

# Central Bureau Of Investigation vs State Of Haryana And Others on 24 January, 2025

Neutral Citation No:=2025:PHHC:010508

CRM-M-5650-2022 and connected case 1

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

204 (I) CRM-M-5650-2022  
Reserved on: 19.11.2024  
Date of Pronouncement : January 24, 2025

CENTRAL BUREAU OF INVESTIGATION - PETITIONER

V/S

STATE OF HARYANA AND OTHERS - RESPONDENTS

(II) CRM-M-10268-2021

BARUN CHANDRA THAKUR - PETITIONER

V/S

STATE OF HARYANA AND OTHERS - RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Prateek Gupta, Advocate  
for the petitioner (in CRM-M-5650-2022) and  
for the respondent No.2 (in CRM-M-10268-2021).

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Mr. S.S. Narula, Advocate  
for the respondents No.5 to 8 (in CRM-M-5650-2022) and  
for the respondents No.3 to 6 (in CRM-M-10268-2021).

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KULDEEP TIWARI, J.

1. Both these petitions encompass common question(s) of law, besides encompassing common prayer(s), therefore, they are amenable for being decided through a common verdict. For the sake of convenience, the facts are being extracted from CRM-M-5650-2022.

2. The gravamen of the lis, as encapsulated in the instant 1 of 49 Neutral Citation No:=2025:PHHC:010508 petition, is centered upon the validity of the impugned orders dated 19.02.2021, which are enclosed with the instant petition respectively as Annexures P1 to P4, and whereby, the sanction for prosecution of the respondents No.5 to 8, in Case No. RC 08(S)/2017/SC-III/CBI/New Delhi dated 22.09.2017, as sought by the C.B.I. under Section 197 Cr.P.C., has been declined by the respondent No.1-State of Haryana.

3. Succinctly stated, the present case derives its origin from the infamous incident of Ryan International School, Gurugram, wherein, a student of 2nd class [a seven year old boy] [hereinafter referred to as the 'minor deceased'] was found murdered in the school premises. Initially, the investigation was conducted by the Haryana Police and they arrested one Ashok Kumar [a Conductor employed in the School Bus at the relevant time] as the accused behind the murder. Since there was a lot of hue and cry and the matter was highlighted throughout media, and, even the father of the minor deceased approached the Hon'ble Supreme Court for transfer of investigation, therefore, the State of Haryana issued a gazette notification, thus transferring the investigation of this case to the C.B.I. The investigation of the C.B.I. culminated in a juvenile student of the same school, namely, Bholu [imaginary name given by the trial Court to conceal the identity of the juvenile student] [hereinafter referred to as the 'C.C.L.'] being the sole culprit behind murder of the minor deceased. Moreover, post conducting a through investigation, the C.B.I. also reached a conclusion that, in fact, Ashok Kumar was falsely framed in the murder and he is totally innocent. The further shocking revelations, as 2 of 49 Neutral Citation No:=2025:PHHC:010508 emerged from the investigation conducted by the C.B.I. are that, the Special Investigation Team [constituted by Commissioner of Police, Gurugram] not only created false documents, but, also pressurized the material witnesses to depose against Ashok Kumar. Consequently, a supplementary report was filed by the C.B.I., thereby requesting to accord sanction under Section 197 Cr.P.C. for prosecution of some of the members of the Special Investigation Team [i.e. respondents No.5 to 8]. This request was declined by the respondent No.1 through rendering the impugned orders. Therefore, fetching grievance from the impugned orders, the C.B.I. has instituted the instant petition(s).

4. Since the present case has a chequered history, therefore, it is deemed imperative to dive deep and make a studied survey of the factual matrix of the case.

5. On 08.09.2017, at around 08:00 a.m., the minor deceased was found in a pool of blood outside the boys' washroom situated on ground floor of the Ryan International School, Gurugram. While being taken to a private hospital by the school authorities, he succumbed to his injuries. Consequently, his father made a complaint to the police, whereupon, FIR No.250 dated 08.09.2017 was registered under Section 302 IPC and Section 25 of the Arms Act, at P.S. Bhondi, against unknown person.

6. On 08.09.2017 itself, on the directions of the respondents No.5 and 6, S.I. Shamsher Singh (respondent No.7) arrested one Ashok 3 of 49 Neutral Citation No:=2025:PHHC:010508 Kumar, who was employed as a Conductor in the School Bus, for committing murder of the minor deceased. Ashok Kumar was subjected to police remand for three days, and thereupon, he was remanded to judicial custody. During the course of investigation, the Special Investigation Team also recorded

the confessional statement of Ashok Kumar on 08.09.2017, wherein, he confessed to have, before committing murder, attempted to sexually assault the minor deceased. Resultantly, offence under Section 12 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act') was added in the present case.

7. The investigating agency also arrested two more persons/officer bearers of the School concerned, namely, Francis Thomas and Jayesh Thomas, for offence punishable under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act of 2015').

8. The complainant/petitioner (in CRM-M-10268-2021) was not at all convinced by the theory propounded by the investigating agency behind murder of the minor deceased, therefore, he instituted one S.L.P. before the Hon'ble Supreme Court, thereby seeking transfer of investigation to the C.B.I. In the meantime, considering the outcry of the minor deceased's family and concern of public all over the nation, the Government of Haryana, vide notification dated 17.09.2017, recommended to transfer the investigation to the C.B.I. The Central 4 of 49 Neutral Citation No:=2025:PHHC:010508 Government also, vide the counter notification dated 22.09.2017, granted its consent and transferred the investigation of the present case to the C.B.I.

9. Post its becoming seized with the investigation of the present case, the C.B.I. re-registered the present FIR as Case No. RC 08(S)/2017/SC-III/CBI/New Delhi dated 22.09.2017. After conducting thorough investigation, the C.B.I. found the C.C.L., who was about 16½ years of age at the time of commission of offence, to be involved in the murder of the minor deceased, whereas, the involvement of Ashok Kumar was completely ruled out. Consequently, the C.C.L. was arrested on 07.11.2017 at 23:30 hours. Although the C.B.I. filed the Charge Sheet dated 05.02.2018 after completion of investigation, however, the scope of further investigation under Section 173(8) Cr.P.C. was kept open to investigate the false implication of Ashok Kumar by the investigating agency/S.I.T., and, to find out the lapse on the part of the school authorities.

10. On the basis of the charge sheet as well as the evidence placed on record, the learned Additional Sessions Judge/Children's Court concerned drew the order dated 28.02.2018, thereby discharging Ashok Kumar from the charges of murder of the minor deceased. Moreover, further investigation within the sphere of Section 173(8) Cr.P.C. was also conducted by the C.B.I. to examine the false implication of Ashok Kumar by the State investigating agency. This brought to the fore the act of the 5 of 49 Neutral Citation No:=2025:PHHC:010508 respondents No.5 to 8, inasmuch as, it surfaced that, these respondents created false and fabricated evidence with intent to procure conviction of capital punishment for Ashok Kumar. Consequently, the C.B.I., after disclosing the entire incriminatory material/evidence collected against the respondents No.5 to 8, through its reports submitted on 19.08.2020 and 30.09.2020, requested the State Government to accord sanction for prosecution, under Section 197 Cr.P.C., of the said respondents.

11. In the meantime, on 06.01.2021, the C.B.I. also filed the supplementary charge sheet against the respondents No.5 to 8, for the offence punishable under Section 120-B read with Sections 166-A, 167, 330 and 506 of the IPC, before the Special Judicial Magistrate, C.B.I. Haryana at Panchkula.

12. Since the State Government, instead of adhering to the guidelines issued by the Hon'ble Supreme Court in "Vineet Narain and others Vs. Union of India and another", (1998) 1 SCC 226, sat over the matter and did not make any decision on the request made by C.B.I. for grant of sanction for prosecution under Section 197 Cr.P.C., therefore, the trial Court was propelled to observe that, the sanctioning authority is having a dogged determination not to grant sanction to prosecute the accused/respondents concerned owing to the sense of camaraderie. It was also observed that, the sanctioning authority appeared to be frightened of the fact that, the order of declining sanction may fall short of facing the 6 of 49 Neutral Citation No:=2025:PHHC:010508 judicial scrutiny. The relevant observations embodied in the interim order dated 02.02.2021 are reproduced hereunder:-

"In view of the facts and circumstances coupled with a legal position enumerated above, at this stage, this court is not inclined to opt for the deemed sanction to prosecute the accused by virtue of the acts of omission on the part of the authority who is to grant the requisite sanction for prosecution. Needless to say that this option may or may not be explore at some subsequent stage. It is indeed dismal state of affairs on the part of the authority saddled with the task of granting/declining the sanction to prosecute the accused, that so far as the decision whatsoever upon the request of the Investigating Agency has been ducked by it despite being approached time again by none other than the premier Investigating Agency of the country. If any statutory duty is assigned to a public servant/particular authority, the acts of omission/commission by that authority are squarely culpable, especially when the valuable rights of the victims of offences attributed to the accused are at stake. Unfortunately, this court has been pushed against the wall in making a candid observation against the authority tasked with the exercise of sanction to prosecute the accused that at an appropriate stage, appropriate proceedings under the law of the land may be initiated against that authority. It has been rightly said that "be you ever so high, the law is above you". Obviously, the sanctioning authority appears to be quite oblivious of this well entrenched maxin holding the field in our criminal jurisprudence. What makes the situation more pathetic, is the fact of sleeping over the request of the premier Investigating Agency of the country like a 'Kumbhakama' instead of discharging its statutory duties/functions without any delay/demure. On the face of it, sleeping over the request of the Investigating Agency appears to be for the simple reason that the sanctioning authority is having a dogged determination not to grant sanction to prosecute the

7 of 49 Neutral Citation No:=2025:PHHC:010508 accused owing to the sense of camaraderie and at the same time, it appear to be frightened of the fact that the order of declining the request of the Investigating Agency may fall short of facing the judicial scrutiny."

