HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

M.Cr.C. No.7219/2017

.....Applicants: Ramlakhan and another

Versus

.....Respondents: State of M.P. and others

Shri Arun Pateriya, with Shri M.P.S. Raghuvanshi, counsel for the applicants.

Shri S.S. Rajput, Public Prosecutor for the respondents/State.

Shri Prashant Sharma, counsel for the intervenor.

Date of hearing : 09/07/2019

Date of Order : 23/07/2019

Whether approved for reporting : Yes

O R D E R
(23/07/2019)

This application under Section 482 of Cr.P.C. has been filed by the complainants/victims for transfer of investigation of Crime Nos.3/2015 and 22/2015 registered at Police Station Dabra Dehat and Crime No.186/2015 registered at Police Station Bilaua, Distt. Gwalior to CBI.

2. It is not out of place to mention here that during the pendency of this application, the police has filed the closure report in all the three cases which are pending consideration before the Court of J.M.F.C., Dabra, Distt. Gwalior and C.J.M. Gwalior. This Court by order dated 5-7-2019 had stayed the further proceedings.

3. Before considering the facts and submissions of the parties, it

would be necessary to consider the history of the case, which had resulted in the present petition under Section 482 of Cr.P.C.

4. M.Cr.C. No.1473 of 2016 under Section 482 of Cr.P.C. was filed by the applicant no.1/Ramlakhan for a direction to the Superintendent of Police, Gwalior to investigate the Crime No.186/2015 registered at Police Station Bilaua, Distt. Gwalior by himself. The following relief was claimed :

> ''अतएव निवेदन है कि प्रार्थी द्वारा प्रस्तुत याचिका स्वीकार किया जाकर विद्वान पुलिस अधीक्षक जिला ग्वालियर (म.प्र.) (प्रतिप्रार्थी कं 2) को यह निर्देश देने की कृपा करें कि उपरोक्त वर्णित मामलों मे स्वयं विवेचना करके प्रार्थी को न्याय दिलाये ।''

5. Notices were issued in the said petition on 10-3-2016 and the State Counsel was directed to file the status report, however, on 10-8-2016, 30-8-2016, 7-9-2016, 23-9-2016, 27-9-2016 and 7-10-2016, the case was adjourned at the request of the Counsel for the State and neither the status report, nor the case diary was produced. On 24-10-2016, a statement was made by the Counsel for the State that the case diary is not traceable and case diary is being reconstructed and accordingly, the following order was passed :

> "Shri Brijesh Sharma, counsel for the applicant.
>
> Shri R.D. Agrawal, Panel Lawyer for the respondent/State.
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> The counsel for the State submitted that he has received a letter dated 19.10.2016 from the office of SHO, Police Station Bilauva, District Gwalior to the effect that the case diary of Crime No. 186/2015 is not traceable and the carbon diary is being prepared and the documents are being reconstructed.
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> The counsel for the State is directed to file the letter dated 19.10.2016 within three days.
>
> Under these circumstance, the counsel for the

> respondent is directed to submit the progress report of the reconstruction of the case diary and also with regard to the departmental action which is proposed to be taken against the erring official.
>
> The counsel for the respondent prays for two weeks' time to submit the compliance report.
>
> List this case on **9.11.2016**.
>
> It is made clear that if the compliance report is not filed on or before 9.11.2016, this Court may require the personal appearance of the SHO Police Station Bilauva, District Gwalior.
>
> Copy of this order be made available to the counsel for the State for necessary compliance."

6. On 9-11-2016, a statement was made that except X-ray report, which is to be received from J.A. Hospital, Gwalior, all the relevant documents of the case diary have been reconstructed and accordingly, the following order was passed :

> "Shri Arun Pateriya, counsel for the applicant.
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> Shri Girdhari Singh Chauhan, learned P.P for the respondent / State.
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> In compliance of the order dated 24.10.2016, compliance report has been filed today. A copy of the same was made available by the learned counsel for the State for
> perusal of this Court.
>
> As per compliance report, except X-ray report which is to be received from J.A. Hospital, Gwalior, all the relevant documents of the case diary have been re-constructed.
>
> Since the sincere efforts are being made by the police for reconstructing the case diary, further time of 15 days is granted to the State to produce the complete case diary for hearing of this matter on merits.
>
> List this matter immediately after 15 days."

7. On 25-11-2016, this Court after observing the casual approach of the police, directed for personal appearance of S.H.O., Police Station Bilaua, Distt. Gwalior as nothing was being done and accordingly, the following order was passed:

> "Shri Brijesh Sharma, learned counsel for the petitioner.
>
> Ms. Anjali Gyanani, learned Panel Lawyer for the respondents/State.
>
> Fifteen days' time was granted to produce the case diary. For reply, earlier on 19.10.2016 SHO, Police Station, Biloa, District Gwalior had informed the office of Advocate General that efforts are being made to prepare the case diary and as soon as certified copies of the document are received, the diary shall be completed. Thereafter, on 07.11.2016 progress report has been filed and it is mentioned that x-ray report was sought from the JA. Hospital on 02.11.2016 and it is still awaited. This progress report reflects the casual approach of the SHO Police Station-Biloua, District Gwalior, therefore, it will be appropriate that SHO, Biloua be directed to remain present before this Court to explain as to why the documents could not be obtained from JA Hospital, Gwalior and why case diary has not been produced and why the compliance of the order of this Court has not been made.
>
> Let SHO, Biloua, District Gwalior either file complete case diary along with status report or shall remain personally present before this Court on the next date of hearing.
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> List this case on **06.12.2016."**

8. In spite of the direction for personal appearance, the S.H.O., Police Station Bilaua, Distt. Gwalior did not appear before the Court on 6-12-2016, accordingly, following order was passed :

> "Shri Arun Pateriya, Advocate for the petitioner.
>
> Shri Mohd Irshad, Panel Lawyer for the respondent/State.
>
> Though the case diary has been received, but the status-report in regard to investigation trigerred by the FIR dated 04.07.2015 has not been filed yet.
>
> The SHO, Police Station, Gwalior is not present despite the order dated 25.11.2016.
>
> Let the case be taken up **day after tomorrow i.e. 8th December,2016** to enable the said Officer to appear in person and explain the default."

9. Thereafter, on 8-12-2016, the S.H.O., Police Station Bilaua Distt. Gwalior appeared before the Court. On the said date, a specific

allegation was made against Yogeshwar Sharma, the then Additional Superintendent of Police, Gwalior (respondent no.3) that he is relative of one of the accused Nawal Kishore, and the entire investigation is being manipulated at the instance of Yogeshwar Sharma /respondent no.3. Apart from other questions, when it was asked from the S.H.O., as to why the call details of the complainant are being collected, then he immediately replied "अभियुक्त के" and then stopped and considering the conduct of the S.H.O., an inference was drawn by this Court, that on the instructions of the accused persons, the investigation is being done. Therefore, notices were issued to the Superintendent of Police, Gwalior/respondent no.2 and Yogeshwar Sharma, Additional Superintendent of Police Gwalior/respondent no.3.

10. On 20-12-2016, the respondents sought time to file detailed reply and on 2-1-2017, the case was finally heard.

11. On 4-1-2017, an additional affidavit of Yogeshwar Sharma, Additional Superintendent of Police, Gwalior and an order dated 3-1-2017 was filed, by which a new SIT was constituted by the then Superintendent of Police.

12. It is also mentioned that the complainant did not object to the new SIT constituted by the Superintendent of Police.

13. A detailed order dated 19-1-2017 was passed by this Court and the petition was finally disposed of. The detailed order dated 19-1-2017 can be summarized as under :

1. On 19-12-2016 itself, one affidavit was filed by Yogeshwar

Sharma, Additional Superintendent of Police, Gwalior to counter the allegation that he is relative of one of the co-accused Nawal Kishore and in the said affidavit, the relationship with co-accused was not denied. However, after the case was reserved for judgment, a supplementary affidavit was filed denying the relationship.

2. Earlier, the case diary of Crime No.186/2015 was lost and no attempt was made by the police authorities to reconstruct the same and in that regard, a progress report dated 2-1-2017 was filed, in which it was mentioned that A.S.I. Anantram Bhadauria was found negligent and accordingly, the departmental action is under stipulation. Ramesh Singh Sikarwar, the then S.H.O., Police Station Biloua was also found negligent, therefore, show cause notice has been issued to him. Similarly, show cause notice has been issued to R.C. Dohare and Sanjay Singh. However, the proceedings against Anantram Bhadauria were subsequently dropped on the ground that he has retired and the police authorities are completely silent on the show cause notice issued to Ramesh Singh Sikarwar, R.C. Dohare and Sanjay Singh. Thus, it is clear that the reply dated 2-1-2017 filed in M.Cr.C. No.1473/2016 was nothing but an attempt on the part of the then Superintendent of Police, Gwalior to mislead the Court.

(Underline applied)

3. The complainant had already made a written complaint against Sudhir Singh Kushwah, the then S.D.O.(P) Dabra, but still, the then Superintendent of Police, formed a new SIT under the leadership of Sudhir Singh Kushwaha, the then S.D.O. (P) Dabra. On 2-1-2017 itself, an objection was raised by the Complainant, that the complainant has already made serious complaints against Sudhir Singh Kushwaha S.D.O.(P), but still he has been made the head of SIT. Thus, it was alleged that the entire attempt is to give benefit to the accused persons. Thereafter, on 3-1-2017, a new order was passed by the then Superintendent of Police, Gwalior and new SIT was constituted under the leadership of Alim Khan, which was not objected by the complainant.

4. In order dated 19-1-2017, it was observed by this Court as under :

> 26.....It is important to mention here that the moment, the X-ray report of the injured was received, it appears that thereafter, the case diary of this case was lost on 29-3-2016. This Shows in volumes about the conduct of the police authorities.
> 27. It appears that earlier every attempt was being made to conduct a tainted investigation and after the receipt of X-ray report of the injured, in which foreign bodies were also found in the body of the injured, then the case diary was lost. Thus, under the facts and circumstances of the case, the loss of diary appears to be a deliberate act on the part of the police authorities.

5. Again, after considering various steps taken by the investigating officer, this Court observed as under :

> 30. .....Thus, it is clear from this diary proceeding, that the case diary was not reconstructed till 9-12-2016.
>
> (Underline applied)

6. It was also found that the investigating officer included the call details of the complainant and other witnesses which were made available to him by some interested person. Thus, following observations were made :

> 31.....It is further mentioned that the call details of the mobile of the complainant is obtained and as he had earlier said that he had informed the police on 100 about the incident but at that time, the mobile location was B.S.F. Secondary School therefore, a querry is being raised from Company that Jaurasy Danda area falls in which tower. Here it is not out of place to mention here that the call details of the mobile no. 9826224509 (of complainant), 7247552619 (of Asharam), 8964805133 (of accused Raju) and 9977614893 (of accused Surendra) were included in the case diary on 13-12-2016. However, surprisingly, there is nothing on record that how, these call details came in possession of the Investigating Officer. Earlier, the investigating officer had written a letter dated 6-12-2016 asking the Superintendent of Police, Gwalior to provide the call details of the complainant and his witnesses for the period 20-11-2015 to 30-11-2015. However, there is nothing in the police case diary to show that at point of time, any letter was written to the Company concerned, for providing the call details. Further, from the perusal of the call details of mobile no. 9826224509, 7247552619, 8964805133 and 9977614893 which are available in the police case diary, it appears that the print out of these call details was obtained on 30-12-2015 at

> 16:08 and the call details are from 26-11-2015 till 30-12-2015 16:08:01. Thus, it is clear that the print out of the call details of the above mentioned mobile Phone No.s were obtained on 30-12-2015 and not on 13-12-2016. If the investigating officer, had collected the call details on 13-12-2016 from the concerned Company, then the date of print out should have been 13-12-2016 and not 30-12-2015. Thus, it is clear that the call details which are the part of the police case diary were made available by some body to the investigating officer who without realizing the fact that the date of print out of the call details is also mentioned, included the same in the police case diary. No covering letter is annexed with the call details. Further, there is no document or case diary proceedings to show that at what time, the investigating officer had gone to the office of concerned Company to collect the call details. Further, when the incident took place on 26.11.2015, then what was the need to obtain call details till 30.12.2015 has also not been clarified. It is also not out of place to mention that by writing letter to S.P. Gwalior, the I.O. had sought call details from 20.11.2015 till 30.11.2015. Thus, it is clear that the investigating officer was including the documents in the police case diary which were made available by interested persons, and the investigating officer had not collected any document during the investigation....."
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> (Underline applied)

7. Even the Scientific Officer, Scene of Crime, Mobile Unit Gwalior, in its report dated 16-12-2016 had opined that the incident can take place as per the information of the complainant, but still the investigating officer, by mis-quoting the report of Scientific Officer, Scene of Crime, Mobile Unit, Gwalior jumped to a conclusion that the F.I.R., appears to be suspicious.

8. Thereafter, this Court came to the conclusion that the investigation was not done in a free and fair manner and was a tainted one. The following observations were made :

> 34. Thus from the appreciation of the facts which are available on record, it is clear that all the investigating officers, including the present one, right from the beginning of the F.I.R. were not conducting free and fair investigation and the entire investigation was tainted with a pre conceived notion that the F.I.R. is false. How, the investigating officer could perceive such notion is a matter to be investigated afresh.....

