



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2023



PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 19366 OF 2023 (GM-POLICE)

BETWEEN:

1. SRI GIRISH BHARADWAJ
S/O SRI. DATTAREYA H N,
AGED ABOUT 32 YEARS,
R/AT NO.11, ASTHITHVA,
RAILWAY PARALLEL ROAD,
SHESHADRIPURAM,
BENGALURU 560 020.
MOBILE NO. 9448605923
AADHAR NO. 730494798728
EMAIL info@girishbharadwaj.in
PAN No.BKJPDO464K
2. SRI. NAVEEN KUMAR G
S/O AITHAPPA RANYA,
AGED ABOUT 42 YEARS,
1-314, SAMPIGE HOUSE,
GANDIBAGILU NERIYA POST,
BELTHANGADY TALUK,
DAKSHINA KANNADA 574 228.
AADHAR NO. 774049266707
MOB. 9741036849
PAN No.AQWPK4481H,
Sampigenavin@gmail.com
3. VINAYAKA FRIENDS CHARITABLE TRUST ®
R NO. 368/2015-16, BALNADU
PUTTUR 574 201.





REP BY ITS TRUSTEE,
MR. SHARATH KUMAR M
S/O DEVAPA
AGED ABOUT 27 YEARS,
MUDALAJE HOUSE,
BALNADU PUTTUR 574 203
AADHAR NO. 511571915483
MOBILE NO. 9483080394
PAN No.eadpk9270B
Sharathmudhalaj@gmail.com

...PETITIONERS

(BY SRI. ARUN SHYAM M., SENIOR ADVOCATE FOR
SRI. SUYOG HERELE E.,ADVOCATE)

AND:

1. THE UNION OF INDIA
REP BY ITS HOME SECRETARY,
GOVERNMENT OF INDIA,
NORTH BLOCK,
NEW DELHI 110 001.
2. THE STATE OF KARNATAKA
REP BY ITS CHIEF SECRETARY,
VIDHAN SOUDHA,
AMBEDKAR VEEDHI,
BENGLAURU 560 001.
PHONE NO. 080-22252442
FAX 22258913
E MAIL. cs@karnatak.gov.in
3. THE ADDITIONAL CHIEF SECRETARY
HOME DEPARTMENT
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
BENGLAURU 560 001.
PHONE NO. 080 22258830
EMAIL. home@karnataka.gov.in



4. THE DIRECTOR GENERAL &
I.G.P KARNATAKA
NRUPATHUNGA ROAD,
NUNEGUNDLAPALLI, AMBEDKAR VEEDHI,
BENGALURU 560 001.
PHONE 080 2221177
E-MAIL.ksdgp@bgl.vsnl.net.in
5. THE SUPERINTENDED OF POLICE,
DAKSHINA KANNADA DISTRICT,
NEAR AB SHETTY CIRCLE PANDESHWARA,
MANGALURU 575 001.
E MAIL. spmaq@ksp.gov.in
phone 9480805301
6. THE DIRECTOR
CENTRAL BUREAU INVESTIGATION,
PLOT NO. 5-B, COG COMPLEX,
LODHI ROAD,
NEW DELHI 1100003
PHONE 011 24368123
7. THE STATION HOUSE OFFICER
BELTHANGADY POLICE STATION,
BELTHANGADY TALUK,
D.K DISTRICT 574 214.
E MAIL. belthangadymaq@ksp.gov.in
PHONE 08256232093

...RESPONDENTS

(BY SRI. SHANTHI BHUSHAN H.,DSG FOR R1;
SMT. NILOUFER AKBAR., AGA FOR R2 TO 5 & 7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER WRIT OR ORDER DIRECTING THE RESPONDENTS TO CONDUCT FRESH OR DE-NOVO INVESTIGATION OR RE-INVESTIGATION MONITORED BY THE HONBLE COURT THROUGH RESPONDENT No-6 (CENTRAL BUREAU OF INVESTIGATION) OR ANY OTHER PREMIER INDEPENDENT INVESTIGATION AGENCY OR BY



