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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.10.2021

PRONOUNCED ON: 02 .11.2021

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.Nos. 21801 of 2012 and 17856 of 2015
Crl.O.P.Nos. 5356 & 2691 of 2011
Crl.O.P.No. 13904 of 2015
And
Crl.O.P.No. 1661 of 2016

W.P.No. 21801 of 2012:

Pramod Kumar ... Petitioner

Vs.

1. Union of India
Rep. by its Secretary
Ministry of Home Affairs
Grih Mantralaya
New Delhi.

2. Union of India
Rep. by its Secretary
Department of Personnel and Training
New Delhi.

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3. Central Bureau of Investigation
   Rep. by its Director
   CGO Complex, Lodhi Road,
   New Delhi.

4. State of Tamil Nadu
   Rep. by its Secretary
   Department of Home
   Fort St. George
   Chennai – 600 009.

5. Additional Superintendent of Police
   Economic offences Wing, III Floor
   Rajaji Salai, Besant Nagar
   Chennai – 600 090 ... Respondents

W.P.No. 17856 of 2015:

V.Mohanraj ... Petitioner

Vs.

1. The Additional Superintendent of Police
   CBI, E.O.W., Shastri Bhavan
   Chennai.

2. The Deputy Superintendent of Police
   CBCID, Vellore.

3. The Deputy Superintendent of Police
   Tirupur North
   Tirupur.

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4. The Inspector of Police
   Tirupur North, Tirupur.

5. Promodh Kumar

6. N.Rajendiran

7. E.Shanmugaiah
   Inspector of Police
   Otacumund

8. John Prabakar @ Annachi

9. N.Senthil @ Dharani Senthil Kumar ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents 3 to 5 from proceeding further with conducting inquiry or investigating offences alleged to have been committed by the petitioner in connection with the case registered in First Information Report in RC.No. 13(E)/2011-CBI/EOW/Chennai and pending on the file of the 5th respondent.

Crl.O.P.No. 2691 of 2011:

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K.Loganathan ... Petitioner

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Vs.

1. The State
   Rep. by Superintendent of Police
   O/o. Economic Offence Wing – II (Hqrs)
   I/C. EOW (II) Unit, Chennai.

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2. The Deputy Superintendent of Police
Economic Offences Wing – II
Coimbatore.

3. The Superintendent of Police
Central Bureau of Investigation (CBI)
Rajaji Bhavan
Besant Nagar,
Chennai.

4. Pramod Kumar ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to withdraw the Crime No. 03 of 2010 (Originally Crime No. 26 of 2009) pending on the file of the second respondent and transfer into the third respondent and direct the third respondent to investigate the same.

Crl.O.P.No. 5356 of 2011:

Paazee Nidhi Niruvanathal Bathikkapattore
Nala Sangam, rep. by its President
N.Nachimuthu,
Son of M.Nattarayan
Hindu, aged about 68 years
Nbo.44, Teachers Colony, West Anna Thoppu
Madurai – 625 016 ... Petitioner

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Vs.

1. The State rep. by Dy. Superintendent of Police
Economic Offences Wing, Coimbatore,
(Crime No.3 of 2010)

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2. The Inspector of Police
Central Crime Branch, Thiruppur
(Crime No. 26 of 2009)

3. Central Bureau of Investigation
III Floor, E.V.K. Sampath Building
College Road, Chennai – 600 006.

4. Pramod Kumar ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to grant a direction transferring the investigation from the State Police authorities, Viz., respondents 1 & 2 to CBI, the third respondent herein and to file its report.

Crl.O.P.No. 13904 of 2015:

1. V.Mohanraj ... Petitioner/Accused

2. Smt. Lakshmi Devi ... Petitioner/3rd party

Vs.

1. The Superintendent of Police
CBI-E.O.W., Shastri Bhavan
Chennai.

2. The Dy. Superintendent of Police
CBCID, Vellore Range,
Vellore.

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3. The Manager,
Canara Bank
Gudalur, Perianaickenpalayam
Coimbatore – 641 020. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to direct the first respondent to release the jewels in A/c. No. 1262842017071 and 1262842017730 and allow the operations in the locker No.49 mentioned in the ref.CBGUDLRCBI 2015-16 KRK dated 13.04.2014.

Crl.O.P.No. 1661 of 2016:

State rep., by
Additional Superintendent of Police
CBI : EOW : Chennai ... Prosecution / Petitioner

Vs.

(1) Shri Pramod Kumar (A-1) ... Respondent-1/A-1

(2) Shri V. Mohanraj (A-3) ... Respondent 2/A-3

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the docket order dated 19.10.2015 in C.C.No. 2 of 2013 on the file of the Ld. II Additional District Judge cum Special Judge for CBI Cases, Coimbatore.

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For Petitioner in W.P.No. 21801/2012	:	Mr. Vijay Narayan Senior Counsel for Mr.Karthick Rajan Mr. N.R.Elango Senior Counsel for Mr.R.Vivekananthan
For Petitioner in W.P.No. 17856/2015 & Petitioners in Crl.O.P.No. 13904/2015	:	Mr. C.Deivasigamani
For Petitioner in Crl.O.P.No. 2691 of 2011	:	Mr. R.Amardeep
For Petitioner in Crl.O.P.No. 1661/2016 & Respondent in W.P.No. 21801/2012 & Respondent 1, 3 & 5 in W.P.No. 17856/2015 & Respondent in Crl.O.P.Nos. 13904/2015, 2691 & 5356/2011	:	Mr.R.Sankaranarayanan Additional Solicitor General for Mr.K.Srinivasan Special Public Prosecutor for CBI Cases
For Petitioner in Crl.O.P.No. 5356/2011	:	Mr. N.Vijaya Kumar
For Respondent in Crl.O.P. Nos. 2691 & 5356/2011 & for 2nd Respondent in W.P.No. 17856/2015	:	Mr.Gokulakrishnan Additional Public Prosecutor

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For R-6 in W.P.No. 17856/2015: Mr.P.Prasannan

For R-7 in W.P.No. 17856/2015: Mr. R.Jaya Prakash

For R-8 in W.P.No. 17856/2015: Mr. M.V.Vijaya Baskar

For R-9 in W.P.17856/2015 : Mr.ARL. Sundaresan,
Senior Counsel for
Mr. C.T.Murugappan

COMMON ORDER

Background facts:

Three individuals K.Mohan Raj, K.Kathiravan and A.Kamalavalli, commenced a business in the name of M/s. Pazee Forex Trading India Pvt. Ltd. They were the Directors. They invited deposits from the general public and promised to pay high interest on maturity. They also held out that the deposits would be invested in foreign exchange. Several depositors fell into the trap. It is stated that more than 100 corers had been so collected by the company, the Directors. Since there was no repayment of money, complaints were lodged seeking police investigation.

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2. A First Information Report in Crime No. 26 of 2009 was registered suo moto by the Inspector of Police, Central Crime Branch, Tiruppur, on 24.09.2009. The said Inspector of Police P.Natarajan was the informant and he stated that while browsing the internet, he came across an advertisement from a company through its website www.pazemarketing.com that the company is offering investment plans and also commission for referring new investors. The address of the company and the names of those who were running the same was given. He stated that he had reliably learnt that they had invented the scheme, planning to make quick and easy money by offering the public attractive returns on their investments. He further stated that he learnt through his sources that a large number of public had invested their money which amounted to crores of rupees in the schemes. He also learnt that the accused had informed the public that they are using the investment in foreign exchange and they were authorised by the Reserve Bank of India. He further stated that however, the company was not authorised by the Reserve Bank of India to deal in foreign currencies. He therefore stated that accepting deposits from general public was in violation to the various provisions of the Foreign Exchange Management Act 2000 and the guidelines issued by the Reserve Bank of

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India. He also stated that they had prima facie made out offences under Sections 3 and 4 of the Prize of Chits and Money Circulation Schemes (Banning) Act, 1978 and under Section 420 IPC. Holding that the report revealed commission of cognizable offence he took up further investigation.

3. The names of the accused were Mohan Raj, Kathiravan and Kamalavalli Arumugam.

4. Investigation into the said First Information Report revealed that large scale deposits had been received by M/s. Pazee Forex Trading India Pvt. Ltd.

5. Subsequently, the investigation was handed over to the Economic Offences Wing at Coimbatore and a First Information Report in Crime No. 3 of 2010 had been registered and investigation was taken up by the Deputy Superintendent of Police.

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6. In the meanwhile one of the Directors Tmt. Kamalavalli Arumugam went missing in the late hours of 08.12.2009. Her driver, Karunakaran had given a complaint to the North Police Station, Tiruppur, at 00.40 hours on 09.12.2009 stating that his employer, the Managing Director

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of M/s. Pazee Companies had gone to the Lakshmi Vilas Bank on 08.12.2009 at 5.30 p.m., to draw money. She told him to proceed to the office, but she did not come to the office. He went to the Bank. She was not there. He went back to the office. She was not there. He searched for her along with his co-employees. They could not find her. He tried to call her over her cellphone, but the phone was switched off. Therefore, he went to the police station and lodged a complaint in the middle of the night and a First Information Report in Crime No. 3068 of 2009 was registered in Tiruppur North Police Station under the category "*woman missing*". Investigation was taken up.

7. Kamalavalli surfaced on 11.12.2009 at Coimbatore and was admitted in Ashwin Hospital. She took treatment for dehydration. On receiving that information, the Inspector of Police, Tiruppur, North Police Station, where the First Information Report in Crime No. 3068 of 2009 registered under the category *woman missing* was pending went over to the hospital and obtained a statement.

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8. The First Information Report was however kept pending for further investigation.

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9. Subsequently, on 14.02.2010 Kamalavalli appeared before the Deputy Superintendent of Police, Tiruppur Sub Division and presented a petition stating that when she was going to the ATM, a car came nearby and she felt that somebody had beaten on her head and she fell unconscious. She was put in the car and confined in a house. The kidnappers demanded money from her.

10. On receipt of such a petition, the First Information Report in Crime No. 3068 of 2009 which had been registered under the category *woman missing* was altered to one under Sections 323, 365, 384, 354 IPC and Section 4 of the Tamilnadu Prohibition of Harassment to Women Act 2002 on 15.02.2010.

11. Further investigation was done. She gave a further statement on 13.03.2010. In that statement, she stated that M/s. Pazee Forex Trading India Pvt. Ltd., was facing a financial crisis and V.Mohan Raj, then Inspector of Police, Aanaimalai Police Station, and Shanmugaiah, Inspector of Police CCB Tiruppur, had come to her and demanded Rs.3/- crores as bribe to settle the financial problems. She refused to accept the demand.

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The Inspector of Police, V.Mohan Raj, called one Annachi through his mobile phone and gave the phone to her/Kamavalli. She spoke with Annachi. She was asked to give the money by Annachi @ John Prabhakar. After a few days, frequent threating calls were received by Kamallavalli. She was compelled to give Rs.3/- crores. Owing to the mental torture, she went to Chennai by Air on 08.12.2009 and later went to Puducherry with her friend Vijayaraj and stayed at Annamalai Lodge. Thereafter, she sent a message to K.Mohan Raj from Puducherry stating that she had been kidnapped and confined. She left Puducherry on 10.12.2009 to Chennai. She then came to Coimbatore. She made a phone call from a public telephone booth near Aroma Bakery and then she lost her consciousness. She further stated that Rajendran, then Deputy Superintendent of Police, V.Mohan Raj and Shanmugaiah , then Inspectors, Annachi @ John Prabhakar, had threatened her and that V.Mohan Raj had also received Rs.2.95 crores in installments from her.

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12. The Officer, Raja, who examined her and recorded the statement concluded his investigation stating that the allegation of kidnapping was false.

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13. Thereafter, the investigation was transferred to CBCID as per orders of the Director General of Police Tamil Nadu dated 08.03.2020 and accordingly, ADGP, CBCID, Chennai, by order dated 22.03.2010, appointed Malaichamy, Deputy Superintendent of Police, CBCID, Vellore Range, to take up investigation. He conducted further investigation.

14. During the course of his investigation, he collected details of air tickets and also arrested V.Mohan Raj, Inspector of Police, CCB, Tiruppur. The provisions of law were altered to Section 384, 506(i) and 507 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 1998 as amended by Act 39 of 2002 and under Section 7 and 13(1)(d) of PC Act, 1988. He also took V.Mohan Raj into police custody and statement was also recorded under Section 164 Cr.P.C.

15. In the statement, V.Mohan Raj had stated that there were money transactions between himself and the other accused, Inspector Shamugaiah and Annachi @ john Prabhakar. He further stated that he got involved in the case only on the instructions of Pramod Kumar, IPS, then Inspector General of Police, West Zone, Coimbatore.

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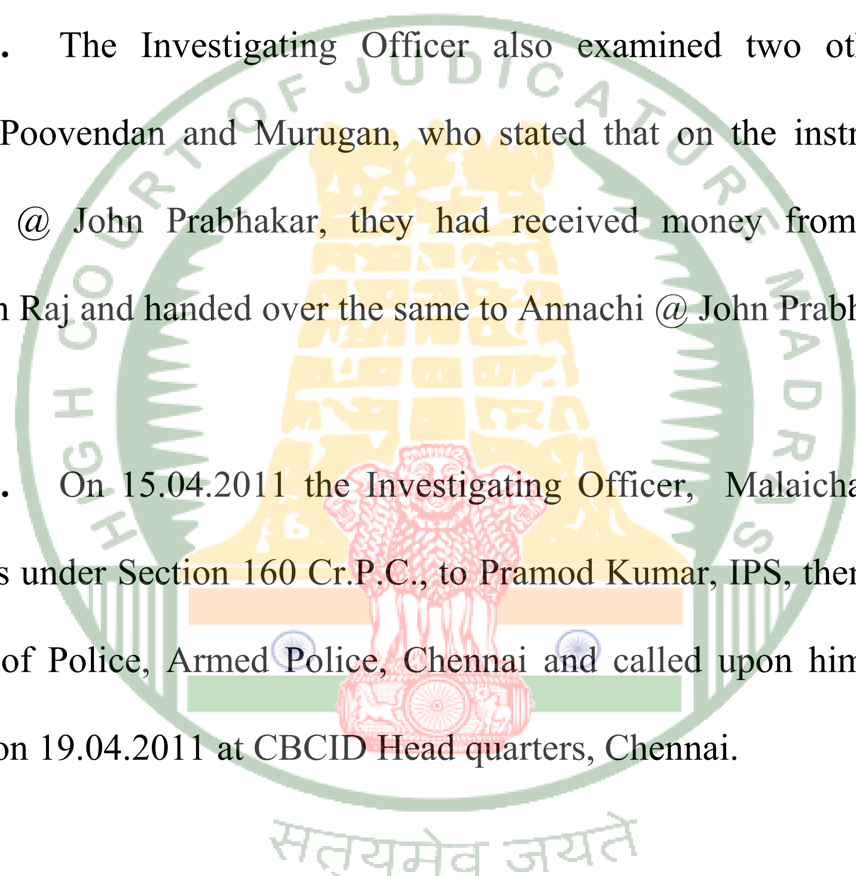
16. In the meanwhile, Annachi @ John Prabakar surrendered before the Judicial Magistrate Court at Alandu and also obtained anticipatory bail.

