendra's mother was sent in the vehicle to Sagar. It is pertinent to note that Rajendra's mother cannot hear or speak. **The police are calling this an accident, and a case of Unnatural Death** has been registered at Khurai City Police Station. However, **Anjana's family believes that her death was not an accident but murder. Rajendra's family also believes that it was the Thakurs who had Anjana killed. Those who knew Anjana say that it is impossible to believe that she would jump from the vehicle of her own accord. The claim of her "accidentally falling out" of a closed vehicle is also unbelievable and highly improbable. Anjana's post-mortem reveals Anjana suffered a head injury due to a skull fracture as well injuries on her hands and knees. According to the post mortem report, the cause of Anjana's death was "head injury and its complications"**

Curiously, **about 10 days before the incident, the police security provided to the family after Nitin's murder, had been removed. The CCTV cameras in front of Anjana's home had also not been functional for a few days. When questioned about this fact, the Collector claimed the security was removed since no incident had taken place for several months, while the CCTV was not functioning due to "some technical malfunction"**

Discussions with District officials and role of the Administration District Collector of Sagar, Shri Deepak Arya, believed the root of these incidents to be societal, stating that "this Dalit family had feelings of anger and rebellion against exploitation of the elites, and were wanting to escape their pressure and influence. However, they were manipulated to commit crimes by a faction

opposed to the village elites (lambardars) who had their own ulterior motives.” Superintendent of Police, Mr. Abhishek Tiwari had been on leave for several days during our visits, and was unavailable for comment. We met Additional Superintendent of Police Mr. Sanjeev Uikey, who is supervising the investigation into the entire matter and SDOP Khurai Mr. Sachin Parte, who is the Investigating Officer in the murders of Nitin and Rajendra. When asked about the murders, both officials were eager to present the victims as criminals and rationalise the acts of the accused. Both officers stated that Vishnu, Rajendra, and Nitin were habitual offenders and had multiple criminal cases against them. However, they refused to provide any details of these cases. They claimed that a feud existed between the families of Shabbir Khan and Komal Thakur of the village. Rajendra, Vishnu, and Nitin were embroiled in crimes due to their proximity with Shabbir Khan's sons. The SDOP stated that Shabbir Khan's group used these Dalit youths to file false cases of caste atrocities against the Thakurs, but when we asked for information about these alleged false cases, he fell silent. According to ASP Mr. Uikey, Nitin was killed because he attacked Vikram Thakur first. The SDOP admitted that Pappu Rajak, at whose house Rajendra was murdered, has not been arrested even after a month. Regarding the omission of 11 attackers' names from the FIR of Rajendra's murder filed by his family, he claimed that the investigation about these individuals was ongoing. When asked if statements from eyewitnesses Amir Sohail and Faizal have been taken in Rajendra's murder case, he did not provide a clear answer. Both Amir and Faizal are currently in jail, having been arrested on Pappu Rajak's complaint. Despite not being named in Pappu Rajak's complaint or media statements, two other individuals, Machla Kori and Imran Khan, have also been arrested. Machla Kori is an eyewitness in the case. We were told that Imran Khan, a resident of Rahatgarh, was not even present at the scene, but was possibly arrested because he was helping the Ahirwar family in to continue their pursuit for justice in Nitin's murder case. Though we cannot confirm

the truth of this claim, these two arrests raise suspicions on the objectivity of the police in the matter. As 13 people had been arrested for Nitin's murder, when we met police officials, we expected them to be objective and sensitive. However, we were shocked to see the police show clear prejudice against the victims; when asked for information about the murder cases, instead of providing details, they indirectly tried to justify these murders by calling Nitin, Rajendra, and Vishnu "habitual offenders". Nitin was only 18 years old when he was murdered. While refusing to provide us with any detailed information about criminal cases against Nitin, police officers stated 7 FIRs were filed against him between 2021 and 2023. The fact that so many cases were registered against a minor from a rural Dalit family of daily wage labourers raises many questions, and also strengthens his family's allegation that their children were being implicated in false cases because of Anjana's complaint against the Thakurs. Nitin and Anjana's mother, Badibahu Ahirwar, also showed written complaints to the SP and DIG (Sagar) on 31.03.21 and on 09.04.21 stating that Nitin, who had come home from Indore for Holi, was picked up by Khurai police and kept and beaten at the police station for many days. No investigation was done on these complaints, even though they were serious complaints of custodial torture of a Dalit minor. On 03.05.24, around three weeks before Anjana's death, her brother Vishnu was externed (Zila Badar) from Sagar and 8 adjoining districts for a period of 6 months, on the grounds of his being a "habitual offender", creating "an atmosphere of fear and terror among the general public" and "affecting public safety, peace, and public order". We examined the criminal cases on the basis of which the order was passed, and found that there are no cases that could justify the externment on these grounds. All 6 cases mentioned are still at the trial stage, in one a compromise has been effected. 3 cases are ordinary disputes. In one case, the complainant is Vikram Singh Thakur, who is a key accused both in the assault on Anjana and the lynching of Nitin, and whose animosity to the family is well established. This case is also pending. One case is of theft but is also pending. The

externment of Vishnu based on such cases raises suspicion of administrative prejudice, especially when the police repeatedly try to emphasize "criminal record" of Nitin and Rajendra and Vishnu, when asked about the atrocities against them and their families. Nitin, Anjana, and Vishnu's mother, Badi Bahu Ahirwar, said that after Anjana's death, when family members met Additional Superintendent of Police Mr. Uikey, he threatened that even Vishnu could be killed. He ordered the police personnel present there to snatch Vishnu's phone. The police said they would return the phone the next day, but then refused to do so. No seizure memo was provided and the procedure for seizure of electronic articles mandated by law was not followed. After repeatedly asking for the phone without success, his mother filed a complaint to the SP. Important evidence related to Nitin and Anjana's case are on Vishnu's phone, but now they do not know what will happen to that evidence. Later, on June 29, we learned from media reports that on June 5, the ASP had "confiscated" Vishnu's phone for making a video when he went to submit an application with the family. According to the police, based on photos of illegal weapons, videos, and WhatsApp chats on the phone, a case was registered against Vishnu on June 27 under Section 25(1)(a) of the Arms Act. That an FIR has been filed 22 days after the phone was seized without a proper seizure memo raises suspicion about the intent of the police; the possibility of tampering with the electronic device cannot be ruled out. Moreover, evidence found on a phone "seized" in such an illegal manner would not have a legal validity. It appears that this whole exercise is merely an attempt to pressurise the affected family from pursuing justice and creating public prejudice against them. Collector Deepak Arya informed us that after Nitin's murder, the victim's family was given a total assistance of Rs. 21,46,724, under various heads, including the Chief Minister's Discretionary Fund, Red Cross Society, and compensation under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Political Intervention

Khurai MLA and former minister Shri Bhupendra Singh gave a statement to the media that this was not an Atrocity but merely the fallout of a long-standing dispute between the two parties. The fight happened because of the dispute, due to mutual disagreement... The truth will come out after investigation... Congress is trying to divide society; Congress is trying to use the incident to make political capital.

Khurai's BJP MLA and former minister Mr. Bhupendra Singh blamed the victim's family for Anjana's death, accusing them of criminal tendencies, he said, "Anjana Ahirwar's deceased relative had a criminal background..."

According to police records, the deceased Rajendra Ahirwar terrorised the village. Rajendra Ahirwar was involved in criminal activities at the behest of Imran Khan." He said, "Congress politicizes deaths. The mastermind of the Baraudiya Naunagir case is Imran Khan. Imran was the one who made the deceased's family commit all these crimes. Imran has cases like 302 registered against him. People here are troubled by his terror. Imran has used the deceased's family." He said that the entire CDR of this case should be extracted. "Those who have instigated that girl should be charged". He said that... "85-year-old people are in jail. Will they commit such a crime? Ankit wasn't even there at that time. The police have been impartial in the case." (It may be noted that the oldest accused, 77 year old Vijay Singh is now out on bail)

Conclusions:

1. Bundelkhand, is known for its history of deep feudalism and to this day, the dominance of the "lambardars" persists. **The Thakur family of Baraudia Naunagir have been the village "lambardars" for generations and they own most of the land in the village. They dominate the village, control the panchayat and play a role in all major village affairs. No one dares go against them. The defiance and rebellion of these Dalit youths against feudal oppression and exploitation by the**

Thakurs were undoubtedly seen as an affront and challenge to their authority. The violence was in reaction to this defiance.

2. *It was in these circumstances that lambardar youth tried to humiliate Vishnu in the marketplace, by slapping him and making him touch their feet, and assaulted and molested 15-year-old Anjana. Anjana got an FIR registered only with great difficulty, and the excluded the complaint of sexual violence and did not apply the relevant sections Protection of Children from Sexual Offences Act. According to Anjana's family, despite the accused getting bail easily, the lambardars considered it an insult to their dominance and began harassing them.*
3. *It was these circumstances that led to the murder of 18-year-old Nitin in the village market, the assault on his mother and Anjana who went to save him and the smashing and looting of their home and that of Rajendra Ahirwar. Tension increased after the arrest of the accused lambardars and their associates. Anjana kept complaining about the lack of action in this case, about police not adding the name of local BJP leader Ankit Singh, and about the coercion from the accused to agree to a "settlement". But the police and administration kept ignoring these complaints.*
4. *The lynching of 18-year-old Nitin for over an hour in the middle of the market by lambardars and their men, the fact that no one except his mother and sister even attempted to save them, the assault on his mother in which her hand was broken and her sari stripped off followed by the assault on Anjana, the smashing and looting of their homes, and the glaring tardiness of the police in arrival - all of this was possible only because the victims were a Dalit family of labourers and the assailants were historically dominant elites.*
5. *While the police displayed commendably proactive in arresting 13 people, including lambardars for Nitin's*

murder, some questions remain: Why was BJP leader Ankit Singh Thakur not made an accused despite Anjana complaining, in writing, about his involvement immediately after the murder? Why was the stripping of Badi Bahu Ahirwar not mentioned in the FIR despite the complaint to this effect and the police themselves helping her cover herself? Why was no action taken on Anjana's repeated complaints about threats and pressure for "compromise"? Why was the CCTV footage not taken into account? Nitin's death took place at 12:16 am, while the FIR was registered two hours after - yet, why were the charges of murder (Section 302, IPC) not added in the FIR? We received no satisfactory answers to these questions.

6. *Rajendra Ahirwar was Nitin and Anjana's uncle and a witness in Nitin's murder. The lambardars were not directly involved in Rajendra Ahirwar's murder, but the assailants were associated with them. Reportedly, Rajendra had been working for a family who were opposed to the Thakurs. On the day of Nitin's murder itself, a mob led by the lambardars had entered Rajendra's home looking for him, and when they did not find him at home, they had attacked his father Ramsevak Ahirwar and trashed their home and their belongings. Immediately after Rajendra's death, Anjana told the media that Rajendra was being constantly threatened to turn hostile as a witness in Nitin's murder case or else he would be killed. Rajendra's family are also convinced that the Lambardars had him killed. Many of Rajendra's attackers have not yet been arrested, despite the family submitting a list of their names to the police. The police claim this is because they are "still investigating" these people, a sense of discretion normally never seen. Even Pappu Rajak, in whose house Rajendra was attacked, has neither been arrested nor has his name been added in the FIR. Rajendra had serious injuries from sharp weapons (reportedly an axe) all over his head and body. Yet, it appears his treatment was inordinately delayed. At 9*

PM, Rajendra was taken to Sagar hospital in a very critical condition, but it took more than 5 hours for him to be referred to Bhopal. Rajendra was sent to Bhopal only after around 2 AM, but died on the way. The family suspects that there was a deliberate delay in treatment.

- 7. Anjana's death, mere hours after Rajendra's murder, while she was being accompanied by the police, is a highly suspicious one. Almost two months later, the police are tight lipped, offer no explanation claiming that the "investigation is ongoing". Claims of Anjana "falling" or "jumping" from the hearse transporting Rajendra's body are completely unbelievable. The circumstances of Anjana's death point towards a conspiracy. Anjana was educated and was central to the family's struggle for justice especially in the murders of Nitin and Rajendra. She was the one who communicated with the administration and politicians on behalf of her family. At the age of 15, she had managed to get an FIR registered against the village lambardars and further still, refused to "compromise" even when faced with threats from the lambardars. Anjana was the complainant and a key witness in Nitin's murder case. She was also the main witness in her uncle's murder case, as he had named his attackers to her over the phone. Anjana was constantly pressured to compromise and change her testimony, and she made several written complaints about the same. Anjana also objected to the bail application of the accused in Nitin's murder case in the High Court, which led to their bail being rejected. Anjana was preparing to file a similar objection in the Supreme Court as well. After Nitin's murder, Anjana had expressed fear for her safety and that of her family, to the administration and repeatedly complained of threats. The police had provided a guard for the family's security and installed a CCTV camera in front of the house. However, just 10 days before Anjana's death, the police security was withdrawn and the CCTV cameras were non functional. The family says that*

Anjana was killed by the Thakurs as part of a conspiracy. While Rajendra's parents, who were also in the same van, are fearful and say they "saw nothing" they are also insistent that the Thakurs had her killed. This case requires a detailed and impartial investigation, one that the local police is neither equipped for, nor can be trusted to undertake with any objectivity.

8. *The village lambardars are reportedly close to Khurai MLA and former cabinet minister, veteran BJP leader Mr. Bhupendra Singh, and politically connected to him.* The three main accused in Nitin's murder are BJP workers. Since Nitin's brutal murder, *Mr. Bhupendra Singh has been quick to reduce this atrocity which has claimed three young lives to 'a mere dispute between two parties'.* By claiming the matter to be *"orchestrated" by Congress,* and by a person with a criminal record (from the faction opposed to the Thakurs) he has sought to trivialize and downplay the seriousness of this atrocity. Regrettably, the police and administration echo his words - thus, as things stand, chances of the Ahirwar family getting justice seem very slim. It is possible that in an attempt to defy the suffocating dominance of the lambardar Thakurs, these Dalit youths may have accepted support from some persons opposed to the lambardars who had their own ulterior motives. Nevertheless, attempts by the police and the administration to justify and rationalize these atrocities on this basis is absolutely reprehensible. It is possible that due to the support received from the opposing faction, tensions may have escalated further, and these Dalit youths may have been implicated in the criminal charges against members of this faction. It is not possible for us to reach any conclusion about the merits of the charges against Rajendra, Vishnu, and Nitin. However, it is highly possible that these may be false cases, especially when we clearly see the bias and prejudice of the police as they try to equate atrocities and murder to petty criminal offences. Police's competence and objectivity both suspect: Anjana's death and in fact,

all the matter require CBI investigation The tragic events of Baraudiya Naunagir prove that the socio-political structures that have enabled historical inequality and exploitation are very much alive today. The strange circumstances of Anjana's death/murder make it abundantly clear that the matter requires careful and thorough investigation, one that local police do not appear capable of undertaking. It is also clear that political pressures and administrative bias will not allow proper investigation or action in these matters. In such a situation, neither is the police equipped to handle these case - nor can they be trusted to objectively do so. For these reasons we very strongly urge that Anjana's death as well as all the other matters described above be thoroughly investigated by the CBI and that there be transparency in the proceedings.

Prayer for independent investigation with

Officers from outside the State

31. In the Case of Dharam Pal V State of Haryana (2016 (4) SCC 160)

while transferring the Investigation to the CBI in a case of rape of minor daughter of the petitioner this court held as under:

*24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. **The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation.** We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.*

25. *We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one taste, the taste of salt, so does justice have one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. **It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one.** It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He*

should not harbour the feeling that he is an “orphan under law”.

32. In *Subrata Chattoraj Vs. Union of India (UOI) and Ors.* This

Hon’ble court held as under:

9. *It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to the **CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved.** What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand.*

33. In the case of *Bharati Tamang v. Union of India and Others*, (2013

(15) SCC 578), this Court allowed the Writ Petition filed by the widow of late Madan Tamang who was killed during a political clash and directed investigation by the CBI which would be monitored by the Joint Director, CBI. The following observations were made:

*“44...Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial for being dealt with under the provisions of the criminal law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred to in the earlier paragraphs, we find that it is **our***

responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried on effectively and the perpetrators of crime are duly punished by the appropriate court of law.”

34. This Court has expressed its strong views about the need of Courts to be alive to genuine grievances brought before it by ordinary citizens as has been held in Zahira Habibulla H. Sheikh v. State of Gujarat (2004 (4) SCC 158) is as under:

22. It was submitted by the appellants that in view of the atmosphere in which the case was tried originally, there should be a direction for a trial outside the State in case this Court thinks it so appropriate to direct, and evidence could be recorded by video-conferencing so that a hostile atmosphere can be avoided. It is further submitted that a fresh investigation should be directed as investigation already conducted was not done in a fair manner and the prosecutor did not act fairly. If the State's machinery fails to protect citizen's life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is but appropriate that this Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members.

*56“...Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. **If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. ...***

35. In *Awungshi Chirmayo & Anr. V Government of NCT of Delhi &*

Others (2024 INSC 249) it was held as under:

16. It is to observe that unresolved crimes tend to erode public trust in institutions which have been established for maintaining law and order. Criminal investigation must be both fair and effective. We say nothing on the fairness of the investigation appears to us, but the fact that it has been ineffective is self evident. The kith and kin of the deceased who live far away in Manipur have a real logistical problem while approaching authorities in Delhi, yet they have their hope alive, and have shown trust and confidence in this system. We are therefore of the considered view that this case needs to be handed over to CBI, for a proper investigation and also to remove any doubts in the minds of the appellants, and to bring the real culprits to justice.

36. After reviewing the case law mentioned above, it can be concluded that the facts and circumstances surrounding the present case it makes it a suitable for a CBI investigation, consisting officers from outside the state of Madhya Pradesh. The accused individuals are politically influential. The primary accused the former Home Minister of Madhya Pradesh and the current MLA of Sagar, has repeatedly interfered in the investigation. They have influenced and threatened witnesses while preventing the police authorities from conducting a fair inquiry. This is evident from the omission of key names, such as Ankit Singh, who is a central figure and a close aide of the

aforementioned minister in the lynching of Anjana's brother Nitin.

37. Since Anjana registered an FIR against the molestation and violence she endured, her entire family has been subjected to constant pressure and intimidation. Tragically, Anjana's brother Nitin, her uncle Rajindra, and Anjana herself have been murdered. Additionally, false cases have been filed against Anjana's elder brother, Vishnu. Numerous representations have been submitted to various authorities, urging the registration of an FIR and a thorough investigation into Anjana's death, which the police claim occurred when she jumped from an ambulance. This version of events is implausible, as Anjana had been actively pursuing justice since the age of 15.

38. After the death of her uncle, Rajindra, Anjana made a public statement implicating the former Home Minister and sitting MLA from Sagar in the murder of her uncle, who had been a key witness in Nitin's murder case. With three members of the Dalit family already dead, it is clear that there has been a failure on the part of the police authorities in Madhya Pradesh. Therefore, a CBI investigation into Anjana's death is imperative.

RELIEFS SOUGHT

- a. For a writ directing the CBI to constitute a team of officers from outside the State of Madhya Pradesh to take over the investigation and prosecution of the persons engaged in the murders of Nitin, Rajendra and Anjana and the criminal intimidation of the entire family as set out in this Petition and to do all things necessary in accordance with law to complete the prosecution of the accused persons expeditiously.
- b. To transfer the investigation and prosecution in respect of FIR No. 27/2019 dated 26.01.2019 at Annexure P-1, FIR No. 329/2023 at Annexure P-2 dated 25.08.2023 and FIR No.197 of 2024 dated 25.05.2024 at Annexure P-7 from Madhya Pradesh to Delhi so that the entire proceedings will be conducted in an independent and fair manner.
- c. To order immediate and effective police protection for the members of the family of the deceased.

- d. For an order directing the CBI/SIT to register an FIR in respect of the murder of Anjana as described in para 19 of this Petition and investigate and prosecute in accordance with law.
- e. Pass such other or further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

LIST OF DATES & EVENTS

26.01.2019	Around 8:30 a.m the deceased Anjana Ahirwar went to a nearby nursery to attend to nature's call. While she was alone, four villagers—Azad Thakur, Vishal Thakur, Pushpendra Thakur, and Chhotu Raikwar—arrived at the scene due to longstanding enmity and discrimination against her because of her Dalit identity, they began verbally abusing her with offensive language, targeting her in the name of her mother and sister. Vishal Thakur then slapped her on the left side of her face and ear, causing her pain. When Anjana cried out for help, the assailants fled the scene but not before threatening her, saying, "If you report this, we will kill you." Anjana later recounted the incident to her mother, Badi Bahu, and her brother Vishnu. Together, they went to the police station to file a complaint. A written report was submitted to Police Station Khurai, District Sagar, detailing the incident, and an FIR (No. 27/2019) was filed under sections 294, 323, 506, and 34 of the Indian Penal Code, along with sections 3(1) and 3(2) of the SC/ST Act, 1989. However, it is noted that no charges related to molestation or the POCSO Act were invoked
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	against the accused, indicating a possible bias by the police authorities towards the perpetrators from the very beginning of this horrific incident.
31.03.2021	A complaint was submitted regarding Nitin being forcibly detained at the police station on false charges and subjected to torture for five days.
09.04.2021	Another complaint was submitted to SP and DIG (sagar) regarding Raghuveer and Nitin being forcibly detained at the police station on false charges, with Nitin being beaten for five days.
24.08.2023	Nitin had gone to the market, but as it grew quite late, someone went to check on him. Loud screams were heard near Golu Soni's shop, where lambardars and their men were seen brutally beating Nitin. A woman managed to rescue Nitin from the mob and brought him to Vinod Kori's shop for safety. However, the attackers soon surrounded them, dragged Lalu onto the road, and continued beating him mercilessly for almost an hour. It was during this assault that Ankit Singh arrived at the scene. According to Badi Bahu Ahirwar, the assailants included Komal Singh Thakur, Vikram Thakur, Azad Thakur, Ankit Singh Thakur, Vijay Thakur, Golu Soni, Lalu Khan, Anees, Wahid, and their accomplices. Despite Badi Bahu Ahirwar's desperate attempts to protect Nitin, she sustained severe injuries, including a broken right hand, and

	her saree was forcibly removed during the struggle. Anjana, who arrived later, was also assaulted and slapped. When the police eventually arrived, Lalu was unconscious. A policeman assisted Badi Bahu Ahirwar by providing her a towel to cover herself, as her injuries made it difficult for her to manage on her own. Nitin was rushed to the hospital but succumbed to his injuries shortly thereafter. On the same day, Vikram Thakur, Azad Thakur, Komal Thakur, and their accomplices reportedly invaded Nitin Ahirwar's home and vandalized it. They destroyed all belongings, including essential documents, and even killed the family's pet parrot. They broke the leg of their horse, resulting in its death. Additionally, they looted jewellery and around 8,000–9,000 rupees in cash that Badi Bahu Ahirwar had saved for her eldest son's wedding.
25.08.2023	FIR 329/2023 dated 25.08.2023 was filed regarding Nitin's murder, but several critical details from Anjana's complaint were omitted. Notably, the incident of Badi Bahu being disrobed, which was explicitly mentioned in Anjana's complaint and reported in the media, was excluded. The destruction of the horse and the parrot, as well as the full extent of the damage to their home, were also not included in the FIR.

	Based on Anjana's complaint, a case was registered at Khurai Rural Police Station at 2:09 AM, against Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Wahid Khan, and 3–4 unidentified individuals. The charges were filed under IPC sections 307, 323, 458, 427, 294, 147, 148, 149, and sections 3(1)(d), (e), 3(1)(va), and 3(2)(v) of the Atrocities Act. Notably, IPC section 302, which pertains to murder, was added much later. The Registration of Death report indicated that Nitin died at 12:16 AM. However, in the FIR filed at 2:09 AM, section 307 IPC (attempt to murder) was initially included instead of section 302 IPC (murder). According to Nitin Ahirwar's post-mortem report, the cause of death was attributed to "multiple injuries sustained over the body." The report documented 29 serious injuries inflicted on Nitin's head and body.
08.09.2023	Anjana submitted an application with respect to not adding Ankit Singh's name to the complaint, giving him protection and chance to influence evidence, and not taking her statement under section 164 into consideration.

29.09.2023	Anjana submitted an application to IG about Ankit Singh's name not being added to the complaint
21.10.2023	Anjana sent an application to the SP of district Sagar, MP about SDOP Khurai not conducting impartial investigation and of Collector's assurances not being fulfilled
26.02.2024	Komal Singh Thakur, Ankit Thakur's family threatened Anjana at her home
25.05.2024	Rajendra Ahirwar, a 26-year-old key witness in Nitin's murder case, was tragically killed. He sustained deep lacerations on his head, along with additional injuries on his chest and arms. Numerous other wounds were also documented. According to the post-mortem report, the cause of death was identified as "multiple injuries sustained to the body and its complications." Based on the <i>Dehati Nalsi</i> report filed at 8:45 PM on May 25, 2024, FIR No. 197/2024 was registered at 9:03 AM on May 26, 2024, under IPC sections 307, 147, 148, 149, and sections 3(2)(v) and 3(2)(va) of the Prevention of Atrocities Act. Despite Rajendra's death being evident by the time the FIR was filed, section 302 (murder) was not included in the charges. In connection with this case, Israel Khan, Ashiq Qureshi, Tantu Qureshi, Faheem Khan, and Bablu Khan have been arrested. However, Rajendra's

	family has alleged the involvement of 11 additional individuals, whom the police have yet to apprehend, citing that the investigation is still ongoing. Rajendra's family has stated that his lack of fear toward the Thakurs provoked their ire. They strongly believe that the Thakurs orchestrated his murder. It is noteworthy that despite Rajendra's death being confirmed before the registration of FIR No. 197/2024, the police failed to include section 302 (murder) in the initial filing.
26.05.2024	After the post-mortem of Rajendra Ahirwar was conducted in Sagar, 20-year-old Anjana Ahirwar, who was pursuing her B.A. at the time, accompanied her uncle's body in the ambulance on the way back to their village. Tragically, under highly suspicious circumstances, Anjana died on May 26, 2024, during the journey. Police authorities have claimed that Anjana either jumped from the ambulance or fell out of it, but the exact circumstances surrounding her death remain unclear.
02.07.2024	Representation was submitted by the petitioner dated 01.07.2024 to the DM,IG and SP of Sagar Madhya Pradesh for Registration of FIR in case of murder of Anjana

July 2024	Fact finding report was conducted to investigate the three murders of 3 members of the petitioners family
04.11.2024	Representation sent by Vishnu the brother of Anjana to the DGP Madhya Pradesh citing threats and intimidation by the former home minister to make statements in favour of the accused in the murder cases of his family members
	Hence this Writ Petition

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

Writ Petition (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

BETWEEN

<u>Sr.No</u>	<u>Particulars</u>	<u>Before this Hon'ble Court</u>
1.	Badi Bahu W/O Raghuvir Ahirwar, Aged About 49 Years, R/O Village Barodiya, Naunagir, P.S.- Khurai Rural, District-Sagar	Petitioner No.1
VERSUS		
1.	The State of Madhya Pradesh Through its Chief Secretary at Mantralaya, Vallabh Bhawan, Bhopal- 4620041.	Respondent No.1

2	CBI Through its director at Plot No. 5-B, CGO Complex, Lodhi Road, New Delhi - 110003	Respondent No.2
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To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGED OF THE

SUPREME COURT OF INDIA

THE WRIT PETITION OF THE

PETITIONERS ABOVENAMED

IT IS MOST RESPECTFULLY SHOWETH:

FACTUAL BACKGROUND:

Writ to transfer criminal proceedings

From Madhya Pradesh to Delhi

Former Home Minister behind killing of 3 family members

makes it impossible for justice in Madhya Pradesh

1. This Petition is filed by the mother of Anjana, who has suffered the murder of 3 members of her Dalit family i.e. (1) Nitin her son, (2) Rajendra, her brother-in-law and (3) Anjana her daughter, and who

fears that the former Home Minister of the State of Madhya Pradesh may wreck further vengeance on her family and herself for making complaints against members of the gang of the former Home Minister as well as the latter himself to the police.

2. One after the other 3 members of a family were killed with the police extending full assistance to the accused persons only because the former State Home Minister and his group was behind the killings. Resultantly, no prosecution of the accused persons is possible in the State of Madhya Pradesh.

**Petition seeking CBI/SIT investigation into the molestation and
murder of 20 year old Dalit woman
Politically powerful person behind the killing**

3. That the Present Petitioners have filed this Petition seeking an order for a C.B.I/SIT investigation into the molestation and murder of 20 year old Anjana on 26.05.2024.
4. **Three members of family killed** all were members of the Scheduled Caste community. The sabotage of the investigation and the killing of eyewitnesses were the result of a criminal conspiracy, which involved members of the village dominant community headed by the former home minister of the State of MP.

5. The former Home Minister, being a politically powerful figure, is **currently the MLA for the same district, Sagar**. He is influencing and threatening the witnesses. Due to the power and influence of the accused, **three family members, who were important witnesses in the criminal conspiracy against the Dalit family, have already been murdered in the span of 1 year**. The petitioners have filed this Writ Petition seeking an appropriate Writ, Order, or Direction for the **transfer of the case** and investigations into the aforementioned murder of Anjana Ahirwar **to Delhi**. This request is made in light of the complete failure of the police authorities in Madhya Pradesh to conduct an unbiased and fair investigation, as well as to protect the witnesses.

Anjana beaten and molested on 26.1.19

6. The brief facts of the case is that on 26.01.2019, deceased Anjana Ahirwar who belongs to a Dalit community and was only 15 years old at that time, filed a written complaint before P.S. Village Station Khurai, District-Sagar, stating therein that one Azad Thakur, One Pushpendra Thakur, one Chotu Raikawar and one Vishal Thakur of her village **beat her and physically molested her** at around 8:30 PM when she went out for defecation.

FIR 27/2019: Facts stated in complaint removed from FIR

On 26.01.2019 **FIR No. 27/2019 (at Annexure P-1,Page 52 to 54)**

was filed u/s 294, 323, 506, 34 of IPC and Sections 3 (1) and 3 (2)

of SC/ST Act, 1989. The FIR is as under:

*I am posted as Head Constable in P.S. Khurai. Complainant Anjana D/o Raghuvir Ahirwar, Age- 15 Years, R/o Barodiya Naunagir, came to Police Station and submitted a written Application, on which, on finding the offence of Section 294, 323, 506, 34 IPC and Section 3(1)®, 3(1)(s), 3(2)(va) of SC & ST & ST Act from the contents of Application, crime was registered and taken into investigation. Copy of Application reads as under:- To, the SHO, P.S. Khurai Rural, District-Sagar. Subject:- Regarding slapping by hurling abuses and threatening to kill. Sir, it is submitted that I live in Village- Barodiya Naunagir. I am studying in class 10th. Today on 26.01.2019 at about 8.30 a.m. in the morning, I by carrying Lota, went to attend natures' call at Nursery. When I was alone, at the same time, villagers namely Azad Thakur, Vishal Thakur, Pushpendra Thakur ad Chhotu Raikwar came there, who on the issue of old enmity, **started abusing me with filthy language in the name of mother and sister, and Vishal Thakur slapped me on my left side cheek and ear, due to which, I am suffering pain.** When I raised hue and cry, then all the abovenamed persons fled away from there and while fleeing away from there, they were saying that Madarchod, **if you will lodge report, then we will kill you.** Thereafter, after reaching home, I told this incident to my mother, Badi Bahu and brother Vishnu, onwhich, I alongwith my brother and mother have come to lodge the report at Police Station. I submit Application. Kindly take action. Sd/- Anjana Ahirwar, Applicant Anjana D/o Raghuvir Ahriwar, R/o Barodiya Naunagir, Mobile No. 9294989275.*

7. It is submitted however that **none of the sections regarding molestation or POSCO Act were invoked** against the accused persons which clearly show that Police authorities have been biased towards the accused persons since the inception of the horrific

incidents that befell Petitioner's family. It is further pertinent to note that three days before the lodging of the said complaint, the above said accused persons had **beaten up Vishnu Ahirwar who is the brother of deceased** Anjana Ahirwar and made him touch their feet. However, **instead of initiating proceedings/investigation against the accused persons, Police arrested Vishnu Ahirwar (brother of Anjana) himself on basis of a false case.**

Murder of Nitin @ Lalu, brother of Anjana by Ankit

Accused Ankit's name removed from FIR

8. First, Nitin, the brother of Anjana was killed by the same group of persons that molested Anjana. **FIR No. 329/2023**, dated 25.08.2023 **(at Annexure P-2 Page 55 to 61)** was registered on a complaint made by Anjana.

9. Secondly, the FIR was registered on 24.08.2023 and names the accused persons as **Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan Waheed Khan** and other unknown persons. This FIR is as under:

..R/o Barodiya Naunagir, Place of Dehati Nalishi- General Ward, CHC, Khurai, Name & Address of Police Officer: SI Dinesh Kumre, P.S. Khurai Rural, Particulars – I live in village- Barodiya

*Naunagir, and do household works. Today on 24.08.2023 at about 8.30 p.m.in the night, I was present at home alongwith my mother. At the same time, villagers namely Vikram Thakur, Komal Thakur and Vijay Thakur being armed with sticks in their hands, came and on the issue of old enmity, **started abusing us with filthy language in the name of mother and sister, and by breaking the door of house, entered inside and by demolishing fridge and other items kept inside the house, scuffled with my mother** and started say that where Madarchod Lalu has gone, I said that he is not available at home, then, thereafter those persons went towards the Bus Stand. When I heard loud noise of crying from that side, then, I myself and my mother Badi Bahu went there and saw that near Grameen Madhyanchal Bank, Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan Waheed Khan and three four other persons were beating my brother Lalu @Nitin with lathis and sticks with intention to kill him and were saying that today we will kill him. When I myself and my mother went there for rescue, then **Lalu Khan also slapped me** and someone's stick blow struck on my left hand finger; and my mother was also beaten with lathis and sticks, due to which, my mother sustained injuries on her both the hands and wrist and brother Lalu @ Nitin has sustained injuries on both the legs, hands and contusions on his back and chest, blood has oozed out due to fracture in both the hands. I lodge the report. Kindly take action. Sd/- Informant in English. illegible. Sd/- Police Officer, illegible 24.08.2023.*

10. In this FIR, though it is stated in the complaint, that **the Petitioner was disrobed**, this is deliberately omitted in the FIR. Also the **29 serious injuries** on the body of Nitin was deliberately omitted. Further, though Anjana had stated in her complaint that after the accused persons killed her brother they came back to her house and **killed their pet parrot and horse**, this is deliberately not mentioned in the FIR.

11. Thirdly, most important, **police deliberately removed the name of Ankit Singh Thakur that was mentioned in the complaint.** Ankit Singh is the head of the youth wing of the political party at the State and a close confidante of the former home minister and sitting MLA. The other names mentioned in the FIR are also closely connected to the said former home minister.

12. All the accused persons have been arrested and the Trial is going on. In this trial the mother of Anjana and the brother of Anjana are prosecution witnesses and their evidence has been recorded.

**CCTV footage given to police by the family
deliberately suppressed in the charge-sheet**

13. The **CCTV footage** whose screenshots (Page 83) which are provided in the fact finding report **at Annexure P-3 Page 62 to 88** shows all the accused persons beating Nitin and yet the police **did not include it in their charge sheet.**

3 applications to the police to include Ankit's name

14. According to Anjana, the said Ankit Singh Thakur was one of the main accused in the murder of her brother. The **Police refused to include the name of Ankit Singh Thakur.** Anjana sent **repeated applications on 08.09.2023, 29.09.2023 and 21.10.2023** to the

Superintendent of Police as well as the Director General of Police.

These applications are at Annexures P-4, P-5 and P-6 However, **no action has been taken.** Relevant parts of the abovementioned applications are as under:

15. The application dated 08.09.202 (At Annexure P-4 Page 89 to 91), submitted by Anjana to the Superintendent of Police, Madhya Pradesh, is as under:

Subject: Regarding adding name of Non-Applicant Ankit Singh S/o Rajkumar Thakur as main accused.

Sir,

1. *It is submitted that the Applicant is permanent resident of Village- Barodiya Naunagar, Tehsil- Khura, District- Sagar. On 24.08.2023 at about 8.30 p.m. in the evening, Non-Applicant Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Ankit Singh Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Waheed Khan, and other accused persons by forming common intention, killed my brother Nitin @ Lalu Ahriwar by beating him. Moreover, they also committed marpeet with my mother and misbehaved with her and they also abused and beaten me, regarding which, a Report is registered in P.S. Khurai Rural, whose' Crime No. is 329/23*
2. *That, in the said case, Accused Ankit Singh S/o Sh. Rajkumar had beaten my brother very badly by iron rod. Aforesaid incident took place in front of me, and I have seen Accused Ankit Thakur committing marpeet with my brother by iron rod, but, the Police of P.S. Khurai Rural has not mentioned the name of Ankit Singh Thakur as main accused in the present case. He is still absconding and may temper the witnesses of present case. I also have threat to my life from Ankit Singh. Police has not got recorded my statements u/s 164 Cr.P.C. till date, and Khurai Police is deliberately causing delay in the matter.*

3. Therefore, you are humbly prayed that **kindly register the name of Accused Ankit Singh S/o Rajkumar Thakur, R/o Barodiya Naungar, as main accused in the present case and kindly ensure his immediate arrest and kindly also record my statement under Section 164 Cr.P.C**

16. The application dated 29.09.2023 (at Annexure P-5, Page 92 to 94)

submitted by Anjana to the I.G. Sagar, Madhya Pradesh, is as under:

*Subject: Regarding **Complaint against Investigating Officer of Crime No. 329/2023 of P.S. Khurai Rural.***

Sir,

*It is submitted that in Crime No. 329/23 u/s 302, 307, 147, 458, 427 IPC of P.S. Khurai, my brother Lalu @ Nintin was murdered by the Accused Persons, in which, I myself and my mother were also beaten by the accused persons, in which, the hand of my mother could not have been cured till date. **Accused persons are very influential and under their pressure, Doctor did not conduct proper treatment of my mother and also sacked her out from the Hospital. We complained to the Police several times, but, due to the political pressure, they submitted the Chargesheet in haste, whereas, on 08.09.2023, I also made a complaint to the Superintendent of Police that name of main Accused Ankit Singh Thakur S/o Rajkumar Thakur is not mentioned in the FIR, whereas, in Dehati Nalishi, I got written the name of Ankit, and Police also did not get recorded my statements u/s 164 Cr.P.C.. In the complaint lodged by me, I had also complaint about my mother being stripped in the incident, but, neither the Police added name of Ankit Singh and nor got done full treatment of my mother. Moreover, the 10 points assurance which was given in writing by the Collector, Sagar, that has also not been fulfilled till date. On the other hand, the relatives of Accused Persons are constantly forcing my family members to do compromise, and are threatening that if you won't do compromise, then, after coming out of jail, we won't let you live in the village. In future, we have threat to our lives from the relatives of accused persons as well as accused persons.***

Sir, it is requested that the Investigating Officer of present case i.e. SDOP and SHO have deliberately saved an Accused in the serious offence like murder and did not allow to get proper treatment of my mother and even after several oral and written complaints, my statement u/s 164 Cr.P.C. was not recorded and they by helping accused persons in the investigation, and by making the acquaintances of accused persons in the Seizure Memos, have conducted investigation by favouring the accused persons, due to this reason, kindly pass orders to add the name of Accused Ankit Singh Thakur S/o Rajkumar Thakur, and to conduct treatment of my mother and to take action against the Investigating Officer, so that justice could be done with us.

17. The application dated 21.10.2029 (At Annexure P-6, 95 to 97), submitted by Anjana to the DGP of Madhya Pradesh, is as under:

Date: 21.10.2023

Subject:- Regarding conducting enquiry of Applicant's Complainant dated 08.09.2023 through impartial officer and changing Investigating Officer.

Sir,

- 1. It is submitted that the Applicant is permanent resident of Village- Barodiya Naunagir, Tehsil- Khura, District- Sagar. On 08.09.2023, a written Complaint was lodged by Applicant against Non-Applicants Vikram Singh, Vijay Singh, Azad Singh, Komal Singh, Ankit Singh, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Waheed Khan and other accused persons, in which, Applicant's brother Nitin @ Lalu was murdered and Applicant was also beaten and abused.*
- 2. That, in the aforesaid case, Accused Ankit Singh S/o Sh. Rajkumar had beaten my brother very badly with iron rod, but, name of Ankit Singh Thakur was not mentioned by the Khurai Police as main accused, due to this reason, as a result of not conducting proper proceedings by Khurai Police and SDOP, Khurai, I had*

made an Application before your good faith for conducting impartial enquiry and to add the name of Ankit Singh as main accused.

3. *That, due to not conducting impartial investigation by Khurai Police and SDOP, Khurai, I had submitted an application on 08.09.2023, in which, SDOP, Khurai issued Letter No.144/23 dated 11.10.2023, which was received by me on 20.10.2023, in which, I appeared before the SDOP, Khurai on 20.10.2023.*
4. *That, since, I had made complaint against Khurai Police and SDOP for not conducting impartial investigation, due to this reason, how can the SDOP, Khurai conduct the enquiry of Complaint lodged against SDOP, Khurai himself, if it happens, then, how would I get justice. **How can a persons accused of allegations, can do the enquiry of Complaint lodged against him, and how can he take impartial decision by conducting impartial enquiry.***
5. *Therefore, you are humbly prayed that kindly get done the enquiry of Complaint lodged by me on 08.09.2023 through any Senior and Impartial Additional SP, so that I could get justice.*

Sd/-

Applicant

Anjana D/o Raghuvir Ahriwar

Murder of eyewitness Rajendra, uncle of Anjana

Once again the police protect the accused

18. On 24.5.24 one of the eye witnesses to Nitin's murder, **Rajendra Ahirwar, uncle of Anjana** was himself murdered by persons belonging to the same group of accused as abovementioned. **FIR No. 197/2024 (at Annexure P-7 Page 98 to 107)** was registered on

26.05.2024 on the basis of information given by Anjana to the police. Relevant extracts of the abovementioned FIR are as under:

I, Constable 143 Lokendra Parmar am posted in P.S. Khurai Rural. On 25.05.2025, on receipt of information of fight in village- Barodiya Naiagir, I alongwith SHO departed for verification of information, and on reaching village- Barodiya Nainnagir, brought injured Rajendra Ahirwar to Civil Hospital, Khurai for treatment, from where, on referring the injured to Sagar, the injured was taken to BMC Hospital, Sagar. In BMC, the SHO by preparing Dehati Nalishi of Crime No. 00/24 u/s 147, 148, 149, 307 IPC and Section 3(2)(v), 3(2)(va) of SC & ST Act, has set the same for registration at original number. Therefore, I produce the same. Kindly register the crime at original number. Copy of Dehati Nalishi reads as under:- Copy of Dehati Nalishi, P.S, Khurai Rural, District- Sagar, Crime No. 0/24 u/s 147, 148, 149, 307 IPC ad Section 3(2)(v0, 3(2)(va) of SC & ST Act, Date and time of Incident: 25.05.2024 at 20.45 Hrs., Place of Occurrence: House of Pappu Rajak, Village- Barodiya Naiagir, Date and Time of Report: 26.05.2024 at 01.40 p.m., Name & Address of Informant: Ramsewak S/o Adhar Ahirwar, Age- 57 Years, R/o Village- Barodiya Naunagir, P.S. Khurai Rural, Name & Address of Accused: Ashiq Quraishi, Babula Benam, Israel Benna, Faheem Khan, Tantu Qureshi, all Rr/o Village- Barodiya Naunagir, Place of Dehati Nalishi, BMC, Sagar, Name and Address of Police Officer: SI Dhanendra Yadav, P.S. Khurai Rural, Contents:- I reside in village- Barodiya Naunagir and do labour work. This incident is of 25.05.2024 at about 8.45 p.m., when I was present at my home, at the same time, I came to know that my son Rajendra had fight and on getting injured in the marpeet, he has been taken to Khurai Hospital, from where, he has been referred to Sagar. Thereafter, when I reached in BMC Hospital, Sagar, then, grand-daughter of my family namely Anjana Ahirwar told that on 25.05.2024 at about 8.45 p.m., we received phone call of Rajendra uncle, on which, he said that fight is occurring, Ashiq Qureshi, Bablu Bena, Israel Bena, Faheem Khan, Tantu Qureshi are committing marpeet with us. Thereafter, Vikas

*made a phone call to me and told that fight of Rajendra uncle is being taken place in the house of Pappu Rajak. Ashiq Qureshi, Bablu Bena, Israel Bena, Faheem Khan, Tantu Qureshi all are beating them with axe and sticks. Vikas was telling that I myself and Majhla Kori have seen that Ashiq Qureshi etc. are committing marpeet at the house of Pappu Rajak. There was dispute between Ashik Qureshi and Rajendra uncle on the old report which was registered in P.S. Khurai City. Thereafter, I informed the Police on phone. After arrival of Police, Rajendra uncle was taken to Government Hospital, Khurai for treatment, from where he has been referred to Sagar. **Rajendra uncle has sustained injuries on his head, both the ears, mouth, both the armpits, claws of both the legs and blood is oozing out from head and ear. Ashiq Qureshi, Bable Bena, Israel Bena, Faheem Khan, Tantu Qureshi have beaten Rajendra uncle with axe and sticks with intention to kill him.** In the said marpeet, mobile phone of Rajendra uncle has also been broken. Israel Khan has beaten him on the issue of old report registered u/s 302 IPC. I lodge the report. Kindly take action. Sd/- Complainant in Hindi, Ramsewak, Signatures of Police Officer in English, Sd/- illegible 26.05.2024.*

Anjana killed by the police

while travelling in the ambulance with police

19. When Anjana was coming back with the dead body of Rajendra Ahirwar who was her uncle in the ambulance on 26.05.2024, **she was killed by the police while travelling in the ambulance with the police.**
20. It is pertinent to note that in the said ambulance, apart from the driver and police constables, the father and mother of deceased Rajendra were also present with Anjana. It is submitted that according to the

father and mother of deceased Rajendra, the Police constables gave them water. After drinking the said water, they fell asleep. Thereafter, Policemen woke them up and told them that Anjana had fallen off the ambulance. When Anjana was brought back to the ambulance, she was unconscious. It is pertinent to note that after Anjana was brought back to the ambulance, only Rajendra's mother who is deaf, was allowed to sit with Anjana.

Former Home Minister and present MLA threatening witnesses

21. It is pertinent to note that after Nitin @ Lalu's murder Anjana was called to the house of the former Home Minister where he threatened her not to give evidence against him. He also **offered Rs. 2 crore** to Anjana to compromise in the murder of Nitin. Anjana refused. the video is **at Annexure P-8 (Page 108 - 109)** and the transcript of the videotestimony is **at Annexure P-9 Page 110** and is as under:

Female Report in Background :- Ahirwar Family who has faced deaths of their son and daughter within a period of one year, was scared, but, Anjana's mother is leveling allegation of offer of Rs. 2 Crores for settlement in the murder case.

*Interview of Anjana's Mother:-My daughter Anjana went to Bungalow, and Bhupendra Singh spoken that only I am the Leader, I am the Minister and I am the Government, **you speak in our favour, do settlement, we will give you Rs.2 Crores.***

Complaint made to the SP by Anjana

Accused threatening witnesses

22.It is submitted that Anjana Ahirwar had given a complaint dated **26.02.2024 (at Annexure P-10 Page 111 to 113) to the Superintendent of Police, Madhya Pradesh** in which she he had stated that the accused had been trying to influence and threaten the family members of the deceased to compromise in the matters.

23.The relevant part of the complaints made to the SP is as under:

It is submitted that, I live in village- Barodiya Naunagir. On 24.08.2023, Vikram Thakur, Komal Thakur, Vijay Thakur, Azad Thakur, Waheed Khan, Islam Khan, Nafees Khan, Anees Khan, Golu Khan, Lalu Khan, Golu Soni, Abhishek Rikwar, Arbaz Khan had killed my brother Nitin @ Lalu and had vandalized the household articles after entering inside the house, and when sister and mother of deceased tried to rescue deceased, Police had arrested them. At present, all the accused persons of murder are confined in Sagar Jail since last 05 months. Family members of Accused persons are constantly crating pressure for settlement. The family members of Vikram Thakur and Komal Thakur namely Ankit Thakur, Jyoti Ss/o Komal Ahirwar, Kalabai W/o Komal Ahirwar are threatening to falsely implicate my brother Vishnu Ahirwar in the case of molestation and marpeet. Ankit Singh Thakur has said that if you won't do settlement, then, we will send you jail by implicating you in the case of molestation and marpeet. On 25.02.2024 in the evening, Ankit Thakur came to our house and said that do settlement in murder case, otherwise, you won't be able to reside in this village, we will get killed your parents and will send your brother Vishnu to Jail in the case of molestation and marpeet. Ankit Singh was saying that since the bail of my family members is not being allowed and if you won't do settlement, then, not only in this village, in fact, we won't let you stay in entire District, and

will get out our brother ishnu Ahirwar from District in collusion with Police.

Therefore, you are requested that if the family member of accused persons who are confined in jail, namely Ankit Singh Thakur lodges report of any molestation, marpeet with any woman or girl against my brother Vishnu Ahirwar, then, it's impartial enquiry should be conducted because we are scared of the threats of implication of false case and he has also threatened us to get us displaced from district. The family members of accused persons are trying to get us out from the village forever because we have refused to do settlement in murder case. Therefore, by taking the application serious, kindly do just with us i.e. poor people.

Police creating false criminal records against Anjana's family

24. Right from the beginning the former minister has been working closely with the police to create **false criminal records** against the members of Anjana's family including the 3 deceased members. For example, **Nitin, the younger brother of Anjana, aged 18 at the time of his death has been shown by the police to have many criminal cases against him.** Similarly, **Vishnu, the elder brother of Anjana has been falsely implicated in several cases and the police label him as a "habitual offender".**

25. The former cabinet minister and presently M.L.A from Sagar from the ruling party at the State has been **trying to influence the investigation** since the inception through his various media interactions wherein he refers to the false criminal records of the

family members of Anjana that has been prepared by the police on the instructions of the aforesaid MLA. One such media report dated 29.05.2024 is (at **Annexure P-11, Page 114 to 116**) hereto and the relevant part is as under:

“Anjana Ahirwar's deceased relative had a criminal background. Congress is doing politics of lies. According to police records, the deceased Rajendra Ahirwar was a terror in the village. Rajendra Ahirwar has been involved in crime at the behest of Imran Khan.”

Mother of Anjana sends letters for independent investigation

Also seeks police protection: No response

26. Representations were submitted by the mother of Anjana Badi Bahu to the DM, IG, and SPS of district Sagar, MP, on **01.07.2024**, (at **Annexure P-12 Page 117-120**), which is for an **impartial inquiry** into the murders of Anjana, Nitin, and Rajendra Ahirwar, as well as the **constant harassment** of their family by the Lambardars of the village and their associates. Additionally, concerns were raised about the suspicious death of her daughter following the murders of her son, Nitin, and brother-in-law, Devendra Ahirwar. The death, which was initially deemed an accident, is alleged to be a murder. the abovementioned representation is reproduced herein:

I, Badi Bahu W/o Raghuvir Ahirwar, am resident of Village Barodiya Naunagir and our family depends on labour work. In the year 2019, some influential villagers (Lambardars) had committed marpeet and molested with my daughter namely Anjana Ahirwar, regarding which after registration of report, the Lambardar of village started constantly harassing us for the compromise and

started threatening us. Report could also be registered very hardly and at that time my daughter was 15 years old minor, but, Police did not add relevant Section.

On 24.08.2023 in the evening, Lambardars of village and their associates beaten my 18 years old son namely Nitin very badly to this extent that he got died in the same night. When I tried to rescue him, then they also beaten me, due to which, my one hand got fractured and I also sustained injury in other, my entire Saree was opened and I got naked. They also beaten my daughter. On the same day they vandalized our house and looted all household items and broken the leg of our horse and in fact, they also killed our parrot. In the murder case of my son Nitin, on the complaint of my daughter, FIR No. 329/2023 was registered, but, even after the information by my daughter, name of Accused Ankit Singh Thakur has not been added. In this regard, on the next day, my daughter also made a written complaint to the Collector and SP, but, his name was not added. Even thereafter, my daughter on 08.09.2023, 29.09.2023, 21.10.2023 and 26.02.2024, also made written Complaints to SP and IG regarding not adding name of Ankit Singh, and repeatedly forcing us by the relatives of accused persons to do compromise. We also made Complaint regarding not conducting impartial enquiry in the matter by SDOP, Khurai, but, no action was taken on the same. The proper investigation of murder of Nitin and other incidents happened on 24.08.2024, was not conducted properly.