13. Post the recording of the hereinabove reproduced observations, the sanctioning authority woke up from slumber and passed the impugned orders, thereby declining to grant sanction for prosecution of the respondents No.5 to 8. In this way, the validity of the impugned orders is assailed by filing the instant petition(s). SUBMISSIONS OF THE LEARNED COUNSEL FOR THE C.B.I./PETITIONER (IN CRM-M-5650-2022)

14. The learned counsel representing the C.B.I. addressed oral arguments and furnished his written submissions as well. By drawing attention of this Court towards the incriminatory material, as collected by the C.B.I. against the respondents No.5 to 8, he claimed the impugned orders to be suffering from the vice of biasedness and non application of mind. He submitted that, the material produced before the sanctioning authority was not at all considered while declining to grant sanction for prosecution of the respondents No.5 to 8. Moreover, the eyewitness account as well as the scientific evidence, which vividly destroys the case of the State investigating agency against Ashok Kumar, was not given due weightage by the sanctioning authority. Not only this, the highhandedness of the respondents No.5 to 8 is apparent from the fact that, in order to falsely implicate an innocent person, totally malicious investigation was conducted by the said respondents. Strangely enough, the provisions of 8 of 49 Neutral Citation No:=2025:PHHC:010508 POCSO Act were also added by the investigating agency, whereas, the post-mortem report clearly voices that no sexual assault had taken place.

15. The learned counsel for the C.B.I. further submitted that, the investigation qua the role of Ashok Kumar forms a part of the investigation conducted in respect of the C.C.L., therefore, the evidence(s) collected are intertwined, intrinsic and not capable of being segregated so as to make the offence committed by the respondents No.5 to 8 being tried as separate offence.

16. Proceeding further, the learned counsel for the C.B.I. made dependence upon the statements of various material witnesses, as recorded under Section 164 Cr.P.C. by the C.B.I., to submit that, the said witnesses clearly pointed out that the respondents No.5 to 8 indulged in creation of false evidence in order to falsely implicate Ashok Kumar. Moreover, by referring to the notifications dated 17.09.2017 and 22.09.2017, as issued under Sections 5 and 6 of the Delhi Special Police Establishment Act, 1946, respectively by the State Government and by the Central Government, he submitted that the C.B.I. is vested with jurisdiction to conduct investigation of all the attempts, conspiracies in relation to or in connection with the offences mentioned above and/or offences committed and arising from the same transaction, and that, this clearly reflects the intent of the authorities to cover also those offences, which are discovered in the course of investigation.

17. The learned counsel for the C.B.I. next argued that, the further investigation conducted qua the role of the respondents No.5 to 8 9 of 49 Neutral Citation No:=2025:PHHC:010508 is in line with the notifications (supra). The provision of Section 223(d) Cr.P.C. prescribes for joint trial of different accused for separate offences committed in the course of same transaction. Therefore, the investigation conducted by the C.B.I. is well within the jurisdiction extended by way of State/Central Government notification.

18. Concluding his submissions, the learned counsel for the C.B.I. submitted that, even if for the sake of arguments it is accepted that, the respondents No.5 to 8 are to be tried in a separate offence, yet the same would be at the instance of the C.B.I. and in the same trial as that of Section 302 IPC, in terms of Section 223(d) Cr.P.C. and also in terms of the interconnected nature of evidence.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE COMPLAINANT/PETITIONER (IN CRM-M-10268-2021)**

19. Although none caused representation on behalf of the complainant/petitioner during the course of arguments, however, written synopsis/arguments were furnished by the petitioner's counsel on the subsequent day, which are taken on record.

20. It is submitted in the written synopsis that, in the given facts and circumstances of the case, the C.B.I. is not at all required to seek sanction for prosecution of the respondents No.5 to 8, inasmuch as, the offence alleged to have been committed by the said respondents cannot be said to be committed in the discharge of their official duties. To lend vigour to this submission, reliance is placed upon the judgment rendered by the Hon'ble Supreme Court in "Shadakshari Vs. State of Karnataka", 10 of 49 Neutral Citation No:=2025:PHHC:010508 2024 LiveLaw (SC) 42.

21. The next submission made in the written synopsis is that, despite there being no sanction for prosecution, yet the Magistrate is required to apply his mind under Section 200 Cr.P.C. to take cognizance or not on the chargesheet filed by the C.B.I., on the ground as to whether sanction is required or not in the given facts and circumstances of the case.

22. It is also submitted in the written synopsis that, the further investigation carried out by the C.B.I. under Section 173(8) Cr.P.C. is neither beyond the scope of the notifications (supra), nor beyond the main offence, as ancillary trial of offence leading to the main case was only investigated. In this regard, reliance is placed upon the verdict rendered in "Mahmood Ali and others Vs. State of U.P.", 2023 INSC 684.

23. Finally, it is submitted in the written synopsis that, the inherent powers of this Court under Section 482 Cr.P.C. are vast and the same can be exercised to prevent abuse of the legal process and to secure justice. Moreover, reliance is also placed upon the verdicts rendered in "South Indian Bank Limited Vs. Directorate of Enforcement" (Neutral Citation: 2024:KER:53873), "M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others", [(1998) 5 SCC 749], and, "Vijay Madanlal Choudhary and others Vs. Union of India and others", [2022 SCC Online SC 929].

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS NO.5 TO 8 (IN CRM-M-5650-2022) 11 of 49 Neutral Citation No:=2025:PHHC:010508

24. The learned counsel representing the respondents No.5 to 8 vociferously opposed the submissions made by his contesting counsels and submitted that, the C.B.I. does not have any locus standi to file the instant petition inasmuch as the impugned orders declining sanction for prosecution are administrative in nature. In his defending the validity of the impugned orders, he submitted that, there is no illegality or perversity therein, rather the same have been passed after due application of mind to the entire evidence.

25. The learned counsel for the respondents No.5 to 8 further argued that, the offence alleged to have been committed by the respondents No.5 to 8 was committed within the territorial jurisdiction of Gurugram Police, therefore, the jurisdiction in this regard vests specifically with the Gurugram Police. The C.B.I., being a central agency, cannot usurp the jurisdiction of the Gurugram Police until and unless there is a specific entrustment through a valid notification. Moreover, the C.B.I. was

entrusted only with the investigation of the murder of the minor deceased and not the investigation of false implication of Ashok Kumar, which is a completely separate and distinct matter having no connection with the main offence. Consequently, during the course of investigation into the murder of the minor deceased, if the C.B.I. found any other evidence regarding innocence of Ashok Kumar, it ought to have recommended action to the state investigating agency, rather than itself carrying out investigation in that regard also, which is otherwise beyond its jurisdiction. Not only this, Ashok Kumar, against whom the offence is 12 of 49 Neutral Citation No:=2025:PHHC:010508 alleged to have been committed by the respondents No.5 to 8, has not yet made any complaint against them before any authority.

26. Resting his arguments, the learned counsel for the respondents No.5 to 8 submitted that, the impugned orders could have been challenged only by way of filing a petition under Articles 226/227 of the Constitution of India and the present petition under Section 482 Cr.P.C is not maintainable.

#### SUBMISSIONS OF THE LEARNED STATE COUNSEL

27. Mr. Rajesh Gaur, Addl. A.G., Haryana, also made a strenuous attempt to protect the legality of the impugned orders and in his attempt to do so, he submitted that the protection and immunity conferred upon official(s) must be construed broadly to assess the nature of the act under scrutiny. Such an assessment encompasses scenarios involving mistaken identity for the action undertaken based on genuine suspicion. Therefore, immunity provision must be interpreted with a wider margin of discretionary powers vested in the sanctioning authority so as to safeguard onerous discharge of official duties. The sanction for prosecution should be granted only upon a thorough and objective evaluation and not only on speculative and arbitrary grounds.

