Pooja Pal vs Union Of India And Ors on 22 January, 2016

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Author: Amitava Roy

Bench: Amitava Roy, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 77 OF 2016
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 1458/2015)

POOJA PAL .…APPELLANT

Versus

UNION OF INDIA AND ORS. ...RESPONDENTS

J U D G M E N T

AMITAVA ROY,J.

Leave granted.

2. The appellant, widow of slain Raju Pal, who at his death was a sitting M.L.A. of Uttar Pradesh State Assembly, is before this court in her relentless pursuit for securing investigation by the Central Bureau of Investigation (CBI) into the stirring incident of murderous attack on her husband, snuffing their a week old marital tie. This is the appellant's second outing before this forum, she having been relegated earlier to the High Court, to seek the remedy at the first instance. By the decision impugned, the High Court has declined the relief sought for.

3. We have heard Mr. R. S. Sodhi, learned senior counsel for the appellant, Ms. V. Mohana, learned senior counsel for the respondent Nos. 1 & 2, Mr. P.N.Misra, learned senior counsel for the respondent No. 3 and Mr. Manoj Goel, learned counsel for the respondent Nos. 4 and 5.

4. The eventful factual backdrop is outlined by the available pleadings. First the facts as narrated by the appellant. In the bye-elections to the vacant seat of Allahabad (West) State Assembly, held in the month of October 2004, the same having been vacated on the resignation of its incumbent Atiqe Ahmed, respondent No. 4, he having been elected as a Member of Parliament from Phoolpur constituency, Allahabad, the appellant's husband was elected thereto by defeating the nearest contender Mohd. Ashraf set-up by the Samajwadi Party. Whereas the appellant's husband as the candidate of the Bahujan Samaj Party (for short hereinafter referred to as "BSP.") secured 70537 votes against 65713 votes polled by the respondent No. 5, the other candidates representing the Congress and Bhartiya Janta Party fared very poorly in comparison. According to the appellant, since his defeat, Moh. Ashraf @ Khalid Azeem the respondent No. 5, along with his brother Atiqe Ahmed respondent No. 4 as well as the then Chief Minister of the State had taken the set-back to be a matter of personal humiliation, defeat and insult so much so that the respondent No. 4 declared in public that the candidate elected would not be able to hold the seat for long. It has been alleged by the appellant that subsequent thereto, continuous attempts were made to eliminate Raju Pal and that too with the connivance of the local police and at the instigation of the respondent No. 4. The appellant has asserted that as a consequence, the family members and the supporters of her husband very often were assaulted and subjected to harassment by arrests by the police and hired goons engaged by the respondent Nos. 4 and 5 and that their property and personal belongings were even destroyed.

5. The appellant alleged as well that the respondent No. 5 was a history sheeter against whom several cases had been lodged involving the offence of murder, but on account of his political clout and the following of anti- social elements, no witness would even dare to give evidence of his nefarious activities. This was more so, according to the appellant, as he enjoyed police patronage and protection. The appellant stated that after the election of her husband as the Member of the Legislative Assembly on 16.10.2004, three abortive attempts were made on his life and the properties belonging to him and his close relatives were ransacked and taken away. The appellant mentioned that the last attempt on the life of her husband before the gruesome incident was made on 28.12.2004. Prior thereto amongst others, an attempt was also made in the month of November, 2004, whereafter Raju Pal did submit a representation to the Governor of the State on 04.11.2004, following which the said constitutional authority had directed an inquiry to be made.

6. According to the appellant though the Governor of the State had directed that additional security be provided to her husband, it was not done and instead his existing security staff was replaced by the State Government. Such was the animosity as alleged by the appellant, that the State Government even had withdrawn Raju Pal's official gunners for whose timely intervention, he survived the attempt on his life on 28.12.2004 by the hired goons and henchmen of the respondent Nos. 4 and 5. The appellant has alleged that the two official gunners of her husband were replaced by others on the choice of the local police and the desire of the respondent Nos. 4 and 5 to ensure that Raju Pal does not escape the next attempt. That in connection with the incident of 28.12.2004, Raju Pal had lodged a First Information Report with the police in which he had named these respondents has been stated as well. This notwithstanding, buckling under political pressure, the police even deleted the name of respondent No. 5 from the F.I.R. and made a formality of some investigation.

7. The appellant has stated that on the date of the incident i.e. 25.01.2005 at 3 P.M., her husband Raju Pal was travelling in a vehicle accompanied by his two supporters Sandeep Yadav and Devi Lal Pal. His two official gunners instead of accompanying him, and as a part of the conspired plan were travelling in the second car behind his vehicle. The vehicle in which the appellant's husband was travelling along with his friend Singh Sahib and his wife on reaching Amit Deep Maruti Agency, was intercepted and surrounded by eight persons, whereupon the respondent No. 5 Mohd. Ashraf shot him in his head. In course of the shoot-out, Sandeep Yadav, Devi Dayal Pal and the appellant's husband were seriously injured and they eventually succumbed to the injuries. The appellant has alleged that the official gunners, who were travelling in the car behind, not only did not intervene or retaliate to save Raju Pal but had abandoned their vehicle. She has alleged that reportedly, a conspiracy was hatched in this regard, at the political level in connivance with the top police officers including the Station Officer, Dhoomanganj, Shri Parshuram, C.O. (Police), Civil Lines who were then present at the spot alongwith Superintendent of Police (City) & Deputy Inspector General of Police, Allahabad and Atiqe Ahmad, respondent No. 4.

8. The appellant has stated as well that the assailants who were in three different vehicles, left the site of the incident after resorting to indiscriminate firing, whereupon the persons present along with the supporters of the injured took Raju Pal out of the car and tried to rush to the hospital in a three-wheeler. The appellant has mentioned that as per the account of the eyewitnesses present and as reported by the media, the assailants returned and opened indiscriminate fire on Raju Pal from a close range so as to ensure that he was dead. That a third attack was made on the injured Raju Pal from a point plank range before he could reach the hospital, where he succumbed to his injuries, has been stated in categorical terms. According to the appellant, though there were four police stations on the route to the hospital, no police officer did respond or offer to help the injured or his companions in their last minute bid to save their lives.

9. The appellant on the very same date i.e. 25.01.2005 filed the FIR at 4.30 P.M., narrating the incident and also mentioning clearly, the involvement of the respondent No. 4 as the brain behind the murder and that the respondent No. 5 had shot Raju Pal in the head. The FIR was registered as 31/2005 dated 25.01.2005 of Dhoomanganj Police Station, Allahabad, U.P. under Sections 147, 148, 149, 302, 307, 120B IPC.

10. The incident received rave media coverage as would be evident from the following extract of a news item of the daily "Times of India": (para No. 21of Writ Petition) "Eyewitnesses said the assailants, who were about two dozen in numbers, came in two Tata sumos and opened indiscriminate fire when the MLA's vehicle reached the Chaufatka petrol pump. Pal, who was in the driver's seat, was hit several times in the neck, chest and stomach. His supporters immediately put him in an auto and rushed him to a private nursing home in Rain Bagh area. The assailants, however, continued firing even on the auto to ensure his death. At the Fire Brigade crossing, the assailants again opened fire. Just after reaching the hospital, Pal succumbed to his injuries. Two police gunners of Pal reportedly escaped from the scene.

Though the assailants kept on shooting at Pal on the entire stretch between Chaufatka and the nursing home covering four police stations of Dhoomangang, Cantt. Civil Lines and Kotwali, the

police failed to react."

11. The appellant has further stated that the body of Raju Pal was thereafter taken into custody by deploying heavy police force and thereafter a show of the post mortem was done hurriedly & secretly at the Swaroop Rani Nehru Hospital at about 03.15 A.M. in the morning of 25- 26/01/2005 without any information to the appellant or any family member and in total violation of all norms pertaining to autopsy. The appellant has stated that purposefully in order to ensure that the prosecution case is rendered weak, the injuries indicated in the postmortem report were described in a manner to be rendered doubtful to have been caused by the two weapons recovered i.e., one DBBL Gun and one 30 Spring Rifle. The appellant has thus stated that the charge-sheet that was eventually submitted was merely an eye-wash to save the respondent Nos. 4, 5 and their accomplices on one hand and to rule out the possibility of further investigation by the CBI and in the process hush up the true facts. According to her, the dead body of the Raju Pal was thereafter cremated in the early morning of 26.01.2005 at Daraganj crematorium, but neither prior thereto, it was handed to the appellant nor the ashes were made available to her. As a matter of fact, the dead body was cremated as if it was an unclaimed body though the deceased was a sitting Member of the Legislative Assembly of the State and his identity was well known to all concerned including the police.

12. Even the representation made by the mother of Raju Pal on 26.01.2005 to the Senior Superintendent of Police to hand over the dead body of her son to her for final rites was not heeded too. All fervent requests and appeals made by her in this regard failed. The appellant has alleged that not only she as a widow was given a chance to have a parting glance of the body of her husband, the dead bodies were disposed of hurriedly without any notice to her as well as other family members of Raju Pal presumably to wipe off all possible clues in support of the heinous crime. The appellant was married to the deceased Raju Pal only on 16.1.2005 i.e. hardly a week before the tragic incident.