17. The Investigating Officer also examined two other police persons Poovendan and Murugan, who stated that on the instructions of Annachi @ John Prabhakar, they had received money from Inspector V.Mohan Raj and handed over the same to Annachi @ John Prabhakar.



18. On 15.04.2011 the Investigating Officer, Malaichamy sent a summons under Section 160 Cr.P.C., to Pramod Kumar, IPS, then Inspector General of Police, Armed Police, Chennai and called upon him to attend enquiry on 19.04.2011 at CBCID Head quarters, Chennai.

19. Pramod Kumar, IPS, also appeared and answered 29 questions in writing. He stated that he had known Annachi @ John Prabhakar for the past 5 to 6 years.

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20. To continue with the investigation with respect to the First Information Report registered against the Company for collecting money promising high interest, it was also transferred to the Economic Offences Wing, Coimbatore and a First Information Report in Crime No. 3 of 2010 was registered.

21. Complaining that the investigation was not proceeding in accordance with expectations and with the seriousness required, Crl.O.P.Nos. 2691 of 2011 and 5356 of 2011 were filed by K.Loganathan and the Paazee Nidhi Niruvanathal Bathikapattore Nala Sangam, represented by its President N.Nachimuthu, seeking to transfer the investigation to the Central Bureau of Investigation.

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22. These two petitions came up for consideration before a learned Single Judge of this Court, who passed a common order on 19.04.2011. In that common order, the learned Single Judge while examining the nature of investigation conducted with respect to Crime No. 3 of 2010, originally Crime No. 26 of 2009, also examined the status report filed by the

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prosecution wherein it had been stated that the accused had registered 8 companies in various names in India and 9 companies in different countries for the purpose of transferring funds to various company accounts in different countries to evade forefeiture of liquid assets. Thereafter, the learned Judge ordered as follows:-

> *"**6.** While on one hand, we find that no persons have been arrested inspite of cancellation of Anticipatory Bail on the other, we find the admitted position that the case could have international reamlfications. In the circumstances, this Court would transfer the investigation in Crime No. 26 of 2009 on the file of the second respondent to the file of the Director, Central Bureau of Investigation, New Delhi. While doing so, we would also transfer the investigation of the case pending in Crime No. 3068 of 2009 on the file of Deputy Superintendent of Police, CBCID, Vellore to the CBI/3rd Respondent. This Court would do since such is a case, which though in origin was of a woman missing has turned out to be one where **police officials are said to have wrongly obtained upto Rs.3,00,00,000/- under assurance to the Directors of the Paazee Company, that they need***

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not repay to any of the remaining depositors. *Besides considering the probability that if the prosecution version be true,* ***the moneys involved could be that of the depositors****, we also would think that interrogation of the accused police officials could* ***throw light on what has been gathered by them on the wrong doings of M/s. Paazee Forex Trading India Pvt., Ltd., and its Directors/Officials***.

7. Accordingly, Crime No. 26 of 2009 pending on the file of the second respondent is transferred to the file of the Director, CBI, New Delhi ***as is Crime No. 3068 of 2009 on the file of the Deputy Superintendent of Police, CBCID, Vellore****. The Director, CBI, New Delhi is directed to entrust investigation to a competent official. The first respondent/State is directed to afford such infrastructural support as may be necessary for proper conduct of investigation, connected Miscellaneous Petition is also closed."*

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[Emphasis Supplied]

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23. As seen above, the learned Single Judge had transferred investigation in Crime No. 26 of 2009 which was subsequently registered as Crime No. 3 of 2010 to the file of the Director, Central Bureau of Investigation, New Delhi. At the same time, the learned Single Judge had also transferred investigation of the case which was registered as Crime No. 3068 of 2009 which was pending on the file of the Deputy Superintendent of Police, CBCID, Vellore and which was, to recall, the original *woman missing* complaint also to CBI.

24. The learned Single Judge had opined that this was done since it was a case where police officials were said to have wrongly obtained nearly Rs.3 crores under assurance to the Directors of the Paazee Company that they need not repay any of the remaining depositors. It had been further observed that if the prosecution version were to be true, then the money involved would be the money of the depositors and therefore, interrogation of the accused police officials would throw light the wrong doings of M/s. Paazee Forex Trading India Pvt., and its Directors/Officials.

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25. On receipt of a copy of this order, the CBI, EOW, Chennai registered First Information Report in RC.No. 13/-E 2011-CBI/EOW, Chennai on 15.06.2011. The original provision was *woman missing* which was altered to Sections 323, 365, 384 and 354 on 15.02.2009 and then subsequently altered to Sections 384, 506(i) and 507 on 15.09.2010 and also under Section 4 of Tamil Nadu Prohibition of Women Harassment Amendment Act 2002 and under Section 7 and 13 (2) read with 13(1)(d) of PC Act 1988. Investigation proceeded by the CBI on this particular First Information Report.

26. It must also be noted that the other First Information Report with respect to receipt of money from depositors was also transferred to CBI. It is a fact that the Central Bureau of Investigation had conducted further investigation and had also filed a final report before the competent jurisdictional Court at Coimbatore which had also taken cognizance of the final report and trial is under way. The discussions in this order are not related to that particular investigation or trial.

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27. On 07.08.2012 while CBI was conducting investigation in what was the original *woman missing* First Information Report pursuant to the order of the learned Single Judge of this Court, Promod Kumar, I.P.S., who, to recall, had actually been issued with summons under Section 160 Cr.P.C., by the Deputy Superintendent of Police, CBCID, Vellore, filed W.P.No. 21801 of 2012 before this Court seeking a Writ of Mandamus forbearing the third to fifth respondents, namely CBI, represented by its Directors, the State of Tamil Nadu, represented by its Secretary, Department of Home and the Additional Superintendent of Police, EOW, Chennai, from proceedings further with either conducting enquiry or investigating the offences alleged to have been committed by him in connection with First Information Report in Crime No. RC 13(E)/2011-CBI/EOW/Chennai, pending on the file of the third respondent/CBI, Chennai.

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28. In the affidavit filed in support of the said writ petition, he claimed that he had been appointed as an I.P.S., Officer and was governed by the Rules framed under the All India Services Act 1951 and was allotted to the Tamil Nadu Cadre. He therefore stated that any enquiry or investigation conducted without the previous approval of the Central

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Government would be non est under Section 6A of the Delhi Special Police Establishment Act. He stated that he had come to know that he had been arrayed as an accused on 28.02.2012, even before he had been summoned for enquiry under Section 160 Cr.P.C., on 14.03.2012, by the Additional Superintendent of Police, EOW, Chennai. He had been made an accused on 28.02.2012 itself. He was informed that he had been made an accused on 14.03.2012. At the time when he was made an accused on 28.02.2012, he was holding the post of Inspector General of Police (Armed Forces), Chennai and was in service. He stated that the third and fifth respondents, namely, CBI, represented by its Director, New Delhi and the Additional Superintendent of Police EOW, Chennai, were governed by the Delhi Special Police Establishments Act 1946 and Section 6A of the said Act requires approval of Central Government at the level of Joint Secretary to conduct any enquiry or investigation with respect to any case relating to the employees of the Central Government.

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29. That writ petition was dismissed by a learned Single Judge of this Court by order dated 05.12.2012. The learned Single Judge held that the Writ Petitioner was not entitled to maintain the writ petition and to find

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fault with respondent Nos. 3 and 5 in arraying him as A-6 in the First Information Report RC. No. 13(E)/2011-CBI/EOW/Chennai.

30. Thereafter, the writ petitioner filed W.A.No. 12 of 2013. The Writ Appeal came up for consideration before a learned Division Bench of this Court. By Judgment dated 29.04.2013, the Writ Appeal was also dismissed.

31. The writ petitioner Pramod Kumar then filed Special Leave to Appeal (C) Nos. 17999 of 2013 against the Judgment of the Division Bench. He also filed an application in SLP (Crl.) Crl.M.P.Nos. 15475 and 15476 of 2014 with application for permission to file SLP against the order of the learned Single Judge in Crl.O.P.Nos. 2691 & 5356 of 2011 whereby the learned Single Judge had directed transfer of investigation to the Central Bureau of Investigation.

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32. By order dated 17.03.2015, the Hon'ble Supreme Court referred to the Judgement reported in ***(2011) 14 SCC 770 [State of Punjab Vs. Davinder Singh Bhullar]*** and then ordered as follows:-

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*"In view of the above, without getting into the intricacies of the merits of the issues canvassed, **we consider it just and appropriate to remand the matter back to the High Court, requiring the High Court to adjudicate upon Writ Petition No.21801 of 2012 afresh,** by impleading the appellant(s) in Criminal Original Petition Nos.2691 and 5356 of 2011, and by affording an opportunity to the appellant before this Court. **In disposing of the aforesaid Writ Petition, the jurisdiction exercised by the High Court, would be under Article 226 of the Constitution of India.***

*In the above view of the matter, **the order dated 5.12.2012 passed by the High Court while disposing of the above Writ Petition is hereby set aside.** Parties are directed to appear before the High Court on 13.4.2015. We hope and trust that the High Court shall dispose of the controversy at the earliest. Since, the appellant herein was not heard when the order dated 19.4.2011 was passed by the High Court while disposing of the Criminal Original Petition Nos.2691 and 5356 of 2011, **we consider it just and appropriate to further clarify, that the above order dated 19.4.2011, will not stand int eh way of the appellant***

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herein, when the High Court disposes of the matter afresh.

The instant appeal is disposed of in the above terms. Pending applications, if any, are also disposed of.

S.L.P.(R) No.___/2014 (Crl.M.P.Nos.15475-15476 of 2014)

Permission to file the special leave petition is granted.

Delay condoned.

*In view of the order passed by this Court, in the Civil Appeal arising from Special Leave petition (C) No.17999 of 2013, **nothing survives in these petitions and the same are accordingly disposed of.***

[Emphasis Supplied]"

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33. By the said order, the Hon'ble Supreme Court had remanded the matter, namely, W.P.No. 21801 of 2012 back to the High Court and directed afresh adjudication by impleading the appellant, namely Pramod

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Kumar in Crl.O.P.Nos. 2691 and 5356 of 2011 and afford him an opportunity of being heard. The order dated 05.12.2012 in W.P.No. 21801 of 2012 was set aside.

34. The Hon'ble Supreme Court had further stated that the order dated 19.04.2011 of the learned Single Judge of this Court transferring investigation to CBI of what can be called the *woman missing* case will not stand in the way of Pramod Kumar when the matter is heard afresh. In view of the said order, it had been further observed that no separate orders are required with respect to the petitions seeking permission to file Special Leave Petition against the order in the two Criminal Original Petitions, Crl.O.P.Nos. 2691 and 5356 of 2011.

35. The Hon'ble Supreme Court had directed the parties, namely Pramod Kumar and the respondents in the writ petition to appear before the High Court on 13.04.2015. The Hon'ble Supreme Court further stated that they trusted and hoped that the High Court would dispose of the controversy at the earliest.

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36. I must append a note of apology.

37. The High Court had not kept up the hope and trust of the Hon'ble Supreme Court.

38. The matter was heard in full after more than 6 years and the controversy is hopefully disposed of by this order.

39. In the meanwhile, on 22.05.2013, after completing the investigation in the *woman missing* case, CBI had filed final report before the Special Court for CBI Cases at Coimbatore which final report had been taken cognizance as C.C.No. 2 of 2013 for commission of offences punishable under Sections 120-B r/w 347, 384, 506(i), 507 of IPC and also under Sections 8, 10, 13(2) r/w 13(1)(d) of PC Act, 1988.

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40. CBI had also completed the investigation with respect to the offence in Crime No. 26 of 2009 and had filed a final report before the Special Court for TANPID cases in Coimbatore, which had taken cognizance of the final report as C.C.No. 9 of 2011 against the accused,

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K.Mohan Raj, K.Kathiravan, Kamalavalli, M/s. Paazee Forex Trading India Pvt. Ltd., M/s. Paazee Trading Inc., and against M/s. Paazee Marketing Co., for offences punishable under Sections 120-B r/w Section 4 of Prize Chits and Money Circulation Schemes (Banning Act 1978), 420 IPC and Section 5 of TANPID Act 1997.

41. It must be pointed out that even in the interim orders, prior to the passing of the final order on 17.03.2015, the Hon'ble Supreme Court by an order dated 28.04.2014 had stated that the CBI can conduct further investigation in relation to the role of other individuals if any. It was also stated that in case, the investigating agency requires any assistance, the petitioner/Pramod Kumar should co-operate.

42. Pursuant to the order of the Hon'ble Supreme Court dated 17.03.2015, the writ petitioner Pramod Kumar filed a further affidavit in W.P.No. 21801 of 2012. In the additional affidavit, the petitioner stated that the Hon'ble Supreme Court had countenanced that the transfer of the case to CBI was in violation of the principles of natural justice and therefore, further investigation and every other action taken by CBI

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pursuant to the order dated 19.04.2011 of the learned Single Judge in Crl.O.P.Nos. 2691 & 5356 of 2011 have become a nullity and are void.

43. He further stated that the CBI had taken him into custody on 02.05.2012 and he suffered incarceration till 28.06.2012. He had also been suspended on 02.05.2012. He claimed that he had been put to unnecessary harassment and embarrassment. He stated that all consequential judicial or administrative actions had become a nullity in view of the order of the Hon'ble Supreme Court. He therefore stated that the Writ Petition should be allowed by declaring that all actions consequent to the order dated 19.04.2011 are void abinitio.

44. Thereafter, V.Mohan Raj, one of the accused / Inspector of Police CCB, Tiruppur filed W.P.No. 17856 of 2015 under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the charge sheet filed in C.C.No. 2 of 2013 on the file of the Special Court, CBI Cases, Coimbatore and to quash the same.

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45. In the affidavit filed in support of the said Writ Petition, it had been stated that the First Information Report in Crime No. 26 of 2009 had been registered as *woman missing* in the early hours on 09.12.2009 and after she had been located on 11.12.209, since she had been traced, she can no longer be categorised as *woman missing* and therefore, that particular First Information Report should have been closed. It had been stated that the First Information Report had been kept pending unlawfully and thereafter, a further statement had been obtained from her on 14.02.2010 by the Deputy Superintendent of Police, Tiruppur and she had given an entirely different statement from what she had initially given on 11.12.2009 when enquired in the hospital soon after being traced.