28. While continuing with his arguments, Mr. Rajesh Gaur submitted that, there is no evidence on record to substantiate that there was any criminal intent or mens rea on the part of the members of the S.I.T. for falsely implicating any individual. The sanctioning authority took into account the broader context including the possibility that the 13 of 49 Neutral Citation No:=2025:PHHC:010508 police official(s)' action was the result of error in judgment in assessing the situation, or, was based on genuine suspicion. Moreover, all the relevant material was duly considered by the sanctioning authority and it remains undisputed that the sanctioning authority applied its mind properly, as is evident from the findings embodied in the impugned orders.

29. Finally, Mr. Rajesh Gaur submitted that, although the State Government has declined to grant sanction for prosecution of respondents No.5 to 8, however, disciplinary proceedings were initiated against them for their failing to properly discharge their duties and for their not apprehending the actual offender. Moreover, a chargesheet dated 29.03.2022, under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016, was issued to the respondent No.6 in this regard and a regular departmental inquiry is continually ongoing. EVALUATING THE LEGALITY OF THE IMPUGNED ORDERS

30. This Court has heard at length the rival submissions of the contesting litigants and also made a thorough perusal of the record, and in aftermath thereof, this Court is coaxed to formulate the

following issues for adjudication of lis.

(i) Whether the impugned orders, nature whereof is primarily administrative, can be subjected to judicial review?

(ii) Whether the impugned orders are banked upon consideration and application of mind to the material 14 of 49 Neutral Citation No:=2025:PHHC:010508 placed before the author thereof by the C.B.I.?

(iii) Whether the C.B.I. was vested with the jurisdiction to, apart from conducting investigation as regards murder of the minor deceased, investigate the offence(s) allegedly committed by the respondents No.5 to 8 ? If the answer is in affirmative, then it is also imperative for this Court to adjudicate the issue whether the respondents No.5 to 8 can be tried jointly with the C.C.L. [main accused of murder]?

31. For penning down an affirmative opinion upon the first issue, this Court deems it imperative to refer to the judgment rendered by the Hon'ble Supreme Court in "State of Punjab and another Vs. Mohammed Iqbal Bhatti", (2009) 17 Supreme Court Cases 92, inasmuch as, it has been categorically held therein that, the legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the superior courts. The relevant paragraphs of this judgment are reproduced hereinafter:-

"6. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity 15 of 49 Neutral Citation No:=2025:PHHC:010508 of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts.

7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See Mansukhlal Vithaldas Chauhan v. State of



Gujarat]. [(1997) 7 SCC 622]. The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority. [See State v. Dr. R.C. Anand] [(2004) 4 SCC 615]."

32. Also, in the verdict rendered in "Mansukhlal Vithaldas Chauhan Vs. State of Gujarat", (1997) 7 SCC 622, the Hon'ble Supreme Court has, while concurring with the ratio of law laid down in "Sterling Computers Ltd. Vs. M&N Publications Ltd.", (1993) 1 SCC 445, held that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process. The relevant paragraph of Mansukhlal Vithaldas Chauhan's verdict (*supra*) is reproduced hereunder:-

16 of 49 Neutral Citation No:=2025:PHHC:010508 "28. In *Sterling Computers Ltd. vs. M & N Publications Ltd.*, AIR 1966 SC 51, it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process? In this case, the following passage from Professor Wade's *Administrative Law* was relied upon :

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts *ultra vires*. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended."

33. In view of the above, this Court can delve upon the exercise of gauging the legality of the impugned orders, whereby, sanction for prosecution of respondents No.5 to 8 has been declined.

34. Insofar as the second issue is concerned, it is a trite law that, refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane to the purpose of arriving at the conclusion would vitiate an administrative order and certainly requires judicial review. Gainful reference in this regard can be made to the verdict rendered in "*M.P. Special Police Establishment Vs. State of M.P. and Others*", (2004) 8 Supreme Court Cases 788, relevant paragraphs whereof are reproduced hereunder:-

17 of 49 Neutral Citation No:=2025:PHHC:010508 "29. The Office of the Lokayukta was held by a former Judge of this Court. It is difficult to assume that the said High Authority would give a report without any material whatsoever. We, however, do not intend to lay down any law in this behalf. Each case may be judged on its own merits. In this case, however, we are satisfied that the Lokayukta made a report upon taking into consideration the materials which were placed or received by him. When the Council of Ministers takes a decision in exercise of its jurisdiction it must act fairly and reasonably. It must not only act within the four corners of the statute but also for

effectuating the purpose and object for which the statute has been enacted. Respondent No. 4 in each appeal are to be prosecuted under the Prevention of Corruption Act wherefor no order of sanction is required to be obtained. A sanction was asked for and granted only in relation to an offence under Section 120-B of the Penal Code. It is now trite that it may not be possible in a given case even to prove conspiracy by direct evidence. It was for the Court to arrive at the conclusion as regard commission of the offence of conspiracy upon the material placed on record of the case during trial which would include the oral testimonies of the witnesses. Such a relevant consideration apparently was absent in the mind the Council of Ministers when it passed an order refusing to grant sanction. It is now well-settled that refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane to the purpose of arriving at the conclusion would vitiate an administrative order. In this case, on the material disclosed by the report of the Lokayukta it could not have been concluded, at the prima facie stage, that no case was made out.

32. If, on these facts and circumstances, the Governor cannot act in his own discretion there would be a complete breakdown of the rule of law inasmuch as it would then be open for 18 of 49 Neutral Citation No:=2025:PHHC:010508 Governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out. If, in cases where prima facie case is clearly made out, sanction to prosecute high functionaries is refused or withheld, democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted."

35. The Hon'ble Supreme Court has also expressed a similar view in "State of Karnataka Vs. Ameerjan", (2007) 11 Supreme Court Cases 273, by holding that, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. The relevant paragraphs of this verdict are reproduced as under:-

"9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report

19 of 49 Neutral Citation No:=2025:PHHC:010508 has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

36. Furthermore, in Mansukhlal Vithaldas Chauhan's verdict (supra), it has also been held that, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. The validity of sanction depends on the applicability of mind by the sanctioning authority to the facts of the case, as also the material and evidence collected during investigation. The relevant paragraphs of this verdict are reproduced hereunder:-

"18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were 20 of 49 Neutral Citation No:=2025:PHHC:010508 considered by the sanctioning authority. (See also Jaswant Singh vs. State of Punjab, AIR 1958 SC 124; State of Bihar vs. P.P. Sharma, 1991 Cri. L.J. 1438).

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

37. On the anvil of the hereinabove discussed legal propositions of law concerning the issue No.(ii), this Court proceeds to adjudicate the legality of the impugned orders.

38. What emerges to the fore from scrutiny of the record is that, the C.B.I. had, in its report(s)/request letter(s) submitted to the sanctioning authority for grant of sanction for prosecution of the respondents No.5 to 8, made complete disclosure regarding: (i) wilful lapse in the investigation conducted by members of the S.I.T., besides 21 of 49 Neutral Citation No:=2025:PHHC:010508 creation of false documents to falsely implicate Ashok Kumar; (ii) the incriminatory evidence collected against the C.C.L.; and (iii) the exculpatory evidence collected against Ashok Kumar. The disclosures (supra), as made by the C.B.I. in tabulated form, are reproduced hereinafter:-

"9.16 During the arrest of conductor Ashok Kumar, the allegations/grounds framed against him by Investigation Team of Gurugram Police for implicating him as accused and the reasons/evidence revealed through CBI investigation which not substantiated the allegation are as follows:-

S. No. Allegations/Grounds Evidence to dis-prove the allegations a. Ashok Kumar had taken the knife CBI investigation revealed that there was from the tool box of Bus bearing no such knife kept in the tool box of school registration No. HR 55 Y 5626 of bus. The driver of the school bus Vidhyalaya plying on Route No. 7 registration No. HR 55 Y 5626 Shri with one Saurab as bus driver. Saurabh Raghav in which conductor The said knife having rust on it Ashok Kumar was working has stated that was lying in the tool box of the there was no knife in the tool box of the aforesaid bus and accused Ashok school bus as he cleaned the tool box of Kumar picked up the same for the bus before two days of the incident. taking it to his residence after investigation also revealed that Shri cleaning rust from it. Narender Singh Khattana, the then SHO of Bhondsi Police Station pressurized him on 08.09.2017 in the school premises to admit that knife was available in the tool box of the bus. It also revealed that Shri Narender Singh Khattana, the then SHO of Bhondsi Police Station told him "ki seedhe seehe batayga ya pit kar batayga"

but he did not succumb to the pressure of aforesaid Police Officer. The statement of Saurab was recorded u/s 164 Cr.P.C.

b. Ashok Kumar became excited in CBI Investigation revealed that conductor the morning of 08.09.2017 by Ashok Kumar had never touched any touching the school children at student/children of the school while the time of their boarding and de- boarding and de-boarding them. No such boarding. complaint was ever made against him by any student or school teacher travelling in the same bus. This fact is corroborated by Ms. Swathi Satsangi, Ms. Har Simran Kaur, Ms. Preeti Malik and Ms. Poorva Chopra.