13. The appellant has stated as well that having regard to the perceived involvement of the state administration and the police in particular, in the perpetration of the crime and their passive and indifferent disposition in taking steps as required in law, it was felt by all right minded quarters that investigation by the C.B.I. was indispensably warranted to unearth the diabolic plot and identify the persons involved, so as to ensure an impartial and meaningful enquiry for justice. In spite of repeated representations, though submitted by the appellant herself and the then President of the BSP, U.P. before the Governor, Chief Minister, Chief Secretary etc. of the State expressing in clear terms that no impartial and dispassionate probe by the state police was possible in the facts and circumstances of the case and having regard to the persons involved, and that the exercise ought to be handed over to the C.B.I., the same did not meet with any favourable response.

14. Instead, as asserted by the appellant, by way of retaliation to the public outcry against the ruthless and savage assassination of Raju Pal and his two associates, the police authorities went berserk in the entire city and they forcibly trespassed into the houses of such residents, mercilessly assaulted them, including old women and children, ransacked their belongings and threatened and intimidated them of dire consequences if they did not refrain from their agitation for a C.B.I. inquiry. This high handed action of the police force also received media coverage, both print and

electronic. The writ petition further discloses that for reasons unfathomable, the investigation of the incident was soon thereafter transferred from Station House Officer, Dhoomanganj to a Police Inspector posted in another police station, in violation of the G.O. No. DG-7-S (253)/198 dated 21.03.2000.

15. While mentioning that with the installation of the Samajwadi Party in power, there was an upsurge in the crimes, the appellant has referred as well to the criminal antecedents of the respondent No. 5, tracing back to the year 1979, when he was accused of murdering a contractor in Bihar. According to her, this respondent has been booked in a number of cases under Sections 302 and 307 IPC as well as amongst others, under the Gangster Act, National Security Act and had been identified also as a member of the interstate gang in December 2002. Accusing the State Government, the above notwithstanding, of bestowing its generosity on him as well as his brother, the appellant has also referred to a list of 20 criminal cases registered against the respondent No. 5 in which efforts were being made to withdraw the same. The list of cases, as set-out in the writ petition involves offences inter alia, under Sections 302, 307, 149, 120B IPC as well as under the Arms Act and Gangster Act. The appellant has been candid enough to state in no uncertain terms, that though the evidence was galore against the respondent Nos. 4 and 5 and their accomplices in the commission of murder of her husband, conscious and intentional steps were taken by the state administration and the police to shield them therefrom due to political and other influence wielded by them. In endorsement of this accusation, the appellant has referred to as well some excerpts from the writ petition filed by the Station House Officer Shri Parshuram Singh in Civil Writ Petition No. 34265/2005 challenging his suspension. This police officer who was in-charge of the investigation of incident made serious allegations against the senior police officers in their attempt to efface evidence against the respondent Nos. 4, 5 and their henchmen in the following terms: (page No. 126 of Writ Petition) “25 -That, on 27.01.2005, one of the main accused Ashraf alias Khalid Azim was arrested in Lucknow and brought to Allahabad in tight security two other accused were also arrested by the petitioner on 30.01.2005, namely Farhan Ahmed and Ranjeet Pal and a DBBL Gun and life cartridges were recovered from their possession. True photo and typed copy of the F.I.R. and Recovery Memo are collectively enclosed herewith and marked as Annexure- 5, to this writ petition.

26 - That, the respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, because of the reason better known to him, he told to the petitioner the empty cartridge of thirty spring rifle not be shown in the G.D. but the petitioner refused to do so. The respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, also told to the petitioner that Ashraf and Atiqe not be made main accused in the case crime No. 34/05, Police Station, Dhoomanganj, Allahabad.

27 - That, on 30.01.2005, on the day of arrest of Farhan Ahmed and Ranjeet Pal, the respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, told to the petitioner these two accused be kept in curtain (Baparda) do not produce the accused before media, the petitioner denied as the accused persons are local resident and they are publicly known criminals therefore, no meaning to put them in curtain.

28-That, the respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, also, told the petitioner, the DBBL Gun recovered from the possession of Farhan Ahmed and Ranjeet Pal also be changed but

the petitioner denied and showed the same DBBL Gun in the records which was recovered from their possession.

29 -That, the respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, has motive to save the main accused Ashraf and Atiqe Ahmed from the charge of murder of M.L.A, Raju Pal. The respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, handled by the political leaders of the ruling Samajwadi party and he was doing in the manner for tempering the evidence of the murder against the main accused Ashraf and Atiqe Ahmed as directed by leaders of ruling Samajwadi Party.

30- But the respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, suspended the petitioner in the evening of 30.1.2005, alleging that the murder of Raju Pal was occurred and he could not control the disturbances after the murder of M.L.A. Raju Pal.

31 -That, the respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad suspended the petitioner to help the accused persons as the respondent No. 2, Shri Sunil Gupta, S.S.P., Allahabad, several times told to change the facts that shows the interest of respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, in saving accused persons.

32-That, in as much as the investigation which was being carried out by the petitioner was transferred to one Inspector, Police Station Colonelganj Inspector Surendra Singh.

33- That, the one of the main accused Atiqe Ahmed, Member of Parliament now was released on bail and he mounted pressure on respondent No. 2, Shri Sunil Kumar Gupta, S.S.P., Allahabad, for transferring the Investigation Officer Inspector Surendra Singh and transferring the petitioner any other place ahead from Allahabad.

34- That, the Respondent No. 2, wrote a D.O. letter on 15.04.2005, to D.I.G. Range, for transferring the petitioner under suspension from District Allahabad to any other district, the respondent No. 2, Shri Sunil Kumar, S.S.P., Allahabad, recommended transfer of the petitioner in the pressure of Atiqe Ahmed, Member of Parliament who is one of the main accused in the murder of M.L.A. Raju Pal. True photo and typed copy of the D.O. letter dated 15.04.2005, of respondent No. 2, is enclosed herewith and marked as Annexure–6 to this writ petition.

35- That, the Colonelganj Inspector Surendra Singh, who was the Investigating Officer in this case, was suddenly relieved of all the responsibilities and has been posted to Jhansi. At the same time, efforts were on to ensure the removal of Dhoomanganj Station Officer the petitioner around the time of the murder and get him posted to some other district. The only fault of both these Investigating Officers was that they did not succumb to the pressure exerted by their superiors and went ahead with the investigation in the right manner _ _ _ _ According to sources, some senior police officers of the district were putting pressure on the Investigating Officer to replace the gun with some other weapon. But the investigator did not relent and forwarded the recovered pistol and the gun for a forensic test. The tests revealed that two of the six empty cartridges, also found at the scene of crime, had been fired from the recovered DBBL Gun. All along the course of the investigation, some senior police officers had been making efforts to persuade the investigator to

shift the focus of his investigation from the named accused Samajwadi Party Member of Parliament Atiqe Ahmed and his brother Ashraf, and bring into focus the personal enmity angle of the slain M.L.A. as the cause behind his murder. The fact that the police officers of the district were working under tremendous political pressure was evident from the way they had been working."

16. On the basis of these foundational facts, the appellant has prayed for an appropriate writ or a direction in the nature of mandamus, directing the official respondents to entrust a fresh investigation into the episode by the C.B.I.

17. As abovestated, the appellant had approached this Court earlier, seeking its intervention for an appropriate direction for investigation of the incident by the CBI. This was, to reiterate, as the appellant nursed a deep rooted impression, in view of overwhelming sinister background and the sequence of events culminating in the gruesome murder of her husband, that the crime had been committed with the tacit support of the police administration and covert approval of the authorities in power. In course of the hearing before this Court in the earlier proceedings afore-mentioned and registered as Writ Petition (Crl.) Nos. 118-119 of 2005, the learned counsel for the appellant sought to withdraw the same, so as to enable her to file an appropriate writ petition before the High Court seeking the same relief.

18. By order dated 03.05.2006, the prayer made was allowed, requiring the appellant to file the writ petition as proposed before the High Court within a period of two weeks therefrom. It was observed that if it was so done, till the disposal of the writ petition, the respondent State would provide necessary security to the appellant and her mother-in-law (co- appellant before this Court). Further proceedings of the Trial Court were ordered to remain stayed till the disposal of the writ petition if filed within the period of two weeks as permitted and a request was made to dispose of the same as expeditiously as possible. In compliance of this order the appellant alone filed a writ petition which was registered as W.P.(Crl.) No.6209 of 2006 within the time allowed.

19. While the Writ Petition was thus pending, by letter No.- Home (Police) Section-11, Lucknow No.2169/6-Pu-11-7-06(writ)/2006 dated 15.05.2007 addressed to the Secretary, Ministry of Personnel, Government of India, New Delhi, the State Government conveyed its decision to get the investigation of the case conducted through the CBI and requested that the steps be taken accordingly and to keep the State Government apprised of the action taken. The consent of the State Government as required under Section 6 of the Delhi Special Police Establishment Act, 1946 to this effect was also appended to the said letter. As the case number was wrongly mentioned therein, correction to the said effect was communicated vide letter No.Home/Police/Section-11, Lucknow No.3636/6-Pu-11.05.06 (writ)/2005 dated 14.08.2007.

