

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ANTONY DOMINIC  
&  
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 23RD DAY OF MAY 2018 / 2ND JYAISHTA, 1940

WP(C).No. 32894 of 2017

PETITIONER:

GOPALAN ADIYODI VAKKEEL SMARAKA TRUST  
TIRUVANGAD, THALASSERY, KANNUR, (REG. NO.239/98)  
REPRESENTED BY ITS SECRETARY, R.K.PREMDAS,  
RESIDING AT RAYAROTHHOUSE, PARAPRAM, KANNUR,  
THALASSERY, KANNUR DISTRICT.

BY ADVS.SRI.R.V.SREEJITH  
SRI.SUSEEL M.MENON

RESPONDENTS:

1. STATE OF KERALA  
REPRESENTED BY THE SECRETARY, HOME DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM. 695001.
2. THE STATE POLICE CHIEF,  
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.695001.
3. THE CENTRAL BUREAU OF INVESTIGATION,  
REPRESENTED BY ITS DIRECTOR, CBI HEADQUARTERS,  
NEW DELHI. 100001.
4. THE SPECIAL CRIME UNIT,  
CENTRAL BUREAU OF INVESTIGATION,  
THIRUVANANTHAPURAM. 695001.
5. UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY,  
HOME DEPARTMENT, NEW DELHI. 100001.
6. MINISTRY OF PERSONNEL,  
PUBLIC GRIEVANCE & PENSION, GOVT. OF INDIA,  
REPRESENTED BY ITS SECRETARY, NEW DELHI.100001.

R5-R6 BY ADV. SRI.SUVIN R.MENON, CGC  
R3 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.  
RADDL.7 BY ADV. SRI.B.RAMAN PILLAI (SR.)

RADDL.7 BY ADV. SRI.M.SUNILKUMAR  
RADDL.7 BY ADV. SRI.SUJESH MENON V.B.  
RADDL.7 BY ADV. SRI.THOMAS ABRAHAM (NILACKAPPILLIL)  
R1 & 2 BY SR. GOVERNMENT PLEADER SRI P.NARAYANAN  
SR.G.P.SRI V.MANU  
R1 BY ADV. SRI. P.NARAYANAN (SR. GOVT. PLEADER)  
R2 BY ADV. SRI. HARIN P.RAVAL (SR.)  
R1 BY ADV. SRI. V.MANU (SR. GOVT. PLEADER)  
R2 BY ADV. SRI. SUMAN CHAKRAVARTHY (SR. GOVT. PLEADER)  
R1,R2 BY ADVOCATE GENERAL SRI C.P.SUDHAKARA PRASAD  
R1-R2 BY DIRECTOR GENERAL OF PROSECUTION SRI MANJERI SREEDHARAN NAIR  
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/12/2017  
THE COURT ON 23-05-2018, DELIVERED THE FOLLOWING:

WP(C).No. 32894 of 2017 (S)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1 A TRUE COPY OF THE FIR IN CRIME NO.1056/2016 OF  
DHARMADOM POLICE STATION, KANNUR.

EXHIBIT P1(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P1

EXHIBIT P2 TRUE COPY OF FIR IN CRIME NO.61/2017 OF  
DHARMADOM POLICE STATION, KANNUR.

EXHIBIT P2(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P2

EXHIBIT P3 TRUE COPY OF THE FIR IN CR.NO.1192/2016 OF  
PAYYANNUR POLICE STATION REGISTERED IN  
CONNECTION WITH THE MURDER OF LATE C.K  
RAMACHANDRAN.

EXHIBIT P3(a) THE TRUE TRANSLATION OF EXHIBIT P3

EXHIBIT P4 TRUE COPY OF THE FIR IN CRIME NO.0510/2017 OF  
PAYYANNUR POLICE, KANNUR.

EXHIBIT P4(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P4

EXHIBIT P5 TRUE COPY OF THE FIR IN CR.NO.888/2016 OF THE  
KASABA POLICE STATION, PALAKKAD.

EXHIBIT P5(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P5

EXHIBIT P6 TRUE COPY OF THE FIR IN CR.NO.220 OF 2017 OF  
KADAKKAL POLICE STATION, KOLLAM.

EXHIBIT P6(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P6

EXHIBIT P7 TRUE COPY OF THE FIR IN CR. NO.879/2017 OF  
SREEKARYAM POLICE STATION,  
THIRUVANANTHAPURAM.

EXHIBIT P7(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P7

EXHIBIT P8 TRUE COPY OF THE REPRESENTATION SUBMITTED BY  
FATHER OF LATE RAJESH TO THE CHIEF SECRETARY,  
DATED 10.8.2017.

RESPONDENT'S EXHIBITS:

EXT.R1(a) TRUE COPY OF THE CHART OF INCIDENCE AND RATE OF VIOLENT CRIMES DURING  
2010 PUBLISHED BY THE NATIONAL CRIME RECORDS BUREAU.

EXT.R1(b) TRUE COPY OF THE CHART OF INCIDENCE AND RATE OF VIOLENT CRIMES DURING  
2014 PUBLISHED BY THE NATIONAL CRIME RECORDS BUREAU.

EXT.R1(c) TRUE COPY OF THE CHART SHOWING MOTIVES OF MURDER AND CULPABLE  
HOMICIDE NOT AMOUNTING TO MURDER DURING 2010.

EXT.R1(d) TRUE COPY OF CHART SHOWING MOTIVES OF MURDER AND CULPABLE HOMICIDE NOT AMOUNTING TO MURDER DURING 2014.

EXT.R1(e) TRUE COPY OF THE CHART SHOWING THE CASES REPORTED, VICTIMS (V) AND RATE OF COGNIZABLE CRIMES (IPC) UNDER DIFFERENT CRIME HEADS DURING 2015.

EXT.R1(f) TRUE COPY OF THE CHART SHOWING IPC CASES REGISTERED FROM 2008 TO 2016 IN THE STATE OF KERALA.

EXT.R1(g) TRUE COPY OF THE CHART SHOWING THE IPC CASES REGISTERED FROM 2010-2016 IN KANNUR DISTRICT.

EXT.R2(a) TRUE COPY OF THE EXECUTIVE DIRECTIVE-10/2017 DTD.5.5.2017 ISSUED BY THE STATE POLICE CHIEF.

EXT.R2(b) TRUE COPY OF THE LETTER NO.T5/77026/2017/PHQ DTD.24.7.2017 ISSUED BY THE STATE POLICE CHIEF.

EXT.R2(c) TRUE COPY OF THE FINAL REPORT IN CRIME NO.1056/16 OF DHARMADOM POLICE STATION.

EXT.R2(d) TRUE COPY OF THE FINAL REPORT IN CRIME NO61/2017 OF DHARMADAM POLICE STATION.

EXT.R2(e) TRUE COPY OF THE FINAL REPORT IN CRIME NO.1192/16 OF PAYYANNUR POLICE STATION.

EXT.R2(f) TRUE COPY OF THE FINAL REPORT IN CRIME NO.510/17 OF PAYYANNUR POLICE STATION.

EXT.R2(g) A COPY OF THE FINAL REPORT IN CRIME NO.879/17 OF SREEKARYAM PS.

TRUE COPY

P.STO JUDGE

CSS/

**ANTONY DOMINIC, C.J. & DAMA SESHADRI NAIDU, J.**

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**W.P.(C)No. 32894 of 2017 (S)**  
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**Dated this the 23<sup>rd</sup> day of May 2018**

**JUDGMENT**

***Dama Seshadri Naidu, J.***

**Introduction:**

Public, Private, Political, Promotional: all have the same initial letter—P. But which of these stands for the ‘P’ in this self-proclaimed PIL? We shall see.

2. A charitable trust complains that the State of Kerala has been swept and is still being swept by waves of political violence, murders. It accuses the principal party of the ruling coalition and some of its executives as the cause for these wanton violence and macabre murders. It further complains that the state police machinery is not independently investigating the crimes; it is bailing out the accused with political clout. So it wants "impartial, independent investigation" by a "neutral agency", such as Criminal Bureau of Investigation (CBI). For that purpose, it has filed this public interest litigation and urged this Court to transfer the investigation to CBI from the state police.

3. In a federal polity, law and order being a state subject, a person must establish exceptional circumstances, for this Court to allow the CBI, without the executive's consent, to investigate crimes occurring within a particular state's territorial limits.

4. Has the Trust established those grounds, so that this Court can order the exceptional remedy—transfer of investigation?

**Facts:**

**About the Whistle Blower:**

5. Gopalan Adiyodi Vakkeel Smaraka Trust (“the Trust”), the petitioner, is said to function for nearly three decades with noble objectives. It has its headquarters at Thalasseri, Kannur District, but has an all-Kerala presence. It complains of political murders. It espouses the cause of the victims' relatives, for “they are unable to proceed against the politically influential culprits, fearing a backlash from them.”