c. Accused Ashok Kumar kept the CBI investigation revealed that there was 22 of 49 Neutral Citation No:=2025:PHHC:010508 knife in his pocket and went to no knife kept in the tool box of

the school ground floor boy's bus. Driver Saurab Ragav has confirmed washroom/toilet of Vidhyalaya the fact and he also stated that he cleaned from the wooden gate of the the tool box two days prior to the incident. school meant for school students. He also stated that Inspector Narender Singh Khattana pressurized him on 08.09.2017 by saying "ki seedhe seedhe batayga ya pit kar batayga" in the school premises to admit that knife was available in the tool box of the bus. His statement was recorded u/s 161 Cr.P.C and 164 of Cr.P.C.

d. Conductor Ashok Kumar opened CBI investigation revealed that no sexual nicker of Master Prince and tried assault was made with Master Prince. Ms. to sexually assault him but the Mini Gopal, the Nurse of the school child started shouting and he revealed that she had accompanied the stopped the child from shouting injured Prince to the hospital along with by keeping his hand on the mouth school in-charge Jayesh Thomas and of the child and in the meantime Conductor Manoj Kumar in a Wagon-R he discharged. Car. She further revealed that while going to hospital she only removed the shoes, Shocks of the child Prince and opened the belt & button of knickers of Prince in order to make the child relax. Until she removed the belt of minor deceased, the trouser/nicker of Master Prince was intact. Further, witness/staff of the School Ms Sowmya Shiju also revealed that the belt, nicker and clothes were intact while he was placed inside the Wagon-R Car.

Further there is no symptoms of sexual assault mentioned in Post-Mortem Certificate. This rules out the theory of sexual assault made by conductor Ashok Kumar. The statement of Mini Gopal and Conductor Manoj was recorded U/s 161 and 164 Cr.P.C.

e. He committed the murder of CBI investigation revealed that Conductor Master Price on 08.09.2017 as Ashok Kumar was not inside the the child started shouting and in washroom while the minor deceased order to save his job & reputation master Prince entered into the toilet. he committed the murder of • Two children named Ayush Gupta and Master Prince. Krish Yadav revealed that they have seen Conductor Ashok Kumar entering the washroom while they were changing the Karate Dress. CCTV Analysis revealed that the two children exited from the washroom at 7.33.52 after changing the dress.

- During this time Master Prince didn't enter into the school building.

23 of 49 Neutral Citation No:=2025:PHHC:010508 • As per the version of Teacher Anju Dudeja, Harpal Mali, Gajraj Driver and Aditya Yadav - conductor Ashok Kumar came from the water cooler side while called for help to lift the injured Master Prince.

- During CBI investigation, Driver Gajraj revealed that he saw conductor Ashok Kumar near water cooler. The entry of Gajraj in Cam-1 is 07:38:26. If it takes 10 Seconds for him to reach water cooler then the time is 07:38:36.

- At 7.38.36 Ashok Kumar is present near water cooler whereas the minor deceased Master Prince entered washroom gallery along with school bag, he is visible in Cam-2 at 07:38:03 - entering into washroom gallery with school bag.

- In the meantime, Harpali Mali also while going to toilet has seen Conductor Ashok Kumar and Gajraj near the water cooler.
- Harpal Mali saw the accused Bholu coming out the toilet while he was entering into the toilet. The elder class student/Bholu has informed him that a small boy inside the toilet room is injured and directed him to attend him immediately.
- Another Student of the same School Ayushi Yadav also has seen accused Bholu coming out of the toilet at about 07:39:22.
- The accused boy Bholu has been identified while going with minor deceased Prince in cam-2 at 07:37:35 and Master Prince is visible in Cam-2 at 07:38:03 - returning and entering into washroom gallery with school bag.

Exactly after 20 Seconds i.e at 7:38:23 accused Bholu enters to washroom Gallery.

- Then Bholu is seen coming out of the toilet and reports to Harpal Mali that Master Prince is injured.

Thus CBI investigation ruled out the 24 of 49 Neutral Citation No:=2025:PHHC:010508 involvement of Conductor Ashok Kumar in the murder of Master prince based on the CCTV Footages, Circumstantial evidences and Scientifical/Medical evidences.

f. Blood of Master Prince comes on CBI investigation revealed that there was the hands, clothes of Conductor no blood stains/blood particles found in Ashok Kumar while slitting the the taps and pipes fitted inside the throat of Master Prince. He threw washroom and near water cooler. the knife in the toilet sheet and came out, washed his hands, • The Scientific Assistant Jothi Rati also mouth and removed blood stains has opined in her report that no blood on the water taps installed in the particles found in the taps and pipes fitted gallery near the water cooler. (meant for washing hands as wash basin) in the washroom. She has informed the fact to ACP Birem Singh and Inspector Narender Khattana on 08.09.2017 itself. • CFSL, New Delhi also opined that there is no blood particles found in the taps and pipes fitted inside the washroom and near water cooler.

- As per the theory built up by Gurugram Police that Conductor Ashok Kumar washed his hands in the washbasin inside the washroom/near water cooler- then the stain of blood particle should have been detected during the Forensic Analysis.

g. Ashok Kumar shirt was having CBI investigation revealed that witness blood stains/blood when he was Harpal Mali was pressurized by seen in the toilet by Harpal Mali Investigation Team of Gurugram Police to on 08.09.2017. say that he saw conductor Ashok Kumar inside the boy's toilet where the murder took place. The statement of Harpal Mali was recorded u/s 164 Cr.P.C.

If Harpal Mali has seen Ashok Kumar inside the toilet, then the elder student/accused Bholu also must have seen him indie. But Bholu has not seen anyone inside the washroom.

Teacher Anju Judeja, Driver Gajraj have revealed that there was no blood stain in the shirt of Conductor Ashok Kumar until he lifted the child.

9.16 During the course of CBI investigation, it revealed that the following documents were falsely prepared by SI Shri Shamsher Singh and Inspector Shri 25 of 49 Neutral Citation No:=2025:PHHC:010508 Narender Khattana on the direct supervision of ACP Shri Birem Singh against conductor Ashok Kumar are as follows:-

S. Name and details Evidence revealed during CBI No. of the documents investigation to prove the manipulation made by investigation team, Gurugram Police to falsely implicate Conductor Ashok Kumar I Document - (i) Allegation-1:- Fact found during CBI 1/CD dt. 08.9.17. SI Shamsher Singh Investigation:-

received the complaint Complaint was actually given by from Barun Chander Barun Chandra Tahakur at City Thakur at Artemis Police Station, Gurugram at about Hospital at 2.20 pm and 3 pm. forwarded the same to Bhondsi P.S through 1. Statement of Barun Chandra Constable Bheem Singh. Thakur.

2. Statement of Sh. Sujit Bharathi.
3. Statement of Sh. Mahavir Mishra.
4. Statement of ASI Sachiv Kumar.
5. Statement of Constable Rajinder.

Statement of Constable Bheem Singh.

(ii) Allegation-2:- Fact found during Investigation:-

SI Shamsher Singh At 2.20 pm Ms. Jyoth Singh was visited Artemis Hospital present at Ryan School, but SI along with Ms. Jyothi Shamsher Singh was not present Singh at 2.20 pm and along with her.

from Artemis Hospital with her came to the • 161 and 164 CrPC statement of Scene of Crime. Ms. Jyothi Singh, Scientific Assistant.

- CCTV Footages of School dated 08.09.17.
- Mobile Tower Location of SI Shamsher Singh.

(iii) Allegation-3:- Fact found during CBI Investigation:-

SI Shamsher Singh has Actually SI Shamsher Singh visited mentioned that SHO SOC by night only whereas SHO Insp Narinder Khattana Insp Narinder Singh Khattana reached SOC after his reached SOC in the morning at visit. about 10:48:18 hrs.

26 of 49 Neutral Citation No:=2025:PHHC:010508 • Statements of Police Officers DCP Simardeep Singh, DCP Sumit Kumar, DCP Ashok Bakshi, ACP Birem Singh.

- 161 and 164 CrPC statement of Ms. Jyothi Singh, Scientific Assistant.
- CCTV Footages of School dated 08.09.17.
- CDR and Tower Location of Inspector Narender Khattana.
- CDR and Tower Location of SI Shamsher Singh.

(iv) Allegation-4:- Fact found during CBI Investigation:-

SI Shamsher Singh has SI Shamsher visited the SOC at mentioned that Rough night only .

Site plan of SOC was prepared by him and • Statements of Police Officers after that only DCP DCP Simardeep Singh, DCP Sumit Traffic Simardeep Singh, Kumar, DCP Ashok Bakshi, ACP DCP Ashok Bakshi, Birem Singh.