20. At this stage, in view of this development, a submission was made on behalf of the State Government before the High Court, bringing to its notice, the same. Consequently by order dated 11.07.2007, the High Court being of the view that the relief sought for in the writ petition had been granted by the State Government by making a request to the Central Government to get the case investigated by the CBI, dismissed the writ petition.

21. As the records would reveal, the appellant on the very same date i.e. 11.07.2007 filed an application for restoration of the writ petition, contending principally that though the request had been made by the State Government, a decision in affirmation of the Central Government, agreeing to the investigation of the case being conducted by the CBI was awaited and thus the writ petition ought not to have been dismissed as infructuous. An application was also filed, requesting the High Court to list the writ petition for appropriate orders. As the order sheet of the writ proceedings before the High Court would disclose, the restoration application was kept pending, awaiting the decision of the Central Government on the request of the State Government. The Government of India, Ministry of Personnel and Public Grievances and Pension (Department of Personnel and Training) eventually, vide letter No.228/29/2007 - A.V.D Govt. of India.....1212/PGS/MS/2008 dated 18.01.2008 declined to get the case investigated by the CBI. The contents of the letter would disclose that the decision conveyed thereby was preceded by an inquiry said to have been made by the concerned Department in consultation with the CBI. Pendency of the writ petition filed by the appellant, seeking the same relief was also referred to as a consideration. It was mentioned as well, that the State Government had not stated any other reason to justify the investigation to be conducted by the CBI. According to the Central Government, the trial of the case was pending, the proceedings whereof however have been stayed by the High Court and that there was no interstate or international ramification of the case so as to warrant investigation thereof by the CBI.

22. In the wake of the rejection of the request for investigation of the case by the CBI, the appellant applied for an amendment of the writ petition, by incorporating the required facts pertaining to the process related thereto and also prayed for the annulment of the letter dated 18.01.2008 of the Central Government. In the facts pleaded to that effect, she averred that during the trial, the respondent Nos. 4 & 5 had threatened the eye witnesses and did impeach the decision of the Central Government disallowing the request for investigation of the case by the CBI as mechanical and prompted by surmises and conjectures. She did furnish as well, the particulars of the cases in which the respondent No.4 & 5 had been involved in kidnapping and abduction as well, as elimination of witnesses who could otherwise withstand their pressure and displayed courage to disclose the truth in support of the charge leveled against them. Following the refusal of the Central Government, the state government, however shifted the investigation to the CBCID and meanwhile both the state police and CBCID have submitted chargesheets.

23. Be that as it may, the High Court eventually by the impugned judgment and order has dismissed the writ petition. It held the view that if the appellant was not satisfied with the charge-sheet submitted by the Civil Police as well as the CB CID and the materials collected by these two agencies in course of their separate and independent investigation, and is also of the view that further investigation was required, or that some additional evidence was to be collected, she was at liberty to file an application before the Magistrate concerned to that effect so as to enable the trial court to pass appropriate orders thereon. It further held that so far as the adduction of additional evidence was concerned, the appellant would have every opportunity to produce the same or ask therefor also by making an appropriate application at the time of trial.

24. Before adverting to the rival submissions, it would be apt to notice the pleaded stand of the respondents in substance. The state government has admitted the incident in which the appellant's

husband had been assassinated on 25.01.2005 along with two others namely Sandeep Yadav and Devi Dayal Pal in a shootout. It has not disputed as well, the registration of the information of the said incident under Sections 148/147/149/302/307 and 120B of the IPC against respondents No. 4,5 and seven others at Dhoomganj Police Station. That on 27.01.2005, the state police had arrested respondent Nos. 4 & 5 in connection of the incident has also been admitted. The state government has placed on record, that the state police on the completion of the investigation in the case has submitted a charge-sheet on 08.04.2005 against respondent Nos. 4,5 and 9 others together with a list of 27 witnesses.

25. It disclosed as well that after the submission of the charge-sheet, the case was committed to the Court of Sessions and was registered as Session Trial No.24/2006 whereafter, the trial had begun only to be stayed by this Court on 03.05.2006 vide its order to that effect passed in W.P.(Crl.) No.118-119 filed by the appellant under Article 32 of the Constitution of India.

26. It mentioned as well that during the pendency of the writ petition, filed after the disposal of the proceedings before this Court, the state government had accorded its sanction for investigation of this case by the CBI and the communication to this effect was forwarded to the Ministry of Personnel, Government of India. That however the Government of India refused to accede to the request, being of the view that it was not a fit case for investigation for the CBI was stated as well.

27. According to the state government, on such refusal of the Central Government, it transferred the investigation of the case to CB CID which after the completion of the investigation submitted three charge-sheets on 10.01.2009, 04.04.2009 and 24.12.2009, adding to the array of accused persons and also the witnesses in support of the charge.

28. While stoutly denying the allegation of indifference and apathy to secure an impartial and effective investigation and instead a tacit support of the offending act, it has asserted, that having regard to the constricted scope of ordering investigation of a case by the CBI, no such direction as sought for is warranted in the facts and circumstances of the case. It has emphatically asserted that the said police as well as the CBCID had conducted proper investigations and in the process, did not spare anyone found involved in the incident. It has denied in emphatic terms, the involvement of the said machinery in any conspiracy, its support thereto and intentional distortions in the investigation to bail out the culprits of the offence. It pleaded that the dead bodies had been duly received by the concerned family members and that cremations of Raju Pal was performed by the one of his first cousins. It has been stated as well that the postmortem examination of Raju Pal was undertaken by a panel of doctors and that the allegations made by the appellant that the dead body of her husband was secretly and hastily cremated without handing over the same to his relations and that the postmortem examination was deliberately skewed are palpable falsehood. It also denied the allegation of the appellant that the respondent No. 4 had sophisticated firearms including AK- 47 and AK-56 had been used in the incident. It disclosed as well that at the time of his death, there were several criminal cases registered against Raju Pal including the offence of murder and attempt to murder and that he had many enemies who could have shared the motive to liquidate him.

29. The respondent No. 4 while emphatically denying his involvement as well as the complicity of his brother in the incident, in substance accused the appellant of falsely implicating them as her political rivals and of keeping the proceedings pending so as to derive political mileage therefrom. He alleged as well, that the appellant had deliberately protracted the proceedings inter alia by omitting to take necessary steps so as to use the same to promote her political prospects riding on the sympathy wave induced by the murder of her husband. The answering respondent has averred that thereby the appellant has been successful in getting elected to the State Assembly for two successive terms. It has been stated further that within a couple of days of the formation of the Government in the State by the Bahujan Samaj Party, the State Government did refer the case to the Central Government for investigation by the CBI and having failed in its endeavour to do so, they took a conscious decision to transfer the investigation thereof to the CBCID on 10.12.2008. The answering respondent has emphasized that the appellant has neither challenged the decision of transferring the investigation to CBCID nor the charge-sheets submitted by the said agency on the completion of the said investigation. According to the answering respondent, the appellant has also not pointed out any fault or deficiency in the investigation conducted by the CBCID and that her insistence for further investigation or reinvestigation by the CBI is wholly impermissible in law.

30. The CBI in its turn while reiterating the intervening developments pertaining to the investigation conducted by the State Police and the CBCID has pleaded that after a lapse of 10 years from the incident, no purpose would be served by any investigation by it at this stage. It has averred as well that the case does not involve any larger public interest or any interstate or international ramification. That it is already overburdened with the investigation/inquiry of different cases entrusted to it by various High Courts and this Court has been mentioned. It has asserted that having regard to the state of law laid down by this court and the contingencies in which investigation by the CBI is called for, the facts and circumstances of the case do not merit any such direction.

31. In the above contentious premise, Mr. Sodhi has assiduously argued, that the run up of facts leading to the merciless murder of the appellant's husband, the conspicuous impassive response of the state machinery to ensure his safety and security as well as the shoddy and purported investigation by the state police as a casual completion of routine formalities, warrant a fair and impartial probe by the CBI. The learned senior counsel has urged that the onetime readiness of the State Government to handover the investigation to the CBI unambiguously reflects its satisfaction as well of such essentiality to espouse the cause of even handed justice. According to him, the rejection of the request of the state government to this effect by the Central Government is wholly mechanical and without any application of mind to the factors relevant and germane and thus the decision to that effect is liable to be adjudged illegal, null and void. Not only at the point of time when the Central Government refused to accede to the request for investigation by the CBI, the Writ Petition filed by the Appellant before the High Court had been closed, there is nothing on record to even suggest that any independent endeavour had been made by the Central Government to make a dispassionate evaluation of the overall facts thus rendering its decision arbitrary unfair and unjust. Mr. Sodhi has maintained that not only the manner in which the daring offence was committed was shocking to every right minded person of the society; it signalled as well, an apparent collapse of the administrative machinery of a democracy committed to the solemn promise of guaranteeing protection of life and liberty of its citizens. The learned senior counsel argued that the cruel and

barbaric crime having been committed in the broad day light in public view, there are still several eye-witnesses available who are genuinely willing to testify about the same to bring the real culprits to book and thus in the interest of fair and impartial investigation and to obviate any possibility of miscarriage of justice, it is imperative to entrust the probe to the CBI. According to Mr. Sodhi, the testimony of the witnesses so far examined at the trial clearly demonstrate their hostile and non-cooperative approach which per se suggests that they must have been won over in between, leaving a bleak chance for the prosecution to succeed. This unmistakably affirms the apprehension of the appellant vis-à-vis quality and authenticity of the investigation undertaken by the state police and the CBCID, he urged.