9. It was also observed that in exercise of *suo motu* powers, this Court can direct for CBI investigation, however, because of assurance given by the the Superintendent of Police as well as the Additional Advocate General, this Court under the belief and hope that free and fair investigation would be conducted by the new SIT, permitted the new SIT to proceed with the investigation and also directed that the new SIT shall carry out investigation on the following issues also:

> "**38.** Further, an application was filed by the respondents on 04.01.2017, mentioning that a new S.I.T. has been constituted by order dated 3-1-2017. A detailed reply has been filed by the applicant and has submitted that he has no objection if all the three crime No.s i.e., 186/2015 registered by Police Station Biloua and Crime No. 3/2015 and 22/2015 registered by Police Station Dehat, Dabra, Distt. Gwalior are investigated by the newly constituted S.I.T. In view of the no-objection submitted by the applicant, this Court instead of transferring the investigation to an independent agency, accepts the constitution of the

new S.I.T. as per the order dated 3-1-2017 issued by the Superintendent of Police, Gwalior and hope that a free and fair investigation would be conducted by the newly constituted S.I.T. As the S.I.T. would work under the supervision of Shri Alok Singh, Add. Superintendent of Police, Gwalior and the S.I.T. would also give weekly report to the Superintendent of Police, Gwalior, then it is expected that these two Senior Police Officers would ensure that the free and fair investigation is done by the newly constituted S.I.T. It is made clear that any deviation from the free and fair investigation would be viewed seriously. However, it is expected that the S.I.T. would also consider the following facts :

i. When the complaint was lodged on 26-11-2015 at 1:30 P.M. then how without wasting a single minute, a Rojnamcha Sanha was written at 1:30 P.M. itself, mentioning that the complaint appears to be suspicious.

ii. In the case of gun shot fire, cloths are considered to be first cover of the body. Why the cloths of the victim Ramlakhan were not seized from the Hospital and why they were allowed to be retained by the Hospital.

iii. When the accused person had appeared before the investigating officer, then instead of arresting them, under whose instructions, their statements were recorded and they were allowed to go?

iv. When the X-ray report of the victim was received on 20-3-2016 showing the presence of foreign bodies in the body of the victim, then under what circumstances, the Case diary of the crime no. 186/2015 was lost?

v. Who made the call details of Mobile Phone No.s 9826224509, 7247552619, 8964805133 and 9977614893 available to the investigating officer, Sanjay Singh and when the print out of these call details were obtained?

vi. When the Scientific Officer, Scene of Crime, Mobile Unit, Gwalior, has given his report on 16-12-2016 pointing out that the victim could have sustained the gun shot injury from the place as pointed out by the victim, then under what circumstances, the investigating officer had kept the case under

suspicion.

vii. When the Scientific Officer, Scene of Crime, Mobile Unit, Gwalior, gave his report on 16-12-2016 with regard to the possibility of commission of offence, then under what circumstances, the statements of other witnesses were recorded on 16-12-2016, to show that the accused persons were in the fields on 26-11-2015?

viii. When already serious allegations against Sudhir Singh Kushwaha made by the complainant, then why the S.I.T. was constituted under the leadership of Sudhir Singh Kushwaha is also a matter which is required to be addressed."

10. A show cause notice was also issued to Sanjay Singh T.I., Police Station Bilaua Distt. Gwalior as to why proceedings for Contempt of Court be not initiated against him. It appears that although the Registry of this Court has registered Conc No.141 of 2017 on 25-1-2017, but in spite of lapse of more than 2½ years, the said case has not been listed even for once**.** Therefore, the Principal Registrar of this Court is directed to immediately initiate an enquiry against the concerning Dealing Clerk and all other employees/officers, who are directly or indirectly involved in not listing of Conc No.141 of 2017.

11. The complainant had also expressed that he has no objection if the newly constituted SIT investigates all the three crime numbers i.e., Crime No.186/2015 registered at Police Station Bilaua, Crime Nos.3/2015 and 22/2015 registered at Police Station Dabra Dehat, Distt. Gwalior and

accordingly, the SIT has investigated all the three crime numbers.

14. Now, the present petition has been filed seeking CBI investigation in all the three Crime Nos., i.e, 3/2015, 22/2015 registered at Police Station Dabra Dehat, Distt. Gwalior and crime no.186/2015, registered at Police Station Bilaua, Distt. Gwalior.

15. Therefore, in order to find out that whether there is a tainted and pre-conceived investigation in all the three crime numbers, this Court would separately consider the manner in which investigation was done in all the three cases. But, before doing the said exercise, this Court would like to consider the scope of interference by this Court in exercise of powers under Section 482 of Cr.P.C.

16. The Supreme Court in the case of **State of Punjab Vs. CBI** reported in **(2011) 9 SCC 182** has held as under :

> **30.** In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to CBI. The narration of the facts and circumstances in paras 2 to 9 of this judgment also support the conclusion of the High Court that investigation by an independent agency such as CBI was absolutely necessary in the interests of justice.
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> **31.** Moreover, even though the High Court in the impugned order dated 11-12-2007 did make a mention that in case challan has been filed, then the petition will stand as having become infructuous in the order dated 12-12-2007, the High Court has stayed further proceedings before the trial court in the case arising out of FIR No. 82 of PS City I, Moga, till further orders. Thus, the High Court was of the view that even though the investigation is complete in one case and charge-sheet has been filed

by the police, it was necessary in the ends of justice that CBI should carry out an investigation into the case.

32. In the recent case of *State of W.B.* v. *Committee for Protection of Democratic Rights* a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extraordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under Section 482 CrPC to direct investigation by CBI for securing the ends of justice.

33. In the facts and circumstances of this case, however, the High Court has held that the State local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation has to be handed over to CBI. In other words, this was one of those extraordinary cases where the direction of the High Court for investigation by CBI was justified.

The Supreme Court in the case of Vinay Tyagi Vs. **Irshad Ali,** reported in **(2013) 5 SCC 762** has held as under :

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.

The Supreme Court in the case of **State of W.B. v. Committee for Protection of Democratic Rights** reported in **(2010) 3 SCC 571** has held as under :

> **Conclusions**
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> **68.** Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:
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> (*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.
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> (*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.
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> (*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 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 Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent

by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

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

69. In the final analysis, our answer to the question referred 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 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.

The Supreme Court in the case of **Dharam Pal Vs. State of Haryana** reported in **(2016) 4 SCC 160** has held as under :

> **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 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 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.
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> * * * *
>
> **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 test, the test of salt, so does justice has 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".

The Supreme Court in the case of **Pooja Pal Vs. Union of India** reported in **(2016) 3 SCC 135** has held as under :

> **72.** While recalling its observation in *State of Bihar* v. *J.A.C. Saldanha*, that on a cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8) of the Code and that the adjudicatory function of the judiciary commences, thus delineating the well-demarcated functions of crime detection and adjudication, this Court in *Sampat Lal case* did recognise a residuary jurisdiction to give directions to the investigating agency, if satisfied that the requirements of law were not being complied with and that the investigation was not being conducted properly or with due haste and promptitude.
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> **73.** It was reiterated in *Babubhai* that in exceptional circumstances, the Court in order to prevent the miscarriage of criminal justice, may direct investigation de novo, if it is satisfied that non-interference would ultimately result in failure of justice. In such an eventuality endorsement of the investigation to an independent agency to make a fresh probe may be well merited. That not only fair trial but fair investigation is also a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and therefore, investigation ought to be fair, transparent and judicious, was re-emphasised. The expression "ordinarily" as used in Section 173(8) of the Code was noted again to rule that in exceptional circumstances, however, in order to prevent miscarriage of criminal justice, a court may still direct investigation de novo.
>
> **74.** The above postulations being strikingly common in all these decisions, do pervade the fabric and the content thereof and thus dilation of individual facts has been avoided.
>
> **75.** That the extraordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to CBI to conduct investigation must be exercised with great caution, was underlined in *Committee for Protection of Democratic Rights* as adverted to hereinabove. Observing that although no

inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

76. In *Kashmeri Devi*, being satisfied, in the prevailing facts and circumstances that effort had been made to protect and shield the guilty officers of the police who allegedly had perpetrated the offence of murder involved, this Court directed the Magistrate concerned before whom the charge-sheet had been submitted, to exercise its power under Section 173(8) of the Code to direct CBI for proper and thorough investigation of the case and to submit an additional charge-sheet in accordance with law.

77. In *Gudalure M.J. Cherian*, this Court in a petition under Article 32 of the Constitution of India, lodged in public interest, did after taking note of the fact that charge-sheet had already been submitted, direct CBI to hold further investigation in respect of the offence involved. In recording this conclusion, this Court did take note of the fact that the nuns who had been the victim of the tragedy did not come forward to identify the culprits and that as alleged by the petitioners, the four persons set up by the police as accused were not the real culprits and that the victims were being asked to accept them to be so. The paramount consideration for the direction issued was to secure justice between the parties and to instil confidence in public mind. The same imperative did impel this Court to issue a similar direction for fresh investigation by CBI in *Punjab and Haryana High Court Bar Assn.* Here as well the investigation otherwise had been completed and charge-sheet was submitted.

78. This Court dealing with the proposition that once a charge-sheet is filed, it would then be exclusively in the domain of the competent court to deal with the case on merits in accordance with law and that the monitoring of the investigation would cease in all respects, held, in particular, in *K.V.*

Rajendran in reiteration of the enunciations aforestated, that though it is ordinarily so, the power of transferring investigation in rare and exceptional cases for the purpose of doing justice between the parties and to instil confidence in the public mind, can be made invoking its constitutional power available, to ensure a fair, honest and complete investigation.

79. The precedential ordainment against absolute prohibition for assignment of investigation to any impartial agency like CBI, submission of the charge-sheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victim(s) and the public in general in the justice administering mechanism, is thus unquestionably absolute and hallowed by time. Such a measure, however, can by no means be a matter of course or routine but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike.

80. In the decisions cited on behalf of CBI as well, this Court in *K. Saravanan Karuppasamy* and *Sudipta Lenka*, recounted the above propositions underpinning the primacy of credibility and confidence in investigations and a need for complete justice and enforcement of fundamental rights judged on the touchstone of high public interest and the paramountcy of the rule of law.

The Supreme Court in the case of **Neelam Mishra v. Union of India,** reported in **(2017) 12 SCC 775** has held as under :

2. It is submitted by Mr V. Shekhar, learned Senior Counsel for the petitioner that there has been no proper investigation in respect of the crime in question and effort is being made for some unfathomable reason to treat it as an accident. True it is, some investigation has been carried out by the Crime Branch of Delhi Police after the case being transferred from Noida as there was total inaction by the Noida police. It is urged by Mr Shekhar, learned Senior Counsel that the material evidence, as is

demonstrable, has been destroyed by the accused persons who have some influence and, therefore, it is a fit case to assuage the feelings of an anguished mother in search of justice to be transferred the investigation to CBI.

3. Mr Rana Mukherjee, learned Senior Counsel for CBI and Mr Ajit Kumar Sinha, learned Senior Counsel appearing for the Delhi Police though initially made an effort to put forth before the Court that the Delhi Police has taken extreme pains to solve the issue and, therefore, no fault can be found with its status report, later on they left it to the discretion of the Court.

4. At this juncture, we make it clear that we do not think that there has been any kind of laxity in the investigation carried out by the Delhi Police, but there can be no doubt that CBI is more equipped and the citizens of this country have faith in its investigating abilities.

5. In view of the aforesaid, we direct CBI to investigate into the crime independently and file the status report before this Court within three months' hence. Needless to say, when CBI is conferred the responsibility by this Court to investigate into the crime, it has to investigate independently, impartially and objectively without being influenced by any kind of prior investigation or prior status report.

The Supreme Court in the case of **Bharati Tamang Vs. Union of India,** reported in **(2013) 15 SCC 578** has held as under :

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.

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 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 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.
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> **41.6.** While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the 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 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.

The Supreme Court in the case of **State of Punjab v. Davinder Pal Singh Bhullar,** reported in **(2011) 14 SCC 770** has held as under :

> **VI. When CBI enquiry can be directed**
>
> **71.** In *Minor Irrigation and Rural Engg. Services, U.P.* v. *Sahngoo Ram Arya* this Court placed reliance on its earlier judgment in *Common Cause* v. *Union of India* and held that before directing CBI to investigate, the court must reach a conclusion on the basis of pleadings and material on record that a prima facie case is made out against the accused. The court cannot direct CBI to investigate as to whether a person committed an offence as alleged or not. The court cannot merely proceed on the basis of "ifs" and "buts" and think it appropriate that inquiry should be made by CBI.
>
> **72.** In *Divine Retreat Centre* this Court held that

the High Court could have passed a judicial order directing investigation against a person and his activities only after giving him an opportunity of being heard. It is not permissible for the court to set the criminal law in motion on the basis of allegations made against a person in violation of the principles of natural justice. A person against whom an inquiry is directed must have a reasonable opportunity of being heard as he is likely to be adversely affected by such order and, particularly, when such an order results in drastic consequence of affecting his reputation.

