



W.P.No.15139/2021(GM-RES)
C/W
W.P.No.15144/2021(GM-RES)

SSDYJ:
17.05.2022

INTERIM DIRECTIONS IN W.P.No.15144/2021

This Order has been divided into the following Sections to facilitate analysis:

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Case as made out in the Pleadings:-

The petitioner had filed a Private Complaint in PCR No.18/2012 under Section 200 of Cr.P.C. with the prayer to secure the presence of accused and deal with him in accordance with law.

2. The said complaint was filed on the premise that Sri Abhaykumar B. Patil, who was a representative of the Karnataka Legislative Assembly (i) from the year 2004 to 2008 representing Bagewadi Assembly Constituency, Belagavi District and (ii) from the year 2008 to 2012 representing Belagavi Dakshin Constituency, had assets disproportionate to known sources of income, had indulged in corrupt activities and amassed wealth by corrupt and illegal means. It is made out that there were discrepancies in the affidavits filed along with the nomination by Sri Abhaykumar B. Patil and alleging that he was in possession of properties disproportionate to his known sources of income. Accordingly, Private Complaint is stated to have been filed on 20.11.2012.

3. The trial Court directed the Superintendent of Police, Lokayukta to register a case and investigate the

matter exercising powers under Section 156(3) of Cr.P.C. The Lokayukta Police Station, Belagavi registered a case which came to be numbered as FIR No.14/2012 for the offences punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' for brevity).

4. There were series of petitions filed challenging the validity of the proceedings as hereunder:-

(i) W.P.No.75545/2013 came to be filed seeking quashing of the order passed by IV Additional District and Sessions Judge, Belgaum dated 19.11.2012 raising various contentions and the same came to be allowed quashing the order dated 19.11.2012 directing registration of the FIR while remitting the matter back to the Special Judge to consider the matter afresh, more particularly, the exercise of power in making reference under Section 156(3) of Cr.P.C.

(ii) W.P.No.104165/2017 filed under Article 226 and 227 of the Constitution of India seeking for issuance of writ of certiorari to quash the order dated 20.04.2017 passed in PCR No.18/2012. Various contentions had been raised in

the said writ petition, including the non-filing of affidavit as adverted to in the judgment in the case of **Priyanka Srivastava and Another v. State of Uttar Pradesh and Others** reported in **(2015) 6 SCC 287**. The same came to be disposed off, observing that the Special Judge had failed to take note of the directions of Apex Court which required the filing of affidavit verifying the contents in the Private Complaint. Accordingly, the order dated 20.04.2017 was set aside reserving liberty to the complainant to file supporting affidavit, verifying the contents in the Private Complaint.

(iii) The Special Judge upon fresh consideration and in light of the directions reconsidered the matter and by a detailed order referred the complaint to the Deputy Superintendent of Anti Corruption Bureau, Belagavi under Section 156(3) of Cr.P.C. This order of the Special Judge dated 21.09.2017 has been challenged in W.P.No.15139/2021.

(iv) W.P.No.15144/2021 has been filed by the complainant who is the petitioner and has sought for issuance of writ of mandamus directing the Superintendent

of Police, Anti Corruption Bureau to file a report/charge sheet as regards FIR No.12/2017.

5. It must be noted that though the Special Judge had passed an order on 21.09.2017 referring the matter in exercise of power under Section 156(3) of Cr.P.C., till date, no final report has been filed. In the interregnum, a letter came to be addressed by the petitioner to the Chief Justice, High Court of Karnataka with a copy also addressed to the Chief Justice, Supreme Court of India stating that there has been an inordinate delay in completing the investigation and the final report has not been filed, that in the meanwhile, he was being threatened by the accused to withdraw the case and attempts were made by use of the offices of Sri Abhaykumar B. Patil to implicate the petitioner in false cases. Specific assertion was made that every possible attempt was being made to further cause delay and provide opportunity to the accused to destroy the incriminating evidence available against him.

6. It is further submitted that the petitioner was being threatened by the henchmen of the accused to withdraw the case and he was "under constant pressure for

well being of my family." The said complaint has been taken note of in the order of this Court dated 20.12.2019.

7. Taking serious note of the said complaint/representation made by the petitioner to the Chief Justice, this Court by order dated 06.09.2021 appointed Amicus Curiae to assist the Court.

8. The Amicus has submitted that the delay in filing the final report had contributed to the apprehension of the petitioner and accordingly directions need to be passed for speedy investigation which are to be made applicable for cases in general.

9. W.P.No.15139/2021 came to be filed by the accused calling in question the validity of the proceedings in PCR No.18/2021. As the other petition, viz., W.P.No.15144/2021 was clubbed and called alongwith W.P.No.15139/2021, learned counsel Sri K.Chandrashekar appearing for the petitioner-accused was also heard. The learned counsel for the Anti Corruption Bureau as well as the learned counsel for the petitioner in W.P.No.15144/2021 and the learned Senior Counsel, Sri Sandesh Chouta, who

was appointed as Amicus Curiae by order of this Court dated 06.09.2021, were heard in detail.