**Political Murders: The Allegations**

6. Though the State of Kerala epitomizes many virtues, it has earned an epithet, too: a political graveyard. So alleges the Trust. It has earned notoriety for political violence, and a series of political killings has been continuing unabated—for decades. In most incidents, activists of CPM were

the accused. The investigation suffered because of political interference, and hundreds of criminal cases involving CPM activists as accused were withdrawn. The ruling party has “a game plan to frighten and annihilate the political opponents.” To hammer home its allegations, the Trust narrates seven recent political murders. It accuses the police of shoddy, ineffective investigation, and the Government of interference in the investigation.

7. The common theme of the allegations about all the seven murders is that all the victims owed allegiance either to BJP or RSS. And all the accused invariably belong to CPM, the principal partner of the coalition government. There exists an unholy nexus between the police and the ruling political class; it has perverted the course of justice, and the investigation suffered. Thus pan out the allegations.

8. Whenever CPM came to power in Kerala, the investigation suffered serious setbacks because of the political interference—more particularly when the accused were from that party. So in numerous cases, the Sessions Courts concerned were constrained to acquit the accused who were CPM activists.

9. Now, too, the abuse of power is continued, and the investigations are meddled with. Unless this Court intervenes and investigates, through an

impartial fact-finding Commission, the Government's omissions and commissions, the victims will not get justice. As a corollary to these allegations, the Trust wants this Court to hand over the investigation to the CBI from the State police.

10. The Trust alleges that the ruling class, as a part of its game plan, has been rendering law and order in the State ineffective, to frighten and to silence the political adversaries of CPM into submission. The Trust has illustrated seven crimes to bring home the allegations: (1) Crime 1056/16 of Dharmadom PS; (2) Crime 60/17 of Dharmadom PS; (3) Crime 1192/16 of Payyannur PS; (4) Crime 510/17 of Payyannur PS; (5) Crime 888/16 of Kasaba PS; (6) Crime 220/17 of Kadakkal PS; and (7) Crime 879/17 of Sreekaryam PS.

**The Relief Sought:**

(a) To direct the CBI to investigate the seven crimes and submit reports;

(b) To direct the State police, the State of Kerala, and Union of India "to facilitate effective and speedy investigation/further investigation" by CBI in a time bound manner; and

(c) To grant other incidental reliefs.



**Counter Facts:**

**(a) The State:**

11. The State took these contentions: (a) the Trust wanted to mitigate private grievances under the cover of a PIL; (b) the writ petition suffers from the misjoinder of causes of action; (c) the Trust has miserably failed to justify its invoking Article 226 of the Constitution; (d) in most cases the investigation has proceeded substantially; and (e) strangely, CBI, flooded with cases, is still willing to take over the investigation—only by “acting under dictates of the higher echelons in the party ruling the Centre”.

**(b) The Police:**

12. The State’s defence apart, its police chief (DGP), arrayed as the second respondent, filed a detailed counter affidavit, denying all the allegations and countering the Trust’s claims, comprehensively.

13. The DGP, as the head of the State police force, does acknowledge that there have been political murders. But he denies that the ruling dispensation has anything to do with them. According to him, most murders are retaliatory and cut across all political lines—not simply one particular political party going after all others. He also asserts that he has verified and has been satisfied with the investigation conducted. The DGP, arrayed as the

second respondent, asserts that there have been no interferences whatsoever either from the politicians or from any other quarter. He concludes that the investigations are impartial, effective, and honest in all the cases.

**Submissions:**

**Petitioner's:**

14. To begin with, Shri P. Venugopal, the learned Senior Counsel for the Trust, has presented a thumbnail sketch of, what he calls, the political atmosphere in the state and also its legal fallout, especially on law and order. We choose to recapitulate all the essential legal pleas, leaving out the political slant which does not affect the Trust's contentions.

15. The learned Senior Counsel reminds us that the writ petition covers "the political murders" only of 2016; by the time the Trust approached the Court, there occurred seven murders. And by the time the matter came up for consideration, two more occurred. Shri Venugopal stresses that in the politically charged atmosphere, the executive has been abusing its power and misusing its official machinery, especially the police, to shield the guilty, for they belong to the ruling dispensation. Under these circumstances, according to him, to have a free and fair investigation, this Court ought to transfer all the cases to CBI. Fairness demands, further goes

his contention, the investigation must be by an agency outside the State, the executive's permission for which is not a prerequisite.

16. Countering the State's plea that in many cases the police had filed charge-sheets, Shri Venugopal would contend that there is ample precedential support to the proposition that even the charge-sheeted cases could be transferred. According to him, in a case about changing the investigating agency, the accused or the persons likely to be accused or affected need not be arrayed as parties. Emphasising that life and liberty are the cherished fundamental rights, the Senior Counsel has further asserted that, to have the investigating agency changed, a suitor need not establish "a cast-iron case".

17. On the issue whether the Trust produced sufficient material before the Court, Shri Venugopal would have us consider the constraints the Trust faced. According to him, given the secretive nature of the investigation and further given the hostile attitude displayed by the official machinery, it is well-nigh impossible for the Trust to gather all the material. It suffices if the Trust, he maintains, could raise a plausible issue warranting Court's intervention.

18. On the Trust's standing or *locus*, Shri Venugopal would contend that the Trust is an NGO., having no axe of its own to grind. Further, he draws our attention to the pleas the Trust has taken in the reply affidavit and submits that the members of the victims' families are terrified to come out in the open and show an accusing finger towards the Government. In this regard, the learned Senior Counsel has referred to certain affidavits filed by those aggrieved persons.

19. Then, Shri Venugopal has referred to each of the seven murders and elaborated on the gruesome incidents in graphic detail to hammer home his contention that in certain politically sensitive districts, people not owing their allegiance to the ruling dispensation are facing an imminent threat to their lives.

20. In the end, the learned Senior Counsel for the Trust has relied on a profusion of precedents to support his contentions that the writ petition is eminently maintainable, that the Trust has the *locus*, and that the interest of justice demands the investigation be transferred to a neutral agency—CBI.

**Respondents’:**

**First Respondent’s:**

21. Shri Sudhakara Prasad, the learned Advocate General, for the State submits that the writ pleadings are deplorable. According to him, the allegations are unrestrained, affecting the careers and characters of the people in responsible positions. He has submitted that the Trust has not chosen to array as parties all those it named in the writ petition and against whom very grave allegations have been levelled. The Trust has indulged in character assassination, with impunity, contends the learned Advocate General.

22. With specific reference to the scope of the writ petition, the learned Advocate General would contend that the Trust is only a front for certain political organisations and that the victims’ families themselves have full faith in the State machinery and investigation it has undertaken. In other words, if there had been any element of truth in the allegations, at least one of the numerous victims’ relatives would have come before this Court ventilating his or her grievance. The learned Advocate General has specifically contended that if at all the Trust had doubted the Investigating

Officers' integrity and impartiality, it ought to have arrayed those officers *eo nomine*.

23. In the end, the learned Advocate General has lamented, what he calls, the Trust's reckless and irresponsible attitude in abusing the judicial process. He too has relied on a few precedents, which we will refer to while we analyse the case.

**Second Respondent's:**

24. Shri Harin Raval, the learned Senior Counsel, for the second respondent has elaborated on the federal fabric of our polity and asserted that the power of judicial review trenching upon any State's legislative domain must be exercised sparingly, consciously, and exceptionally. This exercise of the extraordinary power must be only when it becomes extremely necessary to provide credibility and instil confidence in the investigations or where the incident may have national and international ramifications". He has also submitted that the measure of ordering an enquiry by an agency outside the state could be necessary "for doing complete justice and enforcing fundamental rights." The Trust has not, he contends, placed sufficient material before this Court, for it to exercise its extraordinary jurisdiction

under Article 226. According to him, none of the seven cases gives rise to any exceptional situation warranting judicial intervention.

25. Shri Raval has brought to our notice the charge sheets filed in the crimes: in five crimes out of seven, the police have filed charge sheets. He contends that those charge sheets amply demonstrate that the investigation was impartial, effective, and swift, too.

26. Shri Raval has frontally attacked not only the Trust's *locus* but also its *bona fides*. Drawing our attention to the writ pleadings, he contends that the Trust, besides its tall claims, has not spelled out anything about its activities, charitable or otherwise. Shri Raval has also submitted that though the Trust itself alleged that the political murders had been taking place for decades, strangely it had chosen to react only now. And it has—for reasons not far to seek—had chosen to espouse the cause of only one section of people, though the so-called political murders have taken place on either side of the political divide.

27. Shri Raval asserts that the writ petition is silent about why the victims did not approach the court. In other words, the pleadings are laconic: they do not divulge what prevented the aggrieved persons from approaching the Court themselves. He has, however, submitted that when the respondents

raised this specific plea affecting the writ petition's maintainability, only as an afterthought, the Trust provided a lame excuse in the reply, which cannot be treated as part of the substantive pleadings.