73. In *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari* this Court held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. Therefore, a person against whom an order is passed on the basis of a criminal petition filed against him, he should be impleaded as a respondent being a necessary party.

74. This Court in *Disha* v. *State of Gujarat* after considering the various judgments of this Court, particularly, in *Vineet Narain* v. *Union of India*, *Union of India* v. *Sushil Kumar Modi*, *Rajiv Ranjan Singh 'Lalan' (8)* v. *Union of India*, *Rubabbuddin Sheikh* v. *State of Gujarat* and *Ashok Kumar Todi* v. *Kishwar Jahan* held that the Court can transfer the matter to CBI or any other special agency only when it is satisfied that the accused is a very powerful and influential person or the State authorities like high police officials are involved in the offence and the investigation has not been proceeded with in proper direction or the investigation had been conducted in a biased manner. In such a case, in order to do complete justice and having belief that it would lend credibility to the final outcome of the investigation, such directions may be issued.

75. Thus, in view of the above, it is evident that a constitutional court can direct CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances

> where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.

The Supreme Court in the case of **K.V. Rajendran v. CBCID,** reported in **(2013) 12 SCC 480** has held as under :

> **13.** The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that 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. Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide *Gudalure M.J. Cherian* v. *Union of India*, *R.S. Sodhi* v. *State of U.P.*, *Punjab and Haryana High Court Bar Assn.* v. *State of Punjab*, *Vineet Narain* v. *Union of India*, *Union of India* v. *Sushil Kumar Modi*, *Disha* v. *State of Gujarat*, *Rajender Singh Pathania* v. *State (NCT of Delhi* and *State of Punjab* v. *Davinder Pal Singh Bhullar.*)
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> **14.** In *Rubabbuddin Sheikh* v. *State of Gujarat* this Court dealt with a case where the accusation had been against high officials of the Police Department of the State of Gujarat in respect of killing of persons in a fake encounter and Gujarat Police after the conclusion of the investigation, submitted a charge-sheet before the competent criminal court. The Court came to the

conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a charge-sheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

15. In *State of W.B.* v. *Committee for Protection of Democratic Rights* a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation 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. (See also *Ashok Kumar Todi* v. *Kishwar Jahan*.)

16. This Court in *Sakiri Vasu* v. *State of U.P.* held: (SCC p. 416, para 31)

> "*31*. … this Court or the High Court has power under Article 136 or Article 226 to order investigation by CBI. That, however, should be done *only in some rare and exceptional case*, otherwise, *CBI would be flooded with a large number of cases* and would find it impossible to properly investigate all of them."
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> (emphasis supplied)

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.

The Supreme Court in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat,** reported in **(2014) 4 SCC 626** has held as under :

> **50.** In *W.N. Chadha*, the High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing the order rogatory, on the application of a named accused in the FIR, Mr W.N. Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this Court held as follows:
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> > "*89*. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.
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> > * * *
> >
> > *92*. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of

> an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.
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> * * *
>
> *98*. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

These observations make it abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. In the present case, the appellant was not even an accused at the time when the impugned order was passed by the High Court. Finger of suspicion had been pointed at the appellant by independent witnesses as well as by the grieved father of the victim.

51. In *Rajesh Gandhi case*, this Court again

reiterated the law as follows:

> "*8*. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. … There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, CBI has been directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) CrPC, 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate."

The aforesaid observations would clearly support the course adopted by the High Court in this matter. We have earlier noticed that the High Court had initially directed that the investigation be carried under the supervision of the Special Commissioner of Police, Crime Branch, of the rank of the Additional Director General of Police. It was only when the High Court was of the opinion that even

further investigation was not impartial, it was transferred to CBI.

52. Again in *Sri Bhagwan Samardha*, this Court observed as follows:

> "*10*. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang* v. *State (Delhi Admn.)*. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.
>
> *11*. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation."

These observations also make it clear that there was no obligation for the High Court to either hear or to make the appellant a party to the proceedings before directing that the investigation be conducted by CBI.

53. We had earlier noticed that the High Court had come to the prima facie conclusion that the investigation conducted by the police was with the motive to give a clean chit to the appellant, in spite of the statements made by the independent witnesses as well as the allegations made by the father of the deceased. The legal position has been reiterated by this Court in *Narender G. Goel*:

> "*11*. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will

however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.* this Court observed:

'*11*. … There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.'

12. The accused can certainly avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code.

13. We are of the view that what is the evidentiary value can be tested during the trial. At this juncture it would not be proper to interfere in the matter."

54. Again in *Narmada Bai*, this Court after reviewing the entire body of case law concluded as follows:

"*64*. The above decisions and the principles stated therein have been referred to and followed by this Court in *Rubabbuddin Sheikh* where also it was held that considering the fact that the allegations have been levelled against high-level police officers, despite the investigation made by the police authorities of the State of Gujarat, ordered investigation by CBI. Without entering into the allegations levelled by either of

> the parties, we are of the view that it would be prudent and advisable to transfer the investigation to an independent agency. It is trite law that the accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them."

55. We may also notice here the observations made by this Court in *Mohd. Anis* v. *Union of India*, wherein this Court held as follows: (*Narmada Bai case*)

> "*61*. … '*5*. … Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice.' (*Mohd. Anis case*)
>
> '*2*. … Doubts were expressed regarding the fairness of the investigation as it was feared that as the local police was alleged to be involved in the encounters, the investigation by an officer of the U.P. Cadre may not be impartial.' (*Mohd. Anis case*)"

The Supreme Court in the case of **E. Shivakumar Vs. Union of India and others** reported in **(2018) 7 SCC 365** has held as under :

> **10.** As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on *Dinubhai Boghabhai Solanki* v. *State of Gujarat*, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in *Narender G. Goel* v. *State of Maharashtra*, in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the

accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.

11. Our attention was invited to the observations made in para 73 in *State of Punjab*, which in turn adverts to the exposition in *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari*, wherein it has been held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. That may be so, if the order to be passed behind the back of the party was to entail in some civil consequence to that party. But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected.

The Supreme Court in the case of **Romila Thapar v. Union of India,** reported in **(2018) 10 SCC 753** has held as under :

23. After having given our anxious consideration to the rival submissions and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:

23.1. (*i*) Should the investigating agency be changed at the behest of the named five accused?

23.2. (*ii*) If the answer to Point (*i*) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?

23.3. (*iii*) If the answer to Questions (*i*) and/or (*ii*) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the court-monitored investigation by an independent investigating

agency?

23.4. (*iv*) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?

24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In *Narmada Bai* v. *State of Gujarat*, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus:

> "*64. ... It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them*."
>
> (emphasis supplied)

25. Again in *Sanjiv Rajendra Bhatt* v. *Union of India*, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus:

> "*68. The accused has no right with reference to the manner of investigation or mode of prosecution*. Similar is the law laid down by this Court in *Union of India* v. *W.N. Chadha*[4], *Mayawati* v. *Union of India*, *Dinubhai Boghabhai Solanki* v. *State of Gujarat*, *CBI* v. *Rajesh Gandhi*, *CCI* v. *SAIL* and *Janata Dal* v. *H.S. Chowdhary*."
>
> (emphasis supplied)

26. Recently, a three-Judge Bench of this Court in *E. Sivakumar* v. *Union of India*, while dealing with the appeal preferred by the "accused" challenging the order of the High Court directing investigation by CBI, in para 10 observed:

> "*10*. As regards the second ground urged by the petitioner, we find that even

> this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on *Dinubhai Boghabhai Solanki* v. *State of Gujarat*, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on *Narender G. Goel* v. *State of Maharashtra*, in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."
>
> **27.** This Court in *Divine Retreat Centre* v. *State of Kerala*, has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

17. Thus, the investigation done by the police in each and every case would be considered separately.

Crime No. 186/2015 Police Station Bilaua, Distt. Gwalior.

18. This Court by order dated 19-1-2017 passed in M.Cr.C. No.1473

of 2016 had already considered the deficiencies in the investigation as well as the high handedness of the investigating officer. Therefore, instead of reiterating the same deficiencies once again, it would be proper to reproduce the observations made by this Court in order dated 19-1-2017 passed in M.Cr.C. No. 1473 of 2016 which are as under :

> **"21.** From the First Information Report, it is clear that the incident took place on 26-11-2015 at 12 P.M. and the complainant/injured lodged a Complaint in the Police Station Biloua, Distt. Gwalior at 1:30 P.M.
> **22.** On 26-11-2015 itself the injured Ramlakhan was taken to J.A. Hospital and it is mentioned in the diary that the hospital personals told the I.O. to collect the shirt of the victim and medical documents on the next date. It is also mentioned in the case diary that the I.O. went on the spot and enquired from the Forest Outpost, but found that no body had heard the sound of gunshot fire. It appears that the spot map was also prepared on 26-11-2015 itself. Subsequently the F.I.R. was registered on 28-11-2015. However, surprisingly, one Rojnamcha Sanha is available in the Police Case Diary which was also written at 1:30 P.M. on 26-11-2015 itself. In the said Rojnamcha Sanha, after narrating the complaint, it is mentioned that on asking for information from Police Station Dehat, an information has been received that on 4-7-2015, and 3-8-2015 the complainant had lodged two reports against the accused persons, in Police Station Dehat Dabra, Distt. Gwalior and investigation is still going in those cases, therefore, it appears that the present complaint is suspicious. It is surprising that when the complaint was made at 1:30 P.M. then how, the person who has written the Rojnamcha Sanha at 1:30 P.M. itself, without wasting a single minute could collect informations from the different police station? How, the scriber of the Rojnamcha Sanha got a clue that some other cases might have been registered in Police Station Dehat, Dabra, Distt. Gwalior. This is possible only when the scriber of the Rojnamcha Sanha was already aware of the fact that the complaint is going to be lodged and

therefore, he had already collected the informations from different police station in advance. If this is the situation, then it speaks in volumes against the police. However, after conducting certain preliminary enquiry, the police ultimately registered the crime and recorded the F.I.R. on 28-11-2015. Thus, it is clear that whatever suspicion was in the mind of the police was clarified after conducting the enquiry/investigation and therefore, they lodged the F.I.R. It appears that thereafter, no investigation was done and consequently, Kamlesh, brother of the victim made a complaint to the Superintendent of Police on 1-12-2015 in Jan Sunvai which was received in the police station on 3-12-2015. Therefore, the case diary proceedings were written on 3-12-2015. According to this proceeding, the Doctor did not handover the shirt and swab to the police and the witnesses who were bypassers were being searched. There is also mention of making of complaint to the Superintendent of Police on 1-12-2015.

23. It appears that an application was made by the accused persons to the S.D.O.(P) which was received in the Police Station on 20-12-2015. Therefore, after 3-12-2015, the diary proceedings were written for the first time on 20-12-2015. According to these proceedings, it appears that the witnesses were called in the police station and they have stated that they were working in their fields therefore, they have no information with regard to the incident. They also narrated that the accused persons were also working in the fields. It is surprising that how the Investigating Officer came to know about the names of witnesses because the names of the by-passers were not disclosed by the complainant in his complaint and statement. How and under what circumstances and at whose instance these witnesses reached to the police station is not known. From the diary proceedings dated 20-12-2015, it is also clear that the I.O. could not get any information about the names of by-passers.

24. The next diary proceeding is dated 28-12-2015. According to this diary proceedings, the accused persons, namely Badam Singh and Raju were called in the police station and their

statements were recorded who stated that they are innocent persons and have been falsely implicated and for the third time, a false report is being lodged by Ramlakhan. It is also mentioned that the shirt and swab of the victim is not received from the hospital and the call details of the accused persons are being procured. Surprisingly, when the FIR was already lodged then why the accused persons were not arrested and why they were allowed to go after recording their statement is also not known.

25. Next diary proceeding is dated 14-1-2016 in which it is mentioned that the complainant was summoned for further interrogation, but he did not turn up and the shirt and swab of the victim also could not be collected from the Hospital.

26. Next diary proceeding is dated 25-1-2016 in which it is mentioned that the call details of the accused are yet to be received and the victim has refused to come for further interrogation on the ground that he has already given his statement. It is also mentioned that the shirt and swab of the victim could not be collected from Hospital. Thereafter there is a long pause in the investigation and the next diary proceeding is dated 20-3-2016. As per this diary proceeding, the X-ray report and X-ray Plate of the injured Ramlakhan were received from the Hospital in which it was found that the injured had suffered fracture. It was also mentioned that the call details are yet to be received. It is further mentioned that the further investigation will be done as per the directions given by the Higher Authorities. It is important to mention here that the moment, the X-ray report of the injured was received, it appears that thereafter the case diary of this case was lost on 29-3-2016. This shows in volumes about the conduct of the police authorities.

27. It appears that earlier every attempt was being made to conduct a tainted investigation and after the receipt of X-ray report of the injured, in which foreign bodies were also found in the body of the injured, then the case diary was lost. Thus, under the facts and circumstances of the case, the loss of diary appears to be a deliberate act on the part of the police authorities.