Delay in Investigation:-

10. The delay in investigation stands out in the present case. The PCR was presented at the first instance on 19.11.2012. There were two rounds of litigation before this Court, viz., W.P.No.75545/2013 and W.P.No.104165/2017, and pursuant to directions in the latter proceedings, fresh orders came to be passed by the Special Judge referring the matter for investigation under Section 156(3) of Cr.P.C., which is the subject matter of challenge in W.P.No.15139/2021.

11. Though the order of Special Judge was passed on 21.09.2017, till date, the Investigating Authority has not placed the final report before this Court. In the interregnum, the petitioner in W.P.No.15144/2021 has filed a representation to the Chief Justice of Karnataka with copy marked to the Chief Justice, Supreme Court of India, as referred to in para-5 supra complaining of threats to withdraw the complaint. The said Complaint reads as follows:-

"To,

The Hon'ble Chief Justice of Karnataka,

Dated:13/12/2019

Subject: Life threat to withdraw of a case filed against the MLA Belagavi South Constituency.

Respected Hon'ble Judge,

1. I am involved in many social activities mainly aiming for upliftment and betterment of the living conditions of the people living under poverty line and deprived of socio economic and civilian amenities. Since past many years I have been agitating against the corrupt practices and protest the personalities who practice corruption and also abate such corrupt practices.
2. I had filed a Private Complaint in the year 2012 against Shri Abhaykumar B. Patil who is a sitting MLA (Belagavi South Constituency) and has indulged in many corrupt activities and has amassed huge wealth by corrupt and illegal means. (P.C.R. No.18/2012 before the Hon'ble Special Judge and IVth Additional Sessions Judge, Belagavi, FIR No.12/2017 for offences u/s 13(1)(e) & 13(2) of the P.C. Act 1988). I wish to bring to your notice that despite the private complaint being of the year 2012 till today the charge sheet has not been filed and for 6 years it has been delayed on one or the other pretext. On regular basis I

am being threatened by the accused and his henchmen to withdraw the case and also attempts were made by the using his office to implicate me in false cases.

3. The accused has for the 3rd time approached Hon'ble High Court of Karnataka for quashing of the FIR by filing Writ Petition No.110504/2017. In the meanwhile after having the reliably learnt that the officers ACB Belagavi are helping the accused I have filed a Writ Petition No.107080/2018 in the Hon'ble High Court of Karnataka Dharwad Bench seeking direction for filing of the charge sheet. Despite having filed the Writ Petition in the High Court there was no status report filed by the ACB, Belagavi giving reasons for the inordinate delay. On the contrary every possible attempt is being made to further cause delay and provide opportunity to accused to destroy the incriminating evidence available against him.
4. The Writ Petition No.110504/2017 filed by the accused was listed on 11/06/2019 before Hon'ble Justice B.A. Patil sitting at Dharwad Bench. The Writ Petition came to be dismissed. However, the petition filed by me Writ Petition No.107080/2018 was kept pending and till today no direction is passed till today.

5. Sir, I am being threatened by the henchmen of the accused to withdraw the case and I am under constant pressure for wellbeing of my family. Few days before I was again approached by the henchmen of the accused and threatened to withdraw the case. I have been told by them that they have filed a Writ Petition seeking quashing of the FIR No.12/2017 and now he has threatened me to withdraw the case by filing a withdrawal application before the Hon'ble High Court. I am not willing to withdraw the case filed by me. However, I and my family are under such threat that I am made to file the withdrawal application under pressure which they say will be listed on Monday 16/12/2019 in W.P.No.111508/2019.

(emphasis supplied)

6. Sir, my humble request to you is that, my application which would be filed on my behalf in the Writ Petition No.W.P.111508/2019 should not be accepted and I should not be permitted to withdraw the case.

Place:Belagavi

Sd/-
Sujit M. Mulgund

CC to: Chief Justice of India Supreme Court of India"

12. The proceedings before the trial Court also mirrors the delay. The typed copy of the order sheet of the trial Court commencing from 21.09.2017 till 14.02.2022 has been filed along with the memo to produce additional documents filed on 17.02.2022.

13. The orders passed by the trial Court would make interesting reading and throw light on the aspect of delay and completion of investigation and the relevant developments as reflected in the proceedings are summarized as below:-

21.02.2018	Dy.S.P. of ACB through Spl. P.P. files requisition seeking time of four months to submit report.
09.05.2018	Dy.S.P. of ACB, P.S., Belagavi files requisition seeking time of two months to submit report.
20.08.2018	As complainant submits that charge sheet or report has not been filed, notice was issued to the Dy.S.P., ACB, Belagavi and to call for report as to present status of investigation.
17.11.2018	Court orders issue of letter to I.G.P., ACB to look into the matter and take necessary steps as it was an old case
27.12.2018	Investigating Officer seeks time of two months to file the final report.
14.01.2019	Office was directed to issue reminder letter to I.G.P., ACB, Bengaluru with a copy to Dy.S.P., ACB, Belagavi and called for report.