28. Proceeding further, the learned Senior Counsel has also contended that the alleged fear psychosis the aggrieved persons suffered from is far-fetched; if the fear of survival is so overwhelming, those persons would not have ventured—even belatedly—to provide affidavits to the Trust supporting its pleadings.

29. The learned Senior Counsel has particularly pointed out that the Trust has not shied away from flaunting its political identity or proclivity, nor has it showed sympathy to the victims of violence unmindful of those victims' political affiliations. It ignored the victims on the other side of the political divide.

30. The learned Senior Counsel has repeatedly referred to the writ pleadings and contended that the Trust has, in the name of public interest, indulged in character assassination, without ever bothering to bring on record those persons against whom it has made wild allegations. The Trust's conduct, according to Shri Raval, is disgraceful.



31. Shri Raval has made every effort to distinguish the plethora of precedents the Trust has relied on, besides his citing equally prolific precedents. In the end, Shri Raval has decried the Trust's using a public law remedy as a gimmick to create a political sensation, thus resorting to gross abuse of process.

32. Heard Shri P. Venugopal, the learned Senior Counsel for the Trust, Shri Sudhakara Prasad, the learned Advocate General for the State, and Shri Harin Raval, the learned Senior Counsel for the State Police Department.

**Issues**

- (1) Has the Trust got the locus to file the writ petition *probono publico*?
- (2) Should the writ petition fail for not bringing on record those it has accused against—the necessary parties?
- (3) Has the Trust established sufficient grounds justifying this Court to transfer the investigation to an outside agency—CBI?

**Analyses:**

**Should the writ petition fail for not bringing on record those it has accused against—the necessary parties?**

33. The common law confers on the Trust a title: *dominus litus*. As such, the Trust has the luxury of choosing its adversaries. Or has it? The first and second respondents are the State and its police Chief. The third and fourth respondents are the CBI and its local unit. The fifth respondent, understandably, is the Union of India. But we fail to appreciate in the array of parties the sixth respondent—Ministry of Personnel, Public Grievance & Pension, GOI, New Delhi. But the Trust has smeared the image of many a person—prominent or insignificant—and tarred all and sundry with a broad brush, yet never bothering to bring them on record.

**Should the writ petition fail for not adding the necessary parties?**

34. As we have already pointed out, the pleadings proceed no-holds-barred. From the Chief Minister to the grassroots party cadres, many names pop out in the pleadings. They all allegedly have played a part in the violence and deaths. The Trust wants an investigation by an independent agency—CBI—into these allegations and into the crime or complicity of all those named persons. But the Trust did not array them. Allegations galore, rampaging accusations threatening to tear their reputation, and even freedom, apart; are they not entitled to notice, prior hearing?

35. Indeed, Shri P. Venugopal did argue that at the pre-cognizance

stage, no accused need be served notice. According to him, being an accused does not mean being tried or, much less, being convicted. At various stages of the enquiry and trial, the accused will, contended the learned Senior Counsel, get opportunities to vindicate his stand. Regrettably, this plea fails to persuade us. A third party to a writ petition, facing innuendo without ever getting an opportunity to rebut it, cannot be equated with an accused in an FIR.

36. A PIL must aim to redress genuine public wrongs or injuries, but not private injury, or political disputes, or other disputes not genuinely concerned with public. The Court should see that nobody's character is besmirched.<sup>1</sup>

37. In *Divine Retreat Centre v. State of Kerala*,<sup>2</sup> the Supreme Court has held that the High Court could have passed a judicial order directing investigation against a person and his activities only after giving him an opportunity of being heard. It is not permissible for the court to set the criminal law in motion based on allegations made against a person, in violation of principles of natural justice. A person against whom an inquiry

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<sup>1</sup> Dattaraj Nathuji Thaware V. State of Maharashtra, (2005) 1 SCC 590

<sup>2</sup> (2008) 3 SCC 542

is directed must have a reasonable opportunity of being heard as he is likely to be affected by such order and, particularly, when such order results in drastic consequences of affecting his reputation.

38. In *D. Venkatasubramaniam v. M. K. Mohan Krishnamachari*<sup>3</sup> as quoted in *Davinder Pal Singh Bhullar*, the Supreme Court has held that an order passed behind the back of a party is a nullity and is liable to be set aside only on this score. Therefore, a person against whom an order is passed based on a criminal petition filed against him, he should be impleaded as a Respondent, a necessary party.

39. Without multiplying the precedents, we hold that the writ petition incurably suffers from the vice—non-joinder of necessary parties.

### **Naming, Blaming, and Shaming:**

#### **The First Murder:**

40. The murder of Remith, the first victim, took place close to the local MLA's camp office; of course, the pleadings plainly reveal who that local MLA is: the very Chief Minister. Then proceed the pleadings with more innuendo. The assailants allegedly came from the local MLA's camp

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3 (2009) 10 SCC 488

office. At that time, a member of the CM's personal staff, his Assembly Constituency Agent, and the Block Secretary of DYFI—all named—were present in the camp office. The assailants, after committing the heinous crime, went right back into the camp office. The murder, therefore, was “a high-level conspiracy hatched by CPM leadership.” You do not need Hawkin's high intellect to guess who that “leadership” is.

41. About Remith's murder, one CI registered the crime but, as the allegation goes, another CI has investigated, for he owes his loyalty to the ruling party. This loyalist police officer has many complaints against him pending. Nothing more is spelt out—either about the loyalty or about the complaints—but naming and shaming continued.

42. The eye-witnesses in Remith's murder case were “brutally harassed” and threatened. Graphic are the details. But the Trust's signatory, the omniscient good Samaritan, does not divulge how he came to know about all the seven crimes inside out—as many details as anyone could gather after watching a video of all the crimes. Again, the Trust names two DSPs as the culprits for the police excesses and asserts that the “BJP activists” earlier filed complaints against these officers before the jurisdictional magistrate. But no further details.

43. Third parties' integrity questioned, reputation ruptured, and image distorted, the pleadings proceed further, defiantly. Neither the source of information revealed nor relevant material produced. The pleadings conclude, concerning Remith's murder, that the "senior leaders of CPM" conspired and the CM's personal staff were involved. The slur is that the CM holds the Home portfolio. Then comes another assault on reputation: one of the CM's personal staff has been taking care of the accused in prison, besides continuously visiting them: source, again, is invisible.

**The Second Murder:**

44. Anticipating an assault on Santosh Kumar, the local BJP leaders informed one named DSP, but to no avail. A prominent CPM leader of that area, the Panchayat Vice-President, interacted with the murderous gang before they went out to fulfil the task; he also warned the other members of his party "not to go to that place." The murder took place despite the police party's presence just 250 mts., away. Of the 12 assailants, the police arrested only 7, and the rest are roaming free in the open.

45. The police registered the statement of the victim's widow, when she was in a state of shock, besides being not mentally and emotionally fit to give "a proper statement." The police arrested the assailants from a place

near to the residence of CM's personal staff—named again. But the police recorded as if they had arrested the assailants from some other place. “It was also reliably understood” that the CM's personal staff (named) arranged for the accused “to evade arrest.”

46. The Trust may have lost sight of the legal requirement that allegations as were “reliably learnt” have no place in the pleadings unless the deponent attests to the source of information. Such statements, of course, may pass political muster but not the legal hurdle.

47. The Trust declares that investigation is improper and ineffective, and no trial could be sustained on its basis; “it is a mockery of justice.” But it stops short of demonstrating how the investigation has suffered.

**Third Murder:**

48. The victim was C. K. Ramachandran, a BJP political functionary, besides being its trade union (BMS) leader; he was done away by a group of about 50 CPM/DYFI activists, asserts the Trust. The victim's wife, according to the Trust, identified many accused, who include the Secretary of CPM and another top political functionary, both named. A local CPM leader, initially, was shown as the second accused, but later the police deleted his name. About the second accused's *alibi*, the Trust seems to have

its parallel investigation. It accuses the police of not examining his cell phone to expose his theory of *alibi*.

49. About the first accused, the Trust terms him a notorious criminal. Though he had earlier been subjected to Anti-Social Activities Prevention Act, the police dropped the proceedings because of “the interference by the present Chief Minister”, and it shows that the first accused is “so close to the Chief Minister.” The Trust also turns its all-knowing eye into the police station and states that the police assaulted the BJP activists. The police have even been preventing these BJP activists from appearing as witnesses in the courts.

**Fourth Murder:**

50. The victim was Biju, an RSS activist, killed by CPM activists. The Trust provides the background for this murder. Earlier, one CPM activist was killed; then CPM workers threatened many RSS activists, including Biju, through social media. Finally, they retaliated, accounting for Biju. The whole police force in that area—Payyannur P S—is notorious, according to the Trust, for “yielding to CPM”; so no fair and proper investigation takes place.