FORMING AN SPECIAL INVESTIGATION TEAM (SIT) BY CONSIDERING THE REPRESENTATIONS OF THE PETITIONERS DATED 08.08.2023, 18.08.2023 AND 26.08.2023 TO ASCERTAIN THE ACTUAL CRIMINALS IN CONNECTION WITH CRIME NUMBER 250/2012 REGISTERED BY BELTHANGADY PS-RESPONDENT No-7 Re-REGISTERED AS CRIME No.2(S)/2014-CBI/SCB/CHN CBI SCB CHENNAI BY RESPONDENT No-6-CBI (PRODUCED AT ANNEXURE-F, F1, G AND H) AND II) ISSUE A WRIT IN THE NATURE OF MANDAMUS DIRECT THE RESPONDENTS TO TAKE APPROPRIATE ACTION AGAINST ERRING OFFICIALS IN THE EARLIER ROUND OF LITIGATION, IN VIEW OF THE OBSERVATIONS MADE BY THE LEARNED ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, CHILDREN COURT (SPECIAL) BENGALURU (CCH-51) WHILE PASSING THE JUDGMENT AND ORDER DATED 16.06.2023 IN SPL.CC No-203/2016 AND III) ISSUE ANY OTHER WRIT OR MANDAMUS OR DIRECTION AND GUIDELINES REGARDING THE INVESTIGATION DURING GOLDEN HOURS AFTER THE CRIME IN CASES LIKER MURDER AND RAPE ETC., TO SECURE THE ENDS OF JUSTICE AND PREVENT ABUSE OF PROCESS OF LAW.

THIS PETITION COMING ON FOR ORDERS THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

This Writ Petition framed in the guise of a *social action litigation* has the following principal prayers:

"i. Issue a Writ in the nature of Mandamus or any other Writ or Order, directing the Respondents to conduct Fresh or De-Novo Investigation or re-investigation monitored by the Hon'ble court through Respondent No.6 (Central Bureau of Investigation) or any other premier independent investigation agency or by forming an Special Investigation Team (SIT) by considering the representations of the petitioners dated 08-08-2023, 18-08-2023 and



26-08-2023 to ascertain the actual criminals in connection with crime number 250/2012 registered by Belthangady PS-Respondent No.7, Re-registered as Crime No. 2(S)/2014-CBI/SCB/CHN CBI SCB Chennai by Respondent No.6-CBI. (produced at ANNEXURE-F, F1, G and H)

ii. Issue a writ in the nature of mandamus direct the Respondents to take appropriate action against erring officials in the earlier round of litigations, in view of the observations made by the Learned L Additional City Civil & Sessions Judge, Children's Court (special), Bengaluru [CCH-51] while passing the Judgment and order dated: 16-06-2023 in Spl.CC.No.203/2016.

iii. Issue any other writ of mandamus or direction and guidelines regarding the investigation during golden hours after the crime in cases like murder and rape etc., to secure the ends of justice and prevent abuse of process of law. "

2. BRIEF FACT MATRIX OF PETITIONERS' CASE:

(a) It is very unfortunate that a minor girl Ms.Sowjanya was raped and murdered on 9.10.2012. Her father lodged a missing complaint; the dead body of the victim was discovered under a tree in Mannasanka forest at Dharmasthala on 10.10.2012 at 12.20 noon. The Belthangadi Police registered Crime No.250/2012 for the



offences punishable under Sections 376 & 302 of Indian Penal Code, 1860. Regard being had to nature of the case, the investigation was handed to the Crime Investigation Department of the State vide Government Order dated 22.11.2012. A Final Report was submitted to the Trial Court on 31.10.2013. However, at the instance of local MLA and others, the State Government entrusted the matter to CBI for investigation vide Order dated 06.11.2013. The CBI registered FIR No.2(S)2014-CBI/SCB/CHN for the same offences.

(b) After the accomplishment of investigation, the CBI submitted charge sheet No.1/2015 on 26.10.2015 implicating one Mr.Santhosh Rao as the sole accused. The Special Court on the application filed u/s 319 of Cr.P.C. had summoned the said accused vide order dated 19.11.2016 and this was challenged by the accused in CrI.P.No.8678/2016. Victim's father Sri.Chandappa Gowda's application filed u/s 173(8) of Cr.P.C. came to be allowed by the Trial Court vide order dated 07.02.2017.



This also came to be challenged by the accused in CrI.P.No.1928/2017. Chandappa Gowda too had preferred W.P.No.2208/2018 seeking a direction for a court monitored reinvestigation at the hands of respondent-CBI.

(c) Both the above Criminal Petitions came to be clubbed with Chandappa Gowda's Writ Petition and heard. A Co-ordinate Bench of this Court vide common order dated 27.1.2021 allowed the said Criminal Petitions and dismissed the Writ Petition. As a consequence, the array of sole respondent Mr.Santhosh Rao came to be quashed. On the basis of the final report, Spl.C.C.No.203/2016 came to be registered; charges were framed and trial was conducted. Learned L Addl. City Civil & Sessions Judge, Bengaluru, vide order dated 16.6.2023, acquitted the accused and set him free. According to petitioners, this has resulted into a lot of social unrest and public agitation for coercing the authorities to do justice to the deceased victim and her family by undertaking a *de novo* investigation. Representations were also given to the



concerned quarters seeking reinvestigation of the offences at the hands of CBI. Nothing having happened on that score, these petitioners claiming to be public spirited persons, are knocking at the doors of this court in PIL jurisdiction.