In the Dead Body Vehicle, Anjana was also sitting along with Rajendra. Thereafter we received information from Police regarding Anjana that Anjana has got died by falling from the vehicle.

Anjana was constantly raising voice for justice for Nitin and Rajendra. The Lambardars of village constantly threatened our family for compromise, tried to evict us from village, threatened us to kill and constantly forced us to do compromise, but, even thereafter, we did not turn up or do compromise, due to this reason, Rajendra and Anjana were killed.

When Anjana sat in the vehicle, at that time, she was fully fit. As it is being stated that she fell down or jumped down from the vehicle, is not trustworthy. We have doubt that Lambardars of village by

hatching conspiracy on the issue of murder of Nitin and old case, have got killed Anjana.

Therefore, you are humbly prayed that kindly conduct impartial enquiry regarding the murder of Anjana, Nitin and Rajindra. Sir, we have already lost our three family members, and we also demand from you that kindly provide security to our family from further harassment, so that rest of family could live peacefully.

27. Another representation was submitted by the petitioner on 04.07.2024 (at Annexure P-13 Page 121-125) to DM, IG and SP of district Sagar MP which is as under :

I, Badi Bahu W/o Raghuvir Ahriwar, vide this letter demand for registration of FIR and impartial enquiry regarding the murder of my daughter Anjana Ahirwar, because:-

In the year 2019, villagers namely Azad Thakur, Vishal Thakur, Pushpendra Thakur and Chhotu Raikwar had committed marpeet and molested my daughter Anjana Ahirwar. In this regard, Anjana also lodged a Report in P.S. Khurai in the year 2019. Immediately after registration of FIR, the Lambardars of village started putting pressure on Anjana and on our entire family.

In the month of August, 2023, Lambadars of village and Ankit Singh Thakur and their associates killed my son Nitin @ Lalu Ahirwar by beating him with lathis and sticks in the village. When, I tried to rescue my son then they also beaten me and undressed me. On the same day Vikram Thakur, Azad Thakur, Komal Thakur and their associates also attacked on our house and vandalized our all household items. Also in this regard, the Anjana had lodged FIR. In the murder case of Nitin, my daughter Anjana and family member namely Rajendra were the main witnesses.

In the murder case of Nitin, Anis Khan, Azad Khan, Sushil @ Golu Soni, Vikram Thakur, Arbaz, FaheemKhan, Abhishek Raikwar, IslamBena, Mubarak Khan, Wahid Khan, Komal Thakur and Vijay Thakur were arrested. But, Ankit Singh was not arrested, whereas, Anjana also made complaint regarding him. After the

arrest, all the Lambardars of our village started putting immense pressure on our family and started threatening us to kill.

Rajendra Ahiwar was the witness in murder case of Nitin. The arrested Accused persons were also repeatedly forcing and threatening him to make false statement in their favour. When Rajendra refused to make false statement, then, they killed Rajendra by assaulting with lathi, sticks and sharp edged weapons in the house of Pappu Rajak.

My daughter Anjana was the main witness in the murder case of Rajendra. Rajendra also informed her on phone regarding the assault. But, when, Ajnana was returning to village alongwith the dead body of Rajendra, then, she also got died. It is being informed by the Police that she got died due to falling from the vehicle, but, we are not able to believe this story.

Anjana was not only the main witness in the murder case of Nitin and Rajendra, in fact, she was super active for justice in these case. Only she was a educated person in our family and in all causes, she used to talk with Government- Administration and used to handle documentary proceedings. Regarding the murder case of Nitin, Anjana had also protested the bail of Accused persons in High Court. In this manner, Anjana was making all possible efforts for justice in both the cases. Even after being confined in jail, the accused persons were putting pressuring on our family to do compromise. But, we refused to from the compromise.

Even after the threats, we did not agree to change our statement and for compromise. Anjana was being forced continuously from the date of FIR lodged in the year 2019, even thereafter, she never stepped back and kept demanding justice from the Government/ Administration and continuously contested legal proceedings. It is being informed by the Administration that Anjana got died by jumping down from the vehicle, which is not appearing to be true. Our daughter could not do so. We have doubt that the Lambardars of village had hatched conspiracy to kill Anjana who was main witness in the both the murder cases of Nitin and Rajendra, due to which, she was killed. Due to the death of Anjana, now, the people we were pressurizing our family have become more confident and we are also apprehending assault on our family in future.

Therefore, we demand from your goodself that after registering FIR regarding the murder of Anjana, kindly conduct enquiry regarding the conspiracy behind the murder of Anjana, and after arresting the guilty persons, they be send to jail immediately.

28. Anjana's brother wrote to the DGP (at Annexure P-14 Page 126 to 130) about the pressure being exerted by former Home Minister as under:

*To,
The Director General of Police
Police Headquarter, Bhopal, M.P.*

Subject: Regarding take legal action on luring and threatening by Khurai MLA to make statement in favour of murderers in Court and changing statements regarding Applicant's brother Nitin @ Lallu Murder Case and death (murder) of sister Anjana in suspicious circumstances within the limits of P.S. Khurai, District- Sagar.

*Sir,
In reference to the above subject matter, it is submitted that I i.e. Applicant Vishnu Ahirwar S/o Raghuvir Ahirwar, am resident of Village- Barodiya Naunagir. On 24.08.2023, my villagers by hatching criminal conspiracy with other unknown accused persons had killed my brother Nitin @ Nitin in Village- Barodiya Naunagir, and aforementioned accused persons had also killed our another relative namely Rajendra Ahirwar and previously, my sister Anjana was also died in the suspicious circumstances, and complaint regarding her murder was also lodged by me and my family members. My sister Anjana was the main witness of Lallu murder case, who was called by MLA Bhupendra Singh at his bungalow situated in Sagar and threatened her for settlement and she was also lured with money, whose' video got viral on social media, but, my sister did not agree with his proposal, and after few days thereof, my sister Anjana got died (killed) in suspicious circumstances, whereas my sister Anjana was main witness in Lallu murder case and was contesting legal fight against the accused persons of village.*

Sir, in Lalu @ Nitin murder case, my mother Smt.Badi Bahu and I myself are witnesses. Statement of my mother had to be recorded in Court on 27.09.2024 and before 02-03 days thereof, real nephew of MLA Bhupendra Singh and his MLA Representative Lakhan Singh called me and my mother at his Crusher, thereafter, Kallu Councilor came to call us and took us to the Crusher of Lakhan Singh, whereupon, Lakhan Singh by threatening us said that statement of yourself and your mother have to be recorded in Lalu murder case. And make statement as we say, otherwise, you also will have to sustain gunshot, thereafter, before few days of the date of hearing, MLA Bhupendra Singh called me and my mother at his Bungalow and said that whatever Lakhan has spoken to you, make statement accordingly, and he also threatened that make statement in Lalu Murder Case as per our instructions, we were also lured for money by him and moreover, were also threatened and said that if you won't make statement as per our wishes, then your fate will be same as of Lalu, Rajendra and Anjana. Thereafter, he directly sent us to meet the Advocate for accused persons in his vehicle, whereupon, Advocate explained us to make statement in favour of Accused Persons, and taught the statement to my mother. But, my mother after visiting Court, stated the truth and made correct statement and did not follow his instructions, due to this reason, now, I myself and mother and other family members are apprehending threat to life from MLA Bhupendra Singh and his associates. These people have threatened us that if you won't make statement in our favour, then, they would also kill me, my mother and other family members, like my brother Lalu @ Nitin, Rajendra Ahirwar and my sister Anjana. Therefore, if any accident/ incident occurs with me or my mother or any other family members/ witnesses, and if murder/ attempt to murder is committed, then for that, only Khurai MLA Bhupendra Singh and his goons will be responsible.

Therefore, it is requested to yourgoodself that for the purpose of suppressing the murder case of my brother Lalu @ Nitin, murder of Rajendra Ahirwar and suspicious death of my sister Anjana, and for getting released his relatives from the murder case, the constant pressure is being made by MLA Bhupendra Singh and we are also beating threatened. Due to his such conduct, I have apprehension that MLA Bhupendra may get killed me at any point of time, due to which, kindly provide security to me and my

family and after registering case against the MLA Bhupendra Singh who is creating pressure on us to change statement in murder case, kindly take legal action against him. I shall be highly grateful.

Date:04.11.2024

-Sd

Applicant

Vishnu Ahirwar S/o Sh. Raghuvir Ahirwar

R/o Village- Barodiya Naunagir

P.S. Khurai, District- Sagar,M.P., Mobilee No.9294585275

Copy to:-

The Hon'ble Chief Minister, Madhya Pradesh.

Hon'ble Chairman, Human Rights Commission, Bhopal.

The Inspector General of Police, Sagar Range, Sagar.

29.No action was taken by the authorities.

PUCL fact-finding report dated July 2024

30.The fact-finding team that investigated the tragic events surrounding the lynching of 18-year-old Dalit youth Nitin Ahirwar and subsequent incidents in Sagar district, Madhya Pradesh, in 2023, was composed of several concerned citizens and experts. The team included Advocate Mohan Dixit, independent journalists Rohit and Sadaf Khan, Advocate Aditya Rawat, Neelu from Eka Collective, Madhuri from the People's Union for Civil Liberties (PUCL), Anjali from the All India Feminist Alliance (ALIFA) and NAPM, and Nitin from the Jagrit Adivasi Dalit Sangathan. The members of this team engaged with the victims' families, local police, administrative officials, journalists, and lawyers, examined documents and media

reports, and conducted in-depth research to understand the ongoing violence and the suspicious deaths of Nitin, his uncle Rajindra and his sister Anjana, who had bravely sought justice. The fact finding report is **at Annexure P-3** and the relevant extracts are reproduced as under:

*According to her family, around three months after Nitin's murder, **former minister, former MP and senior BJP leader, Shri Bhupendra Singh** summoned them to tell them to stop pursuing this case any further, and to tell the media that they were getting complete support from the the minister and were satisfied with the administrations' actions. Anjana was even handed a typed copy of the statement to be made by her before the media, however Anjana refused to give such a statement. A few months later, another attempt was made on behalf of **Shri Bhupendra Singh** to engineer a "compromise" but Anjana and her family refused.*

*26-year-old Rajendra Ahirwar was a key witness in Nitin's murder case. He was attacked with lathis and axes at the house of Pappu Rajak, and had to be taken to Khurai Community Health Center, then to Sagar District Hospital, and then was referred to Bhopal. He died on the way to Bhopal. Anjana Ahirwar was with him since he was brought to Khurai. **After Rajendra's post-mortem in Sagar, Anjana gave this statement to the media:***

*"Uncle Rajendra was a witness in the 302-murder case. Israel Khan, whose sons **Golu and Lalu Khan**, who are in jail, threatened him (Rajendra) to turn hostile and testify in their favour in Nitin's murder case, and threatened to kill him if he did not do so Around 8:45 at night, I phoned my uncle, and heard a lot of commotion at the other end. Uncle said, '**Anju, these people are beating me,**' he mentioned some names and said that a fight has broken out. Then they broke his mobile. I then called my uncle Mohan Ahirwar, his son Vikas Ahirwar and Machla, and they went to where Rajendra chacha was...they said that - Israel Khan, Ashiq Qureshi,*

*Tantu Qureshi, Faheem Khan and Bablu Khan were attacking Rajendra chacha. After that we informed the police. **We had reported threats against us, the police had registered an FIR, I don't know what action they took...Ashiq Qureshi said that we will kill you, we will chop you to pieces, we will slit your throat to pieces for reporting against us, and that is what they did...** If the government had demolished the houses of the accused in my brother's murder, if proper action had been taken against them..Uncle Rajendra would have been alive today, he would still be with us..."*

***Rajendra's family said that Rajendra was not afraid of the Thakurs, which irritated them.** They believe that the Thakurs had him killed. **Rajendra's father Ramsevak says - "On the day of Nitin's murder, Komal Thakur, Vikram Thakur, Azad Thakur, Vishal Thakur and their associates came to our house looking for Rajendra. When they didn't find Rajendra at home, they beat me up and smashed everything in the house. They threatened us to leave the village if we wanted to stay alive. My leg was injured in the attack and I couldn't walk properly for two months. But out of fear, I was not able to complain about this anywhere. I thought that if I complained, they would only cause more harm to my family."** Everyone in the family claimed that if Rajendra had been at home at the time of the attack, he would have been murdered that day itself.*

*Rajendra's grandmother recounted an incident a few days before his murder - **"The Thakurs were farming our land on rent for a few years. This year they had sown the field without paying us anything.** When I went to Govind Singh Thakur to ask for the money he owed me, he abused me and sent me away. A few days later, I went to Govind Singh again with Rajendra, and he abused us again. But on Rajendra's insistence, he threw the money at us and said, 'take your money and see what happens to you. You have testified against the Thakurs...You better change your testimony, otherwise you won't survive.'"*

The family also reported that the accused in Nitin's murder were continuously pressuring Rajendra to compromise, even while they were in jail. Pappu Rajak, at whose house Rajendra was attacked, has filed a counter-FIR in the matter of the

attack on Rajendra. According to the FIR, Rajendra, Amir, and Faizal came to Pappu Rajak's house and started beating him to demand a compromise in some previous incident. Pappu Rajak received injuries in his hand and on his head, and was later admitted for treatment in Hamidia Hospital, Bhopal. In this case, FIR No. 198/24 was registered at 5:42pm on 26.05.24, the day after the incident and several hours after Rajendra and Anjana's death. The Dehati Nalsi report was also only made at 7:30 AM on the morning after the alleged incident. We were told that Pappu Rajak works for the lambardars and is close to them. An FIR under sections 307, 458, 294, 34 of the IPC has been registered against Rajendra, Amir and Faizal. Amir and Faizal have been arrested.

Anjana's Death under extremely suspicious circumstances
 After Rajendra's post-mortem in Sagar, **Anjana was bringing Rajendra's body back to the village accompanied by the police. It was then that she died under extremely suspicious circumstances on Khurai bypass road.** The police claim that Anjana died due to "either falling or jumping" out of the vehicle but that the matter is "still under investigation". **Rajendra's parents were also in the vehicle, along with one policeman and a driver.** According to Rajendra's parents there was a police vehicle in front, and possibly one behind as well. **They say that the police had given them some water to drink, after which they fell asleep. They were woken up by the police to see Anjana lying about 20-30 feet away on the road.** When the police brought Anjana back to the vehicle, she was already unconscious. Another police vehicle arrived on the scene, and Anjana along with Rajendra's mother was sent in the vehicle to Sagar. It is pertinent to note that Rajendra's mother cannot hear or speak. **The police are calling this an accident, and a case of Unnatural Death** has been registered at Khurai City Police Station. However, **Anjana's family believes that her death was not an accident but murder. Rajendra's family also believes that it was the Thakurs who had Anjana killed. Those who knew Anjana say that it is impossible to believe that she would jump from the vehicle of her own accord. The claim of her "accidentally falling out" of a closed vehicle is also unbelievable and highly improbable.** Anjana's post-mortem reveals Anjana suffered a head injury due to a skull fracture as well injuries on her hands and knees.

According to the post mortem report, the cause of Anjana's death was "head injury and its complications"

Curiously, about 10 days before the incident, the police security provided to the family after Nitin's murder, had been removed. The CCTV cameras in front of Anjana's home had also not been functional for a few days. When questioned about this fact, the Collector claimed the security was removed since no incident had taken place for several months, while the CCTV was not functioning due to "some technical malfunction"

Discussions with District officials and role of the Administration District Collector of Sagar, Shri Deepak Arya, believed the root of these incidents to be societal, stating that "this Dalit family had feelings of anger and rebellion against exploitation of the elites, and were wanting to escape their pressure and influence. However, they were manipulated to commit crimes by a faction opposed to the village elites (lambardars) who had their own ulterior motives." Superintendent of Police, Mr. Abhishek Tiwari had been on leave for several days during our visits, and was unavailable for comment. *We met Additional Superintendent of Police Mr. Sanjeev Uikey, who is supervising the investigation into the entire matter and SDOP Khurai Mr. Sachin Parte, who is the Investigating Officer in the murders of Nitin and Rajendra. When asked about the murders, both officials were eager to present the victims as criminals and rationalise the acts of the accused. Both officers stated that Vishnu, Rajendra, and Nitin were habitual offenders and had multiple criminal cases against them. However, they refused to provide any details of these cases. They claimed that a feud existed between the families of Shabbir Khan and Komal Thakur of the village. Rajendra, Vishnu, and Nitin were embroiled in crimes due to their proximity with Shabbir Khan's sons. The SDOP stated that Shabbir Khan's group used these Dalit youths to file false cases of caste atrocities against the Thakurs, but when we asked for information about these alleged false cases, he fell silent. According to ASP Mr. Uikey, Nitin was killed because he attacked Vikram Thakur first. The SDOP admitted that Pappu Rajak, at whose house Rajendra was murdered, has not been arrested even after a month.*

Regarding the omission of 11 attackers' names from the FIR of Rajendra's murder filed by his family, he claimed that the investigation about these individuals was ongoing. When asked if statements from eyewitnesses Amir Sohail and Faizal have been taken in Rajendra's murder case, he did not provide a clear answer. Both Amir and Faizal are currently in jail, having been arrested on Pappu Rajak's complaint. Despite not being named in Pappu Rajak's complaint or media statements, two other individuals, Machla Kori and Imran Khan, have also been arrested. Machla Kori is an eyewitness in the case. We were told that Imran Khan, a resident of Rahatgarh, was not even present at the scene, but was possibly arrested because he was helping the Ahirwar family in to continue their pursuit for justice in Nitin's murder case. Though we cannot confirm the truth of this claim, these two arrests raise suspicions on the objectivity of the police in the matter. As 13 people had been arrested for Nitin's murder; when we met police officials, we expected them to be objective and sensitive. However, we were shocked to see the police show clear prejudice against the victims; when asked for information about the murder cases, instead of providing details, they indirectly tried to justify these murders by calling Nitin, Rajendra, and Vishnu "habitual offenders". Nitin was only 18 years old when he was murdered. While refusing to provide us with any detailed information about criminal cases against Nitin, police officers stated 7 FIRs were filed against him between 2021 and 2023. The fact that so many cases were registered against a minor from a rural Dalit family of daily wage labourers raises many questions, and also strengthens his family's allegation that their children were being implicated in false cases because of Anjana's complaint against the Thakurs. Nitin and Anjana's mother, Badibahu Ahirwar, also showed written complaints to the SP and DIG (Sagar) on 31.03.21 and on 09.04.21 stating that Nitin, who had come home from Indore for Holi, was picked up by Khurai police and kept and beaten at the police station for many days. No investigation was done on these complaints, even though they were serious complaints of custodial torture of a Dalit minor. On 03.05.24, around three weeks before Anjana's death, her brother Vishnu was externed (Zila Badar) from Sagar and 8 adjoining districts for a period of 6 months, on the grounds of his being a "habitual offender", creating "an atmosphere

of fear and terror among the general public" and "affecting public safety, peace, and public order". We examined the criminal cases on the basis of which the order was passed, and found that there are no cases that could justify the externment on these grounds. All 6 cases mentioned are still at the trial stage, in one a compromise has been effected. 3 cases are ordinary disputes. In one case, the complainant is Vikram Singh Thakur, who is a key accused both in the assault on Anjana and the lynching of Nitin, and whose animosity to the family is well established. This case is also pending. One case is of theft but is also pending. The externment of Vishnu based on such cases raises suspicion of administrative prejudice, especially when the police repeatedly try to emphasize "criminal record" of Nitin and Rajendra and Vishnu, when asked about the atrocities against them and their families. Nitin, Anjana, and Vishnu's mother, Badi Bahu Ahirwar, said that after Anjana's death, when family members met Additional Superintendent of Police Mr. Uikey, he threatened that even Vishnu could be killed. He ordered the police personnel present there to snatch Vishnu's phone. The police said they would return the phone the next day, but then refused to do so. No seizure memo was provided and the procedure for seizure of electronic articles mandated by law was not followed. After repeatedly asking for the phone without success, his mother filed a complaint to the SP. Important evidence related to Nitin and Anjana's case are on Vishnu's phone, but now they do not know what will happen to that evidence. Later, on June 29, we learned from media reports that on June 5, the ASP had "confiscated" Vishnu's phone for making a video when he went to submit an application with the family. According to the police, based on photos of illegal weapons, videos, and WhatsApp chats on the phone, a case was registered against Vishnu on June 27 under Section 25(1)(a) of the Arms Act. That an FIR has been filed 22 days after the phone was seized without a proper seizure memo raises suspicion about the intent of the police; the possibility of tampering with the electronic device cannot be ruled out. Moreover, evidence found on a phone "seized" in such an illegal manner would not have a legal validity. It appears that this whole exercise is merely an attempt to pressurise the affected family from pursuing justice and creating public prejudice against them. Collector Deepak Arya

informed us that after Nitin's murder, the victim's family was given a total assistance of Rs. 21,46,724, under various heads, including the Chief Minister's Discretionary Fund, Red Cross Society, and compensation under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Political Intervention

Khurai MLA and former minister Shri Bhupendra Singh gave a statement to the media that this was not an Atrocity but merely the fallout of a long-standing dispute between the two parties. *The fight happened because of the dispute, due to mutual disagreement... The truth will come out after investigation... Congress is trying to divide society; Congress is trying to use the incident to make political capital.*

Khurai's BJP MLA and former minister Mr. Bhupendra Singh blamed the victim's family for Anjana's death, accusing them of criminal tendencies, he said, "Anjana Ahirwar's deceased relative had a criminal background..."

According to police records, the deceased Rajendra Ahirwar terrorised the village. Rajendra Ahirwar was involved in criminal activities at the behest of Imran Khan." He said, "Congress politicizes deaths. The mastermind of the Baraudiya Naunagir case is Imran Khan. Imran was the one who made the deceased's family commit all these crimes. Imran has cases like 302 registered against him. People here are troubled by his terror. Imran has used the deceased's family." He said that the entire CDR of this case should be extracted. "Those who have instigated that girl should be charged". He said that... "85-year-old people are in jail. Will they commit such a crime? Ankit wasn't even there at that time. The police have been impartial in the case." (It may be noted that the oldest accused, 77 year old Vijay Singh is now out on bail)

Conclusions:

1. *Bundelkhand, is known for its history of deep feudalism and to this day, the dominance of the "lambardars" persists. **The Thakur family of Baraudia Naunagir have been the village "lambardars" for generations and they own most***

of the land in the village. They dominate the village, control the panchayat and play a role in all major village affairs. No one dares go against them. The defiance and rebellion of these Dalit youths against feudal oppression and exploitation by the Thakurs were undoubtedly seen as an affront and challenge to their authority. The violence was in reaction to this defiance.

2. *It was in these circumstances that lambardar youth tried to humiliate Vishnu in the marketplace, by slapping him and making him touch their feet, and assaulted and molested 15-year-old Anjana. Anjana got an FIR registered only with great difficulty, and she excluded the complaint of sexual violence and did not apply the relevant sections Protection of Children from Sexual Offences Act. According to Anjana's family, despite the accused getting bail easily, the lambardars considered it an insult to their dominance and began harassing them.*
3. *It was these circumstances that led to the murder of 18-year-old Nitin in the village market, the assault on his mother and Anjana who went to save him and the smashing and looting of their home and that of Rajendra Ahirwar. Tension increased after the arrest of the accused lambardars and their associates. Anjana kept complaining about the lack of action in this case, about police not adding the name of local BJP leader Ankit Singh, and about the coercion from the accused to agree to a "settlement". But the police and administration kept ignoring these complaints.*
4. *The lynching of 18-year-old Nitin for over an hour in the middle of the market by lambardars and their men, the fact that no one except his mother and sister even attempted to save them, the assault on his mother in which her hand was broken and her sari stripped off followed by the assault on Anjana, the smashing and looting of their homes, and the glaring tardiness of the police in arrival - all of this was possible only because the victims were a Dalit family of labourers and the assailants were historically dominant elites.*

5. *While the police displayed commendably proactive in arresting 13 people, including lambardars for Nitin's murder, some questions remain: **Why was BJP leader Ankit Singh Thakur not made an accused despite Anjana complaining, in writing, about his involvement immediately after the murder? Why was the stripping of Badi Bahu Ahirwar not mentioned in the FIR despite the complaint to this effect and the police themselves helping her cover herself? Why was no action taken on Anjana's repeated complaints about threats and pressure for "compromise"? Why was the CCTV footage not taken into account? Nitin's death took place at 12:16 am, while the FIR was registered two hours after - yet, why were the charges of murder (Section 302, IPC) not added in the FIR? We received no satisfactory answers to these questions.***

6. *Rajendra Ahirwar was Nitin and Anjana's uncle and a witness in Nitin's murder. The lambardars were not directly involved in Rajendra Ahirwar's murder, but the assailants were associated with them. Reportedly, Rajendra had been working for a family who were opposed to the Thakurs. On the day of Nitin's murder itself, a mob led by the lambardars had entered Rajendra's home looking for him, and when they did not find him at home, they had attacked his father Ramsevak Ahirwar and trashed their home and their belongings. Immediately after Rajendra's death, Anjana told the media that **Rajendra was being constantly threatened to turn hostile as a witness in Nitin's murder case or else he would be killed.** Rajendra's family are also convinced that the Lambardars had him killed. **Many of Rajendra's attackers have not yet been arrested, despite the family submitting a list of their names to the police.** The police claim this is because they are "still investigating" these people, a sense of discretion normally never seen. Even Pappu Rajak, in whose house Rajendra was attacked, has neither been arrested nor has his name been added in the FIR. **Rajendra had serious injuries from sharp weapons (reportedly an axe) all over his head and body. Yet, it appears his treatment was inordinately delayed.** At 9 PM, Rajendra was taken to Sagar hospital in a very critical condition, but it took more*

than 5 hours for him to be referred to Bhopal. Rajendra was sent to Bhopal only after around 2 AM, but died on the way. The family suspects that there was a deliberate delay in treatment.

7. *Anjana's death, mere hours after Rajendra's murder, while she was being accompanied by the police, is a highly suspicious one. Almost two months later, the police are tight lipped, offer no explanation claiming that the "investigation is ongoing". Claims of Anjana "falling" or "jumping" from the hearse transporting Rajendra's body are completely unbelievable. The circumstances of Anjana's death point towards a conspiracy. Anjana was educated and was central to the family's struggle for justice especially in the murders of Nitin and Rajendra. She was the one who communicated with the administration and politicians on behalf of her family. At the age of 15, she had managed to get an FIR registered against the village lambardars and further still, refused to "compromise" even when faced with threats from the lambardars. Anjana was the complainant and a key witness in Nitin's murder case. She was also the main witness in her uncle's murder case, as he had named his attackers to her over the phone. Anjana was constantly pressured to compromise and change her testimony, and she made several written complaints about the same. Anjana also objected to the bail application of the accused in Nitin's murder case in the High Court, which led to their bail being rejected. Anjana was preparing to file a similar objection in the Supreme Court as well. After Nitin's murder, Anjana had expressed fear for her safety and that of her family, to the administration and repeatedly complained of threats. The police had provided a guard for the family's security and installed a CCTV camera in front of the house. However, just 10 days before Anjana's death, the police security was withdrawn and the CCTV cameras were non functional. The family says that Anjana was killed by the Thakurs as part of a conspiracy. While Rajendra's parents, who were also in the same van, are fearful and say they "saw nothing" they are also insistent that the Thakurs had her killed. This case requires a detailed and impartial investigation, one that the local*

police is neither equipped for, nor can be trusted to undertake with any objectivity.

8. ***The village lambardars are reportedly close to Khurai MLA and former cabinet minister, veteran BJP leader Mr. Bhupendra Singh, and politically connected to him. The three main accused in Nitin's murder are BJP workers. Since Nitin's brutal murder, Mr. Bhupendra Singh has been quick to reduce this atrocity which has claimed three young lives to 'a mere dispute between two parties'. By claiming the matter to be "orchestrated" by Congress, and by a person with a criminal record (from the faction opposed to the Thakurs) he has sought to trivialize and downplay the seriousness of this atrocity. Regrettably, the police and administration echo his words - thus, as things stand, chances of the Ahirwar family getting justice seem very slim. It is possible that in an attempt to defy the suffocating dominance of the lambardar Thakurs, these Dalit youths may have accepted support from some persons opposed to the lambardars who had their own ulterior motives. Nevertheless, attempts by the police and the administration to justify and rationalize these atrocities on this basis is absolutely reprehensible. It is possible that due to the support received from the opposing faction, tensions may have escalated further, and these Dalit youths may have been implicated in the criminal charges against members of this faction. It is not possible for us to reach any conclusion about the merits of the charges against Rajendra, Vishnu, and Nitin. However, it is highly possible that these may be false cases, especially when we clearly see the bias and prejudice of the police as they try to equate atrocities and murder to petty criminal offences. Police's competence and objectivity both suspect: Anjana's death and in fact, all the matter require CBI investigation The tragic events of Baraudiya Naunagir prove that the socio-political structures that have enabled historical inequality and exploitation are very much alive today. The strange circumstances of Anjana's death/murder make it abundantly clear that the matter requires careful and thorough investigation, one that local police do not appear capable of undertaking. It is also clear that political pressures and administrative bias will not allow proper***

investigation or action in these matters. In such a situation, neither is the police equipped to handle these case - nor can they be trusted to objectively do so. For these reasons we very strongly urge that Anjana's death as well as all the other matters described above be thoroughly investigated by the CBI and that there be transparency in the proceedings.

Prayer for independent investigation with

Officers from outside the State

31. In the Case of Dharam Pal V State of Haryana ((2016) 4 SCC 160)

(at Annexure P-15 (Page 131 to 142)) while transferring the Investigation to the CBI in a case of rape of minor daughter of the petitioner this court held as under:

*24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. **The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation.** We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.*

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one taste, the

*taste of salt, so does justice have one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. **It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one.** It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.*

32. In *Subrata Chatteraj Vs. Union of India (UOI) and Ors* (At

Annexure P-16 Page 143-169). This Hon'ble court held as under:

9. *It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to the CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends*

of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand.

33. In the case of *Bharati Tamang v. Union of India and Others*, (2013 (15) SCC 578), (At Annexure P-17 Page 170-194) this Court allowed the Writ Petition filed by the widow of late Madan Tamang who was killed during a political clash and directed investigation by the CBI which would be monitored by the Joint Director, CBI. The following observations were made:

“44... Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial for being dealt with under the provisions of the criminal law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred to in the earlier paragraphs, we find that it is our responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried on effectively and the perpetrators of crime are duly punished by the appropriate court of law.”

34. This Court has expressed its strong views about the need of Courts to be alive to genuine grievances brought before it by ordinary citizens as has been held in *Zahira Habibulla H. Sheikh v. State of*

Gujarat (2004) 4 SCC 158 **at Annexure P-18 Page 195-241**) is as under:

22. It was submitted by the appellants that in view of the atmosphere in which the case was tried originally, there should be a direction for a trial outside the State in case this Court thinks it so appropriate to direct, and evidence could be recorded by video-conferencing so that a hostile atmosphere can be avoided. It is further submitted that a fresh investigation should be directed as investigation already conducted was not done in a fair manner and the prosecutor did not act fairly. If the State's machinery fails to protect citizen's life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is but appropriate that this Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members.

*56“...Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. **If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. ...***

35. In *Awungshi Chirmayo & Anr. V Government of NCT of Delhi & Others* (2024 INSC 249) (**At Annexure: P-19 Page 242-253**) it was held as under:

*16. It is to observe that **unresolved crimes tend to erode public trust in institutions which have been established for maintaining law and order. Criminal investigation must be both fair and effective.** We say nothing on the fairness of the investigation appears to us, but the fact that it has been ineffective is self evident. The kith and kin of the deceased who*

live far away in Manipur have a real logistical problem while approaching authorities in Delhi, yet they have their hope alive, and have shown trust and confidence in this system. We are therefore of the considered view that this case needs to be handed over to CBI, for a proper investigation and also to remove any doubts in the minds of the appellants, and to bring the real culprits to justice.

36. After reviewing the case law mentioned above, it can be concluded that the facts and circumstances surrounding the present case it makes it a suitable for a CBI investigation, consisting officers from outside the state of Madhya Pradesh. The accused individuals are politically influential. The primary accused the former Home Minister of Madhya Pradesh and the current MLA of Sagar, has repeatedly interfered in the investigation. They have influenced and threatened witnesses while preventing the police authorities from conducting a fair inquiry. This is evident from the omission of key names, such as Ankit Singh, who is a central figure and a close aide of the aforementioned minister in the lynching of Anjana's brother Nitin.

37. Since Anjana registered an FIR against the molestation and violence she endured, her entire family has been subjected to constant pressure and intimidation. Tragically, Anjana's brother Nitin, her uncle Rajindra, and Anjana herself have been murdered. Additionally, false cases have been filed against Anjana's elder

brother, Vishnu. Numerous representations have been submitted to various authorities, urging the registration of an FIR and a thorough investigation into Anjana's death, which the police claim occurred when she jumped from an ambulance. This version of events is implausible, as Anjana had been actively pursuing justice since the age of 15.

38. After the death of her uncle, Rajindra, Anjana made a public statement implicating the former Home Minister and sitting MLA from Sagar in the murder of her uncle, who had been a key witness in Nitin's murder case. With three members of the Dalit family already dead, it is clear that there has been a failure on the part of the police authorities in Madhya Pradesh. Therefore, a CBI investigation into Anjana's death is imperative.

GROUND:-

39. That there is no alternative remedy open to the Petitioner except to invoke Writ Jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India, inter-Alia on the following amongst the other grounds:-

A. Because of the complete failure of the Police Authorities in ensuring the safety of Anjana Ahirwar and her family has resulted in the deaths of three family members belonging from the scheduled caste community. Furthermore, the apparent bias displayed by the Madhya

Pradesh Police towards the accused in this case, along with the botched investigation, justifies a CBI inquiry into the deaths and murders of the aforementioned individuals. It is also requested that these cases be transferred to a different state to ensure a fair trial.

B. Because the main accused in the entire criminal conspiracy is the Former Home Minister of Madhya Pradesh, who is currently the MLA from Sagar and a member of the ruling party at both the state and national level. He has been attempting to influence the investigation from the outset, including through various media interactions, where he continuously blamed the victim's family for the misfortunes they have endured. It is further submitted that after the death of Nitin, the former minister tried to coerce witnesses into a compromise. Additionally, following the death of Anjana Ahirwar, the former minister and current MLA made defamatory statements against the victim's family during media interviews.

C. Because the Police Authorities in Madhya Pradesh, particularly in the Sagar District, have completely failed to conduct an unbiased and fair investigation into the murders and deaths of three family members. The police have failed to ensure the safety of Anjana Ahirwar and other witnesses after Nitin's murder. Despite repeated complaints from Anjana Ahirwar and her family, the authorities refused to include the names of the main accused in Nitin's death, likely due to political pressure from the former Home Minister. The investigation into the murders of Nitin, Rajendra Ahirwar, and the death of Anjana Ahirwar has been mishandled, reflecting a complete

lack of good faith on the part of the police to conduct a fair investigation.

D. Because The most troubling aspect of these incidents is the highly suspicious circumstances surrounding the death of Anjana Ahirwar, a 20-year-old woman who had been relentlessly fighting for justice for the murders of her family members. It is deeply suspicious that Anjana Ahirwar allegedly died by jumping or falling from the ambulance, especially when police constables, the driver, and Rajendra Ahirwar's parents were present in the vehicle. The investigation into the suspicious death of Anjana Ahirwar remains unresolved, and despite repeated requests from the petitioners, no FIR has been filed regarding her death.

E. Because no action has been taken by the police authorities against the former Home Minister and current MLA from Sagar, despite numerous complaints and statements made by the deceased's family members against him.

F. Because the failure of the Madhya Pradesh Police to conduct a fair investigation, coupled with the ongoing political pressure and threats faced by the family members of the deceased since 2019, warrants a CBI inquiry led by officers from outside the state of Madhya Pradesh. Additionally, to ensure a fair and just investigation and trial, it is essential that these cases be transferred to Delhi.

G. Because the petitioner submitted representations to various authorities on 02.07.2024 and 04.07.2024, requesting an impartial investigation into the three murders within the family, including the death of Anjana, as well as the intimidation, violence, and conspiracy that have targeted this poor Scheduled Caste family. However, no action has been taken on these representations.

H. Because in Subrata Chatteraj Vs. Union of India (UOI) and Ors this Hon'ble court held that this Court has exercised the power to transfer investigation from the State Police to the CBI in cases where such transfer **is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved.**

I. Because in the Case of Dharam Pal V State of Haryana ((2016) 4 SCC 160) while transferring the Investigation to the CBI in a case of rape of minor daughter of the petitioner this court held **The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation and It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one.**

J. Because in the case of *Bharati Tamang v. Union of India and Others*, (2013 (15) SCC 578),) this Court allowed the Writ Petition filed by the widow of late Madan Tamang who was killed during a political clash and directed investigation by the CBI which would be monitored by the Joint Director, CBI.

K. Because This Court has expressed its strong views about the need of Courts to be alive to genuine grievances brought before it by ordinary citizens as has been held in *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158.

Because a fact-finding mission conducted by members of civil society in Madhya Pradesh investigated the killing of three Dalit youths and other atrocities against their families in Sagar District (MP). The findings revealed alarming evidence of police bias against the victims' families and the extent to which political pressure is being applied to obstruct justice.

PRAYER

40. Under the facts and circumstances of the case and in the interest of justice it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. For a writ directing the CBI to constitute a team of officers from outside the State of Madhya Pradesh to take over the investigation and prosecution of the persons engaged in the murders of Nitin, Rajendra and Anjana and the criminal intimidation of the entire family as set out in this Petition and to do all things necessary in

accordance with law to complete the prosecution of the accused persons expeditiously.

- b. To transfer the investigation and prosecution in respect of FIR No. 27/2019 dated 26.01.2019 at Annexure P-1, FIR No. 329/2023 at Annexure P-2, dated 25.08.2023 and FIR No.197 of 2024 dated 25.05.2024 at Annexure P-7 from Madhya Pradesh to Delhi so that the entire proceedings will be conducted in an independent and fair manner.
- c. To order immediate and effective police protection for the members of the family of the deceased.
- d. For an order directing the CBI/SIT to register an FIR in respect of the murder of Anjana as described in para 19 of this Petition and investigate and prosecute in accordance with law.
- e. Pass such other or further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER IS
DUTY BOUND SHALL EVER PRAY.**

Drawn By: Manik Gupta

Place: New Delhi

Date:14.01.2025

Filed By:

Dubey & Chandra Law Chambers

(AOR for the Applicant)

IN THE SUPREME COURT OF INDIA

[CRIMINAL ORIGINAL JURISDICTION]

WRIT PETITION (CRL) No. _____ OF 2025

IN THE MATTER OF :

Badibahu & Ors

..... Petitioner

//versus//

The state of Madhya Pradesh & Anr

..... Respondents

AFFIDAVIT

I, Badibahu W/o Shri Raghuvir aged about 50 years, R/o- resident of Village Barodiya Naunagar, Barodiya Nainagir, Sagar, Madhya Pradesh-470117, presently at New Delhi, do hereby solemnly affirm and declare as under :-

1. That I am the Petitioner in this above Writ Petition and I am well conversant with the facts and circumstances of the case and as such fully competent to swear this affidavit.
2. That I have read and understood the contents of Synopsis, List of Dates at Pages B to **ZZ** and contents of Writ Petition as contained in Paras 1 to **40** at Pages **1** to **265** and also the applications and state that the facts mentioned therein are true and correct to my knowledge and information derived from the records of the case and those of grounds are true as per the legal advice received from A-O-R and believed by me.
3. That the contents of this Writ Petition have been duly explained to me in vernacular language and have been understood by me.
4. That the Annexure annexed along with the Special Leave Petition are true copies of their original.



5. That the facts stated in the above paragraphs of my affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

बदिवह
DEPONENT

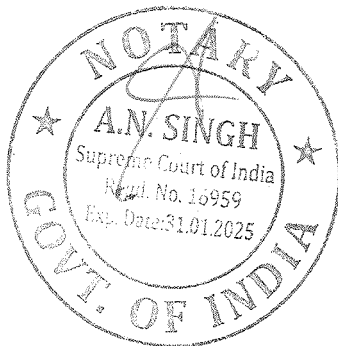
VERIFICATION

I, Badibahu, the above named deponent, do hereby verify that the contents of the above affidavit are true and correct to my knowledge and belief, that no part of it is false and nothing material has been concealed thereof.

Verified at New Delhi on 07 JAN 2025

I Identify the deponent who has
Signed/Put T.I. in my presence

बदिवह
DEPONENT



Certified That The Above Named
Deponent, ID. No. 2023400785 Identified
And Verified By SH. / Smt. Badibahu
Solemnly Affirmed Before Me, Reg. Sr. No. 321
The Content of The Affidavit Which Have Been Read
& Explained To Me Are True And Correct.
Notary

ATTESTED
A.N. Singh, Adv.
Notary Public
Govt. of India, New Delhi

07 JAN 2025

Appendix

21. Protection of life and personal liberty:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

32. Remedies for enforcement of rights conferred by this Part:

(1)The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2)The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3)Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4)The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Annexure P-1

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.C.)

1. District: Sagar PS: Khurai Rural Year: 2019

FIR No.: 0027 Date & Time of FIR: 26.01.2019, 18.18 Hrs.

2.

S. No.	Acts	Sections
1.	IPC, 1860	294
2.	IPC, 1860	323
3.	IPC, 1860	506
4.	IPC, 1860	34
5.	SC & ST (Prevention of Atrocities) Act, 1989 (Amendment, 2015)	3(1)(d)
6.	SC & ST (Prevention of Atrocities) Act, 1989 (Amendment, 2015)	3(1)(e)
7.	SC & ST (Prevention of Atrocities) Act, 1989 (Amendment, 2015)	3(2)(va)

2. Occurrence of Offence:

(d) Day: Saturday Date from: 26.01.2019 Date to:
26.01.2019

Time Period: Pahar 3 Time From: 08.30 Hrs. Time to:
08.40 Hrs.

(e) Information received at P.S.:

Date: 26.01.2019 Time: 17.45 Hrs.

(f) General Diary Reference:

Entry No.:018 Date &Time: 26.01.2019, 18.06 Hrs.

4. Type of Information: Written

7. Details of known/suspected/unknown accused with full particulars:

S. No.	Name	Alias	Relative's Name	Present Address
2.	Vishal Thakur			Village – Barodiya Naunagir, Rural,

				P.S. Khurai, Sagar, Madhya Pradesh, India.
3.	Pushpendra Thakur			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
3.	Chhotu Raikwar			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.

8. Reasons of delay in reporting by the complainant/ informant :

9. Particulars of properties of interest : Drugs/Narcotic Drugs

10. Total value of property (In Rs.):

11. Inquest Report/ U.D. Case No., if any:

12. First Information Contents:-

I am posted as Head Constable in P.S. Khurai. Complainant Anjana D/o Raghuvir Ahirwar, Age- 15 Years, R/o Barodiya Naunagir, came to Police Station and submitted a written Application, on which, on finding the offence of Section 294, 323, 506, 34 IPC and Section 3(1)®, 3(1)(s), 3(2)(va) of SC & ST & ST Act from the contents of Application, crime was registered and taken into investigation. Copy of Application reads as under:- To, the SHO, P.S. Khurai Rural, District-Sagar. Subject:- Regarding slapping by hurling abuses and threatening to kill. Sir, it is submitted that I live in Village-Barodiya Naunagir. I am studying in class 10th. Today on 26.01.2019 at about 8.30 a.m. in the morning, I by carrying Lota, went to attend natures' call at Nursery. When I was alone, at the same time, villagers namely Azad Thakur, Vishal Thakur, Pushpendra Thakur ad Chhotu Raikwar came there, who on the issue of old enmity, started abusing me with filthy language in the name of mother and sister, and Vishal Thakur slapped me on my left side cheek and ear, due to which, I am suffering pain. When I raised hue and cry, then all

the abovenamed persons fled away from there and while fleeing away from there, they were saying that Madarchod, if you will lodge report, then we will kill you. Thereafter, after reaching home, I told this incident to my mother, Badi Bahu and brother Vishnu, onwhich, I alongwith my brother and mother have come to lodge the report at Police Station. I submit Application. Kindly take action. Sd/- Anjana Ahirwar, Applicant Anjana D/o Raghuvir Ahriwar, R/o Barodiya Naunagir, Mobile No. 9294989275.

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.C.)

2. District: Sagar

PS: Khurai Rural

FIR No.: 0329

Year: 2023

Date & Time of FIR: 25.08.2023, 02.09 hrs.

2.

S. No.	Acts	Sections
1.	IPC, 1860	307
2.	IPC, 1860	323
3.	IPC, 1860	458
4.	IPC, 1860	427
5.	IPC, 1860	294
6.	IPC, 1860	147
7.	IPC, 1860	148
8.	IPC, 1860	149
9.	SC & ST (Prevention of Atrocities) Act,	3(1)(d)

	1989 (Amendment, 2015)	
10.	SC & ST (Prevention of Atrocities) Act, 1989 (Amendment, 2015)	3(2)(v)
11.	SC & ST (Prevention of Atrocities) Act, 1989 (Amendment, 2015)	3(2)(va)

4. Occurrence of Offence:

(g) Day: Thursday Date from: 24.08.2023 Date to:
24.08.2023

Time Period: Time From: 20.30 Hrs. Hrs. Time to:
21.00 Hrs.

(h) Information received at P.S.:

Date: Time:

(i) General Diary Reference:

Entry No.: Date & Time:

(ii) Occupation: Housewife

(j) Phone Number: Mobile No.: 91-7909957501

7. Details of known/suspected/unknown accused with full particulars:

S. No.	Name	Alias	Relative's Name	Present Address
1.	Vikram Thakur			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
2.	Vijay Thakur			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
3.	Azad Thakur			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
4.	Komal			Village – Barodiya

	Thakur			Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
5.	Lallu Khan			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
6.	Islam Khan			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
7.	Golu Soni			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.

...

12. First Information Contents:-

..R/o Barodiya Naunagir, Place of Dehati Nalishi- General Ward, CHC, Khurai, Name & Address of Police Officer: SI Dinesh Kumre, P.S. Khurai Rural, Particulars – I live in village- Barodiya Naunagir, and do household works. Today on 24.08.2023 at about 8.30 p.m.in the night, I was present at home alongwith my mother. At the same time, villagers namely Vikram Thakur, Komal Thakur and Vijay Thakur being armed with sticks in their hands, came and on the issue of old enmity, started abusing us with filthy language in the name of mother and sister, and by breaking the door of house, entered inside and by demolishing fridge and other items kept inside the house, scuffled with my mother and started say that where Madarchod Lalu has gone, I said that he is not available at home, then, thereafter those persons went towards the Bus Stand. When I heard loud noise of crying from that side, then, I myself and my mother Badi Bahu went there and saw that near Grameen Madhyanchal Bank, Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan Waheed Khan and three four

other persons were beating my brother Lalu @Nitin with lathis and sticks with intention to kill him and were saying that today we will kill him. When I myself and my mother went there for rescue, then Lalu Khan also slapped me and someone's stick blow struck on my left hand finger, and my mother was also beaten with lathis and sticks, due to which, my mother sustained injuries on her both the hands and wrist and brother Lalu @ Nitin has sustained injuries on both the legs, hands and contusions on his back and chest, blood has oozed out due to fracture in both the hands. I lodge the report. Kindly take action. Sd/- Informant in English. illegible. Sd/- Police Officer, illegible 24.08.2023.

13. Action taken: Since the above information reveals commission of offence (s) as mentioned at Item No.2:

- (1) Registered the case and took up the investigation:
- (2) Directed (Name of I.O.): Nitin Pal, SI (Sub-Inspector),/ SI,

To take up the investigation or

(3) Refused investigation due to:

(4) Transferred to P.S.:

District:

On point of jurisdiction.

Killing Of Three Dalit Youths And Other Atrocities Against Their Families in Sagar District (MP)

**Despite Media and Political Spotlight: How
Much Justice**



**A fact-finding report
by
concerned citizens of Madhya Pradesh
July 2024**

About the Report

In August 2023, there were widespread media reports of the lynching of an 18-year-old Dalit youth named Nitin Ahirwar by members of the village elite in Sagar district, Madhya Pradesh. His mother, who tried to save him, was also beaten and stripped and their home was looted and smashed. Subsequently, there were reports of his sister Anjana's continuous efforts for justice. Suddenly, at the end of May 2024, there were news reports that Nitin's uncle, Rajendra Ahirwar, had also been murdered, and that Anjana, who was accompanying his body, had died after "falling" from the hearse. Shocked by the persistent violence and the suspicious death of a brave young woman like Anjana, many concerned citizens discussed the matter and formed a small team to conduct a detailed citizens' investigation of this case. In order to understand these events, this team interacted with the victims' families, police and administrative officials, journalists, lawyers and several others, examined relevant documents and old media reports, to prepare this report.

The team members were Advocate Mohan Dixit, Rohit (Independent Journalist), Advocate Aditya Rawat, Neelu (Eka Collective), Sadaf Khan (Independent Journalist), Madhuri (PUCL-People's Union for Civil Liberties), Anjali (ALIFA - All India Feminist Alliance- NAPM), and Nitin (Jagrit Adivasi Dalit Sangathan).

Brief Description of Events

In January 2019, a 15-year-old Dalit girl Anjana Ahirwar was molested and beaten by members of the village elite, locally called "lambardars" in Baraudiya Naunagir village of Sagar district. Anjana filed a complaint and got an FIR registered against this. Reportedly, the village "lambardars" then repeatedly threatened and pressured the family to compromise.

On August 24, 2023, the accused in this case, along with other "lambardars" and several of their associates brutally beat Anjana's younger brother, Nitin alias Lalu Ahirwar, in the village market with kicks, rods and lathis in a brutal attack that lasted for over half an hour to an hour. A few hours later, 18-year-old Nitin succumbed to his injuries in the hospital. His mother, Badi Bahu Ahirwar, who tried to save her son during the assault, was also severely beaten, her saree was stripped off and her right hand was broken. Anjana was also slapped.

Just nine months after Nitin's murder, his uncle, Rajendra Ahirwar, was also murdered. Rajendra, a witness in Nitin's murder, was attacked with lathis and axes. Critically injured, he was referred from the local Khurai hospital to Sagar district hospital and then to a Bhopal hospital, but he died on the way to Bhopal. Immediately after Rajendra's death, Anjana, gave a statement to the media that her uncle's death was due to strict action not being taken in the matter of Nitin's lynching. While accompanying Rajendra's body home, Anjana Ahirwar died in a highly suspicious manner. According to the police who were also accompanying the body, she died "due to a fall from the hearse". This assertion is highly suspect and raises several questions.

Within a year, three members of this Dalit family, who were raising their voice against the influential village elite, died. The family holds the administration responsible for these murders. There are allegations of political protection to the accused and bias in action by the police.

About Baraudiya Naunagir

Baraudiya Naunagir is a village in Khurai tehsil of Sagar district in the Bundelkhand region of Madhya Pradesh. Sagar is one of the most populous districts in Madhya Pradesh. It is also an important centre of political power in the state; three prominent BJP leaders and former ministers, Shri Gopal Bhargava, Shri Bhupendra Singh, and Shri Govind Singh Rajput hail from this district. Baraudiya Naunagir is about 150 km from the capital Bhopal on the Rahatgarh-Bina Road. The population of Baraudiya Naunagir is about 3500, of which Scheduled Castes are 23.11% and Scheduled Tribes are 11.14%. Most people here depend on farming and daily wage labour. People from many communities live here, including Ahirwar, Kori, Patel, Adivasi, Muslim and Thakur.

We were told that the village Thakurs are hereditary "lambardars" or village elites. Villagers depend on them for governmental matters and resolving various village level issues, and they have a major role in all affairs of the village. Although they have only 20-25 houses in the village, they reportedly own over 1000 bighas of land. We were also told that after paying a small amount as "rent", the Thakurs control most of the land of marginal farmers, most villagers work as labourers, and are often pressured into working for the Thakurs even though the wages they offer are lower than what workers receive elsewhere.