29.04.2019	<p>Spl. P.P. submitted requisition of I.O. seeking two months to file the final report.</p> <p>The Court notices that final report was not filed, despite sufficient time having been taken and that though letter was addressed to I.G.P. of ACB, there was no reply.</p> <p>The Court observes investigation is the domain of the I.O. and no direction could be given and has proceeded to direct the I.O. to complete the investigation at the earliest.</p>
29.06.2019	<p>Dy.S.P. Belagavi had filed an application through Spl. P.P. seeking the Income Tax Department to hand over original diary required for investigation.</p> <p>Direction made out to the Income Tax Officer, Ward-I, Nippani to hand over original diary. The I.O. had sought for three months time for conclusion of investigation.</p>
24.07.2019	<p>Counsel for complainant had filed application under 156(3) of Cr.P.C.</p>
13.08.2019	<p>Copy of C.D. Report submitted by Dy.S.P., A.C.B., Belagavi with respect to the period of 27.09.2017 to 08.08.2019.</p> <p>The Public Prosecutor had submitted that Income Tax Officer, Nippani had refused to hand over original diary as directed. Hence, request was made to issue appropriate directions to the Principal Commissioner of Income Tax to give necessary direction to ITO to hand over the original diary.</p> <p>Invoking power under Section 91 of Cr.P.C., the Prl. Commissioner of Income Tax, Belagavi was directed to give necessary instruction to Income Tax Officer, Nippani, Ward-1 to hand over the original diary.</p>

	Show cause notice issued to the Income Tax Officer, Ward -1, Nippani as to why action for contempt of court should not be initiated for disobeying the order of the Court dated 29.06.2019.
13.09.2019	Income Tax Officer was present and handed over the document in compliance of the order. The Public Prosecutor submitted that seized document was required to be sent to FSL to get the expert's opinion.
27.12.2019	Public Prosecutor sought for six months time to file the final report.
27.01.2022	Complainant had filed an application under Section 156(3) of Cr.P.C. to direct and produce all the documents collected by the Lokayukta and to submit explanation for not having transferred the document to A.C.B.

14. In light of the narration of the life of the litigation, clearly, there has been delay in completion of the investigation. It is noticed that there have been delays caused due to lack of coordination between different Departments, viz., the Prosecution and the Income Tax Department (as diary in possession of the Income Tax Department was not handed over to the Prosecution promptly till direction was issued by the trial Court), report of the FSL as regards handwriting found in the diary was not obtained in time. The accused has also taken several

opportunities to submit his response to the notices issued by the Prosecution.

15. Learned counsel appearing for the accused has submitted that the delay in conclusion of the investigation is due to the interim orders passed in W.P.No.75545/2013 and W.P.No.104165/2017 and the final orders whereby, the FIR registered was quashed and fresh proceedings were directed to be made. It was further submitted that the accused had submitted all documents to the Investigating Officer.

16. The Prosecution, on the other hand, has contended that they have finally received the documents from the Lokayukta and that petitioner has furnished the schedules only on 05.01.2022. It is also submitted that proceedings are pending in ITA No.100050/2018 and it is only after awaiting outcome of such proceedings, the final report would be filed within a period of three months.

17. In light of the above factual matrix, there is a requirement to pass directions for speedy conclusion of investigation, that may be applicable to the matters in general.

18. Prior to passing of such directions, few aspects are to be dealt with as below:-

18.1. **Causes and Consequences of delay in Investigation**

(A) **Causes of delay in investigation:-**

i) Lack of bifurcation of duties and the need for entrusting of investigation to specified and designated personnel.

ii) Non-exercise of supervisory power to monitor investigation and lack of assigning roles on superior officers to monitor and ensure time bound investigation.

iii) Inadequate training to the investigating personnel/officers. The Investigation Officers are to be abreast with latest developments in use of technology in commission of crimes. They are not conversant with the manner of commission of crimes, especially with respect to crimes relating to money laundering and in specific use of crypto currency and digital money in commission of crimes.

iv) International ramification of offences which are cross border offences usually found in money laundering cases has a serious impact on investigation. Due to lack of co-ordination between various agencies and Governments of different

Countries, investigation is protracted facilitating destruction of evidence and erasing of money trail.

v) Lack of monitoring by judicial magistrates by exercising power under Section 156(3) of Cr.P.C.

vi) Direct and indirect Interference in investigation where accused may belong to the Party in power. This may result in prolonging of investigation depending on the party in power or even misuse of investigation to settle scores by party in power.