3. Learned Sr. Advocate appearing for the petitioners submits that the trial Court has recorded a specific finding as to grave lapse on the part of the investigating agencies that eventually resulted into acquittal and therefore, there is an eminent case for the issuance of a direction by this court for the fresh investigation at the hands of CBI. He also notifies to the court other prayers made in the petition. In support of his submission, he pressed into service a decision of Apex Court in *SUNITA DEVI vs. UNION OF INDIA* (2018) 3 SCC 664. Learned DSGI appears for the Union of India and learned Additional Government Advocate appears for respondent Nos.2 to 5 & 7.



4. Having heard the learned counsel appearing for the parties and having perused the Petition Papers, we decline indulgence in the matter for the following reasons:

(a) Learned Sr. Advocate appearing for the petitioners vehemently submits that there has been a tremendous social unrest in Dakshina Kannada district because of acquittal order in question, and voices are heard in chores as to people loosing faith in the administration of criminal justice; the learned trial Judge at several places in the order of acquittal has recorded a finding about grave lapses that occurred in the investigation process and therefore, a *de novo* CBI investigation is eminently warranted in the matter. Ordinarily, the established canons of criminal jurisprudence abhor the request for *de novo* investigation once a full-fledged trial having taken place, an acquittal/conviction order is entered in any criminal case. This view gains support from the observations in *VINAY TYAGI vs. IRSHAD ALI AND OTHERS*, (2013) 5 SCC 762. Admittedly, investigation having been accomplished, the



final report came to be filed; the charges having been framed, trial for the offences in question took place. As many as 35 witnesses were examined from the side of prosecution; 40 documents came to be produced & marked as Exhibits; 26 Material Objects are also noted & marked. After considering all this, the acquittal order which runs into 95 pages came to be passed by the learned trial Judge. Merely because some findings as to lapse on the part of investigating agencies have been recorded, this court cannot readily grant the prayer of the petitioners for a *de novo* investigation.

(b) Petitioners strangely seek a direction for a fresh investigation in a concluded case and that this investigation should be undertaken by the CBI. As already mentioned above, the State Government vide order dated 06.11.2013 had entrusted the investigation of the case to the CBI earlier. However, that order came to be quashed by a Co-ordinate Bench of this Court vide judgment dated 27.01.2021, as already mentioned above. Therefore



investigation at the hands of the CID was accomplished and trial having taken place the acquittal order is recorded by the court of competent jurisdiction. It hardly needs to be stated that in our system of administration of criminal justice, normally what is tried is the offence and not the offender. In JARNAIL SINGH VS. STATE OF HARYANA, (2003) 9 SCC 328 at paragraph 7, the Hon'ble Supreme Court observed "*....The inquiry into or trial is of 'an offence' and not the offender...*". The acquittal order is not put in challenge in this PIL and rightly so. The same can be put in challenge in an appeal. As long as that order stands, in our opinion a *de novo* investigation cannot be ordered for an askance by persons who were neither victims, complainants, witnesses or in any way associated with the criminal case in question. It is not that in no circumstance a fresh investigation can be directed; if a very strong case is made out, re-investigation is permissible. However, the petition at hands, is not one such. For that to happen, the order of acquittal or the conviction, as the case may be, needs to be set aside.



(c) The public agitation, social unrest or the like do occur in any democratic set up like ours, for various reasons. However, they constitute a poor justification for the courts to set at naught the judicial orders passed after the trial/hearing. Here is a case that ended in acquittal after a full fledged trial. No prayer is made nor can be made for quashment of the same, in PIL jurisdiction invoked by the strangers to criminal case. Once a final order is recorded in a criminal case, howsoever wrong it may be, it continues to exist in the eye of law for all practical purposes till the same is vacated in an appropriate proceeding. Prof. Wade sums up this principle in his Administrative Law 6th Ed. p. 352 as under:

"The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid."



Prof. Wade's view has been approved in **STATE OF PUNJAB AND OTHERS VS. GURDEV SINGH AND ASHOK KUMAR, AIR 1992 SC 111** at paras 5, 6 & 7.