The victims' family also primarily depends on labour. Anjana's father, Raghuvir Ahirwar, worked as a guard in a factory in Indore but is now back in the village after Nitin's murder. Their four children: Rohit (age 26), Vishnu (age 24), Anjana (age 20) and Nitin (age 18) of whom only Rohit and Vishnu now survive. 20-year-old Anjana Ahirwar was a second-year undergraduate student in a college in Sagar. The other affected family is that of the deceased Rajendra Ahirwar (age 26), who was their "uncle" in village kinship terms. Rajendra's family, also primarily dependent on wage labour, includes his father, mother, grandmother, one brother, and two sisters.

Assault on Vishnu, Anjana's Complaint against Harassment

On January 26, 2019, Anjana was beaten and molested by Azad Thakur, Pushpendra Thakur, Chotu Raikwar, and Vishal Thakur, the "lambardars" of the Thakur family of the village. Based on Anjana's complaint, FIR no. 27/2019 was registered against them, only with great difficulty on 26.01.2019. According to Anjana's family, sections related to beating and intimidation (IPC 294, 323, 506, 34) and the Atrocities Act (Section 3(1)(r)(s) and 3 (2)(va)) were applied in the FIR, but sections related to child sexual abuse were not applied despite the complaint of molestation by a 15 year old.

A few days before Anjana's complaint, the accused in her complaint had slapped Anjana's elder brother, Vishnu Ahirwar and made him touch their feet. We were shown a video of the incident showing the accused slapping Vishnu and making him touch their feet. According to the family, after this incident the police came home, took Vishnu to the police station and filed a false case against him at the behest of the Thakurs.

The family also reported increased hostility from the Thakurs after Anjana's FIR. According to them, the fact that a family of poor Dalit labourers like theirs had managed to file a case against them irked them. The family was repeatedly threatened to withdraw. According to Nitin's family, on 23/08/2023, the police took Vishnu and Rajendra to the police station, claiming that 'it was for their safety as their lives were in danger'. The very next day, Nitin was murdered.

Nitin (Lalu) Ahirwar's mother, Badi Bahu Ahirwar, recalled - On the evening of 24/08/2023, Nitin had gone to the market. It had gotten quite late, so I went to check on him. I heard loud screaming and saw lambardars and their men beating Lalu near Golu Soni's shop. She somehow rescued Nitin from the mob and brought him to Vinod Kori's shop. But the assailants soon surrounded them, dragged him onto the road and started beating him brutally. This continued for almost an hour. It was after Lalu was dragged onto the road that Ankit Singh arrived at the scene. According to Badi Bahu Ahirwar, it was Komal Singh Thakur, Vikram Thakur, Azad Thakur, Ankit Singh Thakur, Vijay Thakur, Golu Soni, Lalu Khan, Anees, Wahid, and their men who beat Lalu to death.

Badi Bahu Ahirwar tried very hard to protect Lalu, but in trying to do so her right hand was broken, and the other was also injured while trying to save him. The assailants also removed her saree. Anjana, who came later, was also slapped. The police eventually arrived at the spot, by which time Lalu had already lost consciousness. It was then that a policeman helped Badi Bahu cover herself with a towel as her hand was broken. The police took Lalu to the hospital, where he died shortly after.

On the same day, Vikram Thakur, Azad Thakur, Komal Thakur and their men had barged into Nitin Ahirwar's home and vandalized it. They destroyed everything in the house, not even sparing a single bowl. They destroyed important documents of the family, killed their pet parrot and broke the horse's leg, which ultimately led to the horse's death. Badi Bahu had kept her jewellery and 8-9 thousand rupees in cash saved for their eldest son's wedding, but all of it was looted.

An FIR was filed against Nitin's murder, but the police left several facts that Anjana had complained against: Badi Bahu being disrobed, even though it was in Anjana's complaint and was subsequently mentioned in media reports as well. The matter of the horse and parrot was also not added, and the full extent of damage to their home was also not included.

Based on Anjana's complaint, a case was registered at Khurai Rural Police Station at 2.09 am on 25/08/2023 against Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Wahid Khan and 3-4 other accused under IPC sections 307, 323, 458, 427, 294, 147, 148, 149 and Atrocities Act sections 3(1)(d), (e), 3(1)(va) and 3 (2)(v). Section 302 was added much later.

Notably, according to the Registration of Death report, Nitin died at 12:16 at night, but in the FIR registered at 2:09 am, only section 307 IPC was added instead of section 302 (IPC).

According to Nitin Ahirwar's post-mortem report, the cause of Nitin's death was "multiple injuries sustained over body". Nitin had 29 serious injuries on his head and body.

Remarkably, after Nitin was referred from Khurai hospital at 9:50 pm, it took close to 2.5 hours to reach Sagar, 52 kilometres away, by which time Nitin had already died.

Events following Nitin's Murder

The day after Nitin's murder, Anjana submitted a complaint to the Collector and Superintendent of Police, to add the name of Ankit Singh Thakur in the FIR, as he was one of the main perpetrators. The complaint also asked the police to secure the CCTV footage near the spot where Nitin was murdered. In the complaint Anjana also expresses fear for her safety and that of her family.

Subsequently, Anjana also submitted several complaints to the Superintendent of Police and Inspector General of Police (Sagar) on 08/09/2023, 29/09/2023, 21/10/2023, and 26/02/24, about Ankit Singh Thakur's name not being added and accusing the investigation officer of protecting the accused. She also complained of threats being made against her family by the relatives of the accused, who were pressuring them to reach a "compromise". However, no cognizance was taken and no action was taken on these complaints.

We were shown a video of about 20 minutes, of the beginning of the assault on Nitin as captured by a nearby CCTV camera. Nitin was first attacked in front of Golu Soni's shop, after which his mother arrives and somehow takes him away from the attackers, and sits him down in front of Vinod Photocopy's shop. But they are soon surrounded and are attacked again. According to the family, Vikram Thakur, Golu Soni, Komal Thakur, Lalu, Anees, and about 10-12 others who attacked Nitin are visible in the footage. In addition to the arrested persons, Mukati, Israel Bena, Bablu Bena were also identified to us in the video, but no action has been taken against them. Komal Thakur is also seen threatening and abusing Nitin's mother. More people join in and they all drag Nitin to the road and start brutally assaulting him with rods and lathis. According to Nitin's mother Badi Bahu Ahirwar, this video only captures the beginning of the attack, and after this, more people came and attacked Nitin, including Ankit Thakur and other accused even after the video ends.

This CCTV footage is not part of the chargesheet in Nitin's murder case. In Anjana's application dated 25/08/2023, a demand was made to secure the CCTV footage. The chargesheet filed by the police states that the DVR of the CCTV in front of Vinod Kori's shop was destroyed by the crowd after the incident. The family received the CCTV footage, from a camera that appears to be from across the road from Vinod Kori's shop 3-4 months after the incident. The family says they gave the video to the police, but the police had already submitted the chargesheet by then and refused to take cognizance of the video.

Among the accused, Anees Khan, Azad Thakur, Sushil alias Golu Soni, Vikram Thakur, Arbaz, Faheem Khan, Abhishek Raikwar, Islam Bena were arrested on 27/08/2023, Mubarak Khan, Nafees Khan, Wahid Khan were arrested a month later on 23/09/2023, and the chief village 'Iambardar' Komal Thakur along with Vijay Thakur was arrested only when the chargesheet was presented on 26/09/2023. The bail applications of the accused were rejected by the District Court. The bail applications of Vijay Singh, Komal Thakur, Sushil Soni, Islam Khan, Nafees Khan, Abhishek Raikwar, and Wahid Khan were also rejected by the High Court when Anjana opposed their bail in accordance with Section 15 (A)(3) of the Prevention of Atrocities Act. However, an accused Vijay Singh, was granted bail by the Supreme Court on 08/05/2024 on the grounds of his old age (77 years). Anjana's family could not oppose the bail as they received the notice of bail hearing after it had already taken place in the Supreme Court.

According to her family, around three months after Nitin's murder, former minister, former MP and senior BJP leader, Shri Bhupendra Singh summoned them to tell them to stop pursuing this case any further, and to tell the media that they were getting complete support from the the minister and were satisfied with the administrations' actions. Anjana was even handed a typed copy of the statement to be made by her before the media, however Anjana refused to give such a statement. A few months later, another attempt was made on behalf of Shri Bhupendra Singh to engineer a "compromise" but Anjana and her family refused.

Rajendra's Murder

26-year-old Rajendra Ahirwar was a key witness in Nitin's murder case. He was attacked with lathis and axes at the house of Pappu Rajak, and had to be taken to Khurai Community Health Center, then to Sagar District Hospital, and then was referred to Bhopal. He died on the way to Bhopal. Anjana Ahirwar was with him since he was brought to Khurai.

After Rajendra's post-mortem in Sagar, Anjana gave [this statement to the media](#):

"Rajendra chacha 302 ke gawah hain jinka abhi murder hua hai. Us case mein Lalu Khan aur Golu Khan, jo andar hain, unke papa Israel Khan inko dhamka rahe the ki tum un logon ke paksh mein gawahi nahi doge, hamare paksh mein gawahi doge, tumne unke paksh mein gawahi di to hum tumhen jaan se maar ke phenk denge. Raat kareeb 8.45 ko maine chacha ko call kiya to us samay shor sharabe ki awaaz aa rahi thi. Chacha bole ki Anju ye log humen maar rahe hain, unhone kuch naam bataye aur bola ki ladai ho gayi hai. Phir un logon ne chacha ka mobile poori tarah tod diya. Maine phir apne chacha Mohan Ahirwar ko phone kiya, unke ladke Vikas Ahirwar aur Machla ye donon wahan gaye to unhone bola ki haan wahan par ye log Rajendra chacha ke saath marpeet kar rahe hain - Israel Khan, Ashiq Qureshi, Tantu Qureshi, Faheem Khan aur Bablu Khan. Uske baad humne police ko soochna di.

Humne dhamki ki report di thi, police ne FIR to likh li, pata nahi kya karyawahi ki... Ashiq Qureshi bole ki tumne hamari report ki hai, tumhen jaan se maar denge tumhari gheenchn kaat kar phenk denge... Phir unhone wahi kar diya...

Mere bhai ke murder ke aaropiyan ke makan tode jaate, un par achchi karyawahi ho jaati to aaj yeh naubat nahi aati aur Rajendra chacha aaj zinda hote, hamare saath hote."

Roughly translates to:

"Uncle Rajendra was a witness in the 302-murder case. Israel Khan, whose sons Golu and Lalu Khan, who are in jail, threatened him (Rajendra) to turn hostile and testify in their favour in Nitin's murder case, and threatened to kill him if he did not do so Around 8:45 at night, I phoned my uncle, and heard a lot of commotion at the other end. Uncle said, 'Anju, these people are beating me,' he mentioned some names and said that a fight has broken out. Then they broke his mobile. I then called my uncle Mohan Ahirwar, his son Vikas Ahirwar and Machla, and they went to where Rajendra chacha was...they said that - Israel Khan, Ashiq Qureshi, Tantu Qureshi, Faheem Khan and Bablu Khan were attacking Rajendra chacha. After that we informed the police.

We had reported threats against us, the police had registered an FIR, I don't know what action they took...Ashiq Qureshi said that we will kill you, we will chop you to pieces, we will slit your throat to pieces for reporting against us, and that is what they did...

If the government had demolished the houses of the accused in my brother's murder, if proper action had been taken against them..Uncle Rajendra would have been alive today, he would still be with us..."

Amir Sohail, who was present at the scene reported that they heard screams from Pappu Rajak's house. When he and his brother Faizal went inside, they saw Pappu Rajak, Akshay Rajak, Israel Khan, Ashiq Qureshi, Tantu Qureshi, Arif Qureshi, Faheem Khan and Bablu Khan along with 4-5 other people attacking Rajendra with axes, sticks and hammers. Pappu Rajak's two daughters also threw stones at them.

Rajendra was first taken to Khurai hospital, from where he was referred to Sagar. From Sagar, he was referred to Bhopal for treatment, but he died on the way near Vidisha. Family members repeatedly told us that there was a lot of delay in referring Rajendra to Bhopal. They had taken him to Sagar around 9 o'clock, but despite the critical condition he was in, he was referred to Bhopal only after around 2-3 o'clock at night. The family suspects that the delay was intentional and that he was deliberately denied proper treatment in Sagar.

Rajendra had deep lacerations on his head, besides lacerations on his chest and arms. There were many other injuries as well. The post-mortem report states the cause of Rajendra's death as "multiple injuries sustained to the body and its complications". Based on the *Dehati Nalsi* report of 8:45 pm on 25.05.25, FIR No. 197/24 was registered on 9:03 am on 26.05.24 under sections 307, 147, 148, 149 (IPC) and sections 3(2)(v), 3(2)(va) of the Prevention of Atrocities Act. Pertinently, section 302 was not added even though Rajendra's had already died by then. Israel Khan, Ashiq Qureshi, Tantu Qureshi, Faheem Khan and Bablu Khan have been arrested in this case. Rajendra's family has complained about the involvement of 11 other individuals, but the police have not arrested them, claiming that the investigation in the case is still ongoing.

Rajendra's family said that Rajendra was not afraid of the Thakurs, which irritated them. They believe that the Thakurs had him killed.

Rajendra's father Ramsevak says - *"On the day of Nitin's murder, Komal Thakur, Vikram Thakur, Azad Thakur, Vishal Thakur and their associates came to our house looking for Rajendra. When they didn't find Rajendra at home, they beat me up and smashed everything in the house. They threatened us to leave the village if we wanted to stay alive. My leg was injured in the attack and I couldn't walk properly for two months. But out of fear, I was not able to complain about this anywhere. I thought that if I complained, they would only cause more harm to my family."* **Everyone in the family claimed that if Rajendra had been at home at the time of the attack, he would have been murdered that day itself.**

Rajendra's grandmother recounted an incident a few days before his murder - *"The Thakurs were farming our land on rent for a few years. This year they had sown the field without paying us anything. When I went to Govind Singh Thakur to ask for the money he owed me, he abused me and sent me away. A few days later, I went to Govind Singh again with Rajendra, and he abused us again. But on Rajendra's insistence, he threw the money at us and said, 'take your money and see what happens to you. You have testified against the Thakurs...You better change your testimony, otherwise you won't survive.'*

The family also reported that the accused in Nitin's murder were continuously pressuring Rajendra to compromise, even while they were in jail.

Pappu Rajak, at whose house Rajendra was attacked, has filed a counter-FIR in the matter of the attack on Rajendra. According to the FIR, Rajendra, Amir, and Faizal came to Pappu Rajak's house and started beating him to demand a compromise in some previous incident. Pappu Rajak

received injuries in his hand and on his head, and was later admitted for treatment in Hamidia Hospital, Bhopal. In this case, FIR No. 198/24 was registered at 5:42pm on 26.05.24, the day after the incident and several hours after Rajendra and Anjana's death. The *Dehati Nalsi* report was also only made at 7:30 AM on the morning after the alleged incident. We were told that Pappu Rajak works for the lambardars and is close to them. An FIR under sections 307, 458, 294, 34 of the IPC has been registered against Rajendra, Amir and Faizal. Amir and Faizal have been arrested.

Anjana's Death under extremely suspicious circumstances

After Rajendra's post-mortem in Sagar, Anjana was bringing Rajendra's body back to the village accompanied by the police. It was then that she died under extremely suspicious circumstances on Khurai bypass road. The police claim that Anjana died due to "either falling or jumping" out of the vehicle but that the matter is "still under investigation".

Rajendra's parents were also in the vehicle, along with one policeman and a driver. According to Rajendra's parents there was a police vehicle in front, and possibly one behind as well. They say that the police had given them some water to drink, after which they fell asleep. They were woken up by the police to see Anjana lying about 20-30 feet away on the road. When the police brought Anjana back to the vehicle, she was already unconscious. Another police vehicle arrived on the scene, and Anjana along with Rajendra's mother was sent in the vehicle to Sagar. It is pertinent to note that Rajendra's mother cannot hear or speak.

The police are calling this an accident, and a case of Unnatural Death has been registered at Khurai City Police Station. However, Anjana's family believes that her death was not an accident but murder. Rajendra's family also believes that it was the Thakurs who had Anjana killed.

Those who knew Anjana say that it is impossible to believe that she would jump from the vehicle of her own accord. The claim of her "accidentally falling out" of a closed vehicle is also unbelievable and highly improbable.

Anjana's post-mortem reveals Anjana suffered a head injury due to a skull fracture as well injuries on her hands and knees. According to the post mortem report, the cause of Anjana's death was "head injury and its complications".

Curiously, about 10 days before the incident, the police security provided to the family after Nitin's murder, had been removed. The CCTV cameras in front of Anjana's home had also not been functional for a few days. When questioned about this fact, the Collector claimed the security was removed since no incident had taken place for several months, while the CCTV was not functioning due to "some technical malfunction".

We were told that the investigation into Anjana's death was being conducted by Ms. Shashi Vishwakarma, Khurai (city) Police Station's Thana In-charge. She refused to provide any information on the investigation, claiming that it was still ongoing. She even refused to provide general information like the location of the incident. SDOP, Shri Sachin Parte had claimed the investigation would be completed by around July 10th, but at the time of writing, and almost 2 months after the incident, the investigation remains "ongoing".

Discussions with District officials and role of the Administration

District Collector of Sagar, Shri Deepak Arya, believed the root of these incidents to be societal, stating that "this Dalit family had feelings of anger and rebellion against exploitation of the elites,

and were wanting to escape their pressure and influence. However, they were manipulated to commit crimes by a faction opposed to the village elites (lambardars) who had their own ulterior motives.”

Superintendent of Police, Mr. Abhishek Tiwari had been on leave for several days during our visits, and was unavailable for comment.

We met Additional Superintendent of Police Mr. Sanjeev Uikey, who is supervising the investigation into the entire matter and SDOP Khurai Mr. Sachin Parte, who is the Investigating Officer in the murders of Nitin and Rajendra.

When asked about the murders, both officials were eager to present the victims as criminals and rationalise the acts of the accused. Both officers stated that Vishnu, Rajendra, and Nitin were habitual offenders and had multiple criminal cases against them. However, they refused to provide any details of these cases.

They claimed that a feud existed between the families of Shabbir Khan and Komal Thakur of the village. Rajendra, Vishnu, and Nitin were embroiled in crimes due to their proximity with Shabbir Khan's sons. The SDOP stated that Shabbir Khan's group used these Dalit youths to file false cases of caste atrocities against the Thakurs, but when we asked for information about these alleged false cases, he fell silent. According to ASP Mr. Uikey, Nitin was killed because he attacked Vikram Thakur first.

The SDOP admitted that Pappu Rajak, at whose house Rajendra was murdered, has not been arrested even after a month. Regarding the omission of 11 attackers' names from the FIR of Rajendra's murder filed by his family, he claimed that the investigation about these individuals was ongoing. When asked if statements from eyewitnesses Amir Sohail and Faizal have been taken in Rajendra's murder case, he did not provide a clear answer. Both Amir and Faizal are currently in jail, having been arrested on Pappu Rajak's complaint.

Despite not being named in Pappu Rajak's complaint or media statements, two other individuals, Machla Kori and Imran Khan, have also been arrested. Machla Kori is an eyewitness in the case. We were told that Imran Khan, a resident of Rahatgarh, was not even present at the scene, but was possibly arrested because he was helping the Ahirwar family in to continue their pursuit for justice in Nitin's murder case. Though we cannot confirm the truth of this claim, these two arrests raise suspicions on the objectivity of the police in the matter.

As 13 people had been arrested for Nitin's murder, when we met police officials, we expected them to be objective and sensitive. **However, we were shocked to see the police show clear prejudice against the victims; when asked for information about the murder cases, instead of providing details, they indirectly tried to justify these murders by calling Nitin, Rajendra, and Vishnu "habitual offenders".**

Nitin was only 18 years old when he was murdered. While refusing to provide us with any detailed information about criminal cases against Nitin, police officers stated 7 FIRs were filed against him between 2021 and 2023. The fact that so many cases were registered against a minor from a rural Dalit family of daily wage labourers raises many questions, and also strengthens his family's allegation that their children were being implicated in false cases because of Anjana's complaint against the Thakurs. Nitin and Anjana's mother, Badibahu Ahirwar, also showed written

complaints to the SP and DIG (Sagar) on 31.03.21 and on 09.04.21 stating that Nitin, who had come home from Indore for Holi, was picked up by Khurai police and kept and beaten at the police station for many days. No investigation was done on these complaints, even though they were serious complaints of custodial torture of a Dalit minor.

On 03.05.24, around three weeks before Anjana's death, her brother Vishnu was externed (Zila Badar) from Sagar and 8 adjoining districts for a period of 6 months, on the grounds of his being a "habitual offender", creating "an atmosphere of fear and terror among the general public" and "affecting public safety, peace, and public order". We examined the criminal cases on the basis of which the order was passed, and found that there are no cases that could justify the externment on these grounds. All 6 cases mentioned are still at the trial stage, in one a compromise has been effected. 3 cases are ordinary disputes. In one case, the complainant is Vikram Singh Thakur, who is a key accused both in the assault on Anjana and the lynching of Nitin, and whose animosity to the family is well established. This case is also pending. One case is of theft but is also pending. The externment of Vishnu based on such cases raises suspicion of administrative prejudice, especially when the police repeatedly try to emphasize "criminal record" of Nitin and Rajendra and Vishnu, when asked about the atrocities against them and their families.

Nitin, Anjana, and Vishnu's mother, Badi Bahu Ahirwar, said that after Anjana's death, when family members met Additional Superintendent of Police Mr. Uikey, he threatened that even Vishnu could be killed. He ordered the police personnel present there to snatch Vishnu's phone. The police said they would return the phone the next day, but then refused to do so. No seizure memo was provided and the procedure for seizure of electronic articles mandated by law was not followed. After repeatedly asking for the phone without success, his mother filed a complaint to the SP. Important evidence related to Nitin and Anjana's case are on Vishnu's phone, but now they do not know what will happen to that evidence.

Later, on June 29, we learned from media reports that on June 5, the ASP had "confiscated" Vishnu's phone for making a video when he went to submit an application with the family. According to the police, based on photos of illegal weapons, videos, and WhatsApp chats on the phone, a case was registered against Vishnu on June 27 under Section 25(1)(a) of the Arms Act. That an FIR has been filed 22 days after the phone was seized without a proper seizure memo raises suspicion about the intent of the police; the possibility of tampering with the electronic device cannot be ruled out. Moreover, evidence found on a phone "seized" in such an illegal manner would not have a legal validity. It appears that this whole exercise is merely an attempt to pressurise the affected family from pursuing justice and creating public prejudice against them.

Collector Deepak Arya informed us that after Nitin's murder, the victim's family was given a total assistance of Rs. 21,46,724, under various heads, including the Chief Minister's Discretionary Fund, Red Cross Society, and compensation under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Political Intervention

Political parties have made different statements about this entire series of events from time to time, we are sharing some details here, which are based on media reports:

After Nitin's murder, former Chief Minister and Congress leader Mr. Digvijay Singh met the family and said - If the police had taken action in time, Nitin's murder would not have happened. He

asked the officials why the main accused's name was not registered in the FIR, why is BJP Youth Front's Ankit Thakur's not being named as an accused, is the government administration trying to protect him?

On the other hand, Khurai MLA and former minister Shri Bhupendra Singh gave a statement to the media that this was not an Atrocity but merely the fallout of a long-standing dispute between the two parties. The fight happened because of the dispute, due to mutual disagreement... The truth will come out after investigation... Congress is trying to divide society; Congress is trying to use the incident to make political capital.

After the death of Anjana and Rajendra, former Chief Minister Shri Digvijay Singh and State Congress President Shri Jitu Patwari reached to meet the family and arranged for the family to talk to Shri Rahul Gandhi over the phone. After meeting with the family and participating in Anjana's funeral Shri Digvijay Singh said, *"There were three witnesses to Lalu's [Nitin's] murder - Rajendra, Anjana, and his mother. When they didn't buckle under pressure, Rajendra was murdered and Anjana died."* He alleged that *"A few days ago, Anjana had complained to the police about pressure being put on her to change her statement, but the police did not act on the complaint."*

He claimed that Anjana had initially said that Ankit Thakur was involved in the incident, but he was not arrested because of his local influence and political connections.

Shri Jitu Patwari said that murders are happening one after another, and now a daughter has died under suspicious circumstances. He said that if the government does not agree, they will approach the court for a CBI investigation.

After Anjana's death, Madhya Pradesh Chief Minister Dr. Mohan Yadav also reached the village with Shri Bhupendra Singh. Expressing sorrow over the incident, he said that the cause of the matter is merely a village dispute. Upon learning about such incidents happening repeatedly in the village, he directed the police administration to open a police outpost, to ensure that such incidents do not happen again.

Meanwhile, Khurai's BJP MLA and former minister Mr. Bhupendra Singh blamed the victim's family for Anjana's death, accusing them of criminal tendencies, [he said](#), *"Anjana Ahirwar's deceased relative had a criminal background... According to police records, the deceased Rajendra Ahirwar terrorised the village. Rajendra Ahirwar was involved in criminal activities at the behest of Imran Khan."* [He said](#), *"Congress politicizes deaths. The mastermind of the Baraudiya Naunagir case is Imran Khan. Imran was the one who made the deceased's family commit all these crimes. Imran has cases like 302 registered against him. People here are troubled by his terror. Imran has used the deceased's family."* He said that the entire CDR of this case should be extracted. *"Those who have instigated that girl should be charged". He said that... "85-year-old people are in jail. Will they commit such a crime? Ankit wasn't even there at that time. The police have been impartial in the case."* (It may be noted that the oldest accused, 77 year old Vijay Singh is now out on bail)

Important words by ex-Urban Housing and Development Minister, Shri Bhupendra Singh, on why the homes of the accused in Nitin's murder were not demolished

Since the past few years, Madhya Pradesh has seen a number of instances where homes of the accused have been demolished in a form of "bulldozer justice". In this context, a viral video clip of ex-minister Shri Bhupendra Singh, taken during his meeting with Anjana and her family is worth mentioning separately.

On Anjana's demand that the government demolish the houses of the accused in Nitin's murder, he says -

"Makan girane ka aadhaar kya hai? Aise to roj jhagde hote hain, roj murder hote hain..kaun se kanoon mei likha hai ki makaan girayaa jaye? Makaan, jo mafia hote hain..beta, koi is tarah kii ghatna hoti hai ya rape jaisa koi maamla hota hai - tab apan..koi matlab sangeen apraadh hota hai - tab apan makaan giraate hai. Kanoon to makaan gira nahin sakte. Abhi wo High Court ne rok laga di thi. Abhi, pata hoga Haryana ki ghatna mei makaan gira rahi thi sarkaar to high court ne rok laga dii thi. Bina aap kaise gira sakte hain? Maan lo ek makaan mei 10 log rehte hain. Ek apradhi hai to 9 ne kya galti ki hai? Makan toh 10 ka hai na? Aur apradhi ek hai..to 9 ne kya apradh kiya hai? Kanoonan to makaan gira nahin saktein! Kanoonan tabhi gira sakte hain jab atikraman ho, tab to bilkul kisi ka bhi gira sakte hain..vo to kabhi bhi gira sakte hain, kisi ka bhi gira saktein hain!"

This roughly translates to:

"What is the basis for demolishing houses? Fights, disputes and murders happen every day..which law allows us to demolish houses? In case of a crime like rape, or if it is the house of some mafia, meaning if a heinous crime has been committed, only then we demolish houses. Legally we cannot demolish houses. Now the High Court has put a stay on it as well. You may know that in Haryana the High Court stayed the demolition of a house...Consider that 10 people live in a house. If one of them is an accused, then what is the crime of the other nine? The house belongs to the 10 does it not? Legally we cannot demolish houses. We can only do so when it is an encroachment..yes then we can demolish anyone's home, any time we want!"

Conclusions

1. Bundelkhand, is known for its history of deep feudalism and to this day, the dominance of the "lambardars" persists. The Thakur family of Baraudia Naunagir have been the village "lambardars" for generations and they own most of the land in the village. They dominate the village, control the panchayat and play a role in all major village affairs. No one dares go against them. The defiance and rebellion of these Dalit youths against feudal oppression and exploitation by the Thakurs were undoubtedly seen as an affront and challenge to their authority. The violence was in reaction to this defiance.
2. It was in these circumstances that lambardar youth tried to humiliate Vishnu in the marketplace, by slapping him and making him touch their feet, and assaulted and molested 15-year-old Anjana. Anjana got an FIR registered only with great difficulty, and the excluded the complaint of sexual violence and did not apply the relevant sections Protection of Children from Sexual Offences Act. According to Anjana's family, despite the accused getting bail easily, the lambardars considered it an insult to their dominance and began harassing them.
3. It was these circumstances that led to the murder of 18-year-old Nitin in the village market, the assault on his mother and Anjana who went to save him and the smashing and looting of their home and that of Rajendra Ahirwar. Tension increased after the arrest of the accused lambardars and their associates. Anjana kept complaining about the lack of action in this case, about police not adding the name of local BJP leader Ankit Singh, and about the coercion from the accused to agree to a "settlement". But the police and administration kept ignoring these complaints.
4. The lynching of 18-year-old Nitin for over an hour in the middle of the market by lambardars and their men, the fact that no one except his mother and sister even attempted to save them, the assault on his mother in which her hand was broken and her sari stripped off followed by the assault on Anjana, the smashing and looting of their homes, and the glaring tardiness of the police in arrival - all of this

was possible only because the victims were a Dalit family of labourers and the assailants were historically dominant elites.

5. While the police displayed commendably proactive in arresting 13 people, including lambardars for Nitin's murder, some questions remain: Why was BJP leader Ankit Singh Thakur not made an accused despite Anjana complaining, in writing, about his involvement immediately after the murder? Why was the stripping of Badi Bahu Ahirwar not mentioned in the FIR despite the complaint to this effect and the police themselves helping her cover herself? Why was no action taken on Anjana's repeated complaints about threats and pressure for "compromise"? Why was the CCTV footage not taken into account? Nitin's death took place at 12:16 am, while the FIR was registered two hours after - yet, why were the charges of murder (Section 302, IPC) not added in the FIR? We received no satisfactory answers to these questions.
6. Rajendra Ahirwar was Nitin and Anjana's uncle and a witness in Nitin's murder. The lambardars were not directly involved in Rajendra Ahirwar's murder, but the assailants were associated with them. Reportedly, Rajendra had been working for a family who were opposed to the Thakurs. On the day of Nitin's murder itself, a mob led by the lambardars had entered Rajendra's home looking for him, and when they did not find him at home, they had attacked his father Ramsevak Ahirwar and trashed their home and their belongings. Immediately after Rajendra's death, Anjana told the media that Rajendra was being constantly threatened to turn hostile as a witness in Nitin's murder case or else he would be killed. Rajendra's family are also convinced that the Lambardars had him killed. Many of Rajendra's attackers have not yet been arrested, despite the family submitting a list of their names to the police. The police claim this is because they are "still investigating" these people, a sense of discretion normally never seen. Even Pappu Rajak, in whose house Rajendra was attacked, has neither been arrested nor has his name been added in the FIR.

Rajendra had serious injuries from sharp weapons (reportedly an axe) all over his head and body. Yet, it appears his treatment was inordinately delayed. At 9 PM, Rajendra was taken to Sagar hospital in a very critical condition, but it took more than 5 hours for him to be referred to Bhopal. Rajendra was sent to Bhopal only after around 2 AM, but died on the way. The family suspects that there was a deliberate delay in treatment.

7. Anjana's death, mere hours after Rajendra's murder, while she was being accompanied by the police, is a highly suspicious one. Almost two months later, the police are tight lipped, offer no explanation claiming that the "investigation is ongoing". Claims of Anjana "falling" or "jumping" from the hearse transporting Rajendra's body are completely unbelievable.

The circumstances of Anjana's death point towards a conspiracy. Anjana was educated and was central to the family's struggle for justice especially in the murders of Nitin and Rajendra. She was the one who communicated with the administration and politicians on behalf of her family. At the age of 15, she had managed to get an FIR registered against the village lambardars and further still, refused to "compromise" even when faced with threats from the lambardars. Anjana was the complainant and a key witness in Nitin's murder case. She was also the main witness in her uncle's murder case, as he had named his attackers to her over the phone. Anjana was constantly pressured to compromise and change her testimony, and she made several written complaints about the same. Anjana also objected to the bail application of the accused in Nitin's murder case in the High Court, which led to their bail being rejected. Anjana was preparing to file a similar objection in the Supreme Court as well.

After Nitin's murder, Anjana had expressed fear for her safety and that of her family, to the administration and repeatedly complained of threats. The police had provided a guard for the family's security and installed a CCTV camera in front of the house. However, just 10 days before Anjana's death, the police security was

withdrawn and the CCTV cameras were non functional. The family says that Anjana was killed by the Thakurs as part of a conspiracy. While Rajendra's parents, who were also in the same van, are fearful and say they "saw nothing" they are also insistent that the Thakurs had her killed. This case requires a detailed and impartial investigation, one that the local police is neither equipped for, nor can be trusted to undertake with any objectivity.

8. The village lambardars are reportedly close to Khurai MLA and former cabinet minister, veteran BJP leader Mr. Bhupendra Singh, and politically connected to him. The three main accused in Nitin's murder are BJP workers. Since Nitin's brutal murder, Mr. Bhupendra Singh has been quick to reduce this atrocity which has claimed three young lives to 'a mere dispute between two parties'. By claiming the matter to be "orchestrated" by Congress, and by a person with a criminal record (from the faction opposed to the Thakurs) he has sought to trivialize and downplay the seriousness of this atrocity. Regrettably, the police and administration echo his words - thus, as things stand, chances of the Ahirwar family getting justice seem very slim.

It is possible that in an attempt to defy the suffocating dominance of the lambardar Thakurs, these Dalit youths may have accepted support from some persons opposed to the lambardars who had their own ulterior motives. Nevertheless, attempts by the police and the administration to justify and rationalize these atrocities on this basis is absolutely reprehensible.

It is possible that due to the support received from the opposing faction, tensions may have escalated further, and these Dalit youths may have been implicated in the criminal charges against members of this faction. It is not possible for us to reach any conclusion about the merits of the charges against Rajendra, Vishnu, and Nitin. However, it is highly possible that these may be false cases, especially when we clearly see the bias and prejudice of the police as they try to equate atrocities and murder to petty criminal offences.

Police's competence and objectivity both suspect: Anjana's death
and in fact, all the matter require CBI investigation

The tragic events of Baraudiya Naunagir prove that the socio-political structures that have enabled historical inequality and exploitation are very much alive today. The strange circumstances of Anjana's death/murder make it abundantly clear that the matter requires careful and thorough investigation, one that local police do not appear capable of undertaking. It is also clear that political pressures and administrative bias will not allow proper investigation or action in these matters. In such a situation, neither is the police equipped to handle these case - nor can they be trusted to objectively do so.

For these reasons we very strongly urge that Anjana's death as well as all the other matters described above be thoroughly investigated by the CBI and that there be transparency in the proceedings

Madhya Pradesh Government must take responsible for the safety of the victim families

The Collector must be made responsible for ensuring the safety of the families of Nitin-Anjana and Rajendra Ahirwar. Despite Nitin's murder receiving a lot of attention in both the media and from all political parties, Rajendra was murdered and Anjana died. Now, even the Chief Minister of Madhya Pradesh, Dr. Mohan Yadav has met the family and is cognisant of the situation - yet justice remains a far cry for the families. If the families of Rajendra and Nitin and Anjana face any more violence or persecution, it is the Government of Madhya Pradesh that will be solely responsible.

ANNEXURES**1. Table 1 – A timeline of events from 2019-2024**

Timeline	
Date	Incident
23.01.2019	Assault on Vishnu in the market
26.01.2019	Harassment and assault on Anjana
31.03.2021	Complaint about Nitin being forcibly detained at the police station in a false case and beaten for 5 days
09.04.2021	Complaint about Raghuveer and Nitin being forcibly detained at the police station in a false case, and Nitin being beaten for 5 days
24.08.2023	1. Nitin was beaten to death at night. His mother's arm was broken and her sari was removed when trying to save him. Anjana was also assaulted. 2. Lambardars and their associates vandalized Nitin's house. 3. Lambardars and their associates broke into Rajendra's house with intent to kill him, assaulted father Ramsevak Ahirwar and vandalized the house.
25.08.2023	1. FIR filed on Nitin's murder 2. Anjana applied to Collector, SP to add Ankit Singh and others' names in Nitin's murder case
08.09.2023	Anjana complained again about not adding Ankit Singh's name to the complaint, giving him protection and chance to influence evidence, and not taking her statement under section 164 into consideration.
29.09.2023	Anjana complained to the IG about Ankit Singh's name not being added to the complaint
21.10.2023	Anjana complained to SP about SDOP Khurai not conducting impartial investigation and of Collector's assurances not being fulfilled
27.10.2023	FIR by Pappu Rajak against Vishnu and Rajendra
25.02.2024	Komal Singh Thakur, Ankit Thakur's family threatened Anjana at her home
26.02.2024	Anjana complained to SP about threats from Komal Singh Thakur, Ankit Thakur's family to pressure for compromise
03.05.2024	Order by Collector Sagar, externing Vishnu (<i>Jila Badar</i>) issued
25.05.2024	Rajendra was attacked, taken from Khurai to Sagar, then sent to Bhopal but died near Vidisha en route. After his death, Anjana's media statement details pressure for compromise, threats made to Rajendra and some attackers' names he mentioned to her on a phone call just before his death.

26.05.2024	1. FIR filed in Rajendra's murder case, followed by FIR against Rajendra by Pappu Rajak 2. Anjana died after "falling" from vehicle near Khurai while Rajendra's body was being taken back after post-mortem
18.06.2024	Ramsevak Ahirwar submits an application to SP, naming 11 more accused who were involved in Rajendra's murder
02.07.2024 and 05.07.2024	1. Application for FIR and impartial investigation into Anjana's suspected murder 2. Complaint to Additional SP about police seizing Vishnu's phone without proper documentation during meeting 3. Application for inquest report and post-mortem report copy of Anjana's death

Table 2 – Summary of Key Documents and Events:

Date	Related Officer or Department	Details
26.01.2019	FIR 0027/2019 filed at Khurai Police Station at 6:18 PM	15-year-old Anjana Ahirwar complained against village lambardars for harassment and assault Sections 294, 323, 506 of IPC and SC/ST Act applied, but POCSO Act sections not included despite acknowledging harassment
31.03.2021	Complaint to SP Sagar by Badi Bahu Ahirwar, w/o Raghuvir Ahirwar	Alleged unlawful detention of Nitin at police station, assault, and threats to prevent complaint
09.04.2021	Complaint to IG and SP Sagar by mother and elder daughter-in-law	Similar allegations of Nitin's unlawful detention and assault in custody
26.05.2021	Application by Raghuvir Ahirwar to SP Sagar under 132/21	Vishnu's father complained to the Superintendent of Police, Sagar, against Vishnu being falsely implicated in false cases because of Anjana's FIR against the village lambardars. He states that at the time of the incident, Vishnu was in Bhopal, yet his name was added to the case.
25.08.2023	FIR 0329/2023 filed at 2:09 AM at Khurai Rural Police Station by Anjana Ahirwar	Complaint filed by Anjana regarding the murder of her brother Nitin Ahirwar. The FIR includes the names of Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafis Khan, Wahid Khan, and 3-4 other people.
08.09.2023	Anjana's complaint to Collector and SP Sagar	Anjana filed a complaint about Nitin's murder and demanded the arrest of Ankit Singh Thakur, Vikram Singh Thakur, Komal Singh Thakur, Azad Singh Thakur, and others. Anjana also complained about the assault on her mother and her mother being stripped. The application also included a request to

		secure CCTV recordings.
29.09.2023	Anjana's complaint to SP Sagar	Anjana complained about adding Ankit Singh, son of Rajkumar Thakur, as the main accused. She complained that by not adding Ankit Singh's name, he was being given an opportunity to influence the evidence, and this was causing a threat to her family's life.
21.10.2023	Anjana's application to IG Sagar	Complaint about the lack of action on the demand to add names to the FIR as per the complaint dated 08.09.23. The letter also complained about the incomplete treatment of the mother, unfulfilled assurances from the Collector, and pressure from the accused's relatives to reach a compromise.
27.10.2023	Anjana's application to SP Sagar	A complaint was filed against the SDOP Khurai, investigating officer in Nitin's murder, accusing him of protecting the accused on 08/09/23. However, the investigation of the complaint about the SDOP was assigned to the SDOP Khurai himself.
26.02.2024	FIR 0454/2023 filed at 8:44 PM at Khurai Rural Police Station	Pappu Rajak accused Vishnu and Rajendra Ahirwar of assault and verbal abuse
03.05.2024	Anjana's application to SP	A complaint was filed regarding threats to implicate Vishnu in false cases of harassment, assault, and other fabricated charges for not agreeing to a compromise in Nitin's murder case. According to the complaint, the family members of the accused lambardars were continuously pressuring for a compromise.
26.05.2024	Externment order against Vishnu Ahirwar (Jila Badar)	Externment proceedings began on 23.02.2024 based on the report of the Superintendent of Police. On 03/05/2024, the Collector issued an order for a 6-month externment from the districts of Sagar, Damoh, Chhatarpur, Raisen, Narsinghpur, Ashok Nagar, and Tikamgarh.
26.05.2024	FIR 197/2024 filed at 9:03 AM by Ramsevak Ahirwar	An FIR was registered based on the complaint of Ramsevak Ahirwar regarding the murder of Rajendra Ahirwar. The name of Pappu Rajak, at whose house Rajendra was murdered, was not included in the FIR.
18.06.2024	FIR 198/2024 filed at 5:42 PM by Pappu Rajak	An FIR has been filed alleging assault by Pappu Ahirwar against Faizal Qureshi, along with Rajendra Ahirwar and Amir Sohel, to obtain the withdrawal of an old case.

2. Photos



he was made to bow to their feet in the same video



Anjana Ahirwar, 20 years old at time of death.



Nitin Ahirwar



Still from the CCTV footage of Nitin being attacked by village lambardars – the Thakurs and their men



Scenes after the attack in Nitin and Anjana's home



Old photo of Anjana with her mother, following the murder of Nitin



Nitin's mother, Badi Bahu was injured while trying to protect her son – she suffered injuries on both arms, while her right arm was broken 'Lambardars' slapping Vishnu –



The main accused behind Nitin's murder – Komal Singh Thakur, Vikram Thakur and Azaad Thakur.



The day of Nitin's murder, Rajendra Ahirwar's home was also attacked. His family believes that if he were present at home at the time, he would have been killed as well.

Below – Rajendra Ahirwar, 26 year old at time of death





Rajendra Ahirwar's home

3. Links to news reports

- Anjana can be seen demanding justice from the Collector. She threatened that she would be forced to self-immolate in front of Shri Bhupendra Singh's home if the administration failed to act. Contains statements from Nitin's mother just after his murder- <https://www.youtube.com/watch?v=okl3qGQ0sZQ>
- Visuals of damage to the Ahirwar home the day of Nitin's murder - <https://www.youtube.com/watch?v=gqGntz8BFYQ>
- Statement by Shri Bhupendra Singh, blaming Congress for the deaths in Baraudiya Naunagir - <https://www.abplive.com/states/madhya-pradesh/sagar-bhupendra-singh-attacks-congress-in-barodia-nonagir-dalit-murder-case-ann-2701804>
- Statement by Shri Bhupendra Singh on "Bulldozer Justice" – https://www.youtube.com/watch?v=Yo_MBxvKx4w & <https://www.youtube.com/watch?v=kSQHZhKW2Es>
- Statement by CM Dr. Mohan Yadav - <https://www.youtube.com/watch?v=O7aR0JdCzal>
- Madhya Pradesh: Sagar Dalit Youth Beaten to Death| NDTV इंडिया <https://www.youtube.com/watch?v=87E9buyT29k>
- The last statement made by Anjana before her suspicious death/murder - <https://www.instagram.com/reel/C7dUenavjdR/?igsh=MXFoYnI5YXk1dndtYw==>
- Family raises demand for CBI enquiry, talks to Rahul Gandhi on phone: https://mpcg.ndtv.in/madhya-pradesh-news/will-there-be-a-cbi-inquiry-into-the-suspicious-death-of-a-dalit-girl-congress-raised-the-demand-rahul-gandhi-spoke-to-the-family-5766335/amp/1#amp_tf=From%20%251%24s&aoh=17205278322167
- A detailed report by Dainik Bhaskar with relevant visuals- <https://www.bhaskar.com/local/mp/news/inside-story-of-dalit-massacre-in-sagar-131762030.html>
- Report by BBC India: <https://www.bbc.com/hindi/articles/crg3845plv7o>

Annexure P-4

To,

The Superintendent of Police

Sagar, District- Sagar, M.P.

Anjana D/o Raghuvir Ahirwar

R/o Barodiya Naungar, Tehsil- Khura.

...Applicant/ Complainant

Subject: Regarding adding name of Non-Applicant Ankit Singh S/o

Rajkumar Thakur as main accused.

Sir,

It is submitted that the Applicant is permanent resident of Village- Barodiya Naunagar, Tehsil- Khura, District- Sagar. On 24.08.2023 at about 8.30 p.m. in the evening, Non-Applicant Vikram Thakur, Vijay Thakur, Azad Thakur, Komal Thakur, Ankit Singh Thakur, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Waheed Khan, and other accused persons by forming common intention, killed my brother Nitin @ Lalu Ahriwar by beating him. Moreover, they also committed marpeet with my mother and misbehaved with her and

they also abused and beaten me, regarding which, a Report is registered in P.S. Khurai Rural, whose' Crime No. is 329/23.

That, in the said case, Accused Ankit Singh S/o Sh. Rajkumar had beaten my brother very badly by iron rod. Aforesaid incident took place in front of me, and I have seen Accused Ankit Thakur committing marpeet with my brother by iron rod, but, the Police of P.S. Khurai Rural has not mentioned the name of Ankit Singh Thakur as main accused in the present case. He is still absconding and may temper the witnesses of present case. I also have threat to my life from Ankit Singh. Police has not got recorded my statements u/s 164 Cr.P.C. till date, and Khurai Police is deliberately causing delay in the matter.

Therefore, you are humbly prayed that kindly register the name of Accused Ankit Singh S/o Rajkumar Thakur, R/o Barodiya Naungar, as main accused in the present case and kindly ensure his immediate arrest and kindly also record my statement under Section 164 Cr.P.C.

Date: 08.09.2023

Sd/-

Applicant

Annexure P-5

To,

The I.G., Sagar, M.P.

Subject: Regarding Complaint against Investigating Officer of
Crime No. 329/2023 of P.S. Khurai Rural.

Sir,

It is submitted that in Crime No. 329/23 u/s 302, 307, 147, 458, 427 IPC of P.S. Khurai, my brother Lalu @ Nintin was murdered by the Accused Persons, in which, I myself and my mother were also beaten by the accused persons, in which, the hand of my mother could not have been cured till date. Accused persons are very influential and under their pressure, Doctor did not conduct proper treatment of my mother and also sacked her out from the Hospital. We complained to the Police several times, but, due to the political pressure, they submitted the Chargesheet in haste, whereas, on 08.09.2023, I also made a complaint to the Superintendent of Police that name of main Accused Ankit Singh Thakur S/o Rajkumar Thakur is not mentioned in the FIR, whereas, in Dehati Nalishi, I got written the name of Ankit, and Police also did not get recorded my

statements u/s 164 Cr.P.C.. In the complaint lodged by me, I had also complaint about my mother being stripped in the incident, but, neither the Police added name of Ankit Singh and nor got done full treatment of my mother. Moreover, the 10 points assurance which was given in writing by the Collector, Sagar, that has also not been fulfilled till date. On the other hand, the relatives of Accused Persons are constantly forcing my family members to do compromise, and are threatening that if you won't do compromise, then, after coming out of jail, we won't let you live in the village. In future, we have threat to our lives from the relatives of accused persons as well as accused persons.

Sir, it is requested that the Investigating Officer of present case i.e. SDOP and SHO have deliberately saved an Accused in the serious offence like murder and did not allow to get proper treatment of my mother and even after several oral and written complaints, my statement u/s 164 Cr.P.C. was not recorded and they by helping accused persons in the investigation, and by making the acquaintances of accused persons in the Seizure Memos, have

conducted investigation by favouring the accused persons, due to this reason, kindly pass orders to add the name of Accused Ankit Singh Thakur S/o Rajkumar Thakur, and to conduct treatment of my mother and to take action against the Investigating Officer, so that justice could be done with us.

Sagar

Date: 29.09.2023

Sd/-

Applicant

Anjana Ahirwar, Age- 19 Years

D/o Sh. Raghuvir Ahirwar

R/o Barodiya Naunagir, P.S. Khurai

Tehsil- Khurai, District- Sagar, M.P.

Mobile No. 9294589275

Annexure P-6

To,

The Hon'ble Superintendent of Police

Sagar, District- Sagar, M.P.

Anjana D/o Raghuvir Ahriwar

R/o Barodiya Naunagir, Tehsil- Khurai.

..Applicant/ Complainant

Subject:- Regarding conducting enquiry of Applicant's Complainant
dated 08.09.2023 through impartial officer and changing
Investigating Officer.

Sir,

It is submitted that the Applicant is permanent resident of Village-
Barodiya Naunagir, Tehsil- Khura, District- Sagar. On 08.09.2023, a
written Complaint was lodged by Applicant against Non-Applicants
Vikram Singh, Vijay Singh, Azad Singh, Komal Singh, Ankit
Singh, Lalu Khan, Islam Khan, Golu Soni, Nafees Khan, Waheed
Khan and other accused persons, in which, Applicant's brother Nitin
@ Lalu was murdered and Applicant was also beaten and abused.

That, in the aforesaid case, Accused Ankit Singh S/o Sh. Rajkumar had beaten my brother very badly with iron road, but, name of Ankit Singh Thakur was not mentioned by the Khurai Police as main accused, due to this reason, as a result of not conducting proper proceedings by Khurai Police and SDOP, Khurai, I had made an Application before yourgoodself for conducting impartial enquiry and to add the name of Ankit Singh as main accused.

That, due to not conducting impartial investigation by Khurai Police and SDOP, Khurai, I had submitted an application on 08.09.2023, in which, SDOP, Khurai issued Letter No.144/23 dated 11.10.2023, which was received by me on 20.10.2023, in which, I appeared before the SDOP, Khurai on 20.10.2023

That, since, I had made complaint of not conducting impartial investigation by Khurai Police and SDOP, due to this reason, how can the SDOP, Khurai can conduct the enquiry of Complaint lodged against SDOP, Khurai himself, if it happens, then, how would I get justice. How can a persons accused of allegations, can do the enquiry of Complaint lodged against him, and how can he take impartial decision by conducting impartial enquiry.

Therefore, you are humbly prayed that kindly get done the enquiry of Complaint lodged by me on 08.09.2023 through any Senior and Impartial Additional SP, so that I could get justice.

Date: 21.10.2023

Sd/-

Applicant

Anjana D/o Raghuvir Ahriwar

R/o Barodiya Naunagir, Tehsil- Khurai

Encl:

Copy of Application submitted on 08.09.2023 is enclosed herewith.

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.C.)

1. District: Sagar PS: Khurai Rural

FIR No.: 0197 Year: 2024

Date & Time of FIR: 26.05.2024, 09.03 Hrs.

2.

S. No.	Acts	Sections
1.	IPC, 1860	147
2.	IPC, 1860	148
3.	IPC, 1860	149
4.	IPC, 1860	307
5.	SC & ST (Prevention of Atrocities) Act, 1989 (Amendment, 2015)	3(2)(v)
6.	SC & ST (Prevention of Atrocities) Act, 1989 (Amendment, 2015)	3(2)(va)

3. Occurrence of Offence:

(a) Day: Saturday Date from: 25.05.2024 Date to:
25.05.2024

Time Period: Time From: 20.45 Hrs. Hrs. Time to:
20.55 Hrs.

(b) Information received at P.S.:

Date: 26.05.2024 Time: 08.39 Hrs.

(c) General Diary Reference:

Entry No.: 004 Date & Time: 26.05.2024, 09.02 Hrs..