DCP Sumit and ACP Sohna Sh. Birem • 161 and 164 Cr.PC statement of reached the SOC. Ms. Jyothi Singh, Scientific Assistant.

- CCTV Footages of School dated 08.09.17.
- CDR and Tower Location of Inspector Narender Khattana.
- CDR and Tower Location of SI Shamsher Singh.

(v) Allegation-5:- Fact found during CBI Investigation:-

SI Shamsher Singh has Actually the Crime Scene Visit mentioned that he Report was collected from her received the Crime office on 09.09.2017 evening. Scene Report from Ms. Jyothi at Vidyalaya • 161 and 164 □□□□statement of itself. Ms. Jyothi Singh, Scientific Assistant.

(vi) Allegation-6:- Fact found during □□□Investigation:-

SI Shamsher Singh has Conductor Ashok Kumar was not mentioned in Case Diary present at SOC while preparing that Ashok Kumar has disclosure statement. He was



taken 27 of 49 Neutral Citation No:=2025:PHHC:010508 admitted the crime. to Sohna Cl Office by SHO Insp Narinder Khattana at 11.30 to 12.00 hrs. • Statement u/s 161 and 164 CrPC statement of Ms. Jyothi Singh, Scientific Assistant.

- Statements of Police Officers DCP Simardeep Singh, DCP Sumit Kumar, DCP Ashok Bakshi, ACP Birem Singh.
- Statement u/s 161 and 164 of Lady Constable Manju. (prepared the confession statement)

(vii) Allegation-7:- Fact found during ☐☐☐ Investigation:-

SI Shamsher Singh has Conductor Ashok Kumar was not mentioned in CD that present at SOC while preparing the Ashok Kumar was Identification Memo.

identified by two school children Ayush Gupta (i) Children Ayush Gupta and Krish and Krish that he were not present at the time entered boy's toilet in mentioned in the Identification the morning when they Memo, as they left home early. gone to change the Judo dress. (ii) SI Shamsher was not present in the SOC at the time mentioned in the Identification Memo.

- Statement of Ayush and Krish • Statement of Anju Dudeja.
- Statement of HC Vineet Kumar.
- CCTV footages of School.
- Handwriting Opinion of CFSL for proving handwriting of Vineet.

II Document-2/ SI Shamsher Singh has Fact found during Investigation:-

Seizure Memo. prepared a Seizure Ashok Kumar was arrested at 21.00 dated 08.09.2017 Memo for seizing the hrs on 08.09.2017, FIR was lodged time 15.00 hrs. cloths and swabs of at 15.30 hrs, whereas the IO has (D-17) minor deceased in which mentioned Ashok Kumar's name he has mentioned the prior to FIR shows the Criminal name of Ashok Kumar as Negligence of the IO to implicate accused. Ashok Kumar as accused.

Memo Signed by:- • Statement of HC Vineet Kumar.

1. SI Shamsher Singh • Handwriting Opinion of CFSL for 28 of 49 Neutral Citation No:=2025:PHHC:010508
2. Constable Bheem proving handwriting of Vineet. Singh

3. Ms. Jyoti, Scientific Assistant.

Memo Prepared by HC Vineet Kumar.

In the memo the Case FIR No., Name of the Complainant and the name of accused i.e. Ashok Kumar has been mentioned.

III Document - SI Shamsher Singh has Fact found during CBI 3/Seizure Memo. prepared a Seizure Investigation:-

dated 08.09.2017 Memo for seizing the Ashok Kumar was arrested at 21.00 time 16.00 to Knife at SOC and school hrs on 08.09.2017, FIR was lodged 16.30 hrs. bag of the minor at 16.00 to 16.30 hrs, whereas the deceased in which he IO has mentioned Ashok Kumar's has mentioned the name name prior to arrest/any materiel of Ashok Kumar as evidence to suspect Ashok with him accused. shows the malafide intention of the IO to implicate Ashok Kumar as accused.

- Statement of HC Vineet Kumar.
- Handwriting Opinion of CFSL for proving handwriting of Vineet Kumar.

IV Document - SI Shamsher Singh has Fact found during CBI 4/Rough Sketch prepared a Rough Investigation:-

of Knife dated Sketch of knife at SOC Ashok Kumar was not available at 08.09.2017. after seizing it in the School from 12.00 pm. SI Shamsher presence of Ashok Singh did not visited school when Kumar. Ashok Kumar was present.

- Statement of Constable Rahul.
- Statement of Jyothi u/s 161 and 164 Cr.P.C., Scientific Assistant.
- Statement of Head Constable Ram Kumar (Who prepared the document) • Statement of Officers - to establish that Conductor Ashok Kumar was taken from school and was not brought back.
- CCTV footages of School.

29 of 49 Neutral Citation No:=2025:PHHC:010508 • Mobile CDR/Tower Location of SI Shri Shamsher Singh.

V Document - SI Shamsher Singh has Fact found during □□□5/Lifting of prepared a Seizure Investigation:-

Finger Prints Memo for seizing the Ashok Kumar was not available at from SOC dated chance finger prints School from 12.00 pm. SI Shamsheer 08.09.2017 lifted by FP Expert Singh did not visited school when Rishiraj from SOC Ashok Kumar was present.

- Statement of HC Rishi Raj.
- Statement of Jyothi u/s 161 and 164 Cr.P.C, Scientific Assistant.
- Statement of HC Vineet Kumar.
- CCTV footages of School.
- Handwriting Opinion of CFSL for proving handwriting of Vineet.

VI Document - SI Shamsheer Singh has Fact found during CBI 6/identification prepared an Investigation:-

Memo of Ashok Identification Memo in Ashok Kumar was not available at Kumar by Two which two children School from 12.00 pm. SI Shamsheer School Children Ayush Gupta and Krish Singh did not visited school when dated Yadav identified Ashok Kumar was present. Both the 08.09.2017. (D- Conductor Ashok Kumar children left the school at 12.00

13) that he came to toilet noon itself. Anju Dudeja was not while they were present at school, she only took changing their Karate minor deceased to hospital.

Dress. Children were produced by teacher • Statement of Sh. Manoj Gupta Anju Dudeja.

- Statement of Devender Yadav.

Memo Signed by:-

- Statement of HC Vineet
- 1. Conductor Ashok Kumar • Statement of Jyothi u/s 161 and
- 2. SI Shamsheer Singh 164 Cr.P.C, Scientific Assistant.
- 3. Constable Bheem Singh • CCTV footages of School.
- 4. Ms. Jyoti, Scientific Assistant. • Handwriting Opinion of CFSL for proving handwriting of Vineet.

Memo Prepared by HC Vineet Kumar.

VII Document -7/ SI Shamsher Singh has Fact found during CBI Identification prepared an Investigation:-

Memo of the Identification Memo of Ashok Kumar was not available at place of the SOC in the presence School from 12.00 pm. SI Shamsher occurrence by of Conductor Ashok Singh did not visited school when Ashok Kumar Kumar. Ashok Kumar was present.

30 of 49 Neutral Citation No:=2025:PHHC:010508 dated 08.09.2017. (D- Memo Signed by:- • Statement of HC Ram Kumar.

14)

1. Conductor Ashok • Statements of Police Officers Kumar DCP Simardeep Singh, DCP Sumit
2. SI Shamsher Singh Kumar, DCP Ashok Bakshi.
3. Constable Bheem Singh • CCTV Footages of School dated 08.09.17.

Memo Prepared by HC Ram Kumar • Mobile CDR of SI Shamsher Singh & Constable Bheem Singh.

VII Document - Ashok Kumar was Fact found during CBI I 8/Arrest Memo arrested on 08.09.2017 Investigation:-

of Ashok Kumar at 09.00 pm, but he was Arrest of Ashok Kumar was made dated 08.09.2017 shown as accused before at 09.00 pm but two seizure memo's itself in other documents showing his name as accused were by police. prepared prior to his arrest thus Gurugram Police has already decided to arrest Conductor Ashok Kumar in this case.

1. Statement of HC Ram Kumar IX Document - SI Shamsher Singh has Fact found during CBI 9/Confession of recorded a confession Investigation:-

Ashok Kumar statement of Ashok After Arrest of Ashok Kumar by SI dated Kumar after arresting Shamsher Singh at 09.00 pm he has 08.09.2017. him in which he not visited school premises all. The confessed the crime. confessional statement was not After the confessional recorded at SOC on 08.09.2017, it statement he added 12 of was prepared on 11.09.2017 by POCSO Act in the case. Constable Manju.

Constable Manju has stated that Inspector Shri Narender Khattana and Vineet of Sohna Cl Officer were present in the room where she was writing the confessional Statement of Ashok Kumar on

11.09.2017.

Constable Manju has further stated that Shri Narinder Singh Khattana, the then SHO of Bhondsi Police Station, Gurugram, Haryana and at that time ACP Birem Singh was present in the SHO Room at Bhondsi Police.