vii) In the 239th Report of the Law Commission of India submitted to the Apex Court as noted in the order dated 12.11.2013 in the case of **Virender Kumar Ohri v. Union of India & Others W.P (C) No.341/2004**, the causes for delay in investigation in prevention of corruption involving cases against high Government Officials has been pointed out and the relevant portion of the report has been extracted below:-

"4. Cases against high Government officials:

4.2 In prevention of corruption cases, it is reported that the disproportionate assets cases get prolonged as a number of witnesses – necessary and unnecessary, will be examined. Even the filing of the charge-sheet in such matters, it is reported, is delayed, some times for more than a year after completion of investigation. Further, sufficient

number of Special Courts to deal with PC Act cases are not in place in many States. These are the special problems in cases relating to Government officials..."

viii) The Law Commission of India in its 239th Report has noted that inordinate delay in investigation and prosecution of criminal cases has eroded, the fear of law and faith of people in the judicial system. It has been observed in the report and relevant portion of the report has been produced as below:-

" 2.2 The causes for delay before the case reaches the Court for trial:-

1. *Apathy and inaction on the part of the police in registering the FIRs and taking up the investigation in right earnest for various reasons. (This is so inspite of Police Manuals emphasizing the need for speedy and prompt investigation.)*

2. *Police are either hesitant to proceed with the investigation against important/influential persons or they are under pressure not to act swiftly especially if the person accused is in power or an active member of the ruling party. They adopt a pusillanimous attitude when the accused are such persons.*

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4. *When the FIR is not registered within a reasonable time or the pace of investigation is tardy, there is no internal mechanism to check this effectively. Even in*

States where Addl. SPs are posted in every District to be mainly in charge of crimes (as distinct from general law and order duties) the situation has not improved, except marginally.

5 xxxx

6 xxxx

7. *Sanctions for prosecution are unduly delayed by the Governments. These reasons are not peculiar to cases of public men – they are all problems surrounding the Criminal Justice system as a whole.*

2.6 The principal causes of low rate of conviction are:

1. Inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery;

2. Police Stations understaffed and manned by inadequately trained Police personnel; lack of trained and efficient prosecutors.;

3. Inordinate delay in disposal of cases by Courts resulting in witnesses not being available or changing the version;

4. Adducing fabricated evidence.

ix) The society itself might feel, approaching the police or investigating agencies would cause more problems than solve their issues.

x) Delayed investigation may result in destruction of evidence which are time sensitive, would result in difficulties in retrieving evidence.

xi) Efforts to quash proceedings at the instance of the accused complaining that the protracted investigation has prejudiced the right of the accused for a fair trial.

xii) Fear and reluctance on the part of public and officers to be arraigned as witnesses due to fear of threat to life and non-adherence to witness protection scheme.

xiii) Delay in granting sanction and procedure prescribed under Section 19 of the Prevention of Corruption Act.

B. **Consequences of delay in investigation :**

i) Due to lack of speedy investigation, when accused is in custody, the accused would be eligible for grant of mandatory/default bail under Section 167(2) of Cr.P.C. The same benefit is also invoked by the accused under Prevention of Corruption Act.

In **RAKESH KUMAR PAUL v. STATE OF ASSAM** reported in **(2017) 15 SCC 67**, the accused charged for the offence under Section 13 of the Prevention of Corruption Act, 1988 was granted default bail under section 167(2) of Cr.P.C.

ii) Upon release of the accused by default bail, chances of influencing the investigation are increased.

18.2. **Legislative and Judicial Framework relating to speedy investigation:-**

A. **Legislative Framework:-**

(a) **Provisions under Cr.P.C. :-**

i) **Section 157 of Cr.P.C.** – When information is received and an Officer incharge of the Police Station has reason to suspect commission of an offence which he can investigate under Section 156 of Cr.P.C. "...he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of the subordinates not being below such rank as the State Government, may, by general or special order, prescribe in

this behalf, to proceed, to the spot to investigate the facts and circumstances of the case....."

ii) **Section 167 of Cr.P.C.** - Where the investigation is not completed within the period of 24 hours fixed by Section 57 of Cr.P.C., such officer shall forthwith transmit copy of the entries in the diary relating to the case and shall forward the accused to such Magistrate. Under Section 167(2), the Magistrate may authorize detention of the accused for a term not exceeding fifteen days. The Magistrate may authorize detention beyond the period of fifteen days not exceeding period of ninety days where investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years.

The Magistrate may also authorize detention for a period beyond fifteen days upto a term of sixty days in case of any other offence and on expiry of period of ninety days or sixty days as the case may be, if investigation is not completed the accused shall be released on bail.

iii) **Section 167(5) of Cr.P.C.** - With respect to case triable by a Magistrate as a summons case and

investigation is not concluded within a period of six months from the date on which accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless officer making the investigation satisfies the Magistrate for special reasons and in the interests of justice, that continuation of investigation beyond the period of six months is necessary.

iv) **Section 173 of Cr.P.C.**- Every investigation under Chapter-XII shall be completed without unnecessary delay.