**Fifth Murder:**

51. Smt. Vimalaand and Sri Ramakrishnan, close relatives and BJP activists, were the victims. In the last assembly elections, BJP “improved its performance by leaps and bounds” in Kanjikode area. Because of BJP’s “spectacular performance in the election, violence was unleashed against BJP activists throughout the constituency.” When the CPM activists set on fire Ramakrishnan’s motorcycle, an LPG cylinder nearby caught fire and exploded, accounting for the couple.

52. The allegation reads that the police were “reluctant to incorporate the offence under Section 302 even though two persons were killed.” The police have not investigated how the assailants secured fuel for that incendiary incident. Though the crime, as “it was understood”, had initially been investigated by an ASP, it was suddenly handed over to the District Crime Branch solely to avoid the previous IO.

53. Then begins the naming and blaming game, again: one named Circle Inspector, as “the District President of Police Association owning allegiance to the ruling party,” tried his level best from the very beginning to sabotage the investigation. And, as a reward, he was “promoted as Deputy Superintendent of Police and has been posted at Kozhikode now.” So far

three DSPs were changed, and now a fourth one is investigating; it was “to hamper the investigation.” The allegations follow thick and fast. Not all accused persons were arrested, and the victims’ dying declarations were not recorded “in spite of specific requests in this regard by the relatives.” Again, the Trust reveals neither the names of the relatives nor any further details.

**Sixth Murder:**

54. Sri Raveendran Pillai, a retired SI of Police, was killed by CPM activists, for he joined BJP and later became the Kadakkal Panchayat Committee President of BJP. The Trust agrees that there had been a spate of murders in the area: “in three incidents, BJP/RSS activists were killed by CPM activists, and on one occasion, one CPM worker was killed by them.” The Trust alleges that two named CPM activists tried to prevent the doctors at the Taluk Hospital from treating the victim. Later, the Trust also “understood that the local Secretary of CPM”—a named Advocate—and a named District Committee Member “conspired to execute the murderous assault” on the victim. When the victim was admitted in a hospital, two CPM activists, again named, “tried to prevent treatment being provided” to the victim. The local Secretary “also rushed to the hospital and tried to prevent the doctors from treating or shifting the victim” to any other

hospital. But, despite his efforts, the victim reached the Medical College Hospital, Trivandrum. Then again, the local Secretary, accompanied by a named police officer, dictated the statement as that of one Mr. Kalesh, who accompanied the victim.

55. Though “Mr. Kalesh submitted complaints to the jurisdictional Judicial First Class Magistrate, Human Rights Commission, and higher officers of the Police pointing out that a statement prepared at the instance” of the Secretary, no action has been taken. The Trust’s signatory does not reveal in his affidavit how he secured this information. The attestation is bald.

56. In fact, about this murder, the Trust provides minute details—how the murder was committed, the precise number of the murderous gang, the forensic flaws in the police investigation, the political cover-up, and the alleged implication of the victim’s companion as the perpetrator. The Trust accuses that only 23 of 50 assailants were shown as the accused; but only 13 were arrested, the rest roaming free. It also names a KSRTC employee-CPM activist as the principal conspirator and says that the police have let him off—not arrayed as an accused.

57. The Trust digs deeper. It finds that the CI who initially investigated was “an activist of Student Federation of India, the student wing of CPM, while he studied in Sreenarayana College, Kollam.”

**Seventh Murder:**

58. Victim Rajesh, a local RSS office bearer, died of “89” injuries. First, the CPM cadres attacked BJP state-office building; later, 11 CPM activists armed with deadly weapons, assaulted Rajesh brutally, chopped one of his hands and threw it away, besides inflicting numerous injuries. “There are strong indications”, the Trust asserts, “that even State-level leaders of CPM were involved in the planning and execution of series of clashes targeting the BJP State office, houses of BJP leaders and activists, and also assaults on BJP/ RSS workers.”

59. Rajesh’s father represented to the Chief Secretary, Home Secretary, and State Police Chief, pointing out the lapses in the investigation; he wanted the investigation handed over to the CBI. According to the Trust, the flaws in the investigation are deliberate. And justice-denial is the State’s objective.

60. The Trust, as usual, produces no material about Rajesh’s father complaining to the authorities. A father, distraught as he has been, having

lost his son, is said to have mustered courage—contrary to Trust’s doomsday picture—to complain to the authorities. The police, however, admit that he complained and the authorities addressed the grievance. If dissatisfied, the father could have come to the Court. But he did not.

**A Word on Pleadings:**

61. Gruesome or gory are the murders and the attendant violence—or at least the Trust depicted them so. Institutions such as courts have established methods to see the issues, not emotionally clouded, but in the clearest possible light—dispassionately. An allegation is an allegation until it is proved.

62. Pleadings play the primary role in presenting the issue for the Court’s consideration. There is a method of making allegations and a manner of establishing their veracity. The Judges, by disposition, are expected to be dispassionate. The contesting counsel ought to be composed, and the pleadings considerate. Here the learned counsel are, but the pleadings are not.

63. We may add: pleadings are not playthings; they are like loaded pistols. Words can wound. In fact, they do many things: they edify, deify, vilify, or even destroy—lives and reputations. They can stoke emotions,

provoke violence, throw values into turmoil, affect lives, in many inconceivable ways. Pleadings—their tone and tenor, more so—can make or mar the case prospects and fortunes. While drafting the pleadings, counsel must be on guard; decorum and deference, precision and circumspection are the watch words. Rather they are the cardinal virtues and primary attributes. A life may hang on a comma; a fortune on an infelicitous expression; a disaster on a misspelt word.

64. To conclude, we may add, it takes cognitive toil and literary skill to plead correctly, clearly, cogently, and concisely: the four Cs.

**Has the Trust got the locus to file the writ petition *pro bono publico*?**

65. The traditional rule of standing which confines access to the judicial process only to those who suffered a legal injury or legal wrong has now been jettisoned. And the narrow confines within which the rule of standing was imprisoned for long years, given our inheriting the Anglo-Saxon system of jurisprudence, too, have been broken; and a new dimension has been given to the doctrine of *locus standi*. This approach has revolutionized the whole concept of access to justice in a way not known

before to the western system of jurisprudence. So observes the Supreme Court in *Asiad Workers Case*.

66. The Supreme Court has emphasized, as the need of the hour, this liberal—some call activist— approach: It has paid heed to the peculiar socio-economic conditions prevailing in our country, where there is considerable poverty, illiteracy, and ignorance, obstructing and impeding access to the judicial process. Any restrictive, doctrinaire approach, the Court has felt, would close the doors of justice to the poor and deprive sections of the community.

67. *S.P. Gupta v. Union of India*,<sup>4</sup> (Judges' Transfer Case), a precursor to *Asiad Workers Case*, a seven-Judge Bench, spoke at length about the limiting doctrine of standing. It acknowledges the need to carve out an exception to the strict rule of standing. And it eloquently stresses, but with a caveat, on a suitor's standing. *S. P. Gupta* observes that where a legal wrong or a legal injury is caused or threatened to be caused to a person or to a determinate class of persons and if "such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically

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4 1981 Supp SCC 87

disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32” of the Constitution.

68. Yet, with an eye to the exploitative potential of this permissive provision, *S. P. Gupta* cautions in the same paragraph:

“But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular writ petition filed in court.”

69. Here, the petitioner is a Trust, represented by its Secretary. In one of the seven cases the Trust talks about, the Secretary’s brother is the *de facto* complainant. In all cases, first, the Trust has not pleaded why any of the affected persons—the victims’ families or their relatives—could not approach the Court. Attacked on this front in the counter-pleadings, the



Trust filed a reply, belatedly justifying, that they have all been terrified. Yet some seem to have given affidavits to the Trust; those affidavits were collected only in the face of the respondents attacking the Trust's locus.

70. Second, epistolary jurisprudence well established, if such fear-psychosis as pleaded by the Trust gripped the aggrieved, any of them could have either complained to any higher officials or to this Court—through, say, a letter. Those who dared to give an affidavit could have as well dared to complain or dash a letter, so to say.

71. Third, the Trust, of course a congregation of people, has not spelt out in its affidavits, or in its verification, how it got the voluminous information and the minutest details of the crime—though they remain mere allegations at this stage—as though it had conducted a parallel investigation. The Trust pleaded as if it had a ring-side view of every crime.

72. The affidavit accompanying the writ petition, as is well-established, should clearly state which part of the averments (referring to para numbers or their parts) made (including those in the synopsis and list of dates, not just the petition) is true to the petitioner's personal knowledge, derived from records or based on some other source. It should also aver what

part is based on legal advice, which the petitioner believes to be true, so held the Delhi High Court in *Subramanian Swamy v. Delhi Police*.<sup>5</sup> But here, we see no such information provided.