4. Type of Information: Written

5. Place of Occurrence:

(a) Direction & distance from P.S.: South, 15 Kms., Beat
No.:

(b) Address: House of Pappu Rajak, Village- Barodiya
Naunagir

(c) In case, outside the limit of this Police Station, then :

Name of P.S.: District (State):

6. Complainant/Informant:

(a) Name: On behalf of Ramsevak Ahirwar, Const. 143
Lokendra Parmar, P.S. Khurai Rural

(b) Father's Name: Adhar Ahirwar

(c) Date/ Year of Birth: 1967 (d) Nationality: Indian

(e) UID No.:

(f) Passport No.: Date of Issue: Place of Issue:

(g) ID Details (Ration Card, Voter ID Card, Passport, UID No., Driving License, PAN)

(h) Address:-

S. No.	Address Type	Address
1	Present Address	Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
2	Permanent Address	Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.

(i) Occupation:

(j) Phone Number: Mobile No.:

7. Details of known/suspected/unknown accused with full particulars:

S. No.	Name	Alias	Relative's Name	Present Address
1.	Ashiq Qureshi			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
2.	Bablu Bena			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
3.	Israel Bena			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh,

				India.
4.	Faheem Khan			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.
5.	Tantu Qureshi			Village – Barodiya Naunagir, Rural, P.S. Khurai, Sagar, Madhya Pradesh, India.

8. Reasons of delay in reporting by the complainant/ informant :

9. Particulars of properties of interest : Drugs/Narcotic Drugs

10. Total value of property (In Rs.):

11. Inquest Report/ U.D. Case No., if any:

12. First Information Contents:-

I, Constable 143 Lokendra Parmar am posted in P.S. Khurai
Rural. On 25.05.2025, on receipt of information of fight in

village- Barodiya Naiagir, I alongwith SHO departed for verification of information, and on reaching village- Barodiya Nainnagir, brought injured Rajendra Ahirwar to Civil Hospital, Khurai for treatment, from where, on referring the injured to Sagar, the injured was taken to BMC Hospital, Sagar. In BMC, the SHO by preparing Dehati Nalishi of Crime No. 00/24 u/s 147, 148, 149, 307 IPC and Section 3(2)(v), 3(2)(va) of SC & ST Act, has set the same for registration at original number. Therefore, I produce the same. Kindly register the crime at original number. Copy of Dehati Nalishi reads as under:- Copy of Dehati Nalishi, P.S, Khurai Rural, District- Sagar, Crime No. 0/24 u/s 147, 148, 149, 307 IPC ad Section 3(2)(v0, 3(2)(va) of SC & ST Act, Date and time of Incident: 25.05.2024 at 20.45 Hrs., Place of Occurrence: House of Pappu Rajak, Village- Barodiya Naiagir, Date and Time of Report: 26.05.2024 at 01.40 p.m., Name & Address of Informant: Ramsewak S/o Adhar Ahirwar, Age- 57 Years, R/o Village- Barodiya Naunagir, P.S. Khurai Rural, Name & Address of Accused: Ashiq Quraishi, Babula Benam, Israel Benna,

Faheem Khan, Tantu Qureshi, all Rr/o Village- Barodiya Naunagir, Place of Dehati Nalishi, BMC, Sagar, Name and Address of Police Officer: SI Dhanendra Yadav, P.S. Khurai Rural, Contents:- I reside in village- Barodiya Naunagir and do labour work. This incident is of 25.05.2024 at about 8.45 p.m., when I was present at my home, at the same time, I came to know that my son Rajendra had fight and on getting injured in the marpeet, he has been taken to Khurai Hospital, from where, he has been referred to Sagar. Thereafter, when I reached in BMC Hospital, Sagar, then, grand-daughter of my family namely Anjana Ahirwar told that on 25.05.2024 at about 8.45 p.m., we received phone call of Rajendra uncle, on which, he said that fight is occurring, Ashiq Qureshi, Bablu Bena, Israel Bena, Faheem Khan, Tantu Qureshi are committing marpeet with us. Thereafter, Vikas made a phone call to me and told that fight of Rajendra uncle is being taken place in the house of Pappu Rajak. Ashiq Qureshi, Bablu Bena, Israel Bena, Faheem Khan, Tantu Qureshi all are beating them with axe and sticks. Vikas was telling that I myself and Majhla Kori have seen that

Ashiq Qureshi etc. are committing marpeet at the house of Pappu Rajak. There was dispute between Ashik Qureshi and Rajendra uncle on the old report which was registered in P.S. Khurai City. Thereafter, I informed the Police on phone. After arrival of Police, Rajendra uncle was taken to Government Hospital, Khurai for treatment, from where he has been referred to Sagar. Rajendra uncle has sustained injuries on his head, both the ears, mouth, both the armpits, claws of both the legs and blood is oozing out from head and ear. Ashiq Qureshi, Bable Bena, Israel Bena, Faheem Khan, Tantu Qureshi have beaten Rajendra uncle with axe and sticks with intention to kill him. In the said marpeet, mobile phone of Rajendra uncle has also been broken. Israel Khan has beaten him on the issue of old report registered u/s 302 IPC. I lodge the report. Kindly take action. Sd/- Complainant in Hindi, Ramsewak, Signatures of Police Officer in English, Sd/- illegible 26.05.2024.

13. Action taken: Since the above information reveals commission of offence (s) u/s as mentioned at Item No.2:

(1) Registered the case and took up the investigation:

- (2) Directed (Name of I.O.): Dhanendra Yadav, SI (Sub-Inspector),/ SI,

To take up the investigation or

- (3) Refused investigation due to:

- (4) Transferred to P.S.:

District:

On point of jurisdiction.

FIR read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/information free of cost.

RO & A C

FIR was registered on the instructions of SHO

FIR Writer

Name: Shyam Lal Ahirwar

Rank: ASI

Signature of Officer-in-Charge, Police Station

Name: Dhanendra Yadav

Rank: Sub-Inspector (Sub-Inspector)

No.: SI

14. Signatures / Thumb Impression of the Complainant/ Informant.

15. Date and time of dispatch to the Court:

TRANSCRIPT OF THE TESTIMONY OF THE PETITIONER

The death of key witness of Dalit Murder Case of Village- Barodiya Naunagir, namely Anjana has become mystery. On the incident of falling of Anjana from Ambulance, neither Police is speaking anything and nor villagers.

Male Reporter :- Police is narrating the death of Anjana as Accident, Anjana's mother is with me, she clearly says that Anjana has been murdered and Politically influential persons are involved in her murder.

Female Report in Background :- Ahirwar Family who has faced deaths of their son and daughter within a period of one year, was scared, but, Anjana's mother is leveling allegation of offer of Rs. 2 Crores for settlement in the murder case.

Interview of Anjana's Mother:-My daughter Anjana went to Bungalow, and Bhupendra Singh spoken that only I am the Leader, I

am the Minister and I am the Government, you speak in our favour,
do settlement, we will give you Rs.2 Crores.

Female Report in Background: Anjana was the main witness of the
murder case of her brother and uncle, she was fighting for justice
from Police Station upto Court....

Annexure P-10

To,

The Superintendent of Police

Sagar, M.P.

Anjana Ahirwar D/o Sh. Raghuvir Ahirwar, Age- 20 Years, R/o
Village- Barodiya, Naunagir, P.S. Khurai Rural, Tehsil- Khurai,
District- Sagar, M.P., Mobile No. 8319755517.

....Applicant

Subject:- Regarding molestation, threaten to falsely implicate in
case of marpeet on not doing settlement in Crime No.
329/23u/s 302 IPC of P.S. Khurai Rural.

Sir,

It is submitted that, I live in village- Barodiya Naunagir. On
24.08.2023, Vikram Thakur, Komal Thakur, Vijay Thakur, Azad
Thakur, Waheed Khan, Islam Khan, Nafees Khan, Anees Khan,
Golu Khan, Lalu Khan, Golu Soni, Abhishek Rikwar, Arbaz Khan
had killed my brother Nitin @ Lalu and had vandalized the
household articles after entering inside the house, and when sister
and mother of deceased tried to rescue deceased, then they also

committed marpeet with us, Police had arrested them. At present, all the accused persons of murder are confined in Sagar Jail since last 05 months. Family members of Accused persons are constantly crating pressure for settlement. The family members of Vikram Thakur and Komal Thakur namely Ankit Thakur, Jyoti Ss/o Komal Ahirwar, Kalabai W/o Komal Ahriwar are threatening to falsely implicate my brother Vishnu Ahirwar in the case of molestation and marpeet. Ankit Singh Thakur has said that if you won't do settlement, then, we will send you jail by implicating you in the case of molestation and marpeet. On 25.02.2024 in the evening, Ankit Thakur came to our house and said that do settlement in murder case, otherwise, you won't be able to reside in this village, we will get killed your parents and will send your brother Vishnu to Jail in the case of molestation and marpeet. Ankit Singh was saying that since the bail of my family members is not being allowed and if you won't do settlement, then, not only in this village, in fact, we won't let you stay in entire District, and will get out our brother Vishnu Ahirwar from District in collusion with Police.

Therefore, you are requested that if the family member of accused persons who are confined in jail, namely Ankit Singh Thakur lodges report of any molestation, marpeet with any woman or girl against my brother Vishnu Ahirwar, then, it's impartial enquiry should be conducted because we are scared of the threats of implication of false case and he has also threatened us to get us displaced from district. The family members of accused persons are trying to get us out from the village forever because we have refused to do settlement in murder case. Therefore, by taking the application serious, kindly do just with us i.e. poor people.

Sagar, Date: 26.02.2024

Sd/-Applicant

Sd/-

Anjana Ahirwar D/o Raghuvir Ahirwar

R/o Barodiya Naunagir, Tehsil- Khurai

District- Sagar, M.P.

MP News: Former minister and Khurai MLA Bhupendra Singh said that Anjana Ahirwar committed suicide by jumping is sad. Calling Anjana Ahirwar the daughter of the same, Bhupendra Singh recalled last year's incident.



Sagar Dalit Death: Former Home Minister and Khurai MLA Bhupendra Singh has made a big revelation in the Sagar Barodia Nonagir Dalit murder case. Seeing the matter getting heated, Chief Minister Mohan Yadav reached Barodia Nonagir village today (Wednesday) and met the Dalit family of the victim. Former Home Minister and Khurai MLA Bhupendra Singh was also present with the Chief Minister. He offered condolences to the bereaved family. During this time, CM Yadav assured of strict action against the culprits after conducting a fair investigation.

Former minister Bhupendra Singh said that the culprits of the incident will not be spared. "CM Mohan Yadav has assured to get an inquiry and set up a police post," he said. Rs 4 lakh has been announced as financial assistance to the families of the victims. Hitting out at the Congress, he said Anjana Ahirwar's deceased relative had a criminal background. Congress is doing politics of lies. According to police records, the deceased Rajendra Ahirwar was in terror in the village. Rajendra Ahirwar has been involved in crime at the behest of [Imran Khan](#).

MLA reaches village along with Chief Minister

He said that it is sad that Anjana Ahirwar committed suicide by jumping. Calling Anjana Ahirwar the daughter of the same, Bhupendra Singh recalled last year's incident. "Anjana Ahirwar's brother was murdered." After the incident, the victim went to the village to meet the family. Both incidents are sad. The government has announced to give Rs 21 lakh to the victim Dalit family so far. He said that Anjana Ahirwar got the benefit of PM Awas Yojana in Khurai.

The former minister said that the whole development was instigated by Congress leader and criminal Imran. Anjana had advised Ahirwar to protest by placing the body. He demanded that the police conduct an investigation by getting the CDR of the phone out. He said the investigation would reveal who called and instigated Anjana Ahirwar to jump. Police should take action against the accused involved in the conspiracy. He demanded that the police should conduct a fair investigation on both sides and take action against the culprits.

Meeting with the victim's Dalit family

Rajendra Ahirwar was killed on Saturday in Barodia Nonagir village. After the murder, niece Anjana Ahirwar committed suicide by jumping from the vehicle carrying the body. After the incident, the political mercury in the state is hot. Former CM Digvijay Singh and Jitu Patwari reached Barodia Nonagir and attacked the BJP government fiercely. Anjana Ahirwar's brother Nitin Ahirwar was murdered in August last year. All the accused

are in jail. The incident took place before the assembly elections.

(Report- Vinod Arya)

'The government is busy with making the leaders in its camp', BJP said on Jitu Patwari's allegation- if there is so much trouble...

01.07.2024

To,

1. The District Magistrate, District- Sagar, Madhya Pradesh.
2. IG, Sagar, Madhya Pradesh.
3. Superintendent of Police, District- Sagar, Madhya Pradesh.

Subject: Regarding impartial enquiry of murder of Anjana, Nitin, and Rajendra Ahirwar, and constant harassment of our family by the Lambardars of village and their associates, and regarding suspicious death of my daughter after the murder of my son Nitin and brother-in-law Devendra Ahirwar, which was not an accident and it was murder.

Hon'ble Sir,

I, Badi Bahu W/o Raghuvir Ahirwar, am resident of Village-Barodiya Naunagir and our family depends on labour work. In the year 2019, some influential villagers (Lambardars) had committed marpeet and molested with my daughter namely Anjana Ahirwar,

regarding which after registration of report, the Lambardar of village started constantly harassing us for the compromise and started threatening us. Report could also be registered very hardly and at that time my daughter was 15 years old minor, but, Police did not add relevant Section.

On 24.08.2023 in the evening, Lambardars of village and their associates beaten my 18 years old son namely Nitin very badly to this extent that he got died in the same night. When I tried to rescue him, then they also beaten me, due to which, my one hand got fractured and I also sustained injury in other, my entire Saree was opened and I got naked. They also beaten my daughter. On the same day they vandalized our house and looted all household items and broken the leg of our horse and in fact, they also killed our parrot. In the murder case of my son Nitin, on the complaint of my daughter, FIR No. 329/2023 was registered, but, even after the information by my daughter, name of Accused Ankit Singh Thakur has not been added. In this regard, on the next day, my daughter also made a written complaint to the Collector and SP, but, his name was not added. Even thereafter, my daughter on 08.09.2023,

29.09.2023, 21.10.2023 and 26.02.2024, also made written Complaints to SP and IG regarding not adding name of Ankit Singh, and repeatedly forcing us by the relatives of accused persons to do compromise. We also made Complaint regarding not conducting impartial enquiry in the matter by SDOP, Khurai, but, no action was taken on the same. The proper investigation of murder of Nitin and other incidents happened on 24.08.2024, was not conducted properly.

In the Dead Body Vehicle, Anjana was also sitting along with Rajendra. Thereafter we received information from Police regarding Anjana that Anjana has got died by falling from the vehicle.

Anjana was constantly raising voice for justice for Nitin and Rajendra. The Lambardars of village constantly threatened our family for compromise, tried to evict us from village, threatened us to kill and constantly forced us to do compromise, but, even thereafter, we did not turn up or do compromise, due to this reason, Rajendra and Anjana were killed.

When Anjana sat in the vehicle, at that time, she was fully fit. As it is being stated that she fell down or jumped down from the vehicle, is not trustworthy. We have doubt that Lambardars of village by hatching conspiracy on the issue of murder of Nitin and old case, have got killed Anjana.

Therefore, you are humbly prayed that kindly conduct impartial enquiry regarding the murder of Anjana, Nitin and Rajendra. Sir, we have already lost our three family members, and we also demand from you that kindly provide security to our family from further harassment, so that rest of family could live peacefully.

Sd/-

Applicant

Badi Bahu W/o Raghuvir Ahirwar

Village- Barodiya Naunagir, Tehsil- Khurai,

District- Sagar, Madhya Pradesh

Date: 02.07.2024

Date: 04.07.2024

To,

1. The Collector, District- Sagar, Madhya Pradesh.
2. Superintendent of Police, District- Sagar, Madhya Pradesh.
3. SHO, Khurari Rural, District Sagar, Madhya Pradesh.

Subject:- Regarding registration of FIR regarding murder of my daughter Anjana Ahirwar.

Ref.: Letter dated 02.07.2024 sent to the Collector and Superintendent of Police for conducting impartial enquiry regarding murder of Anjana Ahirwar.

Sir,

I, Badi Bahu W/o Raghuvir Ahirwar, vide this letter demand for registration of FIR and impartial enquiry regarding the murder of my daughter Anjana Ahirwar, because:-

1. In the year 2019, villagers namely Azad Thakur, Vishal Thakur, Pushpendra Thakur and Chhotu Raikwar had

committed marpeet and molested my daughter Anjana Ahirwar. In this regard, Anjana also lodged a Report in P.S. Khurai in the year 2019. Immediately after registration of FIR, the Lambardars of village started putting pressure on Anjana and on our entire family.

2. In the month of August, 2023, Lambadars of village and Ankit Singh Thakur and their associates killed my son Nitin @ Lalu Ahirwar by beating him with lathis and sticks in the village. When, I tried to rescue my son then they also beaten me and undressed me. On the same day Vikram Thakur, Azad Thakur, Komal Thakur and their associates also attacked on our house and vandalized our all household items. Also in this regard, the Anjana had lodged FIR. In the murder case of Nitin, my daughter Anjana and family member namely Rajendra were the main witnesses.
3. In the murder case of Nitin, Anis Khan, Azad Khan, Sushil @ Golu Soni, Vikram Thakur, Arbaz, FaheemKhan, Abhishek Raikwar, IslamBena, Mubarak Khan, Wahid Khan, Komal Thakur and Vijay Thakur were arrested. But, Ankit Singh was

not arrested, whereas, Anjana also made complaint regarding him. After the arrest, all the Lambardars of our village started putting immense pressure on our family and started threatening us to kill.

4. Rajendra Ahiwar was the witness in murder case of Nitin. The arrested Accused persons were also repeatedly forcing and threatening him to make false statement in their favour. When Rajendra refused to make false statement, then, they killed Rajendra by assaulting with lathi, sticks and sharp edged weapons in the house of Pappu Rajak.
5. My daughter Anjana was the main witness in the murder case of Rajendra. Rajendra also informed her on phone regarding the assault. But, when, Ajnana was returning to village alongwith the dead body of Rajendra, then, she also got died. It is being informed by the Police that she got died due to falling from the vehicle, but, we are not able to believe this story.
6. Anjana was not only the main witness in the murder case of Nitin and Rajendra, in fact, she was super active for justice in these case. Only she was a educated person in our family and in

all causes, she used to talk with Government- Administration and used to handle documentary proceedings. Regarding the murder case of Nitin, Anjana had also protested the bail of Accused persons in High Court. In this manner, Anjana was making all possible efforts for justice in both the cases. Even after being confined in jail, the accused persons were putting pressuring on our family to do compromise. But, we refused to from the compromise.

Even after the threats, we did not agree to change our statement and for compromise. Anjana was being forced continuously from the date of FIR lodged in the year 2019, even thereafter, she never stepped back and kept demanding justice from the Government/ Administration and continuously contested legal proceedings. It is being informed by the Administration that Anjana got died by jumping down from the vehicle, which is not appearing to be true. Our daughter could not do so. We have doubt that the Lambardars of village had hatched conspiracy to kill Anjana who was main witness in the both the murder cases of Nitin and Rajendra, due to which, she was killed. Due to the death of Anjana, now, the people we were

pressurizing our family have become more confident and we are also apprehending assault on our family in future.

Therefore, we demand from yourgoodself that after registering FIR regarding the murder of Anjana, kindly conduct enquiry regarding the conspiracy behind the murder of Anjana, and after arresting the guilty persons, they be send to jail immediately.

Regards,

Sd/-

Badi Bahu W/o Raghuvir Ahirwar

Village- Barodiya Naunagir

Khurai Tehsil, District- Sgar.

Annexure P-14

To,

The Director General of Police

Police Headquarter, Bhopal, M.P.

Subject: Regarding take legal action on luring and threatening by Khurai MLA to make statement in favour of murderers in Court and changing statements regarding Applicant's brother Nitin @ Lallu Murder Case and death (murder) of sister Anjana in suspicious circumstances within the limits of P.S.Khurai, District- Sagar.

Sir,

In reference to the above subject matter, it is submitted that I i.e. Applicant Vishnu Ahirwar S/o Raghuvir Ahirwar, am resident of Village- Barodiya Naunagir. On 24.08.2023, my villagers by hatching criminal conspiracy with other unknown accused persons had killed my brother Nitin @ Nitin in Village- Barodiya Naunagir, and aforementioned accused persons had also killed our another relative namely Rajendra Ahirwar and previously, my sister Anjana was also died in the suspicious circumstances, and complaint

regarding her murder was also lodged by me and my family members. My sister Anjana was the main witness of Lalu murder case, who was called by MLA Bhupendra Singh at his bungalow situated in Sagar and threatened her for settlement and she was also lured with money, whose' video got viral on social media, but, my sister did not agree with his proposal, and after few days thereof, my sister Anjana got died (killed) in suspicious circumstances, whereas my sister Anjana was main witness in Lalu murder case and was contesting legal fight against the accused persons of village.

Sir, in Lalu @ Nitin murder case, my mother Smt.Badi Bahu and I myself are witnesses. Statement of my mother had to be recorded in Court on 27.09.2024 and before 02-03 days thereof, real nephew of MLA Bhupendra Singh and his MLA Representative Lakhan Singh called me and my mother at his Crusher, thereafter, Kallu Councilor came to call us and took us to the Crusher of Lakhan Singh, whereupon, Lakhan Singh by threatening us said that statement of yourself and your mother have to be recorded in Lalu murder case. And make statement as we say, otherwise, you also will have to sustain gunshot, thereafter, before few days of the date of hearing,

MLA Bhupendra Singh called me and my mother at his Bungalow and said that whatever Lakhan has spoken to you, make statement accordingly, and he also threatened that make statement in Lalu Murder Case as per our instructions, we were also lured for money by him and moreover, were also threatened and said that if you won't make statement as per our wishes, then your fate will be same as of Lalu, Rajendra and Anjana. Thereafter, he directly sent us to meet the Advocate for accused persons in his vehicle, whereupon, Advocate explained us to make statement in favour of Accused Persons, and taught the statement to my mother. But, my mother after visiting Court, stated the truth and made correct statement and did not follow his instructions, due to this reason, now, I myself and mother and other family members are apprehending threat to life from MLA Bhupendra Singh and his associates. These people have threatened us that if you won't make statement in our favour, then, they would also kill me, my mother and other family members, like my brother Lalu @ Nitin, Rajendra Ahirwar and my sister Anjana. Therefore, if any accident/ incident occurs with me or my mother or any other family members/ witnesses, and if murder/ attempt to

murder is committed, then for that, only Khurai MLA Bhupendra Singh and his goons will be responsible.

Therefore, it is requested to your good self that for the purpose of suppressing the murder case of my brother Lalu @ Nitin, murder of Rajendra Ahirwar and suspicious death of my sister Anjana, and for getting released his relatives from the murder case, the constant pressure is being made by MLA Bhupendra Singh and we are also being threatened. Due to his such conduct, I have apprehension that MLA Bhupendra may get killed me at any point of time, due to which, kindly provide security to me and my family and after registering case against the MLA Bhupendra Singh who is creating pressure on us to change statement in murder case, kindly take legal action against him. I shall be highly grateful.

Date:

Sd/-04.11.2024

Applicant

Vishnu Ahirwar S/o Sh. Raghuvir Ahirwar

R/o Village- Barodiya Naunagir

P.S. Khurai, District- Sagar,M.P., Mobilee No.9294585275

Copy to:-

1. The Hon'ble Chief Minister, Madhya Pradesh.
2. Hon'ble Chairman, Human Rights Commission, Bhopal.
3. The Inspector General of Police, Sagar Range, Sagar.

Annexure P-15

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SUPREME COURT CASES

(2016) 4 SCC

(2016) 4 Supreme Court Cases 160

(BEFORE DIPAK MISRA AND PRAFULLA C. PANT, JJ.)

DHARAM PAL

.. Appellant; ^a

Versus

STATE OF HARYANA AND OTHERS

.. Respondents.

Criminal Appeal No. 85 of 2016[†], decided on January 29, 2016

A. Constitution of India — Arts. 226, 136 and 32 — Transfer of investigation — Power of constitutional courts to direct further investigation or de novo or fresh investigation or reinvestigation by some other investigating agency — Commencement of trial and examination of some witnesses, cannot be an absolute impediment for exercising said constitutional power — Such power is meant to ensure fair and just investigation ^b

B. Constitution of India — Arts. 32, 226 and 136 — Transfer of investigation to CBI — When warranted — Instilling of faith of victim and public at large in investigating agency — Importance of — Fact that trial had commenced and some witnesses had been examined — Not a bar to such transfer — Case of rape of minor daughter of appellant and murder of his wife ^c

— Appellant was provided security personnel as threats were received by him for entering into a compromise in rape case, and for change of his version in murder case of his wife — He approached High Court under Art. 226 of Constitution, alleging improper investigation by investigating agency — High Court declined to transfer investigation to CBI on reasoning that as trial had commenced and some witnesses had been examined, there cannot be a transfer of case to another investigating agency, going by the stage of trial ^d

— Held, in *Committee for Protection of Democratic Rights case*, (2010) 3 SCC 571, Constitution Bench laid great emphasis on instilling of faith of victim and public at large in investigating agency — Herein, there was request by Additional Chief Secretary for handing over investigation to CBI; that departmental action was taken against investigating authorities for negligent investigation; that ASI concerned was reverted to post of Head Constable; and that apart, certain material witnesses were not examined by investigating agency without any rhyme or reason — Though direction for transfer of investigation to another agency has to be very sparingly issued, but facts depicted in instant case, held, compel the Court to exercise said power — Herein, purpose of justice commands that cause of victim, father of rape victim and husband of deceased, deserves to be answered so that miscarriage of justice is avoided — Therefore, in instant case, stage of case cannot be governing factor ^e — Hence, order of High Court is set aside, and it is directed that CBI shall conduct investigation and file report before trial Judge — Said investigation report shall be considered by trial Judge as per law — Till the report by CBI ^f ^g

[†] Arising out of SLP (Crl.) No. 6298 of 2015. From the Judgment and Order dated 26-2-2015 of the High Court of Punjab and Haryana at Chandigarh in CRMM No. 24527 of 2013 ^h

DHARAM PAL v. STATE OF HARYANA

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is filed, trial Judge shall not proceed with trial — Penal Code, 1860, Ss. 302 and 376 (Paras 13 to 26)

a Held :

Cry for fair trial by the accused as well as by the victim sometimes remains in the singular and individualistic realm, may be due to the perception gatherable from the facts that there is an attempt to contest on the plinth of fairness being provoked by some kind of vengeance or singularity of “affected purpose”; but, irrefutably a pronounced and pregnant one, there are occasions when the individual

b cry is not guided by any kind of revengeful attitude or anger or venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge of conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as
c perceived by him, is nothing but an apology for the same and mirrors before him the world of disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated. (Para 2)

d The constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. Direction for further investigation by another agency has to be very sparingly issued but the facts depicted in the instant case, compel to exercise the said power. (Para 24)

e The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power, which is meant to ensure a fair and just investigation. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an

f investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has

g commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if the court allows itself to say so it has become “idée fixe”, but the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. The facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not

h harbour the feeling that he is an “orphan under law”. (Para 25)

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SUPREME COURT CASES

(2016) 4 SCC

State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401, *followed*

Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526; *K.V. Rajendran v. Supt. of Police*, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578, *relied on*

Dharam Pal v. State of Haryana, 2015 SCC OnLine P&H 14786, *reversed*

Dharam Pal v. State of Haryana, SLP (Cri) No. 6298 of 2015, order dated 18-9-2015 (SC), *referred to*

C. Criminal Procedure Code, 1973 — S. 173 — Investigation and further investigation by police — Statutory scheme pertaining to, explained — Held, power of police officer under S. 173(8) is unrestricted — Needless to say, Magistrate has no power to interfere, but it would be appropriate on part of investigating officer to inform court — Moreover, Magistrate before whom a report under S. 173(2) is filed, is empowered in law to direct “further investigation” and require the police to submit a further or a supplementary report (Paras 21 to 23)

Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346 : (2009) 2 SCC (Cri) 1059; *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557; *Bhagwant Singh v. Commr. of Police*, (1985) 2 SCC 537 : 1985 SCC (Cri) 267, *relied on*

Appeal allowed

Y-D/56320/CR

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Kamlesh Kr. Mishra and Satya Mitra, Advocates) for the Appellant;

Tushar Mehta, Additional Solicitor General (P.K. Dey, Kumar Parimal, B.V. Balaram Das and Sanjay Kr. Visen, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

1. 2015 SCC OnLine P&H 14786, *Dharam Pal v. State of Haryana* (**reversed**) 163e-f
2. SLP (Cri) No. 6298 of 2015, order dated 18-9-2015 (SC), *Dharam Pal v. State of Haryana* 165b
3. (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578, *K.V. Rajendran v. Supt. of Police* 168c-d, 168e
4. (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557, *Vinay Tyagi v. Irshad Ali* 169c-d, 169e-f
5. (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526, *Narmada Bai v. State of Gujarat* 168b
6. (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401, *State of W.B. v. Committee for Protection of Democratic Rights* 165b-c, 165c, 167a, 167d-e, 168a
7. (2009) 6 SCC 346 : (2009) 2 SCC (Cri) 1059, *Rama Chaudhary v. State of Bihar* 169c
8. (1985) 2 SCC 537 : 1985 SCC (Cri) 267, *Bhagwant Singh v. Commr. of Police* 169c-d, 169e

The Judgment of the Court was delivered by

DIPAK MISRA, J.— Leave granted.

2. Cry for fair trial by the accused as well as by the victim sometimes remains in the singular and individualistic realm, may be due to the perception gatherable from the facts that there is an attempt to contest on the plinth of fairness being provoked by some kind of vengeance or singularity of “affected purpose”; but, irrefutably a pronounced and pregnant one, there are occasions

a when the individual cry is not guided by any kind of revengeful attitude or anger or venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge of conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as perceived by him, is nothing but an apology for the same and mirrors before him the world of b disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated.

c 3. Justice, which is “truth in action” and “the firm and continuous desire to render to everyone which is his due” becomes a mirage for the victim and being perturbed he knocks at the doors of the High Court under Article 226 of the Constitution alleging that principle of fair and proper investigation has been comatosed by the investigating agency, for the said agency has crucified the concept of faith in the investigation which is expected to maintain loyalty to law and sustain fidelity to its purpose.

d 4. In the case at hand, the assertions made with immense anguish gave rise to the question before the High Court whether some progress in trial would act as a remora in the dispensation of justice and the situation should be allowed to remain as it is so that an organic disorder is allowed to creep in and corrode and create a cul-de-sac in administration of justice. The further question posed whether the non-approach to the court prior to the stage of commencement e of trial would be a peccadillo so as to usher in an absolutely indifferent, unconcerned and, in a way, biased investigation to rule and in the ultimate eventuate lead to guillotining of justice. The High Court having negated¹ the stand put forth by the appellant, the husband of the deceased, he has approached this Court by way of special leave.

f 5. With the aforesaid prefatory note and a short prelude to the grievance of the appellant, we proceed to narrate the facts.

g 6. The minor daughter of the appellant who was raped by the accused persons was threatened with dire consequences in case she disclosed the incident. The incident, as alleged, occurred on 6-8-2012. Despite the threat, the daughter disclosed the incident to her parents. Keeping in view the future of the girl and the social repercussions, they chose to suffer in silence rather than set the criminal law in motion. When the family stood reconciled to the situation, something extremely untoward happened.

h 7. On 2-9-2012, Kamlesh Devi, wife of the appellant, had gone to Village Nilikhen for taking medicine for her teeth and gums problem but did not return home on that day. The appellant searched for his wife along with his relatives and eventually a bag containing vegetables and medicines and some other

1 *Dharam Pal v. State of Haryana*, 2015 SCC OnLine P&H 14786

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articles belonging to the wife was found underneath the bridge Manak Majra on the lower side of Sarsa Branch River. The appellant suspected that Kusum, wife of Sukh Ram, resident of Kalsi and Aman alias Virender had abducted his wife or had thrown her into the river. In such a situation, the appellant lodged an FIR, on 5-9-2012 at PS Butana. The investigating agency registered FIR No. 354 for the offences under Sections 363, 366-A, 506, 365 and 34 of the Penal Code, 1860 (for short “IPC”).

8. During the investigation, on 5-9-2012, the dead body of Kamlesh Devi was found near the Sarsa Branch canal bridge. Thereafter, the appellant and his daughter were examined and on that basis, offence under Section 376 IPC was added. Eventually, the allegations were segregated and FIR No. 394 dated 20-9-2012 under Sections 363, 365, 376(2)(g), 506, 201 and 120-B IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered and after the investigation, a charge-sheet was filed. Be it stated, the accused persons in FIR No. 394 dated 20-9-2012 have been acquitted by the judgment dated 12-3-2014 by the learned Sessions Judge. Against the judgment of acquittal, the appellant has filed a criminal appeal which is pending before the High Court of Punjab and Haryana. Therefore, we shall refrain from referring to the facts of the said case.

9. Coming to the subject-matter of FIR No. 354 which relates to the murder of the wife of the appellant, as is evident, the report would show that the cause of death was due to strangulation coupled with head injury which is ante-mortem in nature and sufficient to cause death in ordinary course. Apart from the accused persons named in the FIR, another person, namely, Krishan Kumar, was also implicated who was arrested on 19-10-2012. The other two accused persons, namely, Aman and Kusum were taken into custody on 30-10-2012. It is a matter of record that the appellant was provided security personnel as threats were received by the appellant for entering into a compromise in the rape case, and for change of his version in the murder case of his wife.

10. It has been asserted and not denied by the respondents that on 28-1-2013, the Superintendent of Police, Karnal vide Office Memo No. 3961 recommended to the Director General of Police, Haryana that the case bearing FIR No. 354 along with the rape case and the unsolved case of murder of the sister-in-law of the appellant be transferred to the Central Bureau of Investigation (CBI), New Delhi. Based on the said recommendation, the Additional Chief Secretary, Government of Haryana vide Office Memo No. 20/2/2013-3HG1 requested the Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi for handing over the investigation to CBI. It has also been asserted that a departmental action has been taken against ASI Ram Prakash and SHO Sanjeev Malik on the basis of the complaints made by the appellant. On information being sought by the appellant under the Right to Information Act, 2005, he has been informed vide communication dated 17-11-2014 that departmental inquiry had already been initiated against ASI Ram Prakash and SHO Sanjeev Malik on charges of dereliction and negligence of duty. It was also mentioned in the reply that as a result of

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departmental inquiry, Ram Prakash had been reverted from the post of ASI to Head Constable, and with respect to Sanjeev Malik, the proceedings had been sent to the Deputy Commissioner of Police, Ambala for being transferred.

11. The issue that arises for consideration is whether such a situation calls for issuance of direction for transfer of the investigation to CBI. The High Court has declined to do so direct as trial has commenced and some witnesses have been examined. The High Court has gone by the principle of “stage”. When the matter was listed on 18-9-2015, this Court had directed² a copy of the petition to be served on Mr P.K. Dey, learned counsel who ordinarily appears for CBI. The stand of CBI is that the case does not fall within the guidelines laid down by this Court in *State of W.B. v. Committee for Protection of Democratic Rights*³.

12. The learned counsel for the State has supported the order passed by the High Court and also emphasised that regard being had to the stage of the trial, there is no need for directing for investigation by another agency.

13. First, we intend to deal with the stand of CBI and the principles laid down in *Committee for Protection of Democratic Rights*³. In the said case, the Constitution Bench, after examining the rival contentions in the context of the constitutional scheme, recorded the following conclusions: (SCC pp. 600-02, para 68)

“(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. *The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.* In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover,

² *Dharam Pal v. State of Haryana*, SLP (Cri) No. 6298 of 2015, order dated 18-9-2015 (SC)

³ (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of ‘the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review’.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

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

(vi) If in terms of Schedule VII List II Entry 2 on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

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

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14. After recording the conclusions, the Constitution Bench added a note of caution which we may profitably reproduce: (*Committee for Protection of*

a *Democratic Rights case*³, SCC p. 602, para 70)

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. *This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.* Otherwise CBI would be flooded with a large number of cases and with limited resources, it may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.” (emphasis supplied)

15. In the said case in *Committee for Protection of Democratic Rights case*³, a contention was raised that a detailed charge-sheet had been filed and subsequent to the filing of the said detailed charge-sheet, a supplementary charge-sheet had also been filed to complete the evidence, both oral and documentary, to bring home the guilt of the accused before the competent court and in accordance with the direction given by the Court, further investigation had been carried out in accordance with Section 173(8) of the Code of Criminal Procedure and, therefore, the jurisdiction of this Court under Article 32 of the Constitution had come to an end. In essence, the submission was that when a charge-sheet was filed after conducting the investigation under the supervision and monitoring of the Court, there was no need to transfer the case to another agency. Repelling the said submission, the larger Bench opined, regard being had to the nature of the crime and the persons involved, the investigation could not be said to be satisfactorily held. That apart, the Constitution Bench also ruled that in the circumstances it was not sufficient to instil confidence in the minds of the victims as well as the public at large that State should be allowed to continue the investigation when the alleged offences were against its officials. Under these circumstances, the Court directed CBI to take up the investigation and submit a report.

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3 *State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

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16. On a perusal of the said authority in *Committee for Protection of Democratic Rights case*³, we really do not find any aspect which would support the stand put forth by the learned counsel for CBI. On the contrary, as we perceive, the Constitution Bench has laid great emphasis on instilling of faith of the victim and the public at large in the investigating agency. True it is, the facts in the said case were different and related to alleged crimes committed by certain State officials, but the base of confidence in investigation has been significantly highlighted. a

17. In the context, we may profitably refer to a two-Judge Bench decision in *Narmada Bai v. State of Gujarat*⁴. The Court, in the factual matrix of the case, has emphasised that: (SCC p. 99, para 59) b

“59. ... If the majesty of the rule of law is to be upheld and if it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust the investigation to CBI.” c

18. A three-Judge Bench in *K.V. Rajendran v. Supt. of Police*⁵ reiterating the said principle stated that: (SCC p. 485, para 13)

“13. ... the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having ‘a fair, honest and complete investigation’, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.” d

19. The Court, after referring to earlier decisions, has laid down as follows: (K.V. Rajendran case⁵, SCC p. 487, para 17) e

“17. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.” f

20. The factual scenario in the present case has to be appreciated on the touchstone of the aforesaid authorities. As the facts would reveal there was a request by the Additional Chief Secretary for handing over the investigation to CBI; that departmental action was taken against the investigating authorities g

3 *State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401 h

4 (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526

5 (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578

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a for negligent investigation; that the ASI concerned has been reverted to the post of Head Constable; and that apart, certain material witnesses have not been examined by the investigating agency without any rhyme or reason. The reasoning of the High Court is that as the trial has commenced, there cannot be a transfer of the case to another investigating agency.

b 21. In this context, we may notice the statutory scheme pertaining to investigation. Section 173 CrPC empowers the police officer conducting investigation to file a report on completion of the investigation with the Magistrate empowered to take cognizance of the offence. Section 173(8) CrPC empowers the officer-in-charge to conduct further investigation even after filing of a report under Section 173(2) CrPC if he obtains further evidence, oral or documentary. Thus, the power of the police officer under Section 173(8) CrPC is unrestricted. Needless to say, the Magistrate has no power to interfere but it would be appropriate on the part of the investigating officer to inform the Court. It has been so stated in *Rama Chaudhary v. State of Bihar*⁶.

22. In *Vinay Tyagi v. Irshad Ali*⁷, wherein a two-Judge Bench, after referring to the decision in *Bhagwant Singh v. Commr. of Police*⁸ has held thus: (*Vinay Tyagi case*⁷, SCC p. 789, para 38)

d “38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct ‘further investigation’ and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in *Bhagwant Singh*⁸ has, in no uncertain terms, stated that principle, as
e aforenoticed.”

23. In the said case, the question had arisen whether a Magistrate can direct for reinvestigation. While dealing with the said issue, the Court has observed: (*Vinay Tyagi case*⁷, SCC p. 791, para 43)

f “43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct ‘further investigation’, ‘fresh’ or ‘de novo’ and even ‘reinvestigation’. ‘Fresh’, ‘de novo’ and ‘reinvestigation’ are synonymous expressions and their result in law would be the same. *The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.*”
g (emphasis supplied)

h 6 (2009) 6 SCC 346 : (2009) 2 SCC (Cri) 1059

7 (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557

8 (1985) 2 SCC 537 : 1985 SCC (Cri) 267

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And again: (SCC p. 794, para 51)

“51. ... Whether the Magistrate should direct ‘further investigation’ or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct ‘further investigation’ or ‘reinvestigation’, as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one taste, the taste of salt, so does justice have one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation

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would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grievd protagonist, a person
a belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

26. In view of the aforesaid analysis, the appeal is allowed, the order of the High Court is set aside, and it is directed that CBI shall conduct the investigation and file the report before the learned trial Judge. The said investigation report shall be considered by the trial Judge as per law. Till the report by CBI is filed,
b the learned trial Judge shall not proceed with the trial. A copy of the order be handed over to Mr P.K. Dey, learned counsel for CBI to do the needful.

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Annexure P-16

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connection with the loan transactions as a part of on-going annual exercise undertaken by the lending Bank. If that be so, Saharas would do well to obtain a confirmation from Bank of China to the effect that the valuation reports prepared in respect of the three properties mentioned above by CBRE and JLL, have been prepared at the instance of Bank of China and that the said valuation reports have been accepted by the Bank to be correct. This could lend reassurance to the Court that the value/stakes held by the Saharas in these properties are sought to be transferred on the basis of the true market value of the said assets. Needful shall be done expeditiously, but not later than one week from today.

Court Masters

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(BEFORE T.S. THAKUR AND C. NAGAPPAN, JJ.)

Writ Petitions (C) No. 401 of 2013[†] with No. 402 of 2013 and
TP (C) No. 445 of 2014

SUBRATA CHATTORAJ . . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

With

Writ Petitions (C) No. 413 of 2013 with No. 324 of 2014

ALOK JENA . . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petitions (C) No. 401 of 2013 with Nos. 402 and 413 of 2013,
324 of 2014 and TP (C) No. 445 of 2014, decided on May 9, 2014

A. Public Accountability, Vigilance and Prevention of Corruption — Scams — Saradha Chit Fund Scam — Fraudulent/Illegal multi-State investment scam involving Rs 10,000 crores, affecting lakhs of depositors (especially weaker/poorer sections) — CBI investigation directed

— Need for competent, effective, comprehensive and credible investigation to unearth larger conspiracy angle and other important aspects by CBI, which State investigating agencies of Bihar, W.B. and Odisha in spite of their efforts, failed to do and generally fail to inspire such confidence — All cases, therefore, transferred to CBI (States of Assam and Tripura already had transferred the investigation to CBI) — Clarified that proceedings pending before Inquiry Commissions (that is Sen Commission in W.B. and Patra Commission in Odisha) shall not be stalled and shall not affect process of attachment, recovery and payment to depositors initiated by said Commissions — State Police agencies currently investigating the case directed to provide fullest cooperation/assistance to CBI to conduct and complete the investigation expeditiously — Penal Code, 1860 — S. 120-B — Constitution of India — Arts. 32 and 226 — Debt, Financial and Monetary

[†] Under Article 32 of the Constitution of India

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Laws — Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/
Financial leasing — Fraudulent/Fictitious Financial Establishments/Deposit

a Schemes (FFEs)

B. Constitution of India — Arts. 32 and 226 — CBI investigation directed — Monitoring Team for monitoring progress of investigation — Option of such Monitoring Team kept open, but not resorted to immediately

C. Constitution of India — Arts. 32 and 226 — Scope of transferring case to CBI — Power of Supreme Court to direct CBI to take up investigation — Principles summarised

b

— Some situations in which such direction can be issued — CBI investigation can be directed: (a) where it is necessary to discover the truth or to meet the ends of justice or to examine complex issues [like in present case role and involvement, if any, of regulatory authorities like SEBI, Registrar of Companies (RoC) and RBI were required to be found out and State investigation having failed to explain the huge gap between the amount collected and investments made], (b) where the case involves national or international ramifications (like in present case international money laundering dimensions were required to be investigated), or (c) where people holding high positions of power and influence or political clout are involved (like in present case larger conspiracy angle was required to be unearthed and also the alleged involvement of political/influential persons like MPs, etc.) — What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection, the Supreme Court has more often than not directed transfer of cases where the fact situations so demand — Public Accountability, Vigilance and Prevention of Corruption — People in Power/Politically Influential Personalities/MPs/MLAs/Ministers — Criminal Procedure Code, 1973, Ss. 155 to 159

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D. Public Accountability, Vigilance and Prevention of Corruption — Scams — Saradha Chit Fund Scam — Fraudulent/Illegal multi-State investment scam involving Rs 10,000 crores, affecting lakhs of depositors (especially weaker/poorer sections) — Type and nature of fraud as revealed from reports

f

— Judicial notice taken of and its effect considered to decide the issue as to whether matter should be transferred to CBI: (a) investors were lured by promise of very high returns, (b) brokers were tempted to collect as much as possible by giving high brokerage of about 30%, etc., (c) reports pointed out fraudulent certification, non-compliance with accounting standards, material misstatement of facts and gross negligence on part of statutory auditors, (d) companies had no real intention of doing any legitimate/meaningful business (money collected were either spent or siphoned off) and investments that matured were paid out of cash collected from new members and not from profits earned (opposed to normal business norms), (e) there was allegation of involvement of regulatory bodies like SEBI, Registrar of Companies (RoC) and RBI, etc., and (f) allegedly, reports pointed out violation of the Securities and the Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961 —

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Effect — Constitution of India — Arts. 32 and 226 — Debt, Financial and Monetary Laws — Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial leasing — Fraudulent/Fictitious Financial Establishments/ Deposit Schemes (FFE)s

a

Allowing the transfer of investigation to CBI, the Supreme Court

Held :

Writ petitions seeking transfer of investigation from the State Agencies to CBI is by no means uncommon in the High Courts. Judicial review is a basic feature of the Constitution. Thus, writ courts can issue appropriate writ, directions and orders to protect the fundamental rights of the citizens. CBI investigation can be directed where (a) it is necessary to discover the truth or to meet the ends of justice or to examine complex issues, or (b) the case involves national or international ramifications, or (c) people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection, the Supreme Court has more often than not directed transfer of cases where the fact situations so demand. (Paras 1 and 9)

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State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401; *Inder Singh v. State of Punjab*, (1994) 6 SCC 275 : 1994 SCC (Cri) 1653; *R.S. Sodhi v. State of U.P.*, 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248; *State of Punjab v. CBI*, (2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666; *Advocates Assn. v. Union of India*, (2013) 10 SCC 611 : (2014) 1 SCC (Cri) 355, *relied on*

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Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389, *cited*

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The present case, nicknamed “Chit Fund Scam” affected lakhs of depositors across several States involving several companies. The alleged companies evolved newer and more ingenious ways of tantalising gullible public to make deposits in their fraudulent (Ponzi) schemes such as land allotment schemes, flat allotment schemes and tours and travel schemes, etc. For instance, Saradha Group of Companies which is a major player in the field, floated as many as 160 companies although four out of them were the front-runners in this sordid affair. (Para 10)

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Reports suggest that the investors were promised very high returns ranging from 10% to 18% interest. And that Saradha Realty India Ltd. had 2,21,000 agents who were paid an unreasonably high brokerage of 30% of the instrument and this became the driving force for said agents to go that extra mile to collect as much as possible. And that investments that matured were paid out of the cash collected from new members as opposed to normal business norm of paying such maturity sums from profits. And that books of accounts and bank accounts did not accurately show the cash collections. And that the company had no real intention of doing any legitimate business. Money collected was either spent away or siphoned off. No major revenue was seen to be generated by any group company. Apart from as many as 218 branches spread over several States including West Bengal, Odisha, Bihar, Assam and other States, the companies had as many as 347 bank accounts in 15 banks in the name of the group companies. The Report also points out violation of the Securities and the Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961. It also points out fraudulent certification, non-compliance with accounting standards, material misstatement of facts and gross negligence on the part of the statutory auditors. The Report estimates the collection made by Saradha Group of Companies at Rs 2459 crores. (Paras 11 to 14)

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Interim forensic audit report submitted to SEBI by Sarath & Associate, Chartered Accountants on 27-2-2014, *referred to*

- a Failure of the group companies to refund the deposits led to a public outcry against the scam. Majority of the affected persons appear to be from the middle class, lower middle class or poorer sections of the society. The Government of West Bengal set up a Commission of Inquiry headed by Mr Justice Shyamal Kumar Sen vide Notification dated 24-4-2013. The Commission was empowered to receive all individual and public complaints and to forward such complaints to the authorities concerned including the Special Investigation Team for launching prosecution. The Commission was also authorised to send directives to the Special Investigation Team, identify the key persons responsible for the present situation, quantify the estimated amount of money involved in the alleged transactions, assess the assets and liabilities of the group of companies and to recommend ways and means for providing succour to those who had lost their savings. The Commission was also authorised to recommend remedial action and measures to the State Government so that such situations do not recur. By
- c another Notification dated 27-8-2013 the Government, relying upon the directions issued by the High Court of Calcutta in *Basabi Rai Chowdhury*, WP No. 12163 (W) of 2013, decided on 19-6-2013 (Cal) empowered the Commission of Inquiry to dispose of all the assets belonging to Saradha Group of Companies and/or their agents and/or their benamidars and to adopt an appropriate mode of recovery of debts on behalf of Saradha Group from its debtors and add the proceeds to the fund to be created for that purpose. The Commission was also clothed with the power to attach the bank accounts belonging to Saradha Group of Companies and the personal bank accounts of the Directors apart from restraining the banks concerned from allowing anyone to operate such accounts unless authorised by the Commission. Pursuant to the above notifications the Commission has received nearly 18 lakh complaints and claim petitions demanding refund of the amount deposited under such Ponzi
- e schemes. (Paras 16 to 18)

Basabi Rai Chowdhury v. Union of India, WP No. 12163 (W) of 2013, decided on 19-6-2013 (Cal), *referred to*

- f The State of Bihar stated that it has announced a sum of Rs 500 crores for the aggrieved depositors apart from the money that may be raised from selling off the assets of the companies including Saradha Group of Companies. And that as per directions of the Commission over one lakh beneficiaries have been paid compensation, while another 1,66,456 have been identified for such payment. And that as per the directions of the High Court of Calcutta in terms of the Notification dated 27-8-2013 as many as 224 immovable properties and 54 vehicles have been identified for attachment and possible sale and recovery of the amount due from the companies. And that one MP was arrested by the police and another was interrogated by Serious Fraud Investigation Office (SFIO). And
- g that the Special Investigating Team (SIT) and the police authorities are extending full support and cooperation to the Central Agencies like Enforcement Directorate and SFIO, etc. The State of Bihar, has in that view, opposed the prayer of the petitioner for transfer of the investigation from the State Police to CBI. (Para 19)

- h A significant discrepancy exists between investigation based estimated purchase value of the properties on the one hand and that which emerged from the software seized from the companies. The Government of West Bengal further submitted that the discrepancy could be on account of the fact that a large

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number of properties referred to in the affidavit have been acquired by the companies on the basis of powers of attorney which do not indicate the value of the property covered by such deeds and transactions. Be that as it may, a huge gap between the amount collected and the investments made in real estate itself calls for effective investigation as to the trail of money collected by the group of companies. The investigation by the State Police has not unfortunately made any significant headway in this regard. (Para 21)

A perusal of the sample copies of charge-sheets furnished shows that the same relate only to individual deposits leaving untouched the larger conspiracy angle that needs to be addressed. Though the Investigation Team has named the persons involved in larger conspiracy (in a list prepared by it, the basis on which said list was prepared was not set out in the list or elsewhere). A perusal of the synopsis subsequently furnished and the names included in the list makes it abundantly clear that several important individuals wielding considerable influence within the system at the State and the national level have been identified by the investigating agency for interrogation. Investigation into the scam is not confined to those directly involved in the affairs of companies but may extend to several others. (Paras 22 to 24)

The investigation conducted so far puts a question mark on the role of regulatory authorities like SEBI, Registrar of Companies and officials of RBI within whose respective jurisdictions and areas of operation the scam not only took birth but flourished unhindered. The synopsis goes to the extent of suggesting that regular payments towards bribe were paid through middleman to some of these regulating authorities. The regulatory authorities, it is common ground, exercise their powers and jurisdiction under Central legislations. Possible connivance of those who were charged with the duty of preventing the scams of such nature in breach of the law, therefore, needs to be closely examined and effectively dealt with. Investigation into the larger conspiracy angle will, thus, inevitably bring such statutory regulators also under scrutiny. There was dispute as to whether SEBI had any role to play or not in Chit Fund Scam. Therefore, there is a need for a comprehensive investigation not only to bring those who were responsible to book but also to prevent recurrence of such scams in future. (Paras 25 to 27)