(b) **Provisions under the Karnataka Police Manual:-**

v) **Order 1550:-** In cases where accused are caught red handed with property, there should be no delay in submission of charge sheet. As a rule, accused should be forwarded in custody to the Magistrate having jurisdiction along with the charge sheet except in cases where the accused is a stranger and his antecedents have to be verified.

vi) **Order 1550(2):-** The supervisory Officer should ensure that investigation of cases should be completed

within a period of six months and report to the jurisdictional court is sent as required under Section 173 of Cr.P.C.

vii) **Order 1551:-** It is the duty of the Superintendents, Sub-Divisional Police Officers and Inspectors to see that investigations are promptly carried out and provisions of Section 167, 173 and 468 of Cr.P.C. are adhered to.

viii) **Order 1551(2):-** Provides that investigation in ordinary cases should normally be completed within one month and in case of heinous crimes within two months.

ix) **Order 1551(3):-** In ordinary cases, extension of time for investigation upto three months may be granted month by month by the Sub-Divisional Police Officer and beyond three months by the Superintendent of Police. In heinous cases, extension upto four months may be granted by the Superintendent of Police and if the period exceeds four months, by the Range Inspector General of Police.

B. **Judicial Framework :**

(a) **Witness Protection:-**

x) The Apex Court in the case of **Mahender Chawla and others v. Union of India and Others** reported in **(2019) 14 SCC 615** has discussed regarding protection of vulnerable witnesses.

The Court noticed the establishment of vulnerable witness deposition complexes in Delhi and had referred to the setting up of such complex at Dwaraka District Court established in February 2017. It was observed that the reasons for large percentage of acquittal in criminal cases is due to witnesses turning hostile and the giving of false testimony due to lack of protection for the witnesses and their families. In light of no steps having been taken to have a witness protection scheme with statutory force, the Apex Court has approved the scheme prepared by the Union of India and observations are as follows:

" 35. One thing which emerges from the aforesaid discussion is that there is a paramount need to have witness protection regime, in a statutory form, which all the stakeholders and all the players in the criminal justice system concede. At the same time no such legislation has been brought about. These are the considerations which had influenced this Court to have a holistic regime of witness

protection which should be considered as law under Article 141 of the Constitution till a suitable law is framed.

36. We, accordingly, direct that :

36.1. *This Court has given its imprimatur to the Scheme prepared by respondent No.1 which is approved hereby. It comes into effect forthwith.*

36.2. *The Union of India as well as States and Union Territories shall enforce the Witness Protection Scheme, 2018 in letter and spirit.*

36.3. *It shall be the "law" under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.*

36.4. *In line with the aforesaid provisions contained in the Scheme, in all the district courts in India, vulnerable witness deposition complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year, i.e., by the end of the year 2019. The Central Government should also support this endeavour of the States/Union Territories by helping them financially and otherwise."*

On similar lines are the directions of this court in W.P.No.10240/2020 (*Suo-motu* PIL), dated 01.12.2020 which are as follows:-

*" The first issue which we are considering is about the implementation of the Witness Protection Scheme, 2018 (for short 'the said Scheme') in terms of the directions issued by the Apex Court in the case of **Mahender***

Chawla and Others v. Union of India and Others.

2. We have perused the orders passed by the Apex Court from time to time in Writ Petition (Civil) No.699/2016 and in particular, the directions contained in paragraph 6 of the order dated 4th November, 2020. Apart from the directions issued in the case of **Mahender Chawla and Others** (supra) to implement the said Scheme, now, the Apex Court has directed that keeping in mind the vulnerability of the witnesses in the cases before the Special Court, the Trial Court may consider of granting protection under the said Scheme to the witnesses without the witnesses making any specific application in this regard.

3. There cannot be any dispute that in many cases pending before the Special Court, prominent political personalities are the accused. There is every possibility that some of the prosecution witnesses may become vulnerable witnesses who may need protection. We are, therefore, of the view that it is all the more necessary to strictly and effectively implement the said Scheme in relation to the prosecution witnesses in the cases before the Special Court.

4. In the memo filed today by the State of Karnataka, there is an assurance that the Government will pass an order constituting Competent Authorities in each District as per the said Scheme. There is already a direction issued by the Apex Court to all the States to implement the said Scheme.

5. The Special Court is a part of the City Civil Court at Bengaluru. Therefore, the Principal Judge will be the Chairman of the Competent Authority for the Bengaluru Urban District in terms of Clause (2) (c) of the said Scheme. The Commissioner of Police being the head of the Police will be a Member of the said

Competent Authority. The other member will be the head of the prosecution in the District. We, therefore, direct the State Government immediately to issue a formal order for firstly, constituting a Competent Authority for Bengaluru Urban District and secondly, for all other Districts. The Competent Authority for Bengaluru Urban District shall be constituted by the State Government within a maximum period of two weeks from today.