32. The learned senior counsel maintained that if the formalities of the trial with the materials so far collected in the investigation are allowed to be completed being unmindful of the consequences thereof, it would be a travesty of justice and a servile subjugation of the process of law to the minatory reflexes of the daring and audacious violators of law. Reiterating the imputations made in the writ petition vis-à-vis the role of the state instrumentalities and the police in particular, as well as the culpability of respondent Nos. 4 & 5, Mr. Sodhi has argued that entrustment of the investigation to the CBI would not prejudice the respondents in any manner and that it would secure the obligatory requirement of a fair, effective and impartial inquisition, more particularly when witnesses of the incident are still available, but need to be appropriately identified, interrogated and assured of their safety to disclose the truth. Mr. Sodhi has argued that it is a fit case for the judiciary to intervene both in the individual as well as social perspectives in order to discourage such villainous outrages and sustain a just and law abiding citizenry. He rested his submissions on the following decisions: Zahira Habibulla H. Sheikh and Anr. vs. State of Gujarat and Ors. (2004)4 SCC 158, State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others (2010)3 SCC 571, Babubhai vs. State of Gujarat and others (2010)12 SCC 254, Mohd. Hussain alias Julfikar Ali vs. State (Government of NCT of Delhi) (2012)9 SCC 408, Bharati Tamang vs. Union of India and others (2013)15 SCC 578.

33. Mr. Misra, learned senior counsel representing the State not only dismissed emphatically the allegations of tacit involvement of the administration and the police in the design and execution of the offence as alleged in order to eliminate the appellant's husband, he argued as well, that the decision to handover the investigation of the case to the CBI does not only neuter such accusation, but also establish irrefutably the bona fide of the state government.

34. The learned senior counsel pointed out that in absence of any allegation whatsoever of the appellant against the investigation conducted by the CBCID, her persistent requests for transferring the investigation to the CBI is fallacious and unsustainable in law. Mr. Misra has maintained that not only the insistence for the transfer of the investigation to the CBI, in the face of successive probes made by the state police and the CBCID is uncalled for in absence of any deficiency or defect decipherable therein, it is impermissible as well, at this belated stage. Mr. Misra has argued that even otherwise such a transfer of investigation even if allowed, it would be fatal for the prosecution as at this distant point of time not only the witnesses would be unavailable and even if available they would decline to testify. The learned senior counsel has urged as well that as the trial is pending and the respondent Nos. 4 & 5 and other accused persons are subjected thereto, the relief sought for by

the appellant is prematured as well.

35. Mr. Goel representing respondent Nos. 4 & 5 while supplementing the assertions made on behalf of the State has submitted that the introduction of a fresh investigating agency, at this stage is not only impermissible in law but also would have the potential of protracting the trial further, in violation of the fundamental right to life of his respondents as guaranteed by Article 21 of the Constitution of India. Reiterating that the facts do not demonstrate a faulty or incomplete investigation by either the state police or the CBCID, the learned counsel has maintained that the appellant has resorted to this delaying tactics to promote her election prospects and political future. While underlining that the writ petition filed by the Investigating Officer Parsuram Singh alleging pressure on him by his higher ups to misdirect the investigation, has meanwhile been dismissed on merits, the learned senior counsel argued that the averments even if accepted to be true, did in fact vouchsafe the fairness and impartiality of the investigation conducted by the state police. Mr. Goel has urged that as the trial is pending, any intervention of this Court to induct another investigating agency on the basis of deductions made from the testimony of hostile witnesses, would amount to unwarranted interference with the trial which would be highly prejudicial to the parties. Reiterating that the present initiative of the appellant is clearly a political vendetta against the private respondents being her rivals, the learned counsel has asserted that there is neither any exceptional circumstance nor any justifiable reason in law to direct a reinvestigation by the CBI when the trial is underway. He dismissed the authorities cited on behalf of the appellant as inapplicable to the facts of the case, being rendered in the textual facts disclosing vitiation of trials. The following decisions were cited to buttress the above pleas:

> State of West Bengal and others vs. Sampat Lal and others (1985) 1 SCC 317;
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> Vineet Narain and others vs. Union of India and another (1996) 2 SCC 199 Union of India and others vs. Sushil Kumar Modi and others (1998) 8 SCC 661, Common Cause, A Registered Society vs. Unon of India and others (1999)6SCC Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others vs. Sahngoo Ram Arya and Anr. (2002)5 SCC 521 State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors. (supra) Disha vs. State of Gujarat & Ors. (2011)13 SCC 337 K.V. Rajendran vs. Superintendent of Police, CBCID South Zone, Chennai and Ors. (2013) 12 SCC 480 Hussainara Khatoon & others vs. Home Secretary, State of Bihar (1980)1 SCC Abdul Rehman Antulay and others vs. R.S. Nayak and another (1992)1SCC 225 P. Ramachandra Rao vs. State of Karnataka (2002)4SCC 578 Vakil Prasad Singh vs. State of Bihar (2009)3SCC 355 Kashmeri Devi vs. Delhi Administration and another 1988 (Suppl.) SCC 482 Gudalure M.J. Cherian and others vs. Union of India and others (1992) 1 SCC Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary vs. State of Punjab and others (1994)1SCC 616 Inder Singh vs. State of Punjab and others (1994)6SCC 275 Rubabbuddin Sheikh vs. State of Gujarat and others (2010) 2 SCC 200

36. Ms. Mohana representing the Union of India endorsed its decision of not entrusting the investigation to the CBI and contended that the facts and circumstances did not convincibly

demonstrate any flaw in the investigation undertaken by the state police or the CBCID. In support of this assertion, she relied upon the decisions of this Court in Committee for Protection of Democratic Rights (supra), K. Saravanan Karuppasamy and another vs. State of Tamil Nadu and Ors. (2014) (10) SCC 406, Sudipta Lenka vs. State of Odisha and Others. (2014) 11 SCC 527.

37. We have extended our anxious consideration to the competing pleadings and the arguments advanced. The gory incident in which the appellant's husband was brutally gunned down in a public place is indeed harrowing and alarmingly distressful. Not only the daring act in the broad day light is condemnable, it sent shock waves among the living community, wrecking the temper and rhythm of social life and created a fear psychosis and a scary feeling of lack of security in all concerned. It is a matter of record that at the relevant time, the appellant's husband was a sitting member of the State Legislative Assembly, having defeated the respondent No. 5, in the bye-elections held a few months prior to his murder. That at that time, the respondent No. 4, brother of respondent No. 5 was a member of the Parliament is also an admitted fact. In the FIR filed by the appellant soon after the incident, she named the respondent No. 5 to be the assailant who had shot Raju Pal in the head, being accompanied by others. She has alleged therein that respondent No. 4 was the brain behind the operation and thus was involved in the conspiracy to eliminate her husband. As referred to hereinabove, it has been averred by her as well that soon after the bye-elections in which her husband had been elected, a number of unsuccessful attempts had been made on him for which he genuinely sustained an apprehension regarding his safety and security. That he had repeatedly aired his apprehension to that effect and had sought remedial measures before the appropriate authorities, has been pleaded as well. Immediately after the assassination of her husband, the appellant as well as the President of the Bahujan Samaj Party, to which he belonged, also had submitted a spate of representations before the Governor, Chief Minister, Chief Secretary and other authorities of the State requesting for entrustment of the investigation of the case to the CBI as the state police, as perceived by them, was found to be patently partisan in their initiatives and approach in connection therewith. The allegations by the appellant about laconical autopsy of the dead body without any notice to her or any other family member of the deceased, refusal to return the dead body to them and hasty and secret cremation thereof to remove the otherwise tell tale clues to identify the assassins have been candidly made. As these imputations have been denied by the respondents in their pleadings, we refrain from further dilating thereon. Similarly, both sides have also alleged registration and pendency of criminal cases against the appellant's husband, respondents No. 4 and 5 involving offences amongst others of murder, attempt to murder etc.

38. Noticeably, however, the appellant since after the murder of her husband had been persistently appealing for investigation by any impartial agency i.e. CBI, expressing without reservation, her doubts about the genuineness and bona fide of the probe being conducted by the state police. She has even alleged the involvement of the state administration and the police in the conspiracy to eliminate her husband and to have remained a mute and inert onlooker at the time of and after the open diabolic and barbaric assassination of her husband. It is a matter of record that at the time of the incident, the Samajwadi Party was in power.