Looking to the nature of the scam and its inter-State ramifications, cases registered in the State of Tripura have been transferred to CBI for investigation at the request of the State Government. A similar request has been made by the Government of Assam which has been accepted by the Central Government who is shortly issuing a notification under which cases concerning the scam registered in the State of Assam shall stand transferred to CBI. (Para 28)

The writ petitioners seek to transfer cases registered in the State of Odisha to CBI on the analogy of what was done in relation to Tripura and Assam keeping in view the magnitude of the scam as also those involved, in the same. The number of companies involved in scam in the State of Odisha is 44 as per reports earlier furnished by the State and the appellants. (Paras 29 and 32)

An affidavit filed by the State of Odisha shows that 163 companies were involved in the Chit Fund Scam in the State of Odisha who have collected Rs 4565 crores approximately from the public out of which a sum of Rs 2904 crores has been collected by 43 companies mentioned in the list referred to earlier excluding M/s Nabadiganta Capital Services Ltd. against which no criminal case have been registered so far. And that 7,45,293 envelopes containing

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- claim petitions have been received from the depositors by Justice R.K. Patra Commission. The affidavit also gives details of the properties of the companies seized/sealed in the course of the on-going investigation. The affidavit also refers to payment of Rs 24,17,65,866 allegedly made to 18,596 investors by M/s Prayag Infotech High Rise Ltd., Kolkata and the willingness expressed by M/s Rose Valley Hotels and Entertainment Ltd. to pay back the investors. Larger conspiracy angle is according to the affidavit being examined in three cases (as indicated). It was submitted that while charge-sheets have been submitted in the said three cases mentioned above within the period of limitation, investigation has been kept open under Section 173(8) CrPC to investigate the larger conspiracy angle. The affidavit also refers to certain legislations enacted in the State of Odisha to protect the interest of depositors. It also refers to certain interim orders passed by the Government for attachment of the properties of the defaulting companies. (Para 33)

- The State of Odisha submitted that while the Supreme Court may transfer the cases to CBI for further investigation, any such transfer should not hamper the attachment or recovery process otherwise initiated by the State in terms of the measures taken by it. And that the Public Prosecutors appointed by CBI would be assisted by the State Police Officials so that the efficacy of the investigation and prosecution are both taken care of by the joint efforts that the Central and the State police authorities may make. (Para 34)

- The factual narrative given in the foregoing paragraphs clearly establishes the following: that the financial scam nicknamed Chit Fund Scam that has hit the States of West Bengal, Tripura, Assam and Odisha involves collection of nearly Rs 10,000 crores (approx.) from the general public especially the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam. That investigation so far conducted suggests that the collection of money from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high returns/promised to the depositors. That more than 25 lakh claims have so far been received by the Commissions of Inquiries set up in the States of Odisha and West Bengal which is indicative of the magnitude of scam in terms of number of citizens that have been defrauded by the Ponzi companies. That the companies indulge in Ponzi schemes have their tentacles in different States giving the scam inter-State ramifications. That such huge collections could have international money laundering dimensions cannot be ruled out and needs to be effectively investigated. That investigation so far conducted reveals involvement of several political and other influential personalities wielding considerable clout and influence. That the role of regulators like SEBI, authorities under the Companies Act and Reserve Bank of India is also under investigation by the State Police Agency which may have to be taken to its logical conclusion by an effective and independent investigation. (Paras 35 and 35.1 to 35.6)

Each one of the aspects set out calls for investigation by an independent agency like CBI. It is necessary to ensure credibility of such investigation in the public perception. (Para 36)

- The State Police Agency has done well in making seizures, in registering cases, in completing investigations in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not

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whether the State Police has faltered. However, what is done by the State Police is not sufficient to inspire confidence of those who are aggrieved. Although the State Police have done all that it ought to have done, the money trail has not yet been traced. The collections made from the public far exceed the visible investment that the investigating agencies have till now identified. So also the larger conspiracy angle in the States of Assam, Odisha and West Bengal although under investigation has not made much headway partly because of the inter-State ramifications, which the investigating agencies need to examine but are handicapped in examining. (Paras 37 and 38)

There is no basis of the apprehension expressed by the State Governments and some investors and interveners about credibility of CBI. It is true that a lot can be said about the independence of CBI as a premier investigating agency but so long as there is nothing substantial affecting its credibility it remains a premier investigating agency. Those not satisfied with the performance of the State Police more often than not demand investigation by CBI for it inspires their confidence. The Supreme Court cannot, therefore, decline transfer of the cases only because of certain stray observations or misplaced apprehensions expressed by those connected with the scam or those likely to be affected by the investigation. (Para 40)

Sanjiv Kumar v. State of Haryana, (2005) 5 SCC 517 : (2006) 1 SCC (Cri) 235, *relied on*

All the writ petitions are allowed and the stated cases registered in the various police stations of States of West Bengal and Odisha are directed to be transferred to CBI. The Joint Director, CBI, in charge of the States of West Bengal and Odisha is being given liberty to seek further directions in relation to transfer of any other case or cases that may require to be transferred for investigation to CBI for a full and effective investigation into the scam. (Paras 42 and 43)

Subrata Chattoraj v. Union of India, (2014) 8 SCC 795; *Subrata Chattoraj v. Union of India*, (2014) 8 SCC 796, *referred to*

Transfer of investigation to the Central Bureau of Investigation (CBI) in terms of this order shall not, however, affect the proceedings pending before the Commissions of Inquiry established by the State Government or stall any action that is legally permissible for recovery of the amount for payment to the depositors. Needless to say that the State Police Agencies currently investigating the cases shall provide the fullest cooperation to CBI including assistance in terms of men and material to enable the latter to conduct and complete the investigation expeditiously. The Enforcement Directorate shall, in the meantime, expedite the investigation initiated by it into the scam and institute appropriate proceedings based on the same in accordance with law. (Paras 44 and 45)

Nothing said in this order, shall be taken as a final opinion as to the complicity of those being investigated or others who may be investigated, questioned or interrogated in relation to the scam. (Para 46)

For the present it is not necessary to constitute a Monitoring Team to monitor the progress of the investigation into the scam. But, the exercise of that option is left open for the future. The writ petitions and TP (C) No. 445 of 2014 are disposed of in terms of the above directions. No costs. (Paras 47 and 48)

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Advocates who appeared in this case :

- a* S.K. Bagaria, Rakesh K. Khanna, Mukul Gupta, Sidharth Luthra, Additional Solicitors General, Bikas Ranjan Bhattacharya, Ashok Bhan, C.S. Vaidyanathan, Mukul Rohatgi, Parag P. Tripathi, P.V. Shetty and B.S. Sanyal, Senior Advocates [Subhasish Bhowmick, Ravi Shankar Chattopadhyay, Anindya Sunder Das, K.C. Mittal, Ms Niti Luthra, Dipak Bhattacharyya, Subrata Mukopadhyay, S.K. Sabharwal, Anip Sachthey, Suhaan Mukherjee, Ms Haripriya Padmanabhan, Kabir S. Bose, Mohit Paul, Ms Shagun Matta, Saakaar Sardana, Ashok K. Shrivastava, Anirudh Tanwar, Mohit Nagar, N.K. Karhail, Ms Lakshmi Gupta, Ms Mini Kaushik, Ms Sushma Suri, A.K. Srivastava, Aseem Swaroop, Ms Suvarna Kashyap, B.K. Prasad, B.V. Balam Das, D.S. Mahra, Ramesh Babu M.R., Ms Swati Setia, Shadman Ali, Ashok Dhamija, Bhargava V. Desai, Shreyas Mehrotra, Prateek Jalan, Siddharth Bhatnagar, Prasenjit Keswani, Ms Sonia Dube, S. Chakraborty (for M/s Legal Options), Samir Ali Khan, Ms Kirti Renu Mishra, Ms Apurva Upmanyu, Ms Gaurikaruna Das Mohanti, Shibashish Misra, Ms Liz Mathew, Vybhav Ramesh, Mahesh Thakur, Snehashish Mukherjee, Ajit Kr. Roy, Govind Manoharan, Ms Shruti Iyer, Senthil Jagadeesan, Sajith P., Amandeep Singh, Sumit Kumar, Subhajit Bal, Abhishek Shaw, *c* Shamba Nandy and Vikramjit Banerjee, Advocates) for the appearing parties.

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- d* 4. WP No. 12163 (W) of 2013, decided on 19-6-2013 (Cal), *Basabi Rai Chowdhury v. Union of India* 786b-c
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- e* 8. (1994) 6 SCC 275 : 1994 SCC (Cri) 1653, *Inder Singh v. State of Punjab* 779f
9. 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248, *R.S. Sodhi v. State of U.P.* 780b-c
10. (1984) 3 SCC 161 : 1984 SCC (L&S) 389, *Bandhua Mukti Morcha v. Union of India* 777a

The Judgment of the Court was delivered by

- f* **T.S. THAKUR, J.**— Writ petitions seeking transfer of investigation from the State Agencies to the Central Bureau of Investigation (CBI) under the Delhi Special Police Establishment Act, is by no means uncommon in the High Courts in this country. Some, if not most of such cases in due course travel to this Court also, where, issues touching the powers of the High Courts and at times the power of this Court to direct such transfers are raised *g* by the parties. The jurisdictional aspect is, however, no longer res integra, the same having been answered authoritatively by a Constitution Bench of this Court in *State of W.B. v. Committee for Protection of Democratic Rights*¹. This Court in that case was examining whether the federal structure and the principles of separation of powers, made it impermissible for the superior courts to direct transfer of investigation from the State Police to CBI. *h*

1 (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

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Rejecting the contention, this Court held that the power of judicial review itself being a basic feature of the Constitution, the writ courts could issue appropriate writ, directions and orders to protect the fundamental rights of the citizens. This Court observed: (SCC pp. 593-94, paras 51-53) a

“51. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226 respectively. Dr B.R. Ambedkar described Article 32 as the very soul of the Constitution—the very heart of it—the most important article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution. b
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52. It is manifest from the language of Article 245 of the Constitution that all legislative powers of Parliament or the State Legislatures are expressly made subject to other provisions of the Constitution, which obviously would include the rights conferred in Part III of the Constitution. Whether there is a contravention of any of the rights so conferred, is to be decided only by the constitutional courts, which are empowered not only to declare a law as unconstitutional but also to enforce fundamental rights by issuing directions or orders or writs of or ‘in the nature of’ mandamus, certiorari, habeas corpus, prohibition and quo warranto for this purpose. d
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53. It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision. Moreover, it is also plain from the expression ‘in the nature of’ employed in clause (2) of Article 32 that the power conferred by the said clause is in the widest terms and is not confined to issuing the high prerogative writs specified in the said clause but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of the fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, this Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it f
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for judicial redress (per P.N. Bhagwati, J. in *Bandhua Mukti Morcha v. Union of India*²).”

- a 2. This Court summed up the conclusions in the following words: (*Committee for Protection of Democratic Rights case*¹, SCC pp. 600-02, paras 68-69)

“68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

- b (i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

- c (ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. *The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.* In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

- e (iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. *Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of ‘the principles of*

h 2 (1984) 3 SCC 161 : 1984 SCC (L&S) 389

1 *State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

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separation of powers, the rule of law, the principle of constitutionality and the reach of judicial review’.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. *In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.*

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

(vi) If in terms of Schedule VII List II Entry 2 on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, *there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers.* In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

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

69. In the final analysis, our answer to the question referred to is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a *cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of*

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a *the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.”* (emphasis supplied)

b 3. Having said that this Court sounded a note of caution against transfer of cases to CBI for mere asking and observed: (*Committee for Protection of Democratic Rights case*¹, SCC p. 602, para 70)

c “70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. *Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police.*

d *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.”* (emphasis supplied)

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f 4. We may at this stage refer to a few cases in which this Court has either directed transfer of investigation to CBI or upheld orders passed by the High Court directing such transfer.

g 5. In *Inder Singh v. State of Punjab*³ this Court was dealing with a case in which seven persons aged between 14 to 85 were alleged to have been abducted by a senior police officer of the rank of Deputy Superintendent of Police in complicity with other policemen. Since those abducted were not heard of for a considerable period, a complaint was made against their abduction and disappearance before the Director General of Police of the State. It was alleged that the complaint was not brought to the notice of the Director General of Police (Crime). Instead his PA had marked the same to the IG (Crime) culminating in an independent inquiry through the Superintendent of Police, Special Staff, attached to his office. The report of

h ¹ *State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

³ (1994) 6 SCC 275 : 1994 SCC (Cri) 1653

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the Superintendent of Police recommended registration of a case against the officials concerned under Section 364 IPC. Despite the said recommendation no case was registered on one pretext or the other against the police officer concerned till 23-3-1994. It was at this stage that a writ petition was filed before this Court under Article 32 of the Constitution of India for a fair, independent and effective investigation into the episode. Allowing the petition this Court directed an independent investigation to be conducted by CBI into the circumstances of the abduction of seven persons, their present whereabouts or the circumstances of their liquidation. An inquiry was also directed into the delay on the part of the State Police in taking action between 25-1-1992 when the complaint was first lodged and 23-3-1994 when the case was finally registered.

6. In *R.S. Sodhi v. State of U.P.*⁴ this Court was dealing with a petition under Article 32 of the Constitution of India seeking an independent investigation by CBI into a police encounter resulting in the killing of ten persons. The investigation into the incident was being conducted at the relevant point of time by an officer of the rank of Inspector General level. The State Government also appointed a one-member Commission headed by a sitting Judge of the Allahabad High Court to inquire into the matter. This Court found that since the local police was involved in the alleged encounter an independent investigation by CBI into what was according to the petitioner a fake encounter, was perfectly justified. This Court held that however faithfully the police may carry out the investigation, the same will lack “credibility” since the allegations against them are serious. Such a transfer was considered necessary so that all those concerned including the relatives of the deceased feel assured that an independent agency was looking into the matter, thereby lending credibility to the outcome of the investigation. This Court observed: (SCC pp. 144-45, para 2)

“2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. *However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book.* We direct accordingly. In so ordering we mean no reflection on the credibility of

4 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248

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a either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.” (emphasis supplied)

b 7. A reference may also be made to *State of Punjab v. CBI*⁵ where the High Court of Punjab and Haryana transferred an investigation from the State Police to CBI in relation to what was known as “Moga sex scandal” case. The High Court had while ordering transfer of the investigation found that several police officials, political leaders, advocates, municipal counsellors, besides a number of persons belonging to the general public had been named in connection with the case. The High Court had while commending the investigation conducted by DIG and his team of officials all the same directed transfer of case to CBI having regard to the nature of the case and those allegedly involved in the same. The directions issued by the High Court were affirmed by this Court and the matter allowed to be investigated by CBI.

c 8. More recently, this Court in *Advocates Assn. v. Union of India*⁶ had an occasion to deal with the question of transfer of an investigation from the State Police to CBI in the context of an ugly incident involving advocates, police and media persons within the Bangalore City Civil Court Complex. On a complaint filed by the Advocates’ Association, Bangalore, before the Chief Minister for suitable action against the alleged police atrocities committed on the advocates, the Government of Karnataka appointed the Director General of Police, CID, Special Unit and Economic Offences as an inquiry officer to conduct an in-house inquiry into the matter. The Advocates’ Association at the same time filed a complaint with jurisdictional police station, naming the policemen involved in the incident. In addition, the Registrar, City Civil Court also lodged a complaint with the police for causing damage to the property of the City Civil Court, Bangalore by those indulged in violence. Several writ petitions were then filed before the High Court, inter alia, asking for investigation by CBI. The High Court constituted a Special Investigation Team (SIT) headed by Dr R.K. Raghvan, a retired Director CBI, as its Chairman and others. The Advocates’ Association was, however, dissatisfied with that order which was assailed before this Court primarily on the ground that a fair investigation could be conducted only by an independent agency like CBI. Relying upon the decision of this Court in *State of W.B. v. Committee for Protection of Democratic Rights*¹ this Court directed transfer of investigation to CBI holding that the nature of the incident and the delay in setting up of SIT was sufficient to warrant such a transfer.

g 9. It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to CBI in cases where such transfer is considered necessary to discover the truth and

h 5 (2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666

6 (2013) 10 SCC 611 : (2014) 1 SCC (Cri) 355

1 (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

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to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand. a

10. We are in the case at hand dealing with a major financial scam nicknamed “Chit Fund Scam” affecting lakhs of depositors across several States in the eastern parts of this country. Affidavits and status reports filed in these proceedings reveal that several companies were engaged in the business of receiving deposits from the public at large. The modus operandi of the companies involved in such Ponzi schemes was in no way different from the ordinary except that they appear to have evolved newer and more ingenious ways of tantalising gullible public to make deposits and, thereby fall prey to temptation and the designs of those promoting such companies. For instance, Saradha Group of Companies which is a major player in the field, had floated several schemes to allure the depositors to collect from the market a sizeable amount on the promise of the depositors getting attractive rewards and returns. These fraudulent (Ponzi) schemes included land allotment schemes, flat allotment schemes, and tours and travel schemes. The group had floated as many as 160 companies although four out of them were the front runners in this sordid affair. b c d

11. An interim forensic audit report submitted to SEBI by Sarath & Associate, Chartered Accountants on 27-2-2014 sums up in the following words, the background in which the schemes are floated and the public defrauded: e

“The company M/s Saradha Realty India Ltd. was involved in financial fraud involving in an attempt to deliberately mislead the general public by announcing dubious money multiplier schemes. It has also indulged in misleading the financial status of the group companies by incorrect disclosures in the financial statements in an attempt to deceive financial statement users and regulatory authorities. f

The investors lured to extraordinary returns is typically attributed to something that sounds impressive but is intentionally vague, such as hedge fund in land, resorts, tours and travel plans, high yield investment programmes.

Typical to the Ponzi schemes the investors who are economically very poor have invested relatively small amounts such as Rs 100 and wait to see if the promised returns are paid. After one month the investor received maturity amounts, so the investor truly believes she has earned the promised return. What the investor doesn’t realise is that Rs 100 was a RETURN OF THE INVESTMENT AND NOT A RETURN ON THE INVESTMENT. In other words, the Rs 100 return came from the Rs 100 principal initially invested or from a newly-recruited investor, rather than from any g h

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a profits generated by the investment opportunity. After a second month yields another Rs 100 payment, the investor is ‘hooked’ and typically will invest larger amounts in the scheme and will enthusiastically inform friends and family members about this ‘fantastic’ investment opportunity.

Since these early investors have actually received the promised returns, their promotion of the investment comes across as genuine and instils an almost irresistible urge in friends and family members to invest as well.

b If pressed by sceptical investors for more detail, the promoters typically evade answering the question and instead talk about how recently recruited investors have been receiving the promised returns.

c Since little of the victims’ funds are actually invested into a legitimate profit-generating activity, the scheme continued for only as long as the cash inflows to existing investors. However, as the number of investors grown rapidly, the pool of new investors unavoidably shrinks. At one point, the cash flow situation collapsed resulting in four possible outcomes: (1) the investment promoters disappear, taking remaining investment money with them; (2) the scheme collapsed of its own weight, and the promoters have problems paying out the promised returns and, as the word spread, more people start asking for their money creating a run-on-the-bank situation; (3) the investment promoters turn themselves in and confess.”

d 12. The Report suggests that the investors were promised very high returns by way of interest rate ranging from 10% to 18%. The said returns promised to the depositors were, according to the Report, too good to be true. The Report also suggests that a very large number of “agents base” was created by the companies to extend the reach of these companies. For Saradha Realty India Ltd. itself as many as 2,21,000 agents were working, who were paid an unreasonably high brokerage of 30% of the instrument which became the driving force for the agents to go that extra mile to collect as much as possible. The Report indicates that investments that matured for payment were paid out of the cash collected from new members which was opposed to the normal business norms in which returns ought to be paid out of profits earned in the business. Besides, the cash collections were neither accurately shown in the books of accounts, nor did the bank accounts reveal the details of such cash collections.

e 13. The Report states that the company had no real intention of doing any legitimate business activity and the money collected from the public was spread over 160 companies and spent away or siphoned off. No major revenue was seen to be generated by any group company. The companies had opened too many bank accounts for round tripping transactions for the monies collected by them. Apart from as many as 218 branches spread over several States including West Bengal, Odisha, Bihar, Assam and other States the companies had as many as 347 bank accounts in 15 banks in the name of the Group Companies. The bank accounts were opened at the location of

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branches enabling deposit of the cash into accounts. The daily cash collected less expenses, was deposited at branch account and the money pooled and transferred to other accounts as per CMD's instructions and utilised to issue the cheques. a

14. The Report also points out violation of the Securities and the Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961. It also points out fraudulent certification, non-compliance with accounting standards, material misstatement of facts and gross negligence on the part of the statutory auditors. b

15. The Interim Report eventually draws up the following conclusions:

"Saradha Reality India Ltd. and its other 3 group companies has collected money from the open market, reaching out to the general public by employing huge number of agents, in form of investment under different schemes viz. fixed deposits, monthly investment scheme, recurring deposits. SRIL has in pretext of land developers, construction of flats, running tours and travels, travel packages and resorts collected around Rs 2459 crores over a period of 5 years. c

SRIL has no valid registration under the SEBI Act for 'collective investment scheme' nor has been licensed under the RBI Act for Nidhi/ Chit fund/NBFC. Its MoA also does not permit the company to collect monies in the form of deposits. SEBI had passed a winding-up order in view of the collection of monies under one of the company's schemes as collective investment scheme on 23-4-2013. d

Company management, with fraudulent intent, has designed several investment schemes wherein the depositors invested in expectation of high return. It has also misrepresented its business in writing to Income Tax Department, SEBI, and to its depositors. The depositors are promised fixed interest returns but management has promised tours, travel packages, land purchases, flat advances, etc. on the receipts which in reality is not intended to be given to the depositors. e

SRIL did not comply with the KYC norms while collecting the deposits, all the deposits are identified by names and addresses, but the ID or address proofs are not obtained. The authenticity of the investors is difficult to prove as the deposits are not KYC complied. f

The agents are main part of the entire operations of the company, in evolving the new schemes, explaining the public and collecting the deposits. The agents are operated as a tree (chain) and each agent in the chain will get commission on each deposit. These commissions are paid in priority from the business cash collected (almost 30% of collections) and the balance money is used for meeting company expenses and the rest is either deposited at the bank in the location of the branch or sent to the head office. The cheques collected are directly deposited in the bank. Other than Commission the agents are awarded field allowance, prizes, g h

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and performance bonuses forming around 30% of the total deposits collected.

- a* SRIL has expanded rapidly its business, takeovers in a very short span of five years. The Company has never utilised money so collected from investors for carrying out any legitimate business to earn returns to payback the investors. It has utilised the monies so collected in these takeovers, and venturing into a new company for running the loss making businesses like media channels, newspapers, magazines, manufacturing automobiles. The group has incorporated 160 companies and the share capital monies, furniture and fixtures, plant and machines, huge staff salaries, fleet of cars on rent, buses, 320 branch premises' rents, daily expenses, maintenance are all met through the deposits collected from the investors.

- c* One of the companies—Saradha Exports had announced that it is expanding to international markets by exporting business and opening a branch in Madrid, Spain, on its website.

- d* All the group companies are debt-free companies; the loans standing in the financial statements are partly of investors, other group company loans and advances. The audited financial statements are misrepresenting the facts and statutory auditor is grossly negligent in discharging his duty to present the true and fair view of the state of affairs of the companies. Most of the group company's auditor is common.

- e* Since the deposits collected are not utilised for generating income, the monies are spent off and the Company soon has failed to return back the monies to depositors on their maturity. Cash rotation cycle of the depositors broke and has severe cash crunch and let the company to fall off."

The Report estimates the collection made by Saradha Group of Companies at Rs 2459 crores.

- f* **16.** Failure of the group companies to refund the deposits made with them was bound to as it indeed has led to a public outcry against the scam on account of the huge amount that was collected by these companies by defrauding a very large section of the public majority of whom appear to be from middle class, lower middle class or poorer sections of the society. The Government of West Bengal acted in response to the protests and the public anguish over a fraud of such colossal magnitude and set up a Commission of Inquiry headed by Mr Justice Shyamal Kumar Sen, retired Chief Justice, Allahabad High Court with four others to be nominated by the Government to inquire into the matters set out in a Notification dated 24-4-2013 issued in that regard.

- h* **17.** The Commission was empowered to receive all individual and public complaints regarding Saradha Group of Companies and other similar companies involved in the scam and to forward such complaints to the authorities concerned including the Special Investigation Team for launching

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prosecution. The Commission was also authorised to send directives to the Special Investigation Team, identify the key persons responsible for the present situation, quantify the estimated amount of money involved in the alleged transactions, assess the assets and liabilities of the group of companies and to recommend ways and means for providing succour to those who had lost their savings. The Commission was also authorised to recommend remedial action and measures to the State Government so that such situations do not recur.

18. By another Notification dated 27-8-2013 the Government, relying upon the directions issued by the High Court of Calcutta in *Basabi Rai Chowdhury v. Union of India*⁷ empowered the Commission of Inquiry to dispose of all the assets belonging to Saradha Group of Companies and/or their agents and/or their benamidars and to adopt an appropriate mode of recovery of debts on behalf of Saradha Group from its debtors and add the proceeds to the fund to be created for that purpose. The Commission was also clothed with the power to attach the bank accounts belonging to Saradha Group of Companies and the personal bank accounts of the Directors apart from restraining the banks concerned from allowing anyone to operate such accounts unless authorised by the Commission. Pursuant to the above notifications the Commission has received nearly 18 lakh complaints and claim petitions demanding refund of the amount deposited under such Ponzi schemes.

19. In the counter-affidavit filed on behalf of the State of Bihar it is, inter alia, stated that the State Government has announced a sum of Rs 500 crores for payment to the aggrieved depositors apart from money that may be raised from selling off the assets of the companies including Saradha Group of Companies. The affidavit further states that the Commission has passed orders for payment of compensation to the investors in Saradha Group of Companies and that over one lakh beneficiaries have been paid while another 1,66,456 identified for such payment. The affidavit also states that as per the directions issued by the High Court of Calcutta in terms of the notification mentioned above as many as 224 immovable properties and 54 vehicles have been identified for attachment and possible sale and recovery of the amount due from the companies. The affidavit goes on to say that one Kunal Kumar Ghosh, Member of Parliament, Rajya Sabha, was arrested on 23-11-2013 in connection with the case registered in Bidhannagar South Police Station after being interrogated on several occasions. The said Kunal Kumar Ghosh was the media CEO of Saradha Group of Companies. In addition one Srinjoy Bose, Member of Parliament was also interrogated by Serious Fraud Investigation Office in relation to Saradha Group of Companies and that the Special Investigating Team and the police authorities are extending full support and cooperation to the Central Agencies like Enforcement Directorate, Serious Fraud Investigation Office, etc. for effective

⁷ WP No. 12163 (W) of 2013, decided on 19-6-2013 (Cal)

investigation of the scam. The State has in that view opposed the prayer of the petitioner for transfer of the investigation from the State Police to CBI.

- a* **20.** When this case came up before us on 4-3-2013 our attention was drawn by Mr C.S. Vaidyanathan, Senior Counsel appearing for the State of West Bengal to a statement appearing at p. 474 of the said surrejoinder filed by the State which according to the learned counsel summarised the investments made by Saradha Group of Companies from out of the money collected by it from the depositors. These details were sketchy and
- b* unsatisfactory especially when the trail of money collected remained obscure no matter it was one of the important, if not the single most important, angle to be investigated for unravelling facts leading to the scam and identifying those who had aided and/or abetted the same. Mr Vaidyanathan was, therefore, granted ten days' time to file a comprehensive statement as to the amount collected by the said group of companies and the expenditure
- c* incurred/investments made over a period of time.

- 21.** An affidavit was accordingly filed by the State of West Bengal in which the purchase value of the property acquired by Saradha Group of Companies was estimated at Rs 40 crores only as against a total collection of Rs 2460 crores made by the said companies. Mr Vaidyanathan argued that the investment in real estate could go up to Rs 110 crores on the basis of the
- d* information gathered from the software that was seized from the companies concerned. Even if that were so, a significant discrepancy existed between investigation based estimated purchase value of the properties on the one hand and what could according to Mr Vaidyanathan emerge from the software seized from the companies. Mr Vaidyanathan argued that the discrepancy could be on account of the fact that a large number of properties
- e* referred to in the affidavit have been acquired by the companies on the basis of powers of attorney which do not indicate the value of the property covered by such deeds and transactions. Be that as it may, a huge gap between the amount collected and the investments made in real estate itself calls for effective investigation as to the trail of money collected by the group of
- f* companies. The investigation by the State Police has not unfortunately made any significant headway in this regard.

- 22.** More importantly, the question whether the scam was confined only to those who actively managed and participated in the affairs of the companies or the same flourished on account of the support and patronage of others is an issue that has bothered us all through the hearing of this case. We
- g* had, therefore, directed the State to file a sample copy of the charge-sheets said to have been submitted before the jurisdictional courts. A perusal of the copies so furnished shows that the same relate only to individual deposits leaving untouched the larger conspiracy angle that needs to be addressed. It was argued by Mr Bhattacharya that the investigating agency was deliberately avoiding to investigate that vital aspect. Mr Vaidyanathan,
- h* however, contended that the larger conspiracy angle was being investigated

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separately in an FIR registered with Bidhannagar Police Station. He sought and was given time to file an affidavit setting out the particulars of the FIR in which the larger conspiracy angle was being examined and the progress so far made in that regard. a

23. An additional affidavit was accordingly filed by Mr Vaidyanathan in which it is, inter alia, stated that the larger conspiracy angle is being investigated in Crime No. 102 registered in Bidhannagar Police Station (North) on 6-5-2013 under Sections 406, 409, 420, 120-B IPC. At the hearing of the case on 9-4-2014⁸ Mr Vaidyanathan passed on to us a sealed cover containing a list of persons who according to the learned counsel need to be questioned in view of the disclosures made and the evidence collected so far by the investigating agency. The basis on which the Investigation Team has named the persons in the list was not set out in the list or elsewhere. Mr Vaidyanathan, therefore, offered to file a synopsis of the evidence on the basis whereof the names mentioned in the list had been included in the said list and the evidence which incriminates them calling for further investigation into their role and conduct. b c

24. An affidavit giving the synopsis was pursuant to the said order filed by Mr Vaidyanathan indicating briefly the basis on which the persons named in the list were sought to be interrogated in connection with the scam. A perusal of the synopsis furnished and the names included in the list makes it abundantly clear to us that several important individuals wielding considerable influence within the system at the State and the national level have been identified by the investigating agency for interrogation. We do not consider it necessary to reveal at this stage the names of the individuals who are included in the list on the basis of which the investigating agency proposes to interrogate them or the material so far collected to justify such interrogation. All that we need point out is that investigation into the scam is not confined to those directly involved in the affairs of companies but may extend to several others who need to be questioned about their role in the sequence and unfolding of events that has caused ripples on several fronts. d e

25. There is yet another aspect to which we must advert at this stage. This relates to the role of the regulatory authorities. The investigation conducted so far puts a question mark on the role of regulatory authorities like SEBI, Registrar of Companies and officials of RBI within whose respective jurisdictions and areas of operation the scam not only took birth but flourished unhindered. The synopsis filed by Mr Vaidyanathan names some of the officials belonging to these authorities and give reasons why their role needs to be investigated. The synopsis goes to the extent of suggesting that regular payments towards bribe were paid through middleman to some of those who were supposed to keep an eye on such Ponzi companies. The regulatory authorities, it is common ground, exercise their powers and jurisdiction under Central legislations. Possible connivance f g h

⁸ *Subrata Chattoraj v. Union of India*, (2014) 8 SCC 795

of those who were charged with the duty of preventing the scams of such nature in breach of the law, therefore, needs to be closely examined and effectively dealt with. Investigation into the larger conspiracy angle will, thus, inevitably bring such statutory regulators also under scrutiny.

26. It was at one stage argued on behalf of SEBI that the companies involved in the scam were doing chit fund business and since chit-funds were not within its jurisdiction it could not have taken cognizance of the same. Our attention was, however, drawn to at least two orders passed by SEBI directing winding up of such Ponzi schemes and refund of the amounts received by the companies concerned to the depositors. It was submitted by the learned counsel for the petitioner that SEBI having examined the issue, taken cognizance of the violation, no matter belatedly and issued directions for winding up of the schemes and refund of the amount, it was no longer open to it to argue that it had no role to play in the matter.

27. We are not in these proceedings required to authoritatively pronounce upon the question whether SEBI had the jurisdiction to act in the matter. What is important is that if upon investigation it is found that SEBI did have the jurisdiction to act in the matter but failed to do so then such failure may tantamount to connivance and call for action against those who failed to act diligently in the matter. Suffice it to say, that the scam of this magnitude going on for years unnoticed and unchecked, is suggestive of a deep-rooted apathy if not criminal neglect on the part of the regulators who ought to do everything necessary to prevent such fraud and public loot. Depending upon whether the investigation reveals any criminal conspiracy among those promoting the companies that flourished at the cost of the common man and those who were supposed to prevent such fraud calls for a comprehensive investigation not only to bring those who were responsible to book but also to prevent recurrence of such scams in future.

28. There is yet another dimension of the scam which cannot be neglected. That the Ponzi companies operated across State borders is evident not only from the pleadings on record but also from the submissions urged in the course of the arguments before us. What is significant is that these companies and such other similar companies indulged in similar fraudulent activities in the States of Assam and Tripura also apart from Orissa where the depositors have suffered. Looking to the nature of the scam and its inter-State ramifications, cases registered in the State of Tripura have since been transferred to CBI for investigation at the request of the State Government. A similar request has been made by the Government of Assam which has, according to Mr Sidharth Luthra, learned Additional Solicitor General, been accepted by the Central Government who is shortly issuing a notification under which cases concerning the scam registered in the State of Assam shall stand transferred to CBI.

29. That leaves us with the State of Odisha where too Saradha Group of Companies and a host of similar other companies appear to have indulged in similar activities giving rise to considerable public resentment against the

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authorities for not preventing such companies from defrauding the innocent public. Writ Petitions (C) Nos. 413 of 2013 and 324 of 2014 seek transfer of such cases registered in the State of Odisha to CBI on the analogy of what was done in relation to Tripura and Assam keeping in view the magnitude of the scam as also those involved, in the same. a

30. In Writ Petition (C) No. 413 of 2013 we had by our order dated 26-3-2014⁹ confined the proceedings to 44 companies mentioned in two lists, one filed by Mr Alok Jena, the petitioner in the petition and the other by the counsel for the State Government. The involvement of these companies in the scam had inter-State ramifications besides the fact that their collections had exceeded over Rs 500 crores each. b

31. It was submitted by the counsel for the parties that looking to the large number of cases that had been registered, transfer of each and every case may work as an impediment in the effective investigation of the cases by CBI. For all intents and purposes, therefore, proceedings in these two writ petitions were confined to a prayer for transfer of cases registered against 44 companies named in the lists filed by the counsel for the parties. c

32. Since certain aspects of the information considered relevant for the transfer of the cases was not forthcoming, we had directed the State Government to file an affidavit providing the said information. The information related primarily to the number of companies involved in the scam in the State of Odisha. The total amount allegedly collected by 44 companies referred to in the lists furnished by the State counsel and the counsel for the petitioner. The total number of claims made by the depositors before Justice R.K. Patra Commission set up with the State Government as also the total number of properties, seized in regard to the 44 companies referred to above. The total amount so far paid to the investors under the orders of the Commission or otherwise and the total number of charge-sheets so far filed. Investments made in real estate or otherwise by the 44 companies were also demanded from the State who was asked to disclose whether the larger conspiracy angle was being investigated and, if so, furnish the particulars of the FIR in which that was being done. d
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33. An affidavit has been filed by the State of Odisha pursuant to the said directions in which the FIRs where the State investigating agency is examining the larger conspiracy angle, have been identified. A perusal of the affidavit, further shows that 163 companies were involved in the chit fund scam in the State of Odisha who have collected Rs 4565 crores approximately from the public out of which a sum of Rs 2904 crores has been collected by 43 companies mentioned in the list referred to earlier excluding M/s Nabadiganta Capital Services Ltd. against which no criminal case has been registered so far. The affidavit also states that 7,45,293 envelopes containing claim petitions have been received from the depositors by Justice R.K. Patra Commission. The affidavit also gives details of the g
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⁹ *Subrata Chattoraj v. Union of India*, (2014) 8 SCC 796

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- properties of the companies seized/sealed in the course of the on-going investigation. The affidavit also refers to payment of Rs 24,17,65,866
- a allegedly made to 18,596 investors by M/s Prayag Infotech High Rise Ltd., Kolkata and the willingness expressed by M/s Rose Valley Hotels and Entertainment Ltd. to pay back the investors. Larger conspiracy angle is according to the affidavit being examined in three cases. These are: (i) CID PS Case No. 39 dated 18-7-2012 under Sections 420/120-B IPC read with Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes
 - b (Banning) Act, 1978 registered against M/s Seashore Group of Companies, (ii) Case No. 44 dated 7-2-2013 under the same provisions registered in Kharavelnagar Police Station (Bhubaneswar Urban Police District) against M/s Artha Tatwa Group of Companies, and (iii) EOW PS Case No. 19 dated 6-6-2013 registered against M/s Astha International Ltd. It was submitted that while charge-sheets have been submitted in three cases mentioned above
 - c within the period of limitation, investigation has been kept open under Section 173(8) CrPC to investigate the larger conspiracy angle. The affidavit also refers to certain legislations enacted in the State of Odisha to protect the interest of depositors. It also refers to certain interim orders passed by the Government for attachment of the properties of the defaulting companies.

- d **34.** Appearing for the State of Odisha, Mr Gopal Subramaniam, learned Senior Counsel argued that while this Court may transfer for further investigation into the cases registered against 44 companies referred to above, any such transfer should not hamper the attachment or recovery process otherwise initiated by the State in terms of the measures taken by it. It was also contended by Mr Subramaniam that the Public Prosecutors appointed by CBI would be assisted by the State Police Officials so that the efficacy of the
- e investigation and prosecution are both taken care of by the joint efforts that the Central and the State police authorities may make.

35. The factual narrative given in the foregoing paragraphs clearly establishes the following:

- f **35.1.** That financial scam nicknamed chit fund scam that has hit the States of West Bengal, Tripura, Assam and Odisha involves collection of nearly Rs 10,000 crores (approx.) from the general public, especially the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam.

- g **35.2.** That investigation so far conducted suggests that the collection of money from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high returns/promised to the depositors.

- h **35.3.** That more than 25 lakh claims have so far been received by the Commissions of Enquiries set up in the States of Odisha and West Bengal which is indicative of the magnitude of scam in terms of number of citizens that have been defrauded by the Ponzi companies.

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35.4. That the companies which indulge in Ponzi schemes have their tentacles in different States giving the scam inter-State ramifications. That such huge collections could have international money laundering dimensions cannot be ruled out and needs to be effectively investigated. a

35.5. That investigation so far conducted reveals involvement of several political and other influential personalities wielding considerable clout and influence.

35.6. That the role of regulators like SEBI, authorities under the Companies Act and Reserve Bank of India is also under investigation by the State Police Agency which may have to be taken to its logical conclusion by an effective and independent investigation. b

36. The question is whether the above features call for transfer of the on-going investigation from the State Police to CBI. Our answer is in the affirmative. Each one of the aspects set out above in our view calls for investigation by an independent agency like the Central Bureau of Investigation (CBI). That is because apart from the sensitivity of the issues involved, especially inter-State ramifications of the scam under investigation, transfer of cases from the State Police have been ordered by this Court also with a view to ensure credibility of such investigation in the public perception. Transfers have been ordered by this Court even in cases where the family members of the victim killed in a firing incident had expressed apprehensions about the fairness of the investigation and prayed for entrusting the matter to a credible and effective agency like CBI. c
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37. Investigation by the State Police in a scam that involves thousands of crores collected from the public allegedly because of the patronage of people occupying high positions in the system will hardly carry conviction especially when even the regulators who were expected to prevent or check such a scam appear to have turned a blind eye to what was going on. The State Police Agency has done well in making seizures, in registering cases, in completing investigations in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not whether the State Police has faltered. The question is whether what is done by the State Police is sufficient to inspire confidence of those who are aggrieved. e
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38. While we do not consider it necessary to go into the question whether the State Police have done all that it ought to have done, we need to point out that money trail has not yet been traced. The collections made from the public far exceed the visible investment that the investigating agencies have till now identified. So also the larger conspiracy angle in the States of Assam, Odisha and West Bengal although under investigation has not made much headway partly because of the inter-State ramifications, which the investigating agencies need to examine but are handicapped in examining. g
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39. M/s Vaidyanathan and Gopal Subramaniam, learned counsel for the States of West Bengal and Odisha respectively argued that CBI itself has in a great measure lost its credibility and is no longer as effective and independent as it may have been in the past. Similar sentiments were expressed by Mr P.V. Shetty appearing on behalf of some of the investors and some other intervenors, who followed suit to pursue a similar line of argument.

40. There is, in our opinion, no basis of the apprehension expressed by the State Governments. It is true that a lot can be said about the independence of CBI as a premier investigating agency but so long as there is nothing substantial affecting its credibility it remains a premier investigating agency. Those not satisfied with the performance of the State Police more often than not demand investigation by CBI for it inspires their confidence. We cannot, therefore, decline transfer of the cases only because of certain stray observations or misplaced apprehensions expressed by those connected with the scam or those likely to be affected by the investigation.

41. We may in this regard gainfully extract the following passage from the decision of this Court in *Sanjiv Kumar v. State of Haryana*¹⁰, wherein this Court has lauded CBI as an independent agency that is not only capable of but actually shows results: (SCC p. 523, para 15)

“15. In the peculiar facts and circumstances of the case, looking at the nature of the allegations made and the mighty people who are alleged to be involved, we are of the opinion, that the better option of the two is to entrust the matter to investigation by CBI. We are well aware, as was also told to us during the course of hearing, that the hands of CBI are full and the present one would be an additional load on their head to carry. Yet, the fact remains that CBI as a Central investigating agency enjoys independence and confidence of the people. It can fix its priorities and programme the progress of investigation suitably so as to see that any inevitable delay does not prejudice the investigation of the present case. They can think of acting fast for the purpose of collecting such vital evidence, oral and documentary, which runs the risk of being obliterated by lapse of time. The rest can afford to wait for a while. We hope that the investigation would be entrusted by the Director, CBI to an officer of unquestioned independence and then monitored so as to reach a successful conclusion; the truth is discovered and the guilty dragged into the net of law. Little people of this country, have high hopes from CBI, the prime investigating agency which works and gives results. We hope and trust the sentinels in CBI would justify the confidence of the people and this Court reposed in them.”

42. In the circumstances, we are inclined to allow all these petitions and direct transfer of the following cases registered in different police stations in the State of West Bengal and Odisha from the State Police Agency to the Central Bureau of Investigation (CBI):

¹⁰ (2005) 5 SCC 517 : (2006) 1 SCC (Cri) 235

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A. State of West Bengal

42.1. All cases registered in different police stations of the State against Saradha Group of Companies including Crime No. 102 registered in Bidhannagar Police Station, Kolkata (North) on 6-5-2013 for the offences punishable under Sections 406, 409, 420 and 120-B IPC. a

42.2. All cases in which the investigation is yet to be completed registered against any other company up to the date of this order.

42.3. CBI shall be free to conduct further investigation in terms of Section 173(8) CrPC in relation to any case where a charge-sheet has already been presented before the jurisdictional court against the companies involved in any chit fund scam. b

B. State of Odisha

42.4. All cases registered against the 44 companies mentioned in our order dated 26-3-2014 passed in *Subrata Chattoraj v. Union of India*⁹. CBI is also permitted to conduct further investigations into all such cases in which charge-sheets have already been filed. c

43. We reserve liberty for the Joint Director, CBI, Incharge of the States of West Bengal and Odisha to seek further directions in relation to transfer of any other case or cases that may require to be transferred for investigation to CBI for a full and effective investigation into the scam. d

44. Transfer of investigation to the Central Bureau of Investigation (CBI) in terms of this order shall not, however, affect the proceedings pending before the Commissions of Enquiry established by the State Government or stall any action that is legally permissible for recovery of the amount for payment to the depositors. Needless to say that the State Police Agencies currently investigating the cases shall provide the fullest cooperation to CBI including assistance in terms of men and material to enable the latter to conduct and complete the investigation expeditiously. e

45. The Enforcement Directorate shall, in the meantime, expedite the investigation initiated by it into the scam and institute appropriate proceedings based on the same in accordance with law. f

46. We make it clear that nothing said in this order, shall be taken as a final opinion as to the complicity of those being investigated or others who may be investigated, questioned or interrogated in relation to the scam.

47. We do not for the present consider it necessary to constitute a Monitoring Team to monitor the progress of the investigation into the scam. But, we leave the exercise of that option open for the future. g

48. The writ petitions and TP (C) No. 445 of 2014 are disposed of in terms of the above directions. No costs.

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Annexure P-17

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(BEFORE S.S. NIJJAR AND F.M. IBRAHIM KALIFULLA, JJ.)

BHARATI TAMANG

.. Petitioner;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

Writ Petition (Crl.) No. 159 of 2012[†], decided on October 8, 2013

A. Criminal Trial — Investigation — Deficient/Unsatisfactory investigation — Duty of courts — Duty to ensure effective conduct of prosecution — Entrusting investigation of case to CBI or other independent agency — Constitution of Special Investigation Team in appropriate cases — Power of courts regarding — Further, power of monitoring investigation — Power to direct re-investigation in exceptional circumstances — Principles enunciated by Supreme Court in its various decisions, summarised — Constitution of India — Arts. 32, 136 and 226 — Criminal Procedure Code, 1973, Ss. 155 to 159

Held :

(i) If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, courts have to deal with the same with an iron hand appropriately within the framework of law;

(ii) It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice;

(iii) In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases the Court can even constitute special investigation team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution;

(iv) While entrusting the criminal prosecution with other instrumentalities of State or by constituting a special investigation team, the High Court or the Supreme Court can also monitor such investigation in order to ensure proper conduct of the prosecution;

(v) In appropriate cases even if the charge-sheet is filed it is open for the Supreme Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice;

(vi) In exceptional circumstances, the Court in order to prevent miscarriage of criminal justice and if it considers it necessary, may direct for investigation de novo. (Paras 41.3 to 41.8, 33 and 38)

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; *NHRC v. State of Gujarat*, (2009) 6 SCC 767 : (2009) 3 SCC (Cri) 44; *Babubhai Jamnadas Patel v. State of Gujarat*, (2009) 9 SCC 610 : (2010) 1 SCC (Cri) 79; *Rubabbuddin Sheikh v. State of Gujarat*, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006; *Babubhai v. State of Gujarat*, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336, *followed*

[†] Under Article 32 of the Constitution of India

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Centre for Public Interest Litigation v. Union of India, (2011) 1 SCC 560 : (2011) 1 SCC (Cri) 463; *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310, *relied on*

- a *Kashmeri Devi v. Delhi Admn.*, 1988 Supp SCC 482 : 1988 SCC (Cri) 864; *Jennison v. Baker*, (1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA), *cited*

B. Penal Code, 1860 — S. 302 — Murder case — Duty of investigating agency in conduct of investigation — Role of court in ensuring the fulfilment of this duty

- Held, slackness or lethargic attitude in process of investigation is not
b expected — When a murder takes place, be it due to political rivalry, or personal vengeance or for any other motive, it is the responsibility of police to come up to the expectations of public at large and display that no stone will remain unturned to book the culprits and bring them for trial — Any slackness displayed in that process will not be in the interest of public at large — In such situation, it is court's responsibility to ensure that
c prosecution agency is reminded of its responsibility and duties in discharge of its functions effectively and efficiently and also ensure that criminal prosecution is carried on effectively and perpetrators of crime are duly punished by appropriate court of law — Criminal Procedure Code, 1973 — Ss. 155 to 159 — Police — Duties and Role — Duty of police in conduct of investigation — Role of court in ensuring due discharge of such duties —
d Constitution of India, Arts. 21, 32, 136 and 226 — Criminal Trial — Judge/Presiding Judge (Para 44)

C. Criminal Trial — Investigation — Deficient/Unsatisfactory investigation — Duty of courts — Duty to ensure effective conduct of prosecution/investigation — Fulfilling this duty, Supreme Court issued necessary directions in present case where investigation in murder case was found to be not carried out in satisfactory manner

- e — Deceased, President of political party in Darjeeling, West Bengal was alleged to be killed by supporters of rival political party in broad daylight on 21-5-2010 under the gaze of general public, police and security personnel — Investigation was first handled by State Police, then by CID and thereafter by CBI — 30 persons were arrayed as accused by CBI out of which 22 accused
f were absconding right from day one — It was only after notice was issued in present writ petition filed by widow of deceased, that 5 absconding accused persons were arrested (all together from taxi stand of Darjeeling Railway Station) and 13 accused surrendered — Claim of prosecution agency that those accused were really absconding, not believed by Supreme Court — Further, two prime accused are still absconding — Some of the accused were
g granted bail by Sessions Judge but CBI took no steps for cancellation of bail and only petitioner had to move High Court for cancellation of bail — Thus, held, there was total lack of seriousness by prosecution agency in carrying out investigation — Submission that murder took place due to political rivalry, cannot be a ground for anyone, much less, the investigation agency to display any slackness or lethargic attitude in the process of investigation — CBI itself admitted that it is facing much difficulty in conducting
h investigation as most of the charge-sheeted accused have taken shelter either in Nepal or Sikkim apart from other hindrances such as murder of one of its

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informer and killing of one of the absconding accused — As per CBI there is fear psychosis prevailing in Darjeeling and, therefore, there are great hurdles in CBI proceeding with process of investigation in usual pace — Relevant directions, hence issued by Supreme Court to ensure that criminal prosecution is carried on effectively including the transfer of murder case from Darjeeling to Calcutta while allowing CBI to continue with the probe — Constitution of India — Arts. 32 and 136 — Penal Code, 1860 — S. 302 r/w S. 34 and S. 120-B r/w Ss. 147, 148, 149, 427 and 506 — Criminal Procedure Code, 1973, Ss. 155 to 159 (Paras 44 to 47)

S.P. Gupta v. Union of India, 1981 Supp SCC 87; *Rajiv Ranjan Singh 'Lalan' (8) v. Union of India*, (2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125; *Bholu Ram v. State of Punjab*, (2008) 9 SCC 140 : (2008) 3 SCC (Cri) 710; *Joginder Singh v. State of Punjab*, (1979) 1 SCC 345 : 1979 SCC (Cri) 295, distinguished

Bharati Tamang v. Union of India, WP (Cri) No. 159 of 2012, order dated 3-12-2012 (SC); *Bharati Tamang v. CBI*, Criminal Misc. No. 8230 of 2013, order dated 13-6-2013 (Cal); *Alok Kanta Mani Thulung v. Bharti Tamang*, SLP (Cri) No. 6831-32 of 2013, order dated 2-9-2013 (SC), referred to

D. Criminal Trial — Investigation — Tape-Recording/Electronic interception/data/Mobile phone/Satellite phone/GPS data — Interception of telephone calls — Admissibility of intercepts — Consideration of embargo against their admissibility — Proper stage for

— Held, when investigation is not yet completed and forensic report on correctness/authenticity of intercepted material is still awaited, question of constitutional or other embargo on admissibility of such intercepted material, is not required to be considered by court — Reference to intercepted material at such stage is not totally prohibited while examining grievance of victim party against faulty investigation of murder case by prosecution agencies — On facts, Supreme Court while examining such grievance of petitioner whose husband was murdered and investigation was alleged to be faulty, referred to some intercepted conversation between accused persons — However, clarified that such reference was, prima facie, only to make a note of existence of transcripts and not to express any opinion either as to existence of transcription or about truthfulness or otherwise of its contents, validity of which is awaiting outcome of forensic report — Telegraph Act, 1885 — S. 5 — Applicability — Proper stage for — Telegraph Rules, 1951 — R. 419-A — Applicability — Proper stage for — Evidence Act, 1872 — Ss. 3 and 5 — Human and Civil Rights — Right to Privacy — Interception of communications

E. Evidence Act, 1872 — Ss. 3 and 5 — Illegally obtained evidence — Test of admissibility of evidence — Reiterated, relevancy is the test of admissibility of evidence — Unless there is an express or implied prohibition in Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out

The husband *M* of the petitioner was the President of a political party called Akhil Bhartiya Gorkha League (ABGL). On the morning of 21-5-2010, he was murdered by the supporters of rival party called Gorkha Jan Mukti Morcha (GJMM). Alleging faulty investigation in the murder case which was initially done by State Police, then by CID and thereafter by CBI, writ petition was filed

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a before the Supreme Court praying for several reliefs including appointment of independent Special Investigation Team to conduct investigation de novo. In support of the claim, the petitioner referred to the transcripts of official intercepts of phone conversations between the President and General Secretary of GJMM and their local cadres, just before and after the murder of *M*. The accused persons contended that in view of the embargo contained in Section 5 of the Telegraph Act, 1885 as well as Rule 419-A of the Telegraph Rules, 1951, reliance could not be placed on intercepted materials to support the claim in the writ petition.

b Explaining the legal position and referring to such intercepted material for a limited purpose, the Supreme Court

Held :

c The test of admissibility of evidence lies in relevancy and unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. Apparently and justifiably this legal position always have universal application, as in order to dispense justice and ensure that the real culprits are brought to book, the investigating agency should make every endeavour to unearth the truth by scrutinising and gathering every minute details and materials and place it before the adjudicative machinery concerned in order to enable the court examining the guilt or otherwise of an accused to reach a just conclusion.

