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Reserved on : 30.01.2025
Pronounced on : 07.02.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.27484 OF 2024 (GM - RES)

BETWEEN:

SRI SNEHAMAYI KRISHNA
AGED ABOUT 54 YEARS,
S/O LATE SRI. L. SIDDAPPA,
RESIDING AT NO. 335,
BANDIPALYA,
GANAPATHY ASHRAMA POST,
MYSURU – 570 025.

... PETITIONER

(BY SRI MANINDER SINGH, SENIOR ADVOCATE FOR
SRI PRABHAS BAJAJ, SRI VASANTH KUMARA,
SRI SKANDA ARUN KUMAR, SRI LAKSHMAN KULKARNI,
SMT ANITHA S M PATIL,
SMT POOJA SAVADATTI, ADVOCATES)

AND:

1 . UNION OF INDIA
REPRESENTED BY THE SECRETARY,
MINISTER OF HOME AFFAIRS,
NORTH BLOCK,
NEW DELHI – 110 001.

- 2 . STATE OF KARNATAKA
HOME DEPARTMENT,
BY ADDITIONAL CHIEF SECRETARY,
ROOM NO. 222, II FLOOR, VIDHANA SOUDHA,
BENGALURU - 560 001.
- 3 . THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION,
PLOT NO. 5-B,
CGO COMPLEX,
LODHI ROAD,
NEW DELHI - 110 003.
- 4 . SUPERINTENDENT OF POLICE
CENTRAL BUREAU OF INVESTIGATION,
NO. 36, BELLARY ROAD,
GANGANAGAR,
BENGALURU - 560 032.
- 5 . SUPERINTENDENT OF POLICE
KARNATAKA LOKAYUKTA,
MYSURU DISTRICT,
PADMALAYA BUILDING,
DEWANS ROAD,
CHAMRAJPURA,
MYSURU - 570 004.
- 6 . THE DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE
KARNATAKA STATE POLICE HEADQUARTERS,
NO.2, NRUPATHUNGA ROAD,
BENGALURU - 560 001.
- 7 . ADDITIONAL DIRECTOR GENERAL OF POLICE
KARNATAKA LOKAYUKTA,
DR. B. R. AMBEDKAR ROAD,
M.S. BUILDING,
BENGALURU - 560 001.
- 8 . STATION HOUSE OFFICER
VIJAYANAGAR POLICE STATION,

MYSORE,
 REPRESENTED BY PUBLIC PROSECUTOR,
 HIGH COURT COMPLEX,
 BENGALURU – 560 001.

- 9 . SRI. SIDDARAMAIAH
 THE HONBLE CHIEF MINISTER OF KARNATAKA,
 VIDHANA SOUDHA,
 BENGALURU – 560 001.
- 10 . SMT. PARVATHY. B. M.
 AGED ABOUT 65 YEARS,
 W/O. SIDDARAMAIAH,
 R/AT NO. 206, 16TH CROSS,
 M.C. LAYOUT,
 VIJAYANAGAR,
 BENGALURU – 560 040.
- 11 . SRI. MALLIKARJUNA SWAMY
 AGED ABOUT 68 YEARS,
 S/O. LATE SRI. MARILINGAIAH,
 R/AT NO. 1245, 3RD MAIN,
 KANTHARAJA URS ROAD,
 THUNCHIKOPPALU,
 MYSURU – 570 079.
- 12 . SRI. DEVARAJU J.,
 AGED ABOUT 70 YEARS,
 S/O. NINGA @ JAWARA,
 R/AT NO. 117, 1ST MAIN ROAD,
 10TH CROSS, K.S. TOWN,
 BENGALURU – 560 060.

... RESPONDENTS

(BY SRIH.SHANTHI BHUSHAN, DSGI FOR R-1;
 SRI KAPIL SIBAL, SENIOR ADVOCATE,
 SRI K SHASHIKIRAN SHETTY, AG,
 SRI PRATEEK CHADDA, AAG,
 SRI ISMAIL ZABIULLA, AAG,
 SMT ANUKANKSHA KALKERI, HCGP,
 SRI ADIT PUJARI, SRI RISHAB PARIK, ADVOCATES,

FOR R-2, 6 AND 8;
SRI P.PRASANNA KUMAR, SPL.PP FOR R-3AND 4;
SRI VENKATESH S.ARBATTI, SPL.PP FOR R-5 AND 7;
DR ABHISHEK MANU SINGHVI, SENIOR ADVOCATE A/W
SRI SHATHABISH SHIVANNA, ADVOCATE FOR R-9;
PROFRAVIVARMA KUMAR, SENIOR ADVOCATE FOR
SMT BELLI AND KUM RANJITA G ALAGWADI,
ADVOCATES FOR R-10;
SRI ADITYA SONDHI, SENIOR ADVOCATE FOR
SRI ROHAN TIGADI, ADVOCATE FOR R-11 AND
SRI DUSHYANT DAVE, SENIOR ADVOCATE FOR
SRI ADITYA NARAYANA, ADVOCATE FOR R-12)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W 528 OF BNSS R/W 482 OF CR.P.C. PRAYING FOR A DIRECTION IN THE NATURE OF MANDAMUS OR ANY OTHER WRIT TRANSFERRING THE INVESTIGATION ORDERED BY THE ADDL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (SPECIAL COURT TO TRY CRIMINAL CASES AGAINST MPS AND MLAS) ON 25.09.2024 IN PCR NO. 28/2024 TO R-3 WITH A DIRECTION TO REGISTER A FIR, INVESTIGATE INTO THE OFFENCES AND TO SUBMIT REPORT UNDER SECTION 173 OF Cr.P.C ON THE BASIS OF THE REPRESENTATION OF THE PETITIONER DTD. 26.07.2024 (ANNX-AC) AND IN THE LIGHT OF THE OBSERVATIONS MADE IN W.P.NO. 22356/2024 WITH A FURTHER DIRECTION TO MONITOR THE SAME BY A SITTING JUDGE OF THE HONBLE HIGH COURT OF KARNATAKA, NOMINATED BY THE HONBLE CHIEF JUSTICE OF KARNATAKA OR ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus directing transfer of investigation in P.C.R.No.28 of 2024 to the hands of an independent agency, like that of the Central Bureau of Investigation ('CBI' for short) to investigate into the alleged acts of respondents 9 to 12 and other accused, owing to the observations made by this Court in Writ Petition No.22356 of 2024.

THE PROTAGONISTS:

2. Before embarking upon consideration of the prayers so sought, I deem it appropriate to notice the protagonists in the *lis*. The petitioner claims to be a social worker, who is said to have pursued various causes, in the interest of the society at large. He is said to be a well-known journalist, film maker and a celebrated film director. The 1st respondent is the Union of India; respondents 2, 4, 6 and 8 are the State and its authorities; respondent No.3 is the Central Bureau of Investigation; respondents 5 and 7 are the officers of Karnataka

Lokayukta; respondent No.9 is the sitting Chief Minister of the State of Karnataka; respondent No.10 is the wife of the Chief Minister, respondent No.11 is the brother-in-law of respondent No.9. Respondent No.12 is an outsider who is said to have a role in the *lis*. The aforesaid are projected to be the key players in the *lis*.

3. The petitioner along with others seek to register a private complaint invoking Section 200 of the Cr.P.C. in P.C.R.No.28 of 2024 against respondents 9 to 12 herein, naming them as accused. The complaint was with regard to illegal allotment of sites by Mysore Urban Development Authority ('MUDA') in favour of wife of the Chief Minister, on the alleged influence of the Chief Minister. The offences alleged were an amalgam of offences punishable under the provisions of the Prevention of Corruption Act, 1988 ('the Act' for short) and the Indian Penal Code *inter alia*. Since 9th respondent is a sitting Chief Minister, approval as necessary under Section 17A of the Act, was sought from the hands of the Governor. A ***gubernatorial*** order was passed granting approval to investigate into the matter by the Governor. The said grant of approval comes to be challenged before this Court in Writ

Petition No.22356 of 2024. This Court by its order dated 24-09-2024 rejected the petition filed by the Chief Minister, challenging the order granting approval by the Governor. After dismissal of the petition on 24-09-2024, the concerned Court by its order dated 25-09-2024, the next day, refers the matter for investigation under Section 156(3) of the Cr.P.C. directing investigation on registration of crime by the Police wing, of the Karnataka Lokayukta. The crime comes to be registered on 27-09-2024 in Crime No.11 of 2024. One hour before registration of crime, the subject petition is filed, on the same day i.e., on 27-09-2024 seeking transfer of investigation to the hands of the CBI.

4. The matter comes up before Court on 5-11-2024 and this Court from time to time passed certain orders and permitted investigation, as was directed by the concerned Court, but deferred the outer limit of three months prescribed by the concerned Court to file a final report, from the hands of the Investigating Agency. The matter is heard at that stage.

5. Heard Sri Maninder Singh, learned senior counsel appearing for the petitioner; Sri H.Shanthi Bhushan, learned

Deputy Solicitor General of India appearing for respondent No.1; Sri Kapil Sibal, learned senior counsel appearing for respondents 2, 6 and 8; Sri P.Prasanna Kumar, learned Special Public Prosecutor appearing for respondents 3 and 4; Sri Venkatesh S.Arbatti, learned Special Public Prosecutor for respondent No.5; Dr. Abhishek Manu Singhvi, learned senior counsel appearing for respondent No.9; Prof Ravi Varma Kumar, learned senior counsel appearing for respondent No.10; Sri Aditya Sondhi, learned senior counsel appearing for respondent No.11 and Sri Dushyant Dave, learned senior counsel appearing for respondent No.12.

SUBMISSIONS:**Petitioner:**

6. Learned senior counsel Sri Maninder Singh representing the petitioner would vehemently contend that, to keep the public confidence still alive in matters where highest functionaries of the State, in the case at hand, the Chief Minister and his family is being investigated into, it is necessary that such investigation should be entrusted to independent investigating agency who has no control of any kind from the accused. The learned senior counsel would submit that in cases of corruption of high officers,

if the Chief Minister is still functioning and him being in the control of the officers of Lokayukta, no investigation worth the name can even be thought of.

6.1 He would take this Court through the affidavit filed to contend that the Police wing of the Lokayukta has refused to investigate in a proper manner, as few officers in the month of June, 2024 have taken away certain files from the office of MUDA. Placing heavy reliance upon the said act that has happened in the month of June 2024, the learned senior counsel submits that, that would be circumstance enough to transfer the investigation to the hands of the CBI. It is his emphatic submission that, only because 9th respondent is a sitting Chief Minister, the investigation should be transferred, as fair, fearless and transparent investigation cannot be done by the Lokayukta. He would seek to place reliance upon plethora of judgments rendered by the Apex Court transferring investigation under certain circumstances. All of them would bear consideration *qua* their relevance in the course of the order. He would, above all, emphatically contend that in a matter concerning transfer of investigation as is sought, no accused need be heard in the matter.

Respondents:

7. On the other hand, the learned senior counsel Sri Kapil Sibal along with Sri K Shashikiran Shetty, learned Advocate General representing the State of Karnataka/respondents 2, 6 and 8 would vehemently refute the submissions. He would lay emphasis on the complainant's prayer in P.C.R.No.28 of 2024. It is his case that the complainant himself chose the investigation to be conducted by the Lokayukta and even before the FIR could be registered, he has presented the subject petition seeking transfer of investigation to the hands of the CBI. This is a mala fide intention on the part of the petitioner/complainant in the case at hand.

7.1 He would take this Court through the Karnataka Lokayukta Act to contend that Lokayukta is an independent agency. It is not a wing of the State like how the earlier Anti-Corruption Bureau was functioning. He would contend that the present Chief Minister is not the only one who was investigated into by the Lokayukta. There were high functionaries in the past whom the Police wing of the Lokayukta coming under the Lokayukta, had investigated into. Without knowing what is the investigation, there is no case in the history of independent

judiciary that the Court *suo motu* has transferred investigation to the CBI. There are instances where the transfer has happened after the constitutional Court has perused the investigation papers, found it to be lacking in confidence or lopsided. It is only then investigations are transferred to CBI or any other investigating agency. He would also place reliance upon plethora of judgments, and all of which would be considered *qua* their relevance in the course of the order.

8. The learned senior counsel Sri Dushyant Dave represents respondent No.12, the person who is brought into the web of these proceedings, one J. Devaraju. It is his submission that Sri J Devaraju was not made a party when this Court disposed of earlier in Writ Petition No.22356 of 2024. But, there are copious observations made in the course of the order which are all untrue. He would, therefore, seek to contend that this Court must hear the plea of respondent No.12 and misrepresentation made by the complainant therein, which has resulted in an order of the kind that is passed against respondent No.12. Insofar as the contention of absence of bona fides on the part of the complainant, it is his submission that the petitioner himself chose a particular investigating agency to conduct

investigation. He is not satisfied with it. He immediately rushes to this Court and seeks transfer of investigation to CBI.

8.1 The learned senior counsel would again take this Court to the judgment rendered by the Apex Court, this Court and several other High Courts to demonstrate that transfer to an independent agency can only be done if the investigation conducted by the investigating agency entrusted to conduct investigation is completely shoddy. In the case at hand, nobody knows what is the investigation, neither the petitioner nor respondent No.12.

8.2 He would contend that alleged MUDA scam is blown out of proportion. He would submit that he is not interested in any other respondents but the man – respondent No.12 is now aged 80 years old who had sold the land in the year 2004 and washed off his hands could not be dragged into the web of investigation as an accused and that not being enough, now if it is transferred to the hands of the CBI, it is his submission that it would finish the 12th respondent, for an act which is 20 years ago performed that too legally through valid registered sale deed which even as on to-day is valid. For a legal act, if the citizen is hounded in this

way, it is his submission that it would become a travesty of justice. He has also placed reliance upon several judgments which again would be considered qua their relevance in the course of the order.

9. The learned senior counsel Sri Abhishek Manu Singhvi representing the 9th respondent/Chief Minister would toe the lines of both the learned senior counsel to elaborate his contention with regard to a transfer of the kind that is sought at the hands of this Court never before done in the history. The complainant cannot play hide and seek by choosing a particular forum while registering the complaint and immediately come to this Court and seek investigation by another forum when the investigation is yet to get complete or even commence.