73. Fourth, the record reveals, and the Trust does not contradict, that the political murders took place on either side of the political divide. In fact, the police pleadings expose the volatile political atmosphere and the attendant violence in some parts of the State. We may, here, add one word of appreciation: the pleadings by the police are exhaustive and unapologetic. They have not tried to sound politically correct, either. They named and blamed, in some instances, the misguided masses of, even, the ruling party for the mindless murders, in the name of retaliation. If you were guided by the ghost of Hamlet, your path, of vengeance, would only lead to more murders and more violence, and nothing else. The fruit of vengeance is destruction—always bitter.

74. The victims came from either side of the political divide, most of them from the poorer strata; and the murders on either side happened in quick succession. Despite that, why the Trust, seemingly espousing a public

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<sup>5</sup> 244 (2017) DLT 510

cause, chose to complain about murders only on one side, and why it wanted to champion the cause of only one political party. We fail to understand. In the pleadings, appreciably, the Trust has not hidden its political loyalties and leaning.

75. Then, this political proclivity leads us to another question: Even if the victims' families or relatives have been terrified to complain, to approach the Court; are not the political parties or the organisations, themselves juristic persons, capable of ventilating the grievances on their members' behalf?

76. So we are constrained to conclude that the petitioner Trust lacks the *locus* and *bona fides* to espouse the cause in the name of public interest when it concerns with only parochial political score-settling.

**Do the facts here justify an investigation by CBI?**

**Allegations and Refutations:**

**First Murder:**

77. Here, the de facto complainant is the brother of the person who deposed for the Trust. First, K. V. Venugopal investigated the crime; he arrested A1 and A2, interrogated them, elicited the names of the other

accused, and also recovered the weapons, based on their confession. The IO interrogated 128 witnesses. In fact, all the five accused who participated in the actual commission of the Crime were arrested.

78. The police found the murder to be a retaliatory one, a spill-over of local political rivalry. Just a couple of months earlier, “the accused belonging to BJP/RSS” murdered a CPM activist. Even before that, soon after the ‘Assembly elections’, the same BJP/RSS activists killed another CPM activist, while he was in a victory rally.

Sl. No.	Allegation	Refutation
1.	Remith’s murder was a matter of political persecution, given his affiliation to BJP/RSS.	A retaliatory murder to avenge the deaths of CPM workers Mohana in October 2016, and Raveendran in May 2016—both attributed to the rival political faction.
2.	The assailants came from the Local MLA’s camp office and went back to it after committing the offence.	A wild allegation: no evidence to connect the camp office to the crime.

3.	The two members of the CM staff were involved in the crime.	No evidence to implicate any CM's staff, nor did any witness speak about them. If any other person's involvement emerges at any stage, Section 319 of the Code can be taken recourse to.
4	Investigation Officer was changed, midway, <i>mala fide</i>	The CI, Kannur, was the initial IO; because of the law and order problem in his jurisdiction, he was taken off. The investigation was entrusted to the CI, Thalasserry. When normalcy returned, the investigation was re-entrusted to CI, Kannur.
5.	The first IO was changed because he arrested a member (A8) of the District Committee, CPM.	A8 was arrested by the second IO; A8 is not the Dist. Committee Member; instead he is a State Committee member of SFI.
6	CI Pradeepan Kannipoyil has yielded to political influence.	No grievance made against him before Police Complaint Authority or any other authority. He, in fact, arrested, A6, a DYFI Leader.
7.	The lorry of Remith, the victim, was illegally seized.	It was seized in the crime concerning Mohanan's murder.
8.	Two crucial witnesses were implicated in false crimes.	Police gathered overwhelming evidence that those two witnesses were involved in Crime No. 58/17, Dharamadom PS.

9.	Two DSPs have been trying to subvert the investigation.	The allegations against the two DSPs are scurrilous and shorn of truth.
10.	One of the CM's personal staff visited the accused in prison.	The police refrain from contradicting this allegation for want of knowledge. Yet they maintain that the allegation is unsustainable in the absence of that staff before this Court.
11.	Remith's case will meet the same fate of his father's.	The case concerning the murder of Remith's father earlier ended in acquittal, not because of police's failure, but because the witnesses turned hostile.

**Second Murder:**

79. In this crime eight accused, identified as the perpetrators, were arrested, and sent to judicial custody; the weapons, too, were recovered. The FSL reports already established the involvement of A1 to A3. On A4 to A8, there is, the police say, circumstantial evidence. The case has already been charge-sheeted.

Sl. No.	Allegations	Refutation
1.	All the accused were seen in a marriage party with the Vice-President of Dharamdom Grama Panchayath, before their committing the murder. Of 12 persons, only seven were	No evidence that the accused attended the wedding. The FIR contained no names of the accused. All the eight accused were identified during the investigation. So the allegation some other accused were shielded carries no conviction.

	shown as accused.	
2.	The statement of the deceased's wife was taken on the same day when she was in a state of shock.	The incident happened on 18.01.2017, but her evidence was recorded on 20.01.2017. The shock-theory fails to stick.
3.	Conspiracy angle remains uncovered.	Section 120 (B) covers the issue and all the accused face the conspiracy charge.
4.	Though Shijin Kandiyil assisted the assailants, he was not arrayed as an accused.	The investigation reveals no evidence against him.
5.	The deceased was done away with because he was interfering in temple affairs, besides contesting in the Panchayat elections.	The investigation falsified both the reasons. On the contrary, his death was, again, retaliatory to the clashes in January 2017 at Brennan, where CPM workers sustained injuries.
6.	DSP, Thalassery, ignored local BJP workers' request to deploy additional mobile and striking force in the affected area.	He did provide the additional forces, as requested and as required.
7.	The police present near the place of occurrence did not prevent the crime.	The police reached the scene of offence soon after the event, wasted no time, and launched a massive manhunt.

**Third Murder:**

80. The *de facto* complainant, the victim's wife, initially mentioned the names of two and 50 identifiable CPM workers as accused. Later, based on

the other witnesses' statements, the police identified seven more accused and arrested them. Eventually, eight were charge-sheeted.

Sl. No.	Allegations
1.	Once again, the deceased perished because of his political affiliation to BJP/RSS.
2.	Ranjith, A2, was removed from the array of accused, mala fide.
3.	The complainant named two persons, but spoke about 50 identifiable CPM workers as accused.
4.	A1 was not arrested; he was let go.
5.	The deceased was an eye-witness in two crimes: Crime No. 1146/13 of Payyannur Police Station and Crime No. 1147/13 of Payyannur Police Station.
6.	Threatening violence, the assailants earlier laid a wreath before the deceased's house; they also set his auto-rikshaw on fire. But the police took no preventive steps.

**Fourth Murder:**

81. The crime was registered based on the complaint given by the victim's companion, who rode the motorbike with the victim as the pillion rider. The complainant alleged that they both had been assaulted by seven identifiable persons. Later, after the crime-registration, 12 accused were identified. The police have gathered evidence how A1 procured the vehicle to commit the murder; so they deny laxity on that count. Confessions were recorded and weapons recovered.



Sl. No.	Allegation	Refutation
1.	The police arrested only two culprits, and the remaining ten were supplied by CPIM party's top leadership.	The complainant, an eye-witness, who rode the motorbike, with the victim riding pillion, reported about only seven identifiable persons. But the police arrested 12. The accused's involvement is established through thorough investigation and clear forensic evidence. Except, A4, everybody else was arrested. That the CPM leadership supplanting the accused betrays the petitioner's political propaganda.
2.	There were ominous events in the locality—closing of banks, shops, and so forth—indicating the impending attack. Yet police have not probed the conspiracy.	No record exists of the forebodings about the imminent incident. The allegation is a concoction. The deceased himself was an accused in a murder case.
3.	The police have not investigated how the accused procured the crime-vehicle.	The investigation revealed that A1 procured the vehicle one month before the incident. The owner's section 164 statement, too, was recorded. And conspiracy angle, with section 120(B), stands covered.

**Fifth Murder:**

82. In an incendiary incident, the accused, at late night, set fire to three motorcycles parked next to the deceased's house. When the complainant and his relatives tried to douse the fire, the nearby gas cylinder

caught fire and exploded. As a result, the complainant, his brother, his brother's wife, and another relative received burn injuries. Pending investigation, both the complainant and his sister-in-law died. Given the gravity of crime—two persons succumbing to burn injuries—the investigation was handed over to the DSP., CB CID, HHW-II, Palakkad, who examined 61 witnesses.

83. Still later, the ASP, an IPS, took over the investigation from the DSP., and, from January to March 2017, recorded 24 more witnesses' statements, which included those under section 164 of the Code.