28. It is clear from the case diary proceedings that thereafter neither an attempt was made to

trace out the missing case diary, nor any attempt was made to reconstruct the case diary or to proceed with the investigation with the help of the carbon case diary which was available in the office of S.D.O.(P), Dabra, Distt. Gwalior.

29. The next case diary proceeding is dated 3-11-2016. In this proceedings it is mentioned that in compliance of the order dated 10-9-2016 passed by the S.D.O.(P), Dabra, Distt. Gwalior, with the help of the carbon case diary, the case diary of this case is under reconstruction. It is also mentioned that a letter has been sent to the Radiology Department. In the case diary proceeding dated 4-11-2016, it is mentioned that a request was made on mobile to Dr. Ruchi who is on leave to provide the X-ray report of injured, who in her turn inform that as the duplicate X-report is not traceable, therefore, the same shall be made available as soon as it is located. Diary proceedings dated 5-11-2016 discloses, that the details of Crime no. 3/15 and 22/15 of Police Station Dehat Dabra were included in the case diary. The next diary proceeding is dated 29-11-2016 in which it is mentioned that again a request was made to the concerning Doctor to make the X-ray report of victim Ramlakhan available, however, it has been replied that the duplicate is not traceable and the same shall be made available as soon as it is made available. Next diary proceeding is dated 3-12-2016 in which it is mentioned that a letter has been given in the office of S.D.O. (P) Dabra for collecting the call details of the complainant and the copy of the F.I.R. in crime no. 22/15 and 3/15 registered by police station Dehat Dabra are also included in the case diary as well as the Polygraph test report of the accused person which was got conducted in crime no. 22/15 is also included in the case diary and the copy of the letter showing that in crime no. 3/15, inspite of the letter addressed to the complainant, they did not come for polygraph test is also included in the case diary. Thereafter, it is mentioned that the complainant was further interrogated and Surendra Singh is not found at the given address.

30. The next proceeding is dated 6-12-2016. According to this proceedings, the investigation was taken up by the S.H.O., Police Station Biloua in his hand. In this case diary proceeding it is

> mentioned that as the original case diary is lost, therefore, carbon case diary is prepared. The instant case was listed before the Court on 8-12-2016 on which considering the conduct of the S.H.O. Police Station Biloua Distt. Gwalior, a very detailed order was passed. It is not out of place to mention here that during the hearing the S.H.O. Police Station Biloua had admitted that the call details of the complainant are being sought on the instructions of the accused persons. The next case diary proceeding is dated 8-12-2016, in which it is mentioned that after attending the Court proceedings, the radiology Department was contacted but the X-ray report could not be collected. It appears that a letter was written on 9-12-2016 to the HOD, Radiology Department, JA Hospital, Gwalior for the first time to provide the certified copy of the X-ray report. As per the diary proceedings dated 9-12-2016, it appears that again on telephone, Dr. Ruchi was contacted for providing the carbon copy of the X-ray report, who informed that the same is not traceable and would be made available as soon as the same is traced. The Doctor was informed that since, serious comments have been made by the Court, therefore, the same should be provided as early as possible. It is not out of place to mention that by order dated 8-12-2016, this Court had issued notices to the Superintendent of Police, Gwalior and Add. Superintendent of Police, Gwalior. It is also borne out from the diary proceedings dated 9-12-2016, that the complainant was asked to appear before the investigation officer, for the reconstruction of the case diary. Thus, it is clear from this diary proceeding, that the case diary was not reconstructed till 9-12-2016. ”
>
> (Underline applied)

19. This Court would only refer to the diary proceedings with regard to the investigation done by the SIT constituted by order dated 3-1-2017 and would not reproduce the case diary proceedings in detail in view of Section 172 of Cr.P.C.

20. It appears that notices were sent to the complainant and his

witnesses for supplementary statements and the statements of Lajjaram and Badam Singh (father of persons named in the F.I.R.) were recorded. Thereafter, fresh spot map was prepared on the information of the complainant Ramlakhan and eyewitness Soneram and it was mentioned that there is some discrepancy. However, it is not clear that when the report of the Mobile unit of Scene of Crime, Gwalior was already with the police, then why the investigating officer was trying to recreate the scene and that too after more than 1 year and 4 months of the incident. Thereafter, the statements of some witnesses were recorded, however, it appears that the complainant and other eyewitnesses did not appear and clearly stated that now they would give their statements in the Court. It is not out of place to mention here that the complainant had also filed an application in M.Cr.C. No.1473/2016 for getting his statement recorded under Section 164 of Cr.P.C. Thus, it is clear that although the complainant was ready to give his statement under Section 164 of Cr.P.C., but the investigating officer was not interested in getting his statement recorded under Section 164 of Cr.P.C. In the case diary proceedings dated 9-3-2017, it is mentioned that the injured was taken by S.H.O. R.S. Sikarwar and Constable Krishnakant Palia to Primary Health Centre, Bilaua and the complainant was treated by Dr. J.K. Mansuria. Constable Palia has stated that he had seen burn marks on the shirt of the injured Ramlakhan. However, it is also stated by him that when S.H.O., Police Station Bilaua R.S. Sikarwar requested Dr. Tiwari to handover the cloths of the injured, then Dr. Tiwari had said that he

would seal the same on the next morning. However, no written requisition was made for handing over the shirt and swab of wound of the complainant. No substantive investigation was done by the SIT which was constituted by order dated 3-1-2017 and the Dy.S.P. (Crime) also refused to give any instructions as the post of Additional Superintendent of Police (Crime) was lying vacant. Thereafter, new SIT was constituted and once again notices were issued to the complainant and witnesses for undergoing polygraph test. It was also mentioned that it would be proper to get the statements of the witnesses recorded under Section 164 of Cr.P.C., however, that was not done by the police. In the month of August 2018, the record of the Police Station Bilaua was checked and it was found that on 10-12-2016 a letter was written to Cyber Cell of the office of Superintendent of Police for providing the call details of the complainant. In another diary proceedings, it is mentioned that the concerning mobile company has informed that they preserve the call details for a period of one year only. The statement of one Constable Akash Pandey was also recorded who has stated that he was posted in the Cyber Cell and after obtaining the call details, he had handed over to Constable Shakir Ali. However, neither the photocopy of the inward and outward register of Cyber Cell nor the inward and outward register of Police Station Bilaua is in the case diary. Further, there is no seizure memo in the case diary to show the seizure of call details. Further, this aspect has already been considered in detail by this Court while deciding M.Cr.C. No.1473 of 2016 and now even the said

call details have not been filed along with the closure report, nor there is any reference of such call details in the closure report. Further, the cloths and swab of the injured could not be seized. The transcript of the information given by the informant to the Dial 100 about the gunshot firing in which the names of the assailants were specifically mentioned has also been obtained by the police which supports the contention of the complainant party.

21. This Court had pointed out the circumstances which were required to be investigated by the SIT.

However, there is nothing in the case diary proceedings about any investigation on the issues raised by this Court in order dated 19-1-2017 passed in M.Cr.C. No.1473 of 2016, but at the time of final hearing, a summary with supporting documents was provided by Mr. A.P. Goswami, Town Inspector, Police Station Bilaua which was also signed by the Public Prosecutor and the said folder has been taken on record. The question wise reply submitted by the police is as under :

1. When the complaint was lodged on 26-11-2015 at 1:30 P.M. then how without wasting a single minute, a Rojnamcha Sanha was written at 1:30 P.M. itself, mentioning that the complaint appears to be suspicious?

It is the reply of the respondent/State that on 26-11-2015, the written complaint of the complainant Ramlakhan was received in the police Station at about 12:00 P.M., and the same was recorded in Sanha No.672 after conducting

preliminary enquiry.

Sanha No.672 was written at 13:30 and there is no other separate sanha to show the receipt of the complaint of the complainant at 12:00 P.M. **Further, when the incident itself took place at about 12 P.M., then how the complainant could give written complaint to the police station at 12:00 P.M. itself? Thus, the explanation given by the police authorities cannot be accepted and it is clear that the police authorities were somehow trying to cover-up their lapses.** Thus, it is clear that verbal explanation given by R.S. Sikarwar, S.H.O., Police Station Bilaua is not acceptable.

2. In the case of gunshot fire, cloths are considered to be first cover of the body. Why the cloths of the victim Ramlakhan were not seized from the Hospital and why they were allowed to be retained by the Hospital?

It is the reply of the respondent/State that the Doctor had instructed the S.H.O. to collect the cloths and swab on the next day, however, it appears that thereafter, nobody was sent on the next day. Even, this Court has already considered this aspect in detail and nothing new has come on record. Thus, it is clear that the investigating officer, committed either serious negligence or deliberately avoided to seize the shirt (on which there were burn marks and holes

according to the constable Palia himself) which was one of the crucial evidence in the matter.

3. When the accused person had appeared before the investigating officer, then instead of arresting them, under whose instructions, their statements were recorded and they were allowed to go?

It is mentioned that unless and until the offence is not proved, the accused persons are not arrested. However, there is a suspicion that why the police right from the very beginning was saying that the report is suspicious, specifically when the complainant had sustained the gunshot on his chest, which is a vital part of body.

4. When the X-ray report of the victim was received on 20-3-2016 showing the presence of foreign bodies in the body of the victim, then under what circumstances, the Case diary of the crime no.186/2015 was lost?

It is mentioned that the explanation of Anantram Bhadauria was taken and it was not found satisfactory, but since he has retired, therefore, the case is closed and no departmental action is being taken. The letter dated 13-11-2017 reads as under :

कार्यालय पुलिस अधीक्षक, जिला ग्वालियर

क्रमांक/पुअ/ग्वा/निस–1/ 691 /2017 दिनांक 13/11/2017

प्रति,

पुलिस महानिरीक्षक,
ग्वालियर जोन,
ग्वालियर।

विषयः–स्टार समाचार पत्र भोपाल में प्रकाशित समाचार ''एक झूठ को छुपाने के लिये पुलिस बोल रही है झूठ'' के संबंध में।
सन्दर्भः–आपका पत्र क्र./पुमनि/ग्वा/जोन/रीडर/पुमु–346–बी/17 दि. 27.03.17 एवं पत्र क्र./ पुमनि/ग्वा/जोन/रीडर/पुमु–346–एच/17 दि.10. 08.17 तथा इस कार्यालय का पत्र क्र./अपुअ/ जिविशा/ग्वा/पेपर क्र. /05/17 दि. 24.05.17

–00–

कृपया विषयान्तर्गत सन्दर्भित पत्रों का अवलोकन करने की कृपा करें। तत्संबंध में अनुरोध है कि थाना बिलौआ के अप.क्र. 186/15 धारा 307, 34 भादवि की डायरी गुम करने में सउनि अनन्तराम भदौरिया (सेवानिवृत्त) द्वारा बरती गई लापरवाही के संबंध में एसडीओपी डबरा से जॉच कराई जाने पर उनके द्वारा प्रस्तुत जॉच प्रतिवेदन क्र./एसडीओपी /1823–ए/16 दि. 16. 12.16 में प्रतिवेदित किया गया है कि– उपरोक्त प्रकरण में जॉच से सउनि अनन्तराम भदौरिया (सेवानिवृत्त) द्वारा थाना बिलौआ के अप.क्र. 186/15 धारा 307, 34 भादवि की डायरी गुम करना पाया गया, जो कि एक महत्वपूर्ण अपराध में साक्ष्य को संकलित करने में अत्यन्त आवश्यक थी, परन्तु सउनि अनन्तराम भदौरिया द्वारा गैर जिम्मेदारान तरीका लापरवाही एवं व्यावसायिक अक्षमता का परिचय देते हुये डायरी गुम कर दी एवं इसके द्वारा चार्ज लिस्ट एवं स्वानगी में भी उपरोक्त डायरी का इन्द्राज नहीं किया गया। उक्त कृत्य के संबंध में अपचारी को इस कार्यालय के पत्र क्रमांक/पुअ/ग्वा/रीडर/प्रथम/जी–319–ए/2016 दिनांक 19.12.16 द्वारा अपना स्पष्टीकरण प्रस्तुत करने हेतु निर्देशित करने पर अपचाारी द्वारा प्रस्तुत स्पष्टीकरण अवलोकनोपरान्त असन्तोषजनक पाया गया है, परन्तु अपचारी दिनांक 31.10.2016 को 60 वर्ष की अधिवार्षिकीय आयु पूर्ण करने पर सेवानिवृत्त होने के कारण उसके विरूद्ध कोई दण्डात्मक कार्यवाही नहीं की जाकर प्रकरण नस्तीबद्ध किया गया है। अतः कृपया अवलोकनार्थ सादर सम्प्रेषित है।

(डॉ. आशीष)
पुलिस अधीक्षक,
जिला ग्वालियर

When a question was put to the Public Prosecutor, as to why the departmental proceedings were dropped, then it was replied that since, the delinquent officer had retired, therefore, no disciplinary action could have been taken.

It is surprising, that the Senior Superintendent of Police, was not aware of the provisions of M.P. Civil Services (Pension) Rules, 1976 (In short "Rules 1976"). Rule 9 of the Rules 1976 reads as under :

9. **Right of Governor to withhold or withdraw**

pension. (1).....
2(a).....
(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment :-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings :

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government.....