10. The learned senior counsel ProfRavivarma Kumar representing the 10th respondent, wife of the Chief Minister, would also again toe the lines of the learned senior counsel who have made submissions for the State, respondent No.9 and respondent No.12.

11. The learned senior counsel Sri Aditya Sondhi representing respondent No.11 would also toe the lines taking

this Court through the date and time stamp of filing of the present petition. The order referring the matter for investigation happens within 24 hours of passing of the order by this Court which is on 25-09-2024. The order was made available next day and even before registration of crime, the subject petition is preferred. The time of filing of the petition is available on the website of the High Court. It is at 1.00 p.m. and the FIR is registered at 1.40 p.m. Therefore, there are no bona fides in seeking the prayer that is now sought, except to glorify the issue by dragging in the CBI. All the senior counsel representing respondents 9,10 and 11 also rely upon several judgments.

12. The learned counsel Sri Venkatesh S. Arbatti representing the Lokayukta/respondents 5 and 7 would seek to clarify the allegation that officers have taken away the file as Superintendent of Police, Lokayukta has needed the same. He would submit that it has happened long before the order was passed by this Court. Such projections which are false are deliberately made against the Lokayukta. He would submit that Lokayukta is an independent agency, not coming under the control of the Chief Minister and such independent agency has now conducted investigation and has filed the report of the

Investigating Officer, which is signed by the Inspector General of Police, Lokayukta and a separate report by the Additional Director General of Police, Lokayukta in terms of the directions of this Court. He would submit that he has placed the entire original investigation papers including the report for perusal of this Court, to assist the Court to arrive at a decision in the *lis* as was directed.

13. To all the aforesaid submissions of all the respective learned senior counsel, the learned senior counsel Sri Maninder Singh would, by way of his rejoinder submissions, contends that it is a figment of imagination of all the learned senior counsel representing the respondents that in the history of independent judiciary the Court has not *suo motu* transferred a case to the hands of the CBI. He would submit that the answer lies in the judgments relied on by him on several instances where only because, it involves a high functionary and, in several cases, only because the accused was the Chief Minister therein, the matter has been transferred to the hands of the CBI. With regard to mortal hurry in preferring the present petition, he would also rely on a judgment of the Apex Court, where the Apex Court considered the fact of a petition preferred immediately after the

crime was registered seeking transfer of investigation to CBI. Even there the complainant did not wait for the local investigating agency to complete the investigation. It was transferred 3 years later by the Apex Court, but the petition was filed immediately. He would contend that the respondents should not be allowed to get away with the crime that they have committed in unison, which the Enforcement Directorate also has now projected to be grave illegality in seeking allotment of sites and it amounts to proceeds of crime by the family of the Chief Minister. For this purpose, he would take this Court through the additional affidavit. Therefore, the learned senior counsel would submit that only because the 9th respondent is the Chief Minister, the investigation should be handed over to the CBI, is echoed throughout the submissions.

14. I have bestowed my thoughtful consideration to the aforesaid submissions of all the learned senior counsel and the respective learned counsel appearing for the parties. In furtherance whereof, the following issues arise for my consideration:

(1) Whether the Lokayukta/office of the Lokayukta has questionable independence?

- (2) Under what circumstances the constitutional Courts have referred the investigation/further investigation/ re-investigation to the hands of the CBI and in what cases the Courts have refused to refer?**

- (3) Whether the material on record – investigation conducted by the Lokayukta merits transfer to the hands of the CBI for further/re-investigation?**

ISSUE NO.1:

Whether the Lokayukta/office of the Lokayukta has questionable independence?

15. To consider this issue, it is necessary to go to the genesis of the problem and its aftermath. The afore-narrated facts are not in dispute. The link in the chain of events and the dates of passing of order are all a matter of record. The petitioner is the complainant in one of the PCRs -P.C.R. No.28 of 2024. Certain paragraphs of the complaint are germane to be noticed. They read as follows:

"2. The complainant is a public-spirited person and a social worker who has pursued various causes in the interest of society at large. The complainant is also a well-known journalist, film maker and a celebrated film director.

... ..

53. It is pertinent to note that, complainant on earlier occasion had approached the Vijayanagara Police Station, Mysuru wherefor they have issued an acknowledgement thereby refused to register an FIR. The complainant has given complaint to the Police Commissioner, Mysuru, the Superintendent of Police, Mysuru, Lokayuktha, Assistant Director General of Police, Lokayuktha, the Director General and Inspector General of Police, Bengaluru and also the Central Bureau of Investigation in compliance with Section 154 and landmark judgment of Priyanka Srivastava and another v. State of U.P. and others. The said Police have not taken any action and violated the guidelines of the Apex Court rendered in Lalita Kumari case. Hence, the complaint had no other go than to approach this Hon'ble Court. Hence this present complaint. The copies of the complaint filed before various investigating agencies and the acknowledgment received is produced with the complaint as Document No.33, 33.1, 33.2, 33.3, 33.4, 33.5 and 34, 34.1.

... ..

56 Furthermore, the corruption and irregularities committed by the accused No.1 is just a tip of the iceberg. In fact many Government officials and others at the relevant point in time were actively involved in larger scam which needs deeper investigation, enquiry and trial in the due course. The complainant reserves the right to bring to the notice this Hon'ble such other details in the due course.

... ..

59. That the accused No.1 is a Member of Legislative Assembly (MLA) Karnataka and the offences alleged are triable by the Special Court under the PC Act and hence this Hon'ble Court has got jurisdiction to entertain this complaint and to secure all the accused and to punish them in accordance with law. The complainant has not filed similar complaint before any other forum.

Wherefore, the complainant humbly pray that this Hon'ble Court be pleased to -

- I. Take cognizance for the offences punishable under Section 120B, 166, 403, 406, 420, 426, 465, 340, 351 and other relevant sections of the Indian Penal Code (61, 198, 314, 316, 318, 324, 336, 340 & 351 of BNS), offences punishable under Sections 9 & 13 Prevention of Corruption Act, 1988, 3, 53 & 54 of the Prohibition of Benami Property Transactions Act, 1988 and 3, 4 of Karnataka Land Grabbing**

Prohibition Act, 2011 or hold enquiry or direct the CBI/any independent investigating agency which does not come under the State Government/Lokayukta Police Wing to submit a report after enquiry under Section 202 of CrPC read with section 225 of BNSS and secure the presence of the accused by issuance of process/summons to the accused persons and punish them in accordance with law, OR

- II. **Refer the complaint under 158(3) of CrPC read with Section 175(3) of BNSS to Police wing of Lokayuktha for investigation and to submit report an take cognizance and punish them in accordance with law in the interest of justice."**

(Emphasis added)

The prayer of the petitioner was seeking a direction at the hands of the Special Court to refer the matter for investigation under Section 156(3) of the CrPC/175(3) of BNSS **to the Police wing of the Lokayukta for investigation and to submit report and take cognizance.** Identical complaints were preferred by others. One of the complainants, owing to the fact that offences under the Act had been invoked along with other offences, sought approval from the hands of the Governor, since the accused was the sitting Chief Minister, as obtaining under Section 17A of the Act. The Governor grants his approval for investigation into the matter. This is challenged before this Court by the Chief Minister in Writ Petition No.22356 of 2024. The present petitioner was a respondent therein in the capacity

of being the complainant. This Court rejected the petition putting its imprimatur to the approval granted by the Governor.

The summary of findings of this Court reads as follows:

"SUMMARY OF FINDINGS:

- i. The complainants were justified in registering the complaint or seeking approval at the hands of the Governor.
- ii. The approval under Section 17A of the PC Act is mandatory in the fact situation.
- iii. Section 17A nowhere requires Police Officer to seek approval in a private complaint registered under Section 200 of the Cr.P.C./223 of BSS against a public servant for offences punishable under the provisions of the Act. It is the duty of the complainant to seek such approval.
- iv. The Governor in the normal circumstance has to act on the aid and advice of the Council of Ministers as obtaining under Article 163 of the Constitution of India, but can take independent decision in exceptional circumstances and the present case is one such exception. 195
- v. No fault can be found in the action of the Governor exercising independent discretion to pass the impugned order.
- vi. It would suffice if the reasons are recorded in the file of the decision making authority, particularly of high office, and those reasons succinctly form part of the impugned order. A caveat, reasons must be in the file. Reasons for the first time cannot be brought before the constitutional Court, by way of objections.
- vii. The Gubernatorial order nowhere suffers from want of application of mind. It is not a case of not even a semblance of application of mind, by the Governor, but abundance of application of mind.

- viii. Grant of an opportunity of hearing prior to approval under Section 17A is not mandatory. If the authority chooses to do so, it is open to it.
- ix. The decision of the Governor of alleged hottest haste has not vitiated the order.
- x. The order is read to be restrictive to an approval under Section 17A of the Act and not an order granting Sanction 218 of BNSS.
- xi. The facts narrated in the petition would undoubtedly require an investigation. In the teeth of the fact that the beneficiary of all these acts is not anybody outside, but the wife of the petitioner."

Pursuant to the dismissal of the writ petition preferred by the 9th respondent, the concerned Court, next day i.e., on 25-09-2024, refers the matter for investigation. The order of reference reads as follows:

"ORDER

Acting under Section 156(3) of Code of Criminal Procedure, the jurisdictional police i.e., Superintendent of Police, Karnataka Lokayukta, Mysuru is hereby directed to register the case, investigate and to file a report as contemplated under Section 173 of CrPC within a period of three months from to-day for offences punishable under Sections 120B, 166, 403, 406, 420, 426, 465, 468, 340, 351 and other relevant sections of the Indian Penal Code and for the offences punishable under Sections 9 and 13 of the Prevention of Corruption Act, 1988 and under Section 3, 53 and 54 of the Prohibition of Benami Property Transactions Act, 1988 and 3, 4 of Karnataka Land Grabbing Prohibition Act, 2011.

Office is hereby directed to register the complaint as PCR.

Further the office is hereby directed to communicate the above orders of the Court forthwith to the above said jurisdictional police.

Call on 24-12-2024."

(Emphasis added)

The learned counsel for the Lokayukta submits that though the order was passed on 24-09-2024, the entire order was webhosted or made available on the evening of 26-09-2024. The concerned Court, in terms of the order quoted *supra*, directs the Superintendent of Police, Karnataka Lokayukta, Mysore to register a case, investigate and file a final report as contemplated under Section 173 of the Cr.P.C. within 3 months from 25-09-2024. Immediately thereafter, the crime is registered on the next day, at about 1.40 p.m. in Crime No.11 of 2024 for the following offences:

"Sections 120B, 166, 403, 406, 420, 426, 465, 468, 340, 351 of the Indian Penal Code; Sections 9 and 13 of the Prevention of Corruption Act, 1988; Sections 3, 53 and 54 of the Prohibition of Benami Property Transactions Act, 1988 and 3, 4 of Karnataka Land Grabbing Prohibition Act, 2011.

Even before the **ink on the order could dry**, the petitioner/complainant is before this Court in the subject petition, one hour

before registration of crime. The matter is kept pending and is not moved up to 5-11-2024. For the first time it comes before the Court on 5-11-2024. Be that as it is.

16. As quoted hereinabove, the complainant sought reference for investigation under Section 175(3) of the BNSS to the hands of the Police wing of the Lokayukta. The concerned Court, accepting the prayer refers the matter for investigation to the Lokayukta. In the teeth of aforesaid facts, the prayer in the subject petition needs to be noticed. It reads as follows:

“WHEREFORE, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to –

- (i) Issue a writ/order or direction in the nature of mandamus or any other writ transferring the investigation ordered by the Additional City Civil and Sessions Judge at Bengaluru (Special Court to try Criminal Cases against MPs and MLAs) on 25.09.2024 in P.C.R.No.28 of 2024 (Annexure-AD) to respondent No.3 with a direction to register a FIR, investigate into the offences and to submit report under Section 173 of CrPC on the basis of the representation of the petitioner dated 26-07-2024 (Annexure-AC) and in the light of the observations made in W.P.No.22356 of 2024 with a further direction to monitor the same by a sitting Judge of the Hon’ble High Court of Karnataka, nominated by the Hon’ble Chief Justice of Karnataka (Annexure-AE).**

Or in the alternative:

- (ii) **Direct the CBI i.e., respondent No.3 to investigate into the alleged acts of the respondent No.9 to respondent No.12 and other accused persons in light of observations made by this Hon'ble Court in Writ Petition No.22356 of 2024 (Annexure-AE) to be monitored by a sitting/retired Judge of Hon'ble High Court of Karnataka.**
- (iii) **Issue any writ or order and pass any such orders/ directions which this Hon'ble Court deems fit, in the interest of justice and equity."**

(Emphasis added)

It is now sought to be transferred to the hands of the CBI, the 3rd respondent. First having sought the investigation at the hands of the Lokayukta and without even knowing what the investigation is and because 9th respondent is a sitting Chief Minister, the transfer is sought, questioning the independence of the investigating agency, the Lokayukta. It, therefore, becomes necessary to notice the birth of Lokayukta in the State of Karnataka and the reason for which it was created.

KARNATAKA LOKAYUKTA:

17. The Karnataka Lokayukta Act, 1984 was promulgated on 15-01-1986. It becomes germane to notice the objects and reasons obtaining in Karnataka Act 4 of 1985. They read as follows:

"The Administrative Reforms Commission had recommended the setting up of the institution of Lokayukta for the purpose of appointment of Lokayukta at the state's level, to improve the standards of public administration, by looking into complaints against the administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery.

One of the election promises in the election manifesto of the Janatha Party was the setting up of the Institution of the Lokayukta.

The bill provides for the appointment of a Lokayukta and one or more Upalokayuktas to investigate and report on allegations or grievances relating to the conduct of public servants.

The public servants who are covered by the Act include:-

- (1) Chief Minister;**
- (2) all other Ministers and Members of the State Legislature;**
- (3) all officers of the State Government;
- (4) Chairman, Vice Chairman of local authorities, Statutory bodies or Corporations established by or under any law of the State Legislature, including Co-operative Societies;
- (5) Persons in the service of Local Authorities, Corporations owned or controlled by the State Government, a company in which not less than 50% of the shares are held by the State Government, Societies registered under the State Registration Act, Co-operative Societies and Universities established by or under any law of the Legislature.