46. It had been stated that the Inspector of Police, Tiruppur North Police Station, did not close the First Information Report in Crime No. 26 of 2009 but had proceeded further with the investigation. It was therefore stated that keeping the First Information Report open was illegal and the final report filed pursuant to investigation with that particular First Information Report as its origin is also illegal and necessarily will have to be quashed.

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47. It was also stated that since the Hon'ble Supreme Court, by order dated 19.04.2011, had set aside the order transferring investigation to CBI, the final report filed by CBI and the cognizance taken by the Special Judge, CBI Cases, Coimbatore, are illegal acts, void abinitio and therefore, the same should be quashed.

48. In the said Writ Petition, the petitioner had impleaded all the named accused in C.C.No. 2 of 2013 as respondents.

49. Arguments were therefore addressed on similar lines by the respondent No.5/Pramod Kumar, respondent No. 6/N.Rajendiran, Respondent No.8/ John Prabhakar @ Annachi and Respondent No.9/ N.Senthil @ Dharani Senthil Kumar. It must be kept in mind that the respondent Nos. 6, 7 and 8 were already shown as accused by CBCID, Vellore.

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50. The main thrust of the arguments of the learned counsels was that though they were not heard earlier, orders were passed transferring

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investigation to CBI. The respondent No.9 had been added as an accused by CBI pursuant to its investigation. Arguments were also advanced that the investigation itself should be struck off as illegal owing to the order of the Hon'ble Supreme Court transferring investigation to CBI.

51. V.Mohan Raj also filed Crl.O.P.No. 13904 of 2015 under Section 482 of Cr.P.C. In this, the second petitioner was his wife. The respondents were the CBI, the CBCID, Vellore and the Manager, Canara Bank, Gudalur, Periananickenpalayam, Coimbatore. In the said Criminal Original Petition, it had been stated that during the course of investigation, the first respondent/CBI had freezed the jewel loan account Nos. 1262842017071 and 1262842017730. A direction was sought to release the jewels in the said accounts and to permit operation in Locker No. 49 in the third respondent bank.

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52. Two of the accused A-1 Pramod Kumar and A-3 V. Mohan Raj had filed memos before the Second Additional District Court cum Special Court for CBI Cases at Coimbatore stating that further progress of the Calendar Case should be closed and the said accused should be exonerated.

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The learned Judge passed an order on 19.10.2015 stating that in view of the orders passed by the Hon'ble Supreme Court and by the Madras High Court in Crl.R.C.No. 838 of 2014, subject to the orders to be passed by the Madras High Court in W.P.No. 21801 of 2012 and Crl.O.P.Nos. 2691 of 2011 and 5356 of 2011, for the present, the case in C.C.No. 2Of 2013 is closed.

53. Questioning that particular order, the Additional Superintendent of Police, CBI, EOW, Chennai, had filed Crl.O.P.No. 1661 of 2016.

54. Arguments were advanced in all the matters. In view of the fact that the facts involved are intricately connected, common order is passed in all the above petitions.

55. Heard arguments advanced by Mr. N.Vijay Narayan, learned Senior Counsel and Mr. N.R.Elango, learned Senior Counsel for the writ petitioner in Crl.O.P.No. 21801 of 2012, Mr. C.Deivasigamani, learned counsel for the writ petitioner in W.P.No. 17856 of 2015 and for the petitioners in Crl.O.P.No. 13904 of 2015, Mr.R.Amardeep, learned counsel for the petitioner in Crl.O.P.No. 2691 of 2011.

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56. Mr.R.Sankaranarayanan, learned Additional Solicitor General for petitioner in Crl.O.P.No. 1661 of 2016/ respondent/CBI in W.P.No. 21801 of 2012; for the respondent in W.P.No. 17856 of 2015 and for the respondent in Crl.O.P.No. 13904 of 2015 and also in Crl.O.P.No. 2691 of 2011 and Crl.O.P.No. 5356 of 2011, Mr. Gokulakrishnan, Additional Public Prosecutor for R-6 in W.P.No. 17856 of 2015, Mr.P.Prasannan for R-6 in W.P.No. 17856 of 2015, Mr.R.Jaya Prakash, for R-7 in W.P.No. 17856 of 2015, Mr.ARL. Sundaresan, learned Senior Counsel for C.T.Murugappan learned counsel for R-9, Mr.N.R.Elango, learned Senior Counsel who first opened the arguments in W.P.No. 21801 of 2012, after taking the Court through the facts of the case very emphatically asserted that every investigation conducted after the order of the learned Single Judge in Crl.O.P.No. 2691 of 2011 and 5356 of 2011 are non est in law. The learned Senior Counsel pointed out that no relief had been sought by the petitioners therein or by the respondents therein that the First Information Report in Crime No. 3068 of 2009 which was the *woman missing* complaint should be transferred to CBI. There were no pleadings. There was no reference anywhere in the two petitions to that particular First Information Report. The reliefs sought in the two petitions was to transfer the investigation with

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respect to Crime No.26 of 2009 to CBI. There was no ancillary papers filed by way of typed set bringing to the notice of the learned Judge that the First Information Report in *woman missing* case should also be transferred for investigation to CBI. Consequently, learned Senior Counsel asserted that the order is non est in law.

57. The learned Senior Counsel also pointed out that when that being the case transferring the case to CBI had seriously prejudiced the writ petitioner. He was not heard. He was however directly affected by such transfer since owing to the said transfer, CBI took him in custody and he suffered incarceration. He was also suspended from service. He then had to take recourse to legal proceedings to revoke the suspension which proceedings went up to the Division Bench of the High Court and then to the Hon'ble Supreme Court. He had been put to much mental agony. The learned Senior Counsel stated that it was only owing to these circumstances that the Hon'ble Supreme Court had thought it fit that the writ petitioner should be heard before any order transferring investigation to CBI is passed.

58. The learned Senior Counsel was also very emphatic in his

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submission that merely because final report has been filed, the pendulum had not swing in favour of CBI. To ensure justice, it should be declared that the entire investigation conducted as non est, as nullity and as void.

59. There are no records to show from which source the learned Judge obtained the reasons justifying transfer of investigation.

60. The learned Senior Counsel further stated that it is also inappropriate to effect transfer of investigation to CBI while examining two petitions filed under Section 482 Cr.P.C. Such a power can be exercised only under Article 226 of the Constitution of India and in this regard, the learned Senior Counsel pointed out the order of the Hon'ble Supreme Court wherein they had very categorically stated that while disposing of the case, this Court should exercise jurisdiction under Article 226 of the Constitution of India. The learned Senior Counsel placed reliance on the additional affidavit filed by the writ petitioner wherein a very clear stand had been taken that all further judicial and administrative orders pursuant to the order dated 19.04.2011 are null and void and non est.

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61. Mr. Vijay Narayan, learned Senior Counsel complemented the arguments of Mr.N.R.Elango and stated that there has been violation of Article 21 of the Constitution of India since the petitioner had not been heard before the investigation was transferred to CBI. Such transfer of investigation can be done only by procedure established by law. If the Court wants to change the procedure then notice must be issued to the persons affected.

62. The learned Senior Counsel also pointed out the statements of Kamallavalli, who gave differing statements and the final statement was that she took a flight from Coimbatore to Chennai and went to Puducherry and stayed with her friend in a lodge.

63. The learned Senior Counsel charged that CBI had proceeded in a predetermined manner to array the writ petitioner as an accused. He had been under arrest for 58 days. He had been suspended from 02.05.2012 to 05.09.2018. He had to approach the Central Administrative Tribunal which allowed his petition and revoked the suspension. The learned Senior

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Counsel pointed out the observations of the Administrative Tribunal that he had not at all interfered with the investigation. The learned Senior Counsel further pointed out that it was not the stand of the CBI that he had interfered with the investigation.

64. The appeal filed by the State was also dismissed and the further Appeal before the Hon'ble Supreme Court was also dismissed.

65. The learned Senior Counsel stated that if there is an infraction of law, then Article 21 gets violated and it was also stressed that Section 482 of the Code of Criminal Procedure cannot be invoked to transfer investigation, particularly to CBI. The learned Senior Counsel stated the legal maxim *sublato fundamento cadit opus*, namely, if the foundation is removed, everything falls. Here since the initial order itself had been interfered with by the Hon'ble Supreme Court, the learned Senior Counsel asserted that every other succeeding act particularly the investigation will have to be ignored quashed by this Court and interfered by this Court.

66. Mr.C.Deivasigamani, learned counsel for the writ petitioner in

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W.P.No. 17856 of 2015 pointed out that the First Information Report was originally registered on a complaint given by the driver of Kamalavalli, who went missing on 08.12.2009 and it was registered as *woman missing* at 00.40 hours on 09.12.2009 in Crime No. 3028 of 2009 by North Tiruppur Police Station. She later surfaced and she admitted herself to Ashwin Hospital where the Inspector of Police had recorded her statement. The learned counsel stated that with that particular act, there was no more further investigation to be conducted in the First Information Report which was registered only for *woman missing*. The missing woman had been found. Her statement had been recorded. She did not allege any offence against anybody. Therefore, any further investigation done in that particular First Information Report was illegal and the learned counsel stated that concerted efforts had been taken by the investigating agency to unlawfully build a case.

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67. The learned counsel further stated that the First Information Report should have been filed before the Magistrate and the Magistrate should have been informed that the woman had been found out and therefore, the First Information Report should have been closed.

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68. However, the First Information Report was kept pending till 23.02.2010 when it was sent to the Magistrate. The Deputy Superintendent of Police then obtained a statement on 14.02.2010 running into 7 pages. The learned counsel stated that this statement had been unlawfully extracted. There is no explanation given why the First Information Report was not closed once the woman had been traced.

69. The learned counsel also stated that the petitioner was not made a party to any of the proceedings and also stated that in view of that fact, not only was the investigation in the First Information Report itself illegal, after the order of the Hon'ble Supreme Court, the further investigation was totally illegal. The learned counsel also questioned the statements given by Kamalavalli and stated that they were all false and inserted by the police officials.

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70. He also stated that without any further enquiry, the Superintendent of Police, Tiruppur, had transferred the investigation to Deputy Superintendent of Police, Tiruppur. The learned counsel stated that

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the investigation had travelled from Inspector in Tiruppur to Deputy Superintendent of Police, Tiruppur to CBCID Tiruppur to CBCID, Vellore and finally to CBI. None of the transfers were informed to the accused. The right to know about transfer of investigation was sacrocent. He never knew about the transfers till summons were received from the CBI Court in Coimbatore. The learned counsel stated that the petitioner had a fundamental right to be heard. The learned counsel therefore stated that it was under these circumstances that the Writ Petition has been filed to quash the calender case pending before the Special Court at Coimbatore.

71. The learned counsel also addressed arguments in Crl.O.P.No. 13904 of 2015 and stated that the CBI had unlawfully freezed the jewel loan accounts of the petitioner and his wife and stated that since they are not being relied on during the course of investigation, it is only appropriate that orders are passed defreezing the said bank accounts.

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72. Mr. M.V.Vijaya Baskar, learned counsel for the 8th respondent in W.P.No. 17856 of 2015 stated that he would go along with the relief sought by the petitioner to quash the calendar case in C.C.No. 2 of 2013 on

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the file of the II Additional District and Sessions Court/ Special Court for CBI Cases at Coimbatore. The learned counsel also stated that the charge sheet is void abinitio. He also stated that the principles of natural justice had been violated.

73. The learned counsel for R-6 Mr. P.Prassannan adopted the arguments of Mr. M.V.Vijaya Baskar.

74. The learned counsel for R-7 Mr. R.Jaya Prakash however stated that R-7 had turned approver and therefore stated that after following due process, pardon had been granted to R-7 and if an order is passed interfering with C.C.No. 2 of 2013 then R-7 would be very seriously prejudiced since the State has given him a pardon on solemn trust and there cannot be a breach of such solemn trust imposed by the State.

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75. Mr. ARL. Sundaresan, learned Senior Counsel appeared for R-9 and stated that R-9 had been arrayed as an accused only by CBI. The learned Senior Counsel pointed out that the investigation by CBI itself was void abinitio from the date of transfer of the investigation by the learned

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Judge since such transfer had been set aside by the Hon'ble Supreme Court. The learned Senior Counsel stated that R-9 was seriously prejudiced because the needle of suspicion was never focused of R-9 so long as the investigation was conducted by CBCID, Vellore. The learned Senior Counsel stated that therefore, the further proceedings in C.C.No. 2 of 2013 should be quashed.

76. The learned Additional Solicitor General R.Shankara Narayanan in reply to all the above arguments pointed out, the affidavit of Pramod Kumar filed in W.P.No. 21801 of 2012 wherein the only ground taken was that the investigation by CBI was irregular owing to non compliance of Section 6A of the Delhi Special Police Establishments Act. Subsequently the very provision itself had been struck down by the Hon'ble Supreme Court. Therefore, the very basis of filing of the Writ Petition itself has fallen to the grounds.

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77. The learned Additional Solicitor General further stated that in the affidavit, the writ petitioner has never stated that he was prejudiced by the transfer of investigation to CBI. He only claimed privilege on the

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ground that he was appointed in All India Services and therefore, prior sanction from the Central Government was required under Section 6-A of the Delhi Special Police Establishments Act.

78. The learned Additional Solicitor General also pointed out the additional affidavit filed after the order of the Hon'ble Supreme Court wherein, again the petitioner had only stated that the investigation is void owing to the fact that the Hon'ble Supreme Court had set aside the transfer of investigation. Once again direct prejudice caused to him because of investigation by the CBI had not been pointed out.

79. It was the contention of learned Additional Solicitor General that CBCID, Vellore, had also the writ petitioner in their focus as notice under Section 160 Cr.P.C., had been issued to him and he had appeared. He had been questioned and his answers had been recorded. In this connection, the learned Additional Solicitor General pointed out the status report filed on behalf of CBCID, Vellore, wherein it had been stated that there was a strong suspicion with respect to the role of the writ petitioner in the *woman missing* case and therefore, they had issued notice to him summoning him

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for enquiry.

80. The learned Additional Solicitor General stated that CBI only continued with that investigation and on conclusion of investigation had determined that he must be arrayed as an accused. He had not stated in what manner he was prejudiced.