6. The said Scheme cannot be implemented unless the Witness Protection Fund is set up by the State Government. We, therefore, direct the State Government to set up the said fund within a period of two weeks from today.

7. We direct the State Government to invite the attention of all the Investigating Officers in the prosecutions pending before the Special Court to the provisions of the said Scheme and direct the said Officers to take all possible steps for implementation of the said Scheme. A direction shall be issued to all the Investigating Officers to bring to the notice of all the prosecution witnesses in the cases pending before the Special Court that for their protection, the said Scheme is available and they can make an application to the Principal Secretary of the Competent Authority in the form prescribed which is appended to the said Scheme. Every Investigating Officer should be informed that it is his duty to assess whether the prosecution witness can become a vulnerable witness due to various factors and whether there is a threat to the witness. He will have to apply his mind to the case of each witness and ensure that wherever necessary, a witness protection application is filed by him.

8. In view of the direction contained in Clause (1) of paragraph-6 of the order of the Apex Court dated 4th November 2020, even the

learned Judge presiding over the Special Court will have to apply his mind whether any particular prosecution witness needs protection even if there is no application made by the witness for grant of protection. If the learned Judge is of the view that the witness needs protection, he can always issue a direction to the State to take protection measures as provided under Clause (7) of the said Scheme.

9. The learned Judge can always request the Competent Authority to take immediate measures for taking protection measures in relation to a particular witness. Needless to add that if an oral or a written application is made by a witness, the learned Judge is bound to consider the same and issue a direction as aforesaid. It is the duty of the Special Court to ascertain from the Investigating Officer, before witnesses are examined, whether any of them need protection in terms of the said Scheme.

10. About the procedure to be followed for the appointment of the Public Prosecutor attached to the Special Court, the memo filed by the State Government is silent. It is the duty of the State to ensure that a very competent prosecutor is appointed to work before the Special Court who is capable of handling the nature of prosecutions which are pending before the Special Court. That is the reason why in the earlier order, we had directed the State Government to place on record the nature of the process followed by the State Government for appointing the prosecutor. While we say this, we must hasten to add that this is no reflection on the competency of the prosecutors who are already appointed.

11. The State Government shall ensure that the proposal for setting up the second Special Court is approved at the earliest.

12. We direct the Registrar General to place on record the information regarding availability of Vulnerable Witness Deposition Complexes in the State in the light of the direction issued in paragraph-36.4 of the decision of the Apex Court in the case of **Mahender Chawla and Others** (supra).

13. A copy of the directions issued by the State Government to all the Investigating Officers shall be placed on record. A copy of the Government Order constituting the Competent Authority shall also be placed on record before the next date....."

(b) **Supervision of Investigation under Section 156(3) of Cr.P.C.**

xi) In the case of **Sakiri Vasu v. State of Uttar Pradesh and Others** reported in **(2008) 2 SCC 409**, the Apex Court has laid down the following guidelines relating to exercise of power of the Magistrate under Section 156(3):

"11... if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C., before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be

registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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

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

xii) The Apex Court in the case of **Lalita Kumari v.**

Government of Uttar Pradesh reported in **(2014) 2**

SCC 1, has pointed out the advantages of registering F.I.R as soon as a complaint/information is given to the police and the relevant portion of the judgment has been extracted below:-

"97. ... The obligation to register FIR has inherent advantages:

97.1. (a) It is the first step to "access to justice" for a victim.

97.2. (b) It upholds the "rule of law" inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.

97.3. (c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.

97.4. (d) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR."

19. **Guidelines for speedy Investigation:**

i) Offences may be categorized into (a) petty offences (b) serious offences and (c) heinous offences. As regards petty offences, time limit of 60 days could be fixed for completion of investigation which could be extended by the Special Judge/Magistrate upon request made, assigning reasons for extension of time for investigation to be

completed. As regards serious and heinous offences, time limit of 90 days could be stipulated with provision to extend such time period upon request by the Special Judge / Magistrate upon reasons being made out. Such an intervention may be necessary in light of the approach of the Apex Court in the case of **Abdul Rehman Antulay and Others v. R S Nayak and Another** reported in **(1992) 1 SCC 225** where Guidelines were laid down for speedy trial of criminal proceedings. The relevant extract is as follows:

"86. ...

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged

investigation, inquiry or trial should be minimal; and ..."

ii) In the event the investigation is not completed within the time prescribed and the superior officer is of the opinion that there are no justifiable reasons for completion of the investigation, power can be exercised under Section 36 of Cr.P.C. by the Superior Officer.

iii) The Magistrate / Special Judge can invoke power under Section 156(3) of Cr.P.C. to ensure investigation is expeditious and pass appropriate directions where the investigation appears to be procrastinated to the prejudice of the complainant and would have the effect of derailing the investigation. The Magistrate can upon application filed or otherwise seek report from the concerned authority as regards delay in investigation. **(See Paras-11, 17 and 24 in Sakiri Vasu case (supra) and Om Prakash Sharma v. State of Madhya Pradesh reported in ILR 2021 MP 984, Paras-11 and 11.2).**

(iv) Where grievance relates to non-registration of first information report and application under 156(3) has been filed, same may be disposed off within a period

preferably not exceeding thirty days as relief sought for itself is relating to non-registration of FIR.