Where, after investigation into the complaint, the Lokayukta considers that the allegation against a public servant is prima facie true and makes a declaration that the post held by him, and the declaration is accepted by the competent authority, **the public servant concerned, if he is a Chief Minister or any other Minister or Member of State Legislature shall resign his office and if he is any other non-official shall be deemed to have vacated his office, and, if an official, shall be deemed to have been kept under suspension, with effect from the date of the acceptance of the declaration.**

If after investigation, the Lokayukta is satisfied that the public servant has committed any criminal offence, he may initiate prosecution without reference to any other authority. Any prior sanction required under any law for such prosecution shall be deemed to have been granted.

The Vigilance Commission is abolished. But all inquiries and investigations and other disciplinary proceedings pending before the Vigilance Commission will be transferred to the Lokayukta.

There are other incidental and consequential provisions.

Hence this bill.”

(Emphasis supplied)

The bill was for the appointment of Lokayukta and one or more Upalokayukta to investigate and report on allegations and grievances against public servants. The public servants included are, the first person the Chief Minister and all other Ministers and Members of the State Legislature. Furthermore, the objects and reasons would indicate that, if one is a Chief Minister and is found *prima facie* guilty and prosecution is permitted, he must resign.

18. Section 2 deals with definitions. Sub-section (3) of Section 2 depicts who is the Chief Minister would obviously be the Chief Minister of the State of Karnataka. Sub-section (9) of Section 2 defines who is the Lokayukta is the one appointed under Section 3. Section 3 permits appointment of Lokayukta by

the Governor, though on the advice of the Chief Minister and the Hon'ble Chief Justice of the High Court. These are the objects and reasons which are quoted to emphasise the fact that Lokayukta is independent to investigate, into the allegations against the Chief Minister or any other Minister, high functionaries or bureaucrats, as the case would be. Its independence is illustrative. It is not that the Lokayukta has not in the past investigated into the allegations against a sitting Chief Minister or a Minister, as the case would be. It now becomes germane to notice the *imprimatur* of the Apex Court and the Division Bench of this Court rendered to the independence of the office of the Lokayukta or the officers of the Lokayukta, be it the Police wing or otherwise.

19. The Apex Court in the case of **C. RANGASWAMIAH v. KARNATAKA LOKAYUKTA**¹ holds as follows:

"15. It will be noticed from the above provisions that the staff of the Lokayukta is to "assist" the Lokayukta and Upa-Lokayukta in the discharge of their functions as stated in Section 15(1) and that the staff is to function without "any fear" in the discharge of their duties as stated in Section 15(2). The staff is to be under the administrative and disciplinary jurisdiction of the Lokayukta as stated in Section 15(4).

...

...

...

¹(1998) 6 SCC 66

20. Therefore, while it is true that as per the notification dated 21-11-1992 issued by the Government, the Police Wing in the Lokayukta is to be under the general and overall control of the said Director General of Police, still, in our opinion, the said staff and, for that matter, the Director General himself are under the administrative and disciplinary control of the Lokayukta. This result even if it is not achieved by the express language of Section 15(4) is achieved by the very fact that the Director General's post is created in the office of the Lokayukta. By creating the said post of Director General of Police in the office of the Lokayukta and keeping the Police Wing therein under control and supervision of the said Director General, the State of Karnataka, in our opinion, did not intend to remove the Police Wing or the said Director General from the administrative and disciplinary jurisdiction of the Lokayukta nor did the State intend to interfere with the independent functioning of the Lokayukta and its police staff. The modification of the earlier notification dated 2-11-1992 was, in our opinion, necessitated on account of the creation of the post of the Director General in the office of the Lokayukta. Nor was the notification intended to divest the Lokayukta of its powers and to vest the said powers only in the Director General. For the aforesaid reasons, the memorandum dated 2-9-1997 issued by the Lokayukta after the judgment of the learned Single Judge has become redundant as held by the Division Bench. Thus the main argument relating to the threat to the independence of the Lokayukta which appealed to the learned Single Judge stands rejected.

... ..

26. In our view, if the State Government wants to entrust such extra work to the officers on deputation with the Lokayukta, it can certainly inform the Lokayukta of its desire to do so. If the Lokayukta agrees to such entrustment, there will be no problem. But if for good reasons the Lokayukta thinks that such entrustment of work by the State Government is likely to affect its functioning or is likely to affect its independence, it can certainly inform the State Government accordingly. In case the State Government does not accept the viewpoint of the Lokayukta, then it will be open to the Lokayukta, — having regard to the need to preserve its independence and effective functioning to take action under Section 15(4) [read with Section 15(2)] and direct that these officers on deputation in its Police Wing will not take up any such work entrusted to them by the State Government. Of course, it is expected that the State Government and the Lokayukta will avoid any such

unpleasant situations but will act reasonably in their respective spheres.

(Emphasis supplied)

In a subsequent judgment, in the case of **JUSTICE CHANDRASHEKARAI AH (RETIRED) v. JANEKERE**

C.KRISHNA² the Apex Court holds as follows:

"19. The Commission suggested that there should be one authority dealing with complaints against the administrative acts of Ministers or Secretaries to Government at the Centre and in the States and another authority in each State and at the Centre for dealing with complaints against administrative acts of other officials and all these authorities should be independent of the executive, the legislative and the judiciary.

20. The Commission, in its report, has stated as follows:

"21. We have carefully considered the political aspect mentioned above and while we recognise that there is some force in it, we feel that the Prime Minister's hands would be strengthened rather than weakened by the institution. In the first place, the recommendations of such an authority will save him from the unpleasant duty of investigation against his own colleagues. Secondly, it will be possible for him to deal with the matter without the glare of publicity which often vitiates the atmosphere and affects the judgment of the general public. Thirdly, it would enable him to avoid internal pressures which often help to shield the delinquent. What we have said about the Prime Minister applies mutatis mutandis to the Chief Minister.

Cases of corruption

23. Public opinion has been agitated for a long time over the prevalence of corruption in the administration and it is likely that cases coming up before the independent authorities mentioned above might involve allegations or actual evidence of corrupt motive and favouritism. We think that this institution should deal with

²(2013) 3 SCC 117

such cases as well, but where the cases are such as might involve criminal charge or misconduct cognizable by a court, the case should be brought to the notice of the Prime Minister or the Chief Minister, as the case may be. The latter would then set the machinery of law in motion after following appropriate procedures and observing necessary formalities. The present system of Vigilance Commissions wherever operative will then become redundant and would have to be abolished on the setting up of the institution.

Designation of the authorities of the institution

24. We suggest that the authority dealing with complaints against Ministers and Secretaries to Government may be designated 'Lokpal' and the other authorities at the Centre and in the States empowered to deal with complaints against other officials may be designated 'Lokayukta'. A word may be said about our decision to include Secretaries' actions along with those of Ministers in the jurisdiction of the Lokpal. We have taken this decision because we feel that at the level at which Ministers and Secretaries function, it might often be difficult to decide where the role of one functionary ends and that of the other begins. The line of demarcation between the responsibilities and influence of the Minister and Secretary is thin; in any case much depends on their personal equation and personality and it is most likely that in many a case the determination of responsibilities of both of them would be involved.

25. The following would be the main features of the institutions of Lokpal and Lokayukta:

- (a) They should be demonstrably independent and impartial.
- (b) Their investigations and proceedings should be conducted in private and should be informal in character.
- (c) Their appointment should, as far as possible, be non-political.
- (d) Their status should compare with the highest judicial functionaries in the country.
- (e) They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.

- (f) Their proceedings should not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties.
- (g) They should not look forward to any benefit or pecuniary advantage from the executive Government.

Bearing in mind these essential features of the institutions, the Commission recommend that the Lokpal be appointed at the Centre and Lokayukta at the State level.

The Lokayukta

36. So far as the Lokayukta is concerned, we envisage that he would be concerned with problems similar to those which would face the Lokpal in respect of Ministers and Secretaries though, in respect of action taken at subordinate levels of official hierarchy, he would in many cases have to refer complainants to competent higher levels. We, therefore, consider that his powers, functions and procedures may be prescribed mutatis mutandis with those which we have laid down for the Lokpal. His status, position, emoluments, etc. should, however, be analogous to those of a Chief Justice of a High Court and he should be entitled to have free access to the Secretary to the Government concerned or to the Head of the Department with whom he will mostly have to deal to secure justice for a deserving citizen. Where he is dissatisfied with the action taken by the Department concerned, he should be in a position to seek a quick corrective action from the Minister or the Secretary concerned, failing which he should be able to draw the personal attention of the Prime Minister or the Chief Minister as the case may be. It does not seem necessary for us to spell out here in more detail the functions and powers of the Lokayukta and the procedures to be followed by him.

Constitutional amendment – whether necessary?

37. We have carefully considered whether the institution of Lokpal will require any constitutional amendment and whether it is possible for the office of the Lokpal to be set up by Central Legislation so as to cover

both the Central and State functionaries concerned. We agree that for the Lokpal to be fully effective and for him to acquire power, without conflict with other functionaries under the Constitution, it would be necessary to give a constitutional status to his office, his powers, functions, etc. We feel, however, that it is not necessary for Government to wait for this to materialise before setting up the office. The Lokpal, we are confident, would be able to function in a large number of cases without the definition of his position under the Constitution. The constitutional amendment and any consequential modification of the relevant statute can follow. In the meantime, the Government can ensure that the Lokpal or Lokayukta is appointed and takes preparatory action to set up his office, to lay down his procedures, etc. and commence his work to such extent as he can without the constitutional provisions. We are confident that the necessary support will be forthcoming from Parliament.

Conclusion

38. We should like to emphasise the fact that we attach the highest importance to the implementation, at an early date, of the recommendations contained in this our Interim Report. That we are not alone in recognising the urgency of such a measure is clear from the British example we have quoted above. We have no doubt that the working of the institution of Lokpal or Lokayukta that we have suggested for India will be watched with keen expectation and interest by other countries. We hope that this aspect would also be fully borne in mind by the Government in considering the urgency and importance of our recommendation. Though its timing is very close to the next Election, we need hardly to assure the Government that this has had nothing to do with the necessity of making this Interim Report. We have felt the need of such a recommendation on merits alone and are convinced that we are making it not a day too soon."

21. Based on the above report, the following Bill was presented before the Karnataka Legislature which reads as follows:

“The Administrative Reforms Commission had recommended the setting up of the institution of Lokayukta for the purpose of appointment of Lokayukta at the State's level, to improve the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery.

One of the election promises in the election manifesto of the Janatha Party was the setting up of the institution of the Lokayukta.

The Bill provides for the appointment of a Lokayukta and one or more Upa-Lokayuktas to investigate and report on allegations or grievances relating to the conduct of public servants.

The public servants who are covered by the Act include—

- (1) Chief Minister;**
- (2) all other Ministers and Members of the State Legislature;**
- (3) all officers of the State Government;**
- (4) Chairman, Vice-Chairman of local authorities, statutory bodies or corporations established by or under any law of the State Legislature, including cooperative societies;**
- (5) persons in the service of local authorities, corporations owned or controlled by the State Government, a company in which not less than fifty-one per cent of the shares are held by the State Government, societies registered under the Societies Registration Act, cooperative societies and universities established by or under any law of the legislature.**

Where, after investigation into a complaint, the Lokayukta considers that the allegation against a public servant is prima facie true and makes a declaration that the post held by him, and the declaration is accepted by the competent authority, the public servant concerned, if he is a Chief Minister or any other Minister or Member of the State Legislature shall resign his office and if he is any other non-official shall be deemed to have vacated

his office, and, if an official, shall be deemed to have been kept under suspension, with effect from the date of the acceptance of the declaration.

If after investigation, the Lokayukta is satisfied that the public servant has committed any criminal offence, he may initiate prosecution without reference to any other authority. Any prior sanction required under any law for such prosecution shall be deemed to have been granted.

The Vigilance Commission is abolished. But all inquiries and investigations and other disciplinary proceedings pending before the Vigilance Commission will get transferred to the Lokayukta."

22. The Bill became an Act with some modifications as the Karnataka Lokayukta Act, 1984."

(Emphasis supplied)

20. A Division Bench of this Court in the case of **CHIDANANDA URS B.G. v. THE STATE OF KARNATAKA**³ has considered independence of the Lokayukta while abolishing the office of Anti-Corruption Bureau by its order. A few paragraphs of the said judgment assume significance and I deem it appropriate to quote the same. They read as follows:

"74. It is contended that as per the recommendations of the Administrative Reforms Commission, the Institution of *Lokayukta* was set up "for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery." The Institution of *Lokayukta* was created in 1985 under the KL Act, which received the assent of President of India on 16.1.1985. As per Statement of Objects and Reasons of the KL Act, apart from looking into complaints against administrative

³2022 SCC OnLine Kar 1488

actions, including cases of corruption, the KL Act deals with definition of "corruption", which includes anything made punishable under the provisions of the PC Act. The terms, 'Action', 'Allegation', 'Grievance', and 'Maladministration' are defined under Section 2; Section 7 deals with matters which may be investigated by Lokayukta and an Upa-Lokayukta; Section 9 deals with provisions relating to complaints and investigations; Section 12 relates to reports of Lokayukta etc.; Section 14 deals with initiation of prosecution; Section 15 relates to staff of *Lokayukta*] and Sections 17, 17A and 19 deal with insult, contempt, inquiry, delegation etc.,

... ..