81. The learned Additional Solicitor General also pointed out the interim order passed by the Hon'ble Supreme Court wherein they had stated that they are not inclined to interfere with the investigation. The learned Additional Solicitor General also read the order of the Hon'ble Supreme Court and stated that they had not set aside the order in Crl.O.P.Nos. 2691 of 2011 and 5356 of 2011. They had directed further hearing of W.P.No. 21801 of 2012 by a Single Judge. This was necessitated because an opportunity must be granted to the petitioner to express prejudice caused to him owing to the transfer of investigation. The learned Additional Solicitor stated that none of the senior counsels or the counsels who argued pointed out a single instance of prejudice being caused to the accused. They only stated that they were not heard. Now opportunity of hearing had been

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granted. When such opportunity of being heard had been granted, they had not stated anything about prejudice caused to their respective clients. They only stated that without hearing them, investigation had been transferred. When opportunity has been granted for them to advance arguments, they have never stated that CBI should not investigate into the issue. They have not stated in what manner they have been prejudiced by the investigation. The Investigating Agency has found that cognizable offences have been committed. Those offences are offences against the State. The offenders should be put to trial. The learned Additional Solicitor General therefore stated that the investigation conducted by CBI does not suffer from any irregularity and cannot be declared as void abinitio as claimed by the writ petitioner herein. There was also no contention raised that the writ petitioner was deliberately added as an accused by CBI. He was already under the scanner of CBCID, Vellore. The learned Additional Solicitor General therefore stated that the writ petition should be dismissed and stated that Crl.O.P.No. 1661 of 2016 should be allowed and trial in C.C.No. 2 of 2013 must be directed to be proceeded with.

82. Mr. Vijay Narayan, learned Senior Counsel in his reply to the

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arguments advanced by the learned Additional Solicitor General stated that the scope of remand was only to hear the writ petition and a composite order has been passed by the Hon'ble Supreme Court and the order dated 09.04.2011 had been set aside. Once that had been set aside, the investigation conducted by CBI becomes non est in law. The learned Senior Counsel also stated that the issue of prejudice is evident because the investigation itself is bad in law. Whenever there is a deviation from the procedure established by law and there is violation of Article 21 of the Constitution. Prejudice automatically follows. The learned Senior Counsel stated that owing to the investigation conducted by CBI, the petitioner had suffered incarceration, suffered suspension and had suffered supersession in rank by juniors. The learned Senior Counsel therefore stated that the entire investigation should be set aside by this Court.

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83. Mr. C.Deivasigamani, learned counsel for the writ petitioner in W.P.No. 17856 of 2015 and for the petitioner in Crl.O.P.No. 13904 of 2015 also stated that when there was no offence conducting investigation becomes immaterial. The First Information Report was registered only for *woman missing*. The woman had been traced. The First Information Report

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should have been closed. All further investigation pursuant to that particular First Information Report is non est in law. The learned counsel therefore stated that the Writ Petition should be allowed and C.C.No. 2 of 2013 should be quashed.

84. Mr. ARL. Sundaresan, learned Senior Counsel for R-9 in W.P.No. 17856 of 2015 in his reply also stated that CBI cannot hold on to investigation. They cannot state that they are the only investigating agency to conduct investigation. CBCID, Vellore, had already commenced investigation. They must be permitted to continue with the investigation. When the inception itself is wrong, then every further step which follows is void.

85. Mr. N.R.Elango, learned Senior Counsel in his reply pointed out the grounds of appeal before the Hon'ble Supreme Court wherein it had been stated that the counsel for CBI stated that they would take up investigation in the *woman missing* case and charged that it was that representation which prompted the learned Single Judge to transfer the investigation to CBI. Mr. N.R.Elango stated that the counsel for CBI could

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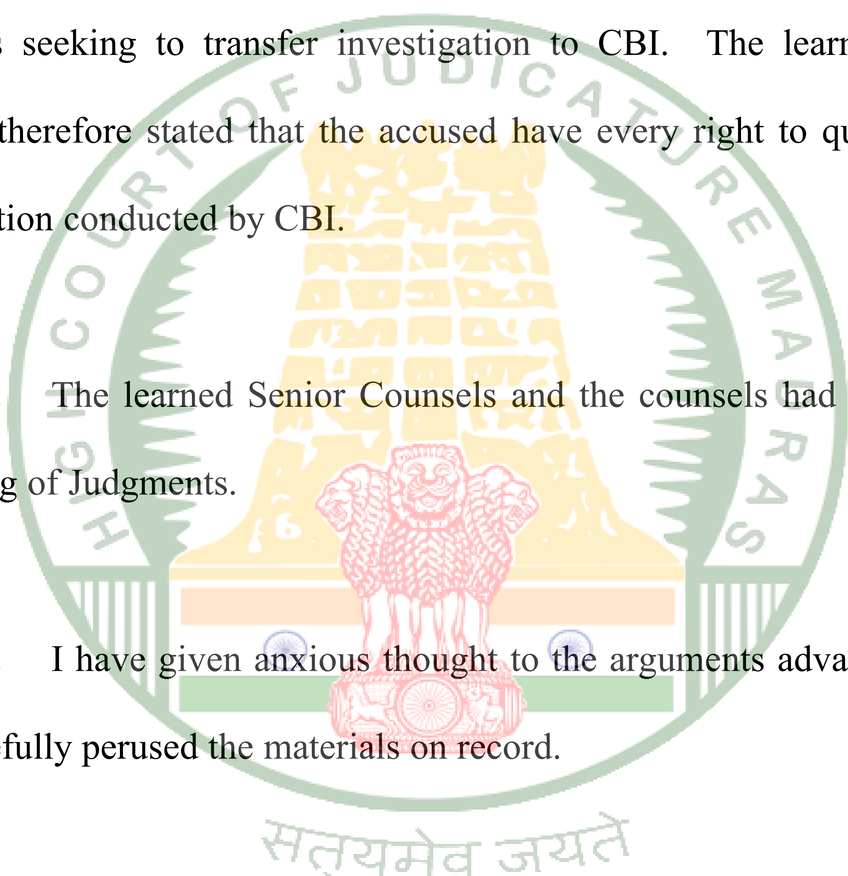
not have made that representation without being instructed. Therefore, learned Senior Counsel stated that CBI had a predetermined stand to implicate the writ petitioner as an accused. Till this date, there is no prayer from any of the parties to transfer investigation to CBI. There are no pleadings seeking to transfer investigation to CBI. The learned Senior Counsel therefore stated that the accused have every right to question the investigation conducted by CBI.



86. The learned Senior Counsels and the counsels had also relied on a string of Judgments.

87. I have given anxious thought to the arguments advanced and I have carefully perused the materials on record.

88. The facts are quite simple and straight forward.

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89. The facts have been stated earlier, but it would help discussion if they are again re-stated.

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90. Three individuals, K.Mohan Raj, his father K.Kathiravan and a lady Kamallavalli, had joined together and floated two partnership firms M/s. Paazee Trading Inc., and M/s. Paazee Marketing Company and also incorporated a company, M/s. Paazee Forex Trading India Pvt Ltd., and also opened a website www.paazeemarketing.com. They are alleged to have mobilised deposits / investments, allegedly dishonestly promising that the investments/deposits made by the public would be used in forex trading business. It is also alleged that they dishonestly promised that high dividends / interest would be paid in very short period on the deposits so collected.

91. They were able to collect several 100 of crores of rupees from substantially more than 1000 depositors. They were not able to discharge the promise which they had offered. This led to the registration of a First Information Report in Crime No. 26 of 2009 under Sections 3 and 4 of the Prize Chits and Money Circulations Scheme (Banning Act 1978) and under Section 420 IPC on 24.09.2009 on information given by P.Natarajan, Inspector of Police, Central Crime Branch, Tiruppur, who stated that while

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browsing the internet, he came across an advertisement from a company through its website www.paazeemarketing.com offering investment plans and further stating that the deposits would be invested in foreign exchange. Subsequently, the investigation was transferred to the Deputy Superintendent of Police, EOW, Coimbatore, who registered a First Information Report in Crime No. 3 of 2010.

92. During the course of this investigation, one of the three individuals in the company Kamalavalli, went in her car on 08.12.2009 purportedly to draw cash from Lakshmi Vilas Bank. She was dropped near the Bank she then asked her driver to proceed further to the office. She did not come back to the office till late in the night. Efforts to contact her proved futile since her phone was switched off. Therefore, the driver Mr.Karunakaran, lodged a complaint before the North Police Station, Tiruppur, at 00.40 hours on 09.12.2009 and a First Information Report in Crime No. 3068 of 2009 was registered under the category *woman missing*.

93. Subsequently, on 11.12.2009 she surfaced and was hospitalised in Ashwin hospital. A statement was recorded from her. The First

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Information Report was not closed but kept pending. In February 2010 another statement was given by her and in this, she stated that she had been subjected to constant extortion threats from V.Mohan Raj, who was Inspector of Police, Aanaimalai Police Station and from Shanmugaiah, CCB Inspector. They allegedly held out that they would be able to assist her in her troubles with the investors/depositors of M/s. Paazee Group Company if she paid a sum of Rs.3/- Crores to them. In this connection, the name of one Annachi surfaced. She refused to pay the amount. She claimed that she had been kidnapped and had been kept in a seculded house. She further claimed that she had paid a total sum of Rs.2.95 crores to the police officials.

94. On the basis of this statement, the Superintendent of Police, Tiruppur District, had issued a memorandum dated 14.02.2010 in RC.No. CAMP-14-SP-TPR/2010 wherein he had stated that the written representation of Kamalavalli reveals grave allegations against police officials of CCB and superior officials. He therefore instructed that further investigation would be taken over by Deputy Superintendent of Police, Tiruppur Sub Division, C.Raja. It was also stated that the new Investigating Officer may alter the sections and intimate the Court accordingly.

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95. Subsequently, on 15.02.2010 C.Raja, the Deputy Superintendent of Police, filed a petition before the Judicial Magistrate No.I, where the First Information Report in Crime No. 3068 of 2009 was pending, altering the provisions from *woman missing* to Sections 323, 365, 384, 354 IPC and Section 4 of Tamil Nadu Prohibition of Harassment to Women Amendment Act 2002.

96. Thereafter, the statement of Kamalavalli under Section 164 Cr.P.C., was also recorded by the Judicial Magistrate at Avinashi on 25.02.2010.

97. Subsequently, she gave a further statement under Section 161(3) Cr.P.C., on 13.03.2010. She stated that on 08.12.2009, she went to Peelamedu airport in Coimbatore and flew to Chennai and from Chennai, she went to Puducherry go to Arobindo Ashram along with one Vijayaraj. They stayed in Annamalai International Hotel. However, they did not go to the Ashram. She gave a SMS to the other Director Mohan Raj that she had been kidnapped. She also contacted her husband and daughter. She came

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back to Chennai and went back to Coimbatore. She then got admitted in Ashwin Hospital at Coimbatore. She finally stated that she had not been kidnapped by anybody.

98. A further statement was recorded on 15.03.2010, wherein she again reiterated handing over of substantial money to V.Mohan Raj and that Shanmugaiah was also instrumental exercising extortion.

99. She gave yet another statement on 27.03.2010 before the Deputy Superintendent of Police, CBCID, at Vellore. By that time, the investigation had been transferred to CBCID Vellore by the orders of Director General of Police, Tamil Nadu.

100. It is thus seen that she had given differing statements to different police officials.

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101. After the statement was recorded by the Deputy Superintendent of Police, CBCID, Vellore, the provisions of law were altered to Sections 384, 506(i) and 507 IPC and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act 1988 as amended by Act 2002 and also Sections 7

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and 13(1)(d) of Provision of PC Act 1988.

102. In the meanwhile the complaint against the company and the Directors was investigated first by the Central Crime Branch, Tiruppur and then by the Deputy Superintendent of Police, Economic Offence Wing at Coimbatore and not satisfied with the progress of investigation, Crl.O.P.No. 2691 of 2011 was filed by K.Loganathan, an Advocate/investor and Crl.O.P.No. 5356 of 2011 was filed by Paazee Nidhi Niruvanathal Bathikkapattore Nala Sangam, seeking transfer of investigation to CBI. A learned Single Judge before whom both the applications came, by order dated 19.04.2011 had transferred the investigation to CBI. The entire order is given below:-

> "***COMMON ORDER***
>
> *These petitions seek a direction to withdraw the Crime No.03 of 2010 (originally Cr.No.26 of 2009) pending on the file of the 2nd respondent and transfer it to the 3rd respondent and direct the 3rd respondent to investigate the same.*
>
> *2. These petitions arise in respect of a case wherein the* ***gullible depositors have been duped of***

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moneys running into hundreds of crores *by a concern namely, M/s. Pazee Forex Trading India Pvt., Ltd., and its Director/officials. The petitioners herein have formed an association along with some of the affected persons.*

3. *Learned Counsel for the petitioners submits that despite several opportunities given to the accused by this court with the intention that they would make good moneys to the depositors, the accused have not been forthcoming in doing so and when the order cancelling the Anticipatory Bail granted to the accused was challenging before the Hon'ble Apex Court, such court alac afforded an opportunity to the accused directing them to settle the claim to the depositors by forming a committee and directing the respondents 1 and 2 herein to file an affidavit. Respondents 1 and 2 filed an affidavit stating that only Rs.6,50,000/- was lying to the credit of the company's account. The Supreme Court also took a serious view of the matter and dismissed the SLP finding "No Merits".*

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4*. Thereafter, the accused persons repeatedly sought orders of Anticipatory Bail without any success. Learned Counsel informs that despite cancellation of*

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Anticipatory Bail and dismissal of further applications by this court, the respondent 1 and 2 have not chosen to arrest the accused, though they are available and hence, the petitioner seeks transfer of investigation to the CBI/3rd respondent.

5*.The state has filed a status report which would inform that due and proper investigation has been conducted and that the accused have registered eight companies in various names in India and nine companies in different countries for the purpose of transferring the funds to various company accounts in different countries to evade forfeiture of liquid assets.*

6*. While on one hand, we find that no persons have been arrested in spite of cancellation of Anticipatory Bail, on the other, we find the admitted position that the case could have international ramifications. In the circumstances, this court would transfer the investigation in Crime.No.26 of 2009 on the file of the 2nd Respondent to the file of the Director, Central Bureau of Investigation, New Delhi.* ***While doing so, we would also transfer the investigation of the case pending in Crime. No. 3068 of 2009*** *on the file of Deputy Superintendent of Police, CBCID,*

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*Vellore **to the CBI/ 3rd Respondent**. This court would do since such is a case, which though in origin was of a women missing has turned out the one where **the police officials are said to have wrongly obtained up to Rs.3,00,00,000/- under assurance to the directors of the Pazee Company, that they need not repay to any of the remaining depositors**, besides considering the probability that if the prosecution version be true, **the moneys involved could be that of the depositors,** we also would think that interrogation of the accused police officials could throw light on what has been gathered by them on the wrong doings of M/s Pazee Forex Trading India Pvt., and its Directors/ Officials.*

*7.Accordingly, Crime.No.26 of 2009 pending on the file of the 2nd respondents is transferred to the file of the Director, CBI, New Delhi **as is Crime.No.3068 of 2009 on the file of the Deputy Superintendent of Police, CBCID, Vellore.** The Director, CBI, New Delhi, is directed to entrust investigation to a competent official. The 1st respondent/ State is directed to afford such infrastructural support as may be necessary for proper conduct of investigation. Connected Miscellaneous Petition is also closed."*

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103. It must be noted that the learned Judge had only commented on the offence, and not on any named police official.