39. It was in this backdrop of events, that the appellant being appalled and exasperated by the perceived failure of the state authorities to affirmatively respond to her request for entrusting the

investigation to the CBI and the casual measurers of the state police in that regard that she approached this Court with an application under Article 32 of the Constitution of India for its remedial intervention. By order dated 3.5.2006, however, this Court, as prayed for on her behalf, did permit her to file a writ petition before the High Court seeking an appropriate writ or a direction for transferring the investigation of the case to the CBI. To reiterate, during the pendency of the writ petition that was filed within the time allowed by this Court, on 15.5.2007, the State Government (by then the Bahujan Samaj Party had come to power) decided to hand over the investigation to the CBI and communicated its decision to the Central Government for the needful. The High Court, being apprised of this development, the writ petition was disposed of on 11.7.2007 as in its comprehension, the relief sought for by the appellant had been granted in view of this decision of the state government. As the response of the Central Government was awaited, the appellant on the same very date filed an application for restoration of the writ petition and as the records reveal, the said application was kept pending by the High Court and after the refusal of the Central Government to accede to the request made by the state government on 18.1.2008, the writ petition was finally disposed of on merits by the decision impugned hereunder.

40. Though a period of seven years intervened, a perusal of the record of the writ proceedings, however, does not demonstrate any deliberate inaction or laches on the part of the appellant to enter a finding of intentional delay on her part to procrastinate the same for extracting any benefit to her therefrom.

41. This Court, while disposing of the earlier writ petition being W.P. (Crl.) Nos. 118-119 of 2005 on 3.5.2006 had stayed the trial of the case which by then had commenced following the submission of the charge-sheet by the state police on 8.4.2005. During the pendency of the writ petition before the High Court and consequent upon the refusal by the Central Government to refer the investigation to the CBI, the state government entrusted the exercise to CBCID, which on completion of the drill submitted three charge-sheets on 10.1.2009, 4.4.2009 and 24.12.2009. A conjoint reading of the charge-sheets submitted by the two investigating agencies would thus reveal that along with respondent Nos. 4 and 5, several other persons have been arraigned as accused adding to the list of those challenged by the state police. Further, CBCID has also added to the list of witnesses in its charge-sheets. Corresponding to these final reports submitted by the investigating agencies, Sessions Trial Case Nos. 13/2006, 14/2006, 15/2006 and 24/2006 are pending for analogous trial, the proceedings whereof being presently stayed pursuant to the order dated 3.5.2006 of this Court in W.P. (Crl.) Nos. 118-119 of 2005 and thereafter the order dated 13.2.2015 passed in the present appeal.

42. In the course of the arguments, attention of this Court has been drawn to the additional documents filed on behalf of the appellant pertaining to the trial so far held and also the parallel criminal cases registered on the accusation of threats being extended to the eye witnesses of the incident. On a cursory perusal of the testimony of witnesses so far examined at the trial, it prima facie appears therefrom that though all of them were present at that time at the spot when the offence was committed, none of them has identified the accused persons standing trial including the respondent Nos. 4 and 5 to be/or among the assailants. Some of the witnesses, who were also injured in the incident, after being declared hostile by the prosecution, have even resiled from their

statements under Section 161 of the Code made before the police. Significantly, however the witnesses have admitted the occurrence in which the appellant's husband had been shot at, following which he had succumbed to the injuries sustained.

43. The additional documents also include a judgment rendered by the trial court on 2.11.2011 in Sessions Trial No. 749 of 2009, State vs. Ram Chandra Yadav @ Fauji registered on the complaint filed by one Mahendra Patel @ Budhi Lal Patel, who in his cross-examination, retraced from the charge levelled by him against respondent No. 4 and his companions of having threatened and assaulted him so as to pressurize him to change his statement made before the police, lest he and his family be murdered. The complainant Mahendra Patel also was an eye witness to the incident of 25.1.2005 and had been driving the Scorpio vehicle which was following the one in which Raju Pal was travelling. The trial court acquitted the accused mainly in view of the retraction of the statement of the complainant and lack of evidence in support of the charge. Having regard to the present stage of the trial, for obvious reasons, we do not wish to offer any comment on any aspect relatable thereto. It is however noteworthy that some other witnesses of the prosecution including the appellant are yet to be examined by the prosecution.

44. Be that as it may, the issue that demands to be addressed is the necessity or otherwise of further investigation or reinvestigation by the CBI in view of the overall conspectus of facts and the state of law. Admittedly, more than a decade has elapsed in between, and in the interregnum, successive investigations have been conducted by the state police and CBCID, following which four charge-sheets have been submitted arraigning respondent Nos. 4 and 5 and others as accused with the supporting material gathered in course of the probe to prove the charge levelled against them. It is noticeable as well that the appellant as well has not highlighted any defect, omission or deficiency in the investigation conducted by the CBCID, likely to adversely impact upon the outcome of the trial therefor.

45. These notwithstanding, it would still be, in our opinion, imperative to examine as to whether for doing complete justice and enforcing the fundamental rights guaranteed by the Constitution, the relief of entrustment of the investigation of the case again to the CBI is grantable or not on its own merits. This is chiefly, in view of the intrepid, audacious and fiendish intrusion of human right by the assassins in broad day light at a public place, by defiantly violating all canons of law and making a mockery of the administrative regime entrusted with the responsibility to maintain an orderly society. The terrorising impact of this incident and the barbaric manner of execution of the offence is also a factor which impels this Court to undertake such a scrutiny in the interest of public safety, a paramount duty entrusted to all the institutions of governance of our democratic polity. This is more so, where a grisly and intimidatory crime impacting upon the public confidence in the justice delivery system as a whole is involved, so as to ensure that such outrageous do not go incautiously, unfathomed and unpunished.

46. The authorities cited at the Bar present the precedential spectrum of the curial jurisprudence in the context of entrustment of investigation to an instrumentality other than the local/state police agencies.

47. In Zahira Habibulla H. Sheikh (supra), commonly adverted to as "Best Bakery Case" on the theme, the aspects of perfunctory and partisan role of the investigating agency as well as improper conduct of the trial involved by the public prosecutor surfaced for scrutiny. Though the trial was over resulting in acquittal of the accused persons mainly as the purported eye- witnesses had resiled from the statements made by them under Section 161 Cr.P.C. (hereinafter to be referred to as "the Code") during the investigation coupled with faulty and biased investigation and laconical trial, this Court responded to the request for a fresh trial made by the State and one of the eye-witnesses, Zahira. It was pleaded inter alia that when a large number of witnesses have turned hostile, it ought to raise a reasonable suspicion that they were being threatened or coerced. Apart from alleging that the prosecution did not take steps to protect the star witnesses, it was contended as well that the trial court had failed to exercise its power under Section 311 of the Code to recall and reexamine them as their testimony was essential to unearth the truth and record a just decision in the case.

48. The casual decision of the public prosecutor to drop a material witness, a measure approved by the trial court also came to be criticized. The lapse of non-examination of the injured eye-witnesses, who were kept away from the trial, was also highlighted. It was alleged that the partisan witnesses had been examined to favour the accused persons resulting in a denial of fair trial.

49. This Court in the above disquieting backdrop, did underline that discovery, vindication and establishment of truth were the avowed purposes underlying the existence of the courts of justice. Apart from indicating that the principles of a fair trial permeate the common law in both civil and criminal contexts, this Court underscored the necessity of a delicate judicial balancing of the competing interests in a criminal trial - the interests of the accused and the public and to a great extent that too of the victim, at the same time not losing the sight of public interest involved in the prosecution of persons who commit offences.

50. It was propounded that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the state and the prosecuting agency was authoritatively stated. This Court observed that the interests of the society are not to be treated completely with disdain and as persona non grata. It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community.

51. While highlighting the courts' overriding duty to maintain public confidence in the administration of justice, it was enunciated as well, that they cannot turn a blind eye to vexatious and oppressive conduct, discernable in relation to the proceedings. That the principles of rule of law and due process are closely linked with human rights protection, guaranteeing a fair trial, primarily aimed at ascertaining the truth, was stated. It was held as well, that the society at large and the

victims or their family members and relatives have an inbuilt right to be dealt fairly in a criminal trial and the denial thereof is as much injustice to the accused as to the victim and the society. Dwelling upon the uncompromising significance and the worth of witnesses in the perspective of a fair trial, the following revealing comments of Bentham were extracted in paragraph 41:

> "41. "Witnesses", as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political count and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice to become ultimate causalities. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slot process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert the trial getting tainted and derailed and truth becoming a causality. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose the truth without any fear of being haunted by those against whom he has deposed."