80. Since the 'decision making' Public Servants have been placed differently, compared to the other Public Servants in terms of the Notification dated 14.3.2016, there is violation of fundamental right under Articles 14 and 21 of the Constitution of India. A Police officer who is working under the disciplinary control of the Home Department and/or Government of Karnataka, while being an Investigating officer under the Anti-Corruption Bureau cannot be expected to conduct a fair and impartial inquiry or investigation in relation to high ranking Public Servants. On the other hand, a police officer working under the supervision of the *Lokayukta* is insulated from such influence. Article 21 of the Constitution of India ensures right to life and liberty to every person. The said rights are required to be protected and safeguarded even in respect of 'public servants' falling within the definition of Section 2(12) of the KL Act, in the larger public interest. The representatives of the people, who are public servants and also full-time government officials, who are government servants, are well protected if the investigation powers under the PC Act, are with the *Lokayukta*. **There is absolutely no chance for vindictive action at the instance of political opponent against the representatives of the people. Same is the position in respect of the bureaucrats who take an independent decision in the larger public interest. If the investigation agency is not independent then the right to life and liberty guaranteed to the citizens under Article 21 is threatened.**

81. Under the KL Act and Karnataka Lokayukta Rules - 1985, undisputedly Lokayukta and Upa-Lokayukta are declared to be persons of high responsibility and of impeccable character and is given status akin to the Chief Justice of India. Some of the

relevant provisions which ensure independence of *Lokayuktaas* provided under the provisions of KL Act and Rules are as under:

- (i) The Hon'ble *Lokayukta* is appointed by the Governor on the advice of the Chief Minister in consultation with the Chief Justice of High Court of Karnataka, the Chairman of the Karnataka Legislative Council, the Speaker of the Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly as contemplated under the provisions of Section 3(1) and 3(2) of the KL Act..
- (ii) The Hon'ble *Lokayukta*, before entering office, make and subscribe before ttfte Governor or some other person appointed in that behalf, an oath of affirmation as contemplated under the provisions of Section 3(3) of the KLAct.
- (iii) The service conditions, the allowance and pension of the Hon'ble *Lokayukta* is the same as that of the Chief Justice of India and the salary is that of the Chief Justice of High Court as contemplated under Rule 6 of the Karnataka *Lokayukta* Rules.
- (iv) Removal of the Hon'ble *Lokayukta* is by a process (impeachment) which is similar as that of the Hon'ble Judges of the High Court and Supreme Court as contemplated under Section 6 of the KL Act.
- (v) To ensure independence and no-conflict, Hon'ble *Lokayukta*, shall not be connected with any political party, cannot hold any office of Trust or profit, must sever his connections with the conduct and management of any business, must suspend practice of any profession as contemplated under Section 4 of the KLAct; and
- (vi) To ensure independence and no-conflict, on ceasing to hold office, the Hon'ble *Lokayukta* is ineligible for further employment to any office of profit under the Government of Karnataka or any other Authority. Corporation, Company, Society or University relating to Government of Karnataka.

82. It is further contended that the Police Officers who are working for the Karnataka Lokayukta cannot be removed without the consent of the Lokayukta as contemplated in terms of Section 15 of the KLAct. The object of this provision is to ensure the independence of the investigating agency. Under Section 15(3) of the KL Act, the said Police Officers are under the direct supervision and disciplinary control of the Lokayukta as per Section 15(3) of the KL Act. So far as the ACB Police are concerned, they are under the direct control of the Executive and their tenure in it is not ensured. The interference in their investigation by the Executive is not ruled out. Therefore, the fear/threat of transfer or vindictive action against them is also not ruled out. The Notification dated 19.3.2016 issued by Government of Karnataka withdrawing status of the Police Station on Lokayuktas contrary to the provisions of Section 14 of KLAct read along with other provisions of the said Act and PC Act as well as Karnataka Police Act, 1963. Even if it is held that the Notification dated 19.3.2016 withdrawing the status of Police Station as per Section 2(s) of the Code of Criminal Procedure on the Officers of the Lokayukta, is valid in law, it is permissible for Lokayukta to independently exercise the power of getting an FIR registered on the basis of the complaint laid before Lokayukta etc.,

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90. The cadre of the officers who are part of the institution of Lokayukta includes one Police Officer in the rank of Additional Director General of Police, who is an IPS Officer, one police officer in the rank of Deputy Inspector General of Police, 23 police officers in the rank of Superintendent of Police, 43 police officers in the rank of Deputy Superintendent of Police, 90 police officers in the rank of Police Inspector, 13 police officers in the rank of Police Sub-Inspector, 4 police officers in the rank of Assistant Sub-Inspector of Police and 145 police officers in the cadre of Head Constable. Apart from the above, 234 Civil Police Constables, 15 Head Constable Drivers, 30 Armed Police Constables and 148 Armed Police Constable Drivers. Therefore, statutorily a Police Wing is created and made as an inseparable part of the Lokayukta Institution. The powers of the Police Wing in no way can be taken away by virtue of the two notifications impugned in the present writ petition, one withdrawing status of police stations of Lokayukta and the second constituting ACB. The Police Wing attached to the institution of Lokayukta has all the powers and

duties conferred on it under the Karnataka Police Act, 1964, and also under the Code of Criminal Procedure.

... ..

92. It is also contended that the only restriction provided under the provisions of PC Act is that the officer to investigate the offences punishable under the PC Act should not be below the rank of DySP, as is clear from the reading of Section 17(c) of PC Act. Therefore, cadre strength of the Karnataka Lokayukta referred to above shows that there are police officers in the cadre of ADGP, DIGP, SP and Dy.SP's in all around 747 officers. As such, there cannot be any difficulty or objection for the Lokayukta Police in the cadre referred to above to conduct investigation in respect of the offences punishable under PC Act. There is no prohibition under the PC Act in relation to the power of the Lokayukta Police, referred to above, to conduct any investigation with regard to the offences punishable under PC Act.

... ..

159. The Legislature - State Government on the basis of the recommendations of the Administrative Reforms Commission enacted the KL Act w.e.f 15th January 1986 for the purpose of improving the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in the administration machinery and abolished the Vigilance Commission, but all inquiries, investigations and other disciplinary proceedings pending before the Vigilance Commission transferred to Lokayukta.

... ..

173. By careful perusal of the provisions of the KL Act stated supra and other provisions, it clearly depict that the scheme ensures preservation of the right, interest and dignity of the Lokayukta or Upalokayukta and is commensurate with the dignity of all the institutions and functionaries involved in the process. It also excludes the needless meddling in the process by busy bodies confining the participation in it, to the Members of the Legislative Assembly or Council, Speaker/Chairman of the Legislature and the Chief Justice to the High Court of Karnataka, the highest judicial functionary in the State apart from the Lokayukta. If the allegations are permitted to be made only in the prescribed manner, justify an inquiry into the conduct of the Upalokayukta. As the Office

in question is a public office as public is vitally interested, the process prescribed in the Act is to be complied with expeditiously, which is also both in public interest as well as in the interest of the incumbent of the office.

... ..

188. It is most unfortunate that even after lapse of 75 years of Independence, no political party in the country is willing or dare enough to allow independent authority like the Lokayukta to discharge its duties in a transparent manner in the interest of the general public at large.

... ..

191. Further, the State Government while withdrawing the statutory Notifications dated 6.2.1991.8.5.2002 and 5.12.2002 that had given the Lokayukta Police the powers to investigate under the PC. Act and had declared the offices of Police Inspectors of Karnataka Lokavukta as Police Stations under the provisions of Section 2(s) of the Code of Criminal Procedure, had not consulted the Lokavukta. Without consultation of Lokavukta. statutory notifications cannot be withdrawn by the executive order of the State Government. Absolutely no independent reasons are assigned by the State Government in the executive order to constitute ACB parallel to the Lokavukta and Upa-Lokavukta. who are appointed under the provisions of the KL Act. The executive Order dated 14.3.2016 depicts that the State Government after examining the recommendation made by the DG & IG keeping in perspective the judgment of the Hon'ble Supreme Court in the case of *C. Rangaswamaiah*. has created the ACB and classified the duties of the officers of the Karnataka Police Wing into two categories. The same is an erroneous understanding of the dictum of the Hon'ble Supreme Court.

192. In the case of *C. Rangaswamaiah* [Supra at Footnote No. 1] . the Hon'ble Supreme Court observed that "eve/7 after deputation, there could be a "dual " role on the part of the Police Officers in their junctions. namely, functions under the Lokayukta and functions in discharge of the duties entrusted to them by the State of Karnataka under the Prevention of Corruption Act. 1988". The Hon'ble Supreme Court further observed that "though the Director General of Police newly attached w. e. f 21.11.1992 to the Bureau of Investigation of the Lokavukta by way of an administrative order of the Government was to be in control and supervision of the police staff in the Lokavukta and though the said post of Director General of Police

was not - by appropriate amendment of the recruitment rules of the Lokavukta staff - included in the cadre of posts in the Police Wing of the Lokavukta - still it had to be taken that the said Director General of Police was under the administrative and disciplinary control of the Lokavukta". The Hon'ble Supreme Court also observed that dual functions could be performed by these officers in relation to two Acts, namely Prevention of Corruption Act and the Lokavukta Act and such a situation of dual control could not be said to be alien to criminal jurisprudence concerning investigation of crimes. In other words, these officers who were of the requisite rank as per Section 17 of the Prevention of Corruption Act, 1988 could not be said to be incompetent to investigate into offences assigned to them under that Act by the competent authority by virtue of statutory powers under Section 17 thereof or to that extent not excluded by the Lokavukta. The Division Bench, therefore, held that the further investigation against the petitioners could be continued through the Police Officers on deputation with the Lokavukta. The Hon'ble Supreme Court further observed that "the entrustment being under statutory powers of the State traceable to Section 17 of the Prevention of Corruption Act, 1988 the same cannot be said to be outside the jurisdiction of the State Government. May be. if it is done without consulting the Lokavukta and obtaining its consent, it can only be treated as an issue between the State and the Lokavukta. Such entrustment of duties has statutory backing, and obviously also the tacit approval of the Lokavukta." The Hon'ble Supreme Court further observed that "having regard to the need to preserve its independence and effective functioning to take action under Section 15(4) read with Section 15(2) and direct that these officers on deputation in its Police Wing will not take up any such work entrusted to them by the State Government". The Hon'ble Supreme Court further observed that "if instead of deputation of Police Officers from the Government, any other solution can be found, that is a matter to be decided amicably between the State Government and the Lokavukta. keeping in view the independence of the Lokavukta and its effective functioning as matters of utmost importance.

... ..

195.

- a) if any law or Act have been made by the State Legislature conferring any functions or any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of the executive power nor can the Governor

exercise such power in regard to that matter through officers subordinate to him.

... ..

199. The statement showing the statistics relating to criminal cases conducted against MLAs, MPs, Ministers, BBMP Corporators etc., by the Lokayukta is as under:

| Sl. No. | Name and their position Sriyuths | Status of the case | | | | | Cr.No. | |
|---------|------------------------------------|---------------------|------------------------|-------------|----------------------|-----------------|--------|----------------|
| | | Under Investigation | Final Report submitted | PSO awaited | B/C report submitted | Charged Sheeted | | Other disposal |
| 1 | Katta Subramanya Naidu, and others | | | | | Yes | | 57/2010 |
| 2 | B.S. Yediyurappa, | | | | | Yes | | 33/2011 |
| 3 | B.S. Yediyurappa, and others | | | | | Yes | | 48/2011 |
| 4 | R. Ashok, And another | | | | Yes | | | 51/2011 |
| 5 | Muruges R. Nirani, and others | | | | | Yes | | 53/2011 |
| 6 | S. Muniraju, and others | | | | | Yes | | 55/2011 |
| 7 | B.S. Yediyurappa and others | | | | | Yes | | 60/2011 |
| 8 | S.R. Vishwanath and others | | | | | Yes | | 66/2011 |
| 9 | C.T. Ravi, former MLA | | | | | Yes | | 70/2011 |
| 10 | H.D. Kumaraswamy, | | | | | Yes | | 02/2012 |
| 12 | Krishnappa, former MLA | | | | Yes | | | 06/2012 |
| 13 | M.S. Somalingappa, | | | | | Yes | | 19/2012 |
| 14 | D.K. Shivakumar, | | | | | Yes | | 26/2012 |
| 15 | E. Krishnappa, | | | | | Yes | | 34/2012 |
| 16 | N. Dharamsingh, | | | | Yes | | | 36/2012 |
| 17 | M. Srinivasa, former | | | | | | Yes | 37/2012 |
| 18 | Muruges R. Nirani, | | | | | Yes | | 49/2012 |
| 19 | H.D. Kumaraswamy, | | | | Yes | | | 60/2012 |
| 20 | V. Somanna, former | | | | Yes | | | 63/2012 |
| 21 | Roshan Baig, former | | | | Yes | | | 66/2012 |
| 22 | Gowamma, | | | | | Yes | | 82/2012 |
| 23 | H.D. Devegowda, | | | | | Yes | | 84/2012 |
| 24 | Smt. Awwai, | | | | | Yes | | 87/2012 |
| 25 | Aravind Limbavalli, | | | | | | Yes | 89/2012 |
| 26 | BaburaoChinchanasooru, | Yes | | | | | | 92/2012 |
| 27 | Somashekara Reddy, | | Yes | | | | | 09/2013 |
| 28 | B. Govindaraju, | | | | Yes | | | 38/2013 |
| 29 | Qumrul Islam, | Yes | | | | | | 57/2014 |
| 30 | R.V. Deshpande, | | | | Yes | | | 11/2015 |
| 31 | Munirathna, | | | | Yes | | | 25/2015 |
| 32 | B.S. Yediyurappa, | Yes | | | | | | 27/2015 |
| 33 | B.S. Yeidiyurappa, | | | | | | Yes | 38/2015 |
| 34 | B.S. Yeidiyurappa, | | | | | | Yes | 39/2015 |
| 35 | B.S. Yeidiyurappa, | | | | | | Yes | 40/2015 |
| 36 | B.S. Yeidiyurappa | | | | | | Yes | 42/2015 |
| 37 | B.S. Yeidiyurappa | | | | | | Yes | 43/2015 |
| 38 | B.S. Yeidiyurappa | | | | | | Yes | 44/2015 |
| 39 | B.S. Yeidiyurappa | | | | | | Yes | 45/2015 |
| 40 | B.S. Yeidiyurappa | | | | | | Yes | 46/2015 |
| 41 | B.S. Yeidiyurappa | | | | | | Yes | 47/2015 |
| 42 | B.S. Yeidiyurappa | | | | | | Yes | 48/2015 |

| | | | | | | | |
|----|---|-------------------------|--|-----|--|-----|----------|
| 43 | B.S. Yeidiyurappa | | | | | Yes | 49/2015 |
| 44 | B.S. Yeidiyurappa | | | | | Yes | 50/2015 |
| 45 | B.S. Yeidiyurappa | | | | | Yes | 52/2015 |
| 46 | B.S. Yeidiyurappa | | | | | Yes | 53/2015 |
| 47 | B.S. Yeidiyurappa | | | | | Yes | 54/2015 |
| 48 | B.S. Yeidiyurappa | Yes | | | | | 55/2015 |
| 49 | B.S. Yeidiyurappa | Yes | | | | | 76/2015 |
| 50 | Gali Janardhan Reddy | Yes | | | | | 79/2015 |
| 51 | Veeranna Chandrashekaraiah Charantheimath | | | | | | 06/2012 |
| 52 | Abhay Kumar Patil | Case transferred to ACB | | | | | 14/2012 |
| 53 | Sanjay B. Patil | | | | | Yes | 3/2014 |
| 54 | B. Sriramulu | | | | | Yes | 09/2013 |
| 55 | C.T. Ravi | | | Yes | | | 06/2014 |
| 56 | N.Y. Gopalakrishna | | | Yes | | | 09/2013 |
| 57 | Madal Virupakshappa | | | Yes | | | 28/2013 |
| 58 | Renukacharya | | | | | Yes | 05/2015 |
| 59 | Renukacharya | Yes | | | | | 06/2015 |
| 60 | Nehru C. Olekar | | | Yes | | | 12/2011 |
| 61 | Manohar H. Tahasildar | | | Yes | | | 09/2013 |
| 62 | Raghunath Vishwanath Deshpande | | | | | | 02/2014 |
| 63 | Varthur Prakash | | | Yes | | | 02/2015 |
| 64 | Varthur Prakash | Yes | | | | | 03/2015 |
| 65 | Papareddy | | | | | Yes | 01/2017 |
| 66 | Suresh Gowda | | | Yes | | | 04/2015 |
| 67 | Dr. M.R. Hulinaykar | | | Yes | | | 10/2015" |