104. After this order was passed, CBI took up further investigation with respect to both the offences, namely, the offence against the Directors and the Companies with respect to collecting of investments / deposits and not repaying the same and the original First Information Report in *woman missing* in which the provisions had been altered and finally, the provisions under PC Act 1988 had also been incorporated.

105. With respect to the First Information Report relating to the company, collection of deposits and its Directors, after investigation, CBI had filed final report before the Special Court for TANPID cases, Coimbatore which had taken cognizance of the same as C.C.No. 9 of 2011 under Sections 120-B read with Section 4 of Prize Chits and Money Scheme Circulation (Banning) Act 1978, Section 420 IPC and Section 5 of TANPID Act 1977. Trial in that case is on going.

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106. With respect to the First Information Report relating to *woman missing* in which Kamalavalli had given several differing statements and the final statement had been recorded by the CBCID, Vellore and pursuant to which offence under the Prevention of Corruption Act 1988 had been incorporated and which had also been transferred to CBI, a final report had been filed before the Special Court for CBI Cases, Coimbatore and was taken cognizance as C.C.No. 2 of 2013 under Sections 120-B read with 347, 384, 506(i), 507 IPC and under Sections 8, 10, 13(2) read with 13(1)(d) of PC Act 1988. In that particular final report, the accused who were arrayed were Pramod Kumar (A1) , N.Rajendran (A-2), V.Mohan Raj (A-3), John Prabhakar @ Annachi (A-4) and Senthil Kumar (A-5). One of the accused, E.Shanmugaiah, who was shown as A-3 in the First Information Report had turned approver.

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107. Pramod Kumar had filed W.P.No. 21801 of 2012 questioning continuation of investigation against him claiming that sanction under Section 6-A of the Delhi Special Police Establishment Act had not been granted and claiming that he was a member of All India Services. The Writ Petition was dismissed.

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108. The Writ Appeal was dismissed.

109. Thereafter, he filed a further Appeal to the Hon'ble Supreme Court under Special Leave to Appeal (C) No. 1799 of 2013 and had also filed an application seeking permission to file SLP against the common order in Crl.O.P.Nos. 2691 and 5356 of 2011. These applications were Crl.M.P.15475 & 15476 of 2014.

110. Orders were passed by the Hon'ble Supreme Court on 17.03.2015.

111. It must be mentioned that even before that order, CBI had filed final report before the Special Court for CBI Cases at Coimbatore and cognizance had been taken as C.C.No. 2 of 2013.

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112. The Hon'ble Supreme Court had held as follows:-

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"<u>Civil Appeal @ S.L.P.(C) No. 17999 of 2013</u>

***1.** Leave granted.*

learned counsel appearing for the appellant placed reliance, inter alia, on State of Punjab v. Davinder Pal Singh Bhullar [State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770 : (2012) 4 SCC (Civ) 1034 : (2012) 4 SCC (Cri) 496 : (2014) 1 SCC (L&S) 208] *, and invited our attention to the following observations recorded therein: (SCC p. 803, para 75)*

*"**75**. Thus, in view of the above, it is evident that a constitutional court can direct CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the*

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view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible."

2. *In view of the above, without getting into the intricacies of the merits of the issues canvassed, we consider it just and appropriate, to remand the matter back to the High Court, requiring the High Court to adjudicate upon Writ Petition No. 21801 of 2012 afresh, by impleading the appellant(s) in Criminal Original Petitions Nos. 2691 and 5356 of 2011, and by affording an opportunity to the appellant before this Court. In disposing of the aforesaid writ petition, the jurisdiction exercised by the High Court, would be under Article 226 of the Constitution of India.*

3. *In the above view of the matter, the order dated 5-12-2012* ***[Pramod Kumar v. Union of India, 2012 SCC OnLine Mad 4877]*** *passed by the High Court while disposing of the above writ petition is hereby set aside. The parties are directed to appear before the High Court on 13-4-2015. We hope and trust, that the High Court shall dispose of the*

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controversy at the earliest. Since, the appellant herein was not heard when the order dated 19-4-2011 ***[K. Loganathan v. State, Criminal Original Petition No. 2691 of 2011, order dated 19-4-2011 (Mad)]*** *was passed by the High Court while disposing of Criminal Original Petitions Nos. 2691 and 5356 of 2011, we consider it just and appropriate to further clarify, that the above order dated 19-4-2011* ***[K. Loganathan v. State, Criminal Original Petition*** *No.* ***2691 of 2011, order dated 19-4-2011 (Mad)] ,*** *will not stand in the way of the appellant herein, when the High Court disposes of the matter afresh.*

4. *The instant appeal is disposed of in the above terms. Pending applications, if any, are also disposed of.*

SLP (Crl.) No. … of 2014 (Crl. MPs Nos. 15475-76 of 2014)

5. *Permission to file the special leave petitions is granted. Delay condoned.*

6. *In view of the order [Set out in paras 1 to 4, above.] passed by this Court in the civil appeal arising from Special Leave Petition (C) No. 17999 of 2013, nothing survives in these petitions and the same are accordingly disposed of."*

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113. In view of the above order, W.P.No. 21801 of 2012 had been argued again by the learned Senior Counsels / Counsels/ Additional Solicitor General and arguments were also advanced in Crl.O.P.No. 2691 of 2011 and 5356 of 2011. The directions to implead had been carried out. Arguments were also advanced in W.P.No. 17856 of 2015 which had been filed to quash C.C.No. 2 of 2013 by one of the accused and also in Crl.O.P.No. 13904 of 2015 which was filed by the same accused and his wife seeking defreezing of bank accounts. Arguments were also advanced in Crl.O.P.No. 1661 of 2016 filed by CBI seeking to set aside the docket order of the learned Special Judge for CBI Cases, Coimbatore, who closed the case awaiting orders in W.P.No. 21801 of 2012.

114. The main thrust of the arguments advanced by the learned Senior Counsels was that Pramod Kumar was not heard prior to investigation being transferred to CBI in the First Information Report which was originally registered as *woman missing*.

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115. In this connection, the Hon'ble Supreme Court had referred to ***(2011) 14 SCC 770 [State of Punjba Vs. Davinder Singh Bhullar]***. Paragraph 75 of the said Judgment had been extracted in the order of the Hon'ble Supreme Court. In paragraph 75, it had been stated that a Constitutional Court, which would imply a court acting under Article 226 of the Constitution of India can direct CBI, to investigate into a case provided, after examining the allegations in the complaint, conclusion is reached that the complainant could make out a prima facie case against the accused.

116. In the order of the Hon'ble Supreme Court it had been therefore directed that this Court should exercise jurisdiction under Article 226 of the Constitution of India and examine the allegations of the complainant and if on such examination, a conclusion is reached that a prima facie case is made out against the accused, then the case can be transferred to CBI. However, a caveat was also placed, namely, that the person against whom investigation is sought must be given reasonable opportunity of being heard.

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117. In this case, during the course of hearing, opportunity of being heard had been now afforded to all the accused against whom the final report had been filed by the CBI.

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118. It had been further held that CBI cannot be directed to a roving enquiry but only when the Court is of the view that the accusation is against a person, who "*by virtue of his post could influence the investigation and it may prejudice the cause of the complainant.*"

119. It is thus seen that the Hon'ble Supreme Court has placed safeguards at every turn to ensure that prejudice is not caused owing to direction given to CBI to investigate a particular case. These directions came to be passed in ***(2011) 14 SCC 770 [State of Punjba Vs. Davinder Singh Bhullar*** in view of the peculiar facts of that particular case.

120. In that case, the facts in brief were that a First Information Report in Crime No. 334 of 1991 had been registered under various provisions including Section 302 IPC and under the Explosive Substances Act. After completion of investigation, the police had charge sheeted 8 persons. They stated that an attempt had been made by terrorists on the life of the then SSP, Chandigarh by using explosives. The Ambassador Car of the SSP, Chandigarh was blown by an explosion caused by remote control. Owing to the explosion, two police men died and one another police man

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and CRPF jawans in the escort vehicle were injured. Three of the accused, including, Davinder Pal Singh Bhullar alias Master, Partap Singh Maan and Gursharan Kaur Maan were subjected to trial.

121. On conclusion of trial, by Judgment dated 01.12.2006, the trial Court acquitted the three accused giving them benefit of doubt.

122. An Appeal was filed before the High Court by the Union Territory of Chandigarh but was dismissed by Judgement dated 11.05.2007.

123. After 20 days, the High Court again took up the case *suo moto* on 30.05.2007 and directed the authorities to furnish full details of the named offenders, who were the absconding accused in the trial. The Bench marked the matter as *part heard*.

124. In the meanwhile, Davinder Pal Singh Bhullar had been subsequently arrested with respect to another case in First Information Report in Crime No. 316 of 1993 and First Information Report in Crime No. 150 of 1993, both registered in New Delhi and after trial had been sentenced

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to death. One of the accused had also escaped. Another accused was killed in police encounter.

125. When the affidavit was filed giving the said details, the High Court by order dated 22.08.2007 constituted a Special Investigation Team and issued notice to CBI.

126. Much earlier, one of the accused had originally escaped from the custody of the police. His father gave a petition to the Bench seeking directions to find out the whereabouts of his son.

127. CBI originally requested that investigation may not be handed over in that since they were over burdened with investigation of cases. They also pleaded shortage of man power.

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128. However, by order dated 05.10.2007, the High Court directed CBI to investigate the whereabouts of the missing son with respect to whom a petition had been given. Thereafter, an order was also passed naming a particular police official and stating that he was holding a very important

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post and was in position to influence the Investigating Officer and therefore, it was stated in the order that the names of the witnesses may be given as A, B, and C. The Bench also entertained a Miscellaneous Application filed by Davinder Pal Singh Bhullar complaining that his father and maternal uncle had been abducted in the year 1991. That case was also directed to be investigated by CBI.

129. CBI after making a preliminary investigation registered a First Information Report against a named Senior Police Officer and various other Police Officials.

130. Aggrieved by this turn of evetns, the State of Punjab approached the Hon'ble Supreme Court.

131. The argument of the learned Senior Counsel for the appellant is extracted below:-

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> *"**18.** These appeals have been filed on various grounds, including : **the judicial bias of the Judge***

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presiding over the Bench by making specific allegations that the officer named in the order *i.e. Shri S.S. Saini* ***had conducted an enquiry against the Presiding Judge*** *(hereinafter called "Mr Justice X")* ***on the direction of the Chief Justice of the Punjab and Haryana High Court*** *and, thus,* ***the said Judge ought not to have proceeded with the matter, rather should have recused himself from the case.*** *More so, as the judgment in appeal against acquittal had been passed by the Court on 11-5-2007 upholding the judgment of acquittal,* ***the Court has become functus officio and it had no competence to reopen the case*** *vide order dated 30-5-2007.*

19. *This Court vide order dated 11-7-2008* ***[State of Punjab v. Davinder Pal Singh Bhullar, SLP (Cri) Crl MPs Nos. 10955-957 of 2008, decided on 11-7-2008 (SC)]*** *stayed the investigation until further orders.*

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20. *Shri Ram Jethmalani, Shri Ravi Shankar Prasad and Shri Ranjit Kumar, learned Senior Counsel appearing for the appellants, have submitted that* ***once the judgment in appeal against acquittal has been rendered by the High Court*** *on 11-5-2007, in view of the complete embargo of the provisions of*

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Section 362 CrPC, ***the Court having become functus officio was not competent to reopen the case and, thus, proceedings subsequent to 11-5-2007 are a nullity for want of competence/jurisdiction.*** *More so, the proceedings that continued after the said judgment,* ***by illegally reopening the case, were a result of judicial bias of Mr Justice X, which was just to take revenge*** *against Shri S.S. Saini, who had conducted an inquiry against Mr Justice X and thus,* ***all such proceedings are liable to be quashed****. None of the parties had ever named Mr S.S. Saini in connection with any of the cases. It was Mr Justice X, who, on his personal knowledge, mentioned his name in court order dated 5-10-2007. Such a course is not permissible in law.*

21. *More so, it was submitted that* ***so far as Balwant Singh Multani's case is concerned,*** *his father Darshan Singh Multani (at the relevant time an officer in the Indian Administrative Service) had approached the High Court for the same relief and* ***the case stood dismissed in the year 1991*** *and he had not taken up the matter any further. Thus,* ***the proceedings attained finality. The application of Mr Multani could not have been entertained after the expiry of 16 years. The same position existed in respect of the***

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application filed by Davinder Pal Singh Bhullar *(who had been convicted and awarded a death sentence in another case and the same stood confirmed by this Court) in respect of abduction of his father Balwant Singh Bhullar and uncle Manjit Singh in the year 1991* ***without furnishing any explanation for the delay of 16 years.*** *More so,* ***Mrs Jagir Kaur****, sister of Balwant Singh Bhullar, had* ***filed Crl. WP No. 1062 of 1997 for production of Balwant Singh Bhullar, which stood dismissed vide order dated 15-7-1997*** *only on the ground of delay.* ***A second writ petition for habeas corpus is not maintainable and is barred by the principles of res judicata.*** *CBI submitted that investigation of the said alleged abduction be not tagged with that of the involvement of the officer and disappearance of Balwant Singh Multani, as both the incidents were separate and independent and had no connection with each other.* ***The High Court*** *after taking note of the said submissions in its order dated 6-11-2007* ***illegally clubbed both the said applications.*** *The applications filed by Davinder Pal Singh Bhullar and Darshan Singh Multani could not be filed/entertained in the disposed of criminal appeal. Had the said applications been filed independently, the same could be rejected as being filed at a much belated*

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stage. ***Even otherwise, the said applications could have gone to a different Bench.*** *Thus, by entertaining those applications in a disposed of criminal appeal,* ***the Bench presided over by Mr Justice X violated the roster fixed by the Chief Justice. Thus, the proceedings are liable to be quashed. "***

132. Contra arguments were of-course advanced before the Hon'ble Supreme Court but then the above submissions of judicial bias led the Hon'ble Supreme Court to examine that aspect as a legal issue.