(Underline applied)

In the present case, Anantram Bhadauria had retired on 31-10-2016, whereas he had lost the case diary on 29-3-2016. Thus, the incident had certainly taken within a period of 4 years from the date of his retirement. Even today, the upper limit of 4 years has not expired.

Thus, if the above mentioned letter is read along with reply dated 2-1-2017 filed by the respondents in M.Cr.C. No.1473/2017, then it is clear that even on 2-1-2017, the real intention of the then Superintendent of Police, Gwalior was to save Anantram Bhadauria, but still false assurance was given that departmental action shall be taken against him, although the then Superintendent of Police was already aware that Anantram Bhadauria has already retired. Thus, it is clear that not only tainted investigation was being done, but even the then Senior Superintendent of Police, Gwalior was deliberately misleading the Court.

5. Who made the call details of Mobile Phone Nos.9826224509, 7247552619, 8964805133 and 9977614893 available to the investigating officer, Sanjay Singh and when the print out of these call details were obtained?

It has been replied that Sanjay Singh, S.H.O., Bilaua Distt. Gwalior had obtained the call details of Mobile Nos. 98261224509, 7247552619, 8964805133, 9977614893 from the Cyber Cell and by letter no.Crime Branch/Gwa/195/18, the CDR of such call details was obtained. The reply given by the police authorities is patently wrong.

It has already been mentioned that the inward and outward register of Cyber Cell as well as Police Station Bilaua, Distt. Gwalior is not on record. Further, if the Cyber Cell had received the call details on 26-12-2016, then why the said call detail was having the print date of 30-12-2015? This crucial aspect of the matter has been deliberately suppressed by the respondents, as well as the SIT. Thus, even the SITs have not conducted the investigation in a free and fair manner.

Further, the earlier call details, which were available in the case diary at the time of hearing of M.Cr.C. No.1473/2016, have been removed from the case diary and have not been filed along with the closure report.

6. When the Scientific Officer, Scene of Crime, Mobile 33 M.Cr.C. No.1473 of 2016 Unit, Gwalior, has given his report on 16-12-2016 pointing out that the victim could have sustained the gunshot injury from the place as pointed out by the victim, then under what circumstances, the investigating officer had kept the case under suspicion?

Explanation offered deals with the opinion of the Investigating officer. However, there is nothing on record to suggest that in spite of the report of Scientific Officer, Scene of Crime, why it was projected that the incident appears to be suspicious. Why the report of Scientific

Officer was misquoted has not been explained. Thus, the explanation requires deeper scrutiny.

7. When the Scientific Officer, Scene of Crime, Mobile Unit, Gwalior, gave his report on 16-12-2016 with regard to the possibility of commission of offence, then under what circumstances, the statements of other witnesses were recorded on 16-12-2016, to show that the accused persons were in the fields on 26-11-2015?

It has been replied that the presence of the suspects was found around the place of incident. The statements of Punjab Singh Gurjar, Harprasad Gurjar, Rameshwar Gurjar and Madho Singh Gurjar were recorded on 16-12-2016 and they had also proved that the suspects were present around the village where the incident had taken place.

Thus, where the presence of the suspects was found around the place of incident, then how the police could jump to the conclusion that they have been falsely implicated?

8. When already serious allegations against Sudhir Singh Kushwaha were made by the complainant, then why the S.I.T. was constituted under the leadership of Sudhir Singh Kushwaha, is also a matter which is required to be addressed.

No explanation has been given. Thus, it is clear that the then Superintendent of Police was not only trying to mislead this Court, but had also constituted the SIT under the leadership of Sudhir Singh Kushwaha S.D.O. (P) Dabra, against whom serious allegations were already made by the complainant. Thus, an attempt was made by the then Superintendent of Police, Gwalior to take the stamp of approval from this Court on the constitution of new SIT so that the biased SIT can be utilized for tainted investigation.

Crime No. 3/2015

22. It appears that a police party was on patrolling, when it got an information about the murder of Saligram. The police party immediately went to the spot. Dehati Nalishi on the information of complainant Kamlesh was recorded. The investigating officer has recorded the following important lines in the case diary proceedings of the first day itself:

> घटनास्थल पर अब मृतक के परिवार रिश्तेदार आदि आना शुरू हो गये है । **तथा आरोपीगणो का मकान भी पास मे ही है। अपनी अपनी राजनीति शुरू कर दी है** .....

23. Since, it was night, therefore, the investigating officer sent the dead body to mortuary, but did not prepare the Dead Body Panchnama before shifting the dead body from the spot. Even nothing is there on record to show that whether the deceased was wearing any shirt/kurta or not? Nothing was seized from the spot before removing the dead body from the place of incident. Dehati Nalishi and Marg Intimation under

Section 174 of Cr.P.C. were sent to the Police Station in the night itself. In the morning of 5-7-2015, the spot map was prepared. Blood stained earth and plain earth was seized and the investigating officer went to mortuary for getting the postmortem done. A dead body Panchnama was prepared and application for postmortem was made and the postmortem was done and the following injuries were found on the body of the deceased :

> "Wound of Entry was found on right side of chest front side. It was situated 3 1/2 inches below the right nipple and wound of exit was found on the right side back of chest. Fractures of ribs were also found. Cause of death was due to gun shot injury and the nature of death was homicidal in nature.

24. As per the dead body panchnama, which was prepared in the mortuary, Kurta, Paijama and one Gamchha were found lying by the side of the dead body, whereas the deceased was wearing only underwear.

25. It is beyond imagination, that when the cloths were found by the side of the dead body of deceased, then why they were not seized by the police on the spot itself and there is no document on record to show that at the time of shifting the dead body from the spot, the cloths were also sent along with the dead body.

26. The spot map was prepared on 5-7-2015 at about 7 A.M. and following observations have been made in the spot map :

1. **Excessive blood was found on cloths, cot and on the earth.**

However, neither the blood stained cloths nor the cot on which the deceased was found dead were seized. The details of the cloths are also not mentioned. It is not clear that whether it was a bed sheet or mattress or any other cloth belonging to the deceased or suspects .

2. It is the finding of the investigating agency that the deceased was shot, while he was lying on the cot. The direction of gunshot was from upwards to downwards but the investigating officer did not try to find out the fired bullet from the spot.
3. Even no gunshot mark on the earth was tried to be lifted by the Investigating Officer.
4. No attempt was made to take a panoramic photograph of the spot.
5. In the Dehati Nalishi itself, it was specifically mentioned by the complainant, that several gunshots were fired towards the complainant and other witnesses, but no attempt was made to search for the fired cartridges, gunshot marks on the wall etc.
6. No attempt was made to find out any fired cartridges from the spot.
7. The persons who have been named in the F.I.R. are having licensed guns and although it is mentioned in the case diary proceedings, that steps would be taken for cancellation of their license, but it appears that no attempt was made.
8. Although in the case diary proceedings of 5-7-2015, it is mentioned that when the police party reached on the spot

immediately after the incident, the complainant as well as the accused party had started doing **politics.** However, it is not mentioned that whether the persons named in the F.I.R. were present on the spot or not? Even the names of the persons from the accused party have also not been disclosed, who were actively involved in doing **Politics.**

9. No effort was made to record the statements of independent witnesses. Even it is not mentioned in the case diary proceedings, that whether any attempt was made to record the statements of independent witnesses.

27. Now the question is that whether these lapses by the investigating officer were result of his negligence, or the evidence has been deliberately destroyed by the police officers and if it was a negligence, then whether the Senior Police Officers have taken any action against such negligent investigating officer or not?

28. The above question can be answered only after considering the subsequent investigation, which was done by the SITs.

29. On 7-7-2015, Scene of Crime Mobile Unit, F.S.L., Gwalior went to spot and recreated the scene of occurrence and gave its report. Some part of the report is reproduced as under :

> **12.निरीक्षण – सर्वप्रथम पी एम हाउस मे मृतक के शव का निरीक्षण किया मृतक लाइनिंग कपडे की चडडी पहने है इसके अलावा शरीर पर कोई कपडे नही है मृतक की दोनो आंखे अधखुली है एवं मुंह बंद है हाथों की मुठिठयां अधखुली है, मुतक के दाहिने तरफ सीने मे गोली का एन्ट्रीहोल (1x1 1/2 इंच) है तथा इसी तरफ पीछे गोली निकलने का धाव (1x1 इंच) पाया गया, अन्य कहीं शरीर मे कोई चोट इत्यादि**

नही पायी गयी <u>इसके पश्चात् ग्राम रजियार मे मुख्य धटना स्थल का निरीक्षण किया गया</u> .....

30. From the above mentioned inspection report, it appears that on 7-7-2015, the Mobile Unit of Scene of Crime, Gwalior went to the mortuary and inspected the dead body and thereafter, they went to the spot. Whereas, an undated receipt of dead body is in the case diary, according to which, after the postmortem, the dead body of the deceased was handed over to Siyaram by constable Shatrughan. It is surprising that when the Postmortem was performed on 5-7-2015 at about 9:50 A.M. and the dead body was already handed over to Siyaram, then how the mobile unit of Scene of Crime could inspect the dead body in the mortuary on 7 -7-2015? Thus, it creates a serious doubt on the veracity of the reports which were being prepared by the investigating agency.

31. Further, it appears from the inspection report, the cot on which the deceased was lying was inspected by the mobile unit and had found that there was a gunshot hole in the cotton tape of the cot and the loose threads of the cotton tape were facing downward. A specific direction was given to the investigating officer to seize the portion of the cotton tape which had gunshot hole. In spite of the direction by the Mobile Unit, the investigating officer did not seize either the cot or the pieces of cotton tape having the gunshot hole. It was also directed that in case the fired bullet is recovered, then the same should be sent to the mobile unit for examination. However, it is clear from the inspection report, no attempt was made to find out the gunshot marks on the wall. Thus, it is clear that even the mobile unit of the Scene of Crime, FSL, Gwalior had

prepared incomplete and suspicious report.

32. Therefore, it is clear that the investigating officer as well as the mobile Unit of Scene of Crime, FSL Gwalior had not acted in accordance with the set norms of investigation. In a case of gunshot, the cloths which are also known as body cover are one of the most important piece of evidence. However, no attempt was made to lift any incriminating evidence from the spot. Even after the direction by the Mobile Unit of Scene of Crime, the cot was not seized. Even till today, the cot has not been seized.

33. Case diary proceedings 9-7-2015 reveal that the report of the Mobile Unit of Scene of Crime FSL Gwalior was received by the Investigating Officer and it is also mentioned that a recommendation is sent for cancellation of the arms license of the persons named in the F.I.R. However, it appears that no action was taken on the said recommendation and the recommendation is also not in the police case diary.

34. On 8-7-2015, the statement of Tahsildar was recorded, who had supported the incident and had specifically stated that the deceased was shot when he was lying on the cot. The statements of Lakhpat were recorded, who also supported the prosecution story. The statements of Sewaram was also recorded, who also supported the prosecution story. It is also mentioned in the case diary proceedings, that none of the villagers is coming forward to give his statements, however, the information regarding enmity between the parties is coming forward.

35. The case diary proceedings further reveal, that on 11-7-2015, the investigating officer was informed by the S.D.O.(P) that the persons who have been named in the F.I.R., have approached the senior police officers along with the **local persons** and the Superintendent of Police, Gwalior has directed for investigation by Additional Superintendent of Police, however, no written order of the said date is in the case diary. However, the words "**Local Persons**" have not been clarified in the case diary proceedings, whereas on day one itself, the investigating officer had specifically mentioned in the case diary proceedings that the persons named in the F.I.R. are also doing **Politics.**

36. On 12-7-2015, the investigating officer went to the spot, however, not a single witness came forward to give his statement, **however, now for the first time, the investigating officer wrote that the incident appears to be doubtful**. The record of some other cases were attached in the police case diary and it was also mentioned that the deceased was aged about 75 years and was not keeping well and, therefore, 19 persons would not come together to kill such an old person, therefore, certainly a false report has been lodged. Thus, it is clear that when the suspects approached the Superintendent of Police along with some **Local persons,** then immediately a decision was taken by the Superintendent of Police to handover the investigation to the Additional Superintendent of Police and the investigating officer also took a U turn and started observing that the F.I.R. has been lodged falsely.

37. On next day, the statements of some witnesses were recorded and

the accused persons were not found in their house. However, it is once again written that the witnesses are not coming forward to give their statement.

38. On 24-7-2015, it was mentioned that the complainant party is continuously making applications, which indicates that they have falsely implicated the suspects and there is a possibility of some conspiracy. It is really surprising, that when the suspects had approached the Superintendent of Police, Gwalior, then the investigating officer did not feel any foul play, but when the complainant made certain applications, then the investigating officer immediately jumped to a conclusion that the persons have been wrongly implicated.

39. It is surprising, that the Superintendent of Police Gwalior, at the instance of the persons named in the F.I.R., passed an order dated 24-7-2015 and constituted a SIT under the leadership of Additional Superintendent of Police, Gwalior. It is made clear that the order dated 24-7-2015 is not in the police case diary. Again on 28-7-2015, it has been mentioned that the complainant party is continuously making applications. However, the Additional Superintendent of Police informed the investigating officer, that now a team has been constituted and a S.D.O.(P) would investigate the case.