(Paras 28, 41.1 and 41.2)

d *Pooran Mal v. Director of Inspection (Investigation)*, (1974) 1 SCC 345 : 1974 SCC (Tax) 114, *followed*

Barindra Kumar Ghosh v. Emperor, ILR (1910) 37 Cal 467; *Emperor v. Allahdad Khan*, ILR (1913) 35 All 358; *Kuruma v. R.*, 1955 AC 197 : (1955) 2 WLR 223 : (1955) 1 All ER 236 (PC); *Herman King v. R.*, (1969) 1 AC 304 : (1968) 3 WLR 391 : (1968) 2 All ER 610 (PC), *considered*

e At the present stage, for the purpose of investigation, the submission of the petitioner that the transcription gives sufficient clues and enough material to carry out an effective investigation in order to identify the real culprits for bringing them to book and to effectively proceed with the case of the prosecution deserves consideration. (Para 7)

It is found that neither Section 5 of the Telegraph Act, 1885 nor Rule 419-A of the Telegraph Rules, 1951 can have any application at the present juncture.

f There is also no constitutional embargo to be considered at this stage. In the present case, the investigation has not yet been fully concluded since even according to CBI the intercepted materials have been forwarded to the forensic laboratories for ascertaining its authenticity and correctness of the alleged conversation between certain persons and the report is awaited and therefore, it cannot even be held at this stage that reference to such interception is totally prohibited while examining the grievances of the petitioner in this writ petition.

g In the case in hand since even according to CBI, the intercepted material has been referred to forensic laboratory for its report there will be time enough for the accused persons to work out their remedy before the trial court by challenging the correctness or otherwise of the report of the forensic laboratory. Therefore, there is no scope to non-suit the petitioner on that ground.

(Paras 29 and 30)

h A cursory glance of the transcription, as published in *The Indian Express* edition of 15-7-2010, discloses that it related to the period between 20-5-2010, 9.02 p.m. to 5.12 p.m. of 21-5-2010. The whole conversation was between

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Accused 23, 13, 15, Respondent 10 and certain other persons all of whom appear to be the partymen of GJMM as disclosed in the charge-sheet filed by CBI. The conversation also related to the preparation made by the deceased *M* for holding his party's Foundation Day Celebration on 21-5-2010, the idea of the GJMM to somehow or other abort the preparation made by ABGL by its President *M* even at the cost of his elimination. The conversation continued in the early hours of 21-5-2010 till 10.54 a.m. i.e. the time when the killing of *M* had taken place at the place of occurrence. A vivid description as to the manner in which the occurrence took place was also talked about by the conversationists. It is, however, made clear that reference to the said transcription and to some of the details contained should not be taken to mean that Court has expressed any opinion either as to existence of the transcription or about the truthfulness or otherwise of the contents of the transcription. Prima facie, only a note of the existence of the transcripts is being made, inasmuch as, even the prosecution agency, namely, CBI does not dispute about its existence as well as its authenticity, though it awaits the outcome of the forensic report. (Para 8)

F. Criminal Procedure Code, 1973 — S. 161 — Statement of accused under S. 161 CrPC — Use and scope of, for investigating agencies to conduct investigation properly — Murder of political leader due to political rivalry

— Statement of one of the accused recorded under S. 161 CrPC in which he narrated the occurrence and also implicated other accused persons — Submission of writ petitioner (widow of deceased) complaining of faulty investigation that contents of said statement would give enough scope for investigating agency to unearth the truth, held, to some extent, has force — Penal Code, 1860, S. 120-B r/w Ss. 147, 148, 149, 427, 506 and 302 r/w S. 34 (Paras 9 and 10)

O-D/52452/SR

Advocates who appeared in this case :

Sidharth Luthra, Additional Solicitor General, Mukul Rohatgi, U.U. Lalit, Ram Jethmalani, Mukul Gupta, Kalyan Kr. Bandopadhyay and K. Radhakrishna, Senior Advocates (Arunabh Chowdhury, Amit Sharma, Ms Pragya Baghel, Vaibhav Tomar, Karma Dorjee, G. Panmei, Nikilesh Ramachandran, Niraj Jha, Bedan Gurung, Shantanu Singh, Karan Kalia, Dipankar Dey, Gitanju Suraj, T.A. Khan, Ms Anjali Chauhan, Syed Tanweer Ahmad, Arjun Diwan, B.V. Balaram Das, Anip Sachthey, Mohit Paul, Dr Ashok Dhamija, Ms Sonia Dhamija and B. Krishna Prasad, Advocates) for the appearing parties.

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- a 9. (2009) 6 SCC 767 : (2009) 3 SCC (Cri) 44, *NHRC v. State of Gujarat* 595b
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- b 14. 1981 Supp SCC 87, *S.P. Gupta v. Union of India* 593b-c
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20. ILR (1913) 35 All 358, *Emperor v. Allahdad Khan* 591f
21. ILR (1910) 37 Cal 467, *Barindra Kumar Ghosh v. Emperor* 591f

d The Judgment of the Court was delivered by

F.M. IBRAHIM KALIFULLA, J.— The petitioner is the widow of one late Madan Tamang r/o Rhododendron Dell, District Darjeeling, West Bengal. According to the petitioner, her husband, who was the President of a political party called Akhil Bhartiya Gorkha League (in short “ABGL”), was brutally murdered on the morning of 21-5-2010 under the gaze of general public, police and security personnel by the supporters of rival party called Gorkha Jan Mukti Morcha known as “GJMM” and that after the brutal attack on the deceased Madan Tamang he was rushed to a nearby hospital where he was pronounced dead. Alleging that the whole investigation which was initially held by the State Police and thereafter by CID and later by CBI, was faulty in every respect, the petitioner has come forward with the following prayers in the writ petition:

f “(a) Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus quashing Charge-sheet No. 76 of 2010 submitted on 30-8-2010 by CID Homicide Squad, West Bengal along with Supplementary Charge-sheet No. 04 (03) dated 20-8-2011 (CBI) filed in GR Case No. 148 of 2010 by CBI on 20-8-2011 and the proceedings emanating therefrom pending before the Court of the Chief Judicial Magistrate, Darjeeling in Sessions Case No. 77 of 2010.

g (b) Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus appointing an independent Special Investigation Team comprising of senior officers headed by a competent person or authority of impeccable credentials to conduct an investigation de novo into the conspiracy and gruesome murder of Madan Tamang on

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21-5-2010 at Darjeeling and to take all necessary consequential steps/actions pertaining thereto.

(c) Alternatively direct further/fresh investigation by the DIG level officer of CBI into the aspects contained and highlighted by the petitioner in Annexure P/43.” a

2. We heard Mr Mukul Rohatgi, learned Senior Counsel for the petitioner, Mr Ram Jethmalani learned Senior Counsel for Respondents 10 to 15, Mr Sidharth Luthra, Additional Solicitor General for CBI, Mr Kalyan Kr. Bandopadhyay, Senior Counsel for State of West Bengal and Mr K. Radhakrishna, learned Senior Counsel for the Union of India. b

3. In order to appreciate the grievances of the petitioner and also to note the various features involved in the prosecution proceedings right from the date of occurrence, namely, 21-5-2010 till this date, it will be necessary to note down the various developments and incidents that were brought out by the petitioner, CBI, as well as, certain orders passed by the Sessions Court, Darjeeling and certain orders passed by the High Court of Calcutta. It will also enable this Court to find out whether the prayer of the petitioner deserves to be granted. c

4. In the course of his submissions Mr Rohatgi learned Senior Counsel took us through the manner in which the occurrence had taken place on 21-5-2010. According to the petitioner there was a deep-rooted rivalry as between the two political parties, namely, ABGL and GJMM for quite some time, that the deceased Madan Tamang who was attempting to spearhead his party with certain objectives wanted to gather the support of the people of Darjeeling and with that view he organised a meeting to be held in the heart of the town of Darjeeling on certain occasions prior to 21-5-2010 and finally irrespective of the alleged resistance on the side of GJMM he is stated to have scheduled the Founders Day meeting on 21-5-2010 in the morning hours at a venue called Club Side Road Stand, just below Planters Club, Darjeeling. It is further alleged that when the deceased Madan Tamang was at the venue in the morning of 21-5-2010 overseeing the preparations for the meeting by his partymen, a group of about 400 supporters of GJMM armed with khukries, patang, swords, sticks and firearms attacked him and brutally axed him to death with the aid of sharp weapons. It was also alleged that the said occurrence took place in the presence of police, security personnel, media persons and members of the general public. The occurrence was stated to have been widely captured by the lensmen, press as well as media which was also telecast very widely in the television network as well as through print media. d e f

5. According to the petitioner, though the occurrence had taken place in a public place and there were several eyewitnesses to the incident and also various other clinching materials with the prosecution, there was a deliberate attempt on behalf of the prosecution to suppress the truth to enable the real culprits escape from the clutches of the police. Mr Rohatgi learned Senior Counsel brought to our notice a newspaper clipping in which the photograph of the deceased Madan Tamang was displayed in a seriously injured g h

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condition, who was assisted by one of his supporters, as well as, few policemen and submitted that the person who assisted the deceased Madan
a Tamang was not even examined and his statement was not recorded immediately in order to find out the real culprits.

6. Our attention was also drawn to the transcripts of official intercepts of phone conversations between the President and General Secretary of GJMM and their local cadres, just before and after the gruesome murder of Madan Tamang.

- b 7. As far as the authenticity of the said transcripts is concerned, it was brought to our notice that in the counter-affidavit filed by CBI in CrI. MP No. 14236 of 2013 in Para 5(g) it was stated that CBI tried to collect the records of the telephonic conversation from West Bengal Police which was published in *The Indian Express* edition of 15-7-2010 and that, however, ultimately the hard disc used by the Intelligence Bureau of West Bengal for recording the
c telephonic conversation of intercepted numbers of different leaders/activists of GJMM was cloned and sent to Central Forensic Science Laboratory, New Delhi. Therefore, according to CBI, the authenticity of the alleged transcript is yet to be finally ascertained including the truthfulness of the so-called conversation between the President, the General Secretary and the local cadres of GJMM. It will have to be, however, noted that at the present stage,
d for the purpose of investigation, the submission made on behalf of the petitioner that the said transcription gives sufficient clues and enough material to carry out an effective investigation in order to identify the real culprits for bringing them to book and to effectively proceed with the case of the prosecution deserves consideration.

- e 8. A cursory glance of the transcription, as published in *The Indian Express* edition of 15-7-2010, discloses that it related to the period between 20-5-2010, 9.02 p.m. to 5.12 p.m. of 21-5-2010. The whole conversation was between Accused 23, 13, 15, Respondent 10 and certain other persons all of whom appear to be the partymen of GJMM as disclosed in the charge-sheet filed by CBI. The conversation also related to the preparation made by the deceased Madan Tamang for holding his party's Foundation Day Celebration
f on 21-5-2010, the idea of the GJMM to somehow or other abort the preparation made by ABGL by its President Madan Tamang even at the cost of his elimination. The conversation continued in the early hours of 21-5-2010 till 10.54 a.m. i.e. the time when the killing of Madan Tamang had taken place at the place of occurrence. A vivid description as to the manner in which the occurrence took place was also talked about by the
g conversationists. We, however, wish to make it clear here and now that our reference to the said transcription and to some of the details contained should not be taken to mean that we had expressed any opinion either as to existence of the transcription or about the truthfulness or otherwise of the contents of the transcription. Prima facie, we want to make a note of the existence of the transcripts, inasmuch as, even the prosecution agency, namely, CBI does not
h dispute about its existence as well as its authenticity, though it awaits the outcome of the forensic report.

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9. Our attention was also brought to the FIR lodged by the General Secretary of ABGL on 21-5-2010 which was registered by Sadar Police Station, Darjeeling at 6.30 p.m. While narrating the occurrence the complainant referred to some of the identified assailants, namely, A-9, A-10, A-12, A-13, A-14 and A-15 and it was also alleged that Respondents 10 to 15 were continuously threatening Madan Tamang both in the press as well as in the public meetings and that such threats included that one day or the other he would be killed. It was, therefore, alleged that the attack at the venue of the meeting organised by ABGL and the brutal killing of the deceased Madan Tamang was conspired, planned and Respondent 10 was the mastermind along with Respondents 11 to 15. There was specific reference to A-9, A-10, A-12, A-13, A-14 and A-15 as well as Respondents 10 to 15 in the FIR registered by Sadar Police Station. Based on the said FIR, the State Police laid the charge-sheet under Section 173 by filing its final report for offences under Sections 147, 148, 149, 427, 506 and 302 read with Section 34 IPC. It was pointed out that there was no charge laid under Section 120-B IPC. As many as 30 persons were arrayed as accused in the said charge-sheet. The statement of second accused Prashant Chhetry was recorded under Section 161 CrPC, in which the narration of the occurrence was noted. The said statement implicated among other persons Respondents 10 to 15 as well.

10. Mr Rohatgi learned Senior Counsel in his submissions made it clear that he was not attempting to rely upon the said statement knowing fully well as to what extent the said statement under Section 161 can be used. But according to the learned Senior Counsel, the contents of the said statement would give enough scope for the investigating agency to unearth the truth and that in spite of such abundant information available, there was total sluggishness in the investigation process. In our opinion, to some extent, we do find considerable force in the said submission.

11. It was then brought to our notice that the final report filed by CBI wherein apart from the offences for which the accused were charged in the final report of the State Police, offence under Section 120-B was also added and in Annexure 5 to the final report the names of the accused persons numbering 30 and of whom those who were already arrested and those who were absconding and also one accused who was granted bail was disclosed. The said Annexure 5 discloses the accused who were arrested were Accused 1 to 7 and the absconding accused were A-8 to A-25 and A-27 to A-30. A-26 was stated to be on bail.

12. Mr Rohatgi learned Senior Counsel in his submissions further contended that the said position which remained static from May 2010 continued till notice was issued in this writ petition on 3-12-2012¹ and that

¹ *Bharati Tamang v. Union of India*, WP (Cri) No. 159 of 2012, order dated 3-12-2012 (SC), wherein it was directed:

“Issue notice, returnable four weeks hence. Let notice be served, both in the usual course and also by way of dasti service on the Union of India, through the Central Agency.”

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only thereafter there were some attempts made to nail the culprits. The learned Senior Counsel also brought to our notice the arrest memos in respect of Accused 9, 10, 13, 14 and 15 who were arrested on 15-2-2013 at 0505 hrs at a taxi stand of Darjeeling Railway Station. All the five accused were arrested at the same place and it was submitted by the learned Senior Counsel that the statement of the prosecution agency that the accused were absconding was far from truth, inasmuch as the very arrest at a taxi stand near a railway station disclose that they were freely roaming around in the city of Darjeeling, but yet no effort was taken by the police to arrest them between May 2010 to February 2013. According to the learned Senior Counsel because this Court ordered notice in this writ petition, the prosecution in order to make it appear as though some seriousness was bestowed in its actions, the arrests were made while 13 other accused surrendered after the notice was issued in this writ petition.

13. Here again, it will have to be stated that the said submission cannot be simply brushed aside when it comes to the question of testing the seriousness and truthfulness with which the investigating agency was proceeding while carrying out the investigation for detecting the crime and also for that purpose apprehending the accused in order to proceed with the case of the prosecution with all its earnest efforts. Even in that context it will have to be stated that the claim that so many of the accused were absconding and, therefore, the prosecution was disabled to proceed with its case effectively and its inability to apprehend the accused in spite of its best efforts appears to be not true and has to be looked at with grave suspicion. It will have to be stated that if five of the accused were available at 0505 hrs at the taxi stand of the Darjeeling Railway Station, it is hard to believe that those accused were really absconding and that police was unable to apprehend them earlier, though, they could have arrested them on 15-2-2013 whole hog in a place where all of them could be taken into custody without much effort. Similarly, the surrendering of 13 other persons closely after the arrest of the abovesaid five accused only shows that the claim of the police that those accused were really absconding was far from truth and cannot be believed.

14. The reasoning in the order dated 17-4-2013 passed by the learned Sessions Judge, Darjeeling while dismissing the bail application also disclose that the accused were absconding for a long time while some other accused continued to abscond and, therefore, there was no scope for granting bail. When a reference was made to the bail granted by the High Court, the learned Sessions Judge noted that in that case the accused was in custody for more than 2 years while the present accused for whom the bail was moved were absconding for a long time and could be arrested only on 15-2-2013.

15. Mr Rohatgi learned Senior Counsel while referring to the said order of the learned Sessions Judge dated 17-4-2013, however, pointed out that just a month later i.e. on 18-5-2013 that very learned Judge granted bail by noting that none appeared for CBI and that the accused concerned in the application were in custody for about 7 months. Mr Rohatgi learned Senior Counsel

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pointed out that when the arrest itself came to be made only on 15-2-2013 the statement found in the said order dated 18-5-2013 that the accused concerned were in custody for more than 7 months, was apparently a wrong statement. a

16. Mr Rohatgi learned Senior Counsel also made a detailed reference to the counter-affidavit filed by CBI in the criminal miscellaneous petition. Having gone through the counter-affidavit filed by CBI it is relevant to cull out certain factors which have been tacitly admitted by CBI as regards the investigation process initiated by it for the first time, the development that had taken place thereafter and the present stage at which it stands in order to arrive at a just conclusion. In the counter-affidavit it is stated that the investigation is still in progress to unearth the criminal conspiracy, that 31 persons have been charge-sheeted against whom sufficient material have been collected while two of the accused, namely, Nicol Tamang and Dinesh Subba are yet to be arrested as they continued to abscond. According to CBI since those two accused played key role in the murder of the deceased Madan Tamang, only after their arrest, CBI will be able to make significant progress as regards the conspiracy though, however, the trial is being proceeded with awaiting their arrest. It is also stated that the person who was found present along with the deceased Madan Tamang immediately after his assault was also identified as one Karma Tamang who is also related to the deceased and that since he has shifted his abode to Nepal, that effort has been taken to record his statement under Section 161 CrPC, though the said person was apprehensive to make any statement to the police. As far as the intercepted telephonic conversations, CBI would state that unless its contents are authenticated by ascertaining the actual voice interceptions no conclusion can be drawn. It was, therefore, contended that as soon as the forensic report is received, CBI will be able to proceed further with its investigation effectively. b c d e

17. CBI fairly admitted that the accused persons are active supporters of GJMM and that due to the prevailing law and order situation in Darjeeling CBI is facing much difficulty since most of the charge-sheeted accused took shelter either in Nepal or Sikkim apart from the other hindrances such as the murder of one of its informer in November 2011, the killing of one of the absconding accused which disabled CBI in making good progress in the investigation. According to CBI, due to fear psychosis prevailing in the region, CBI is not able to get much support from the local public. CBI would, however, claim that it was because of its sustained efforts it was able to arrest five of the accused on 15-2-2013 and 13 of the absconding accused surrendered in June 2013. According to CBI, the moment two absconding accused, namely, Nicol Tamang and Dinesh Subba are apprehended, it will be able to unearth the conspiracy part with certain amount of certainty. f g

18. It was, however, submitted on behalf of CBI that in order to have an effective investigation and prosecution of the accused in a successful manner, it would be more appropriate to transfer the case from Darjeeling to Calcutta. CBI is stated to have moved the Calcutta High Court for transfer and, therefore, it has no objection to the case being transferred from Darjeeling to h

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- Calcutta. The stand of CBI also reveals that after the occurrence which took place on 21-5-2010 and after the FIR was registered, the case which was
- a handled by the local police is stated to have been entrusted with CID Wing and that thereafter on 19-1-2011 CBI took over the investigation. Initially charge-sheet was filed by CID team on 30-8-2010 and after CBI took over the investigation a supplement charge-sheet was stated to have been filed on 20-8-2011, in which, the charge of conspiracy also came to be added apart from the other charges mentioned in the charge-sheet dated 30-8-2010.
- b 19. As far as Respondents 10 to 15 are concerned, Mr Ram Jethmalani, learned Senior Counsel would contend that this case cannot be compared with the case in *Zahira Habibulla H. Sheikh v. State of Gujarat*² which was relied upon by the petitioner. According to him that case was due to a communal frenzy and it was a case of retaliation murder, in which 15 persons were burnt alive. He would contend that that case was an appeal against
- c acquittal by both the courts below and the full record of the investigation and the evidence was before this Court in which a direction came to be issued for reinvestigation and, therefore, the said judgment cannot be a guiding factor.
20. As far as the present case was concerned, he would contend that this was a case in which the occurrence took place on 21-5-2010 and the resultant murder of the President of ABGL was due to political rivalry as between
- d ABGL and GJMM and that on the fateful day when a huge crowd gathered, it was free for all and, therefore, it would be next to impossible to identify who were the perpetrators of the crime. The learned Senior Counsel contended that, therefore, the prayer of the petitioner to implicate Respondents 10 to 15 by directing the prosecution agency cannot be ordered.
- e 21. The learned Senior Counsel contended that for that purpose the intercepted transcription of the telephonic conversation cannot be relied upon which would be hit by the provisions of the Telegraph Act, 1885, namely, Section 5 read along with Rule 419-A of the Telegraph Rules, 1951. According to the learned Senior Counsel, by virtue of the Constitution Bench decision of this Court in *Pooran Mal v. Director of Inspection (Investigation)*³, in particular para 24, any such direction would be a
- f constitutional violation and, therefore, the same should not be ordered. In any event, as regards the telephonic conversation the learned Senior Counsel would contend that it would be highly premature at this stage to conclude that such conversation really emanated as between Respondents 10 to 15 and some of the accused and on that basis proceed against Respondents 10 to 15.
- g 22. The learned Senior Counsel contended that in the course of trial if the trial court is convinced of the involvement of any other person in the act of crime, the court has enormous powers under Section 319 CrPC and by invoking the said power the trial court can always implicate any other person as accused, but certainly in a writ petition under Article 32 of the Constitution such direction cannot be issued.

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2 (2004) 4 SCC 158 : 2004 SCC (Cri) 999
3 (1974) 1 SCC 345 : 1974 SCC (Tax) 114

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23. Mr Rohatgi learned Senior Counsel while countering the submissions of Mr Ram Jethmalani learned Senior Counsel, contended that the petitioner does not pray to this Court to find anyone guilty nor even add anyone as accused. According to Mr Rohatgi, learned Senior Counsel, the petitioner is a widow, whose husband was done to death in broad daylight in the presence of witnesses, police personnel and other security persons, that since authenticated official transcription of interceptions are available there should have been proper investigation and the culprits must have been brought to book. He further contended that the very fact that the State Police and CID displayed their total disinclination to book the real culprits and hold proper investigation to unearth the truth, the case was handed over to CBI. Since for more than two years many of the accused were freely moving around the Darjeeling town, who were not apprehended and the real culprits were not brought to book even after the investigation was taken over by CBI, it became imminent for the petitioner to approach this Court.

24. The learned Senior Counsel contended that such indifferent attitude displayed by the State Police and now by CBI was demonstrably present in the light of glaring factors existing, namely, the snail pace in which the case is being prosecuted, the absconding of key accused and others for several years who were, however, roaming around in the city of Darjeeling and were not even arrested in spite of their notable presence in the town and who could be ultimately apprehended only after the writ petition was entertained by this Court. The learned counsel also referred to the rejection of their bail applications by the trial court once and within a short span of a month's time without CBI being represented in the Court the bail was being granted. The learned Senior Counsel further pointed out that CBI did not take any action for the cancellation of their bail which was, however, cancelled⁴ at the initiative taken by the petitioner and that too by the High Court of Calcutta which calls for a serious consideration of this Court to issue appropriate directions.

25. The learned Senior Counsel would, therefore, contend that this Court should order for reinvestigation by keeping in abeyance the trial commenced already based on a tardy investigation by entrusting the whole case to a Special Investigation Team governed by the provisions of the special Act of the National Intelligence Agency or any other independent body. The learned Senior Counsel also contended that in the interest of justice and fair play, the case should be transferred to any other nearby State.

26. Having thus noted the various factual aspects in this writ petition relating to the murder of Mr Madan Tamang we also wish to refer to some of the decisions relied upon by the learned Senior Counsel for the petitioner as well as Mr Ram Jethmalani learned Senior Counsel who appeared for Respondents 10 to 15. In *Pooran Mal*³ which is a Constitution Bench judgment, reference has been made as to what extent reliance can be placed

⁴ *Bharati Tamang v. CBI*, Criminal Misc. No. 8230 of 2013, order dated 13-6-2013 (Cal)

³ *Pooran Mal v. Director of Inspection (Investigation)*, (1974) 1 SCC 345 : 1974 SCC (Tax) 114

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upon the intercepted conversation between the parties whose litigation was being tried by the court of law. The said decision was relied upon by Mr Ram Jethmalani learned Senior Counsel to contend that the intercepted materials relating to some of the accused and Respondents 10 to 15 cannot form the basis for claiming any relief in this writ petition. The learned counsel referred to the headnote at p. 348 wherein it is noted that:

a

“Where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out.”

b

The learned Senior Counsel while referring to the above passage in the said judgment also made reference to Section 5 of the Telegraph Act, 1885 as well as Rule 419-A of the Telegraph Rules, 1951.

c

27. By referring to Section 5 of the said Act the learned Senior Counsel contended that Section 5(2) puts an embargo on disclosure of such transcription except under certain exigencies and that under Rule 419-A which was referable to Section 5(2) of the said Act the interception of any message can be disclosed only based on an order made by the Secretary to the Government of India in the Ministry of Home Affairs or by the Secretary to the State Government In-charge of the Home Department and merely based on the intercepted materials published in a newspaper whose authenticity is greatly doubtful, no reliance can be placed upon the same by the petitioner in order to support her claim in this writ petition. By referring to the above statutory prescriptions the learned Senior Counsel contended that going by the Constitution Bench decision in *Pooran Mal*³ it should be held that the interceptions heavily relied upon by the petitioner to rope in Respondents 10 to 15 cannot be countenanced.

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28. Though at first blush the submission of the learned Senior Counsel appears to be a formidable one, on a detailed reading of para 24 of the said judgment, we find that the legal position is the other way about. In para 24, the Constitution Bench of this Court, after making a detailed reference to earlier decisions, namely, *Barindra Kumar Ghosh v. Emperor*⁵, *Emperor v. Allahdad Khan*⁶, *Kuruma v. R.*⁷, *Herman King v. R.*⁸, stated the legal position as under in the last part of para 24: (*Pooran Mal case*³, SCC p. 366)

f

g

“24. ... In other words search and seizure for the purposes of preventing or detecting crime reasonably enforced was not inconsistent with the constitutional guarantee against search and seizure. It was held in that case that the search of the appellant by a police officer was not justified by the warrant nor was it open to the officer to search the person of the appellant without taking him before a justice of the peace.

3 *Pooran Mal v. Director of Inspection (Investigation)*, (1974) 1 SCC 345 : 1974 SCC (Tax) 114

5 ILR (1910) 37 Cal 467

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6 ILR (1913) 35 All 358

7 1955 AC 197 : (1955) 2 WLR 223 : (1955) 1 All ER 236 (PC)

8 (1969) 1 AC 304 : (1968) 3 WLR 391 : (1968) 2 All ER 610 (PC)

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Nevertheless it was held that the Court had a discretion to admit the evidence obtained as a result of the illegal search and the constitutional protection against search of person or property without consent did not take away the discretion of the Court. Following *Kuruma v. R.*⁷ the Court held that it was open to the Court not to admit the evidence against the accused if the Court was of the view that the evidence had been obtained by conduct of which the prosecution ought not to take advantage. But that was not a rule of evidence but a rule of prudence and fair play. It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out.”

A close reading of the above passage in *Pooran Mal case*³ discloses that barring an express or implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. In other words, what has been emphasised by the Constitution Bench is that the test of admissibility of evidence lies in relevancy and unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. Apparently and justifiably the said legal position as propounded always have universal application, as in order to dispense justice and ensure that the real culprits are brought to book, the investigating agency should make every endeavour to unearth the truth by scrutinising and gathering every minute details and materials and place it before the adjudicative machinery concerned in order to enable the court examining the guilt or otherwise of an accused to reach a just conclusion.

29. When we consider the submission of the learned Senior Counsel, we find that neither Section 5 of the Telegraph Act nor Rule 419-A of the Telegraph Rules can have any application at the present juncture. There is also no Constitutional embargo to be considered at this stage where CBI has taken steps to ascertain the truthfulness or otherwise or the reliability of the intercepted conversation has only been forwarded to the forensic laboratory and the report is awaited.

30. We are not, therefore, impressed by the submission of Mr Ram Jethmalani learned Senior Counsel in contending that no reliance can be placed upon the intercepted materials as that would amount to violation of a constitutional right of the individuals concerned. We find that in the present case the investigation has not yet been fully concluded since even according to CBI the intercepted materials have been forwarded to the forensic laboratories for ascertaining its authenticity and correctness of the alleged conversation between certain persons and therefore, it cannot even be held at this stage that reference to such interception is totally prohibited while

⁷ 1955 AC 197 : (1955) 2 WLR 223 : (1955) 1 All ER 236 (PC)

³ *Pooran Mal v. Director of Inspection (Investigation)*, (1974) 1 SCC 345 : 1974 SCC (Tax) 114

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- examining the grievances of the petitioner in this writ petition. As far as the proposition of law declared in the said decision in *Pooran Mal case*³ is
- a concerned there can be no two opinions about the said position. But in the case in hand since even according to CBI, the intercepted material has been referred to forensic laboratory for its report there will be time enough for the accused to work out their remedy before the trial court by challenging the correctness or otherwise of the report of the forensic laboratory. We, therefore, do not find any scope to non suit the petitioner on that ground.
- b **31.** Reliance was placed upon the Constitution Bench decision of this Court in *S.P. Gupta v. Union of India*⁹ wherein, in para 24, this Court cautioned that the Court should be careful to see that the member of the public, who approaches the Court by way of a public interest litigation act bona fide and not for personal gain or private profit or political motivation or other oblique consideration. Mr Ram Jethmalani learned Senior Counsel
- c appearing for Respondents 10 to 15 contended that the petitioner who has now become the leader of ABGL after the demise of her husband has come forward with the writ petition to march a political gain and, therefore, none of her grievances expressed in the writ petition should be countenanced. By applying the above principle, set out by the Constitution Bench, we are not in
- d a position to appreciate the said submission, inasmuch as, we find that dehors the political rivalry between ABGL and GJMM the grievances expressed in the writ petition is out and out related to various discrepancies and slackness in the course of investigation of a murder case, which of course related to the husband of the petitioner and the grievances cannot be held to be purely personal based on any political vendetta. Therefore, the reliance placed upon
- e the said decision also does not support the stand of Respondents 10 to 15. It will have to be further stated that the present writ petition is not by way of public interest litigation and the prayer of the petitioner is not to redress any public grievance but grievances relating to the death of a person who is none other than the husband of the petitioner in broad daylight whose murder case is yet to reach to its finality due to the alleged discrepancies in the process of
- f investigation. For the very same reasons we do not find any support in the decision in *Rajiv Ranjan Singh 'Lalan' (8) v. Union of India*¹⁰.
- 32.** As far as the reliance placed upon the decision in *Bholu Ram v. State of Punjab*¹¹, wherein in para 28, this Court has referred to the ultimate conclusion set out in para 6 of *Joginder Singh v. State of Punjab*¹². In *Joginder Singh*¹² the position relating to Section 319(1) CrPC has been
- g clearly set out which empowers all the courts including the Sessions Court to add any person, not being the accused before it, but against whom there

3 *Pooran Mal v. Director of Inspection (Investigation)*, (1974) 1 SCC 345 : 1974 SCC (Tax) 114
9 1981 Supp SCC 87

h 10 (2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125
11 (2008) 9 SCC 140 : (2008) 3 SCC (Cri) 710
12 (1979) 1 SCC 345 : 1979 SCC (Cri) 295

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appears, during trial, sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused. As far as the proposition of law declared, there can be no two opinions. The contention of Mr Ram Jethmalani, learned Senior Counsel is that in the light of the said power available with the trial court there is no necessity for issuing any direction in this writ petition for including Respondents 10 to 15 also as accused to be tried in the pending sessions case. While endorsing the legal position stated in the decision relied upon, we only state that since the petitioner is not seeking for including Respondents 10 to 15 as accused, we do not find any scope to apply the said principle to the facts of this case inasmuch as, it is for the investigating agency to determine based on the evidence already gathered and to be gathered, as to whether or not any one, much less Respondents 10 to 15, should also be arrayed as accused.

33. We also wish to refer to some of the decisions relied upon by Mr Rohatgi learned Senior Counsel for the petitioner as to how far the grievances of the petitioner can be redressed in this proceedings. In the famous decision of *Zahira Habibulla H. Sheikh*², this Court has expressed its strong view as to the necessity of courts to be alive to the situations where genuine grievances were brought to its notice for redressal. Paras 54 and 56 are relevant for our purpose and the relevant portions therein read as under: (SCC pp. 192-93)

“54. ... When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

* * *

56. ... ‘The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.’*

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. *If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron*

2 *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999

* **Ed.**: As observed in *Jennison v. Baker*, (1972) 2 QB 52 at p. 66 H : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA).

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- hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.”*
(emphasis supplied)

The above principles make the position clear to the effect that in the administration of justice, lethargic action of courts may result in failure of justice and, therefore, when deficiency in investigation or prosecution is visible or can be perceived by lifting the veil that thereby tried to hide the realities, the court should deal with the same with the iron hand appropriately within the framework of law.

- 34.** In the decision of *NHRC v. State of Gujarat*¹³, in para 40, this Court issued directions in order to ensure that the criminal prosecution which was entrusted with Special Investigation Team is not hampered by any other intruders including the State Government and ensure that the real culprits are brought to book.

- 35.** In the decision of *Babubhai Jamnadas Patel v. State of Gujarat*¹⁴, this Court has highlighted the powers of the High Court as well as this Court in monitoring the criminal investigation. The relevant part of the decision can be found out in paras 40, 44, 49 and 50 which are as under: (SCC pp. 618-20)

- “40. The area of dispute ultimately narrows down to the question as to whether the courts can monitor investigations in respect of offences alleged to have been committed when the investigation had already been commenced by the investigating agency.

* * *

44. In cases where it has been brought to the notice of the courts that investigation into an offence was not being carried on in the manner in which it should have been carried on, directions have been given by the courts to the investigating agencies to conduct the investigation according to certain guidelines, as otherwise the very purpose of the investigation could become fruitless. The decisions cited by Mr Nariman do not militate against the concept of the Court’s power, where necessary, to direct the authorities to conduct themselves in a particular way.

* * *

49. *The various decisions cited by Mr Dave endorse the view that when required not only could the High Court or this Court direct the investigating agencies to conduct the investigation in a fair and unbiased manner, but that in exercise of its powers under Article 142 of the Constitution, the Supreme Court could also issue directions for enforcement of fundamental rights and to ensure that complete justice was done to the parties.*

- ¹³ (2009) 6 SCC 767 : (2009) 3 SCC (Cri) 44
¹⁴ (2009) 9 SCC 610 : (2010) 1 SCC (Cri) 79

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50. In fact, in *Kashmeri Devi case*¹⁵ this Court had directed the Magistrate to exercise powers under Section 173(8) CrPC to direct CBI to make a proper and thorough investigation in an independent and objective manner and to submit an additional charge-sheet, if circumstances so required, in accordance with law.” (emphasis supplied)

36. Again, in the subsequent decision in *Rubabbuddin Sheikh v. State of Gujarat*¹⁶, this Court has highlighted as to how under certain circumstances the investigation can be entrusted with independent agencies like CBI and also monitor the further progress of the case after the final report is filed by CBI. The relevant paras are 60 and 82 which are as under: (SCC pp. 216 & 221)

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

* * *

82. ... The report of CBI Authorities shall be filed in this Court when this Court will pass further necessary orders in accordance with the said report, if necessary. We expect that the Police Authorities of Gujarat, Andhra Pradesh and Rajasthan shall cooperate with CBI Authorities in conducting the investigation properly and in an appropriate manner.”

(emphasis supplied)

37. In the decision of *Babubhai v. State of Gujarat*¹⁷, in para 40, this Court held that the scheme of investigation particularly Section 173(8) CrPC provides for further investigation and not of reinvestigation but held in para 42 as under: (SCC p. 272)

“42. Thus, *it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances.*”

(emphasis supplied)

38. Therefore, at times of need where this Court finds that an extraordinary or exceptional circumstance arise and the necessity for

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

16 (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006

17 (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336

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reinvestigation would be imperative in such extraordinary cases even de novo investigation can be ordered.

a **39.** In the 2G Spectrum case in *Centre for Public Interest Litigation v. Union of India*¹⁸, this Court gave extensive directions in para 19 and also directed CBI to produce the progress report before this Court.

40. In the decision of *Ram Jethmalani v. Union of India*¹⁹ (to which one of us S.S. Nijjar, J. was a party) considering the nature of grievances expressed by the writ petitioner, constituted a high-level committee as a
b Special Investigation Team in order to ensure that an effective investigation is carried out and the culprits were brought to book.

41. From the various decisions relied upon by the petitioner counsel as well as by respondents' counsel, the following principles can be culled out.

41.1. The test of admissibility of evidence lies in its relevancy.

c **41.2.** Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand

d appropriately within the framework of law.

41.4. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute
e Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6. While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the
f High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do
g complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.

42. Keeping the above well-settled principles in mind when we examine the facts placed before us, we find that the following situations are/were

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18 (2011) 1 SCC 560 : (2011) 1 SCC (Cri) 463
19 (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310

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prevalent till the present writ petition came to be filed in this Court in December 2012 relating to the murder of Mr Madan Tamang which occurred on 21-5-2010 under the gaze of general public, police and security personnel:

42.1. The occurrence took place at around 10 a.m. in the morning and that too in the heart of the town of Darjeeling. a

42.2. The deceased Madan Tamang at the time of his assassination was the President of the political party called “Akhil Bhartiya Gorkha League” (in short “ABGL”) and there was a deep-rooted rivalry as between the said party and the other party called “Gorkha Jan Mukti Morcha” known as “GJMM”. b

42.3. On the fateful day of the murder of Madan Tamang, he had organised the founder’s day of his party ABGL and he was busily engaged in the preparation of the said meeting at the place where he was slain.

42.4. Though it was not in dispute that police personnel were present at the place of occurrence, no report about the incident came to be registered and that the complaint came to be registered at the instance of the General Secretary of ABGL by around 6.30 p.m. of the same date. c

42.5. The occurrence was vividly captured by the media and other network apart from wide coverage given by the print media.

42.6. Dehors the reliability or otherwise of the transcripts of the intercepted conversation of some of the accused and the office bearers of GJMM, the availability of such transcripts is not in dispute. d

42.7. It is the case of CBI itself that the transcripts of the intercepts have been secured by it and that has been forwarded to the forensic laboratory and the report is awaited.

42.8. The content of the transcripts which was initially published in *The Indian Express* edition of 15-7-2010 allegedly reveals that it related to the period between 9.02 p.m. of 20-5-2010 to 5.12 p.m. of 21-5-2010. e

42.9. It is the further claim of the prosecution and the petitioner that the whole conversation was between Accused 23, 13, 15 and Respondent 10 as well as certain other persons all of whom are the party men of GJMM. f

42.10. The intercepted transcript allegedly disclose that there was conversation between the persons about the manner in which the occurrence took place when the killing of Mr Madan Tamang took place around 10 a.m.

42.11. In the complaint lodged by the General Secretary of ABGL on 21-5-2010 at 6.30 p.m. the complainant referred to the identified assailants, namely, A-9, A-10, A-12, A-13, A-14 and A-15 apart from alleging that Respondents 10 to 15 were continuously threatening Mr Madan Tamang both in the press as well as in the public meeting. g

42.12. In the complaint it was further alleged that in such threats it was specifically averred that one day or the other Madan Tamang would be killed and that therefore the attack at the venue of the meeting of ABGL was preplanned and the tenth respondent was the mastermind along with Respondents 11 to 15. h

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42.13. In the FIR apart from making specific reference to A-9, A-10, A-12, A-13, A-14 and A-15 there is also reference to Respondents 10 to 15.

a **42.14.** In the final report filed by the State Police the offences were under Sections 147, 148, 149, 427, 506 and 302 read with Section 34 IPC. Significantly there was no charge laid under Section 120-B IPC in the charge-sheet.

b **42.15.** The statement of the second accused, Prashant Chhetry under Section 161 CrPC was recorded wherein there is reference to the occurrence and also the implication of Respondents 10 to 15.

42.16. The investigation which was initially carried out by the State Police was subsequently entrusted with its own CID Wing and that thereafter CBI took over the investigation on 19-1-2011.

c **42.17.** In the final report filed by CBI apart from other offences the accused were also charged for the offence under Section 120-B and in Annexure 5 to the final report of CBI, 30 persons were arrayed as accused which consisted of persons who were already arrested and those who were absconding. At that stage only one accused was enlarged on bail.

d **42.18.** While Accused 1 to 7 were arrested and Accused 26 was granted bail, the rest of the accused, namely, A-8 to A-25 and A-27 to A-30 were stated to be absconding right from day one.

42.19. The status about the arrest of some of the accused and many of the absconding accused was prevailing from May 2010 till this writ petition was entertained on 3-12-2012.

e **42.20.** After notice was issued in this writ petition, 5 of the accused were arrested at 5.05 a.m. on 15-2-2013 at a taxi stand of Darjeeling Railway Station.

42.21. It was also stated that apart from the arrest of 5 accused, 13 other accused surrendered after the issuance of the notice in this writ petition.

f **42.22.** The order dated 17-4-2013 of the Sessions Judge, Darjeeling dismissing the bail application disclose that the accused were absconding for a long time and, therefore, bail could not be granted at that stage.

g **42.23.** The learned Sessions Judge also noted that the grant of bail by the High Court in respect of one of the accused was due to the fact that he was in custody for more than 2 years, while the accused for whom the bail was moved before him was absconding for a long time and came to be arrested only on 15-2-2013.

h **42.24.** In the subsequent order dated 18-5-2013 the learned Sessions Judge while granting bail stigmatically noted that none appeared for CBI and that the accused concerned in the bail application were in custody for about 7 months, which does not reflect the correct facts, since the arrest itself came to be made on 15-2-2013 on the date when order was passed on 18-5-2013 it cannot be said that he was in custody for more than 7 months.

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42.25. While after CBI took over investigation, 31 persons have been charge-sheeted two of the prime accused, namely, Nicol Tamang and Dinesh Subba are still absconding while one of the accused is dead.

a

42.26. It is also on record that against the grant of bail by the learned Sessions Judge on 18-5-2013, no steps were taken by CBI for its cancellation, while effort was made by the petitioner for the cancellation of bail by moving the High Court. It is also on record that the High Court having noted certain discrepancies in the grant of bail by the learned Sessions Judge ordered for its cancellation against which the accused concerned moved this Court by way of Special Leave Petitions (Crl.) Nos. 6831-32 of 2013 in which order was passed by this Court on 2-9-2013²⁰.

b

42.27. The person who was holding the deceased Madan Tamang at the time when he was assaulted and was in a seriously injured condition was identified as one Karma Tamang who was found to be living in Nepal and his statement was recorded after CBI took over the investigation.

c

42.28. According to CBI the accused persons are all active supporters of GJMM and due to the prevailing law and order situation in Darjeeling CBI is facing much difficulty since most of the charge-sheeted accused take shelter either in Nepal or Sikkim apart from other hindrances such as the murder of one of its informer in November 2011 and the killing of one of the absconding accused.

d

42.29. According to CBI there is fear psychosis prevailing in Darjeeling and, therefore, there are great hurdles in CBI proceeding with the process of investigation in the usual pace.

42.30. Though on behalf of the petitioner it was contended that the investigation should be entrusted with the NIA or any other Special Investigating Team it was submitted before us by the learned Senior Counsel for the petitioner that the investigation can be continued by CBI itself and that for a fair trial the case can be transferred if not to any place outside the State of West Bengal at least to Calcutta.

e

42.31. Though two of the accused are yet to be apprehended by CBI the trial stated to have commenced in the Darjeeling Court has now been stayed by the orders of this Court.

f

43. Having noted the above features in the case of the prosecution and considering the grievances expressed by the petitioner in the writ petition, the prayer of the writ petitioner is four-fold. The petitioner seeks for the issuance of certiorarified mandamus to quash Charge-sheet No. 76 of 2010 dated 30-8-2010 by CID, Homicide Squad, West Bengal along with Supplementary Charge-sheet No. 04 (03) dated 20-8-2011 by CBI in GR Case No. 148 of 2010; for the issuance of a mandamus for appointing an independent Special

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²⁰ *Alok Kanta Mani Thulung v. Bharti Tamang*, SLPs (Cri) Nos. 6831-32 of 2013, order dated 2-9-2013 (SC), wherein it was directed:

“List these Special Leave Petitions, along with Writ Petition (Crl.) No. 159 of 2012, next week on a non-miscellaneous day.”

h

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Investigation Team comprising of senior officials headed by a competent person or authority of impeccable credentials to conduct the investigation de
a novo into the conspiracy and gruesome murder of the deceased Madan Tamang on 21-5-2010 and alternatively direct for further/fresh investigation by an officer of the level of DIG of CBI or for direction to entrust the investigation to the National Investigation Agency.

44. Having noted the various relevant features, we find force in the submission of the learned counsel for the petitioner that the proceeding of the
b case by the prosecution either by the State Police or by CID and after it was taken over by CBI was not carried out in a satisfactory manner. The very fact that after the occurrence took place on 21-5-2001 there was serious lapse in apprehending many of the accused and the absconding of the prime accused Nicol Tamang and Dinesh Subba till this date disclose that there was total lack of seriousness by the prosecution agency in carrying out the
c investigation. The circumstances pointed out on behalf of the petitioner, namely, the absconding of many of the accused between May 2010 and February 2013 was a very relevant circumstance which gives room for suspicion in the mind of this Court as to the genuineness with which the case of the prosecution was being carried out. The submission that the murder took place due to political rivalry cannot be a ground for anyone, much less,
d the investigation agency to display any slackness or lethargic attitude in the process of investigation. Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial for being dealt with under the provisions of the criminal
e law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred to in the earlier paragraphs, we find that it is our responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried
f on effectively and the perpetrators of crime are duly punished by the appropriate court of law.

45. Inasmuch as the petitioner only seeks for handling of the case of murder of her deceased husband by the prosecuting agency, namely, CBI here with utmost earnestness against all the accused who were involved in the crime, we feel that by issuing appropriate directions in this writ petition
g and by monitoring the same the grievances expressed by the petitioner can be duly redressed and the interest of the public at large can be duly safeguarded.

46. In that view we issue the following directions:

46.1. The pending Sessions case on the file of Sessions Judge, Darjeeling shall be transferred to the Principal District and Sessions Judge of the Calcutta Civil and Sessions Court. Such transfer shall be effected by the
h Sessions Court, Darjeeling to the file of the Principal Judge of the Calcutta

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Civil Court along with all the records and material objects within two weeks from the date of production of the copy of this order.

46.2. On such transfer of records being made by the Sessions Judge, Darjeeling and receipt of the same along with the material objects, the Principal District and Sessions Judge of the Calcutta Civil and Sessions Court shall forthwith commence the proceedings by ensuring the presence of all concerned both accused as well as the prosecution agency. a

46.3. The investigation shall continue to be carried out by CBI but shall be monitored closely by Mr Rajiv Singh, Joint Director, CBI. b

46.4. The investigation by CBI shall ensure that all required evidence are gathered by proceeding to make further investigation in order to ensure that no stone is left unturned in proceeding with the case of the prosecution and all accused involved in the offence are brought before court for being dealt with in accordance with law. c

46.5. The trial which was commenced in the absence of the arrest of the remaining accused shall not be proceeded with until CBI concludes its further investigation and submit its comprehensive report before the transferred court, namely, the Principal District and Sessions Judge of the Calcutta Civil and Sessions Court and such comprehensive report shall be filed expeditiously preferably within three months from the date of pronouncement of this order. d

46.6. The Principal District and Sessions Judge of the Calcutta Civil and Sessions Court shall commence the trial after the comprehensive final report is filed by CBI and all the accused concerned are brought before court for the trial.

46.7. Simultaneously CBI shall file a copy of its comprehensive report before this Court in this writ petition for passing further directions if any required. e

46.8. The Principal District and Sessions Judge of the Calcutta Civil and Sessions Court will also be at liberty to approach this Court and seek for appropriate directions in order to ensure that the directions issued by this Court are duly complied with. f

46.9. It is needless to state that to enable CBI, the prosecuting agency and the trial court to effectively comply with our directions, the State Government, Departments of the Central Government and all other agencies whose assistance is required by CBI or the court shall render the required support without giving room for any delay being caused in proceeding with the trial. g

47. This order is, therefore, passed for the present. The writ petition is kept pending for passing necessary orders if and when required in future. A copy of this order shall be forwarded to the Sessions Judge, Darjeeling, the Principal District and Sessions Judge of the Calcutta Civil and Sessions Court and also to the High Court of Calcutta. h

Annexure P-18

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(BEFORE DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.)

ZAHIRA HABIBULLA H. SHEIKH AND ANOTHER . . . Appellants; a

Versus

STATE OF GUJARAT AND OTHERS . . . Respondents.

Criminal Appeals Nos. 446-49 of 2004[†] with Nos. 450-52 of 2004[‡],
decided on April 12, 2004

A. Constitution of India — Arts. 21 and 19 — Communal riots — “Best Bakery Case” — Macabre killings arising out of communal frenzy — Failure of State machinery to protect citizens’ life, liberties and property, and investigation conducted in a manner helpful to accused persons — Duty of courts arising therefrom to maintain confidence of the public in the judicial system — Courts to ensure that accused persons are punished and the might and authority of the State are not used to shield itself or its men — Deficiencies in investigation or prosecution to be dealt with an iron hand, appropriately within framework of law — Judicial criminal administration to be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards of the type prohibited by the Constitution — Role of State Government in not getting the offenders to book deprecated in the strongest terms — Described as “modern-day ‘Neros’ ” who looked elsewhere whilst innocent children and helpless women were burning — As “wanton boys” who’s “flies” law and justice had become, which they killed for their sport — And as “fences that swallowed their crops” — Judiciary — Administration of justice — Nature of — Criminal Procedure Code, 1973 — S. 378 b

B. Jurisprudence — “Justice blindfolded” — Implication of — Held, courts blind only to identity of parties — Not blind to truth of the cause in disregard of their duty to prevent miscarriage of justice — Natural justice — Bias c

Facts

The case commonly came to be known as the “Best Bakery Case”. Between 8.30 p.m. of 1-3-2002 and 11.00 a.m. of 2-3-2002, a business concern known as “Best Bakery” at Vadodara was burnt down by an unruly mob of a large number of people. In the ghastly incident 14 persons died. The attacks were stated to be a part of retaliatory action to avenge the killing of 56 persons burnt to death in the *Sabarmati Express* near Godhra in Gujarat. Z, the appellant, was the main eyewitness who lost her family members, including helpless women and innocent children in the gruesome incident. Many persons other than Z were also eyewitnesses. The accused persons were the alleged perpetrators of the crime. After investigation a charge-sheet was filed in June 2002. During trial the purported eyewitnesses resiled from the statements made during investigation. Faulty and biased investigation as well as perfunctory trial were said to have marred the sanctity of the entire exercise undertaken to bring the culprits to book. By judgment dated 27-6-2003, the trial court directed acquittal of the accused persons. Z appeared before the National Human Rights Commission stating that d

[†] Arising out of SLPs (Ctrl.) Nos. 538-41 of 2004

[‡] Arising out of SLPs (Ctrl.) Nos. 1039-41 of 2004 e

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she was threatened by powerful politicians not to depose against the accused persons.