133. The Hon'ble Supreme Court held as follows with respect to judicial bias :-

*"**23.** We have considered the rival submissions made by the learned counsel for the parties and perused the record.*

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Legal issues

I. Judicial bias

***24.** There may be a case where allegations may be made against a Judge of having bias/prejudice at*

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any stage of the proceedings or after the proceedings are over. There may be some substance in it or it may be made for ulterior purpose or in a pending case to avoid the Bench if a party apprehends that judgment may be delivered against him. ***Suspicion or bias disables an official from acting as an adjudicator.*** *Further, if such allegation is made without any substance, it would be disastrous to the system as a whole, for the reason, that it casts doubt upon a Judge who has no personal interest in the outcome of the controversy.*

25. *In respect of judicial bias, the statement made by* ***Frank, J. of the United States*** *is worth quoting:*

"If, however, ***'bias'*** *and* ***'partiality'*** *be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions.... Much harm is done by the myth that, merely by ... taking the oath of office as a Judge, a man ceases to be human and strips himself of all predilections, becomes a passionless*

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*thinking machine.” (**<u>Linahan, In re [138 F 2d 650 (2nd Cir 1943)])</u>***

*(See also **<u>State of W.B. v. Shivananda Pathak [(1998) 5 SCC 513 : 1998 SCC (L&S) 1402] , SCC p. 525, para 29.)</u>***

26. *To recall the words of **<u>Mr Justice Frankfurter in Public Utilities Commission v. Pollak [96 L Ed 1068 : 343 US 451 (1952)] , L Ed p. 1079 : US at p. 466:</u>***

*“The Judicial process demands that a Judge moves within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. **<u>There is a good deal of shallow talk that the judicial robe does not change the man within it. It does.</u>** The fact is that, on the whole, Judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted.”*

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27. In ***Bhajan Lal v. Jindal Strips Ltd. [(1994) 6 SCC 19]*** *, this Court observed that there may be some consternation and apprehension in the mind of a party and undoubtedly, he has a right to have fair trial, as guaranteed by the Constitution.* ***The apprehension of bias must be reasonable*** *i.e. which a reasonable person can entertain. Even in that case, he has no right to ask for a change of Bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the Bench of his choice. The Court held as under :* ***(SCC pp. 26-27, para 23)***

"23. ***Bias is the second limb of natural justice.*** *Prima facie no one should be a judge in what is to be regarded as* ***'sua causa',*** *whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one."*

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__28.__ The principle in these cases is derived from the legal maxim—__nemo debet esse judex in propria sua causa__. It applies only when the interest attributed is such as to render the case his own cause. This principle is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide Rameshwar Bhartia v. State of Assam [AIR 1952 SC 405 : 1953 Cri LJ 163], Mineral Development Ltd. v. State of Bihar [AIR 1960 SC 468] , Meenglas Tea Estate v. Workmen [AIR 1963 SC 1719] and Transport Deptt v. Munuswamy Mudaliar [1988 Supp SCC 651 : AIR 1988 SC 2232] .)

__29.__ The failure to adhere to this principle creates an apprehension of bias on the part of the Judge. The question is not whether the Judge is actually biased or, in fact, has really not decided the matter impartially, __but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. (Vide A.U. Kureshi v. High Court of Gujarat [(2009) 11 SCC 84 : (2009) 2 SCC (L&S) 567] and Mohd.__

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Yunus Khan v. State of U.P. [(2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180])

30. *In* ***Manak Lal v. Prem Chand Singhvi [AIR 1957 SC 425]*** *this Court while dealing with the issue of bias held as under :* ***(AIR p. 430, para 6)***

Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary.... What is relevant is the reasonableness of the apprehension in that regard in the mind of the appellant.

31. *The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way.* ***Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice****. The Court has to proceed observing the minimal requirements of natural justice i.e. the Judge has to act fairly and without bias and in good faith. A*

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judgment which is the result of bias or want of impartiality, is a nullity and the trial coram non judice. Therefore, the consequential order, if any, is liable to be quashed. ***(Vide Vassiliades v. Vassiliades [AIR 1945 PC 38], S. Parthasarathi v. State of A.P. [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] and Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] .)***

32. In ***Rupa Ashok Hurra v. Ashok Hurra [(2002) 4 SCC 388]*** *this Court observed that public confidence in the judiciary is said to be the basic criterion of judging the justice delivery system. If any act or action, even if it is a passive one, erodes or is even likely to erode the ethics of the judiciary, the matter needs a further look. In the event, there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, technicality ought not to outweigh the course of justice—the same being the true effect of the doctrine of ex debito justitiae. It is enough if there is a ground of an appearance of bias.*

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33. *While deciding* ***Rupa Ashok Hurra case [(2002) 4 SCC 388]*** *, this Court placed reliance upon the* ***judgment of the House of Lords in R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2) [(2000) 1 AC 119 : (1999) 2 WLR 272 : (1999) 1 All ER 577 (HL)]*** *, in which the House of Lords on 25-11-1998, restored warrant of arrest of Senator Pinochet who was the Head of the State of Chile and was to stand trial in Spain for some alleged offences.* ***It came to be known later that one of the Law Lords (Lord Hoffmann), who heard the case, had links with Amnesty International (AI)*** *which had become a party to the case. This was not disclosed by him at the time of the hearing of the case by the House. Pinochet Ugarte, on coming to know of that fact, sought reconsideration of the said judgment of the House of Lords on the ground of appearance of bias and not actual bias. On the principle of disqualification of a Judge to hear a matter on the ground of appearance of bias, it was pointed out :* ***(Pinochet case [(2000) 1 AC 119 : (1999) 2 WLR 272 : (1999) 1 All ER 577 (HL)] , AC p. 132)***

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An appeal to the House of Lords will only be reopened where a party though no fault of its own, has been subjected to an unfair procedure. A decision of the House of Lords will not be varied or rescinded merely because it is subsequently thought to be wrong.

34. *In* ***Locabail (U.K.) Ltd. v. Bayfield Properties Ltd. [2000 QB 451 : (2000) 2 WLR 870 : (2000) 1 All ER 65 (CA)]*** *the House of Lords* ***(sic Court of Appeal)*** *considered the issue of disqualification of a Judge on the ground of bias and held that in applying the real danger or possibility of bias test, it is often appropriate to inquire whether the Judge knew of the matter in question. To that end, a reviewing court may receive a written statement from the Judge. A Judge must recuse himself from a case before any objection is made or if the circumstances give rise to automatic disqualification or he feels personally embarrassed in hearing the case. If, in any other case, the Judge becomes aware of any matter which can arguably be said to give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing.*

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Where objection is then made, it will be as wrong for the Judge to yield to a tenuous or frivolous objection as it will be to ignore an objection of substance. However, if there is real ground for doubt, that doubt must be resolved in favour of recusal. Where, following appropriate disclosure by the Judge, a party raises no objection to the Judge hearing or continuing to hear a case, that party cannot subsequently complain that the matter disclosed gives rise to a real danger of bias.

35.** In **P.D. Dinakaran (1) v. Judges Inquiry Committee [(2011) 8 SCC 380]** this Court has held that in India the courts have held that, to disqualify a person as a Judge, **the test of real likelihood of bias i.e. real danger is to be applied,** considering whether a fair-minded and informed person, apprised of all the facts, would have a serious apprehension of bias. In other words, the courts give effect to the maxim that "**justice must not only be done but be seen to be done",** by examining not actual bias but real possibility of bias based on facts and materials. The Court further held : **(SCC p. 410, para 41)

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*"**41.** ... The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy.* ***He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise*** *as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially."*

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36. *Thus, it is evident that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in*

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> *hand.* ***<u>The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order.</u>*** *Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order, etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial coram non judice. "*
>
> [Emphasis Supplied]

134. It is thus seen that the Hon'ble Supreme Court was deeply concerned with judicial bias, if it is raised as a legal issue.

135. Coming to the facts of this case, it has to be therefore be first examined whether any of the parties to W.P.No. 21801 of 2012 or in W.P.No. 17856 of 2015 have alleged judicial bias against the learned Single Judge. They have thankfully not done so. But it is complained that the learned Judge had transferred investigation to CBI without there being any application for such transfer, without there being any prayer seeking such

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transfer and more importantly by stating that the counsel for CBI had represented that CBI would investigate that particular case.

136. This statement is found in the grounds raised by Pramod Kumar before the Hon'ble Supreme Court. It is not part of the records.

137. In this juncture, reference may be made to ***(1982) 2 SCC 463 [State of Maharashtra Vs. Ramdas Shrinivas Nayaka and another***], particularly paragraph No. 4 which is as follows:-

> *"**4.** When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us* ***intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court.*** *We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done.* ***Public policy bars us. Judicial decorum restrains***

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us. Matters of judicial record are unquestionable. *They are not open to doubt. Judges cannot be dragged into the arena.* ***"Judgments cannot be treated as mere counters in the game of litigation." [Per Lord Atkinson in Somasundaram Chetty v. Subramanian Chetty, AIR 1926 PC 136 : 99 IC 742]*** *We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court.* ***We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence.*** *If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject.* ***The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence.*** *If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been*

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*made in error. [**Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrain, AIR 1917 PC 30 : 42 IC 527]** That is the only way to have the record corrected. **If no such step is taken, the matter must necessarily end there**. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment. "*

[Emphasis Supplied]

138. Thus, unless they are on record, statements made regarding the happenings in the Court cannot be countenanced by any Court. Therefore, I would regard with much askance, the statement that the counsel for CBI volunteered that CBI might take up investigation.

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139. The issue of **bias** and **prejudice** had come up for consideration by a learned Single Judge of this Court [***M.M.Sunderesh J, as his Lordship then was]*** in ***2015 4 L.W. 443 [A.V.Bellarmin and Others Vs. V.Santhakumaran Nair].*** The learned Single Judge examined all aspects

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concerning **bias** and also **prejudice**. The relevant portions are extracted below:-

> *"**3.** Bias is a condition or a state of mind which impairs the concept of impartiality in a decision making process. It might arise in an administrative, executive, quasi judicial or judicial decision making. Such a bias occurs due to pre-determination or pre-disposition leading to a decision moving in one direction, sans impartiality. Thus bias strikes at the very basis of a decision, which is supposed to be fair.*
>
> ***4.** As bias emanates from the mind of a person, proof of it is at times very difficult. Therefore, a litigant has been given the lesser burden of establishing before the Court that there exists a real likelihood of bias or reasonable suspicion of it. The test is not existence of the bias as an authority may act in good faith, but such an action is liable to be questioned on the ground of real likelihood of bias or reasonable suspicion of it. This is for the reason that a mind may honestly think and act keeping fairness in mind, but such a decision*

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which flows from it might lead to an element of bias unconsciously.

5. *Bias is synonymous with prejudice.* ***Robert Ingersoll*** *defined prejudice in the following manner:*

*"P**rejudice is the spider of the mind. It is the womb of injustice."***

When an apparent bias transforms itself into a womb of injustice then, it has to be struck down by the Courts.

6. *Bias can be divided into three parts. They are:*

(i) Pecuniary Bias
(ii) Personal Bias and
(iii) Official Bias.

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7. *We are primarily concerned with personal and official bias. Bias may also occur by a combination of these two. When an authority, plays a role being predominant in nature, cannot thereafter take a different role leading to a positive or potential conflict with the earlier one. This*

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mixture of two roles would create either likelihood of bias or reasonable apprehension of bias. The source of the potential bias has to be a personal interest for it to be potentially objectionable in law.

***8.** The Courts have evolved the principles governing bias i.e., real likelihood of bias test and reasonable suspicion test. For the real likelihood of bias test, the paramount consideration is from the point of view of a fair minded informed observer. Insofar as the reasonable suspicion test is concerned, the test is from the point of view of a reasonable common mind. Though the Courts have evolved these two principles, in effect there is little difference between the two. A fair minded man also has to be reasonable and vice versa. What is reasonable is a quality that has to be attributed to a fair minded informed person. Similarly, a reasonable member of the public has to exhibit fairness. After all the principles governing natural justice are ingrained in the conscious of a man, thus the words "reasonable man" and a "fair minded man" are interchangeable to be applied to the facts of a particular case by the Court while testing a possible existence of a bias. The concept of informed*

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observer is one which is developed by the Courts. It is not as if a reasonable member of the public is neither complacent nor unduly sensitive or suspicious as held by ***Kirby J in Johnson v. Johnson, (2000) 200 CLR 488, 509****. A reasonable man is not a rustic, but reasonably informed. The word "well informed" has to be seen in the context of worldly knowledge which a reasonable man is also expected to possess. To put it differently, a high degree of intellect is not required. Ultimately it is for the Court to decide whether there exists a likelihood or reasonable apprehension of bias warranting interference. The background of bias has to be very reasonable suspicion of bias or a real likelihood of bias. In fact these two concepts are prefix to bias. The Courts are required not to delve into the actual bias but to find the likelihood or a reasonable existence of it. Therefore, real bias is not a relevant inquiry especially when the same cannot be established with ease. Thus a reasonable apprehension of bias and real likelihood of bias are surrogates for bias. This is also for the reason that apart from rule of law and fairness, there can be an unconscious bias exists though not intended.*

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9. *Pre-determination and pre-disposition are two facets of bias. An alleged predetermination or predisposition has to be highlighted from an apparent bias. An apparent bias has to be found out from the point of view of either a reasonable mind or a fair minded informed observer as discussed above. Thus, the Court has to sit in the armed chair as a fair minded man who otherwise could be called a reasonable man and determine whether there exists a real bias. Therefore, a Court is required to transform itself to such a man and then decide. This is the common law principle, which has been evolved by the Courts. There is very little difference between a real likelihood and a reasonable suspicion of bias in practice. It is ultimately for the Courts to decide that there exists a bias or not. After all, the test of likelihood or reasonable suspicion is a mere instrument in identifying an element of bias.*

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10. *Coming to an* ***official bias, it can transform into legal malice at times but not in every case.*** *To decide as to whether there exists a likelihood or reasonable suspicion of bias, the test shall not be unacceptably high considering the concept and proof of bias.*

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11. *An apparent bias can be identified with the relative ease in pecuniary and personal as against official. Deciphering an official bias is an arduous job for a Court. That is the reason why the tests of likelihood or reasonable suspicion of bias is required to be used.*

*12. In **P.D. Dinakaran v. Hon'ble Judges Inquiry Committee (2011) 8 MLJ 331 (SC)**, the Apex Court after considering the judgments of the foreign Courts as well as our High Courts summed up the principles of bias by applying the test of real likelihood from the point of fair minded informed observer. The following paragraph would be apposite:*

*"**71**. The principles which emerge from the aforesaid decisions are that no man can be a judge in his own cause and justice should not only be done, but manifestly be seen to be done. Scales should not only be held even but they must not be seen to be inclined. A person having interest in the subject-matter of cause is precluded from acting as a Judge. To disqualify a person from adjudicating*

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on the ground of interest in the subject-matter of lis, the test of real likelihood of the bias is to be applied. In other words, one has to enquire as to whether there is real danger of bias on the part of the person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. In each case, the court has to consider whether a fair-minded and informed person, having considered all the facts would reasonably apprehend that the Judge would not act impartially. To put it differently, the test would be whether a reasonably intelligent man fully apprised of all the facts would have a serious apprehension of bias. In cases of non-pecuniary bias, the "real likelihood" test has been preferred over the "reasonable suspicion" test and the courts have consistently held that in deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. We may add that real likelihood of bias should appear not only from the materials ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries."