52. It was underlined that if ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interest of justice do not get incapacitated in the sense of making the proceedings before the courts, mere mock trials. While elucidating that a court ought to exercise its powers under Section 311 of the Code and Section 165 of the Evidence Act judicially and with circumspection, it was held that such invocation ought to be only to subserve the cause of justice and the public interest by eliciting evidence in aid of a just decision and to uphold the truth. It was proclaimed that though justice is depicted to be blindfolded, it is only a veil not to see who the party before it is, while pronouncing judgment on the cause brought before it by enforcing the law and administer justice and not to ignore or turn the attention away from the truth of the cause or the lis before it, in disregard of its duty to prevent miscarriage of justice. That any indifference, inaction or

lethargy displayed in protecting the right of an ordinary citizen, more particularly when a grievance is expressed against the mighty administration, would erode the public faith in the judicial system was underlined. It was highlighted that the courts exist to do justice to the persons who are affected and therefore they cannot afford to get swayed by the abstract technicalities and close their eyes to the factors which need to be positively probed and noticed. The following statement in Jennison vs. Baker, (1972) 1 All ER 997 was recalled:

> "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

53. It was declared that the courts have to ensure that the accused persons are punished and that the might or the authority of the state is not used to shield themselves and their men and it should be ensured that they do not wield such powers, which under the Constitution has to be held only in trust for the public and society at large. That if any deficiency in investigation or prosecution is visible or can be perceived by lifting the veil covering such deficiency, the courts have to deal with the same with an iron hand appropriately within the framework of law was underlined.

54. Referring to its earlier decision in Karnel Singh vs. State of M.P. (1995) 5 SCC 518, it was reiterated that in a case of a defective investigation, the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 of the Code or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It recalled as well its observations in Ram Bihari Yadav v. State of Bihar & others, (1998) 4 SCC 517 that the courts are installed for justice oriented mission and thus if a negligent investigation or omissions or lapses due to perfunctory investigation are not effectively rectified, the faith and confidence of the people would be shaken in the law enforcing agency and also in the institution devised for administration of justice.

55. Though, as referred to hereinabove, trial was completed and the accused persons were acquitted, in the textual facts, this Court did direct retrial as prayed for, to avoid subversion of the justice delivery system and ordered the investigating agency or those supervising the investigation to act in terms of Section 173(8) of the Code as the circumstances would so warrant.

56. The observations and the propositions, though made in the backdrop of a request for retrial, those pertaining to the essentiality of a fair and complete investigation and trial as well as the solemn duty of the courts to ensure the discernment of truth to administer even handed justice as institutions of trust of public faith and confidence, are in our estimate, of universal application and binding effect, transcending the factual settings of a case. An adverse deduction vis-à-vis the quality of investigation and/a trial trivializing the cause of justice, is however the essential pre-requisite, for such remedial intervention by way of further investigation, reinvestigation, additional evidence, retrial etc. to be made objectively but assuredly for the furtherance of the salutary objectives of the justice dispensing system as contemplated in law, it being of paramount pre-eminence.

57. This Court in Mohd. Hussain @ Julifikar Ali (supra) was also seized of a situation imploring for a retrial following the termination of the prosecution principally on account of delay, when juxtaposed

to the demand for justice in cases involving grave crimes affecting the society at large. The offence involved was under Sections 302/307/120B IPC and Sections 3 and 4 of the Explosive Substances Act, 1908 and had perpetrated an explosion in a passenger carrying bus. This Court amongst others recalled its observations in Kartar Singh vs. State of Punjab (1994) 3 SCC 569 that while dispensing justice, the courts should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear ones and above all the collective interest of the community and the safety of the nation, so that the public, may not lose faith in the system of judicial administration and indulge in private retribution. It however also took note of its ruling in State of M.P. vs. Bhooraji and others (2001) 7 SCC 679 that a de novo trial should be the last resort and that too only when such a course becomes desperately indispensable and should be limited to the extreme exigency to avert a failure of justice. It noted with approval the observation in P. Ramachandra Rao (supra) that it is neither advisable nor feasible nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings and that the criminal courts are not obliged to terminate the trial or criminal proceedings merely on account of lapse of time. That such time limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings or to terminate the same and acquit or discharge the accused, was emphatically underlined. Reference too was made of the decision in Zahira Habibulla H. Sheikh (supra).

58. Vis-à-vis the notions of 'speedy trial' and 'fair trial' as the integral constituents of Article 21 of the Constitution of India, it was observed that there was a qualitative difference between the right to speedy trial and the right of the accused to fair trial. While pointing out that unlike the accused's right of fair trial, the deprivation of the right to speedy trial does not per se prejudice the accused in defending himself, it was proclaimed that mere lapse of several years since the commencement of prosecution by itself, would not justify the discontinuance of prosecution or dismissal of the indictment. It was stated in no uncertain terms, that the factors concerning the accused's right to speedy trial have to be counterpoised with the impact of the crime on the society and the confidence of the people in the judicial system. It was noted that speedy trial secures rights to an accused but it does not preclude the rights of public justice. It was exposited that the nature and gravity of the crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former, the long delay in conclusion of trial should not operate against the continuation of the prosecution but if the right of the accused in the facts and circumstances of the case and the exigencies or situation leans the balance in his favour, the prosecution may be brought to end. It was held that the guiding factor for a retrial essentially has to be the demand of justice. It was emphasized that while protecting the right of an accused to fair trial and due process of law, the interest of the public at large who seek protection of law ought not to be altogether overlooked so much so, that it results in loss of hope in the legal system. Retrial in the facts of the case was ordered.

59. The content and scope of the power under Article 226 of the Constitution of India to direct investigation by the CBI in a cognizable offence, alleged to have taken place within the territorial jurisdiction of the State, without the consent of the State Government fell for scrutiny of this Court in Committee for Protection of Democratic Rights (supra).

60. While examining the issue in the context of the power of judicial review as embedded in the constitutional scheme, it was held that no Act of Parliament could exclude or curtail the powers of the constitutional courts in that regard. Reiterating, that the power of judicial review, is an integral part of the basic structure of the Constitution, it was underlined that the same was essential to give a pragmatic content to the objectives of the Constitution embodied in Part III and other parts thereof. In elaboration, it was held that Article 21 of the Constitution not only takes within its fold, the enforcement of the rights of the accused but also the rights of the victim. It was predicated that the State has a duty to enforce the human rights of the citizens providing for fair and impartial investigation, against any person accused of commission of any cognizable offence. Referring to Section 6 of the Delhi Special Police Establishment Act, 1946, it was ruled that any restriction imposed thereby could not be construed to be one on the powers of the constitutional courts and thus cannot be taken away or curtailed or diluted thereby. While proclaiming the supervening powers of the High Court under Article 226 of the Constitution of India to direct, entrustment of the investigation to the CBI as in the case involved, this Court sounded a caveat as well that the very plentitude of such power inheres a great caution in its exercise and though no inflexible guidelines can be laid down in that regard, the same has to be invoked sparingly, cautiously and in exceptional situation when it becomes necessary to provide credibility and to instill confidence in the investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. (emphasis supplied)

61. The facts in Bharati Tamang (supra) seeking de novo investigation, present somewhat an identical fact situation. The appellant's husband, President of a political party was brutally murdered in public view and in the presence of police and security personnel by the supporters of the rival party. The investigation into the sordid incident had been completed. Alleging that the probe initially held by the state police and thereafter by the CID and by the CBI were faulty, the prayer for de novo inquisition was made. Imputation of attempts by the prosecution to suppress the truth in spite of the fact that the assailants were identified and named in the FIR and that the incident was in effectuation of a deep rooted conspiracy and preceded by previous threats were made. The CBI in its pleadings, inter alia, cited, prevailing law and order situation in the town;

abscondence of most of the accused persons;

murder of its informants;

fear psychosis in the locality and resultant want of support from the local public as hindrances to its investigation.

62. On behalf of the appellant, accusation of tardy prosecution of the case, and free and open movement of the key accused persons in the city avoiding arrest were made as well. The plea of the impleaded accused persons that the appellant after the demise of her husband had initiated the writ proceedings for political gain was rejected. Their contention based on Section 319 of the Code that in course of the trial, on availability of sufficient evidence, any person not being an accused could be ordered to be tried, was also negated. The propositions expounded in Zahira Habibulla H. Sheikh

(supra) qua the duty of the court to ensure fair investigation by remedying the deficiencies and defaults therein so as to bring forth full and material facts to prevent miscarriage of justice were reiterated. It was concluded that when the courts find extra ordinary or exceptional circumstances rendering reinvestigation imperative, in such eventualities even de novo investigation can be ordered. While ruling that in case of discernable deficiency in investigation or prosecution, the courts have to deal with the same with iron hand appropriately with the framework of law, it was underlined that in appropriate cases even, if charge-sheet was filed, it was open for the High Court and also this Court to direct investigation of the case to be handed over to CBI or to any other agency or to direct investigation de novo in order to do complete justice, in the facts of the case.

63. Noticing that certain transcripts of some conversations relating to the incident intercepted by the CBI were awaiting analysis by the forensic agency as a part of the investigation, this Court in the ultimate, transferred the case beyond the territorial limits of the district involved and directed that the probe be carried out by the CBI to be monitored by its Joint Director as named. It was ordered that the CBI would ensure that all required evidence is gathered by leaving no stone unturned, so that all accused involved in the offence are brought for trial to be dealt with in accordance with law. The trial that had meanwhile commenced was kept in abeyance pending conclusion of the further investigation by the CBI and the submission of report before the transferred court as ordered. Not only in issuing these directions this Court revisited the imperatives bearing on the duty of the Court to ensure that criminal prosecution is carried out effectively and the perpetrators of the crime are duly punished by the appropriate court of law, it noticed as well some of the factual features of the case namely;

The deceased at his death was the President of a political party.