- a On 7-8-2003 an appeal was filed by the State against the judgment of acquittal before the Gujarat High Court. The Gujarat High Court upheld the acquittal of the respondents-accused. Along with the said appeal, two other petitions were disposed of. The prayers made by the State in those petitions for adducing additional evidence under Section 391 CrPC and/or for directing retrial were rejected. Consequentially, prayer for examination of witnesses under Section 311 CrPC was also rejected. Thereafter, NHRC moved the Supreme
- b Court and its special leave petition was treated as a petition under Article 32 of the Constitution. Z and another organisation, Citizens for Justice and Peace, filed an SLP challenging the judgment of acquittal affirmed by the High Court.

These appeals raised important issues regarding witness protection, the quality and credibility of the evidence before court, the improper conduct of trial by the Public Prosecutor and the role of the investigating agency itself, which

- c was alleged to be perfunctory and not impartial.
- Allowing the appeals to the extent and in the terms below, the Supreme Court

Held :

If the State's machinery fails to protect citizen's life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is but appropriate that the Supreme Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members. (Para 22)

- e Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administering justice, and not to ignore or turn the mind/attention of the court away from the truth of the cause or
- f lis before it, in disregard of its duty to prevent miscarriage of justice. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice — often referred to as the duty to vindicate and uphold the “majesty of the law”. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case
- g before it. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts, and erode in stages the faith inbuilt in the judicial system, ultimately destroying the very justice-delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings. (Paras 54 and 35)

- h Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield itself or its men. It should be ensured that they do not wield such powers, which under the Constitution have to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand, appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and

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material facts are brought on record so that there might not be miscarriage of justice. (Para 56)

Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749 : 2003 SCC (Cri) 1918; *Gurcharan Dass Chadha v. State of Rajasthan*, AIR 1966 SC 1418 : (1966) 2 SCR 678 : 1966 Cri LJ 1071; *K. Anbazhagan v. Supdt. of Police*, (2004) 3 SCC 767, relied on

If one even cursorily glances through the records of the present case, one gets a feeling that the justice-delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. The Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice. (Para 68)

The role of the State Government also leaves much to be desired. One gets a feeling that there was really no seriousness in the State's approach in assailing the trial court's judgment. This is clearly indicated by the fact that the first memorandum of appeal filed was an apology for the grounds. A second amendment was done, that too after the Supreme Court had expressed its unhappiness over the perfunctory manner in which the appeal was presented and the challenge made. That also was not the end of the matter. There was a subsequent petition for amendment. All this sadly reflects on the quality of determination exhibited by the State and the nature of seriousness shown to pursue the appeal. Those who are responsible for protecting life and property and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern-day "Neros" were looking elsewhere when Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime could be saved or protected. Law and justice had become flies in the hands of these "wanton boys". When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments. (Paras 68 and 69)

Julia A.F. Cabney: "*Little Things*" referred to

Criminal trials should not be reduced to be mock trials or shadow-boxing or fixed trials. Judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution. (Para 68)

It is no doubt true that the accused persons have been acquitted by the trial court and the acquittal has been upheld, but if the acquittal is unmerited and based on tainted evidence, tailored investigation, unprincipled prosecution and perfunctory trial and evidence of threatened/terrorised witnesses, it is no acquittal in the eye of the law and no sanctity or credibility can be attached and given to the so-called findings. It seems to be nothing but a travesty of truth, fraud on the legal process and the resultant decisions of courts — coram non judis and non est. There is, therefore, every justification to call for interference in these appeals. (Para 64)

C. Constitution of India — Art. 139-A(2) — Transfer of case — When warranted — If the Supreme Court “deems it expedient so to do for the ends of justice” — Ends of justice — Principle that justice should not only be done but should be seen to be done — When attracted — On facts, on basis of the ample evidence on record, glaringly demonstrating a subversion of the justice-delivery system with no congenial atmosphere still prevailing in the State of Gujarat, retrial directed in adjoining State of Maharashtra — Criminal Procedure Code, 1973 — S. 406 — Maxims

D. Constitution of India — Art. 139-A(2) — Retrial ordered on transfer of case — Directions issued for conduct of retrial — Affected parties/complainants given liberty to have a say in appointment of the Public Prosecutor — Public Prosecutor permitted assistance of one lawyer — Fees and expenses of Public Prosecutor and trial initially to be borne by State to which case transferred subject to reimbursement by State from which case transferred — That State to provide all necessary assistance for conduct of retrial — Witnesses to be given protection not only by that State, but in case any witness asks for protection transfer State also to provide such protection as deemed necessary — Criminal Procedure Code, 1973 — Ss. 406 and 386(1), 24 and 225 — Retrial of case on transfer — Public Prosecutor — Appointment of — Say of affected parties/complainants in

It is one of the salutary principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case or that there are general allegations of a surcharged atmosphere against a particular community alone does not suffice. The court has to see whether the apprehension is reasonable or not. The state of mind of the person who entertains the apprehension no doubt is a relevant factor but not the only determinative or concluding factor. But the court must be fully satisfied about the existence of such conditions which would render inevitably impossible the holding of a fair and impartial trial, uninfluenced by extraneous considerations that may ultimately undermine the confidence of a reasonable and right-thinking citizen, in the justice-delivery system. The apprehension must appear to the court to be a reasonable one. (Para 74)

Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167 : 1979 SCC (Cri) 934; *G.X.*

Francis v. Banke Bihari Singh, AIR 1958 SC 309 : 1958 Cri LJ 569, *relied on*

Keeping in view the peculiar circumstances of the case, and the ample evidence on record, glaringly demonstrating a subversion of the justice-delivery system with no congenial and conducive atmosphere still prevailing in the State of Gujarat, it is directed that the retrial shall be done by a court under the jurisdiction of the Bombay High Court. The Chief Justice of the said High Court is requested to fix up a court of competent jurisdiction. (Para 75)

The State Government is directed to appoint another Public Prosecutor and it shall be open to the affected persons to suggest any name which may also be taken into account in the decision to so appoint. Though the witnesses or the victims do not have any choice in the normal course to have a say in the matter of appointment of a Public Prosecutor, in view of the unusual factors noticed in this case, to accord such liberties to the complainant parties, would be appropriate. (Para 76)

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The fees and all other expenses of the Public Prosecutor who shall be entitled to assistance of one lawyer of his choice shall initially be paid by the State of Maharashtra, which will thereafter be entitled to get the same reimbursed from the State of Gujarat. The State of Gujarat shall ensure that all the documents and records are forthwith transferred to the court nominated by the Chief Justice of the Bombay High Court. The State of Gujarat shall also ensure that the witnesses are produced before the court concerned whenever they are required to attend that court. Necessary protection shall be afforded to them so that they can depose freely without any apprehension of threat or coercion from any person. In case, if any witness asks for protection, the State of Maharashtra shall also provide such protection as deemed necessary, in addition to the protection to be provided for by the State of Gujarat. All expenses necessary for the trial shall be initially borne by the State of Maharashtra, to be reimbursed by the State of Gujarat. (Para 77)

E. Criminal Procedure Code, 1973 — S. 173(8) — Reinvestigation — Scope for — On facts, since there was unanimity on part of both parties that investigation was tainted, biased and not fair, though for different reasons, investigating agency directed to act in terms of S. 173(8) — Director General of Police directed to monitor such reinvestigation

Section 173(8) CrPC permits further investigation, and even dehors any direction from the court as such it is open to the police to conduct proper investigation even after the court has taken cognizance of any offence on the strength of a police report submitted earlier. (Para 79)

The role of the investigating agency is perceived differently by the parties, but there is unanimity in their stand that it was tainted, biased and not fair. While the accused persons accuse it for alleged false implication, the victims' relatives like the appellant, allege its efforts to be merely to protect the accused. It would be desirable for the investigating agency or those supervising the investigation, to act in terms of Section 173(8) CrPC, as the circumstances seem to or may so warrant. The Director General of Police, Gujarat is directed to monitor the reinvestigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant. (Paras 2, 78 and 60)

F. Jurisprudence — Fair Trial — Genesis of principle of fair trial — Its pervasiveness and centrality in laws and administration of justice — Its nature — A constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation — Constitution of India — Arts. 21 and 14 — Fair Trial

By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. The principle of fair trial now informs and energises many areas of the law. The operating principles for a fair trial permeate the common law in both civil and criminal contexts. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation — peculiar at times and related to the nature of crime, persons involved — directly or operating behind social impact and societal needs and even so many powerful balancing factors, which may come in the way of administration of criminal justice system. The principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the laws of evidence.

(Paras 32 to 34)

G. Constitution of India — Arts. 21 and 14 — Fair and open trial — Fair trial — Fair hearing — Cardinality of, in protection of human rights — Inherence of fair hearing in “due process” and the rule of law — Natural justice — Audi alteram partem

a

The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. Since a fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

b

(Paras 36 and 39)

H. Constitution of India — Arts. 21 and 14 — Fair Trial — What is — Held, fair trial for a criminal offence consists not only in technical observance of frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice — Words and phrases — “Fair trial” — Meaning of — Jurisprudence

c

(Paras 36 and 40)

I. Constitution of India — Arts. 21 and 14 — Fair trial — Balancing of competing interests of the accused, the victim and society entailed — A trial which is primarily aimed at ascertaining the truth has to be fair to all concerned — Interests of society not to be treated with complete disdain — In fact, public interest in proper administration of justice to be given as much importance, if not more, as interests of the individual accused — In this courts have a vital role to play — Repeated emphasis by Supreme Court in this regard pointed out — Criminal Trial — Prosecution — Role of — Held, it is the community that acts through the State and prosecuting agencies — Jurisprudence

d

J. Criminology — Crimes — Nature of — Held, crimes are public wrongs, in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to society in general

e

The concept of fair trial entails the familiar triangulation of interests of the accused, the victim and society, and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as persona non grata. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson’s eye to the needs of society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Public interest in the proper administration of justice must be given as much importance, if not more, as the interests of the individual accused. In this courts have a vital role to play.

f

g

The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The Supreme Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to society in general.

(Paras 30, 35, 36, 42 and 49)

h

K. Criminal Trial — Presiding Judge — Purpose of and role of — Held, is the discovery, vindication and establishment of truth — Hence, the trial

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should be a search for the truth and not a bout over technicalities — Presiding Judge must cease to be a spectator and a mere recording machine — He must become a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community — Restraints on processes for determining the truth — Criminal Procedure Code, 1973 — Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247 — Purpose of and role of court in criminal trial — Judicial process — Raison d'être for existence of courts of justice

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of courts of justice. However, restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. (Paras 30 and 32)

Pearse v. Pearse, (1846), 1 De G. & Sm. 12; 63 ER 950, referred to

A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine, by becoming a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to the proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. (Paras 35, 38, 43, 46 and 55)

Jennison v. Baker, (1972) 1 All ER 997 : (1972) 2 QB 52 : (1972) 2 WLR 429 (CA), relied on

L. Criminal Procedure Code, 1973 — S. 311 — Nature, scope and object of S. 311 r/w S. 165, Evidence Act, 1872 — Complementary nature of powers under — Two parts to S. 311: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be “essential to the just decision of the court” — When power under to be exercised, discussed in detail — Court to separate “grain from chaff” — Explained that “essential” is to be construed as it would be by an active and alert mind and not one which is bent to abandon and abdicate — Held, S. 311 does not confer on any party any right to examine, cross-examine and re-examine any witness — Evidence Act, 1872 — S. 165

M. Criminal Procedure Code, 1973 — Ss. 311 and 225 — Prosecuting agency not acting in requisite manner — Special necessity for exercise of

powers under S. 311 r/w S. 165 Evidence Act, 1872 and courts not playing into hands of such prosecuting agency in case of, stressed

- a* The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 CrPC. These sections confer vast and wide powers on presiding officers of courts to elicit all necessary materials by playing an active role in the evidence-collecting process. The object of the section is to enable the court to arrive at the truth, irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case and to uphold the truth.

(Paras 43 and 44)

- b* Section 311 CrPC consists of two parts i.e.: (*i*) giving a discretion to the court to examine the witness at any stage, and (*ii*) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution: that the discretionary powers should be invoked as the exigencies of justice require, and exercised judiciously with circumspection and consistently with the provisions of the Code of Criminal Procedure, 1973. Section 311 does not confer on any party any right to examine, cross-examine and re-examine any witness. This is a power given to the court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received, in exceptional cases or extraordinary situations the court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The court can certainly be guided by the metaphor — separate the grain from the chaff — and in a case which has telltale imprints of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case — “essential” to an active and alert mind and not to one which is bent to abandon or abdicate.

(Paras 44, 45 and 46)

- f* *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595, *relied on*

- g* The power under Section 311 CrPC is exercised and the evidence is examined neither to help the prosecution nor the defence. However, if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishful or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts should not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

(Paras 43, 46 and 55)

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N. Criminal Procedure Code, 1973 — Ss. 391 and 231, 242, 244, 233, 243 & 247 — Admissibility of evidence initially or as additional evidence distinguished from its efficacy, reliability and acceptability — Evidence Act, 1872 — Ss. 5 and 3

a

The question of admission of evidence, initially or as additional evidence under Section 391 CrPC, is distinct from the efficacy, reliability and its acceptability for consideration of claims in the appeal on merits.

(Paras 59 and 24)

The High Court has observed that the question of accepting the application for additional evidence would be dealt with separately, but has in fact dealt with it in a cryptic manner, practically in one paragraph, and did not think it necessary to accept the additional evidence — but at the same time made threadbare analysis of the affidavits as if it had accepted them as additional evidence and was testing their acceptability. The High Court should not have thrown out the application, as well as the materials sought to be brought on record, even at the threshold and yet gone on to surmise on reasons, at the same time, professing to decide on its correctness.

b

(Paras 59, 24 and 71)

c

O. Criminal Procedure Code, 1973 — S. 391 — Grounds for not admitting additional evidence — Veracity of affidavits sought to be adduced as additional evidence doubted by High Court on grounds that witnesses who had filed them were of unsound mind, untruthful, capable of being manipulated, and were in hands of persons using them with “oblique motives”, without any material or reasonable and concrete basis to support such conclusions — Such finding made by High Court after holding that the affidavits were not being taken on record — Held, course adopted by High Court improper and logic applied by High Court to reject the affidavits unsustainable

d

(Paras 20, 11 and 12)

P. Criminal Procedure Code, 1973 — Ss. 391 and 386 — Relative operation of Ss. 391 and 386 — Held, S. 386 does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal — Ss. 391 and 386 are to be harmoniously considered to enable the appeal to be considered and disposed of in the light of additional evidence as well — S. 391 is in the nature of an exception to the general rule

e

Q. Criminal Procedure Code, 1973 — S. 391 — Nature, scope and object of — Legislative intent behind, indicated — Power under, when and for whom to be exercised, discussed in detail — Wide discretion of appellate court — Requirement of recording of reasons safety valve on — Importance of pragmatic considerations — Impermissibility of filling of any lacunae — Question of sufficiency of evidence already on record vis-à-vis the admissibility of additional evidence sought to be adduced — Held, it cannot be laid down as a rule of universal application that the court has to first find out whether evidence already on record is sufficient — Both exercises, that is, whether evidence already on record is sufficient and admissibility of additional evidence sought to be adduced, have to be taken up together — Further held, when circumstances clearly indicate prima facie substance in application for adduction of additional evidence, appropriate course for courts would be to admit additional evidence for final adjudication, so that acceptability or otherwise of evidence tendered by way of additional evidence can be tested properly, and legally tested in the context of the

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probative value of the two versions — There cannot be a straitjacket formula or rule of universal application when alone it can be done and when not — Whether appellate court maintains or upsets verdict of trial court depends upon relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused — This is not a factor in determining the admissibility of additional evidence sought to be adduced

R. Criminal Procedure Code, 1973 — S. 391 — Grounds for not admitting additional evidence — Held, that the affidavits sought to be adduced as additional evidence were also filed in the Supreme Court, in another proceeding, is no reason in the eye of the law to refuse to take on record additional evidence (Para 24)

S. Criminal Procedure Code, 1973 — Ss. 386 and 391 — Retrial — Additional evidence taken on record — Held, retrial not a necessary corollary when additional evidence taken on record

Section 391 CrPC, 1973 is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered, to enable the appeal to be considered and disposed of in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence, who may file an application in this regard, in an appropriate case. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted by arriving at the truth, that is, the prevention of the guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused; and if the appellate court finds that certain evidence is necessary in order to enable it to give a correct and proper finding, it would be justified in taking action under Section 391. However, there is no question of filling of any lacuna in the case on hand. (Paras 47, 48, 58, 21 and 50)

Rambhau v. State of Maharashtra, (2001) 4 SCC 759 : 2001 SCC (Cri) 812; *Rajendra Prasad v. Narcotic Cell*, (1999) 6 SCC 110 : 1999 SCC (Cri) 1062; *Ram Chander v. State of Haryana*, (1981) 3 SCC 191 : 1981 SCC (Cri) 683; *Jamatraj Kewalji Govani v. State of Maharashtra*, AIR 1968 SC 178 : (1967) 3 SCR 415 : 1968 Cri LJ 231; *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595, *relied on*

There is no restriction in the wording of Section 391 either as to the nature of the evidence, or that the provisions of the section are only to be invoked when formal proof for the prosecution is necessary. The matter is one of discretion of the appellate court and any approach without pragmatic consideration defeats the

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very purpose for which Section 391 CrPC, 1973 has been enacted. However, the same has to be exercised judicially and the legislature has put a safety valve by requiring the recording of reasons. The necessity for additional evidence arises when the court feels that some evidence which ought to have been before it is not there or that some evidence has been left out or erroneously brought in. It is true that merely because an affidavit has been filed stating that the witnesses were threatened, as a matter of routine, additional evidence should not be permitted. But when the circumstances, as in this case, clearly indicate that there is some truth or prima facie substance in the grievance made, having regard to background of events that happened, the appropriate course for the courts would be to admit additional evidence for final adjudication, so that the acceptability or otherwise of evidence tendered by way of additional evidence can be tested properly, and legally tested in the context of the probative value of the two versions. There cannot be a straitjacket formula or rule of universal application when alone it can be done and when, not. (Paras 49, 59, 58, and 73)

In all cases, it cannot be laid down as a rule of universal application, that the court has to first find out whether the evidence already on record is sufficient. The nature and quality of the evidence on record is also relevant. If the evidence already on record is shown or found to be tainted, tailored to suit or help a particular party or side and the real truth has not and could not have been spoken or brought forth during trial, it would constitute merely an exercise in futility, if it is considered first whether the evidence already on record is sufficient to dispose of the appeals. Disposal of appeal does not mean disposal for statistical purposes but effective and real disposal to achieve the object of any trial. The exercise has to be taken up together. It is not that the Court has to be satisfied that the additional evidence would be necessary for rendering a verdict different from what was rendered by the trial court. Merely because the High Court permits additional evidence to be adduced, it does not necessarily lead to the conclusion that the judgment of the trial court was wrong. In a given case even after assessing the additional evidence, the High Court can maintain the verdict of the trial court and similarly the High Court on consideration of the additional evidence can upset the trial court's verdict. It all depends upon the relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused. Moreover, whenever additional evidence is accepted, retrial is not a necessary corollary. (Paras 58, 59, 73 and 21)

Nowhere has the High Court effectively dealt with the application under Section 391 as a part of the exercise to deal with and dispose of the appeal. In fact the High Court dealt with it practically in one paragraph, accepting the stand of counsel for the accused that the consideration of the appeal has to be limited to the records sent up under Section 385(2) CrPC for disposal of the appeal under Section 386. This perception of the powers of the appellate court and misgivings as to the manner of disposal of an appeal per se vitiates the decision rendered by the High Court. If the stand of counsel for the accused as was accepted by the High Court is maintained, it would mean that Section 391 CrPC would be a dead letter in the statute-book. (Para 58)

T. Criminal Procedure Code, 1973 — Ss. 386(a) and 391 — Retrial when to be ordered — Held, whether retrial under S. 386 or taking up of additional evidence under S. 391 proper procedure will depend on facts and circumstances of each case — No straitjacket formula of universal and invariable application can be formulated — Ultimately courts must keep in

- view their very raison d'être, that is, to find out the truth and dispense justice impartially, in this regard — On facts, case found to be one writ large with serious infirmities, telltale even to the naked eye of an ordinary man, arbitrariness, where truth had become a casualty, without parallel, and which stood on its own as an exemplary one, special of its kind, necessary to prevent its recurrence and therefore fit and proper for retrial — Further held, a retrial in the case on hand was essentially called for, in order to save and preserve the justice-delivery system, unsullied and unscathed by vested interests — Retrial directed to be taken up on a day-to-day basis, to be concluded by December 2004**

- Whether a retrial under Section 386 or taking up of additional evidence under Section 391 is the proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated. In the ultimate analysis whether it is a case covered by Section 386 or Section 391 CrPC, 1973, the underlying object which the court must keep in view is the very reason for which the courts exist i.e. to find out the truth and dispense justice impartially and ensure also that the very process of courts is not employed or utilized in a manner which gives room to unfairness or lend themselves to be used as instruments of oppression and injustice.** (Paras 52, 53 and 73)

- It is not necessary to highlight all the infirmities in the judgment of the High Court or the approach of the trial court lest nothing credible or worth mentioning remains in the process. There are several infirmities which are telltale even to the naked eye of an ordinary common man. The entire approach of the High Court suffers from serious infirmities, its conclusions lopsided and lacks proper or judicious application of mind. Arbitrariness is found writ large on the approach as well as the conclusions arrived at in the judgment under challenge, in unreasonably keeping out relevant evidence from being brought on record. This appears to be a case where the truth has become a casualty in the trial. It is a fit and proper case, in the background of the nature of additional evidence sought to be adduced and the perfunctory manner of trial conducted on the basis of tainted investigation, where a retrial is a must and essentially called for in order to save and preserve the justice-delivery system unsullied and unscathed by vested interests. The case on hand is without parallel and comparison to any of the cases where even such grievances were sought to be made. It stands on its own as an exemplary one, special of its kind, necessary to prevent its recurrence.** (Paras 73, 70, 59 and 21)

- If the accused persons were not on bail at the time of conclusion of the trial, they shall go back to custody, if on the other hand they were on bail that order shall continue unless modified by the court concerned. It would be appropriate if the retrial is taken up on day-to-day basis keeping in view the mandate of Section 309 CrPC and completed by the end of December 2004.** (Para 85)

- U. Criminal Procedure Code, 1973 — S. 391 — Contradictions/inconsistency between evidence adduced earlier and additional evidence sought to be adduced — Admissibility of additional evidence in light of — Creditworthiness and acceptability of depositions made in earlier evidence or additional evidence due to contradictions/inconsistencies therebetween, to be considered only after admission — Additional evidence not to be rejected at threshold merely because of contradictions, especially in sensitive cases like the present one — Witness claiming that he did not speak truthfully**

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before trial court but was willing to speak the truth before appellate court — Power under S. 391 to be exercised and such testimony to be accepted only if appellate court is satisfied for reasons on record that such a course should be adopted — In this regard, the court can consider whether the party concerned had a fair opportunity to speak the truth earlier

It is only after admission, that the court should consider in each case whether on account of a contradiction between the evidence adduced earlier before the court and the testimony allowed to be given as additional evidence, which of them or any one part or parts of the depositions are creditworthy and acceptable, after a comparative analysis and consideration of the probabilities and probative value of the materials for adjudging the truth. To reject additional evidence merely because of contradictions, and that too in a sensitive case like this one, with a horror and terror oriented history of its own, would amount to a conspicuous omission and deliberate dereliction of discharging functions judiciously and with a justice-oriented mission. In a given case when the court is satisfied that for reasons on record the witness had not stated truthfully before the trial court and was willing to speak the truth before it, the power under Section 391 CrPC, 1973 is to be exercised. However, it is not that in every case where the witness, who had given evidence before court, wants to change his mind and is prepared to speak differently, that the court concerned should readily accede to such a request by lending its assistance. If the witness who deposed one way earlier comes before the appellate court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case, accept it.

(Paras 59, 24, 71 and 45)

Whether the witness had told the truth before the trial court or as stated in the affidavit, were matters for assessment of evidence when admitted and tendered, and when the affidavit itself was not tendered as evidence, the question of analysing it to find fault was not the proper course to be adopted by the High Court. The affidavits were filed to emphasise the need for permitting additional evidence to be taken and for being considered as the evidence themselves. Even the conclusions arrived at with reference to those affidavits do not appear to be correct and seem to suffer from apparent judicial obstinacy and an avowed determination to reject them. For example, to brand a person as not truthful because a different statement was given before the trial court, unmindful of the earliest statement given during investigation and the reasons urged for turning hostile before the trial court negates the legislative intent and purpose of incorporating Section 391 in CrPC, 1973.

(Paras 59, 24 and 71)

Even if the appellant Z had taken different stands as concluded by the High Court, it was obligatory for the Court to find out as to what was the correct stand and the real truth, which could have been decided and examined by accepting the prayer for additional evidence. The disclosed purpose in the State Government's prayer with reference to the affidavits was to bring to the High Court's notice the situation which prevailed during trial and the reasons as to why the witnesses gave the version as noted by the trial court.

(Paras 24 and 71)

V. Criminal Procedure Code, 1973 — Ss. 157, 161, 164, 311 and 391 — Defective investigation — Effect of and examination of prosecution evidence in case of — Course to be adopted by court detailed — Court exhorted to

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adopt active and analytical role and to have recourse to Ss. 391 and 311 CrPC, 1973 and S. 165 Evidence Act, 1872 if necessary, and to evaluate entire evidence — Accused not to be acquitted solely on account of the defect in investigation — To do so would tantamount to playing into hands of investigating officer if investigation is designedly defective and perpetuating the designed mischief — Evidence Act, 1872 — S. 165 — Criminal Trial — Investigation — Defective investigation

a

W. Criminal Procedure Code, 1973 — Ss. 386(a) and 157 — Retrial — Dishonest and faulty investigation — High Court coming to definite conclusion as to — Held, per se sufficient justification to have directed retrial of the case

b

X. Criminal Procedure Code, 1973 — Ss. 157, 161 and 164 — Designedly dishonest and faulty investigation — Possible purposes therefor — Held, the only purpose of such an investigation cannot be false implication, but equally it is possible that the investigating agency was trying to shield the accused — On facts held, High Court's conclusion in this regard not proper

c

If the lapse or omission is committed by the investigating agency or because of negligence, the prosecution evidence is required to be examined de hors such omissions, to find out whether the said evidence is reliable or not. The court has to adopt an active and analytical role. The contaminated conduct of officials should not stand in the way of courts getting at the truth by having recourse to Sections 311, 391 CrPC, 1973 and Section 165 of the Evidence Act, 1872 at the appropriate and relevant stages and evaluating the entire evidence. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective and the designed mischief would be perpetuated with a premium to the offenders and justice would not only be denied to the complainant party but also made an ultimate casualty.

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(Paras 61 and 62)

Karnel Singh v. State of M.P., (1995) 5 SCC 518 : 1995 SCC (Cri) 977; *Paras Yadav v. State of Bihar*, (1999) 2 SCC 126 : 1999 SCC (Cri) 104; *Ram Bihari Yadav v. State of Bihar*, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085; *Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518 : 2003 SCC (Cri) 641, *relied on*

f

Right from the beginning, the stand of the appellant Z was that the investigating agency was trying to help the accused persons and so was the Public Prosecutor. If the investigation was faulty, it was not the fault of the victims or the witnesses. If the same was done in a manner with the object of helping the accused persons as it appears to be apparent from what has transpired so far, it was an additional ground just and reasonable as well for accepting the additional evidence.

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(Paras 60 and 24)

The High Court has come to a definite conclusion that the investigation carried out by the police was dishonest and faulty. That was and should have been per se sufficient justification to direct a retrial of the case. There was no reason for the High Court to come to the further conclusion of its own about false implication without a concrete basis, and that too merely on conjectures. On the other hand, the possibility of the investigating agency trying to shield the accused persons keeping in view the methodology adopted and turn of events,

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can equally not be ruled out. When the investigation is dishonest and faulty, it cannot be only with the purpose of false implication. (Paras 70, 71 and 20)

Y. Criminal Trial — Witnesses — Generally — Primacy of witnesses in administration of criminal justice — Trial vitiated if witnesses incapacitated — Reasons for incapacitation — Witness protection — Need for — Broader public and societal interests therein — Role of State in witness protection pointed out — Pressing and urgent need for legislative measures to protect witnesses highlighted — Imperativeness of initiation of “witness protection programmes” along the lines of those adopted in other nations stressed (Paras 41, 42 and 57)

Vineet Narain v. Union of India, (1998) 1 SCC 226 : 1998 SCC (Cri) 307, *relied on*

Z. Criminal Procedure Code, 1973 — Ss. 231 and 242 — Non-examination of witnesses — Permissible grounds for — Particular order of examination of witnesses set — Departure from — When permissible — Evidence Act, 1872 — Ss. 134 and 135 — Criminal Trial

It is true that the prosecution is not bound to examine each and every person who has been named as a witness. A person named as a witness may be given up when there is material to show that he has been gained over or that there is no likelihood of the witness speaking the truth in court. (Para 71)

The reasons indicated by the High Court to justify non-examination of the eyewitnesses are not sustainable. In respect of one it has been said that whereabouts of the witness may not be known. There is nothing on record to show that efforts were made by the prosecution with any meticulous care or seriousness to produce the witness for tendering evidence, and yet the net result was “untraceable”. Another aspect which has been lightly brushed aside by the High Court is that one person who was to be examined on a particular date was examined earlier than the date fixed. This unusual conduct by the prosecutor should have been seriously taken note of by the trial court and also by the High Court. (Para 71)

So far as non-examination of some injured relatives is concerned, the High Court has held that in the absence of any medical report, it appears that they were not present during the incident and, therefore, held that the prosecutor might have decided not to examine them because there was no injury. This is nothing but a wishful conclusion based on presumption. (Para 73)

AA. Criminal Procedure Code, 1973 — Ss. 231 and 242 — Non-examination of witnesses on ground that witnesses not present during incident — Conclusion based on the fact that statements of such witnesses purportedly recorded in language not known to them — Held, not a ground by itself sufficient to conclude that such witnesses were not present, for it was not a requirement of law that the language of statement recorded under S. 161 CrPC be known to the witness — Moreover, merely because witnesses could only speak the said language, and were not literate in it was not enough to conclude that they did not know the language

AB. Criminal Procedure Code, 1973 — Ss. 161 and 162 — Language of statement recorded under — Held, does not have to be language known to person making statement — Moreover, such person does not have to sign the statement either

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- a It is not a requirement in law that the statement under Section 161 CrPC has to be recorded in the language known to the person giving the statement. As a matter of fact, the person giving the statement is not required to sign the statement as is mandated in Section 162 CrPC. (Para 71)

- b The High Court noted that the statements of certain witnesses under Section 161 CrPC were recorded in Gujarati language though the witnesses did not know Gujarati, and therefore concluded that they were not present during the incident and, therefore, question of their statement being recorded by the police did not arise. There was no material before the High Court for coming to a finding that the persons did not know Gujarati since there may be a person who could converse fluently in a language though not literate to read and write. The reasoning is erroneous for more reasons than one and the conclusion of the High Court holding that the persons were not present during the incident is untenable. (Para 71)

- c **AC. Criminal Trial — Witnesses — Related witnesses — Reliance on evidence of relatives of accused, though there is no legal bar thereagainst, on facts of case, deprecated** (Paras 72 and 59)

AD. Criminal Procedure Code, 1973 — Ss. 24 and 225 — Public Prosecutor — Role and duties of — Duty of court in case of dereliction of duty by prosecuting agency

- d Though a Public Prosecutor is not supposed to be a persecutor, yet the minimum that was required to be done, to fairly present the case of the prosecution, was not done. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts should not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness. (Paras 71, 56 and 43)

- e In the present case, the Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the court. (Para 68)

AE. Criminal Procedure Code, 1973 — Ss. 231 & 242 and 173 & 157 — Investigating officer — Presence of during trial

- f Time and again, the Supreme Court has stressed upon the need of the investigating officer being present during trial unless compelling reasons exist for a departure. In the instant case, this does not appear to have been done, and there is no explanation whatsoever why it was not done. Even the Public Prosecutor does not appear to have taken note of this desirability. (Para 71)

Shailendra Kumar v. State of Bihar, (2002) 1 SCC 655 : 2002 SCC (Cri) 230 : (2001) 8 Supreme 13, *relied on*

- g **AF. Criminal Trial — Proof of charge**

The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny. (Para 38)

- h **AG. Criminal Procedure Code, 1973 — S. 354(b) — Contents of judgment — Reasons not rendered by High Court while giving order, indicating that they would be subsequently given — Highlighted that such a practice on part of High Courts had been deprecated by the Supreme Court in several cases, and was impermissible — Explained why such a practice**

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was permissible in the case of the Supreme Court and not the High Courts — Civil Procedure Code, 1908 — Or. 20 R. 5 (Paras 80 and 82)

State of Punjab v. Jagdev Singe Talwandi, (1984) 1 SCC 596 : 1984 SCC (Cri) 135 : AIR 1984 SC 444, *relied on*

AH. Constitution of India — Art. 136 — Expunction of unwarranted remarks — Course adopted by High Court deprecated — Need for decency, decorum and judicial discipline stressed — Held, proceedings of court normally reflect true state of affairs — Therefore, it was not warranted of the High Court to refer to certain objectionable submissions in its judgment and then state that no serious note was being taken of them (Para 83)

AI. Criminal Trial — Fair Trial — Question, whether on facts, accused could be accorded a fair trial given the media attention that had been given to them, left open for an appropriate case where the media is duly and effectively represented (Para 84)

D-M/29920/CR

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The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— Leave granted.

- a 2. The present appeals have several unusual features and some of them pose very serious questions of far-reaching consequences. The case is commonly known as “Best Bakery Case”. One of the appeals is by Zahira who claims to be an eyewitness to macabre killings allegedly as a result of communal frenzy. She made statements and filed affidavits after completion of trial and judgment by the trial court, alleging that during trial
- b she was forced to depose falsely and turn hostile on account of threats and coercion. That raises an important issue regarding witness protection besides the quality and credibility of the evidence before court. The other rather unusual question interestingly raised by the State of Gujarat itself relates to improper conduct of trial by the Public Prosecutor. Last, but not the least, that the role of the investigating agency itself was perfunctory and not impartial.
- c Though its role is perceived differently by the parties, there is unanimity in their stand that it was tainted, biased and not fair. While the accused persons accuse it for alleged false implication, the victims’ relatives like Zahira allege its efforts to be merely to protect the accused.

- d 3. The appeals are against judgment of the Gujarat High Court in Criminal Appeal No. 956 of 2003 upholding acquittal of the respondents-accused by the trial court. Along with the said appeal, two other petitions, namely, Criminal Miscellaneous Application No. 10315 of 2003 and Criminal Revision No. 583 of 2003 were disposed of. The prayers made by the State for adducing additional evidence under Section 391 of the Code of Criminal Procedure, 1973 (in short “the Code”), and/or for directing retrial were rejected. Consequentially, prayer for examination of witnesses under
- e Section 311 of the Code was also rejected.

4. In a nutshell, the prosecution version which led to trial of the accused persons is as follows:

- f Between 8.30 p.m. of 1-3-2002 and 11.00 a.m. of 2-3-2002, a business concern known as “Best Bakery” at Vadodara was burnt down by an unruly mob of a large number of people. In the ghastly incident 14 persons died. The attacks were stated to be a part of retaliatory action to avenge the killing of 56 persons burnt to death in *Sabarmati Express*. Zahira was the main eyewitness who lost family members including helpless women and innocent children in the gruesome incident. Many persons other than Zahira were also eyewitnesses. The accused persons were the perpetrators of the crime. After
- g investigation charge-sheet was filed in June 2002.

5. During trial the purported eyewitnesses resiled from the statements made during investigation. Faulty and biased investigation as well as perfunctory trial were said to have marred the sanctity of the entire exercise undertaken to bring the culprits to book. By judgment dated 27-6-2003, the trial court directed acquittal of the accused persons.

- h 6. Zahira appeared before the National Human Rights Commission (in short “the NHRC”) stating that she was threatened by powerful politicians

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not to depose against the accused persons. On 7-8-2003 an appeal not up to the mark and neither in conformity with the required care, appears to have been filed by the State against the judgment of acquittal before the Gujarat High Court. NHRC moved this Court and its special leave petition has been treated as a petition under Article 32 of the Constitution of India. Zahira and another organisation — Citizens for Justice and Peace filed SLP (Crl.) No. 3770 of 2003 challenging the judgment of acquittal passed by the trial court. One Sahera Banu (sister of appellant Zahira) filed the aforementioned Criminal Revision No. 583 of 2003 before the High Court questioning the legality of the judgment returning a verdict of acquittal. The appellant State filed an application (Criminal Misc. Application No. 7677 of 2003) in terms of Sections 391 and 311 of the Code for permission to adduce additional evidence and for examination of certain persons as witness. Criminal Miscellaneous Application No. 9825 of 2003 was filed by the State to bring on record a document and to treat it as corroborative piece of evidence. By the impugned judgment the appeal, revision and the applications were dismissed and rejected.

7. The State and Zahira had requested for a fresh trial primarily on the following grounds:

When a large number of witnesses have turned hostile, it should have raised a reasonable suspicion that the witnesses were being threatened or coerced. The Public Prosecutor did not take any step to protect the star witness who was to be examined on 17-5-2003 specially when four out of seven injured witnesses had on 9-5-2003 resiled from the statements made during investigation. Zahira Sheikh, the star witness had specifically stated on affidavit about the threat given to her and the reason for her not coming out with the truth during her examination before court on 17-5-2003.

8. The Public Prosecutor was not acting in a manner befitting the position held by him. He even did not request the trial court for holding the trial in camera when a large number of witnesses were resiling from the statements made during investigation.

9. The trial court should have exercised power under Section 311 of the Code and recalled and re-examined witnesses as their evidence was essential to arrive at the truth and a just decision in the case. The power under Section 165 of the Indian Evidence Act, 1872 (in short “the Evidence Act”) was not resorted to at all and that also had led to miscarriage of justice.

10. The Public Prosecutor did not examine the injured witnesses. Exhibit 36/68 was produced by the Public Prosecutor which is a statement of one Rahish Khan on the commencement of the prosecution case, though the prosecution was neither relying on it nor was it called upon by the accused, to be produced before the court. The said statement was wrongly allowed to be exhibited and treated as FIR by the Public Prosecutor.

11. Statement of one eyewitness was recorded on 4-3-2002 by PI Baria at S.S.G. Hospital, Vadodara disclosing names of five accused persons and when he was sought to be examined before the Court, summons were issued to this person on 27-4-2003 for examination on 9-5-2003. It could not be

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- served on the ground that he had left for his native place in Uttar Pradesh. Therefore, fresh summons were issued on 9-6-2003 for recording his evidence on the next day i.e. on 10-6-2003, giving only one day's time. When it could not be served, then summons were issued on 13-6-2003 for remaining present before the court on 16-6-2003. It could not be also served for the same reasons. Ultimately, the Public Prosecutor gave *purshis* for dropping him as witness and surprisingly the same was granted by the trial court. This goes to show that both the Public Prosecutor as well as the court were not only oblivious but also failed to discharge their duties. An important witness was not examined by the prosecutor on the ground that he, Sahejadhkhan Hasankhan (PW 48) was of unsound mind. Though the witness was present, the Public Prosecutor dropped him on the ground that he was not mentally fit to depose. When such an application was made by the prosecution for dropping on the ground of mental deficiency, it was the duty of the learned trial Judge to at least make some minimum efforts to find out as to whether he was actually of unsound mind or not, by getting him examined by the Civil Surgeon or a doctor from the Psychiatric Department. This witness (PW 48) has received serious injuries and the doctor Meena (PW 9) examined him. She has not stated in her evidence that he was mentally deficient. The police has also not reported that this witness was of unsound mind. During investigation also it was never stated that he was of unsound mind. His statement was recorded on 6-3-2002.

12. Sahejadhkhan Hasankhan, the witness was unconscious between 2-3-2002 — 6-3-2002. When he regained consciousness, his statement was recorded on 6-3-2002. He gave names of four accused persons i.e. A-5, A-6, A-8 and A-11. This witness has also filed an affidavit before this Court in a pending matter narrating the whole incident. This clearly shows that the person was not of unsound mind as was manipulated by the prosecution to drop him.

13. In the case of one Shailun Hasankhan Pathan summons were issued on 9-6-2003 requiring his presence on 10-6-2003 which could not be served on him. He disclosed the names of three accused persons i.e. A-6, A-8 and A-11. This witness was also surprisingly treated to be of deficient mind without any material and even without taking any efforts to ascertain the truth or otherwise of such serious claims.

14. Similarly, one injured eyewitness Tufel Habibulla Sheikh was not examined, though he had disclosed the names of four accused i.e. A-5, A-6, A-8 and A-11. No summons was issued to this witness and he was not at all examined.

15. Another eyewitness Yasminbanu who had disclosed the names of A-5, A-6 and A-11 was also not examined. No reason whatsoever was disclosed for non-examination of this witness.

16. The affidavit filed by different witnesses before this Court highlighted as to how and why they have been kept unfairly out of trial. Lalmohamad Khudabax Shaikh (PW 15) was hurriedly examined on 27-5-2003 though summons was issued to him for remaining present on 6-6-2003.

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No reason has been indicated as to why he was examined before the date stipulated.

17. Strangely, the relatives of the accused were examined as witnesses for the prosecution obviously with a view that their evidence could be used to help the accused persons. a

18. According to the appellant Zahira there was no fair trial and the entire effort during trial and at all relevant times before also was to see that the accused persons got acquitted. When the investigating agency helps the accused, the witnesses are threatened to depose falsely and the prosecutor acts in a manner as if he was defending the accused, and the court was acting merely as an onlooker and when there is no fair trial at all, justice becomes the victim. b

19. According to Mr Sibal, learned counsel appearing for the appellant Zahira, the High Court has not considered the stand taken by the appellant and the State of Gujarat in the proper perspective. Essentially, two contentions were raised by the State before the High Court, in addition to the application filed by the appellant Zahira highlighting certain serious infirmities in the entire exercise undertaken. The State had made prayers for acceptance of certain evidence under Section 391 of the Code read with Section 311 of the Code. So far as the acceptance of additional evidence is concerned, the same related to affidavits filed by some injured witnesses who on account of circumstances indicated in the affidavits were forced not to tell the truth before the trial court, making justice a casualty. The affidavits in essence also highlighted the atmosphere that prevailed in the trial court. The affidavits in fact were not intended to be used as evidence. A prayer was made that the witnesses who had filed affidavits before this Court should be examined, so that the truth can be brought on record. The High Court surprisingly accepted the extreme stand of learned counsel for the accused persons that under Section 386 of the Code the court can only peruse the record of the case brought before it in terms of Section 385(2) of the Code and the appeal has to be decided on the basis of such record only and no other record can be entertained or taken into consideration while deciding the appeal. It was the stand of learned counsel for the accused before the High Court that by an indirect method certain materials were sought to be brought on record which should not be permitted. The High Court while belittling and glossing over the serious infirmities and pitfalls in the investigation as well as trial, readily accepted the said stand and held that an attempt was being made to bring on record the affidavits by an indirect method, though they were not part of the record of the trial court. It further held that no one including the State can be allowed to take advantage of its own wrong and thereby make capricious exercise of powers in favour of the prosecution to fill in the lacuna, overlooking completely the obligation cast on the courts also to ensure that the truth should not become a casualty and substantial justice is not denied to the victims as well. With reference to these conclusions it was submitted that the High Court did not keep in view the true scope and ambit of Section 391 as also the need or desirability to resort to Section 311 of the c
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Code and virtually rendered the provisions otiose by nullifying the very object behind those provisions. The conclusion that the appeal can be decided only on the basis of records brought before the High Court in terms of Section 385(2) would render Section 391 of the Code and other allied powers conferred upon courts to render justice completely nugatory.

- 20.** Further, after having held that the affidavits were not to be taken on record, the High Court has recorded findings regarding contents of those affidavits, and has held that the affidavits are not truthful and are false.
- a** Unfortunately, the High Court has gone to the extent of saying that the appellant Zahira has been used by some persons with oblique motives. The witnesses who filed affidavits have been termed to be of unsound mind, untruthful and capable of being manipulated, without any material or reasonable and concrete basis to support such conclusions. In any event, the logic applied by the High Court to discard the affidavits of Zahira and others that they have fallen subsequently into the hands of some who remained behind the curtain, can be equally applied to accept the plea that the accused or persons acting at their behest only had created fear on the earlier occasion before deposing in court by threats, in the minds of Zahira and others. After having clearly concluded that the investigation was faulty and there were serious doubts about the genuineness of the investigation, it would have been proper for the High Court to accept the prayer made for additional evidence and/or retrial. Abrupt conclusions drawn about false implication not only cannot stand the test of scrutiny but also lack judicious approach and objective consideration, as is expected of a court.
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- 21.** Section 391 of the Code is intended to subserve the ends of justice by arriving at the truth and there is no question of filling of any lacuna in the case on hand. The provision though a discretionary one is hedged with the condition about the requirement to record reasons. All these aspects have been lost sight of and the judgment, therefore, is indefensible. It was submitted that this is a fit case where the prayer for retrial as a sequel to acceptance of additional evidence should be directed. Though, retrial is not the only result flowing from acceptance of additional evidence, in view of the peculiar circumstances of the case, the proper course would be to direct acceptance of additional evidence and in the fitness of things also order for a retrial on the basis of the additional evidence.
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- 22.** It was submitted by the appellants that in view of the atmosphere in which the case was tried originally, there should be a direction for a trial outside the State in case this Court thinks it so appropriate to direct, and evidence could be recorded by video-conferencing so that a hostile atmosphere can be avoided. It is further submitted that a fresh investigation should be directed as investigation already conducted was not done in a fair manner and the prosecutor did not act fairly. If the State's machinery fails to protect citizen's life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is but appropriate that this Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members.
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23. Mr Rohatgi, learned Additional Solicitor General appearing for the State of Gujarat in the appeal filed by it submitted that the application under consideration of the High Court was in terms of Section 311 and Section 391 of the Code. Though the nomenclature is really not material, the prayer was to permit the affidavits to be brought on record, admit and take additional evidence of the persons filing the affidavits by calling/recalling them in addition to certain directions for retrial if the High Court felt it to be so necessary after considering the additional evidence. Though there was no challenge to Zahira's locus standi to file an appeal, it is submitted that prayer for rehearing by another High Court and/or for trial outside the State cannot be countenanced and it is nobody's case that the courts in Gujarat cannot do complete justice and such moves do not serve anybody's purpose.

24. There is no proper reason indicated by the High Court to refuse to take on record the affidavits and the only inferable reason as it appears i.e. that the affidavits were also filed in this Court in another proceeding is no reason in the eye of the law. Admissibility of material is one thing and what is its worth is another thing and relates to acceptability of the evidence. Since they were relevant, being filed by alleged eyewitnesses, there was no basis for the High Court to discard them. Even if the appellant Zahira has taken different stands as concluded by the High Court, it was obligatory for the Court to find out as to what is the correct stand and real truth which could have been decided and examined by accepting the prayer for additional evidence. The High Court has, without any material or sufficient basis, come to hold that the FIR was manipulated, and the fax message referred to by the State could also have been manipulated. There is no basis for coming to such a conclusion. There was no material before the trial court to conclude that the FIR was lodged by one Rahish Khan, though the statement of appellant Zahira was anterior in point of time. The stand of the State was that it was relying on Zahira's version to be the FIR. The State had filed the application for acceptance of additional evidence as it was of the view that the FIR registered on the basis of Zahira's statement was an authentic one and no evidence aliunde was necessary. In the absence of even any material the abrupt conclusion about manipulation and the other conclusions of the High Court are perverse and also contradictory in the sense that after having said that affidavits were not to be brought on record, it went on to label it as not truthful. The High Court should not have thrown out the application as well as the materials sought to be brought on record even at the threshold and yet gone on to surmise on reasons, at the same time, professing to decide on its correctness.

25. The stands taken before the High Court to justify acceptance of additional evidence and directions for retrial were reiterated.

26. Mr Sushil Kumar, learned Senior Counsel for the accused submitted that it is not correct to say that application under Section 391 of the Code was not admitted. It was in fact admitted and rejected on merits. It is also not correct to say that the investigation was perfunctory. The affidavits sought to be brought on record were considered on their own merits. While Zahira's prayer was for fresh investigation, the State's appeal in essence was for fresh

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trial. The four persons whose affidavits were pressed into service were PWs 1, 6, 47 and 48. They were examined as PWs and there was no new evidence.

- a There can be no re-examination on the pretext used by the State for retrial. The original appeal filed by the State was Appeal No. 956 of 2003. There was first an amendment in September 2003, and finally in December 2003. The stand got changed from time to time. What essentially was urged or sought for, related to fresh trial on the ground that investigation was not fair. The stand taken by the State in its appeal is also contrary to evidence on record.
- b Though one of the grounds seeking fresh trial was the alleged deficiencies of the Public Prosecutor in conducting the trial and for not bringing on record the contradictions with reference to the statements recorded during investigation, in fact it has been done. There was nothing wrong in treating the statement of Rahish Khan as the FIR. The High Court has rightly concluded that Zahira's statement was manipulated as if she had given
- c information at the first point of time which is belied by the fact that it reached the court concerned after three days. The High Court after analysing the evidence has correctly come to the conclusion that the police manipulated in getting false witnesses to rope in wrong people as the accused. Irrelevant and out-of-context submissions are said to have been made, and grounds taken and reliefs sought for by Zahira in her appeal.
- d **27.** Mr K.T.S. Tulsi, learned Senior Counsel also appearing for the accused persons in the appeal filed by the State submitted that in Section 311 the key words are "if his evidence appears to it to be essential to the just decision of the case". Therefore, the court must be satisfied that the additional evidence is necessary and it is not possible to arrive at a just conclusion on the basis of the records. For that purpose it has to apply its
- e mind to the evidence already on record and thereafter decide whether it feels any additional evidence to be necessary. For that purpose, the court has to come to a prima facie conclusion that an appeal cannot be decided on the basis of materials existing on record. Therefore, before dealing with an application under Section 391 the court has to analyse the evidence already existing. Since the High Court in the instant case has analysed the evidence
- f threadbare and come to the conclusion that the trial was fair and satisfactory and a positive conclusion has been arrived at after analysing the evidence, the question of pressing into service Section 391 of the Code does not arise.

28. In essence three points were urged by Mr Tulsi. They are as follows:

For the purpose of exercise of power under Section 391 of the Code, the court has to come to a conclusion about the necessity for additional evidence which could only be done after examining evidence on record. In other words, the court must arrive at a conclusion that the existing material is insufficient for the purpose of arriving at a just decision.

- g **29.** The High Court has undertaken an elaborate exercise for the purpose of arriving at the conclusion as to whether additional evidence was necessary after examining every relevant aspect. It has come to a definite conclusion
- h that the trial of the case was fair, satisfactory and neither were any illegalities committed nor was any evidence wrongly accepted or rejected. The

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extraneous factors have been kept out of consideration as these may have influenced the witnesses in changing their evidence and giving a go-by to substantive evidence tendered in court. A need for giving finality to trial in criminal proceedings is paramount as otherwise prejudice is caused to the accused persons and in fact it would be a negation of the fundamental rule of law to make the accused to undergo trial once over which has the effect of derailing the system of justice. Elaborating the points it is submitted that if the court feels that additional evidence is not necessary after analysing the existing evidence and the nature of materials sought to be brought in, it cannot be said that the court has acted in a manner contrary to law. In fact, the High Court has felt that extraneous materials are now sought to be introduced and it is not known as to whether the present statement of the witnesses is correct or what was stated before the trial court originally was the truth. The Court analysed the evidence of the material witnesses and noticed several relevant factors to arrive at this conclusion. The necessity and need for additional evidence has to be determined in the context of the need for a just decision and it cannot be used for filling up a lacuna. Reference is made to the decisions of this Court in *Jamatraj Kewalji Govani v. State of Maharashtra*¹ and *Mohanlal Shamji Soni v. Union of India*². The High Court has also come to a definite conclusion that the submissions of the State and Sahera cannot be accepted because non-examination of certain persons was on account of the circumstances indicated by the trial court and that conclusion has been arrived at after analysing the factual background. There is no guarantee, as rightly observed by the High Court, that the subsequent affidavits are true. On the contrary, in the absence of any contemporary grievance having been made before the Court about any pressure or threat, the affidavits and the claims now sought to be made have been rightly discarded.

30. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of courts of justice. The operating principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as “one of the ablest judgments of one of the ablest judges who ever sat in this court”, Vice-Chancellor Knight Bruce said^{2a}:

1 AIR 1968 SC 178 : (1967) 3 SCR 415 : 1968 Cri LJ 231

2 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595

2a *Pearse v. Pearse* (1846), 1 De G&Sm. 12: 16 L.J. Ch. 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748

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- a “The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still, for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination... Truth, like all other good things, may be loved unwisely — may be pursued too keenly — may cost too much.”

- b The Vice-Chancellor went on to refer to paying “too great a price ... for truth”. This is a formulation which has subsequently been frequently invoked, including by Sir Gerard Brennan. On another occasion, in a joint judgment of the High Court, a more expansive formulation of the proposition was advanced in the following terms: “The evidence has been obtained at a price
- c which is unacceptable having regard to the prevailing community standards.”

32. Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. Oliver Wendell Holmes described the process:

- d “It is the merit of the common law that it decides the case first and determines the principle afterwards.... It is only after a series of determination on the same subject-matter, that it becomes necessary to ‘reconcile the cases’, as it is called, that is, by a true induction to state the principle which has until then been obscurely felt. And this statement is often modified more than once by new decisions before the abstracted
- e general rule takes its final shape. A well-settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it at every step.”

33. The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation — peculiar at times and related to the nature of crime, persons involved — directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.

- g 34. As will presently appear, the principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the laws of evidence. There is, however, an overriding and, perhaps, unifying principle. As Deane, J. put it:

- h “It is desirable that the requirement of fairness be separately identified since it transcends the content of more particularized legal rules and principles and provides the ultimate rationale and touchstone of

the rules and practices which the common law requires to be observed in the administration of the substantive criminal law.”

35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice — often referred to as the duty to vindicate and uphold the “majesty of the law”. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson’s eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

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37. While dealing with the claims for the transfer of a case under Section 406 of the Code from one State to another, this Court in *Maneka Sanjay Gandhi v. Rani Jethmalani*³ emphasised the necessity to ensure fair trial, observing as hereunder: (SCC pp. 169 & 170-71, paras 2 & 5-7)

a “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.

* * *

d 5. A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of court is obstructive of the course of justice and must surely be stamped out. Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one’s case, bring one’s witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquillity at the trial. Turbulent conditions putting the accused’s life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer. In a decision cited by the counsel for the petitioner, Bose, J., observed:

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3 (1979) 4 SCC 167 : 1979 SCC (Cri) 934

‘... But we do feel that good grounds for transfer from Jashpurnagar are made out because of the bitterness of local communal feeling and the tenseness of the atmosphere there. Public confidence in the fairness of a trial held in such an atmosphere would be seriously undermined, particularly among reasonable Christians all over India not because the Judge was unfair or biased but because the machinery of justice is not geared to work in the midst of such conditions. The calm detached atmosphere of a fair and impartial judicial trial would be wanting, and even if justice were done it would not be “seen to be done”.’ (*G.X. Francis v. Banke Bihari Singh*⁴)

6. Accepting this perspective we must approach the facts of the present case without excitement, exaggeration or eclipse of a sense of proportion. It may be true that the petitioner attracts a crowd in Bombay. Indeed, it is true of many controversial figures in public life that their presence in a public place gathers partisans for and against, leading to cries and catcalls or ‘jais’ or ‘zindabads’. Nor is it unnatural that some persons may have acquired, for a time a certain quality of reputation, sometimes notoriety, sometimes glory, which may make them the cynosure of popular attention when they appear in cities even in a court. And when unkempt crowds press into a court hall it is possible that some pushing, some nudging, some brash ogling or angry staring may occur in the rough and tumble resulting in ruffled feelings for the victim. This is a far cry from saying that the peace inside the court has broken down, that calm inside the court is beyond restoration, that a tranquil atmosphere for holding the trial is beyond accomplishment or that operational freedom for judge, parties, advocates and witnesses has ceased to exist. None of the allegations made by the petitioner, read in the pragmatic light of the counter-averments of the respondent and understood realistically, makes the contention of the counsel credible that a fair trial is impossible. Perhaps, there was some rough weather but it subsided, and it was a storm in the tea cup or transient tension to exaggerate which is unwarranted. The petitioner’s case of great insecurity or molestation to the point of threat to life is, so far as the record bears out, difficult to accept. The mere word of an interested party is insufficient to convince us that she is in jeopardy or the court may not be able to conduct the case under conditions of detachment, neutrality or uninterrupted progress. We are disinclined to stampede ourselves into conceding a transfer of the case on this score, as things stand now.

7. Nevertheless, we cannot view with unconcern the potentiality of a flare-up and the challenge to a fair trial, in the sense of a satisfactory participation by the accused in the proceedings against her. Mob action may throw out of gear the wheels of the judicial process. Engineered fury may paralyse a party’s ability to present his case or participate in the

4 AIR 1958 SC 309 : 1958 Cri LJ 569

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- trial. If the justice system grinds to a halt through physical manoeuvres or sound and fury of the senseless populace the rule of law runs aground.
- a Even the most hated human anathema has a right to be heard without the rage of ruffians or huff of toughs being turned against him to unnerve him as party or witness or advocate. Physical violence to a party, actual or imminent, is reprehensible when he seeks justice before a tribunal. Manageable solutions must not sweep this Court off its feet into granting an easy transfer but uncontrollable or perilous deterioration will surely
 - b persuade us to shift the venue. It depends. The frequency of mobbing manoeuvres in court precincts is a bad omen for social justice in its wider connotation. We, therefore, think it necessary to make a few cautionary observations which will be sufficient, as we see at present, to protect the petitioner and ensure for her a fair trial.”

- c **38.** A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout
- d over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

- e **39.** Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

- f **40.** The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

- g **41.** “Witnesses”, as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures
- h and monetary considerations at the instance of those in power, their henchmen and hirelings, political clout and patronage and innumerable other

corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert the trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose the truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short "the TADA Act") have taken note of the reluctance shown by witnesses to depose against dangerous criminals/terrorists. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before courts mere mock trials as are usually seen in movies.

42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair as noted above to the needs of the society. On the contrary, the efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interests of the individual accused. In this courts have a vital role to play.

43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at.

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This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner.

- a The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.
- b 44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e.: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In *Mohanlal v. Union of India*² this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, “any court”, “at any stage”, or “any enquiry or trial or other proceedings”, “any person” and “any such person” clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way.
- c However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.
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45. It is not that in every case where the witness who had given evidence before court wants to change his mind and is prepared to speak differently, that the court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case, accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the court can neither feel

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powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in. a

46. Ultimately, as noted above, ad nauseam the duty of the court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer on any party any right to examine, cross-examine and re-examine any witness. This is a power given to the court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case. b
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47. Section 391 of the Code is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of a guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable. d
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48. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate court finds that certain evidence is necessary in order to enable it to give a correct and proper finding, it would be justified in taking action under Section 391. g

49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that h

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- a the provisions of the section are only to be invoked when formal proof for the prosecution is necessary. If the appellate court thinks that it is necessary in the interest of justice to take additional evidence, it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of discretion of the appellate court. As reiterated supra, the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions.
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- c **50.** In *Rambhau v. State of Maharashtra*⁵ it was held that the object of Section 391 is not to fill in lacuna, but to subserve the ends of justice. The court has to keep these salutary principles in view. Though wide discretion is conferred on the court, the same has to be exercised judicially and the legislature had put the safety valve by requiring recording of reasons.

- d **51.** Need for circumspection was dealt with by this Court in *Mohanlal Shamji Soni case*² and *Ram Chander v. State of Haryana*⁶ which dealt with the corresponding Section 540 of the Code of Criminal Procedure, 1898 (in short “the old Code”) and also in *Jamatraj case*¹. While dealing with Section 311 this Court in *Rajendra Prasad v. Narcotic Cell*⁷ held as follows: (SCC p. 113, paras 7-8)

- e “7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not ‘fill the lacuna in the prosecution case’. A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage ‘to err is human’ is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up.

- f 8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”
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- h ⁵ (2001) 4 SCC 759 : 2001 SCC (Cri) 812
⁶ (1981) 3 SCC 191 : 1981 SCC (Cri) 683
⁷ (1999) 6 SCC 110 : 1999 SCC (Cri) 1062

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52. Whether a retrial under Section 386 or taking up of additional evidence under Section 391 is the proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated. a

53. In the ultimate analysis whether it is a case covered by Section 386 or Section 391 of the Code, the underlying object which the court must keep in view is the very reason for which the courts exist i.e. to find out the truth and dispense justice impartially and ensure also that the very process of courts are not employed or utilized in a manner which give room to unfairness or lend themselves to be used as instruments of oppression and injustice. b

54. Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/attention of the court away from the truth of the cause or lie before it, in disregard of its duty to prevent miscarriage of justice. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice-delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings. c
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55. The courts, at the expense of repetition we may state, exist for doing justice to the persons who are affected. The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself. e
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56. As pithily stated in *Jennison v. Baker*⁸: (All ER p. 1006d)

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

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of g
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⁸ (1972) 1 All ER 997 : (1972) 2 QB 52 : (1972) 2 WLR 429 (CA)

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law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (See *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble*⁹.)

- 57.** This Court in *Vineet Narain v. Union of India*¹⁰ has directed that steps should be taken immediately for the constitution of able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecution in England. In the United Kingdom, the Director of Prosecution was created in 1879. His appointment is by the Attorney General from amongst the members of the Bar and he functions under the supervision of the Attorney General. The Director of Prosecution plays a vital role in the prosecution system. He even administers “Witness Protection Programmes”. Several countries, for example Australia, Canada and USA have even enacted legislation in this regard. The Witness Protection Programmes are imperative as well as imminent in the context of the alarming rate of somersaults by witnesses with ulterior motives and purely for personal gain or fear for security. It would be a welcome step if something along those lines is done in our country. That would be a step in the right direction for a fair trial. Expression of concern merely in words without really the mind to concretise it by positive action would be not only useless but also amounts to betrayal of public confidence and trust imposed.

- 58.** Though it was emphasised with great vehemence by Mr Sushil Kumar and Mr K.T.S. Tulsi that the High Court dealt with the application under Section 391 of the Code in detail and not perfunctorily as contended by learned counsel for the appellants, we find that nowhere the High Court has effectively dealt with the application under Section 391 as a part of the exercise to deal with and dispose of the appeal. In fact the High Court dealt with it practically in one paragraph i.e. para 36 of the judgment accepting the stand of learned counsel for the accused that the consideration of the appeal has to be limited to the records set up under Section 385(2) of the Code for disposal of the appeal under Section 386. This perception of the powers of the appellate court and misgivings as to the manner of disposal of an appeal per se vitiates the decision rendered by the High Court. Section 386 of the Code deals with the manner and disposal of the appeal in the normal or ordinary course. Section 391 is in the nature of exception to Section 386. As was observed in *Rambhau case*⁵ if the stand of learned counsel for the accused as was accepted by the High Court is maintained, it would mean that Section 391 of the Code would be a dead letter in the statute book. The necessity for additional evidence arises when the court feels that some evidence which ought to have been before it is not there or that some evidence has been left out or erroneously brought in. In all cases it cannot be laid down as a rule of universal application that the court has to first find out whether the evidence already on record is sufficient. The nature and quality of the evidence on record is also relevant. If the evidence already on record is

⁹ (2003) 7 SCC 749 : 2003 SCC (Cri) 1918
¹⁰ (1998) 1 SCC 226 : 1998 SCC (Cri) 307

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shown or found to be tainted, tailored to suit or help a particular party or side and the real truth has not and could not have been spoken or brought forth during trial, it would constitute merely an exercise in futility, if it considered first whether the evidence already on record is sufficient to dispose of the appeals. Disposal of appeal does not mean disposal for statistical purposes but effective and real disposal to achieve the object of any trial. The exercise has to be taken up together. It is not that the Court has to be satisfied that the additional evidence would be necessary for rendering a verdict different from what was rendered by the trial court. In a given case even after assessing the additional evidence, the High Court can maintain the verdict of the trial court and similarly the High Court on consideration of the additional evidence can upset the trial court's verdict. It all depends upon the relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused.

59. Merely because the High Court permits additional evidence to be adduced, it does not necessarily lead to the conclusion that the judgment of the trial court was wrong. That decision has to be arrived at after assessing the evidence that was before the trial court and the additional evidence permitted to be adduced. The High Court has observed that question of accepting application for additional evidence will be dealt with separately, and in fact dealt with it in a cryptic manner, practically in one paragraph, and did not think it necessary to accept the additional evidence. But at the same time made threadbare analysis of the affidavits as if it had accepted it as additional evidence and was testing its acceptability. Even the conclusions arrived at with reference to those affidavits do not appear to be correct and seem to suffer from apparent judicial obstinacy and avowed determination to reject it. For example, to brand a person as not truthful because a different statement was given before the trial court unmindful of the earliest statement given during investigation and the reasons urged for turning hostile before court negates the legislative intent and purpose of incorporating Section 391 in the Code. The question of admission of evidence initially or as additional evidence under Section 391 is distinct from the efficacy, reliability and its acceptability for consideration of claims in the appeal on merits. It is only after admission, the court should consider in each case whether on account of earlier contradiction before court and the testimony allowed to be given as additional evidence, which of them or any one part or parts of the depositions are creditworthy and acceptable, after a comparative analysis and consideration of the probabilities and probative value of the materials for adjudging the truth. To reject it merely because of contradiction and that too in a sensitised case like the one before the Court with a horror and terror oriented history of its own would amount to conspicuous omission and deliberate dereliction of discharging functions judiciously and with a justice-oriented mission. In a given case when the Court is satisfied that for reasons on record the witness had not stated truthfully before the trial court and was willing to speak the truth before it, the power under Section 391 of the Code is to be exercised. It is to be noted at this stage that it is not the prosecution

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which alone can file an application under Section 391 of the Code. It can also be done, in an appropriate case by the accused to prove his innocence.

- a Therefore, any approach without pragmatic consideration defeats the very purpose for which Section 391 of the Code has been enacted. Certain observations of the High Court like, that if the accused persons were really guilty they would not have waited for long to commit offences or that they would have killed the victims in the night taking advantage of the darkness and/or that the accused persons had saved some persons belonging to the
- b other community, were not only immaterial for the purpose of adjudication of application for additional evidence but such surmises could have been carefully avoided at least in order to observe and maintain the judicial calm and detachment required of the learned Judges in the High Court. The conclusions of the High Court that 65 to 70 persons belonging to the attacked community were saved by the accused or others appears to be based on the
- c evidence of the relatives of the accused who were surprisingly examined by the prosecution. We shall deal with the propriety of examining such persons, *infra*. These aspects could have been, if at all permissible to be done, considered after accepting the prayer for additional evidence. It is not known as to what extent these irrelevant materials have influenced the ultimate judgment of the High Court, in coming with such a strong and special plea in
- d favour of a prosecuting agency which has miserably failed to demonstrate any credibility by its course of action. The entire approach of the High Court suffers from serious infirmities, its conclusions lopsided and lacks proper or judicious application of mind. Arbitrariness is found writ large on the approach as well as the conclusions arrived at in the judgment under challenge, in unreasonably keeping out relevant evidence from being brought
- e on record.

60. Right from the beginning, the stand of the appellant Zahira was that the investigating agency was trying to help the accused persons and so was the Public Prosecutor. If the investigation was faulty, it was not the fault of the victims or the witnesses. If the same was done in a manner with the object of helping the accused persons as it appears to be apparent from what

- f has transpired so far, it was an additional ground just and reasonable as well for accepting the additional evidence.

61. In the case of a defective investigation the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in

- g despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.*¹¹)

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11 (1995) 5 SCC 518 : 1995 SCC (Cri) 977

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62. In *Paras Yadav v. State of Bihar*¹² it was held that if the lapse or omission is committed by the investigating agency designedly or because of negligence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of courts getting at the truth by having recourse to Sections 311, 391 of the Code and Section 165 of the Evidence Act at the appropriate and relevant stages and evaluating the entire evidence; otherwise the designed mischief would be perpetuated with a premium to the offenders and justice would not only be denied to the complainant party but also made an ultimate casualty.

63. As was observed in *Ram Bihari Yadav v. State of Bihar*¹³ if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice in the hands of courts. The view was again reiterated in *Amar Singh v. Balwinder Singh*¹⁴.

64. It is no doubt true that the accused persons have been acquitted by the trial court and the acquittal has been upheld, but if the acquittal is unmerited and based on tainted evidence, tailored investigation, unprincipled prosecutor and perfunctory trial and evidence of threatened/terrorised witnesses, it is no acquittal in the eye of the law and no sanctity or credibility can be attached and given to the so-called findings. It seems to be nothing but a travesty of truth, fraud on the legal process and the resultant decisions of courts — coram non judis and non est. There is, therefore, every justification to call for interference in these appeals.

65. In a country like ours with heterogeneous religions and multiracial and multilingual society which necessitates protection against discrimination on the ground of caste or religion taking lives of persons belonging to one or the other religion is bound to have dangerous repercussions and reactive effect on the society at large and may tend to encourage fissiparous elements to undermine the unity and security of the nation on account of internal disturbances. It strikes at the very root of an orderly society, which the founding fathers of our Constitution dreamt of.

66. When the ghastly killings take place in the land of Mahatma Gandhi, it raises a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to him. When a large number of people including innocent and helpless children and women are killed in a diabolic manner it brings disgrace to the entire society. Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but a mere cloak to usurp power by fanning ill feeling and playing on feelings aroused thereby. The golden thread passing through every religion is love and compassion.

12 (1999) 2 SCC 126 : 1999 SCC (Cri) 104 (para 8)

13 (1998) 4 SCC 517 : 1998 SCC (Cri) 1085

14 (2003) 2 SCC 518 : 2003 SCC (Cri) 641

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The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy.

a **67.** The little drops of humanness which jointly make humanity a cherished desire of mankind had seemingly dried up when the perpetrators of the crime had burnt alive helpless women and innocent children. Was it their fault that they were born in the houses of persons belonging to a particular community? The still, staid music of humanity had become silent when it was forsaken by those who were responsible for the killings.

b “Little drops of water,
Little grains of sand,
Make the mighty ocean
And the pleasant land,
Little deeds of kindness,

c Little words of love,
Help to make earth happy
Like the heaven above”

said Julia A.F. Cabney in “*Little Things*”.

d **68.** If one even cursorily glances through the records of the case, one gets a feeling that the justice-delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. The Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice. The role of the State Government also leaves much to be desired. One gets a feeling that there was really no seriousness in the State’s approach in assailing the trial court’s judgment. This is clearly indicated by the fact that the first memorandum of appeal filed was an apology for the grounds. A second amendment was done, that too after this Court expressed its unhappiness over the perfunctory manner in which the appeal was presented and the challenge made. That also was not the end of the matter. There was a subsequent petition for amendment. All this sadly reflects on the quality of determination exhibited by the State and the nature of seriousness shown to pursue the appeal. Criminal trials should not be reduced to be mock trials or shadow-boxing or fixed trials. Judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.

g **69.** Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused

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persons were really assailants or not could have been established by a fair and impartial investigation. The modern-day “Neros” were looking elsewhere when Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected. Law and justice become flies in the hands of these “wanton boys”. When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments. a

70. In the background of principles underlying Section 311 and Section 391 of the Code and Section 165 of the Evidence Act, it has to be seen as to whether the High Court’s approach is correct and whether it had acted justly, reasonably and fairly in placing premiums on the serious lapses of grave magnitude by the prosecuting agencies and the trial court, as well. There are several infirmities which are telltale even to the naked eye of even an ordinary common man. The High Court has come to a definite conclusion that the investigation carried out by the police was dishonest and faulty. That was and should have been per se sufficient justification to direct a retrial of the case. There was no reason for the High Court to come to further conclusion of its own about false implication without concrete basis and that too merely on conjectures. On the other hand, the possibility of the investigating agency trying to shield the accused persons keeping in view the methodology adopted and out-turn of events can equally be not ruled out. When the investigation is dishonest and faulty, it cannot be only with the purpose of false implication. It may also be noted at this stage that the High Court has even gone to the extent of holding that the FIR was manipulated. There was no basis for such a presumptive remark or arbitrary conclusion. b

71. The High Court has come to a conclusion that Zahira seems to have unfortunately for some reasons after the pronouncement of the judgment fallen into the hands of some who prefer to remain behind the curtain to come out with the affidavit alleging threat during trial. It has rejected the application for adducing additional evidence on the basis of the affidavit, but has found fault with the affidavit and hastened to conclude unjustifiably that they are far from truth by condemning those who were obviously victims. The question whether they were worthy of credence, and whether the subsequent stand of the witnesses was correct needed to be assessed, and adjudged judiciously on objective standards which are the hallmark of a judicial pronouncement. Such observations, if at all, could have been only made after accepting the prayer for additional evidence. The disclosed purpose in the State Government’s prayer with reference to the affidavits was to bring to the High Court’s notice the situation which prevailed during trial and the reasons as to why the witnesses gave the version as noted by the trial court. Whether the witnesses had told the truth before the trial court or as stated in the affidavit, were matters for assessment of evidence when admitted and tendered and when the affidavit itself was not tendered as evidence, the question of analysing it to find fault was not the proper course to be adopted. The affidavits were filed to emphasise the need for permitting c
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- additional evidence to be taken and for being considered as the evidence itself. The High Court has also found that some persons were not present and,
- a therefore, question of their statement being recorded by the police did not arise. For coming to this conclusion, the High Court noted that the statements under Section 161 of the Code were recorded in Gujarati language though the witnesses did not know Gujarati. The reasoning is erroneous for more reasons than one. There was no material before the High Court for coming to a finding that the persons did not know Gujarati since there may be a person
 - b who could converse fluently in a language though not a literate to read and write. Additionally, it is not a requirement in law that the statement under Section 161 of the Code has to be recorded in the language known to the person giving the statement. As a matter of fact, the person giving the statement is not required to sign the statement as is mandated in Section 162 of the Code. Sub-section (1) of Section 161 of the Code provides that the
 - c competent police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Requirement is the examination by the police officer concerned. Sub-section (3) is relevant, and it requires the police officer to reduce to writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose
 - d statement he records. Statement made by a witness to the police officer during investigation may be reduced to writing. It is not obligatory on the part of the police officer to record any statement made to him. He may do so if he feels it necessary. What is enjoined by the section is a truthful disclosure by the person who is examined. In the above circumstances the conclusion of the High Court holding that the persons were not present is untenable. The
 - e reasons indicated by the High Court to justify non-examination of the eyewitnesses is also not sustainable. In respect of one it has been said that whereabouts of the witness may not be known. There is nothing on record to show that the efforts were made by the prosecution to produce the witness for tendering evidence and yet the net result was “untraceable”. In other words, the evidence which should have been brought before the Court was not done
 - f with any meticulous care or seriousness. It is true that the prosecution is not bound to examine each and every person who has been named as witness. A person named as a witness may be given up when there is material to show that he has been gained over or that there is no likelihood of the witness speaking the truth in the court. There was no such material brought to the notice of the courts below to justify non-examination. The materials on
 - g record are totally silent on this aspect. Another aspect which has been lightly brushed aside by the High Court is that one person who was to be examined on a particular date was examined earlier than the date fixed. This unusual conduct by the prosecutor should have been seriously taken note of by the trial court and also by the High Court. It is to be noted that the High Court has found fault with DCP Shri Piyush Patel and has gone to the extent of
 - h saying that he has miserably failed to discharge his duties; while finding at the same time that Police Inspector Baria had acted fairly. The criticism

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according to us is uncalled for. Role of the Public Prosecutor was also not in line with what is expected of him. Though a Public Prosecutor is not supposed to be a persecutor, yet the minimum that was required to be done to fairly present the case of the prosecution was not done. Time and again, this Court stressed upon the need of the investigating officer being present during trial unless compelling reasons exist for a departure. In the instant case, this does not appear to have been done, and there is no explanation whatsoever why it was not done. Even the Public Prosecutor does not appear to have taken note of this desirability. In *Shailendra Kumar v. State of Bihar*¹⁵ it was observed as under: (SCC pp. 657-58, para 9) a
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“9. In our view, in a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. From the facts stated above, it appears that the accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other the Additional Sessions Judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summons to the investigating officer if he failed to remain present at the time of trial of the case. The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on the part of any witness to remain present, it is the duty of the court to take appropriate action including issuance of bailable/non-bailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such methods and victims of the crime cannot be left in a lurch.” c
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72. A somewhat unusual mode in contrast to the lapse committed by non-examining victims and injured witnesses adopted by the investigating agency and the prosecutor was examination of six relatives of the accused persons. They have expectedly given a clean chit to the accused and labelled them as saviours. This unusual procedure was highlighted before the High Court. But the same was not considered relevant as there is no legal bar. When we asked Mr Rohatgi, learned counsel for the State of Gujarat as to whether this does not reflect badly on the conduct of the investigating agency and the prosecutor, he submitted that this was done to show the manner in which the incident had happened. This is a strange answer. Witnesses are examined by the prosecution to show primarily who the accused is. In this case it was nobody's stand that the incident did not take place. That the conduct of the investigating agency and the prosecutor was not bona fide, is apparent and patent. e
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73. So far as non-examination of some injured relatives is concerned, the High Court has held that in the absence of any medical report, it appears that they were not present and, therefore, held that the prosecutor might have decided not to examine Yasminbanu because there was no injury. This is h

15 (2002) 1 SCC 655 : 2002 SCC (Cri) 230 : (2001) 8 Supreme 13

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- nothing but a wishful conclusion based on presumption. It is true that merely because the affidavit has been filed stating that the witnesses were threatened,
- a as a matter of routine, additional evidence should not be permitted. But when the circumstances as in this case clearly indicate that there is some truth or prima facie substance in the grievance made, having regard to the background of events as happened, the appropriate course for the courts would be to admit additional evidence for final adjudication so that the acceptability or otherwise of evidence tendered by way of additional
 - b evidence can be tested properly and legally tested in the context of probative value of the two versions. There cannot be a straitjacket formula or rule of universal application when alone it can be done and when, not. As the provisions under Section 391 of the Code are by way of an exception, the court has to carefully consider the need for and desirability to accept additional evidence. We do not think it necessary to highlight all the
 - c infirmities in the judgment of the High Court or the approach of the trial court lest nothing credible or worth mentioning would remain in the process. This appears to be a case where the truth has become a casualty in the trial. We are satisfied that it is a fit and proper case, in the background of the nature of additional evidence sought to be adduced and the perfunctory manner of trial conducted on the basis of tainted investigation a retrial is a
 - d must and essentially called for in order to save and preserve the justice-delivery system unsullied and unscathed by vested interests. We should not be understood to have held that whenever additional evidence is accepted, retrial is a necessary corollary. The case on hand is without parallel and comparison to any of the cases where even such grievances were sought to be made. It stands on its own as an exemplary one, special of its kind, necessary
 - e to prevent its recurrence. It is normally for the appellate court to decide whether the adjudication itself by taking into account the additional evidence would be proper or it would be appropriate to direct a fresh trial, though, on the facts of this case, the direction for retrial becomes inevitable.

74. Prayer was made by learned counsel for the appellant that the trial should be conducted outside the State so that the unhealthy atmosphere
- f which led to failure or miscarriage of justice is not repeated. This prayer has to be considered in the background and keeping in view the spirit of Section 406 of the Code. It is one of the salutary principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case or that general allegations of a surcharged atmosphere
 - g against a particular community alone does not suffice. The court has to see whether the apprehension is reasonable or not. The state of mind of the person who entertains apprehension, no doubt is a relevant factor but not the only determinative or concluding factor. But the court must be fully satisfied about the existence of such conditions which would render inevitably impossible the holding of a fair and impartial trial, uninfluenced by
 - h extraneous considerations that may ultimately undermine the confidence of reasonable and right-thinking citizen, in the justice delivery system. The

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apprehension must appear to the court to be a reasonable one. This position has been highlighted in *Gurcharan Dass Chadha v. State of Rajasthan*¹⁶ and *K. Anbazhagan v. Supdt. of Police*¹⁷.

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75. Keeping in view the peculiar circumstances of the case, and the ample evidence on record, glaringly demonstrating subversion of justice delivery system with no congenial and conducive atmosphere still prevailing, we direct that the retrial shall be done by a court under the jurisdiction of the Bombay High Court. The Chief Justice of the said High Court is requested to fix up a court of competent jurisdiction.

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76. We direct the State Government to appoint another Public Prosecutor and it shall be open to the affected persons to suggest any name which may also be taken into account in the decision to so appoint. Though the witnesses or the victims do not have any choice in the normal course to have a say in the matter of appointment of a Public Prosecutor, in view of the unusual factors noticed in this case, to accord such liberties to the complainants' party, would be appropriate.

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77. The fees and all other expenses of the Public Prosecutor who shall be entitled to assistance of one lawyer of his choice shall initially be paid by the State of Maharashtra, who will thereafter be entitled to get the same reimbursed from the State of Gujarat. The State of Gujarat shall ensure that all the documents and records are forthwith transferred to the court nominated by the Chief Justice of the Bombay High Court. The State of Gujarat shall also ensure that the witnesses are produced before the court concerned whenever they are required to attend that court. Necessary protection shall be afforded to them so that they can depose freely without any apprehension of threat or coercion from any person. In case, if any witness asks for protection, the State of Maharashtra shall also provide such protection as deemed necessary, in addition to the protection to be provided for by the State of Gujarat. All expenses necessary for the trial shall be initially borne by the State of Maharashtra, to be reimbursed by the State of Gujarat.

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78. Since we have directed retrial, it would be desirable to the investigating agency or those supervising the investigation, to act in terms of Section 173(8) of the Code, as the circumstances seem to or may so warrant. The Director General of Police, Gujarat is directed to monitor reinvestigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant.

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79. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted.

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80. Before we part with the case it would be appropriate to note some disturbing factors. The High Court after hearing the appeal directed its

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16 AIR 1966 SC 1418 : (1966) 2 SCR 678 : 1966 Cri LJ 1071

17 (2004) 3 SCC 767 : JT (2003) 9 SC 31

ZAHIRA HABIBULLA H. SHEIKH v. STATE OF GUJARAT (*Pasayat, J.*) 203

dismissal on 26-12-2003 indicating in the order that the reasons were to be subsequently given, because the Court was closing for winter holidays. This course was adopted “due to paucity of time”. We see no perceivable reason for the hurry. The accused were not in custody. Even if they were in custody, the course adopted was not permissible. This Court has in several cases deprecated the practice adopted by the High Court in the present case.

81. About two decades back this Court in *State of Punjab v. Jagdev Singe Talwandi*¹⁸ had inter alia observed as follows: (SCC p. 611, para 30)

- b* “30. We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Suppose, for example, that a final order without a
- c* reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the other, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or, as in the instant case, that a detenu be released from detention. If the object of passing such
- d* orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the
- e* reasoned judgment.”

- 82.** It may be thought that such orders are passed by this Court and, therefore, there is no reason why the High Courts should not do the same. We would like to point out that the orders passed by this Court are final and no further appeal lies against them. The Supreme Court is the final court in the hierarchy of our courts. Orders passed by the High Court are subject to the
- f* appellate jurisdiction of this Court under Article 136 of the Constitution and other provisions of the statutes concerned. We thought it necessary to make these observations so that a practice which is not a very desirable one and which achieves no useful purpose may not grow out of and beyond its present infancy. What is still more baffling is that written arguments of the State were filed on 29-12-2003 and by the accused persons on 1-1-2004. A grievance is
- g* made that when the petitioner in Criminal Revision No. 583 of 2003 wanted to file notes of arguments that were not accepted making a departure from the cases of the State and the accused. If the written arguments were to be on record, it is not known as to why the High Court dismissed the appeal. If it had already arrived at a particular view, there was no question of filing written arguments.

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¹⁸ (1984) 1 SCC 596 : 1984 SCC (Cri) 135 : AIR 1984 SC 444

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83. The High Court appears to have miserably failed to maintain the required judicial balance and sobriety in making unwarranted references to personalities and their legitimate moves before competent courts — the highest court of the nation, despite knowing fully well that it could not deal with such aspects or matters. Irresponsible allegations, suggestions and challenges may be made by parties, though not permissible or pursued defiantly during the course of arguments at times with the blessings or veiled support of the presiding officers of court. But such besmirching tactics (*sic*), meant as innuendos or serve as surrogacy ought not to be made or allowed to be made, to become part of solemn judgments, of at any rate by High Courts, which are created as court of record as well. Decency, decorum and judicial discipline should never be made casualties by adopting such intemperate attitudes of judicial obstinacy. The High Court also made some observations and remarks about persons/constitutional bodies like NHRC who were not before it. We had occasion to deal with this aspect to a certain extent in the appeal relating to SLPs (Crl.) Nos. 530-32 of 2004. The move adopted and manner of references made, in para 3 of the judgment except the last limb (sub-para) is not in good taste or decorous. It may be noted that certain reference is made therein or grievances purportedly made before the High Court about the role of NHRC. When we asked Mr Sushil Kumar who purportedly made the submissions before the High Court, during the course of hearing, he stated that he had not made any such submission as reflected in the judgment. This is certainly intriguing. Proceedings of the court normally reflect the true state of affairs. Even if it is accepted that any such submission was made, it was not proper or necessary for the High Court to refer to them in the judgment, to finally state that no serious note was taken of the submissions. Avoidance of such manoeuvres would have augured well with the judicial discipline. We order the expunging and deletion of the contents of para 3 of the judgment except the last limb of the sub-para therein and it shall always be read to have not formed part of the judgment.

84. A plea which was emphasised by Mr Tulsi relates to the desirability of restraint in publication/exhibition of details relating to sensitive cases, more particularly description of the alleged accused persons in the print/electronic/broadcast medias. According to him, “media trial” causes indelible prejudice to the accused persons. This is a sensitive and complex issue, which we do not think it proper to deal in detail in these appeals. The same may be left open for an appropriate case where the media is also duly and effectively represented.

85. If the accused persons were not on bail at the time of conclusion of the trial, they shall go back to custody, if on the other hand they were on bail that order shall continue unless modified by the court concerned. Since we are directing a retrial, it would be appropriate if the same is taken up on day-to-day basis keeping in view the mandate of Section 309 of the Code and completed by the end of December 2004.

86. The appeals are allowed on the terms and to the extent indicated above.



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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024

(ARISING OUT OF SPECIAL LEAVE PETITION (CRIMINAL) NO.8034 OF 2018)

AWUNGSHI CHIRMAYO AND ANR.

...APPELLANTS

VERSUS

**GOVERNMENT OF NCT OF DELHI
AND OTHERS**

...RESPONDENTS

J U D G M E N T

Leave granted.

2. The appellants before this Court are the two cousins of the deceased who was found dead in her rented accommodation in House No.424-B, Ground Floor, Chirag Delhi on 29.05.2013. The deceased was a 25 years old young girl who was a permanent resident of Manipur and at the relevant time was working in a call centre at Delhi. The post mortem was conducted next day on 30.05.2013 which recorded following observations:

“a) Part of nose is missing over right side and piece of it is attached on the left side.

b) Nibbling marks present over both the upper eye lids

c) wound size of 5 cm is present over dorsum of right foot; margins are irregular and show nibbling marks

d) all wounds are post mortem in origin”

The cause of death could not be ascertained in the post mortem report.

3. Some puzzling facts of this case leading to this appeal are that the First Information Report (for short ‘FIR’) was only registered by the police on 31.05.2013, initially under Section 306 of Indian Penal Code (for short ‘IPC’), against unknown persons, when there was blood spattered all over the room and the face of the deceased was smashed, as we are given to understand. It was only later converted to a case under Section 302 of IPC. Initially, investigation was conducted by the Crime Branch and a second post mortem report was submitted again with no clear cause of death determined.

4. The body of the deceased was discovered on 29.05.2013 by the landlord of the tenanted premises who alerted PCR at 11am

on the same day and this was recorded as DD No. 20A. The post-mortem of the deceased was conducted on 30.05.2013 by a Senior Resident of the All India Institute of Medical Sciences (AIIMS) who recorded injuries on the body of deceased, while opinion about the cause of death was not given and the viscera analysis report and other reports from Central Forensic Science Laboratory (CFSL), were yet to come.

5. The FIR No. 253 of 2013 was registered on 31.05.2013 at Police Station, Malviya Nagar against unknown accused persons under Section 306 of the Indian Penal Code, 1860 (hereafter "IPC"). The investigation was transferred to the Crime Branch, Malviya Nagar the next day, i.e., 01.06.2013 and pursuant to representations by the appellants, offence under Section 302 of IPC was added. On 04.06.2013 a second post-mortem was conducted by a Medical Board of three doctors from Maulana Azad Medical College & Lok Nayak Hospital, and noted eleven injuries on the person of deceased-victim, however, the opinion regarding the cause of death was not given due to the pendency of viscera chemical analysis and histopathology reports.

6. Meanwhile, the appellants herein had filed Writ Petition (Criminal) No. 1364 of 2013 before the Delhi High Court praying for direction for the investigation to be given to the Central Bureau of Investigation (for short 'CBI'), who is also respondent No. 3 in the present matter. During the pendency of this Writ Petition, an order dated 11.04.2017 was passed recording the submission made by the counsel for Government of NCT that the final report which was submitted on 24.02.2015 under Section 173 of CrPC before the Chief Metropolitan Magistrate (South), has been agreed to be withdrawn and matter will be subjected to further investigation.

7. The High Court ultimately dismissed this Writ Petition for reasons which are four-fold. Firstly, it was noted that polygraph test had been conducted on the suspects Raj Kumar and Amit Sharma on 26.12.2013, however, no opinion could be formed about their involvement. Secondly, the DNA of the semen samples recovered from the undergarment of the deceased did not match with the DNA samples of the accused. Thirdly, the boyfriend of the deceased had not joined investigation, he was absconding and could not be traced. Fourthly, despite the post

mortem conducted on the deceased, there was no conclusive cause of death which could be ascertained.

8. While considering all these factors, the High Court was of the opinion that simply because the premises of the landlord had an access to the room of the deceased it could not be said that they were guilty of committing the crime, the relevant observations of

the High Court are as follows:

“19. The investigation has been carried out by the investigating agency seemingly without any bias. Nothing has emerged on record if the landlord Raj Kumar and his brother-in-law Amit Sharma were having strong connection with any politician to influence the investigation. The petitioners have not furnished clinching evidence to, prima facie, infer the involvement of Raj Kumar and Amit Sharma in the crime. Their suspicion is based upon ‘no evidence’.

Merely because, the landlord and his brother-in-law had access to the victim’s room by scaling the 7 feet grill, it cannot be inferred at this stage that it was they who had committed the crime.

20. Since all efforts have been made by the Crime Branch to solve the case, handing over the investigation to CBI, at this stage, would serve no purpose. Investigation to CBI can be ordered only in exceptional situation and such an order is not to be passed as a routine merely because, a party has levelled vague allegations. [‘State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights’, 2010 (3) SCC 571].”

9. This order of the High Court is presently under challenge before this Court, where the appellants pray that a thorough investigation be done by CBI. Vide Order dated 05.02.2019, this Court had constituted Special Investigation Team (SIT) to monitor the investigation. The SIT so constituted submitted two status reports on 25.07.2019 and 21.10.2019. All the same, the investigation which has been conducted by the police and later by the SIT yielded no conclusive result. The SIT in its report has reached the following conclusion:

“From the investigation conducted so far, circumstantial evidences suggest that Ms. A.S. Reingamphi @ A.S. Solam D/o Sh. A.S. Chihanpam r/o Village-Choithar, Ukhrul-District, Manipur had committed suicide by consuming some poison/medicine, though the viscera reports did not reveal presence of any common posion/medicine in the exhibits. Till now there is

no evidence on record to support the allegation of murder or abetment of suicide or foul play or commission of any other offence in this case.

-Sd-

*Dy. Commissioner of Police
Crime (Cyber & FICN), Delhi*

10. The present appellants, who are close relatives of the deceased and are residents of the State of Manipur, have always claimed that it is a case of rape and murder, and the police is trying to shield the accused. The deceased comes from a “Ukhrul” District in the State of Manipur, which is far away from Delhi. The kith and kin of the deceased, who are before this Court are only praying for an effective investigation so that the culprits can be apprehended and brought to justice.

11. Apparently there seems to be no reason for a young girl of 25 years of age to commit suicide. *Prima facie* it does not seem to be a case of suicide. The crime scene shows that blood was spattered on the floor and the bed sheet was completely drenched in blood. It appears to be a homicidal death and therefore the culprits must be apprehended.

12. Mr. K.M. Nataraj, learned Additional Solicitor General of this Court, in his usual fairness submits that he has no objection, if the investigation in the present case is handed over to the CBI.

13. In a seminal judgment reported as ***State of West Bengal and Others vs Committee for Protection of Democratic Rights, West Bengal and others (2010) 3 SCC 571***, this Court has discussed in detail inter alia the circumstances under which the Constitutional Courts would be empowered to issue directions for CBI enquiry to be made. This Court noted that the power to transfer investigation should be used sparingly, however, it could be used for doing complete justice and ensuring there is no violation of fundamental rights. This is what the Court said in Para 70:

“70...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...

*emphasis
supplied*

14. The powers of this Court for directing further investigation regardless of the stage of investigation are extremely wide. This can be done even if the chargesheet has been submitted by the prosecuting agency. In the case of ***Bharati Tamang v. Union of India and Others (2013) 15 SCC 578***, this Court allowed the Writ Petition filed by the widow of late Madan Tamang who was killed during a political clash and directed investigation by the CBI which would be monitored by the Joint Director, CBI. The following observations were made in Para 44:

“44...Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits

and bring them for trial for being dealt with under the provisions of the criminal law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred to in the earlier paragraphs, we find that it is our responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried on effectively and the perpetrators of crime are duly punished by the appropriate court of law.”

15. This Court has expressed its strong views about the need of Courts to be alive to genuine grievances brought before it by ordinary citizens as has been held in **Zahira Habibulla H. Sheikh v. State of Gujarat (2004) 4 SCC 158.**

16. It is to observe that unresolved crimes tend to erode public trust in institutions which have been established for maintaining law and order. Criminal investigation must be both fair and effective. We say nothing on the fairness of the investigation

appears to us, but the fact that it has been ineffective is self evident. The kith and kin of the deceased who live far away in Manipur have a real logistical problem while approaching authorities in Delhi, yet they have their hope alive, and have shown trust and confidence in this system. We are therefore of the considered view that this case needs to be handed over to CBI, for a proper investigation and also to remove any doubts in the minds of the appellants, and to bring the real culprits to justice.

17. In view of the discussion made above, the order of the Delhi High Court dated 18.05.2018, dismissing the prayer of the present appellants to transfer the investigation to CBI is hereby set aside. The appeal is hereby allowed and we direct that CBI to hold enquiry in the matter. The case shall be transferred from SIT to the CBI. The SIT, which has so far conducted the investigation in the matter, will hand over all the relevant papers and documents to CBI for investigation. After a thorough investigation, CBI will submit its complete investigation report or

charge sheet before the concerned court as expeditiously as possible.

Pending application(s), if any, shall stand disposed of.

.....**J.**
[J.K. MAHESHWARI]

.....**J.**
[SUDHANSHU DHULIA]

NEW DELHI;
MARCH 22, 2024.

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2025

IN

WRI PETITION (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

Badibhau

...Petitioner

Versus

State of Madhya Pradesh & Anr.

...Respondents

APPLICATION SEEKING PERMISSION TO FILE
LENGHTY SYNOPSIS AND LIST OF DATES

TO,

THE HON'BLE THE CHIEF JUSTICE

OF INDIA AND HIS COMPANION JUDGES

OF THE HON'BLE SUPREME COURT OF INDIA

The humbler petition of
the Petitioner Above-Named.

1. This Petition is filed by the mother of Anjana, who has suffered the murder of 3 members of her Dalit family i.e. (1) Nitin her son, (2) Rajendra, her brother-in-law and (3) Anjana her daughter, and who fears that the former Home Minister of the State of Madhya Pradesh may wreck further vengeance on her family and herself

for making complaints against members of the gang of the former Home Minister as well as the latter himself to the police.

2. That the abovementioned petition has been filed seeking an order for a C.B.I/SIT investigation into the molestation and murder of 20 year old Anjana on 26.05.2024.
3. That the facts and contents of the Petition are not repeated herein for the sake of brevity and repetition and the same may be read as part and parcel of this Application.
4. It is most humbly submitted that the issue involved in the petition is complicated, and facts are plenty; a detailed description whereof is necessary, and hence the lengthy synopsis is filed.
5. This application is moved in bonafide.

PRAYER

Prayed, therefore, most humbly, that Your Lordships be pleased to:

- a. Permit the petitioner to file the lengthy synopsis and list of dates with the Writ Petition.
- b. Pass any other order deemed fit and proper in the interest of Justice

Place: New Delhi

Date:14.01.2025

Filed By:

Dubey & Chandra Law Chambers
(AOR for the Applicant)

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2025

IN

WRI PETITION (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

Badibhau

...Petitioner

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State of Madhya Pradesh & Anr.

...Respondents

APPLICATION SEEKING PERMISSION TO FILE
LENGHTY SYNOPSIS AND LIST OF DATES

TO,

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1. This Petition is filed by the mother of Anjana, who has suffered the murder of 3 members of her Dalit family i.e. (1) Nitin her son, (2) Rajendra, her brother-in-law and (3) Anjana her daughter, and who fears that the former Home Minister of the State of Madhya Pradesh may wreck further vengeance on her family and herself

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2. That the abovementioned petition has been filed seeking an order for a C.B.I/SIT investigation into the molestation and murder of 20 year old Anjana on 26.05.2024.
3. That the facts and contents of the Petition are not repeated herein for the sake of brevity and repetition and the same may be read as part and parcel of this Application.
4. That the Petitioner is filing this Petition and Supporting documents, namely Annexures P-1,P-2,P-3,P-4,P-5,P-6,P-7,P-8,P-10,P-11,P-12,P-13, and P-14 which were originally in Hindi and due to paucity of time the same could not be translated by an official translator. The annexures have been translated as per their true originals by the translator who is well versed in Hindi and English.
5. That in view of the facts and circumstances, it is expedient in the interest of justice that the documents filed herewith and mentioned here under may be taken on record.

PRAYER

6. It is therefore, prayed most respectfully that Your Lordships may be pleased to:
 - a. Exempt the petitioner from filing the official translation of Annexures P-1,P-2,P-3,P-4,P-5,P-6,P-7,P-8,P-10,P-11, P-12,P-13 and P-14 to the writ petition.

- b.** Pass any other order which Your Lordships deem fit and proper in the facts and circumstances of the present case.

**AND FOR THIS ACT OF KINDNESS PETITIONER
AS IN DUTY BOUND SHALL EVER PRAY.**

Date:14.01.2025

Place: New Delhi

Filed By:

Dubey & Chandra Law Chambers
(AOR for the Applicant)

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2025

IN

WRI PETITION (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

Badibhau

...Petitioner

Versus

State of Madhya Pradesh & Anr.

...Respondents

APPLICATION SEEKING EXEMPTION FROM FILING
ORIGINAL TRANSLATION OF DOCUMENTS

TO,

THE HON'BLE THE CHIEF JUSTICE

OF INDIA AND HIS COMPANION JUDGES

OF THE HON'BLE SUPREME COURT OF INDIA

The humbler petition of
the Petitioner Above-Named.

1. This Petition is filed by the mother of Anjana, who has suffered the murder of 3 members of her Dalit family i.e. (1) Nitin her son, (2) Rajendra, her brother-in-law and (3) Anjana her daughter, and who fears that the former Home Minister of the State of Madhya Pradesh may wreck further vengeance on her family and herself

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5. That in view of the facts and circumstances, it is expedient in the interest of justice that the documents filed herewith and mentioned here under may be taken on record.

PRAYER

6. It is therefore, prayed most respectfully that Your Lordships may be pleased to:

- a. Exempt the petitioner from filing the official translation of Annexures P-1,P-2,P-3,P-4,P-5,P-6,P-7,P-8,P-10,P-11, P-12,P-13 and P-14 to the writ petition.
- b. Pass any other order which Your Lordships deem fit and proper in the facts and circumstances of the present case.

**AND FOR THIS ACT OF KINDNESS PETITIONER
AS IN DUTY BOUND SHALL EVER PRAY.**

Date:14.01.2025

Place: New Delhi

Filed By:

Dubey & Chandra Law Chambers
(AOR for the Applicant)

THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

Writ Petition (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

MEMO OF PARTIES

<u>Sr.No</u>	<u>Particulars</u>	<u>Before this Hon'ble Court</u>
1.	Badi Bahu W/O Raghuvir Ahirwar, Aged About 49 Years, R/O Village Barodiya, Naunagir, P.S.- Khurai Rural, District-Sagar	Petitioner No-1
VERSUS		
1.	The State of Madhya Pradesh Through its Chief Secretary at Mantralaya, Vallabh Bhawan, Bhopal- 4620041.	Respondent No.1
2	CBI Through its director at Plot No. 5-B, CGO Complex, Lodhi Road, New Delhi - 110003	Respondent No.2

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRI PETITION (CRIMINAL) No. _____ of 2025

(Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

Badibhau

...Petitioner

Versus

State of Madhya Pradesh & Anr.

...Respondents

FILING MEMO

S.no	Particulars	Copies	Court Fee
1.	Listing Performa		
2.	Synopsis and List of Dates		
3.	Writ Petition along with Affidavit		
4.	Annexure P-1 to P-19		
7.	I.A seeking permission to file lengthy synopsis		
8.	I.A Seeking exemption from Filing Original Translation of Documents		
9.	Memo of Parties		
10.	Vakalatnama		

Filed By:

Dubey & Chandra Law Chambers
(AOR for the Applicant)

VAKALATNAMA

[SCR Order IV Rule 18]

IN THE SUPRME COURT OF INDIA

ORIGINAL/CRIMINAL/CIVIL/APPELLATE JURISDICTION
IN THE MATTER OF:-

Badibahu &

.....Petitioner(s)/Appellant(s)

//Versus//

The state of Madhya Pradesh & Anr

.Respondent(s)

I/We Badibahu W/o Shri Raghvir, In the above/Petition/Appeal do hereby appoint and retain Dubey & Chandra Law Chambers, AOR of the Supreme Court of India to act and appear for me/us in the above Suit /Appeal/Petition/Reference and on my /our behalf to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for review, to file and obtain return of documents, and to deposit and receive money on my /our behalf in the said suit / Appeal /Petition/ Reference and in the above matter. I /We agree to ratify acts done by the aforesaid Advocate in pursuance of this authorits.

Dated this the 07 day of January 2025

Accepted:

07 JAN 2025



(Dubey & Chandra Law Chambers)

AOR

Meenesh Dubey

Petitioners/Respondents

Advocate

UP 5490/2004

MEMO OF APPEARENCE

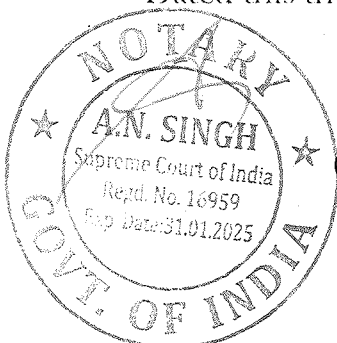
To,
The Registrar
Supreme Court of India
New Delhi
Sir,



Please enter my appearance on behalf of the Petitioner(s)/Appellant(s) /Respondent(s) Opposite Parties/Intervener in the mentioned above:

Dated this the day of2025

Yours faithfully



(DUBEY & CHANDRA LAW CHAMBERS/AOR CODE-3658)

Advocate for the Appellants/Petitioner/Respondents

ATTESTED

A.N. Singh, Adv.
Notary Public

07 JAN 2025

of India, New Delhi

SR NO 339