• Statement u/s 161 and 164 Cr.P.C of WPC Manju • Statement of Constable Bheem 31 of 49 Neutral Citation No:=2025:PHHC:010508 Singh (Confession Witness) • Statements of Police Officers DCP Simardeep Singh, DCP Sumit Kumar, DCP Ashok Bakshi.

• CCTV Footages of School dated 08.09.17.

X Case Diaries of 1. The Case Diary dated 1. 161 Statement of Head Constable Inspector Shri 08.09.2017 was actually Vineeth Kumar that he prepared the Narender Singh prepared on 11.09.17 case diary on or after 11.09.2017.

Khattana (post dated).

2. CFSL, New Delhi report on Handwritings of Head Constable Vineeth Kumar in case diary sent for comparison are matched with the Questioned documents.

3. Official order for his attachment with Bhondsi P.S.

4. GD entries of Cl office Sohna that he was on duty till 11.09.17 evening that he was on duty.

5. GD entry in Bhondsi for his reporting.

6. CCTV footages of the school.

7. CFSL, New Delhi report on Handwritings of Head Constable Vineeth Kumar in case diary sent for comparison are matched with the Questioned documents.

8. Official order for his attachment with Bhondsi P.S.

9. GD entries of Cl office Sohna that he was on duty till 11.09.17 evening that he was on duty.

10. GD entry in Bhondsi for his reporting.

2. As per the case diary 1. Statement of Ms. Anju Dudeja dated 08.09.2017, Insp that she was not available in school Narinder Khattana has as she went to Hospital along with examined EASI Subash, minor deceased/ She states that she ASI Rajinder, School was not examined by Insp Narinder teachers Anju Dudeja, Khattana.

Sanju Bala, Chavi Bhatnagar and Harpal 2. 161 Statement of Head Constable 32 of 49 Neutral Citation No:=2025:PHHC:010508 Mali. Vineeth Kumar that he prepared the case diary on or after 11.09.2017.

3. Insp Narinder Singh Evidences mentioned in the Column Khattana has mentioned X. in his CDs on 8.09.19 that he visited and he directed SI Shamsher Singh to collect the evidences from SOC. But actually Shamsher Sigh was not at SOC at that time. Actually SI Shamsher Singh reached the School at 08.56 pm only.

4. Insp Narinder Singh 1. Statement of Ms. Anju Dudeja Khattana has mentioned that she was not available in school in the case diary that as she went to Hospital along with Anju Dudeja informed minor deceased/ She states that she him that two children was not examined by Insp Narinder Ayush Gupta and Krish Khattana Khattana. had seen conductor Ashok Kumar entering 2. Statement of teacher Ms. Sanju washroom while Bala that she only produced the changing dress/ Insp children.

Narinder Khattana examined the children, 3. Statement of Father of Krish directed IO Shamsher Yadav Singh to examine them and record their 4. Statement of Father of Ayush statements/ But actually Gupta the children were produced by Sanju Bala 5. CCTV footages of the school. to ESI Subash.

5. Insp Narinder 1. Statement of Ms. Anju Dudeja Khattana has recorded that she was not available in school in the case diary as she went to Hospital along with 08/09/17 that after he minor deceased/ She states that she examined Anju Dudeja, was not examined by Insp Narinder Sanju Bala, Chavi Khattana Khattana.

Bhatnagar, Harpal Mali, Neerja Bhatra and after 2. Statement of Ms. Neerja Bhatra that only DCP that she was not available in school Simardeep Singh, DCP as she went to Hospital along with Ashok Bhakshi and minor deceased/ She states that she Birem Singh reached was not examined by Insp Narinder school. Khattana Khattana.

3. Statement of Simardeep Singh, DCP

4. Statement of Ashok Bhakshi, DCP.

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5. CCTV footages of the school.

6. Insp Narinder 1. Statement of Simardeep Singh, Khattana has recorded DCP in CD that he handed over the CD file to 2. Statement of Ashok Bhakshi, Senior Officers and DCP briefed about the case and after receiving 3. CCTV footages of the school. instructions he handed over the CD back to SI. 4. Mobile Tower Location and CDR Shamsher Singh./ But of SI Shamsher.

actually SI Shamsher Singh was not present

7. Insp Narinder 1. Statement u/s 161 and 164 Khattana has mentioned Cr.P.C of Scientific Assistant Jyoti in CD dated 8.9.17 that Singh.

he himself, Shamsher, Scientific Assistant 2. Statement of Constable Bheem Jyothi, FP Expert Rishi Singh.

Raj, Anju Dudeja, Sanju Bala, Chavi Bhatnagar 3. CCTV footages of the school. and Harpal Mali were present in the SOC, 4. Mobile Tower Location and CDR when reached the of SI Shamsher.

school, but it not true as  
SI Shamsher Singh  
reached school by  
evening only.

8. Insp Narinder 1. Statement u/s 161 and 164

Khattana has brought Cr.P.C of Scientific Assistant Jyoti conductor Ashok had Singh.

committed murder in the CD and has given 2. Statement of Constable Bheem certain instructions:-  
Singh.

a. Investigate the case 3. CCTV footages of the school. thoroughly.

4. Mobile Tower Location and CDR b. Collect maximum of SI Shamsher physical evidence at SOC.

c. Collect CCTV footage of cameras installed in the building.

d. Send clothes of Prince to FSL.

e. Procure FP report of Chance Print.

34 of 49 Neutral Citation No:=2025:PHHC:010508 f. Conductor Ashok to be examined thoroughly.

g. Blood Sample from SOC to be lifted and sent to FSL.

h. Conduct investigation as per rules.

(But Shamsher Singh reached SOC after 8 pm only).

39. Furthermore, from a perusal of the 164 Cr.P.C. statements of Harpal Singh Mali, C.C.L., Anju Dudeja, HC Vineet Kumar, Lady Constable Manju and Jyoti Rathi, which are enclosed respectively as Annexures P-19 to P-25, and, which were relied upon by the learned counsel for the C.B.I. during the course of arguments, it vividly emerges that, in order to falsely implicated Ashok Kumar, the purported inculpatory evidence against him was extracted/created by members of the S.I.T. by

threatening the witnesses (supra) to depose against him. In order to avoid unnecessary augmentation of this verdict, the statements (supra) are not elaborated here.

40. A meticulous survey of the impugned orders reflect that the cause for drawing them spurred from the hereinafter extracted premises:-

(a) Despite Ashok Kumar being subjected to regular medical examination during police custody, yet no medical evidence was placed on record regarding voluntarily causing hurt to him to extort confession.

(b) The other charges relating to inaccurate police 35 of 49 Neutral Citation No:=2025:PHHC:010508 documentation were found to be minor in nature, which cannot per se punishable by criminal prosecution unless there is criminal intent and mens rea proving such intent to falsely implicate any person.

(c) There may be instance of incorrect approach, but, the intent of the investigating agency to conduct the investigation in the right perspective has to be seen. An act or omission or lack of efficiency or failure to attain highest standard of investigating ability may not, by itself, amount to or constitute an offence. Error of judgment in evaluating the situation may be some sort of negligence but it would not constitute any offence in the absence of the intent and mens rea.

41. Insofar as the observations of the author of the impugned orders appertaining to falsely created documents being termed as inaccurate documentation is concerned, it would be apt to record here that, there is a stark difference between inaccurate documentation and creation of false documentation. An inaccurate document refers to error/omission or recording information inaccurately or inconsistently, which is primarily unintentional or may relate to incompetency. The intent to mislead or to deceit is mostly absent and its result may lead to some confusion. However, creating false document is intentionally producing or altering documents to deceive or manipulate etc. The basic 36 of 49 Neutral Citation No:=2025:PHHC:010508 difference is of intent. An inaccurate document is the result of bona fide mistake.

42. In the instant case, this Court has, in the preceding paragraphs, reproduced the details of false document created by the errant officials/respondents No.5 to 8. Prima facie, the said documents cannot be considered as inaccurate documents.

43. Heading further, what surges forth from a scrutiny of the impugned orders is that, they do not embody any discussion about the incriminatory evidence placed on record by the C.B.I. Reiteratedly, in M.P. Special Police Establishment's case (supra), it has been categorically held by the Hon'ble Supreme Court that, non consideration of the relevant material placed on record by the sanctioning authority requires judicial review.

44. It is a trite law that, reasons are nexus between the conclusion reached and the facts in question. In the absence of any reasons becoming assigned, an administrative order can be termed as a non speaking order. Therefore, this Court has no hesitation to conclude that, in the absence of any



reference being made by the sanctioning authority to the incriminatory evidence produced by the C.B.I., the impugned orders are unsustainable in the eyes of law on account of them being non speaking.