Sl. No.	Allegation	Refutation
	The police have not examined the CCTV footage available at the nearby filling station, where the accused must have purchased the fuel.	The police did examine the CCTV footage of not only the filling station but also the nearby hotel. They also examined the staff of all the filling stations in the vicinity.
2.	The investigation, so far, is perfunctory and aims at protecting the ruling elite.	The police have been sifting through call data of the witnesses as well as the suspects. But so far, the evidence collected does not lead to the involvement of any senior leaders of the CPI (M).
3.	The police have been harassing the witnesses.	The police deny it. For them, the investigation is vigorous, leaving no

		angle unprobed. No witness so far has complained of any harassment or threat.
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**Sixth Murder**

84. In February 2017, during temple celebrations, the supporters of CPI (M) and BJP/RSS clashed; persons from both factions were injured. A stone pelted by a CPM activist injured the victim. After admitting him in hospital, the police registered a crime under Sections 143, 147, 148, 324, 308, 149 IPC, with Section 307 IPC and Section 27 of the Arms Act getting added soon. When the investigation was underway, the injured died, and the crime had Section 308 altered to Section 302 IPC. A counter case, too, was registered against 19 BJP workers under Sections 143, 147, 148, 324, 308, 149 IPC and Section 27 of Arms Act.

85. Of the 22 identified accused, most were arrested, weapons seized, and call data sifted through.

Sl. No.	Allegation	Refutation
1.	Police selectively arrayed the accused; they left out prominent politicians.	Initially, there was no complaint against the Local Secretary of CPM. But the police themselves discovered his involvement and made him an accused. Against the other persons named by the petitioner, the police found no

		evidence.
2.	Some accused have still not been arrested.	No motive could be read into this. The police have been doing all their best to arrest the remaining accused, most having already been arrested, though.
3.	In the hospital, CPM activists tried to prevent treatment to the victim and assaulted those that accompanied the injured.	During the investigation, the witnesses have denied any such incident. In fact, the injured from both factions were brought to the hospital.
4.	CPM's Local Committee Secretary, accompanied by an ASI, prepared the complaint and forced the complainant to sign it.	The allegation is malicious. As the ASI was nearer to the hospital, he was directed to rush there to record the statements. With persons from both the factions present, it was impossible for one person to dictate terms. The complainant gave a signed complaint; later his additional statement, too, was recorded. At no point has the complainant raised "any such allegation in any of his statements" as the petitioner now did. An enquiry by the ASP, an IPS, revealed that the complaint was genuine.
5.	Even the cause of the victim's death and the nature of injury were falsified.	The complaint and the later-gathered evidence have led to many theories: the injury must have been inflicted with a sword, an iron rod, or a blunt

		object such as a stone. It is a matter of investigation and trial.
6.	Though about 50 persons were involved in the crime, only 23 have been arrayed as accused. Just 13 have been arrested so far.	The complaint named three, besides 50 identifiable accused. During the investigation, 22 were identified and 12 were arrested so far. Of the remaining 10, two are juveniles. Now, on transfer, the District Crime Branch, Kollam Rural, has been investigating the crime.
7.	The police have deliberately omitted the conspiracy angle; no offence under section 120 B has been incorporated.	‘Admittedly’ a group clash occasioned the incident. Yet, during further investigation, if any evidence emerges about conspiracy, section 120 B IPC would be incorporated.
8.	Earlier, too, the inept police investigation has led to acquittal in other crimes.	The acquittal of the accused on the previous occasions at Kadakkal was due to the witnesses’ turning hostile. Notably, no trial court ever found fault with the investigation.

**Seventh Murder:**

86. When the victim, a local leader of RSS, was talking with his friend on the road, the accused, A1 to A11, armed with deadly weapons, attacked him and inflicted multiple fatal injuries on him. Taken to hospital by the police, the victim succumbed to the injuries while undergoing treatment.

87. After registering the crime, the police immediately arrested A1 to A4, A7, A11 to A13. They seized the weapons and other incriminating material, too. After a swift investigation by the ACP., the case was charge-sheeted.

Sl. No.	Allegation	Refutation
1.	The police have ignored a series of attacks on BJP/RSS cadres by the ruling party ruffians.	In July 2017, Trivandrum City witnessed a series of political clashes between BJP/RSS and CPI(M)/DYFI. 28 cases were registered against both the rival factions. These cases include attacks on the BJP office building and on the house of CPM State Secretary's son.
2.	To retaliate against an attack on the house of the State CPM Party Secretary's son, the CPM activists and leaders threatened through social media to unleash violence. But the police have not acted.	The police investigation falsified this allegation. Moreover, the deceased was not involved in the house-attack.
3.	No action was taken on the complaint of the victim's brother and other relatives.	No complaint was received. But, earlier, based on the victim's complaint, Crime No. 988/17 was registered under sections 341, 294(b) and 506(i) IPC. There, the accused was arrested pending further investigation. Further, the complaints submitted by the victim's father to the Chief Secretary and others were

		properly enquired into and remedial steps taken.
4.	The police did not, initially, invoke SC/ST (POA) Act.	The Act was invoked as soon as the police ascertained the victim's caste.
5.	After the victim's murder, the accused exploded a country bomb to terrorise the people.	No such incident has ever occurred.
6.	The victim's dying declaration was not recorded.	Given his serious condition, the victim could not speak; he was initially moaning and later slipped into a coma. The doctors all along focussed on saving him, without getting detracted by technicalities. In fact, while he was being taken to the hospital, the victim revealed the names of A1 and A2. And police proceeded from that information and built the further case.

**Not Politically Correct:**

88. From the tabulated pleadings and counter pleadings, we gather there has been a spate of political murders taking place, especially in a couple of districts where the political polarisation finds resistance at either end. Though we have no intention to name any political parties, much less attribute motives or crime to them, the parties to the *lis* themselves freely

engaged in name-dropping. The Trust does not hide its proclivity to a particular political party; the police, too, place on record that the violence is political; but, to their credit, sounded neutral. Sadly, the recriminations and political one-upmanship apart, the price is paid by the people at the grassroots level, the leaders of whichever hue ensconced at higher echelons. Diplomatic and deferential as the courts are, when justice demands, they jettison being politically correct. So, willy-nilly, we are constrained to refer to the political parties as pleaded. Yet, as far as possible, we avoided referring to people whom the Trust has not made parties, but against whom it made unrestrained allegations.

**The Scope of Adjudication:**

89. A mountain of papers, pleadings, allegations and counter allegations we come across, but all hover around one thing: fair investigation. The Trust complains that the leading party of the ruling coalition, CPM, has unleashed waves of terror and has been selectively silencing its political opponents—particularly belonging to the BJP/RSS. It alleges that the police have buckled under political pressure and the course of various investigations has been perverted—the cause of justice defeated.



So they want what is called impartial investigation by an independent agency, though here the institutional independence is a contested claim.

**Federal Powers-Exceptional Circumstances:**

90. Investigating agencies are guardians of the liberty of innocent citizens; they have a heavy burden cast on them to see that innocent persons are not charged on an irresponsible, false implication. No one should be put through the harassment of a criminal trial unless there are good and substantial reasons. So holds the Apex Court in *Navinchandra N. Majithia v. State of Meghalaya*<sup>6</sup>. Caution not to inflict investigation on the innocent occupies the same pedestal as does the commitment not to let culprits get away. Fair, impartial investigation is the bedrock of criminal-justice dispensation system.

91. The Supreme Court, in fact, through a series of judgments<sup>7</sup> has held that if a court concludes that there was a serious irregularity in the investigation of a crime, it may direct a further investigation under Section 173(8) Cr.P.C., even by transferring the investigation to an independent

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<sup>6</sup> AIR 2000 SC 3275.

<sup>7</sup> K. Chandrasekhar v. State of Kerala & Ors. (1998) 5 SCC 223; Ramachandran v. R. Udhayakumar & Ors. (2008) 5 SCC 413; Nirmal Singh Kahlon v. State of Punjab (2009) 1 SCC 441; Mithabhai Pashabhai Patel & Ors. v. State of Gujarat (2009) 6 SCC 332; and Kishan Lal v. Dharmendra Bafna (2009) 7 SCC 685)

agency. It cannot direct a re-investigation, though. Unless an extraordinary case of gross abuse of power is made out by those in charge of the investigation, the court should, holds the Supreme Court in *S.N. Sharma*<sup>8</sup>, be quite loathe to interfere with the investigation, a field of activity reserved for the police. Yet, if the police exercise their investigative power *mala fide*, the Court can interfere. *Kashmeri Devi*<sup>9</sup> and *Hema*<sup>10</sup> are two such instances where the Supreme Court transferred the investigation to the CBI, after its concluding that the earlier investigation was unfair.