40. Thereafter, it appears that by order dated 27-7-2015, a SIT was constituted under the leadership of S.D.O.(P) and the investigating officer was directed to send the police case diary to the office of Additional Superintendent of Police.

41. It is surprising, that the SIT all of a sudden decided to compel the complainant to undergo the Narco Test. This Court is conscious of the provisions of Section 172 of Cr.P.C. and is deliberately avoiding to reproduce the police case diary proceedings recorded by the investigating officer.

42. On 2-8-2015, the S.D.O.(P) took over the investigation and went to the spot on 9-8-2015 and enquired from the complainant.

43. On 8-10-2015, two witnesses, namely, Jagdish and Kishori appeared before the S.D.O.(P) and gave their statements against the version of the complainant. It is also mentioned that permission was sought for doing Brain Mapping/Narco Test of the complainant and the same has been granted, therefore, the NARCO test would be conducted. It is not out of place to mention here that there is no document in the case diary to show that on what date and under what circumstances, permission to conduct NARCO test of the complainant was sought and when such permission was granted?

44. Thereafter, it appears that the complainant was arrested in connection with crime no.232/2015 under Section 420 of I.P.C., therefore, the S.H.O., Dabra Dehat was directed to keep the complainant present before the Court for seeking permission for conducting NARCO Test. It appears that production warrant was issued, but it appears that the same was not served, therefore, fresh production warrant was obtained and it is also mentioned in the proceedings, that the incident is suspicious. Thereafter, the case diary was sent to Additional S.P. and it is

also mentioned that the complainant has refused to give his consent for undergoing NARCO Test. Thereafter, the accused persons were searched but they were not available. It is also mentioned that both the parties are making complaints against each other, but they are not appearing before the investigating officer.

45. On 3-3-2016 the Additional Superintendent of Police directed that notices be issued to the complainant and the suspects for undergoing Polygraph Test and also to record the statements of independent witnesses.

46. On 4-3-2016, the notices for polygraph test were served on both the parties and statements of some independent witnesses were recorded. It is really surprising, that just few days back, the suspects were not available, but the police successfully served notices for giving consent, thus, it is clear that the suspects were in direct contact with the police and the police was avoiding their arrest.

47. Later on, it appears that suspects Surendra Singh, Mazboot Singh Raju @ Rajendra Gurjar, who were specifically named in the F.I.R., appeared before the Magistrate and gave their consent for Polygraph test and accordingly, questionnaire was prepared. The statements of other witnesses were recorded.

48. On 1-7-2016, the investigating officer, went to Delhi along with suspect Mazboot Singh, Surendra Singh, Raju @ Rajendra and their polygraph test was conducted. As per case diary proceedings dated 4-8-2016, the complainant once again refused to undergo the polygraph Test,

therefore, it was opined that the incident is suspicious and the complainant is hiding some facts, therefore, he is apprehensive.

49. Case diary proceedings dated 25-8-2016 shows that again consent was sought from the complainant for polygraph test, which was refused. However, a very surprising fact was written that the complainant has stated that the gunshot was fired from a distance of 10-12 ft., but according to the Doctor, the gunshot was fired from a distance of 3 ft.s.

50. It is not out of place to mention here that according to the spot map dated 7-1-2017, the gunshot was fired from a distance of 3.5 ft.s. Thus, it is clear that the investigating officer was trying to twist the facts.

51. It appears that because of pendency and continuous hearing of M.Cr.C. No. 1473 of 2016, on 15-12-2016, the blood stained cloths and blood stained earth/plain earth were sent for F.S.L. Sagar i.e., after more than 1 year and 5 months.

52. On 3-1-2017, because of strict view taken by this Court in M.Cr.C. No.1473 of 2016, the SIT, which was constituted under the leadership of Surendra Singh Kushwaha, was changed and another SIT was constituted under the leadership of Alim Khan, S.D.O. (P) Crime Branch and the diary was handed over to him. Accordingly, on 5-1-2017, the Sub-Inspector started investigation and took instructions from Additional Superintendent of Police (Crime) and Dy.S.P. (Crime). On 7-1-2017, a spot map with measurement was prepared, according to which, the gun shot was fired from a distance of 3.5 ft.s from the cot, on which the deceased was lying. The distance between the cot and the house of

Surendra (named in the F.I.R. as assailant) is 60 ft.s. There is a kachcha road between the house of Surendra and the cot. However, there is no boundary wall or any obstruction between the house of Surendra and the cot. Thus, it is clear that the houses of the complainant Kamlesh and house of Surendra (Named in the F.I.R) are situated in front of each other at a distance of 60 ft only with no intermediate obstructions. On 10-1-2017, the scene of crime was recreated and it was mentioned that the information given by the complainant is just contrary to the photograph available in the police case diary. However, it is very surprising, that no panoramic photograph of the scene of occurrence is available and only specific photograph of cot etc. are in the case diary, which cannot be used for comparison purposes. On this date, the investigating officer, recorded statements of various witnesses. The supplementary statements of some of the witnesses were also recorded. On 13-1-2017, an attempt was made to search for the fired bullet, however, nothing could be recovered. However, it is not out of place to mention here that this attempt was made for the first time after 1½ years of incident. It also appears that again the scene of occurrence was recreated by F.S.L. Officer and on 20-1-2017, the report was handed over to the Investigating officer. It is surprising that the report given by Dr. Akhilesh Bhargava, F.S.L. Gwalior on the basis of the recreation of scene of crime is not in the case diary, for the obvious reason that Dr. Bhargava had opined in the report, that if the gunshot is fired from the left side of the deceased, then the line of fire would form and the injuries sustained by

the deceased and the hole found in the cot would synchronize. The above mentioned fact is mentioned in case diary proceedings dated 20-1-2017 written by Bidur Kaurav, S.I. However, the investigating officer was continuously writing that the incident appears to be suspicious. Again the statements of various witnesses were recorded. On 17-2-2017, the photographs and the CD of videography which was done on 13-1-2017 was included in the case diary, but unfortunately, they are not in the diary. The Criminal record of both the sides were obtained. Thereafter, the investigating officer was transferred, therefore, Gambhir Singh Kushwaha, became the investigating officer and started investigation from 8-4-2017. It appears that the complainant party was fed up with the manner in which the police was conducting the investigation, therefore, on 15-6-2017, one of the witness, namely Ramlakhan refused to give any further statement and said that now he would depose before the Court only. It also appears, that on 11-7-2017 the investigating officer decided to have opinion from ADPO, but the ADPO directed the investigating officer to prepare the synopsis. When the investigating officer tried to take further instructions from the head of SIT, namely Alim Khan, S.D.O.(P), he refused to give any direction and said that so long as the post of Additional Superintendent of Police (Crime) is not filled, he would not give any direction. Therefore, the investigating officer, also stayed the investigation in absence of Additional Superintendent of Police (Crime) and Dy.S.P. (Crime). On 4-10-2017, a new SIT was constituted under the leadership of Rajesh Tripathi Additional

Superintendent of Police (Rural), M.K. Goswami Dy.S.P., Dabra, and others. Again the new SIT visited the spot and instructed the complainant to keep all of his witnesses present on 13-10-2017. Thereafter, fresh notices were given to the complainant and witnesses for polygraph test. Again it was mentioned that in spite of the instructions, the complainant and his witnesses are not appearing, thus they are avoiding the police. The complainant and his witnesses were repeatedly given notices for polygraph test. The statements of other witnesses were also recorded.

53. It appears that the SIT had noticed various lapses committed by first investigating officer, Surendra Singh Chouhan, S.H.O., Police Station Dabra, therefore, his statement was recorded, but the same is not in the case diary. It was stated by Surendra Singh Chouhan, that there was no cloth on the dead body of the deceased and he was not informed by the complainant, that gunshots were also fired towards them. (However, the SIT lost sight of fact that why it was not mentioned by the original I.O. about the facts that there was no cloth on the body of the deceased except the underwear. The SIT also lost sight of the fact, that it was specifically mentioned in the Dehati Nalishi that gunshots were also fired towards the complainant and other witnesses and they saved themselves by taking shelter of wall).

54. It is also mentioned in the case diary, that the call details of the accused persons were collected by Sudhir Singh Kushwaha and the same were included in the case diary. However, nothing was investigated that

for how much time, the call details are preserved by the concerned company and the call details would only mean that a particular mobile was at a particular place, but it cannot be presumed that the holder of the said mobile was also there. A clever person, in order to create false evidence, may send some other person along with his mobile to a distant place. Thereafter, the police started creating/collecting evidence to support the plea of alibi, whereas right from the beginning, all the accused persons were with the police, but they never claimed that they were not in the village. On 17-4-2018, it is mentioned by the investigating officer, that Constable Vijay Sharma, posted in Cyber Cell has informed that it is clear from the call details of the complainant, he had not called his father on 4-7-2015, whereas it was the statement of complainant, that after the incident, he had informed his father. It is once again surprising that from where the police got the call details of the mobile phones which were 3 years old? The statements of other witnesses were recorded. It was also recorded that no gunshot marks were found on any wall. It is surprising, that for the first time on 20-1-2017 i.e., after more than 1½ years of incident, an attempt was made to find out gunshot marks on the wall and it was written by Bidur Kaurav, S.I. that only upper layer of distemper was found. When no attempt was made on the date of incident itself to find out the bullet marks on the wall, then how the same can be found after 1½ years? Be that as it may. Ultimately, the police prepared the Expunge Report and the same has been filed before the Magistrate, which is pending consideration.

55. Thus, some of the deficiencies, which point towards the tainted investigation done by the police, can be summarized as under :

1. On 4-7-2015, a Dehati Nalishi was written on the spot at about 10:50 P.M., whereas the incident took place at 9:30 P.M., thus, it is clear that within 1:30 hour, a named Dehati Nalishi was lodged.
2. Merg intimation under Section 174 of Cr.P.C. was prepared on the spot itself and constable Shatrughan was sent to the police station for its registration.
3. However, Merg intimation prepared in the night of 4-7-2015 itself, bears the merg number, which is not possible, thus, it is clear that in fact Merg Intimation under Section 174 Cr.P.C. was prepared at a later stage, but certainly not on the spot.
4. There is an overwriting on the merg intimation and 4-7-2015 was changed to 5-7-2015, whereas in the merg intimation itself, it is specifically mentioned by constable Shatrughan that he has been sent by Daroga to the police station.
5. According to the prosecution, on the basis of the Dehati Nalishi, F.I.R. was lodged at 2:00 A.M.
6. Rojnamcha Sanha No.56 dated 4-7-2015 reveals that constable Shatrughan had reached Police Station at 01:55 A.M. It is surprising that although the incident took place at a distance of 15 Kms. from police station, but still Constable Shatrughan took three hours to reach Police Station.
7. Rojnamcha Sanha No.57 was initially bearing the time as 22:50,

but thereafter, by overwriting, it was made as 2000, which means 8 P.M., whereas the next sanha which was written at 0200 mentions about registration of F.I.R. Thereafter, Sanha No.57A was written and time 22:50 was overwritten and was made 2000 i.e, 8 P.M. Although the Counsel for the State has tried to convince this Court, by submitting that in fact 2000 should be read as 2 A.M., but the Town Inspector, Police Station Dabra Dehat, who was present at the time of hearing fairly conceded, that 2000 has to be read as 8 P.M. and cannot be read as 02:00 A.M.

8. Although Surendra Singh, S.H.O., Police Station Dabra, had already reached on the spot after getting information on his mobile, but he did not prepare the Dead Body Panchnama before shifting the dead body for postmortem.

9. No steps were taken to seize the cot on which the deceased was lying as the said cot was not only having blood stains but was also having gunshot mark hole. Even in spite of the direction given by the Mobile Unit of Scene of Crime, F.S.L., Gwalior, the said cot was not seized and till today, the same has not be seized.

10. No steps were made to find out gunshot mark on the ground.

11. As per spot map dated 5-7-2015 i.e., prepared on the next date of incident, blood stained cloths were found but they have not been seized. Even the description of those cloths was not given. It is not known that whether those cloths were bed sheets or mattress or any other cloths of the deceased or the assailant. If the said

cloths were either bed sheet or the mattress or both, then they were very crucial for the investigation, because they also must be having gunshot mark or hole. If those cloths were of any assailant, then they were of even more importance and if those cloths were of the deceased, then it should have been specified and it should have been explained that when Kurta, Paijama and Gamchha were found in the mortuary kept by the side of the dead body, then why these cloths were not sent along with the dead body?

12. No steps were taken to search for the fired bullet.

13. Although it was specifically mentioned in the F.I.R., that gunshots were fired towards the witnesses also and the complainant as well as the witnesses had taken the shelter of the wall, but no steps were taken to find out that whether the wall had any gunshot marks or not? On the contrary, at the later stage, the I.O. had tried to justify his stand by saying that he was not informed by the complainant about firing on him and witnesses, but the Dehati Nalishi was lodged by the same I.O. and the fact of firing on the complainant was specifically mentioned in the Dehati Nalishi. Thus, the explanation given by the I.O. is apparently false, but still the SIT has conveniently ignored the same.