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Regarding the test of real likelihood of bias, it was none the less held what is important is real danger of bias on the part of the person against whom such apprehension is expressed. It was also held that human probabilities and ordinary course of human conduct are the parameters to be taken in mind while indulging in such test.

*13. In **<u>State of Gujarat v. R.A. Mehta, (2013) 1 MLJ 362 (SC),</u>** while dealing with the doctrine of bias, the Apex Court held that reasonable suspicion that there is likelihood of bias affecting decision would be sufficient to invoke the doctrine of bias. Therefore, in effect the test of likelihood of bias or reasonable apprehension of bias are interchangeable in nature and consequently, the parameters required for such a test will also be construed to be the same.*

Fairness and Rule of Law:

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***14.** Instrumentality of a State and its officials must conform to the Rule of Law leading to fairness in action. It has been well established that fairness is a facet of Article 21 of the Constitution of India.*

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Such a fairness in action is also mandatorily to be followed in a criminal investigation. A right to a fair investigation is not only a constitutional right but a natural right as well. In ***Sathyavani Ponrani v. Samuel Raj, 2010-2-L.W. (Crl.) 792; 2010 (4) CTC 833,*** *while dealing with fair investigation, this Court has held that the same is mandatory under Articles 14, 21 and 39 of the Constitution of India. The following paragraphs would be apposite:*

*"**66**. Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way*

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of a party in getting a fair trial would in violation of Article 14 of the Constitution.

67. *The Hon'ble Apex Court in **Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158]** has observed as follows:*

*"**36.** The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family*

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members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

*68. Similarly in **Tashi Delek Gaming Solutions Ltd. v. State of Karnataka [(2006) 1 SCC 442)**, the Hon'ble Apex Court has observed as follows:*

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*"**37.** If the agent was to be prosecuted for violation of the term of the notification, he could challenge the validity thereof. A fortiori, a quia timet application would also be maintainable. A person must be held to have access to justice if his right in any manner whether to carry on business is*

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infringed or there is a threat to his liberty. Access to justice is a human right.

38*. In* ***Dwarka Prasad Agarwal v. B.D. Agarwal [2003-4-L.W. 263; (2003) 6 SCC 230] this Court opined: (SCC pp. 245-46, para 38)*** *"A party cannot be made to suffer adversely either indirectly or directly by reason of an order passed by any court of law which is not binding on him. The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Right to a fair trial by an independent and impartial tribunal is part of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 [see* ***Clark (Procurator Fiscal, Kirkcaldy) v. Kelly [(2003) 1 All ER 1106 (PC)]."***

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69. *In* ***Nirmal Singh Kahlon v. State of Punjab [(2009) 1 SCC 441],*** *the Hon'ble Apex Court was pleased to observe that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. The observation of the Hon'ble Apex Court is extracted hereunder: "28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a Central agency which has acquired specialisation in such cases."*

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15. *In* ***Azija Begum v. State of Maharashtra, 2012-1-L.W. (Crl.) 485; (2012) 3 SCC 126****, the Apex Court has held as follows:*

*'**13**. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing the rule of law and maintaining proper balance in law and order."*

16. *In* ***Subramanian Swamy v. CBI, (2014) 8 SCC 682,*** *the Apex Court has ruled that any investigation into crime should be fair and should not be tainted. It has been further held that Rule of Law is a facet of equality under Article 14 of the Constitution of India.*

17. *In* ***Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263****, the Supreme Court has held that the Court is bound to record any deliberate dereliction of duty, designed defective investigation, intentional acts of omission and commission.*

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__18.__ Therefore, fairness in an action leading to upholding rule of law is a sine qua non of a criminal investigation.

__19.__ Law is quite settled that a defective investigation per se cannot be a ground to declare the innocence of an accused. After all, the role of the Court is to find the truth as every trial is journey towards it. Thus, merely because an investigation is defective and that too on a technical ground, a person charged with an offence cannot be acquitted as a matter of course (See __Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263, State of Gujarat v. R.A. Mehta, (2013) 1 MLJ 362 (SC) and Hem Raj v. State of Haryana, (2014) 2 SCC 395.__

Investigator's Bias:

__20.__ An investigator is the kingpin of criminal justice delivery system. (See __Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348).__

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__21.__ A bias attributed on the part of the investigator may lead to a deception leading to injustice. A duty is imposed upon the investigator to

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give an impression that it has been done without an element of unfairness or ulterior motive. He must dispel a possible suspicion to the genuineness of the investigation done. An attempt of an investigation officer is to make a genuine endeavour to bring out the truth.

22. *Considering the same, the Apex Court in* ***Babubhai v. State of Gujarat (2010-1-L.W. (Crl.) 654; (2010) 12 SCC 254)*** *has held as follows:*

*"**32**. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable*

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the court to record a conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur v. State of Punjab, AIR 1960 SC 866, Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774, para 11 and Mahmood v. State of U.P., (1976) 1 SCC 542)"

23. *Considering the duty of a investigator to conduct a proper investigation, the Apex Court in* ***Manohar Lal Sharma v. Principal Secretary ((2014) 2 SCC 532),*** *made its observation in the following paragraph.*

"A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences."

Procedure qua a cognizable offence:

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24. *A First Information Report deals with the cognizance of offences. It can be given either by the complainant or any other person in knowledge of the commission of such offence. The object is to set the Criminal Law into motion. It only enables an officer in charge to commence the investigation qua the*

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crime reported to him. Section 154 of the code, prescribes the mode of recording of information either oral or by written by the officer in charge. Under Section 156 Cr. P.C. such an officer is empowered to investigate and cognates the offence. A receipt of an information of offence is not a condition precedent for investigation. Section 157 of the Code deals with prescription for an investigation which can be initiated either by the information or otherwise. Therefore an in-charge police officer can kick start his investigation on information or otherwise. (See ***State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221)*** *Therefore, there is no bar for such an officer to lodge, register and investigate the case.*

25. *However, the question for consideration is as to whether there would occur a real likelihood or reasonable suspicion of it when an officer, who registers the case, proceed to investigate the case. In this connection, it has to be noted that Section 154 Cr. P.C. deals with only an informant. In a case registered under Section 151 of the Cr. P.C., it is only the State, which assumes the role of a prosecutor. Thus, Section 154(2) of the Cr. P.C.,*

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*provides for giving a copy of the information to the "informant" alone and not to the "complainant". A complaint as defined under Section 2(d) of the Cr. P.C., is to be given to the Magistrate and on receipt of the same, he/she would be examined by the Court under Section 200 Cr. P.C., in a complaint case. Thus, the words "informant" and the "complainant" are not interchangeable. The following paragraph in **Ganesha v. Sharanappa (2014-1-L.W. (Crl.) 665; (2014) 1 SCC 87)** would be appropriate.*

"Before we part with the case, we may observe a common error creeping in many of the judgments including the present one. No distinction is made while using the words 'informant' and 'complainant'. In many of the judgments, the person giving the report under Section 154 of the Code is described as the 'complainant' or the 'de facto complainant' instead of 'informant', assuming that the State is the complainant. These are not words of literature. In a case registered under Section 154 of the Code, the State is the prosecutor and the person whose information is the cause for lodging the report is the informant. This is obvious from sub-section (2) of Section 154 of the Code which, inter

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alia, provides for giving a copy of the information to the 'informant' and not to the 'complainant'. However the complainant is the person who lodges the complaint. The word 'complaint' is defined under Section 2(d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant, which would be evident from Section 200 of the Code, which provides for examination of the complainant in a complaint-case. Therefore, these words carry different meanings and are not interchangeable. In short, the person giving information, which leads to lodging of the report under Section 154 of the Code is the informant and the person who files the complaint is the complainant."

***26.** The Code thus does not bar an informant being a police officer. Therefore, the test of bias would come into play depending upon the roles of the Investigation Officer. If the Investigation Officer has involved himself over two distinct and different roles, then certainly the concept of bias would step in. For example, if the Investigation Officer himself is an eyewitness to the occurrence, though he can*

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register a case, he cannot investigate the same further. In other words, an eyewitness to the occurrence cannot don the role of investigator too. He cannot be allowed to wear two hats at the same time. The concept of official and personal bias would come into play, though an officer is expected to act in a fair manner. There may not be any actual bias, but one of reasonable suspicion or likelihood of bias. However, when an officer receives information either orally or otherwise, he is merely registering the cognizable offence, thereafter proceeds to investigate. The recording by the officer is his official duty as that of the investigation. There is no twin contra roles involved. Similar is the case of an officer registering an F.I.R. suo motu based upon a source information. Such registration qua an offence is on a reasonable suspicion. Cases of such a nature would not attract the concept of bias. After all in all official action fairness is presumed.

Precedents:

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27. *Now, let us analyse the decision rendered by the Apex Court in this regard. In **Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15**, the allegation was an offer of bribe made. The officer*

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*who made the allegation himself took the task of investigation. Therefore, the Apex Court rightly held that on the principle governing bias and fairness in action, the investigation cannot be given the approval of the Court. Similarly in **Megha Singh v. State of Haryana, (1996) 11 SCC 709, P.W. 3** intercepted the accused and recovered arms and thereafter, registered the case and proceeded with the investigation. As admitted, he was the person who apprehended the accused and registered and investigated the case and there was no other independent witness examined except the evidence of P.Ws. 2 and 3. The Apex Court rightly held that the complainant should not have proceeded with the investigation, as it impinges upon the impartial investigation. Incidentally, P.W. 2 also accompanied P.W. 3, being a Police Officer. In **State v. V. Jayapaul, (2004) 5 SCC 223**, the facts are to the effect that the F.I.R. was registered based upon the information received. Thereafter, the said officer proceeded to investigate. On those facts, the Apex Court was pleased to distinguish the earlier decisions and held that there is no bias involved. In **State v. V. Jayapaul, (2004) 5 SCC 223, the decisions in Bhagwan Singh v. State of Rajasthan,***

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(1976) 1 SCC 15 and Megha Singh v. State of Haryana, (1996) 11 SCC 709 *were considered and held as follows:*

*"**6.** Though there is no such statutory bar, the premise on which the High Court quashed the proceedings was that the investigation by the same officer who "lodged" the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police*

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officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack."

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28. *Therefore, the said decision clearly lays down the position of law between an eyewitness becoming an informer, and an officer receiving information, registering the case and then proceeding further.*

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29. *In* ***S. Jeevanantham v. State, (2004) 5 SCC 230****, again the Apex Court has gone into these*

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cases discussed supra. Even in that case an information was received, thereafter, it was recorded and in pursuant to the same, P.W. 8 seized the contraband articles and went through with the investigation. The Apex Court rightly held that there is no element of bias involved.

***30.** In **Bhaskar Ramappa Madar v.State of Karnataka, (2009) 11 SCC 690**, again the Apex Court was pleased to distinguish the earlier decision and held that merely because the case is registered by P.W. 17 on the information given by A1, who lodged the report, it cannot be stated that the investigation is biased.*

***31.** In **State v. N.S. Gnaneswaran, (2013) 1 MLJ (Crl) 294 (SC),** the Apex Court dealt with the case in which an F.I.R. was registered based upon an information. Accordingly, no bias was found.*

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***32.** Considering the above, this Court is of the considered view that there is no conflict of views in the above said pronouncements, as in the subsequent pronouncements, the earlier decisions have been clearly distinguished on facts. Thus, there is*

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absolutely no bar for a police officer to register the case either suo motu or on an information and then proceed to investigate into the same, in which case, the principles governing bias would not get attracted. If an officer being an eyewitness to an occurrence, which leads to filing of a final report, such an officer shall not proceed with the investigation on the concept of real likelihood or reasonable apprehension of bias. However, such investigation and the Final Report, though void, will not have the effect of nullifying the First Information Report recorded. In other words, it is well open to the Courts to direct investigation to proceed afresh to be done by some other officer other than informant who also incidentally happened to be the eyewitness to the offence alleged. "

[Emphasis Supplied]

140. Keeping in consideration, the principles governing bias, namely, the real likelihood of bias and reasonable suspicion, the order of the learned Single Judge should also be examined to find out whether the order is tainted with bias and whether the Writ Petitioner has been prejudiced by transfer of investigation to CBI.

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141. Even before that one further fact will have to be stated namely that before this Court, a status report was filed with respect to the investigation conducted by CBCID, Vellore till the investigation was handed over to CBI. In the status report filed by the Deputy Superintendent of Police, CBCID, Coimbatore Range, it had been stated as follows:-

> "I submit that I am filing this status report as directed by the Hon'ble High Court of Madras in this Writ Petition. I submit that Deputy Superintendent of Police, CBCID, Vellore was nominated as special investigation officer for investigation case in Tiruppur North Police Station. Crime No. 3068 of 2009 since all the official activities took place in the office of CBCID Coimbatore range I am filing this status report as per the investigation documents collected during the investigation in Tiruppur North PS Cr.No. 3068 of 2009 under Section Women Missing @ 343, 365, 384, 354 IPC and Section 4 of Tamil Nadu Prohibition Harassment of Women (Amendment) Act 2002 by State CBCID."

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142. Thereafter, it had been stated as follows in paragraph No. 4:

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"It is submitted that the investigation in this case was transferred to CBCID as per the orders of Director General of Police, Tamil Nadu vide RC.No. 042643/Crime II(2)/2010 dated 18.03.2010. Accordingly, then ADGP, CBCID, Chennai had appointed Tr.Malaichamy, then DSP, CBCID, Vellore Range to take up investigation in this case vide RC.No. C1/375/005870/2010, dated 22.03.2010."