There was a deep rooted rivalry between his party and another party.

The deceased had organized a meeting of his party on the date of the incident.

Police personnel were present at the place of the occurrence. Though present, no report thereof was registered immediately thereafter.

Wide coverage of the incident by the media.

Availability of the transcripts of the intercepted conversations of some of the accused persons and the office bearers of the rival political party.

64. This Court in Babubhai (supra) while examining the scope of Section 173(8) of the Code, did recall its observations in Manu Sharma vs. State (NCT of Delhi), (2010) 6 SCC 1, that it is not only the responsibility of the investigating agency but as well as of the courts to ensure, that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. It underlined, that the equally enforceable canon of criminal law is that high responsibility lies upon the investigating agency, not to conduct an investigation in a tainted and unfair manner and that such a drill should not prima facie be indicative of a biased mind and every effort should be made to

bring the guilty to law de hors his position and influence in the society as nobody stands above law. It propounded that the word "ordinarily" applied under Section 173(8) of the Code, did attest that if the investigation is unfair and deliberately incomplete and has been done in a manner with an object of helping a party, the court may direct normally for further investigation, and not for reinvestigation. It was however added as a sequiter that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, and if it is considered necessary, may direct for de novo investigation as well. It was observed that if an investigation has not been conducted fairly, the resultant charge sheet would be invalid. It was held as well, that such investigation would ultimately prove to be a precursor of miscarriage of criminal justice and the court in such a contingency would be left to guess or conjecture, as the whole truth would not be forthcoming to it. It was held that fair investigation is a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and thus the investigating agency cannot be permitted to conduct an investigation in a tainted or biased manner. It was emphasised that where non-interference of the court would ultimately result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation.

65. In Rubabbuddin Sheikh (supra) as well, though as many as eight action reports had been submitted by the state police on the incident of reported murder of the brother of the petitioner in a fake encounter and the disappearance of his sister-in-law in which, amongst other, allegedly the anti-terrorist squad of the state police was involved, a proceeding was initiated on the basis of a letter addressed to the Chief Justice of India seeking a direction for investigation by the CBI. In view of the rival contentions advanced as to the permissibility or otherwise of the transfer of the investigation as prayed for, this Court on an in-depth audit of the decisions rendered by it, did negate the plea that subsequent to the submission of a charge sheet, the court is not empowered in any case whatsoever to handover the investigation to an independent agency like CBI. It was held, having regard to the parameters outlined by the two sets of authorities on the issue, that such a course however would be permissible in an appropriate case where the facts bearing thereon would demonstrate lack of proper investigation and vitiations thereof by factual discrepancies endorsing such a deduction. The aspect that accusations in the contextual facts were directed against the local police personnel in which high police officials of the state had been made accused also did weigh with the determination. The view taken in Gudalure M.J. Cherian (supra) that though ordinarily, after the investigation is completed by the police and charge sheet is submitted to the court, the investigation ought not to be re-opened by entrusting the same to a specialized agency like CBI, nevertheless in a given situation, to do justice between the parties and to instill confidence in the public mind it may be warranted, was noted with approval. The overriding imperative of permitting transfer of investigation to the CBI was thus acknowledged to be in the advancement of the cause of justice and to instill confidence in the mind of the victims as well as the public.

66. The renderings in Hussainara Khatoon (supra), A.R. Antulay (supra), P. Ramachandra Rao (supra), Vakil Prasad (supra), Sampat Lal (supra), Babubhai (supra) and Common Cause (supra) have been pressed into service on behalf of the respondent Nos. 4 & 5 to highlight the demand of speedy trial as a mandate of the fundamental right to life guaranteed under Article 21 of the Constitution of India. While emphasizing that speedy trial is the essence of criminal justice and any delay constitutes denial thereof, it has been propounded therein, that any procedure which does not

ensure a quick trial cannot be regarded as reasonable, fair or just and would fly in the face of such cherished constitutional promise. While observing that the right to speedy trial encompasses all the stages namely; investigation, inquiry, trial, appeal, revision and retrial, it was however noted in P. Ramachandra Rao (supra) that no guidelines for a speedy trial can be intended to be applied as hard rules or a straight jacket formula and that their application would depend on the fact situation of each case, which is difficult to foresee, so much so that no generalization can be made. It was expounded as well in the Sampat Lal (supra) that in spite of the procedure laid down in the relevant provisions of the Criminal Procedure Code, a court, in a given case, if is satisfied that the statutory agency has not functioned in an effective way or that the circumstances are such that it may reasonably be presumed or inferred that it may not be able to conduct the investigation fairly or impartially, the court may reasonably consider to supplement the procedure.

67. While recalling its observation in State of Bihar and another vs. JAC Saldanha and others (1980) 1 SCC 554, that on a cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8) of the Code and that the adjudicatory function of the judiciary commences, thus delineating the well demarcated functions of crime detection and adjudication, this Court did recognize a residuary jurisdiction to give directions to the investigating agency, if satisfied that the requirements of law were not being complied with and that the investigation was not being conducted properly or with due haste and promptitude. It was reiterated in Babubhai (supra) that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, may direct investigation de novo, if it is satisfied that non-interference would ultimately result in failure of justice. In such an eventuality endorsement of the investigation to an independent agency to make a fresh probe may be well merited. That not only fair trial but fair investigation is also a part of the constitutional rights guaranteed under Articles 20 & 21 of the Constitution of India and therefore investigation ought to be fair, transparent and judicious, was reemphasised. The expression “ordinarily” as used in Section 173(8) of the Code was noted again to rule that in exceptional circumstances however, in order to prevent miscarriage of criminal justice, a court may still direct investigation de novo. The above postulations being strikingly common in all these decisions, do pervade the fabric and the content thereof and thus dilation of individual facts has been avoided.

68. That the extra-ordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to the CBI to conduct investigation must be exercised with great caution was underlined in Committee for Protection of Democractic Rights (supra) as adverted to hereinabove. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

69. In Kashmeri Devi (supra), being satisfied, in the prevailing facts and circumstances that effort had been made to protect and shield the guilty officers of the police who allegedly had perpetrated the offence of murder involved, this Court directed the Magistrate concerned before whom the

charge sheet had been submitted, to exercise its power under Section 173(8) of Code to direct the CBI for proper and thorough investigation of the case and to submit an additional charge-sheet in accordance with law.

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

71. This Court dealing with the proposition that once a charge sheet is filed, it would then be exclusively in the domain of the competent court to deal with the case on merits in accordance with law and that the monitoring of the investigation would cease in all respects, held, in particular, in K.V. Rajendran (supra) in reiteration of the enunciations aforestated, that though it is ordinarily so, the power of transferring investigation in rare and exceptional cases for the purpose of doing justice between the parties and to instill confidence in the public mind, can be made invoking its constitutional power available, to ensure a fair, honest and complete investigation.

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

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

74. The judicially propounded propositions on the aspects of essentiality and justifiability for assignment of further investigation or reinvestigation to an independent investigating agency like the CBI, whether or not the probe into a criminal offence by the local/state police is pending or completed, irrespective of as well, the pendency of the resultant trial have concretized over the years, applicability whereof however is contingent on the factual setting involved and the

desideratum for vigilant, sensitised and evenhanded justice to the parties.

75. The exhaustive references of the citations seemingly repetitive though, assuredly attest the conceptual consisting in the expositions and enunciations on the issue highlighting the cause of justice as the ultimate determinant for the course to be adopted.

76. A "speedy trial", albeit the essence of the fundamental right to life entrenched in the Article 21 of the Constitution of India has a companion in concept in "fair trial", both being in alienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the state police notwithstanding, has to be essentially invoked if the statutory agency already in-charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's 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 reinvestigation, 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 analyzed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

77. As every social order is governed by the rule of law, the justice dispensing system cannot afford any compromise in the discharge of its sanctified role of administering justice on the basis of the real facts and in accordance with law. This is indispensable, in order to retain and stabilize the faith and confidence of the public in general in the justice delivery institutions as envisioned by the Constitution.

78. As succinctly summarised by this Court in Committee for Protection of Democratic Right (supra), the extra ordinary power of the Constitutional Courts in directing the CBI to conduct investigation in a case must be exercised sparingly, cautiously and in exceptional situations, when it is necessary to provide credibility and instill confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. In our comprehension, each of the determinants is consummate and independent by itself to justify the exercise of such power and is not inter-dependent on each other.

79. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

80. Any criminal offence is one against the society at large casting an onerous responsibility on the state, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, the plentitude and content thereof can neither be enervated nor moderated by any legislation.

81. The expression “fair and proper investigation” in criminal jurisprudence was held by this Court in Vinay Tyagi vs Irshad Ali @ Deepak and others (2013)5SCC 762 to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

82. Prior thereto, in the same vein, it was ruled in Samaj Parivartan Samudaya and others vs. State of Karnataka and others (2012)7SCC 407 that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

83. That the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial was reiterated by this Court in Rattiram and others vs. State of Madhya Pradesh (2012)4SCC 516. It was postulated that the criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is the perception of a trial from the view point of criminal as well as the victim when judged in the social context.