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216. It is an undisputed fact that the Lokayukta as an institution has all the trappings of a police station conferred on it by virtue of several provisions of K.L. Act and Rules framed thereunder. Section 14 of the K.L. Act makes it clear that whenever sanction of the Competent Authority is required for prosecution and if such action is required to be taken by the Lokayukta/Upalokayukta, it is deemed to have been granted. When the power of investigation is conferred on the Lokayukta or Upalokayukta and the Police Wing is attached to the institution of Lokayukta as per the statutory provisions, it cannot be reasonably imagined that in the course of the investigation by them, even if commission of an offence is detected either by the Lokayukta or by the Upalokayukta, it will not have jurisdiction to deal with the matter and that they have to be only a helpless spectator to condone the offences committed and stay their hands and that their power is limited only to initiate disciplinary proceedings. The object of the legislation is to bring about transparency in the administration and that could be brought about by initiating both criminal and

disciplinary proceedings. It cannot be contended that Lokayukta or Upalokayukta or the Police Wing have no power to initiate criminal proceedings and conduct an investigation on that behalf. The power of initiating prosecution includes all the incidental power that is required to complete the investigation.

217. As already stated supra, the K.L. Act is a self contained code providing for investigation, filing of complaint and all other incidental matters with the police attached to the Lokavukta institution by virtue of statutory provisions.

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231. It is also relevant to refer to the main features of the institutions of Lokpal and Lokayukta. Which are as under:

- a) They should be demonstrably independent and impartial.
- b) Their investigations and proceedings should be conducted in private and should be informal in character.
- c) Their appointment should, as far as possible, be non-political.
- d) Their status should compare with the highest judicial functionaries in the country.
- e) They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.
- f) Their proceedings should not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties.
- g) They should not look forward to any benefit or pecuniary advantage from the executive Government.

232. We have no doubt that the working of the Institution of Lokayukta in Karnataka will be watched with keen expectation and interest by the other states in India. We hope that this aspect would also be fully borne in mind by Government in considering the urgency and importance of the independence of the Lokayukta. A Lokayukta is to function as a sentinel to ensure a corruption free administration.

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XVI. Recommendations

237. In view of the above discussion, we are of the considered opinion to make following recommendations to the State Government:

- a) **There is immediate necessity for amending Section 12(4) of the Karnataka Lokayukta Act, 1984 to the effect that once the recommendation made by Lokayukta under Section 12(3) of the KL Act, the same shall be binding on the Government.**
- b) **The Police Wing of Karnataka Lokayukta shall be strengthened by appointing/deputing honest persons with track record of integrity and fairness.**
- c) **The Police Personnel, who at present working in Anti-Corruption Bureau shall be transferred/deputed to the Karnataka Lokayukta Police Wing, in order to strengthen the existing Police Wing of Lokayukta and to enable them to prosecute and investigate the matters effectively. The officers/officials, who at present working in the ACB hereinafter shall be under the administrative and exclusive disciplinary control of Lokayukta.**
- d) **The officers and officials, who assist the Lokayukta and Upa-Lokayuktas in discharge of their functions shall not be transferred for a minimum period of three years, without the consent of Lokayukta/Upa-Lokayukta, as the case may be.**
- e) **The investigation once started shall be completed within the reasonable period. In case any proceedings are pending before the Lokayukta or Upa-Lokayuktas on account of pendency of the matters before the Courts, necessary steps shall be taken for early disposal of the matters before the Courts.**

(Emphasis supplied)

If the elucidation quoted hereinabove by the Apex Court or by the Division Bench in **CHIDANANDA URS***supra* is considered, as seen in para 199 of the judgment of the Division Bench, the

sitting Chief Minister Sri B.S. Yediyurappa was not once but twice investigated into. He had to resign, as the Lokayukta had found him guilty. Sri H.D. Kumaraswamy who had ceased to be the Chief Minister was also investigated into. The Apex Court and the Division Bench of this Court have clearly recognized the independence of the Lokayukta.

21. This Court, by a stroke of pen, for the asking of the petitioner, cannot now without any rhyme or reason, remotely think of holding Lokayukta not to be an independent agency, or an extended arm of the Government. None of these attributes are attributable, to the Lokayukta. The objects and reasons quoted hereinabove, as noted by the Apex Court, and execution of investigations, into the allegations against the past Chief Ministers are, vivid illustrations of independence of the Lokayukta. It cannot be forgotten that institutional integrity is of paramount importance to any institution enjoying independence. Independence of Lokayuktas is recognized in the afore-quoted judgments of the Apex

Court and a Division Bench of this Court. The observations of the Division Bench would clearly indicate the fact that the Lokayukta enjoys independence and insulation from external influences. When the reference of this nature is sought, it is not personal integrity that is to be looked into, but the institutional integrity. Lokayukta as an institution, has displayed insulation from all external influences in the investigations conducted in the past. Therefore, in the considered view of this Court, institutional integrity, independence of the Lokayukta will not be forgotten, as it is competent to investigate the offence against a sitting Chief Minister, as it is done in the past. If past was good, the present cannot be found to be in flaw.

22. In the light of the aforesaid reasons, I hold the Lokayukta to be an independent agency, competent to investigate into the allegations against high functionaries, including the Chief Minister of the State of Karnataka.

ISSUE NO.2:

Under what circumstances the constitutional Courts have referred the investigation/further investigation/re-investigation to the hands of the CBI and in what cases the Courts have refused to refer?

23. The prayer of the petitioner is to transfer the investigation to the hands of the CBI. To consider this issue, it becomes germane to notice those cases where the Apex Court has transferred the matter for investigation/re-investigation/further investigation to the hands of the CBI from the hands of the State Police or the State investigating agency, as the case would be. The learned senior counsel appearing for the petitioner has relied on plethora of judgments to transfer the investigation to the CBI and the learned senior counsel representing the respondents likewise relied on judgments not to transfer to the CBI. Therefore, I deem it appropriate to notice the circumstances in which the Apex Court has transferred the issue to the CBI and has refused to transfer in some cases.

24. The Apex Court in the case of **VISHWANATH CHATURVEDI(3) v. UNION OF INDIA**⁴ was considering the case of Chief Minister of Uttar Pradesh, Sri Mulayam Singh Yadav on the allegations of corruption against him. The facts before the Apex Court could be gathered from the introduction to the judgment. It reads as follows:

"The above writ petition under Article 32 of the Constitution of India styled as public interest litigation has been preferred for seeking enforcement of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. According to the petitioner, he is an advocate by profession and not connected or related to any political party or parties. According to him, he has filed this petition with an intention to highlight the root of corruption in U.P. Administration. According to him, he has no relation or connection with Congress Party as on date and that the documents which have been enclosed along with the additional affidavit filed by Respondent 3 would go to prove that Respondent 3 is having more access in the office of Congress Party, more than even the members of AICC/U.P. CC and that Respondent 3 with the help of some employees of AICC/U.P. CC succeeded in forging documents to project the petitioner as a sponsored person of Congress. It is also further stated that he is not connected with any alleged PIL cell of the party concerned. The name of the petitioner does not appear in the list which is approved by the office of the Congress Party and that the list annexed by Respondent 3 along with his affidavit is a frivolous list. It is also further stated that the petitioner never attended the 82nd Plenary Session of AICC at Hyderabad and Annexure A-3 is a frivolous document which is prepared by Respondent 3 with the help of some employees of U.P. CC and that the petitioner also paid some money to an employee of U.P. CC and **got some identity cards prepared in the name of Shri Mulayam Singh Yadav, Shri Shivpal Singh Yadav, Shri Akhilesh Yadav and Shri Ram Gopal Yadav. Copies of the said identity cards have also been enclosed as Annexure K-6 to the rejoinder to the counter-**

⁴(2007) 4 SCC 380

affidavit. We have perused the identity cards, namely, Annexures A-3 and K-6. In our opinion, both the identity cards which are xerox copies cannot at all be considered as authenticated documents. In the absence of concrete proof that the petitioner belongs to the Congress Party, his writ petition cannot be thrown out on the question of maintainability and on the ground that the petitioner is an active member of the Indian National Congress and the officer in charge of the Humanitarian Aid and Redressal Public Grievance Cell. We do not, therefore, propose to deal with this issue any further and proceed to consider the case of both the parties."

(Emphasis supplied)

What led the Apex Court to transfer the matter to CBI finds place in para-7. It reads as follows:

"7. Pursuant to the said direction, Respondents 2, 3, 4 and 5 have submitted their income tax returns and income tax assessment orders, wealth tax returns and wealth tax assessment orders for the Assessment Years 2001-2002, 2002-2003, 2003-2004, 2004-2005 and 2005-2006 in sealed covers. Respondents 2-5 also filed separate affidavits along with income tax returns, etc. The second respondent has also explained in his affidavit dated 7-7-2006 that all the returns of the deponent-Respondent 2 and the return of Samajwadi Party for the Assessment Year 2005-2006 as well as the assessment orders passed with respect to the deponent-Respondent 2, are being submitted in a sealed cover for the perusal of this Court and that it also includes material submitted along with the returns."

While transferring, the Apex court observes as follows:

"36. Respondent 2, Shri Mulayam Singh Yadav, is a senior politician and holding a very high public post of Chief Minister in a very big State in India and the allegations made by the petitioner against him have cast a cloud on his integrity. Therefore, in his own interest, it is of utmost importance that the truth of these allegations is determined by a competent forum. Such a course would subserve public interest and public morality because the Chief Minister of a State should not function under a cloud and that it would also be in the interest of Respondent 2 and the

members of his family to have their honour vindicated by establishing that the allegations are not true. In our view, these directions would sub-serve public interest.

37. The ultimate test, in our view, therefore, is whether the allegations have any substance. An enquiry should not be shut out at the threshold because a political opponent of a person with political differences raises an allegation of commission of offence. Therefore, we mould the prayer in the writ petition and direct CBI to enquire into alleged acquisition of wealth by Respondents 2-5 and find out as to whether the allegations made by the petitioner in regard to disproportionate assets to the known source of income of Respondents 2-5 is correct or not and submit a report to the Union of India and on receipt of such report, the Union of India may take further steps depending upon the outcome of the preliminary enquiry into the assets of Respondents 2-5.”

(Emphasis supplied)

The Apex Court, in the aforesaid judgment, holds that the allegations therein were against the sitting Chief Minister and he was holding a very high public office in a big State. Therefore, he could not function under a cloud in his own interest, and on that score the investigation from the **State Police** was **transferred to** the hands of independent agency, the **CBI**.

25. The Apex Court, in a later judgment, in the case of **RUBABBUDDIN SHEIKH v. STATE OF GUJARAT**⁵ was considering killing of brother of the victim in a fake encounter.

⁵(2010) 2 SCC 200

The facts could be gathered from the first paragraph. It reads as follows:

“Acting on a letter written by the writ petitioner, Rubabbuddin Sheikh, to the Chief Justice of India about the killing of his brother, Sohrabuddin Sheikh in a fake encounter and disappearance of his sister-in-law Kausarbi at the hands of the Anti-Terrorist Squad (ATS), Gujarat Police and Rajasthan Special Task Force (RSTF), the Registry of this Court forwarded the letter to the Director General of Police, Gujarat to take action. This letter of the Registry of this Court was issued on 21-1-2007 (*sic* 21-1-2006). After about six months and after several reminders, the Director General of Police, Gujarat, directed Ms Geetha Johri, Inspector General of Police (Crime), to inquire about the facts stated in the letter. A case was registered as Enquiry No. 66 of 2006. From 11-9-2006 to 22-1-2007 four interim reports were submitted by one V.L. Solanki, Police Inspector, working under Ms Johri.”

(Emphasis supplied)

Answering these facts, the Apex Court observes and holds as follows:

“53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which the high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner **and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may carry out the investigation, particularly when the**

gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI Authorities would be an appropriate authority to investigate the case.

(Emphasis supplied)

26. The Apex Court in the case of **NARMADA BAI v. STATE OF GUJARAT**⁶ was again dealing with a case of fake encounter, where several police officials were alleged of such fake encounter. The facts are again can be gathered from the first paragraph and answering those facts, the Apex court holds as follows:

“Narmada Bai, the petitioner herein, mother of Tulsiram Prajapati, the deceased, who, according to her, was killed on 27-12-2006/28-12-2006 in a fake encounter by Respondents 6 to 19, who are the officials of Gujarat and Rajasthan Police, somewhere on the road going from Ambalimal to Sarhad Chhapri, has filed the above writ petition under Article 32 of the Constitution of India praying for issuance of a writ of mandamus or in the nature thereof or any other writ, order or direction directing the Central Bureau of Investigation (in short “CBI”) to register a first information report (in short “FIR”) and investigate into the fake encounter killing of her son and submit its report to this Court. In the same petition, she also prayed for compensation for the killing of her son in a fake encounter thereby causing gross violation of Articles 21 and 22 of the Constitution.