(d) The above apart, the undesirable consequences of accepting contention of the petitioner for a *de novo* investigation, needs no research: no citizen adjudged innocent after a due trial would be safe as a member of civil society, should his acquittal be set aside and fresh investigation or trial be directed in PIL jurisdiction merely because there is public agitation. Similarly, the civil society shall not be safe, should an order of conviction secured by the State after full fledged trial be set at naught and eventually the convict be set free only because of the argued social unrest and that the people are violently thronging the public streets. We have not been shown even one solitary Ruling that permits doing of either. In *SANTOSH KUMAR SATISHBHUSHAN BARIYA vs STATE OF MAHARASHTRA*, (2009) 6 SCC 498, it is observed:



"People's perception of crime is neither an objective circumstance relating to crime nor to the criminal. Perception of public is extraneous to conviction as also sentencing. ... Public opinion may also run counter to the rule of law and constitutionalism..."

What the Constitutional Court of Spain in *Appeal for amparo No.1474-2020* disposed off on 02.06.2021 observed is worth noticing:

"...But what neither our Constitution nor the fundamental norm of any democratic State can tolerate is to make one of the most vital requirements of the rule of law -compliance with a court decision, which need not attract adherence or applause or immunity from criticism - subordinate to the will of one person, ten people, a thousand, or thousands or millions. All the more so when there is another great number of citizens who place their trust in that decision and abide by it and even agree with it, and wish to be confident that they, too, will be protected by the rule of law..."

The above observations should be a complete answer to the submissions at the Bar made on behalf of the petitioners. Much is not necessary to specify.

(e) We fail to understand as to how these petitioners can espouse the so called public interest in the



matter or cause of the family of victim. None of the members of victim's family is arrayed as a party nor any explanation is offered for non-arraignment. May be that the victim's family is aware of the remedies that are available in law against the acquittal order, in the light of evolved criminal jurisprudence. The Ruling in *SUNITA DEVI supra*, cited on behalf of the petitioners does not much come to their aid, its facts being dissimilar to those in the petition at hands. Paragraph 2 of the Ruling makes it abundantly clear that those who were seeking reinvestigation of the case were not strangers but the mother-in-law of the deceased and the grandmother of children of the murder victim. Even her son Mr. Nitin Garg was also a victim. Therefore, what is observed in the said case does not come to the aid of petitioners herein to establish their *locus standi* or otherwise for the grant of relief sought for in the petition. It hardly needs to be stated that a case is an authority for the proposition that is laid down in a fact matrix and not for all that, that would follow from what has been so laid down. Lord Halsbury



more than a century ago in QUINN vs. LEATHAM, (1901)

AC 495, 506 observed as under:

"... there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it..."

(f) In a recent decision i.e., ANANT THANUR KARMUSE vs. STATE OF MAHARASHTRA (2023) 5 SCC 802, the Apex Court reiterated the caution against readily entrusting the investigation to the CBI. What it said at paragraph 34 reads as under:

"...In the case of Himanshu Kumar and Ors. (supra), this Court had occasion to consider the power of the Court to transfer investigation to any other independent agency. After taking into consideration the catena of judgments on the point, it is reiterated that investigation may be transferred to the CBI only in "rare and exceptional cases... It is now settled law that if a citizen, who is a de facto complainant in a



criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking ..."

The above observations were made by the Apex Court in a case in which the investigation was yet to be accomplished, whereas in the petition at hand, the investigation was complete long ago; final report was filed by the CID in the court; trial was conducted by examining 35 witnesses, 40 documents and 26 material objects; lastly the acquittal order too has been entered by the court of competent jurisdiction.

(g) There is yet another reason for us to decline interference in the matter: ordinarily, in criminal cases, it is the State which is the custodian of prosecutory rights, subject to all just exceptions, and therefore, it is for the State to prefer the appeal against the acquittal order. It is not that in the event, State decides not to prefer one, that will be end of the road. The remedial provisions



availing to the victims or the aggrieved do obtain in the amended Cr.P.C., 1973. The aggrieved persons can put the acquittal order in challenge. The victim (which includes family of the deceased) has an unconditional right of appeal and no leave of the court for the same is needed. In the absence of victim, others also can avail certain remedies, of course with the leave of court. What the Apex Court observed in *JOSEPH STEPHEN vs. SANTHANASWAMY* 2022 SCC OnLine SC 90, becomes instructive in this regard:

"23. Therefore, no revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal. Even the same would be in the interest of the victim himself/herself as while exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate Court would have a wider jurisdiction than the revisional jurisdiction. Similarly, in a case where an order of acquittal is passed in any case instituted upon complaint, the complainant (other than victim) can prefer an appeal against the order of acquittal as provided under sub-section (4) of Section 378 Cr.P.C., subject to the grant of special leave to appeal by the High Court."



In the above circumstances, this petition being devoid of merits, is liable to be and accordingly dismissed. The observations hereinabove made shall not in any way influence the challenge to the acquittal order in question in an appropriate proceeding.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Bsv, Snb/