14. The dead body panchnama was prepared in the mortuary and it is mentioned that one Kurta, Paijama and Gamchha are kept by the side of the dead body and the dead body was having underwear

only. If the cloths of the deceased were kept by his side at the time of shooting, then the police should have seized the same from the spot itself and should not have sent the same to the mortuary along with the dead body and if the deceased was wearing the cloths at the time of shooting, then who removed those cloths from his dead body? Thus, there is an apparent effort on the part of the investigating officer to destroy the evidence.

15. The position of the gunshot entry wound as well as the gunshot marks on the cloths are the best evidence to prove, the distance from which the gunshot was fired. In the present case, neither the cloths were seized, nor any map with measurement was prepared by the investigating officer to find out the truth in the allegations.

16. It appears that deliberately, the fired bullet was not searched and recovered, because otherwise, it would have established the identity of the firearm used in the offence. According to the case diary proceedings itself, it appears that the persons named in the F.I.R., were having licensed firearms, therefore, in order to establish that whether those firearms were used or not, the recovery of fired bullet was most essential and important piece of evidence, but it appears that deliberately, this important piece of evidence was allowed to get destroyed. The arrest of an accused for interrogation purposes is a part of investigation, but still it was not done by the investigating officer and no attempt was made to seize the licensed firearms of the suspects.

17. Further, the persons named in the F.I.R. were having licensed firearms, but still, those firearms were not seized. The police could have sent those firearms to the ballistic expert to find out that whether they were recently used or not, but that was deliberately not done.

18. The Mobile Unit of Scene of Crime, F.S.L., Gwalior in its report dated 7-7-2015 had opined that if a gunshot is fired from a particular angle, then the line of fire would be formed and the deceased can sustain the injuries, but in spite of that, the investigating officer was all the time mentioning that the F.I.R. appears to be false and the incident appears to be suspicious, specifically when the death of the deceased was found to be homicidal in nature.

19. The Mobile Unit of Scene of Crime, F.S.L., Gwalior had specifically directed for seizure of part of the cloth tape which had gunshot hole, but still, no steps were taken by the Investigating officer.

20. Diary proceedings show that the persons named in the F.I.R., along with **Local persons,** had approached the Superintendent of Police, Gwalior, who on the same day i.e., 11-7-2015, directed for handing over the investigation to the Additional Superintendent of Police and although the order in this regard was issued on 24-7-2015, but the same was already communicated by the S.D.O.(P) to the I.O. on 11-7-2015 itself. It is not clear that why the then

Superintendent of Police, Gwalior, without there being any basis for changing the investigating officer, had decided to constitute a SIT at the behest of the persons named in the F.I.R., whereas it is well established principle of law that the accused persons have no say in the matter of investigation.

21. Yogeshwar Sharma, Additional Superintendent of Police (Crime) took over the investigation and within no time, the line of investigation was changed and it was directed that the complainant must undergo the polygraph test. When the complainant refused to do so, then an adverse inference was drawn that the complainant is trying to hide, whereas the Counsel for the State could not point out any Judgment of the Constitutional Courts or any provision of law, which empowers the police authorities to draw an adverse inference against the person, who is refusing to submit himself for polygraph test.

22. The Counsel for the State fairly conceded that the result of polygraph test is not admissible and he also could not justify as to how an adverse inference can be drawn against the complainant and his witnesses.

23. Although, 19 persons were specifically named in the F.I.R., but for the reasons best known to the investigating officer, a conclusion was already drawn that the F.I.R. is false and, therefore, although the suspects were available with the police, but they were not arrested.

24. Since, three of the suspects had given their consent for undergoing polygraph test, therefore, they were escorted by the Dy.S.P. to Delhi for polygraph test. Whether the conclusion drawn by the police, even without conducting the investigation about the innocence of the suspects named in the F.I.R. was correct or not cannot be decided in this petition, as any observation by this Court would adversely affect the outcome of the Closure Report or the investigation if the CBI investigation is directed. Therefore, suffice it to say that in view of Police Regulations 461, the police may not arrest a person in absence of any evidence, but it is suffice to say, that in the present case, the I.O. was deliberately not collecting the evidence, but in fact was trying to destroy the same.

25. The Complainant and other witnesses were being summoned again and again to find out some discrepancies so that those may be highlighted. Once, the statements of the complainant and his witnesses were already recorded, then the police should not have recorded their supplementary statements.

26. The I.O. in his case diary proceedings dated 1-10-2017, has mentioned that the incident disclosed by the complainant does not find corroboration from the photograph of the deceased. Surprisingly, this observation was made without there being any basis, because the photograph of the deceased was taken when the dead body was in the mortuary and scene of crime cannot be compared with the photograph of deceased and such a finding

recorded by the I.O. was just contrary to the report of Mobile Unit of Scene of Crime, F.S.L., Gwalior dated 7-7-2015.

27. According to the map, which was prepared on 7-1-2017, the gunshot was fired from a distance of 3.5 fts., therefore, blackening etc. was found, however, in the case diary proceedings it was opined that the gunshot was fired from a distance of 10-12 fts. but by that time no spot map with measurement was prepared by the police.

28. That the blood stained cloths, plain and blood stained earth were sent for FSL only on 15-12-2016 and there is no explanation as to why the said articles were not sent for F.S.L. report on earlier occasion. It is not out of place to mention that hearing of M.Cr.C. No.1473/2016 was already going on and the Court had already pointed out certain discrepancies in investigation of Crime No.186/2015 registered at Police Station Biloua, Distt. Gwalior. Thus, it is clear that in the present case, the blood stained cloths were sent for F.S.L., only because of pendency of M.Cr.C. No. 1473/2016.

29. Further, in the case diary, it is mentioned that cloths and cot were found to be blood stained, but as already mentioned that neither the cloths found on the cot were seized nor the cot was seized. It is not known that which blood stained cloths were found on the cot. Thus, it is clear that the investigating officer was trying to destroy the material evidence, which was immediately found on

the spot.

30. Further, the police has filed the Expunge report (Closure report) under Section 169 of Cr.P.C. with following observations :

> प्रकरण सदर की सम्पूर्ण विवेचना कथन गवाहान, सीन आफ क्राइम रिर्पोट, आरोपीगण के सी डी आर के अवलोकन, आरोपीगण के पॉलीग्राफ टेस्ट रिर्पोट अन्य उपलब्ध साक्ष्यों के आधार पर सदर प्रकरण से संबंधित घटना का एफ आई आर मे उल्लेखित आरोपीगणो द्वारा धटित होना नही पाया गया है।
>
> प्रकरण सदर मे हत्या होना प्रमाणित है परन्तु हत्या के मूल आरोपी कौन है इस संबंध मे अभी तक कोई स्पष्ट साक्ष्य नही मिलने और निकट भविष्य मे कोई भी साक्ष्य मिलने की संभावना नही होने से श्रीमान पुलिस अघीक्षक महोदय द्वारा सदर अपराध मे खात्मा कता करने हेतु थाना प्रभारी डबरा देहात को आदेशित किया गया है। श्रीमान के आदेश क्रं/पुआ/ग्वा/रीडर/प्रथम/सीडी–661/2018 दिनांक 17.9.2018 के पालन मे अप. क्र. 03/2015 धारा 302,307,147,148,149 भादवि मे खात्मा क्रं 1818 दिनांक 31.10.2018 का कता की जाकर न्यायार्थ वास्ते श्रीमान के समक्ष सादर प्रेषित है।

31. It is surprising, that when the police itself has come to a conclusion that the deceased had died a homicidal death, then how a closure report can be filed merely on the ground that the persons named in the F.I.R. have not been found to be guilty? In such a situation, the police should have traced out the real culprit and if the police was of the view that a false F.I.R. has been lodged, then a case against the complainant should have been registered, but it

appears that the only intention of the police in filing the closure report was to somehow close the investigation, specifically when the entire investigation was done with a view to somehow prove that the F.I.R. is suspicious.

32. Further, the police had conducted polygraph test only on three suspects out of 19 persons who were named in the F.I.R. If the investigation of the police was free and fair, then it should have asked all the 19 persons to undergo the polygraph test. Why 16 persons, out of 19 persons, who were named in the F.I.R., were left out from polygraph test?

33. It is clear from the case diary proceedings, that initially the eyewitnesses were not coming forward, but surprisingly, after a lapse of considerable long time, various witnesses came forward and deposed against the complainant and incident. No explanation was sought from these witnesses, as to why they had not come forward at the initial stage of investigation and why they kept quite for a considerable long time?

34. Thus, when the police itself has expressed its inability to find out the culprits, then whether the CBI investigation should be directed on this ground only?

Crime No. 22/2015

56. On 3-8-2015, the complainant Kamlesh, lodged a F.I.R. against Raju @ Rajendra, Mazboot Singh, Raghvendra Singh, Dharmendra, Ramnaresh, Asharam, Narendra and Rajendra on the allegations that he

along with his uncles Harkanth and Ram Mohan had gone to their fields for irrigation purposes and the persons named in the F.I.R. were hiding themselves in the field. They extended the threat to the life of the complainant and asked them to change their statements in the murder case. When the complainant refused to change his version, then Dharmendra gave a *sickle* blow on the hand of Harkanth and all of them started assaulting by lathis. Raju @ Rajendra fired a gunshot causing injury on his left hand. It was further alleged that the accused persons had killed his grandfather Saligram on 4-7-2015. The statements of the complainant and injured persons were recorded. The injured persons were sent for medical examination.

57. It is surprising that on 4-8-2015, it was mentioned in the case diary proceedings, the concerning Doctor had found lathi injuries on Harkanth, Rammohan and gunshot injury on Kamlesh, but verbally he has informed that the injuries are fake (The I.O. might be inclined to write self-inflicted). However, for the reasons best known to the I.O., such a statement of the Doctor was not recorded. The spot map was prepared. The next diary proceedings is dated 13-8-2015 and on the same day, a specific opinion was written by the I.O., that a false case has been lodged, whereas no investigation was done, and even the X-ray report of complainant Kamlesh was not received by that time. On 20-8-2015, again a specific finding was recorded that the complainant is a very clever person and is well aware of the Court proceedings and, therefore, the present F.I.R. has been lodged, just one month from the date of

murder of Saligram. Till this time, no investigation was done by the I.O. and there was no reason for him to immediately jump to a specific conclusion. Thereafter, the X-ray report of Kamlesh and Ramlakhan was received and although some foreign body was seen in the body of Kamlesh and an advice was given to consult Radiologist, but still the I.O. merely wrote in the case diary that the Doctor has found no bony injury. Thereafter, the X-ray report of Harkanth was received and fracture of nasal bone was found. Thereafter, on 6-10-2015, the I.O., changed the direction of investigation and decided to go for polygraph test of the complainant. Surprisingly, the investigating officer, has also written in the case diary proceeding that a Panchayat has been convened by the accused party and the truthfulness of the incident shall be enquired/investigated/decided by the Society. Thus, the investigating officer, had delegated his powers to the Society to verify the truthfulness of the incident. Although there was an allegation that a gunshot was fired which had hit the complainant, but still the police registered the case only under Section 326 of I.P.C. because of the fact that Harkanth had sustained a fracture of nasal bone, but no offence under Section 307 of I.P.C. was registered and thereafter, the investigation by the SIT was conducted in the same manner in which the investigation was done in other two cases. Thus, this Court does not find it appropriate to burden this judgment by pointing out same deficiencies which have already been found in the investigation of other two cases.

58. Thus, from the deficiencies pointed out in the above mentioned paragraphs, it is clear that the investigating officer had destroyed all the material evidences and deliberately did not collect the same. Whether it was done on the instructions of the Superior Police Officers, or because of **Politics** as mentioned by the I.O. himself in his case diary proceedings dated 5-7-2015 or it was because of **Local Persons** who had accompanied the persons named in the F.I.R. and had approached the Superintendent of Police, as mentioned in the case diary proceedings dated 11-7-2015, requires deeper investigation. Furthermore, the police itself has filed the closure report on the ground that it has failed to find out the real assailants although the death of the deceased Saligram is homicidal in nature.

59. The police has given undue importance to the refusal by the complainant and his witnesses to undergo the polygraph test and has drawn an adverse inference against the complainant and his witnesses.

60. The Supreme Court in the case of **Selvi Vs. State of Karnataka** reported in **(2010) 7 SCC 263** has held as under :

> **102.** As mentioned earlier "the right against self-incrimination" is now viewed as an essential safeguard in criminal procedure. Its underlying rationale broadly corresponds with two objectives—firstly, that of ensuring reliability of the statements made by an accused, and secondly, ensuring that such statements are made voluntarily. It is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage. When a person is compelled to testify on his/her own behalf, there is a higher likelihood of such testimony being false. False testimony is undesirable since it impedes the

integrity of the trial and the subsequent verdict. Therefore, the purpose of the "rule against involuntary confessions" is to ensure that the testimony considered during trial is reliable. The premise is that involuntary statements are more likely to mislead the Judge and the prosecutor, thereby resulting in a miscarriage of justice. Even during the investigative stage, false statements are likely to cause delays and obstructions in the investigation efforts.