(v) The Magistrate at the stage of extension of remand under Section 167 of Cr.P.C. could enquire regarding stage of Investigation.

vi) Many a time the prosecutor is required to take a call on need for examination of multiple witnesses. Once any one witness is examined on a particular aspect and if the evidence is clear and not shaky, the summoning of additional witnesses is to be avoided, as summoning multiple witnesses to speak on the same aspect results in prolonging trial and gives room to the defence to exploit contradictions amongst witnesses speaking on the same aspect.

vii) Setting up separate investigation wing with dedicated personnel in police stations with necessary training imparted so as to inculcate professionalism in investigation.

viii) Personnel involved may be subjected to training relating to *modus operandi* in commission of crime,

strategies of unearthing crimes and their detection, and steps to be taken to familiarize them with necessary knowledge relating to technology involved in commission of cyber crimes, money laundering and corruption offences.

ix) In the event of failure to complete investigation in an expeditious manner provisions under Section 20(C) and 20(D) of the Karnataka Police Act can be invoked and a complaint could be made to the State and District Police Complaint Authority. In fact, delay in completing investigation can be a ground to invoke Section 20(C) in terms of the Explanation to Section 20(C)(7). This would ensure accountability of the investigating officers.

x) The delay in investigation and consequent delay in trial, places the complainant as well as the witnesses in a vulnerable position and the protection mechanism requires to be evolved.

xi) Necessary efforts for bifurcation of law and order, and crime investigation as regards personnel needs to be implemented.

xii) In order to overcome fear and reluctance on the part of public to be arraigned as witnesses, steps must be taken to implement the Witness Protection Scheme. The Apex Court has approved the Witness Protection Scheme, 2018 in the case of **Mahender Chawla (supra)**, at **para-26**, the Apex Court has referred to the Witness Protection Scheme in which the following protection measures are given to the witnesses under the scheme:

"7. Types of protection measures:

The witness protection measures ordered shall be proportionate to the threat and shall be for a specific duration not exceeding three months at a time. These may include:

(a) Ensuring that witness and accused do not come face to face during investigation or trial;

(b) Monitoring of mail and telephone calls;

(c) Arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number;

(d) Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc;

(e) Concealment of identity of the witness by referring to him/her with the changed name or alphabet;

(f) Emergency contact persons for the witness;

(g) Close protection, regular patrolling around the witness's house;

(h) Temporary change of residence to a relative's house or a nearby town;

(i) Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;

(j) Holding of in-camera trials;

(k) Allowing a support person to remain present during recording of statement and deposition;

(l) Usage of specially designed vulnerable witness court rooms which have special arrangements like live video links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness' voice, so that he/she is not identifiable;

(m) Ensuring expeditious recording of deposition during trial on a day to day basis without adjournments;

(n) Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting a new vocation/profession, as may be considered necessary;

(o) Any other form of protection measures considered necessary."

xiii) Necessary mechanism needs to be designed to implement the mandate of Order No.1550, 1550 (2), 1551 (2) and (3) of the Karnataka Police Manual.

xiv) The Authorities concerned may consider having provisions for the purpose of speedy and effective investigation by framing Regulations in lines of Police Regulations Bengal, 1943 which are as follows:-

"54. Supervision of criminal investigations. [§ 12, Act V, 1861].

- (a) *An officer supervising the investigation of a criminal case should satisfy himself that -*

(i) the investigation is being pushed through without delay ;

(ii) the investigation is thorough, i.e., that clues are not overlooked or important lines of enquiry neglected;

(iii) investigating officers do not work mainly for confessions or rely too much on any that are made, and that they use no sort of pressure and offer no sort of inducement to obtain confessions ;

(iv) the subordinate police are working honestly;

(v) the public are properly treated ; and

(vi) the prescribed procedure is followed.

(b) He shall on no account put pressure on investigating officers by injunctions to detect particular case or cases generally.

(c) The methods to be adopted by supervising officers are-

(i) visits to the place of occurrence at various stages of the investigation and personal examination, if necessary, of witnesses ;

(ii) careful scrutiny of case diaries and other papers connected with the investigation; and

(iii) examination of crime registers and other records at the police-stations.

(d) When a supervising officer discovers mistakes or omissions on the part of an investigating officer, he should point them out to him and should not call for a written explanation unless it appears likely to be necessary to inflict punishment.

(e) A Superintendent, an Assistant or a Deputy Superintendent, and (for his own circle only) a Circle Inspector have power to order an officer attached to any police-station to investigate a case that, under section 156 of the Code of Criminal Procedure, should be investigated by the officer-in-charge; of another police-station; but the power should be exercised sparingly and its exercise by an officer subordinate to a Superintendent should at once be reported to the Superintendent.