45. Heading towards the issue No. (iii); the corresponding notifications issued by the State of Haryana and by the Central Government [DoPT], whereby, the investigation of the present case was 37 of 49 Neutral Citation No:=2025:PHHC:010508 transferred to the C.B.I., are of dire significance. The relevant portion of these notifications is reproduced hereinafter:-

"Notification issued by Haryana Government [Home Department] In exercise of the Powers conferred under section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Governor of State of Haryana, hereby accords consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation of Case FIR No. 250 dated 08.09.2017 u/s 302 IPC & 25/54/59 Arms Act, 12 Protection of Children from Sexual Offences (POCSO) Act & 75 Juvenile Justice (J.J.) Act r/w Section 34 IPC Police Station Bhondsi, Gurugram and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts."

"Notification issued by Government of India [Personnel, Public Complaints & Pension Ministry] [Personnel & Training Department] In exercise of the Powers conferred under Section 5 read with Section 6 of Delhi Special Police Establishment Act, 1946, the Governor of State of Haryana, hereby accords consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana vide Notification No.20/12/2017-3HGI dated 17.09.2017 for Investigation of case FIR No.250 dated 08.09.2017 U/s 302 IPC and 25/54/59 of Arms Act, 12 of POCSO Act and 75 of J.J. Act r/w 34 IPC PS Bhondsi Distt. Gurugram, and to investigation of all the attempts in relation to or in connection and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the

38 of 49 Neutral Citation No:=2025:PHHC:010508 same and arises from the same."

46. A meticulous reading of the hereinabove reproduced notifications makes it crystal clear that, the phrase "in relation to or in connection", as used therein, refers to the power of the C.B.I. to investigate those offences also which have relationship in terms of context, cause, relevance or influence. The phrase "in relation" denotes concern or connection with something, whereas, the phrase "in connection" denotes relationship or association between two or more.

47. The phrase "any other offence or offences committed in the course of the same and arises from the same" used in notifications (supra) does bestow jurisdiction upon the C.B.I. to conduct investigation into the conduct of the S.I.T. The offences alleged to have been committed by the

respondents No.5 to 8 are not to be wholly unconnected but forming part of the same transactions, thus giving jurisdiction to the C.B.I. to conduct investigation in respect thereof, and thereupon, to file chargesheet.

48. Consequent upon transfer of the investigation to it, the C.B.I. found that Ashok Kumar [Bus Conductor] was falsely implicated in the murder of the minor deceased, whereas, the actual culprit is the C.C.L. Moreover, the evidence collected by the C.B.I., in order to arrive at this conclusion, also exposed the criminal act of the members of the S.I.T. inasmuch as it surfaced that they created false oral and documentary evidence to falsely implicate Ashok Kumar. Concisely speaking, the C.B.I. claims that evidence collected is suggestive of the following:- (a) guilt of the C.C.L.; (b) innocence of Ashok Kumar; (c) creation of false 39 of 49 Neutral Citation No:=2025:PHHC:010508 and fabricated oral and documentary evidence by the respondents No.5 to 8/members of the S.I.T. to falsely implicate Ashok Kumar.

49. The evidence(s) collected by the C.B.I. are intertwined, intrinsic and not capable of being segregated inasmuch as the foundation of the C.B.I.'s investigation to the effect that the C.C.L. is involved in commission of murder was laid down by its investigation regarding innocence and false implication of Ashok Kumar. Therefore, although the offence(s) allegedly committed by the respondents No.5 to 8 are different offence(s), however, the same have been committed in the course of same transaction. Reiteratedly, the innocence of Ashok Kumar and his false implication by the respondents No.5 to 8/members of the S.I.T. is totally intertwined with the evidence produced by the C.B.I. to bring home the guilt of the C.C.L. Therefore, in view of the terminology used in the notifications (supra) and the nature of offence(s) allegedly committed by the respondents No.5 to 8, this Court has no hesitation to answer the opening portion of the issue No.(iii) in affirmative.

50. Since an affirmative finding has been recorded as regards jurisdiction of the C.B.I. to investigate the offence(s) allegedly committed by the respondents No.5 to 8, therefore, now this Court is required to adjudicate the latter portion of the issue No.(iii), which appertains to trial of the respondents No.5 to 8.

51. At this juncture, Section 223(d) Cr.P.C. is of utmost necessity inasmuch as it voices that, persons accused of different offences committed in the course of the same transaction, can be charged and tried 40 of 49 Neutral Citation No:=2025:PHHC:010508 together. Moreover, the Hon'ble Supreme Court has, in "Essar Teleholdings Limited Vs. Registrar General, Delhi High Court and Others", (2013) 8 SCC 1, while dealing with the scope of Section 223, held that although the petitioners therein were accused of different offences, however, since the said offences were alleged to have been committed in the course of same 2G Spectrum transactions, therefore, with the aid of Section 223, they can be charged and tried together with the other co-accused of 2G scam cases. Relevant paragraphs of this verdict are reproduced hereunder:-

"22. The second supplementary charge sheet dated 12th December, 2011 was filed in the FIR No. RC DAI 2009 A 0045 dated 21st October, 2009 wherein following allegations have been made against the petitioners and some others:

## "Allegations

1. On 21.10.2009, the CBI registered an FIR vide RC DAI 2009 A 0045 against unknown officials of Department of Telecommunications, India, unknown Government of private persons/companies and others for the offences punishable under Section 120 B IPC read with Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, on allegations of criminal conspiracy and criminal misconduct, in respect of allotment of Letters of Intent, United Access Service (UAS) Licenses and spectrum by the Department of Telecommunication. Investigation of the case was taken up and charge sheets dated 02.04.2011 supplementary and charge sheet first dated 25.04.2011 were filed before Hon'ble Special Judge (2G Spectrum Cases), Patiala House Courts, New Delhi, in which in trial proceedings are going on and are presently at the stage of prosecution evidence.

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3. The eligibility of all the companies which were allocated letters of Intent (LOI) on 10.01.2008 by the DOT was also investigated by BI during the investigation of this case. During such investigation, allegations came to notice that M/s Loop Telecom Ltd., which had applied for UAS licenses in 21 Telecom circles in September, 2007 was front company of M/s Essar Group. M/s Loop Mobile India Ltd. had been operating a UAS license since 2005 in the Mumbai Service Area. It was alleged that M/s Essar Group which already had a stake of 33% in M/s Vodafone Essar Ltd., a telecom operator in all the 22 telecom circles, was controlling substantial stake in the aforesaid 2 companies in violation of the UAS guidelines dated 14.12.2005 and UAS license agreements signed by M/s Vodafone Essar Ltd. with DOT. It was further alleged that the accused persons belonging to M/s Loop Telecom Ltd. M/s Loop Mobile India Ltd and Essar Group of companies, fraudulently suppressed the facts of association of the two Loop Companies with M/s Essar Group of Companies while applying for new licenses DoT, in order the DoT considers these companies as entities which are not substantially controlled by Essar Group. The said accused persons therefore, dishonestly or fraudulently got the 21 new UAS licenses and continue to operate the Mumbai License of Loop in contravention of the applicable guidelines.

4. Investigation has been carried out on the allegations that M/s Loop Telecom Ltd., and associated persons including Essar persons/Companies, Department of cheated Group the Telecommunication, Government of India by concealing the actual stake holders of M/s Loop Telecom Ltd. behind a corporate veil, while applying for and getting 21 new UAS Licenses and got the 21 UAS 42 of 49 Neutral Citation No:=2025:PHHC:010508 Licenses and valuable spectrum for this Company."

23. Following facts also emerge from the background of the matter:

"70. That after the accused persons had cheated the DoT and fraudulently obtained the Letters of Intent/UAS Licenses/valuable spectrum in furtherance of a conspiracy among themselves, several complaints were received by the Department of

Telecommunications during 2008-2010 alleging that M/s Loop Telecom Ltd. was an Essar group company under a corporate veil and was thereby violating the clause 8 of UASL Guidelines dated 14.12.2005. In one such matter Dot referred the matter to Ministry of Corporate Affairs seeking to examine the matter and open whether the given facts and circumstances made out a violation of the clause 8 of UASL Guidelines. Investigation has revealed that the Deputy Director (Inspection), Ministry of Corporate Affairs, who examined the matter in detail, concluded that the clause 8 of the UASL Guidelines had been violated. ....

71. The investigation has, therefore, revealed that M/s. Loop Telecom Ltd. made fraudulent UASL applications for 21 circles on 3.9.2007 by misrepresenting the fact that they met all the eligibility criteria including clause 8 of UASL guidelines. These fraudulent applications were accompanied by false certificates to the effect that the company met the conditions prescribed under clause 8 of UASL guidelines, thereby falsely claiming that the applicant company was not under any control influence of any existing licensee and that competition would not be compromised if 21 licenses applied for are issued to it.....

72. The aforesaid facts and circumstances constitute commission of offences, during 2007-08, punishable u/s 120 B IPC r/w 420 IPC, and substantive offence u/s 420 IPC, against accused persons, viz. Ravi N. Ruia, 43 of 49 Neutral Citation No:=2025:PHHC:010508 Anshuman Ruia, Vikash Saraf, I.P. Khaitan, Ms. Kiran Khaitan, M/s. Loop Telecom Ltd. (erstwhile M/s. Shippingstop Dot Com India Pvt.Ltd.), M/s. Loop Mobile India Ltd. (BPL M/s. Mobile Communications Limited) and M/s. Teleholdings Ltd. Accused persons were not arrested during investigation."