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⁶ (2011) 5 SCC 79

61. In *Mohd. Anis v. Union of India* [1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251] it has been observed by this Court that:

"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." (SCC p. 148, para 5)

"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.**" (SCC p. 147, para 2)

62. In another decision of this Court in *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] the following conclusion is relevant : (SCC pp. 144-45, para 2)

"2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest **it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility.** However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly."

63. In both these decisions, this Court refrained from expressing any opinion on the allegations made by either side but thought it wise to have the incident investigated by an independent agency like CBI so that it may bear credibility. **This Court felt that no matter how faithfully and honestly the local police may carry out the investigation, the same will lack credibility as allegations were directed against them.** This Court, therefore, thought it both desirable and advisable and in the interest of justice to entrust the investigation to CBI so that it may complete the investigation at an early date. It was clearly stated that in so ordering, no reflection either on the local police or the State Government was intended. This Court merely acted in public interest.

64. The above decisions and the principles stated therein have been referred to and followed by this Court in *Rubabbuddin Sheikh* [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] 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.

65. In view of our discussions and submission of the learned counsel on either side and keeping in mind the earlier directions given by this Court, although, charge-sheet has been filed by the State of Gujarat after a gap of 3½ years after the incident, that too after pronouncement of judgment in *Rubabbuddin case* [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] and **considering the nature of crime that has been allegedly committed not by any third party but by the police personnel of the State of Gujarat, we are satisfied that the investigation conducted and concluded in the present case by the State police cannot be accepted. In view of various circumstances highlighted and in the light of the involvement of police officials of the State of Gujarat and police officers of two other States i.e. Andhra Pradesh and Rajasthan, it would not be desirable to allow the Gujarat State Police to continue with the investigation, accordingly, to meet the ends of justice and**

in the public interest, we feel that CBI should be directed to take the investigation."

(Emphasis supplied)

The Apex Court holds following the earlier judgment quoted *supra* in the case of **RUBABBUDDIN SHEIKH** that when police officials themselves are alleged to be involved in the fake encounter, investigation by the very State Police would not instil public confidence.

27. The Apex Court, then in the case of **STATE OF PUNJAB v. CENTRAL BUREAU OF INVESTIGATION**⁷ considering a sex scandal which had broken out in Punjab in the name of "**Moga Sex Scandal**" in which again several officers alleged to be involved holds that the State Police should not investigate and directed further investigation at the hands of the CBI. The Apex Court answers the aforesaid facts. The answer reads as follows:

"25. This position of law will also be clear from the decision of this Court in *Nirmal Singh Kahlon v. State of Punjab* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] cited by Mr Raval. **The facts of that case are that the State Police had investigated into the allegations of irregularities in the selection of a large number of candidates for the post of Panchayat Secretaries and had filed a charge-sheet against Nirmal Singh Kahlon. Yet the High Court in a PIL**

⁷(2011) 9 SCC 182

under Article 226 of the Constitution passed orders on 7-5-2003 directing investigation by CBI into the case as it thought that such investigation by CBI was "not only just and proper but a necessity". Nirmal Singh Kahlon challenged the decision of the High Court before this Court contending inter alia that sub-section (8) of Section 173 CrPC did not envisage an investigation by CBI after the filing of a charge-sheet and the Court of Magistrate alone has the jurisdiction to issue any further direction for investigation before this Court.

26. Amongst the authorities cited on behalf of Nirmal Singh Kahlon was the decision of this Court in *Vineet Narain case* [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] that once the investigation is over and charge-sheet is filed the task of the monitoring court comes to an end. Yet this Court sustained the order of the High Court with inter alia the following reasons: (*Nirmal Singh Kahlon case* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] , SCC pp. 465-66, para 63)

"63. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the officers of the State do not get away. If that be so, the submission of Mr Rao that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by this Court in *Vineet Narain* [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] and *M.C. Mehta (Taj Corridor Scam) v. Union of India* [(2007) 1 SCC 110 : (2007) 1 SCC (Cri) 264] , loses all significance."

27. Though the decision of this Court in *Nirmal Singh Kahlon v. State of Punjab* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] is in the context of the power of the High Court under Article 226 of the Constitution, the above observations will equally apply to a case where the power of the High Court under Section 482 CrPC is exercised to direct investigation of a case by an independent agency to secure the ends of justice.

28. This leads us to the next question whether the High Court in the facts of the present case passed the order for investigation by CBI to secure the ends of justice. The reasons given by the High Court in the impugned order dated 11-12-

2007 for directing investigation by CBI are extracted hereinbelow:

"The investigating officer, who is a DSP in rank, will not be in a position to investigate the case fairly and truthfully, as senior functionaries of the State in the Police Department and political leaders are being named. By this we are not casting any doubts on the investigating team, but it seems that political and administrative compulsions are making it difficult for the investigating team to go any further to bring home the truth. Apart from revolving around a few persons who have been named in the status report, nothing worthwhile is coming out regarding the interrogation of the police officers, political leaders and others. The investigation seems to have slowed down because of political considerations.

Not less than eight police officials, political leaders, advocates, Municipal Councillors and a number of persons from the general public have been named in the status report. We feel that justice would not be done to the case, if it stays in the hands of Punjab Police. Having said this, we want to make one thing very clear that the team comprising of Shri Ishwar Chander, DIG, Shri L.K. Yadav, SSP Moga and Shri Bhupinder Singh, DSP have done a commendable job in unearthing the scam.

We feel it a fit case to be handed over to CBI."

29. On a reading of the reasons given by the High Court, we find that the High Court was of the view that the investigating officer even of the rank of DSP was not in a position to investigate the case fairly and truthfully because senior functionaries of the State Police and political leaders were to be named and political and administrative compulsions were making it difficult for the investigating team to go any further to bring home the truth. It further observed that not less than eight police officials, political leaders, advocates, municipal councillors besides a number of persons belonging to general public had been named in the status report of the State local police.

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.”

(Emphasis supplied)

28. In the case of **K.V. RAJENDRAN v.**

SUPERINTENDENT OF POLICE, CBCID⁸ the Apex Court was answering the following facts:

“This appeal has been preferred against the judgment and order dated 8-12-2011 passed by the High Court of Judicature of Madras in *Prof. K.V. Rajendran v. CBCID* [*Prof. K.V. Rajendran v. CBCID*, Criminal Original Petition No. 9639 of 2011, order dated 8-12-2011 (Mad)], by way of which the High Court has rejected the prayer of the appellant to transfer the investigation of his case/complaint to the Central Bureau of Investigation (hereinafter referred to as “CBI”).

2. The case has a chequered history as the matter has moved from the Court of the Magistrate to this Court time and again. The facts and circumstances necessary to adjudicate upon the controversy involved herein are that : the appellant, who is an Associate Professor in Physics in Presidency College, Chennai, went to his village on 26-8-1998. At about 11.00 p.m., approximately ten people headed by the then Revenue Divisional Officer (hereinafter referred to as “the RDO”), forcibly took him in a government jeep and brought him to the Taluk office and enquired about why he had given a false complaint regarding the smuggling of teakwood in that area. The then RDO and other officials treated him with utmost cruelty and caused severe injuries all over his body and then obtained his signatures on blank papers which were filled up as directed by the then RDO. On the next day, he was handed over to the local police inspector along with the statement purported to have been written by the officials concerned.”

⁸(2013) 12 SCC 480

Answering those facts the Apex Court holds as follows:

"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* [(1992) 1 SCC 397] , *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248 : AIR 1994 SC 38] , *Punjab and Haryana High Court Bar Assn. v. State of Punjab* [(1994) 1 SCC 616 : 1994 SCC (Cri) 455 : AIR 1994 SC 1023] , *Vineet Narain v. Union of India* [(1996) 2 SCC 199 : 1996 SCC (Cri) 264] , *Union of India v. Sushil Kumar Modi* [(1996) 6 SCC 500 : AIR 1997 SC 314] , *Disha v. State of Gujarat* [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628 : AIR 2011 SC 3168] , *Rajender Singh Pathania v. State (NCT of Delhi)* [(2011) 13 SCC 329 : (2012) 1 SCC (Cri) 873] and *State of Punjab v. Davinder Pal Singh Bhullar* [(2011) 14 SCC 770 : (2012) 4 SCC (Civ) 1034 : AIR 2012 SC 364].)

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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 Apex Court considers that transfer should happen only in rare and exceptional cases where high officials of State Authorities are involved and the accusation itself is against the top officials of the investigating agency.

29. The Apex Court, further, in the case of **SUBRATA CHATTORAJ v. UNION OF INDIA**⁹ answering the allegation in Saradha Chit Fund Scam in the State of West Bengal directs investigation at the hands of the CBI. Why the Apex Court so did is captured in few paragraphs. They read as follows:

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

5. In *Inder Singh v. State of Punjab* [(1994) 6 SCC 275 : 1994 SCC (Cri) 1653] this Court was dealing with a case in which seven persons aged between 14 to 85 were alleged to have been abducted by a senior police officer of the rank of Deputy Superintendent of Police in complicity with other policemen. Since those abducted were not heard of for a considerable period, a complaint was made against their abduction and disappearance before the Director General of Police of the State. It was alleged that the complaint was not brought to the notice of the Director General of Police (Crime). Instead his PA had marked the same to the IG (Crime) culminating in an independent inquiry through the Superintendent of Police, Special Staff, attached to his office. The report of the Superintendent of Police recommended

⁹(2014) 8 SCC 768

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

6. In *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] this Court was dealing with a petition under Article 32 of the Constitution of India seeking an independent investigation by CBI into a police encounter resulting in the killing of ten persons. The investigation into the incident was being conducted at the relevant point of time by an officer of the rank of Inspector General level. The State Government also appointed a one-member Commission headed by a sitting Judge of the Allahabad High Court to inquire into the matter. This Court found that since the local police was involved in the alleged encounter an independent investigation by CBI into what was according to the petitioner a fake encounter, was perfectly justified. This Court held that however faithfully the police may carry out the investigation, the same will lack "credibility" since the allegations against them are serious. Such a transfer was considered necessary so that all those concerned including the relatives of the deceased feel assured that an independent agency was looking into the matter, thereby lending credibility to the outcome of the investigation. This Court observed: (SCC pp. 144-45, para 2)

"2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation

credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order."

7. A reference may also be made to *State of Punjab v. CBI* [(2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666] where the High Court of Punjab and Haryana transferred an investigation from the State Police to CBI in relation to what was known as "Moga sex scandal" case. The High Court had while ordering transfer of the investigation found that several police officials, political leaders, advocates, municipal counsellors, besides a number of persons belonging to the general public had been named in connection with the case. The High Court had while commending the investigation conducted by DIG and his team of officials all the same directed transfer of case to CBI having regard to the nature of the case and those allegedly involved in the same. The directions issued by the High Court were affirmed by this Court and the matter allowed to be investigated by CBI.

8. More recently, this Court in *Advocates Assn. v. Union of India* [(2013) 10 SCC 611 : (2014) 1 SCC (Cri) 355] had an occasion to deal with the question of transfer of an investigation from the State Police to CBI in the context of an ugly incident involving advocates, police and media persons within the Bangalore City Civil Court Complex. On a complaint filed by the Advocates' Association, Bangalore, before the Chief Minister for suitable action against the alleged police atrocities committed on the advocates, the Government of Karnataka appointed the Director General of Police, CID, Special Unit and Economic Offences as an inquiry officer to conduct an in-house inquiry into the matter. The Advocates' Association at the same time filed a complaint with

jurisdictional police station, naming the policemen involved in the incident. In addition, the Registrar, City Civil Court also lodged a complaint with the police for causing damage to the property of the City Civil Court, Bangalore by those indulged in violence. Several writ petitions were then filed before the High Court, inter alia, asking for investigation by CBI. The High Court constituted a Special Investigation Team (SIT) headed by Dr R.K. Raghvan, a retired Director CBI, as its Chairman and others. The Advocates' Association was, however, dissatisfied with that order which was assailed before this Court primarily on the ground that a fair investigation could be conducted only by an independent agency like CBI. Relying upon the decision of this Court in *State of W.B. v. Committee for Protection of Democratic Rights* [(2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] this Court directed transfer of investigation to CBI holding that the nature of the incident and the delay in setting up of SIT was sufficient to warrant such a transfer.

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

10. We are in the case at hand dealing with a major financial scam nicknamed "Chit Fund Scam" affecting lakhs of depositors across several States in the eastern parts of this country. Affidavits and status reports filed in these proceedings reveal that several companies were engaged in the business of receiving deposits from the public at large. The modus operandi of the companies involved in such Ponzi schemes was in no way different from the ordinary except that they appear to have evolved newer and more ingenious ways of tantalising gullible public to make deposits and, thereby fall prey to temptation and the designs of those promoting such companies. For instance, Saradha Group of Companies which is a major player in the field, had floated several schemes to allure the depositors to collect from the market a sizeable amount on

the promise of the depositors getting attractive rewards and returns. **These fraudulent (Ponzi) schemes included land allotment schemes, flat allotment schemes, and tours and travel schemes. The group had floated as many as 160 companies although four out of them were the front runners in this sordid affair.**

... ..

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

25. There is yet another aspect to which we must advert at this stage. This relates to the role of the regulatory authorities. The investigation conducted so far puts a question mark on the role of regulatory authorities like SEBI, Registrar of Companies and officials of RBI within whose respective jurisdictions and areas of operation the scam not only took birth but flourished unhindered. The synopsis filed by Mr Vaidyanathan names some of the officials belonging to these authorities and give reasons why their role needs to be investigated. The synopsis goes to the extent of suggesting that regular payments towards bribe were paid through middleman to some of those who were supposed to keep an eye on such Ponzi companies. The regulatory authorities, it is common ground, exercise their powers and jurisdiction under Central legislations. Possible connivance of those who were charged with the duty of preventing the scams of such nature in breach of the law, therefore, needs to be closely examined and effectively dealt with. Investigation into the larger conspiracy angle will, thus, inevitably bring such statutory regulators also under scrutiny.

... ..