55. Supervision by Superintendents and other officers. [§ 12, Act V, 1861]. –

(a) A Superintendent shall supervise the investigation of Important special report cases and of all cases in which the conduct of

subordinate police officers appears unsatisfactory. If, for special reasons, he is unable himself to supervise the investigation of any such case, he may depute an Assistant or Deputy Superintendent to do so.

(b) A Superintendent, Assistant or Deputy Superintendent who is supervising a case need not visit the place of occurrence unless such visit is likely to be of practical value.

(c) A Circle Inspector shall supervise every case within his circle, and he shall visit the place of occurrence and test the evidence in every such case that is of importance. In selecting cases for testing on the spot he should direct his attention particularly to cases of house-breaking, riot and grievous hurt and to other cases which have been reported as false or non-cognizable.

56. Supervising officers to give evidence, and to keep diaries. [§ 12, Act V, 1861].

(a) Officers who have supervised investigations of important cases should be encouraged to give evidence in Court regarding any important facts which have come to their notice during the investigations.

(b) An officer supervising an investigation shall keep a personal diary in the form prescribed for Inspectors in regulation 197 and shall note in the manner in which he supervised the investigation, any questions which he has put to a witness, any identification which took place in his presence and any other matters on which he may need to refresh his memory before giving evidence. This diary shall be kept in the officers' personal custody.

(c) An officer who, while supervising a case, has himself taken part in an investigation shall, under section 172 of the Code of Criminal Procedure, keep a case diary showing where and at what times he made the investigation. Only fresh developments which may take place during supervision should be noted in a case diary by the superior officer. It should also include any specific orders given by him. This diary shall form part of the main case diaries submitted by the Investigating Officer of the case."

xv) In cases involving influential public personalities, resort to Section 164 Cr.P.C., should be made more frequently.

xvi) While investigation of offences under the provisions of Cr.P.C. is the exclusive domain of the police, the Judicial Magistrate should have role to play to counter the moves of persons in influential positions to subvert the effective process of investigation. Accordingly, the I.O. shall bring to the notice of Magistrate the bottlenecks, if any, that are coming in the way of speedy investigation including the attempts being made by the accused to hinder the investigation. The Magistrate shall, apart from taking such steps as are permissible under law, for example, issuing summons for the production of documents in the custody of suspect/accused/or a third party, may also send a report to

the District Judge for appropriate action on the administrative side to eliminate delays.

(xvii) The State is required to take steps for the implementation of the Witness Protection Scheme in terms of the observations of the Apex Court in the case of ***Mahendra Chawla and Others (supra)*** as well as the direction in the order dated 01.12.2020 passed in W.P.No.10240/2020 which is a *suo motu* writ petition pending before this court. Further, the Judicial Officers are also required to take note of the mandate of the directions of the order dated 01.12.2020.

20. Insofar as the present case is concerned, the Special Judge may take note of the observations made herein. The Investigation Agency is to take into the observations as may be applicable. As regards the submission of the Investigation Agency that the final report cannot be filed till the pending proceedings in I.T.A. No.100050/2018 are disposed off may not be the correct stand in light of the law laid down in the case of **State of Karnataka v. J. Jayalalitha** reported in **(2017) 6 SCC**

263 and the relevant observation at para-201 reads as follows:-

"201. This decision is to emphasise that submission of income tax returns and assessments orders passed thereon, would not constitute a foolproof defence against a charge of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the PC Act and that further scrutiny/analysis thereof is imperative to determine as to whether the offence as contemplated by the PC Act is made out or not."

21. It is further clarified in para-199 that the proceedings under the Income Tax Act will not be binding upon the proceedings under the P.C. Act., as follows:-

"199. ...The scrutiny in an assessment proceeding is directed only to quantify the taxable income and the orders passed therein do not certify or authenticate that the source(s) thereof to be lawful and are thus of no significance vis-à-vis a charge under Section 13(1)(e) of the Act."

22. This Court however clarifies that issuance of writ of mandamus as sought for is to be deferred as the companion writ petition challenging the validity of proceedings is yet to be disposed off.

23. The quality of any judgment rests on the assistance of the counsel. This Court places on record its appreciation and assistance of Amicus Curiae Mr.Sandesh

Chouta, learned Senior Counsel, who has given his valuable inputs and a number of suggestions and made extremely useful suggestions and also, his painstaking efforts have contributed to the directions passed herein.

The Registrar General, High Court of Karnataka, Bengaluru to send a copy of this order for necessary attention to the following:-

- i) The Director General & Inspector General of Police, Karnataka.
- ii) The Secretary, Home Department
- iii) The Director, Prosecution Department.

List these matters in due course.

(S. SUNIL DUTT YADAV)
JUDGE

VGR/VP/Np