24. From the aforesaid second charge sheet it is clear that the offence alleged to have been committed by the petitioners in the course of 2G Scam Cases. For the said reason they have been made accused in the 2G Scam Case.

25. Admittedly, the co-accused of 2G Scam case charged under the provisions of Prevention of Corruption Act can be tried only by the Special Judge. The petitioners are co-accused in the said 2G Scam case. In this background Section 220 of Cr.P.C. will apply and the petitioners though accused of different offences i.e. under Section 420/120B IPC, which alleged to have been committed in the course of 2G Spectrum transactions, under Section 223 of Cr. P.C. they may be charged and can be tried together with the other co-accused of 2G Scam cases.

XX XX XX XX

29. Admittedly, 2G Scam case is triable by the Special Judge against the persons accused of offences punishable under the PC Act in view of sub-Section (1) of Section 4. The Special Judge alone can take the cognizance of the offence specified in sub Section (1) of Section 3 and conspiracy in relation to them. While trying any case, the Special Judge may also try an offence other than the offence specified in sub-Section (1) of Section 3, in view of sub-Section (3) of Section 4. A magistrate cannot

take cognizance of offence as specified in Section 3(1) of the PC Act. In this background, as the petitioners have been shown as co-accused in second supplementary chargesheet filed in 2G Scam case, it is open to the Special Judge to take cognizance of the offence under Section 120 B and Section 420 IPC."

52. In "Essar Teleholdings Limited Vs. Central Bureau of 44 of 49 Neutral Citation No:=2025:PHHC:010508 Investigation", (2015) 10 SCC 562, the Hon'ble Supreme Court has reiterated the above observations and placed reliance upon "Chandra Bhal v. State of U.P.", (1971) 3 SCC 983, wherein, it was held that general mandatory rules provide for a separate charge for every distinct offence and for separate trial for every such charge. However, the exceptions to this general rule is found in Sections 234, 235, 236 and 239 and these exceptions embrace cases in which one trial for more than one offence is not considered likely to embarrass or prejudice the accused in his defence (emphasis supplied). The relevant paragraph of the verdict rendered in "Essar Teleholdings Limited Vs. Central Bureau of Investigation" is reproduced hereunder:-

"19. Read in the backdrop of Sections 220 and 223, it is clear that a discretion is vested with the Court to order a joint trial. In fact, in Chandra Bhal v. State of U.P., (1971) 3 SCC 983, this Court stated:

"5. Turning to the provisions of the Code, Section 233 embodies the general mandatory rule providing for a separate charge for every distinct offence and for separate trial for every such charge. The broad object underlying the general rule seems to be to give to the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from lumping together in a single charge distinct offences and from combining several charges at one trial. There are, however, exceptions to this general rule and they are found in Sections 234, 235, 236 and 239. These exceptions embrace cases in which one trial for more than one offence is not considered likely to embarrass or prejudice the accused in his defence. The matter of joinder of charges is, however, in the general discretion of the court and the principle consideration controlling the judicial exercise of this discretion should be to

45 of 49 Neutral Citation No:=2025:PHHC:010508 avoid embarrassment to the defence by joinder of charges. On the appellant's argument the only provision requiring consideration is Section 235(1) which lays down that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person then he may be charged with and tried at one trial for every such offence. This exception like the other exceptions merely permits a joint trial of more offences than one. It neither renders a joint trial imperative nor does it bar or prohibit separate trials. Sub-section (2) of Section 403 of the Code also provides that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235(1). No legal objection to the appellant's separate trial is sustainable and his counsel has advisedly not seriously pressed any before us."

53. In "State of Kerala Vs. Ayyappan and others", (2006) 13 Supreme Court Cases 320, the Hon'ble Supreme Court has, in almost similar facts, held that since some of the evidence in the trial against one set of accused charged by Judicial Magistrate was likely to be common in the trial of the other set of accused charged by Sessions Court, hence a separate trial would prejudice the prosecution case. Therefore, the joint trial was held to be legal. The relevant paragraphs of this verdict are reproduced hereunder:-

"2. Sometime in January 1993, the fourth respondent made a complaint to Padagiri Police Station about two missing persons, Chandran and Thankamani, who were alleged to be missing from 27-11-1992 onwards. The police carried out investigation and, thereafter, an offence under Section 302 of the Penal Code, 1860 (IPC) was registered and the case was remitted to the Additional Sessions Court, Palakkad. Respondents 9, 10 and 12 46 of 49 Neutral Citation No:=2025:PHHC:010508 (Unnikrishnan, Ramankutty and Asis alias Abdul Assis, respectively) are police personnel, who were concerned with investigation of Crime No. 2 of 1993 of Padagiri Police Station. It was alleged against them that they had fabricated false evidence and attempted to destroy evidence in order to shield the accused, who were charged with serious offences. The tenth accused (Ramankutty) moved an application under Section 218 of the Code of Criminal Procedure, 1973 (CrPC) before the Court of Session, Palakkad praying that the case against him be split up and tried separately. By an order dated 12-7-1999, the Additional Sessions Judge dismissed the application. However, on 14-9-1999 the Additional Sessions Court, Palakkad made an order framing separate charges against Accused 9, 10 and 12 for offences punishable under Sections 120-B, 218 and 193 IPC and ordered that they be tried by the Chief Judicial Magistrate, Palakkad. The appellant State of Kerala challenged the said order by Criminal Revision Petition No. 878 of 1999 before the High Court of Kerala. The High Court dismissed the criminal revision petition by its order dated 12-8-2003 taking the view that there was no infirmity in the order transferring the case to the Chief Judicial Magistrate, Palakkad for trial of Accused 9, 10 and 12. The High Court opined that the Additional Sessions Court's order was in conformity with the provisions contained in Section 228(1) CrPC.

The High Court's order is impugned in the present appeal.

3. We have perused the record and heard the learned counsel on both the sides. We are satisfied that at least some of the evidence in the trial against Accused 9, 10 and 12 is likely to be common in the trial of the other accused, who were charged before the Sessions Court. There is likelihood of prejudice to the prosecution's case, if the trials are held separately. On the other hand, if Accused 9, 10 and 12 are also tried by the Sessions Court, there is no prejudice likely to be caused to them. In any event, we are not satisfied that Section 228(1) CrPC could have been applied to the facts of the present case. It was quite within 47 of 49 Neutral Citation No:=2025:PHHC:010508 the competence of the Sessions Court to try the charges against Accused 9, 10 and 12 along with the charges against the other accused, who stood charged with the offences, which were exclusively triable by the Sessions Court. We are, therefore, satisfied that both the trials ought to proceed before the Sessions

Court.

4. We, therefore, quash and set aside the order of the High Court impugned in the present appeal as well as the order of the First Additional Sessions Court, Palakkad dated 14-9-1999 insofar as it directs trial of the charges framed against Accused 9 (Unnikrishnan), Accused 10 (Ramankutty) and Accused 12 (Asis alias Abdul Assis) by the Chief Judicial Magistrate, Palakkad. We direct that the charges against the said accused shall also be tried by the Additional Sessions Court, Palakkad along with the other accused in Sessions Case No. 256 of 1998."

54. In view of the judicial precedents (supra), as also the nature of evidence and its interconnection, this Court is of the opinion that, a separate trial would cause prejudice to the prosecution case as it may result in conflicting decisions. Therefore, in order to achieve the desired object of a fair trial for commission of murder of the minor deceased, the latter portion of the issue No.(iii) is also answered in affirmative. FINAL ORDER

55. In summa, this Court of the opinion that, the impugned orders are not only non speaking but also do not pass the test of legality, hence require interference. Moreover, this Court also does not have any hesitation to conclude that, the act of the sanctioning authority is clearly arbitrary. Consequently, these petitions are allowed and the impugned orders are set aside. The matter is remanded to the sanctioning 48 of 49 Neutral Citation No:=2025:PHHC:010508 authority to, after taking into account all the evidence(s) produced before it by the C.B.I., make afresh decision upon the C.B.I.'s request(s) for grant of sanction for prosecution of respondents No.5 to 8. This exercise shall be carried out within a month from the date of pronouncement of this verdict.

56. Insofar as the complainant's plea appertaining to there being no requirement for sanction to prosecute the respondents No.5 to 8 is concerned, the same is in fact not the subject matter of the instant lis, rather the same is required to be decided by the trial Court at the first instance. This plea can only be considered by this Court, when any adverse inference causing grievance to the complainant is drawn thereon by the trial Court.

57. A photocopy of this order be placed on file of connected case.

January 24, 2025  
devinder

(KULDEEP TIWARI)  
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No