103. The concerns about the "voluntariness" of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements—often through methods involving coercion, threats, inducement or deception. Even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined. In this sense, "the right against self-incrimination" is a vital safeguard against torture and other "third-degree methods" that could be used to elicit information. It serves as a check on police behaviour during the course of investigation. The exclusion of compelled testimony is important otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such "short cuts" will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the "right against self-incrimination" is a vital protection to ensure that the prosecution discharges the said onus.

* * * * *

116. In upholding this broad view of Article 20(3), V.R. Krishna Iyer, J. relied heavily on the decision of the US Supreme Court in *Miranda* v. *Arizona*. The majority opinion (by Earl Warren, C.J.) laid down that custodial statements could not be used as evidence unless the police officers had administered warnings about the accused's right to remain silent. The decision also recognised the right to consult a lawyer prior to and during the course of

custodial interrogations. The practice promoted by this case is that it is only after a person has "knowingly and intelligently" waived of these rights after receiving a warning that the statements made thereafter can be admitted as evidence. The safeguards were prescribed in the following manner *ibid*. at US pp. 444-45:

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

117. These safeguards were designed to mitigate the disadvantages faced by a suspect in a custodial environment. This was done in recognition of the fact that methods involving deception and psychological pressure were routinely used and often encouraged in police interrogations. Emphasis was placed on the ability of the person being questioned to fully comprehend and understand the content of the stipulated warning. It was held *ibid*. at US pp. 457-58:

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

118. The opinion also explained the significance of having a counsel present during a custodial interrogation. It was noted, *ibid*. at US pp. 469-70:

> "The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth

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

119. The majority decision in *Miranda* was not a sudden development in the US constitutional law. The scope of the privilege against self-incrimination had been progressively expanded in several prior decisions. The notable feature was the recognition of the interrelationship between the Fifth Amendment and the Fourteenth Amendment's guarantee that the Government must observe the "due process of law" as well as the Fourth Amendment's protection against "unreasonable search and seizure". While it is not necessary for us to survey these decisions, it will suffice to say that after *Miranda* administering a warning about a person's right to silence during custodial interrogations as well as obtaining a voluntary waiver of the prescribed rights has become a ubiquitous feature in the US criminal justice system. In the absence of such a warning and voluntary waiver, there is a presumption of compulsion with regard to the custodial statements thereby rendering them inadmissible as evidence. The position in India is different since there is no

> automatic presumption of compulsion in respect of custodial statements. However, if the fact of compulsion is proved then the resulting statements are rendered inadmissible as evidence.

61. It is submitted by the Counsel for the intervenor/suspects, that the principle of self-incrimination would apply only to a person who is an accused but in the present case, the police was asking the complainant and his witnesses to undergo the polygraph test, therefore, the principle of self-incrimination would not apply.

62. The Supreme Court in the case of **Selvi (Supra)** has held as under :

> **254.** Lastly, we must consider the possibility that the victims of offences could be forcibly subjected to any of these techniques during the course of investigation. We have already highlighted a provision in the *Laboratory Procedure Manual* for polygraph tests which contemplates the same for ascertaining the testimony of victims of sexual offences. In light of the preceding discussion, it is our view that irrespective of the need to expedite investigations in such cases, no person who is a victim of an offence can be compelled to undergo any of the tests in question. Such a forcible administration would be an unjustified intrusion into mental privacy and could lead to further stigma for the victim.
>
> (Underline applied)

63. Thus, the principle of self-incrimination is equally applicable to the victim of the case.

64. Thus, it is clear that the entire investigation was done in a direction, which is not permissible under the law, and the inference drawn by the police is just contrary to the provisions of law. The polygraph test of three of the persons named in the F.I.R., cannot be

relied upon because the polygraph test report is not admissible in law.

65. The next question for consideration is that- whether this Court, while considering the lapses on the part of the investigating officers and other superior officers, can make observations regarding their conduct?

66. The Supreme Court in the case of **Dinubhai Boghabhai Solanki (Supra)** has held as under :

> **59.** We are not much impressed by the submissions made by Mr Rohatgi that the High Court has unnecessarily cast aspersions of criminality on the appellant. In para 10 of the judgment, the High Court has observed as follows:
>
> > "All the above circumstances put together indicated that the investigation was controlled from the stage of registering the FIR and only the clues provided by the accused persons themselves were investigated to close the investigation by filing Charge-sheet No. 158 of 2010 dated 10-11-2010 and further investigation had not served any purpose. Therefore, the investigation with the lapses and lacunae as also the unusual acts of omission and commission did not and could not inspire confidence. It may not be proper and advisable to further critically examine the charge-sheet already submitted by the police, as some of the accused persons are already arrested and shown as the accused persons and even charge is yet to be framed against them. The facts and averments discussed in paras 6 and 7 hereinabove also amply support the conclusion that the investigation all throughout was far from fair, impartial, independent or prompt."
>
> **60.** In coming to the aforesaid conclusion, the High Court has relied on the following factors:
>
> * * * *
>
> **60.12.** In our opinion, the High Court has only noticed the facts which tend to show that the investigation had not been conducted impartially

and fairly. Although, the appellant is mentioned on a number of occasions, no specific conclusion is reached that the appellant was responsible for influencing or controlling the investigation. In fact, the finger is pointed only towards the higher echelons of the police, who seem to have been under the influence of the accused persons. Mention of the appellant as the prime suspect is not a conclusion reached by the High Court. The appellant has been referred to as the prime suspect in all the allegations made in the writ petitions and the statements of the relatives including the statement of the father of the deceased. Therefore, in our opinion, by recording the gist of the allegations made, the High Court has not committed any error of jurisdiction.

60.13. Mr Rohatgi has pointed out that the High Court has also recorded that since the appellant and his nephew were living together in a joint family and, therefore, must have conspired to kill Jethwa. The statement recorded by the High Court is as under:

> "It has come on record that Mr Shiva Solanki and Mr *DB* were living together in a joint family and no investigator could have been easily satisfied with the statements that they did not interact in respect of the conspiracy to commit a capital crime, particularly when both of them were simultaneously joined as the respondents in the PIL."

This, in our opinion, is not a conclusion that the appellant and his nephew Shiva Solanki must have conspired. The submission made by Mr Rohatgi is not borne out from the observations quoted above. Similarly, the conclusion recorded by the High Court that "The incorrect statements made by Superintendent of Police, Mr Vatsa regarding past record of Mr *DB* as seen and discussed earlier in para 3 herein, clearly indicated an attempt at somehow shielding the person who was the prime suspect, according to the statements of the relatives and associates of the deceased" again only alludes to the statements of the relatives and witnesses. It cannot be said to be a conclusion reached by the High Court, about the guilt of the appellant. Therefore, the conclusion cannot be said to be unwarranted.

The Supreme Court in the case of **Delhi Airtech Services (P) Ltd.**

Vs. State of U.P. Reported in **(2011) 9 SCC 354** has held as under :

> **218.** Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision-making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being "public officer" or "public servant", is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance.

The Supreme Court in the case of **Shahid Balwa Vs. Union of India** reported in **(2014) 2 SCC 687** has held as under :

> **29.** Monitoring of criminal investigation is the function of investigating agency and not that of the court — either of the superior court or of the trial court. But unsolved crimes, unsuccessful prosecution, unpunished offenders and wrongful convictions bring our criminal justice system in disrepute. Crores and crores of taxpayers' money is being spent for investigating crimes in our country since every such incident is a crime against the society. When the persons involved in the crime wield political power and influence, the possibility of putting pressure on the investigating agency, which is no more independent in our country, is much more. Common people will be left with the feeling that they can get away with any crime which tarnishes the image not only of the investigating agency but judicial system as well. Once investigation fails, court will face with a fait accompli. Proper and uninfluenced investigation is necessary to bring about the truth. Truth will be a casualty if investigation is derailed due to external pressure and guilty gets away from the clutches of law.

67. The SIT was constituted by the Superintendent of Police with an assurance that free and fair investigation would be done, but still the police did not change its attitude and went forward in a direction, which is not permissible under the law and did not answer the queries raised by the Court and even tried to protect the guilty police officers. Further, as held by the Supreme Court in the case of **Romila Thapar (Supra)** and **E. Sivakumar (Supra),** the accused has no say in the matter of appointment of investigating agency. Therefore, it is clear that the Superintendent of Police, Gwalior, without any reason, abruptly changed the investigating officer, at the request of the persons named in the F.I.R., thus, this very action of the Superintendent of Police, Gwalior was wrong and contrary to the well settled principles of criminal jurisprudence. Further, by order dated 19-1-2017 passed in M.Cr.C. No. 1473/2016, it was directed that the Additional Superintendent of Police, Gwalior shall give weekly progress report to the Superintendent of Police. Thus, the Superintendent of Police, Gwalior was also under obligation to supervise the investigation. Therefore, this Court is of the considered opinion, that the Senior Police officers including the Superintendent of Police, Gwalior, apart from the members of both the SITs have also brought themselves under a scanner. Therefore, their conduct is also liable to be investigated/looked into and if it is found that they have deliberately saved or screened any guilty person(s), then they should also be criminally prosecuted apart from departmental proceedings.

68. It is really shocking that although this Court at the first instance, instead of transferring the investigation to an independent agency, had deposed its confidence in the assurance given by the Superintendent of Police, Gwalior as a new SIT was constituted, but unfortunately, the situation did not improve and the investigation continued in the same direction without adhering to the principles of investigation.

69. Investigation has been defined by the Supreme Court in the case of **Manubhai Ratilal Patel Vs. State of Gujarat** reported in **(2013) 1 SCC 314** which reads as under :

> **27.** Presently, we shall advert to the concept of investigation. The term "investigation" has been defined in Section 2(*h*) of the Code. It reads as follows:
>
> "**2**. (***h***) '**investigation**' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;"
>
> **28.** A three-Judge Bench in *H.N. Rishbud* v. *State of Delhi*, while dealing with "investigation", has stated that under the Code, investigation consists generally of the following steps: (AIR p. 201, para 5)
>
> "(*1*) proceeding to the spot,
>
> (*2*) ascertainment of the facts and circumstances of the case,
>
> (*3*) discovery and arrest of the suspected offender,
>
> (*4*) collection of evidence relating to the commission of the offence which may consist of:
>
> (*a*) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,
>
> (*b*) the search of places or seizure of things

> considered necessary for the investigation and to be produced at the trial, and
>
> (*5*) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."
>
> **29.** In *Adri Dharan Das* v. *State of W.B.* it has been opined that: (SCC p. 313, para 19)
>
> "*19.* … arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime."
>
> **30.** In *Niranjan Singh* v. *State of U.P.* it has been laid down that investigation is not an inquiry or trial before the court and that is why the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial. In *S.N. Sharma* v. *Bipen Kumar Tiwari* it has been observed that the power of police to investigate is independent of any control by the Magistrate. In *State of Bihar* v. *J.A.C. Saldanha*, it has been observed that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment and further investigation of an offence is the field exclusively reserved for the executive in the Police Department.

70. Thus, if the above mentioned deficiencies are considered in the light of the definition of investigation, then it can be safely said that in fact no investigation was done by the investigating officers.

71. Further, the police itself, in crime no. 3/2015 has also come to a conclusion that it has failed to find out the real culprit, therefore, this Court is left with no other option but to transfer the investigation of all the three cases to CBI.

72. Thus, the investigation of crime no.3/2015 and 22/2015 registered at Police Station Dabra Dehat, Distt. Gwalior and crime No.186/2015 registered at Police Station Bilaua Distt. Gwalior are hereby transferred to CBI.

73. **However, this Court would like to mention that detailed discussion has been made in this order to find out that whether it is a fit case for transfer of investigation to CBI or not? It is believed that any observation with regard to lapses in investigation, shall not be treated as a finding and a free and fair investigation shall be done by the CBI without getting prejudiced by any of the observations.**

74. Thus, the J.M.F.C., Dabra, Distt. Gwalior and C.J.M., Gwalior are directed not to proceed further with the closure reports. The, CBI is directed to take all the original documents in its custody and investigate all the three crimes i.e., No.3/2015 and 22/2015 registered at Police Station Dabra Dehat, District Gwalior and crime no.186/2015 registered at Police Station Bilaua, District Gwalior. The CBI is also directed to look into the questions raised by this Court in its order dated 19-1-2017 passed in M.Cr.C. No.1473/2016, as well as the conduct of each and every police officer, who has handled the matter at any stage.

75. As the then Superintendent of Police by its letter dated 13-11-2017, addressed to the I.G. has mentioned that the explanation given by Anantram Bhadauria, ASI was not satisfactory, therefore, the D.G.P., State of Madhya Pradesh is directed to immediately initiate disciplinary proceedings against Anantram Bhadauria, Retd. ASI as per the

provisions of Rule 9 of M.P. Civil Services (Pension) Rules, 1976.

76. The Principal Registrar of this Court is directed to conduct an enquiry as to why the Conc No.141/2017 was not listed even for a once and why it has been kept in the shelf for the last more than 2½ long years. If necessary, suitable action be taken against the guilty person.

77. With aforesaid directions, the petition is **Allowed.**

78. A copy of this order be sent to the Director, CBI, New Delhi as well as to the Director General of Police, State of Madhya Pradesh, Bhopal for compliance.

(G.S. Ahluwalia)
Judge

Arun*