84. This Court in National Human Rights Commission vs. State of Gujarat and others (2009)6SCC 767 did proclaim unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are raison d'etre for their existence.

85. That the preeminence of truth is the guiding star in a judicial process forming the foundation of justice had been aptly propounded by this Court in Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack De Sequeira (dead) through L.Rs (2012)5SCC 370. It was ruled that the entire judicial system had been created only to discern and find out the real truth and that the Judges at all levels have to seriously engage themselves in the journey of discovering the same. Emphasizing that the quest for truth is the mandate of law and indeed the bounden duty of the courts, it was observed that the justice system will acquire credibility only when the people will be convinced that justice is based on the foundation of the truth. While referring with approval, the revealing observation made in Ritesh Tewari and another vs. State of U.P. and others (2010)10SCC 677 that every trial is voyage of discovery in which truth is the quest, the following passage of Lord Denning scripted in Jones vs. National Coal Board (1957) 2 All ER 155(CA) was extracted in affirmation:

> "...It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth."

86. A strain of piognance and disquiet over the insensitive approach of the court concerned in the textual facts in the context of fair trial in the following observations of this Court in Vinod Kumar vs. State of Punjab (2015)3 SCC 220 sounds an awakening caveat:

> "The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious trial Judge to ignore the statutory command, not recognize "the felt necessities of time" and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracizing the concept that a civilized and orderly society thrives on the rule of law which includes "fair trial" for the accused as well as the prosecution."

87. The observations though made in the backdrop of repeated adjournments granted by the trial court, chiefly for cross-examination of a witness resulting in the delay of the proceedings, the concern expressed is of overarching relevance demanding sentient attention and remedial response. The poser indeed stems from the indispensable interface of the orderly existence of the society founded on the rule of law and "fair trial" for the accused as well as the prosecution. That the duty of the Court while conducting a trial is to be guarded by the mandate of law, conceptual fairness and above all its sacrosanct role to arrive at the truth on the basis of material brought on record, was reiterated.

88. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in Manohar Lal Sharma vs. Principal Secretary and others (2014)2SCC 532 that the aim of investigation is ultimately

to search for truth and to bring the offendor to book. The observations of Lord Denning in his rendering in "The Due Process of Law" First Indian Reprint 1993 page 102 were alluded to at page 553 as under:

> "In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.
>
> The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."
>
> 89. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsized in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation – Basic Perspectives by Paul B. Weston and Renneth M. Wells:
>
> "Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.
>
> Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognizing that even a minor contradiction or error may destroy confidence in their investigation.
>
> The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major

deterrent of crime – the certainty that a criminal will be discovered, arrested and convicted.

90. Reverting to the facts, the gruesome and sordid assassination of the appellant's husband in broad day light under the public gaze is not in dispute. As a consequence of the murderous assault with firearms and indiscriminate use thereof, Raju Pal along with two others fell to the bullets. Records seem to suggest that even prior to the incident, attempts were made on his life but he survived the same in view of the timely intervention of the security guards. That representations were made by him seeking additional protection and that after his murder, the appellant and the party higher ups of Raju Pal had persistently appealed, amongst others, to the Governor and the Chief Minister of the State for handing over the investigation to the CBI is also testified by the records.

91. Pleaded imputations of the appellant include deliberate, uncalled for and mysterious replacement of the earlier sets of personal security officers/gunners of the deceased, presence of high police officials near the place of occurrence, indifference on the part of the state police to act with alacrity, hasty conduct of the post mortem of the dead body and cremation thereof without handing over the same to the appellant or any of his relatives, political pressure on the investigating agency to distort the course of the probe and to screen the incriminating evidence collected etc. One of the Investigating Officers in his writ petition, questioning his suspension had also pleaded on oath about the unexpected and unwarranted interference of the higher ups in the department to withhold evidence gathered in course of the investigation underway. Though nothing decisively turn on these accusations, the same having been refuted by the respondents, the fact remains that the appellant's husband had been mercilessly killed by a group of gun wielding assailants in a public place, in the open view of all concerned. Such a daring and desperate act did have a terrorizing impact on the society sending shock waves amongst all cross sections of the community and received wide coverage by the media.

The incident understandably is not one to be lightly glossed over or trivialized.

92. The trial on the basis of the investigation completed hitherto by the state police and the CBCID has remained stayed by the orders of this Court. Prior thereto however as per the materials laid before this Court, several eye-witnesses cited by the investigating agency have been examined. As the trial is pending for the present, we refrain from commenting on their testimony, except that they seem to have resiled from their statements under Section 161 of the Code. Having regard to the manner in which the offence had been committed, it is incomprehensible that there was no eye-witness to the incident. Thus, if the persons cited as eye-witnesses by the investigating agency retract from their version made before the police, then either they have been wrongly projected as eye-witnesses or they have for right or wrong reasons resiled from their earlier narration. In both the eventualities, in our opinion, the investigation has to be faulted as inefficient, incomplete and incautious with the inevitable consequence of failure of the prosecution in the case in hand. Such a

fall out also spells a dismal failure of the state machinery as a pivotal stake holder in the process of justice dispensation to protect and assure the witnesses of their safety and security so to fearlessly testify the truth. We would hasten to add that these observations are by no means suggestive of the complicity of the respondent Nos. 4 & 5 and other accused persons standing trial. These, to reiterate, are farthest from even any presumptive hypothesis of their involvement in the offence for the present and are engendered by the concern of possible failure of justice. If the investigating agencies, as involved, have not been able to identify and present eye-witnesses of the incident who would under all circumstance religiously and devotedly abide by their version about the same, the shortcoming apparently is in the probe made, sadly reflecting on the competence, commitment and efficacy of such agencies. The very fact that this Court had earlier stayed the trial while permitting the appellant to approach the High Court with the relief for assignment of the investigation to the CBI does signify its expectation that the High Court would adopt a sensitive insight into the issues raised and appropriately address the same. The pendency of the trial and the examination of the witnesses so far made thus in our estimate is not a disarming factor for this Court, to consider the necessity of entrusting the investigation to the CBI even at this stage. To reiterate, a decision in this regard has to be induced and impelled by the cause of justice viewed in the overall facts and circumstances attendant on the incident. No inflexible norm or guideline is either available or feasible.

93. The present factual conspectus leaves one with a choice either to let the ongoing trial casually drift towards its conclusion with the possibility of offence going unpunished or to embark upon investigation belated though, spurred by the intervening developments, to unravel the truth, irrespective of the persons involved. As it is, every offence is a crime against the society and is unpardonable, yet there are some species of ghastly, revolting and villainous violations of the invaluable right to life which leave all sensible and right minded persons of the society shell shocked and traumatized in body and soul. Such incidents mercifully rare though are indeed exceptionally agonizing, eliciting resentful condemnation of all and thus warrant an extra-ordinary attention for adequate remedial initiatives to prevent their recurrence. In our considered view, even if such incidents otherwise diabolical and horrendous do not precipitate, national or international ramifications, these undoubtedly transcend beyond the confines of individual tragedies and militatively impact upon the society's civilized existence. If the cause of complete justice and protection of human rights are the situational demands in such contingencies, order for further investigation or reinvestigation, even by an impartial agency as the CBI ought to be a peremptory measure in the overwhelming cause of justice.

94. Judged in these perspectives, we are of the firm opinion that notwithstanding the pendency of the trial, and the availability of the power of the courts below under Sections 311 and 391 of the Code read with Section 165 of the Evidence Act, it is of overwhelming and imperative necessity that to rule out any possibility of denial of justice to the parties and more importantly to instill and sustain the confidence of the community at large, the CBI ought to be directed to undertake a de novo investigation in the incident. We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the

quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding farseeing an inevitable end signaling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance.

95. In the wake of the above, we are unhesitatingly inclined to entrust the CBI, with the task of undertaking a de novo investigation in the incident of murder of Raju Pal, the husband of the appellant as afore- mentioned. Though a plea has been raised on behalf of the respondent Nos. 4 and 5 in particular that this incident has been exploited by the appellant for her political gains, we are left unpersuaded thereby, as her achievements in public life must have been fashioned by very many ponderable as well as imponderable factors. In any view of the matter, such a contention, in our view, is of no consequence or relevance. We would, however make it abundantly clear that this direction for entrustment of the investigation to the CBI anew has been made in view of the exceptional features of the case as overwhelmingly demonstrated by attendant facts and circumstances indispensably necessitating the same.

96. We are aware that in the meantime, over a decade has passed. The call of justice however demands, that the CBI in spite of the constraints that it may face in view of the time lag, would make all possible endeavours to disenter the truth through its effective and competent investigation and submit the same before the trial court, as early as possible preferably within the period of six months from today. The clarion call of justice expects a befitting response from the country's premier and distinguished investigating agency. On receipt of the report by the CBI only, the trial court would proceed therewith in accordance with law and conduct and conclude the trial expeditiously and not later than six months. The interim order staying the ongoing trial is hereby made absolute.

97. The appeal is thus allowed in the above terms.

.....J. (V. GOPALA GOWDA) .....J. (AMITAVA ROY) NEW DELHI;

JANUARY 22, 2016.