92. As have been observed in WA No.1937 of 2012<sup>11</sup>, there lingered a doubt whether a High Court exercising its jurisdiction under Article 226 of the Constitution of India can, without the consent of the State Government, direct the CBI to investigate a cognizable offence alleged to have taken place within the territorial jurisdiction of that State. A Constitution Bench of the Supreme Court in *State of West Bengal v. Committee for Protection of Democratic Rights*<sup>12</sup> (CPDR) answered the

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8 S.N. Sharma v. Bipen Kumar Tiwari & Ors. AIR 1970 SC 786).

9 Kashmeri Devi v. Delhi Administration & Anr. AIR 1988 SC 1323

10 Hema v. State through Inspector of Police, Madras reported in (2013) 10 SCC 192

11 B C Ramachandra Thilakan v. The Director, Central Bureau of Investigation

12 (2010) 3 SCC 571

question, on reference, affirmatively. Keeping in view the constitutional contours, the Bench viewed the issue comprehensively: when the scheme of Constitution prohibits encroachment by the Union upon a matter which exclusively falls within the domain of the State Legislature—say, public order, police, and so forth—can the third organ of the State, viz., the Judiciary, direct the CBI, an agency established by the Union, to do something about a State subject, without that State’s consent?

93. The Constitution Bench, to begin with, acknowledges that Section 5(1) of the Delhi Police Act empowers the Central Government to extend the powers and jurisdiction of members of the Delhi Special Police Establishment to any area in a State. But Section 6 mandates that it must be only with the consent of the State Government concerned. For in a federal structure, the Union is not permitted to encroach upon the legislative powers of a State regarding the matters specified in List II of the Seventh Schedule.

94. The Court, in this context, has invoked the dictum of the Seven-Judge Bench in *Delhi Laws Case*<sup>13</sup> that the essential characteristic of federalism is “the distribution of limited executive, legislative, and judicial authority among bodies which are coordinate with and independent of each

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13 *Delhi Law Act 1912, In re.*, AIR 1952 SC 332

other”. The supremacy of the Constitution is fundamental for a federal State and for preventing either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of federal power—the federal power satisfying the State’s desire for union without losing its identity or individuality. This supremacy of the Constitution is protected by an independent judicial body interpreting the distribution of powers.

95. The Court has noticed the federal ferment on the delicate distribution of powers between the Union and the constituent States. So it posed a question unto itself: can the doctrine of separation of powers curtail the power of judicial review conferred on the Constitutional Courts, because the exercise of such power would impinge upon the said doctrine, even where the fundamental rights are sought to be abrogated or abridged?

96. To answer the above question, the Court, invoking its earlier precedents, has observed that the Court is not helpless to grant relief if the right to life and personal liberty is threatened. And it should be prepared "to forge new tools and devise new remedies" for vindicating these precious fundamental rights. On the scope of Article 226 of the Constitution, the Court has observed that the power of judicial review conferred on the High

Court, in a way, is wider in scope. The High Courts are authorised under Article 226 of the Constitution to issue directions, orders, or writs to any person or authority, including any Government, to enforce fundamental rights and, "for any other purpose".

97. Keeping in line with the above observations, the Court has gone onto hold that the High Court, exercising its jurisdiction under Article 226, can direct the CBI to investigate a cognizable offence within that State's territory. The direction will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of powers. And it shall be valid in law. As the protectors of the citizen's civil liberties, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular—zealously and vigilantly.

98. Emphatic as its observations are, the Apex Court, nevertheless, served a caveat: despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Constitutional Courts must remember certain self-imposed limitations on exercising these Constitutional powers.

99. Now, with the well-settled principles of law, we will proceed to unravel this question of entrusting investigation to an external agency. Let us progress from technical to substantial.

100. Meticulous and thorough are the submissions of Shri P. Venugopal, the learned Senior Counsel for the Trust, on this count. He took us through the voluminous record to hammer home his contention that this is, if ever, the fittest case for the CBI to probe. He did rely on a plethora precedents. We will examine the holding of those cases, first.

**Dharam Pal:**

101. In *Dharam Pal v. State of Haryana*<sup>14</sup> the victims belonged to an oppressed community. First, the appellant's minor daughter was raped; later, his wife too was done away with. Faced with further threats, the appellant lodged police complaints, but the investigation made no headway. The District Police Chief himself felt that the investigation was ineffective; so he recommended to the DGP to have both the cases transferred to CBI. As a follow-up, the State's Additional Chief Secretary requested the Government of India to have the cases handed over to CBI. That apart, the State police administration took departmental action against the police who mishandled

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14 (2016) 4 SCC 160

the investigation. The High Court, however, felt that the trial had commenced and that it would be inadvisable to transfer the cases to CBI.

102. In that context, the Supreme Court has observed that the Courts' effort is to ensure fair and just investigation. If necessary, the transfer can be ordered "to instil faith of victim and public at large in investigation agency." Yet, *Dharam Pal* cautions that directions for case transfer "should be sparingly issued." Stage of case is no bar to transfer it.

103. *Dharam Pal* goes onto emphasise that fair trial may be difficult if there is no fair investigation. And an impartial and truthful investigation is imperative. If there is a suspicion about the present investigation agency, it can be transferred. Such suspicion, *Dharam Pal* cautions, must have some base and foundation, and it must not be a figment of one's wild imagination. *Dharam Pal* quotes with approval *K.V. Rajendran v. Superintendent of Police, CBCID*<sup>15</sup> to assert that the superior courts can transfer cases, but only in rare and exceptional cases: for example, where high officials of State are involved, where the accusation itself is against the top officials of the

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15 (2013) 12 SCC 480

investigating agency, which can influence the investigation, where the investigation dents the public confidence, having been tainted or biased.

**Narmada Bai:**

104. In *Narmada Bai v. State of Gujarat*<sup>16</sup> the petitioner sought a direction to CBI to register an FIR and investigate into what was said to be fake encounter killing of her son. Here, the State police filed charge sheet after 3½ years. The crime, in fact, was allegedly committed by the State police personnel, and the investigation did not seem fair or effective. Further, the investigation involved police officers of two other States: Andhra Pradesh and Rajasthan. So the Supreme Court has felt it undesirable to allow the police of one State to investigate a crime in another state.

**Davinder Pal Singh Bhullar:**

105. In *State of Punjab v. Davinder Pal Singh Bhullar*<sup>17</sup> after surveying the precedential position, the Supreme Court has observed that a constitutional Court can direct the CBI to investigate a case provided the Court, after examining the allegations, concludes that the complainant made out a *prima facie* case against the accused. *But the person against whom the*

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16 (2011) 5 SCC 79

17 (2011) 14 SCC 770



*investigation is sought must be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry whether a person was involved in the alleged unlawful activities. (emphasis ours)*

106. Most important, *DPS Bhullar* observes that the court can direct CBI to investigate only where the Court feels that the accusation is against a person who by his post could influence the investigation, and that influence may prejudice the complainant's cause. In other words, it must be established that the change of investigating agency is necessary to do complete justice and to impart credibility to the investigation.

107. All the plentiful precedents<sup>18</sup> quoted in the footnote underline a few essential elements for a crime to be referred to a third-party investigating agency, rather than the State police: the court can transfer the matter to the CBI or any other special agency only when it is satisfied that the accused is a powerful and influential person or the State Authorities like high police officials are involved in the offence. And the investigation has

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<sup>18</sup> *Disha v. State of Gujarat*, AIR 2011 SC 3168; *Vineet Narain v. Union of India*, AIR 1996 SC 3386; *Union of India v. Sushil Kumar Modi* (1998) 8 SCC 661; *Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India*, (2006) 6 SCC 613; *Rubabbuddin Sheikh v. State of Gujarat*, AIR 2010 SC 3175; and *Ashok Kumar Todi v. Kishwar Jahan*, (2011) 3 SCC 758, as quoted in *State of Punjab vs. Davinder Pal Singh Bhullar*.

not been proceeded with in proper direction, or the investigation had been conducted in a biased manner. In such a case, to do complete justice and to impart credibility to the outcome of the investigation, such directions may be issued.

**Mithilesh Kumar Singh:**

108. In a college, seniors ragged two junior girls. The seniors' diabolical antics led to one girl's death. Investigation stifled, the Supreme Court in *Mithilesh Kumar Singh v. State of Rajasthan*<sup>19</sup> has observed that "an incomplete, indifferent or ineffective investigation might lead to an ineffective trial and result in failure of justice. A trial based on partisan or motivated or one-sided investigation is not fair." If the Court concludes that the investigation was improper, it may direct further investigation—ordinarily not for and ordinarily not for reinvestigation. But such transfer of investigation must be done in extraordinary or exceptional circumstances.

**Pooja Lal:**

109. An unsuccessful contestant in assembly elections decided to do away with the successfully returned MLA. Sensing danger, the MLA

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19 (2015) 9 SCC 795

complained to the Governor, who ordered for him additional security. Instead, the government changed even his existing security. Eventually, when the MLA was attacked, his security, instead of protecting him, fled.