36. The question is whether the above features call for transfer of the on-going investigation from the State Police to CBI. Our answer is in the affirmative. Each one of the aspects set out above in our view calls for investigation by an independent agency like the Central Bureau of Investigation (CBI). **That is because apart from the sensitivity of the issues involved, especially inter-State ramifications of the scam under investigation, transfer of cases from the State Police have been ordered by this Court also with a view to ensure credibility of such investigation in the public perception.** Transfers have been ordered by this Court even in cases where the family members of the victim killed in a firing incident had expressed apprehensions about the fairness of the investigation and prayed for entrusting the matter to a credible and effective agency like CBI.

37. Investigation by the State Police in a scam that involves thousands of crores collected from the public allegedly because of the patronage of people occupying high positions in the system will hardly carry conviction especially when even the regulators who were expected to prevent or check such a scam appear to have turned a blind eye to what was going on. The State Police Agency has done well in making seizures, in registering cases, in completing investigations in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not whether the State Police has faltered. The question is whether what is done by the State Police is sufficient to inspire confidence of those who are aggrieved.

... ..

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

... ..

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

(Emphasis supplied)

The Apex Court here again observes that transfer cannot be routine exercise, but to instil confidence in public. It was answering a huge chit fund scam which happened on a patronage of high ranking officials.

30. Later, the Apex court in the case of **MITHILESH KUMAR SINGH v. STATE OF RAJASTHAN**¹⁰ referred the matter to CBI on the following facts:

“ **I regret to say that I have not been able to persuade myself to agree to the dismissal of the writ petition which in my opinion raises sensitive issues touching not only the fairness of investigation in a case involving death of a young college student in suspicious circumstances but also whether the sordid episode was a result of ragging of the deceased by her senior colleagues which the college authorities failed to prevent despite being informed about the same.** Given the circumstances pointed out by the petitioner it may be premature for this Court to hold that the investigation conducted by the local police was fair or that the deceased jumped from the four-storeyed college hostel to commit suicide as she was carrying an unwanted

¹⁰(2015) 9 SCC 795

pregnancy. The petitioner who is the unfortunate father of the deceased has attempted to point out certain deficiencies and contradictions in the findings of the investigating agency which in my opinion need to be investigated in a dispassionate attempt to discover the truth, by an outside agency like CBI.”

Reason for reference can be gathered from a few paragraphs which read as follows:

“5. All told the petitioner is totally dissatisfied and disillusioned with the investigation conducted by the State Police. That is why he prays for a fair and proper investigation into the episode to bring the truth to light so that justice is done not only at the stage of investigation but even at the trial which depends so much on the fairness of the investigation.

6. Importance of a fair and proper investigation cannot be understated. In an adversarial system of administration of justice, fairness of investigation is the very first requirement for the fairness of a trial. A trial based on a partisan, motivated, one-sided, or biased investigation can hardly be fair. That is because while the trial itself may be procedurally correct, the essence and the purpose thereof may be vitiated by an unfair or ineffective investigation. This Court has in several pronouncements, emphasised the importance of the fairness of the investigation. Reference, in this regard, may be made to the decision of this Court in *Manu Sharma v. State (NCT of Delhi)* [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] wherein this Court while dealing with the fairness of the investigation said: (SCC pp. 79-80, para 197)

“197. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional

mandate contained in Articles 20 and 21 of the Constitution of India.”

... ..

8. To the same effect is the decision of this Court in *Sasi Thomas v. State* [(2006) 12 SCC 421 : (2007) 2 SCC (Cri) 72] , where fairness of investigation was recognised as an important facet of the rule of law. The Court said: (SCC p. 528, para 15)

“15. Proper and fair investigation on the part of the investigating officer is the backbone of the rule of law. A proper and effective investigation into a serious offence and particularly in a case where there is no direct evidence assumes great significance as collection of adequate materials to prove the circumstantial evidence becomes essential. Unfortunately, the appellant has not been treated fairly. When a death has occurred in a suspicious circumstance and in particular when an attempt had been made to bury the dead body hurriedly and upon obtaining apparently an incorrect medical certificate, it was expected that upon exhumation of the body, the investigating authorities of the State shall carry out their statutory duties fairly.”

... ..

12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. **What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion.** It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the

commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. **The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.**

... ..

15. Suffice it to say that transfers have been ordered in varied situations but while doing so the test applied by the Court has always been whether a direction for transfer, was keeping in view the nature of allegations, necessary with a view to making the process of discovery of truth credible. What is important is that this Court has rarely, if ever, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion. There is no reluctance on the part of the Court to grant relief to the victims or their families in cases, where intervention is called for, nor is it necessary for the petitioner seeking a transfer to make out a cast-iron case of abuse or neglect on the part of the State Police, before ordering a transfer. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case."

Concurring view also captures certain reasons, which reads as follows:

"19. The matter relates to unfortunate death of a young girl student on 8-9-2011. A case was registered under Section 306 of the Penal Code, 1860 on the allegation that the deceased, who was admitted to Engineering Course at Jaipur, was harassed by the senior students of the Institute. She was taken to fourth floor and made to see downwards even though she was scared and felt dizziness. She fell down to the ground and suffered injuries. She was not properly attended and she died on account of injuries and negligence. To cover up the truth and to save the reputation of the College, false

medical record was prepared to show that she had fourteen weeks' pregnancy on account of which she committed suicide by jumping from the fourth floor.

... ..

33. Observing that handing over of investigation to CBI can be ordered only in an exceptional situation and such an order is not to be passed as a routine merely because a party has levelled vague allegations, a Constitution Bench of this Court in *State of W.B. v. Committee for Protection of Democratic Rights* [(2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] held as under: (SCC p. 602, para 70)

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

(Emphasis supplied)

The Apex Court while following the judgment in the case of **STATE OF WEST BENGAL v. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS**¹¹ holds that the very plenitude of power of reference should be used sparingly and in exceptional cases.

31. The Apex Court, in its latest judgment, in the case of **KABIR SHANKAR BOSE v. STATE OF WEST BENGAL**¹² again answering the investigation conducted by local police in the State of West Bengal refers the matter to the hands of the CBI by holding as follows:

"31. In *K.V. Rajendran v. CBCID*, it has been observed that where high officials of the State authorities are involved or the accusation itself is against the top officials of the investigating agency who may probably influence the investigation, and where the investigation is bound to be tainted, to instil confidence in the investigation, the constitutional courts ought not to be shy in exercising power of transferring an investigation from the State agency to any other independent agency like CBI.

32. It is well recognised that investigation should not only be credible but also appear to be credible vide *R.S. Sodhi v. State of U.P.*. Even otherwise, the law requires that justice may not only be done but it must appear to have been done. Thus, following the above dictum, to ensure a fair investigation in the matter, there appears to be weight in the argument of the learned counsel for the petitioner to transfer the investigation in relation to the two FIRs to an independent

¹¹(2010) 3 SCC 571

¹²2024 SCC OnLine SC 3592

agency, more particularly keeping in mind the factual background and circumstances of the case.

33. It is admitted on record that the investigation in pursuance of the two FIRs is at a nascent stage and that it had not proceeded any further, due to the interim order dated 13.01.2021, till date. Therefore, it is but natural to get the investigation completed at the earliest. The primary object is to ensure fair completion of the investigation so that, if necessary, the trial may proceed.

34. The matter of entrusting investigation to a particular agency is basically at the discretion of the court which has to be exercised on sound legal principles. Therefore, the presence of complainant/informants are not very necessary before the Court. We do not feel that any prejudice would be caused to either of the parties if the investigation is conducted by an independent agency other than the State police. Thus, looking to the facts of this case particularly, that respondent No. 7 is a parliamentarian from the ruling party in the State of West Bengal and that the petitioner belongs to the ruling party at the Centre, **the politically charged atmosphere in the State of West Bengal may not be very conducive to a fair investigation being conducted in the instant case. It is, hence, considered appropriate that instead of keeping the investigation pending for an indefinite period, the investigation be transferred to the CBI.**

35. The case involves the investigation of the role of CISF or its personnel which cannot be left in the hands of the local police also for reasons of conflicting interests. Thus, in our view, it is not appropriate to permit the local police to examine the conduct of CISF personnel in the instant case.

36. Accordingly, for all the above reasons and in the peculiar facts of this case, a writ of mandamus is issued to the State-respondents to handover the investigation pursuant to the two FIRs aforesaid to the CBI along with all records, for its completion so that, if necessary, the trial may commence and justice is done to the parties.

37. The writ petition is allowed accordingly.”

The Apex Court holds that investigation in a State where there was politically charged atmosphere would not inspire confidence if it is done by local police. It was therefore, referred to CBI. The aforesaid are the cases where the matter has been referred to CBI by the Apex Court.

CASES WHERE THE APEX COURT REFUSES TO REFER THE MATTER TO THE CBI:

32. The Apex Court, in the case of **COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS***supra*, lays down parameters of reference, wherein it has held as follows:

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

with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* [(2002) 5 SCC 521: 2002 SCC (L&S) 775] **this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."**

(Emphasis supplied)

Every judgment, subsequently rendered on the issue, is following the afore-quoted Constitution Bench judgment wherein the Apex Court observes that the Court answering such a demand, must bear in mind certain self-imposed limitations, on the exercise of constitutional powers. The extraordinary power of such reference should be made only in exceptional circumstances where an incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights.

33. In the case of **ARNAB RANJAN GOSWAMI v. UNION OF INDIA**¹³ the Apex Court holds as follows:

"46. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in

¹³(2020) 14 SCC 12

exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power. It is necessary to address the grounds on which the petitioner seeks a transfer of the investigation. The grounds urged for transfer are:

46.1. The length of the interrogation which took place on 27-4-2020.

46.2. The nature of the inquiries which were addressed to the petitioner and the CFO and the questions addressed during interrogation.

46.3. The allegations levelled by the petitioner against the failure of the State Government to adequately probe the incident at Palghar involving an alleged lynching of two persons in the presence of police and forest department personnel.

46.4. Allegations which have been made by the petitioner on 28-4-2020 in regard to CP, Mumbai.

46.5. Tweets on the social media by activists of INC and the interview by the complainant to a representative of R. Bharat.

47. As we have observed earlier, the petitioner requested for and consented to the transfer of the investigation of the FIR from Police Station Sadar, District Nagpur City to N.M. Joshi Marg Police Station in Mumbai. He did so because an earlier FIR lodged by him at that police station was under investigation. The petitioner now seeks to pre-empt an investigation by Mumbai Police. The basis on which the petitioner seeks to achieve this is untenable. An accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency. The line of interrogation either of the petitioner or of the CFO cannot be controlled or dictated by the persons under investigation/interrogation. In *P. Chidambaram v. Directorate of Enforcement* [*P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24 : (2019) 3 SCC (Cri) 509] , R. Banumathi, J. speaking for a two-Judge Bench of this Court held that : (SCC p. 56, para 66)

"66. ... there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. *It must be left to the discretion of the investigating agency to decide the course of investigation.* If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. *It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.*"

(emphasis supplied)

This Court held that so long as the investigation does not violate any provision of law, the investigating agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in *State of Bihar v. P.P. Sharma* [*State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] and *Dukhishyam Benupani v. Arun Kumar Bajoria* [*Dukhishyam Benupani v. Arun Kumar Bajoria*, (1998) 1 SCC 52 : 1998 SCC (Cri) 261] in which it was held that the investigating agency is entitled to decide "the venue, the timings and the questions and the manner of putting such questions" during the course of the investigation.

48. In *CBI v. Niyamavedi* [*CBI v. Niyamavedi*, (1995) 3 SCC 601 : 1995 SCC (Cri) 558], Sujata V. Manohar, J., speaking for a three-Judge Bench of this Court held that the High Court [*Neyamavedi v. Ramon Srivastava*, 1995 SCC OnLine Ker 15 : (1995) 1 KLJ 353] should have : (*Niyamavedi case* [*CBI v. Niyamavedi*, (1995) 3 SCC 601 : 1995 SCC (Cri) 558], SCC p. 603, para 4)

"4. ... refrained from making any comments on the manner in which investigation was being conducted by CBI, looking to the fact that the investigation was far from complete."

This Court observed that: (*Niyamavedi case* [*CBI v. Niyamavedi*, (1995) 3 SCC 601 : 1995 SCC (Cri) 558], SCC p. 603, para 4)

"4. ... Any observations which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences."

This Court adopted the position that courts must refrain from passing comments on an ongoing investigation to extend to the investigating agencies the requisite liberty and protection in conducting a fair, transparent and just investigation.

... ..

52. In assessing the contention for the transfer of the investigation to CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests

enunciated in the precedents of this Court has been established for the transfer of the investigation."

(Emphasis supplied)

34. Later, the Apex Court in the case of **HIMANSHU KUMAR v. STATE OF CHHATTISGARH**¹⁴ has held as follows:

"Position of law

44. It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high government officials or influential persons, prays before a court for a direction of investigation of the said alleged offence by CBI, such prayer should not be granted on mere asking.

45. A Constitution Bench of this Court, in *State of W.B. v. Committee for Protection of Democratic Rights* [*State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , has made the following observations pointing out the situations where the prayer for investigation by CBI should be allowed : (SCC p. 602, para 70)

"70. ... Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such powers should be exercised, but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. *This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing*

¹⁴(2023) 12 SCC 592

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

(emphasis supplied)

46. In the above decision, it was also pointed out that the same Court in *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* [*Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya*, (2002) 5 SCC 521 : 2002 SCC (L&S) 775] , had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency.

47. In an appropriate case when the Court feels that the investigation by the police authorities is not in *Committee for Protection of Democratic Rights* [*State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to hand over the investigation to an independent agency like CBI. By now it is well-settled that even after the filing of the charge-sheet the court is empowered in an appropriate case to hand over the investigation to an independent agency like CBI.

48. The extraordinary power of the constitutional courts under Articles 32 and 226, respectively, of the Constitution of India qua the issuance of directions to CBI to conduct investigation must be exercised with great caution as underlined by this Court in *Committee for Protection of Democratic Rights* [*State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] as adverted to hereinabove, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have 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 the investigation or where the incident may have national or international ramifications or where such an order may be

necessary for doing complete justice and for enforcing the fundamental rights.

49. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or re-investigation, submission of the charge-sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

50. The above principle has been reiterated in *K.V. Rajendran v. State of T.N.* [*K.V. Rajendran v. State of T.N.*, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held : (SCC p. 485, para 13)

“13. ... 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.”

51. Elaborating on this principle, this Court further observed : (*K.V. Rajendran case* [*K.V. Rajendran v. State of T.N.*, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] , SCC p. 487, para 17)

“17. ... 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."

52. The Court reiterated that an investigation may be transferred to CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies". This observation must be read with the observations made by the Constitution Bench in *Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401]* , that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

53. In *Romila Thapar v. Union of India* [*Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638*] , one of us, A.M. Khanwilkar, J., speaking for a three-Judge Bench of this Court (Dr D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in *Narmada Bai v. State of Gujarat* [*Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526*] , *Sanjiv Rajendra Bhatt v. Union of India* [*Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1*] , *E. Sivakumar v. Union of India* [*E. Sivakumar v. Union of India, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49*] and *Divine Retreat Centre v. State of Kerala* [*Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9*] . This Court observed: (*Romila Thapar case* [*Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638*] , SCC p. 776, para 30)

"30. ... the consistent view of this Court is that the accused cannot ask for changing the investigating agency

or to do investigation in a particular manner including for court-monitored investigation.”

54. It has been held by this Court in *CBI v. Rajesh Gandhi* [*CBI v. Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

55. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used “sparingly” and only “in exceptional circumstances”. In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power.”

(Emphasis supplied)

The Apex Court considers entire spectrum of law right from the judgment in the case of **COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS**^{supra} and all judgments subsequent to it. The Apex Court holds that the principle of law is that power to transfer an investigation must be used sparingly and only in exceptional circumstances.

35. The Apex Court, in the case of **ROYDEN HAROLD BUTHELLO v. STATE OF CHHATTISGARH**¹⁵, again following all

¹⁵2023 SCC OnLine SC 204

the judgments quoted hereinabove and following **ARNAB**

RANJAN GOSWAMI *supra* holds as follows:

"19. The above-noted decisions are in fact cited by the learned Senior Counsel for the appellants to contend that this Court should exercise its extraordinary power to refer to the matter to CBI in the instant facts. In that regard, it is also necessary to note that the High Court on the other hand has referred to the various decisions on the said aspect and has also taken into consideration the recent decision in the case of *Arnab Ranjan Goswami v. Union of India*, (2020) 14 SCC 12 wherein the entire aspect has been crystalized and this Court has held that the power to transfer an investigation must be used sparingly. The relevant portion reads as hereunder:—

"52. In assessing the contention for the transfer of the investigation to CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit

of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.”

20. Hence it is clear that though there is no inflexible guideline or a straightjacket formula laid down, the power to transfer the investigation is an extraordinary power. It is to be used very sparingly and in an exceptional circumstance where the Court on appreciating the facts and circumstance arrives at the conclusion that there is no other option of securing a fair trial without the intervention and investigation by the CBI or such other specialized investigating agency which has the expertise.”

(Emphasis supplied)

36. The Apex Court in the case of **VISHAL TIWARI v. UNION OF INDIA**¹⁶ has held as follows:

32. This Court does have the power under Article 32 and Article 142 of the Constitution to transfer an investigation from the authorised agency to CBI or constitute an SIT. However, such powers must be exercised sparingly and in extraordinary circumstances. Unless the authority statutorily entrusted with the power to investigate portrays a glaring, wilful and deliberate inaction in carrying out the investigation the court will ordinarily not supplant the authority which has been vested with the power to investigate. Such powers must not be exercised by the court in the absence of cogent justification indicative of a likely failure of justice in the absence of the exercise of the power to transfer. The petitioner must place on record strong evidence indicating that the investigating agency has portrayed inadequacy in the investigation or prima facie appears to be biased.”

The Apex Court again considers the entire spectrum of law and holds that transfer should be made only in extraordinary circumstances. The Apex Court was considering whether investigation should be transferred to Special Investigation

¹⁶(2024) 4 SCC 115

Team. The Apex Court refuses to transfer the investigation even to the Special Investigation Team.

37. The Apex Court in the case of **ARVIND KEJRIWAL v.**

CENTRAL BUREAU OF INVESTIGATION¹⁷ has held as follows:

30. Again in the case of *Mohd. Zubair v. State (NCT of Delhi)*⁴, a three-Judge Bench of this Court once again emphasized that the existence of the power of arrest must be distinguished from the exercise of the power of arrest. The exercise of the power of arrest must be pursued sparingly. This Court reiterated the role of the courts in protecting personal liberty and ensuring that investigations are not used as a tool of harassment. Referring to its earlier decision in *Arnab Ranjan Goswami v. Union of India*⁵, this Court observed that the courts should be alive to both ends of the spectrum : the need to ensure proper enforcement of criminal law on the one hand and the need to ensure that the law does not become a ruse for targeted harassment on the other hand. Courts must ensure that they continue to remain the first line of defence against the deprivation of liberty of the citizens. Deprivation of liberty even for a single day is one day too many.

31. When the CBI did not feel the necessity to arrest the appellant for 22 long months, I fail to understand the great hurry and urgency on the part of the CBI to arrest the appellant when he was on the cusp of release in the ED case. The substantive charge against the appellant is under Section 477A IPC which deals with falsification of accounts and if convicted carries a punishment of imprisonment for a term which may extend to seven years or with fine or with both. The appellant has also been charged under Section 7 of the PC Act which deals with offence relating to a public servant being bribed. Here the punishment, if convicted, is imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Without entering into the semantics of applicability of Section

¹⁷2024 SCC OnLine SC 2550

41(1)(b)(ii) and Section 41A Cr. P.C. as explained by this Court in *Arnesh Kumar* (supra), timing of the arrest of the appellant by the CBI is quite suspect.

32. CBI is a premier investigating agency of the country. It is in public interest that CBI must not only be above board but must also be seem to be so. Rule of law, which is a basic feature of our constitutional republic, mandates that investigation must be fair, transparent and judicious. This Court has time and again emphasized that fair investigation is a fundamental right of an accused person under Articles 20 and 21 of the Constitution of India. Investigation must not only be fair but must be seem to be so. Every effort must be made to remove any perception that investigation was not carried out fairly and that the arrest was made in a high-handed and biased manner.

33. In a functional democracy governed by the rule of law, perception matters. Like Caesar's wife, an investigating agency must be above board. Not so long ago, this Court had castigated the CBI comparing it to a caged parrot. It is imperative that CBI dispel the notion of it being a caged parrot. Rather, the perception should be that of an uncaged parrot."

(Emphasis supplied)

38. The Apex Court, further, in the case of **STATE OF WEST BENGAL v. REBEKA KHATUN MOLLA @ REBEKA MOLLA**¹⁸ has held as follows:

"...."

4. The High Court has enlisted some irregularities and alleged inconsistency in the medical reports, on the basis of which, doubt has cast on the fairness and independence of the ongoing investigation.

¹⁸Crl.A.No.4744/2024 disposed on 25.11.2024

5. It is not necessary for us to harp on these reasons, except to say that the entrustment of investigation of matters routinely to the CBI not only leads to an unmanageable burden on the premier investigative agency of the country, but also has a very serious and far-reaching, demoralizing impact on the officers of the State Police. It may not be prudent to proceed on the premise that Senior Officers, belonging to IPS and allocated to the West Bengal cadre, are incompetent or inefficient to hold a fair, independent and dispassionate investigation to find out the truth.”

(Emphasis supplied)

The Apex Court, in the case of **ARVIND KEJRIWAL** *supra*, considers the conduct of the CBI and deals with the factum that “perception matters”. The Apex Court in the case of **REBEKA** *supra* holds that for the asking if the matter is transferred to the hands of CBI, it would not only clog the agency, but would completely demoralize the State Police therein.

39. On a coalesce of the judgments rendered by the Apex Court as quoted hereinabove, where the Apex Court has transferred the case to the hands of the CBI and where the Apex Court refuses even to transfer the case for constitution of an SIT, one glaring factor that runs through the entire spectrum of the judgments towards the reference and towards refusal of reference is, that in all the cases of reference to the CBI it was

transferred from the hands of the local Police in those facts and circumstances. No independent agency was investigating into those offences, which the Apex Court thought it fit to transfer.

40. Merely because a party has levelled some allegations against the local Police in a routine manner, the matter should not be transferred to the CBI. The extraordinary power must be exercised sparingly, cautiously and in exceptional situations, in instances that may have wide ramifications, failing which the CBI would be flooded with large number of cases with limited resources. This is the stream that runs through other judgments as well. As observed hereinabove, they were all cases where the matters were taken away from the hands of the local Police and referred to the CBI. In few of the cases, the Apex Court was considering the local Police themselves involved in the allegation or cases where huge ramifications would ensue. Not one case is placed on record where the investigation from an independent body like that of Lokpal or Lokayukta is taken away midstream and transferred to the hands of the CBI.

41. On a **synthesis**, of the **thesis**, and the **anti-thesis**, of the judgments rendered by the Apex Court directing investigation to be transferred and refusing investigation to be transferred to the hands of the CBI, in the considered view of this Court, the following principles would emerge:

- (a) The power to refer the matter for investigation/ further investigation/re-investigation from the State Police or any agency to the hands of the CBI in exercise of jurisdiction under Article 226 of the Constitution is absolutely wide. The width of such power should be sparingly and cautiously used, only in certain circumstances.
- (b) The discernible circumstances as elucidated by the Apex Court is that, when the allegation involves local Police and the investigation is by the local Police, such investigation would not instill public confidence.
- (c) When the allegation is cheating of lakhs or crores of people in chit fund scam or otherwise where connivance with high ranking officials or even the investigating agencies are alleged.
- (d) Where death of certain persons is the fulcrum of the allegation and that death having happened in an alleged fake encounter.
- (e) Death due to ragging in an educational institution is being shoddily investigated into and certain sex scandals that had rocked the State machinery.
- (f) Where politically charged atmosphere revolved round the allegation or persons involved in the allegation.

- (g) In all cases where the Apex Court has transferred the investigation to the CBI, it is transferred either from the investigation conducted by local Police or investigation conducted by the Special Investigation Team comprising of local Police.

Therefore, the echo that the reference of investigation should be made to the CBI, as one of the accused is a sitting Chief Minister, is unacceptable, as none of the maladies illustrated by the Apex Court are present in the case at hand. The maladies projected are on a blend of all judgments rendered by the Apex Court. The blend does not indicate, that the panacea to a malady, that is not even existing, cannot be by referring the matter to the CBI for investigation. The issue is answered accordingly.

ISSUE NO.3:

Whether the material on record – investigation conducted by the Lokayukta merits transfer to the hands of the CBI for further/re-investigation?

42. The investigation in the case at hand is not being conducted by the local Police; it is by the wing of the Lokayukta. The Police wing of the Lokayukta is answering to the Lokayukta or the Additional Director General of Police of the Lokayukta. The

Act itself insulates them from political interference. The independence of the Lokayukta to conduct investigation in cases of high functionaries cannot be stifled by an order of this Court. If done, it would render the very Act redundant, as the Act covers investigation against the Chief Minister sitting or former; against high functionaries – the Ministers in the State. Public confidence in the institution of the kind i.e., the Lokayukta cannot be **excoriated** for the asking by the petitioner, whose bona fides in seeking the particular prayer being doubtful. The petitioner originally seeks the prayer of reference to the Police wing of the Lokayukta. Even before the FIR could be registered files the subject petition, 3 days after the order is passed by this Court and 48 hours after the order passed by the concerned Court. He cannot approbate and reprobate by seeking investigation to the hands of the Police wing of the Lokayukta in one breath and seeking the same at the hands of the CBI, in the same breath. This is *sans* countenance.

43. As observed hereinabove, this Court from time to time has secured investigation papers from the hands of the investigating agency. A perusal at the records of investigation

would indicate, that all public documents that are available are taken note of, the notifications issued from time to time are also taken note of, and statements of all the accused are recorded. I do not find any partisan, biased, lopsided or shoddy investigation conducted by the Police wing of the Lokayukta. As directed by this Court, the Inspector General of Police of the Lokayukta has, by a separate report, indicates perusal of the report of investigation and narration of facts of such investigation. The Additional Director General of Police has overseen the investigation and has furnished a separate report. All those reports are now to be placed before the concerned Court. A perusal of the report by this Court is only to satisfy itself whether the material on record would need further or re-investigation at the hands of the CBI. In the considered view of this Court, it does not require, re/further/denovo investigation by the CBI. The issue is answered accordingly.

44. As observed hereinabove, it does not require any such step to be taken by this Court. All that this Court has rendered in its earlier order dated 24-09-2024, an offshoot of which is the subject petition is, that the public servants should not get away

with unjust enrichment. Today, the unjust enrichment is somewhat diluted. Since the concerned Court has directed submission of final report which has been deferred by intermittent orders passed by this Court, the respondent/Lokayukta would be at liberty now to place the report before the concerned Court as directed by this Court and it is for the petitioner to avail all such remedies as are available in law. This is all this Court can do in exercise of its jurisdiction in a petition presented under Article 226 of the Constitution of India r/w Section 482 of the Cr.P.C.

45. The learned senior counsel representing respondent No.12 and the learned senior counsel representing respondent Nos.10 and 11, have made elaborate submissions on the merit of the matter. I deem it appropriate not to delve upon those submissions, in the light of the pendency of a writ appeal against the order passed by this Court dated 24-09-2024 in W.P.No.22356 of 2024. In that light, those submissions are not considered.

SUMMARY OF FINDINGS:

- (i) *The Lokayukta/office of the Lokayukta does not suffer from questionable independence. The insulation of the institution from external influences is already recognized by the Apex Court and the Division Bench of this Court, as quoted supra.*
- (ii) *There is no malady of the kind that is projected by the Apex Court, present in the case at hand, to refer the matter for further/re-investigation to the hands of the CBI. It is not the panacea to the projected ill.*
- (iii) *The material on record, on its perusal, nowhere indicates that the investigation conducted by the Lokayukta is partisan, lopsided or shoddy for reference to the CBI for further investigation or re-investigation.*

46. In the result, the petition necessarily would meet its dismissal and is accordingly ***dismissed.***

All pending applications stand disposed of.

Bkp

sd/-

JUSTICE M.NAGAPRASANNA