110. In that context, the Supreme Court in *Pooja Lal v. Union of India*<sup>20</sup> has held that speedy justice differs from a fair trial. And denial of the first would not prejudice the public, unlike the second one. It is judicially acknowledged that right to a fair trial includes right to a fair investigation as envisaged by Articles 20 and 21. Though well-demarcated contours of crime detection exist, if it is not effective or purposeful or objective or fair then it would be the solemn obligation of the Court to order further investigation or reinvestigation to discover the truth. The power of constitutional Courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review.

111. *Pooja Lal* goes to observe that successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results. The jurisdiction to transfer the case to CBI,

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<sup>20</sup> (2016) 3 SCC 135

holds Pooja Lal, is to be made if the investigation appears to be faulty or ineffective. The primary concern of the court is to secure justice based on facts which ought to be unearthed through committed, resolved and competent investigating agency.

112. The pendency of the trial and examination of the witnesses so far made is not a disarming factor for the Court to consider the necessity of entrusting the investigation to the CBI. Here, CBI was entrusted with duty that of investigating the case *de novo*.

**Dhinubhai Boghabai Solanki:**

113. A whistle blower filed a PIL detailing various activities of certain firms and individuals indulging in illegal mining and destroying the biodiversity of the natural habitat of Gir forest in Gujarat. A sitting MP and nephew were impleaded. Within hours, the petitioner was killed.

114. Finding the investigation to be partial and improper, the High Court transferred the case to CBI. When the matter was taken to Supreme Court, it observed in *Dhinubhai Boghabai Solanki v. State of Gujarat*<sup>21</sup> that rule of law can be maintained only by a fair, impartial, and independent

<sup>21</sup> (2014) 4 SCC 626

investigation by the law enforcement agencies, in every reported incident of an offence. The Court further reiterated that only when the High Court felt that further impartial investigation is impossible, can it transfer the case to CBI—to instil confidence. The High Court's order was upheld.

**Rubabuddin Sheikh:**

115. In this, now widely known, case—*Rubabuddin Sheikh v. State of Gujarat*<sup>22</sup>—the Supreme Court framed this issue: Can the investigation be transferred to CBI authorities after charge sheet has been submitted and the trial is progressing?

116. On facts, the Court found that high officials of the state were involved, the investigation has not been done properly by State police and, hence, it was necessary to ensure investigation should not only be fair but also seen to be fair. To instil confidence in the minds of the victims, relatives, and public, the case was directed to be transferred to CBI.

**The Precedential Principles on Transferring Investigation:**

117. The learned Advocate General and Shri Harin Raval, the learned Senior Counsel, both appearing for the State and its law-enforcing

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22 (2010) 2 SCC 200

machinery have spared no effort to impress on the Court that, unfortunate as the violence is, the State and the police have spared no effort to bring the culprit to book and see that they get their just deserts. They, however, persist with their plea that the Trust has established no justifiable ground for the Court to entrust the investigation to an outside agency, that is CBI.

**(a) Political Score-Settling:**

118. Treating the case it was dealing with a textbook example of a 'political interest litigation' dressed up as a PIL, the Delhi High Court, per Dr. S. Muralidhar J., in *Subramanian Swamy v. Delhi Police*,<sup>23</sup> has observed that the Court should be careful in not letting the judicial process be abused by political personae for their own purposes, whatever the nature of the matter may be. Not that no political person can file a PIL. It is only that, in such instances, particularly where the principal allegations are against political opponents, the Court should be cautious in proceeding in the matter. The Court has to be satisfied that the allegations are based on some credible material and are made with a sense of responsibility.

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23 244 (2017) DLT 510

119. We reckon Delhi High Court's observations aptly apply here, too. The Trust is a tool. It serves the interest of justice to discourage camouflaged constitutional contests, having serious, far-reaching consequences.

**Has the State Machinery Failed, Warranting Transfer of Investigation?**

120. We do abhor violence, we do detest murders, and we do feel devastated at the wanton destruction and loss of human life. Yet the question is, has the State and its machinery—especially its law-enforcing one—have abdicated their constitutional obligation of containing crime and conducting a fair investigation to bring the culprits to book?

121. An aggrieved person can claim that the offence he alleges, to be investigated properly, but shall not claim that it be investigated by any particular agency of his choice, holds *Sakiri Vasu vs. State of U.P.*<sup>24</sup> Elaborating on the powers of the Magistrate, *Sakiri Vasu* observes that Section 156 (3) Cr.P.C. is “wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes . . . ordering a proper investigation if the Magistrate is satisfied that

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24 (2008) 2 SCC 409.

a proper investigation has not been done, or is not being done by the police.”

*Sakiri Vasu* quotes with approval the observations of *State of Bihar v. J.A.C.*

*Saldanha*<sup>25</sup>: The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore.

The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation.

122. In *Rubabbuddin Sheikh* the Supreme Court did hold that despite the police filing charge sheet, the Court still retained power, in an appropriate case, to hand over the investigation to an independent agency like CBI. More particularly, if the allegations are against the police and the State Government, such a measure can be adopted. Here, the police have not been involved in any crime. They only face an allegation they have been coming under political pressure. The political establishment faced

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<sup>25</sup>(1980) 1 SCC 554



allegations, but we cannot say that the police have buckled under pressure and subverted the investigation. Verily, the mere apprehension that the accused were influential may not be sufficient to transfer the case.<sup>26</sup>

123. We may, at the cost of repetition, stress what has been said in *CPDR* case: The very plenitude of the constitutional powers requires the Courts to be cautious and circumspect in exercising those powers. As to the Court's directing the CBI to investigate a case, no inflexible guidelines can be laid down about how and when such power should be exercised. But, as oft repeated, such an order is not to be passed routinely or merely because a party has levelled some allegations against the local police.

124. To a telling effect the Supreme Court observes that the Courts should exercise this extra-ordinary power sparingly, cautiously, and exceptionally, to provide credibility and instil confidence in the investigation, or when the incident may have national or international ramifications, or when such an order may be necessary for doing complete justice, and for enforcing the fundamental rights. Otherwise the CBI would be flooded with many cases. And with limited resources, it may find it

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<sup>26</sup> Sujatha Ravi Kiran v. State of Kerala, (2016 )7SCC 597

difficult to properly investigate even serious cases. In this process, it may lose its credibility and purpose with unsatisfactory investigations.

125. In *Vinay Tyagi v. Irshad Ali alias Deepak*<sup>27</sup> the Supreme Court was faced with these two questions: (1) Which of the multiple investigative reports in a case should prevail? (2) And can another investigative agency reinvestigate (de novo or afresh) a crime when the trial court has already taken cognizance of the crime?

126. After exhaustively analysing the procedural provisions and the precedential position, a two-Judge Bench of the Supreme Court has held on these lines:

(1) The investigation can be of these types: (i) initial investigation; (ii) further investigation; (iii) fresh or *de novo* or reinvestigation.

(2) The initial investigation is what the jurisdictional police officer does; it includes the one in compliance with section 156 (3) of CrPC, too.

(3) Further investigation is in terms of section 173 (8) of CrPC; the discovery of further oral or documentary evidence is *sine qua non*. To do it on his own, the Investigating Officer must have the trial court's

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<sup>27</sup> (2013) 5 SCC 762

leave. That apart, the trial court by itself, under justifiable circumstances, order further investigation—that investigation resulting in an additional report.

(4) The power to order fresh or *de novo* or reinvestigation lies with the superior Courts, say High Court or Supreme Court. It is an extraordinary power to be used sparingly only to do complete justice. If necessary, the Court can hand over the investigation to a specialised agency.

(5) The Court ordering reinvestigation must specify what should happen to the material gathered by then.

127. Extraordinary as the power is, this Court can transfer investigation to CBI, illustratively under these circumstances: (a) when the investigation by the State police authorities is deliberately delayed, flawed, or perverted; (b) when the investigating agency acts to the dictates of the superior officials or political bosses; or (c) when the Court feels that the investigation will not enable the Court to do complete justice, or to instil confidence in the public.

128. But we regret our inability to hold that the Trust has placed any material making out any of the above contingencies, warranting our exercising that extraordinary power, in a federal set up, of transferring the

investigation to an external agency: CBI. The 'P' in PIL here stands, of all the expression—Public, Private, Political, Promotional—for Political.

129. So we dismiss the writ petition. No order on costs.

Before parting with the matter, we, however, observe that we have not considered the crimes on merits, nor have we endorsed any plea on either side as right or wrong. All the offences are at the stage of investigation or trial, neither of which shall get influenced by any of our incidental observations. We have considered, apart from the jurisdictional questions, only one substantial issue: Has the petitioner made out any case to have the investigations transferred to CBI. Our answer is a 'No.'

**sd/-Antony Dominic**  
**Chief Justice**

**sd/- Dama Seshadri Naidu**  
**Judge**

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