143. In paragraph No. 8, it had been stated as follows:-

*"**8.** It is submitted that on 15.04.2011, investigation officer has sent 160 Cr.P.C., summon to Tr.Pramod Kumar, IPS., then Inspector General of Police, Armed Police, Chennai and informed him to attend the enquiry on 19.04.2011 at CBCID Headquarters, Chennai. On 19.04.2011, Tr.Pramod Kumar, IPS, then Inspector General of Police, Armed Police, Chennai appeared before the Investigating Officer and answered 29 questioned in writing. One of the questions placed before Tr.Pramod*

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Kumar, IPS., then IGP, West Zone is as follows. ***(Question number.15)*** *"You had instructed Tr.Arun, IPS., Superintendent of Police Tiruppur District to post Tr.V.Mohanraj, then Inspector to the CCB, What made you to speak in favour of posting Tr.V.Mohanraj to such important post inspite of his bad reputation? Why were you unhappy with Superintendent of Police Tiruppur when he had not allowed that said inspector to join there and instead directed him to Anuppupalayam Circle?"* ***(Answer)*** *"S.P./Tiruppur was wrong is not following the orders of Competent authority. He was asked to follow the orders. He was advised to approach the transfer Committee". But witness Tr.Arun IPS., then Superintendent of Police, Tiruppur in his statement stated that he was insisted by Tr.Pramod Kumar IPS, then IGP, West Zone to allow Tr.Mohanraj" then Inspector to take charge of inspector of Police, CCB, Tiruppur. Likewise during that examination, Tr.Pramodkumar IPS, then IGP, West Zone did not answer to the* ***question number.13****. The* ***question number.13*** *placed before Tr.Pramod Kumar IPS, then IGP, West Zone is as follows. (Question number.13)*

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"who is Annachi @ Johan Prabhakar? Why did he contract you frequently from his cell phone during the period from December 2009 to March 2010?". But later Tr.Pramodkumar IPS, then IGP, West Zone had answered to this question stating that Tr.John Prabhakar was known to him for 5 to 6 years. Tr.John Prabhakar was said to have been met during one social gathering. After that, he used to receive the call and reply depending upon his convenience and availability. At that time, Tr.John Prabhakar was holding the post of President of South Indian Chamber of Indo-Polland Chamber of Commerce. Tr.Pramodkumar IPS, then IGP, West Zone also stated that they used to talk general topics. He met Tr.John Prabhakar even at Coimbatore as per mutual convenience. But he does not remember how many times they met during last 1 ½ years as he did not attach must significance to his meeting."

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144. At that stage, the order of the High Court came, transferring investigation to CBI. It was therefore further stated in the status report as

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follows:-

*"**9**. It is submitted that in this stage of investigation on 19.04.2011, the Hon'ble High Court of Madras in Crl.O.P.No. 2691 and 5356 of 2011 ordered to transfer the investigation of this case from CBCID to CBI. Hence, IO Tr.Malaichamy, then Deputy Superintendent of Police, CBCID, Vellore Range had concluded his investigation stating that evidences collected (oral, call details, etc.,) are enough to substantiate the involvement of accounts A-2 Tr.V.Mohanraj, A-3 Tr.Shanmugaiah and A-4 Tr.Annachi @ Johan Prabhakar in this case. Investigation officer also stated that accused Tr.Rajendran, then Deputy Superintendent of Police (A-1) did not turn up for investigation, even after receiving summon under Section 160 Cr.P.C., to confirm his involvement further investigation required. Investigating Officer Tr.Malaichamy, then Deputy Superintendent of Police, CBCID, Vellore Range also pointed out in his last investigation diary that investigation is pending mainly to find out as where the*

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receiving bribe money by the A-2 Tr.Mohanraj was stashed or deposited in any other mode by examining one Sheetahal (may be at Flower Bazaar area, Chennai) who is said to be a assistant to the IGP., Tr.Pramod Kumar, IPS., and other sources may kindly be verified in this regard. Remaining witnesses may also kindly be examined.

10. *It is submitted that as per the orders of the Hon'ble High Court, Madras, in Crl.O.P.Nos. 2691 and 5556 of 2011, dated 19.04.2011 the investigation officer Tr.Malaichamy, then Deputy Superintendent of Police, CBCID, Vellore Range handed over the CD file and connected documents in Tiruppur North P.S. Cr.No. 3068 of 2009 to Deputy. Superintendent of Police, CBI, Economic Offences Wing, Rajaji Bhavan, Chennai, on 10.06.2011. "*

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145. It is thus seen that even during the investigation conducted by CBCID, Vellore, the writ petitioner Pramod Kumar had been issued with

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summons under Section 160 Cr.P.C., to attend enquiry and he had actually appeared before the Investigating Officer and answered 29 questions in writing. Thus, the needle of suspicion was against him even during that particular period.

146. In this background, the order of the learned Single Judge will now have to be re-examined. The entire order had been extracted above. In paragraph No. 4 of the learned Single Judge had observed that though anticipatory bail granted to the accused/the Directors of M/s. Paazee Company, they had not been arrested. This statement will have to be read in connection with the statement of Kamalavalli, one of the Directors, who was the woman, who went missing that if she paid Rs.3/- crores, the police officials would take care that no coercive action would fall against her. She actually stated that she had paid Rs.2.95 crores.

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147. The learned Judge had further observed that a status report had been filed where eight further companies had been registered and various names in India and nine companies in different countries. Naturally it is only the CBI which can investigate into that particular aspect. Thereafter,

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the learned Single Judge had given his reasons.

148. These reasons have been criticised by both Mr. N.R.Elango, learned Senior Counsel and Mr.Vijay Narayan, learned Senior Counsel. They stated that these reasons are not at all sufficient even remotely sufficient to transfer the case to CBI.

149. The learned Single Judge had actually balanced the information which had surfaced from both the investigation. He had stated that the accused have not been arrested in spite of cancellation of anticipatory bail. Thereafter, he had also stated that even though Crime No. 3068 of 2009 was originally a *woman missing* case, the police officials are said to have been obtained Rs.3/- crores and held out that the accused/Directors need not repay any of the remaining depositors. This amount of Rs.3/- crores, the learned Judge opined, could be the amount collected from the depositors which had been secreted by the accused/Directors and which had to be given back to each one of the individual depositors. They had given that amount to the police officials. If that be the case, then, the investigating agency which is entrusted with ensuring that the depositors get back their

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money, which is the objective of the Tamil Nadu Protection of Interests for Depositors (Under Financial Establishments) Act 1997, had a duty to ensure that the depositors actually get back their money. Therefore, the learned Judge had directed that the said aspect can also be investigated by CBI. There was no reference at all to anyone of the individual police officials by name. There was no reference with respect to the petitioner in W.P.No. 21801 of 2012. There was direction to investigate the offence.

150. The petitioner had known that the needle of suspicion had already been pointed out against him by CBCID, Vellore. To prevent that as reality to happen, instead of claiming bias as a ground at the earliest instant, the only ground taken by the petitioner was that there was no sanction as contemplated under Section 6A of the Delhi Special Police Establishment Act.

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151. In the additional affidavit, he stated that he had been arrested and that he had been suspended. These are results of the commission of any offence. Any police official, who investigates cognizable offence has a

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right to take the accused under custody.

152. The petitioner should allege prejudice at the very inception. Mr. Vijay Narayan, learned Senior Counsel relied on the phrase *sublato fundamento cadit opus* and stated that since the Hon'ble Supreme Court had interfered and set aside the order, all further investigation by CBI will have to be declared as nullity.

153. I disagree with this contention.

154. The Hon'ble Supreme Court had only directed that this Court should re-examine transfer of investigation to CBI and should examine that on the basis of paragraph No. 75 of the ***Devendra Singh Bhuller*** referred supra. In paragraph No. 75, the Hon'ble Supreme Court had given directions wherein, they had stated that the Court should come to a conclusion that a prima facie case is made out against the accused.

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155. In the instant case, the status report of the CBCID, Vellore itself shows that there was a prima facie case against the accused. It is also

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seen that the matter cannot rest with an investigation of the *woman missing* case as an independent event. It must be looked from the larger perspective of a Director facing criminal extortion by police officials that they would give protection from criminal action if money is paid. The money was paid. There is a direct interlink among all the actions. Therefore, having re-examined the facts, I am of the firm opinion that it is a fit case for handing it over for investigation to CBI.

156. Mr. Vijay Narayan, learned Senior Counsel referred to the Judgment of the Constitution Bench of the Hon'ble Supreme Court reported in ***(1988) 2 SCC 602 [AR Antulay Vs. R.S.Nayak and another]***. In that particular case, the facts are that the Hon'ble Supreme Court had initially directed a complainant against the Chief Minister of the State of Maharashtra, to be tried by the High Court of Bombay and had requested the Chief Justice to assign the cases to a sitting Judge and to hold the trial on a day to day basis. The trial commenced opened on 09.04.1984. Objections were raised before the learned Single Judge but he rejected them. A Writ Petition was filed and a two Judge Bench of the Supreme Court dismissed the Writ Petition. Several witnesses were examined. 21 charges

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were framed. Orders of discharge were also passed. A further appeal came up before the Hon'ble Supreme Court and a two Judge Bench set aside the order of discharge and directed the trial Judge to frame charges for those offences also.

157. The learned Single Judge of the Bombay High Court then framed 79 charges. Again, the order was challenged before the Hon'ble Supreme Court where again the jurisdiction of the High Court to try the case was questioned. A Two Judge Bench formulated questions and referred the matter for hearing by a Bench of 7 Judges. The questions which had been framed for considerations were as follows:-

> *"I. Whether the directions of the Constitution Bench of Supreme Court dated February 16, 1984 (R.S.Nayak V. A.R. Antulay, (1984) 2 SCC 183, 243 : 1984 SCC (Cri) 172: (1984) 2 SCR 495)] directing the transfer of the case from the Special Judge to the High Court are inoperative, invalid or illegal; and*
>
> *II. Whether, if so, the Supreme Court can and should recall, withdraw, revoke or set aside the same in the present proceedings?"*

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158. The Hon'ble Supreme Court allowed a majority at 5:2 stated that all proceedings in the matter subsequent to the directions of the Supreme Court on February 16, 1984 be set aside and quashed and that the trial proceed in accordance with law i.e., under the Criminal Law Amendment Act, 1952.

159. Placing reliance, Mr. Vijay Narayan, learned Senior Counsel stated that in the instant case, since the Hon'ble Supreme Court had set aside the order of the learned Single Judge directing transfer of investigation to CBI all further investigation stand vitiated and non est. This aspect was uniformly canvassed by all the other learned Senior Counsels/Counsels. But a reading of the order of the Hon'ble Superme Court indicates that the order in the Writ Petition had been set aside and the High Court had been directed to dispose of the controversy. The controversy was whether there could be transfer of investigation or not. I have held that the transfer of investigation is required. It has become a fait accompli. CBI had already conducted investigation. They have also filed final report. The petitioner herein had not complained of any bias caused during the course of

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investigation or with the procedure adopted during the course of investigation. No such ground has been raised. However, all the accused claimed that the investigation should be set aside since the Hon'ble Supreme Court had set aside the order in the Writ Petition and had directed the High Court to rehear the matter again. Even when opportunity had been granted, they have not stated that CBI in the course of investigation had acted in a prejudiced manner and had filed a charge sheet without any evidence or had gathered evidence to their convenience or put up witnesses or materials which did not exist. These are all not issues raised. They have not stated that they have been prejudiced by the investigation. They have not stated that improper investigation had been conducted. It must be kept in mind that the Hon'ble Supreme Court had only directed this Court to hear the matter afresh. On the investigation already done, the accused have not raised a single voice of protest.

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160. Mr. Vijay Narayan, learned Senior Counsel, however stated that once there is infraction of Article 21 of the Constitution prejudice automatically follows.

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161. In the instant case, the infraction of Article 21 of the Constitution was sought to be re-examined to the limited extent to find out whether non hearing of the writ petitioner had caused him prejudice. When the learned Single Judge was hearing the matter, CBCID Vellore had already pointed its needle of suspicion against the writ petitioner. Therefore CBI cannot be charged with prejudice. They did not pick and choose the writ petitioner from thin air and arrayed him as an accused. CBCID, Vellore already had gathered materials against him. CBI consolidated those materials and gathered further materials and filed the final report. I would also readily state that if CBI had not investigated, CBCID Vellore would also have drawn the same conclusion.

162. It has been complained by Mr. N.R.Elango, learned Senior Counsel that investigation had been transferred without there being any relief sought or any materials placed before the learned Single Judge. The order of the learned Single Judge shows that there has been application of mind on the facts which existed. The fact is registration of a First Information Report of *woman missing. T*he fact is the subsequent statement

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that she had been extorted to pay a sum of Rs.3/- crores. The natural inference was whether that particular Rs. 3/- crores formed part of the amounts obtained from the depositors or not. This inference was balanced with the earlier observation in the order that inspite of anticipatory bail being dismissed, the Directors had not been taken into custody. A suspicion had arisen whether they were not arrested because Rs.2.95 Crores was paid to the police officials. That is a question which I would leave it open for the trial Judge to examine.

163. In view of all these reasons, even though several other Judgments revolving around the very same issue, had been cited at the bar, I would pass the following orders:-

(1). W.P.No. 21801 of 2012 and W.P.No. 17856 of 215 are dismissed. The transfer of investigation to CBI and subsequent investigation by CBI are both confirmed.

(2). No specific orders are required in Crl.O.P.Nos. 2691 & 5356 of 2011. The petitions are closed.

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164. Crl.O.P.No. 13904 of 2015 had been filed by the accused V.Mohan Raj and his wife seeking defreezing of his bank accounts.

165. In the petition filed, it had been stated that the petitioners had already filed Crl.O.P.No. 3017 of 2013 and two bank accounts had already been defreezed. At that time, the respondents/CBI had not informed that the jewels pledged with the Bank, namely, Canara Bank, had been freezed by CBCID, Vellore.

166. In view of the fact that the other accounts had been defreezed, without entering into any further discussion, I would allow, the petition and direct release of the jewel in Account No. 1262842017071 and 1262842017730. The petitions are allowed to operate in Locker No. 49 in Ref.C.BGUDLRCBI 2015-16 KRK dated 13.04.2014. This Petition is allowed. If any bond is required, the CBI can approach the trial Court with details of the requirement of such bond and the trial Court may pass necessary orders.

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Crl.O.P.No. 1661 of 2016:

167. In view of the orders passed, the docket order dated 19.10.2015 in C.C.No. 2 of 2013 by the II Additional District Judge cum Special Judge for CBI Cases, Coimbatore is set aside and a direction is given to the learned Special Judge for CBI cases to proceed further in manner known to law in C.C.No. 2 of 2013. This Petition is allowed.

168. In the result,

(1). W.P.No. 21801 of 2012 and W.P.No. 17856 of 2015 are dismissed. The investigation done by CBI is sustained.

(2). Crl.O.P.Nos. 2691 of 2011 and Crl.O.P.No. 5356 of 2011 are closed.

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(3). Crl.O.P.No. 13904 of 2015 is allowed.

(4). Crl.O.P.No. 1661 of 2016 is allowed.

(5). No order as to costs.

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02.11.2021

Index:Yes/No
Internet:Yes/No
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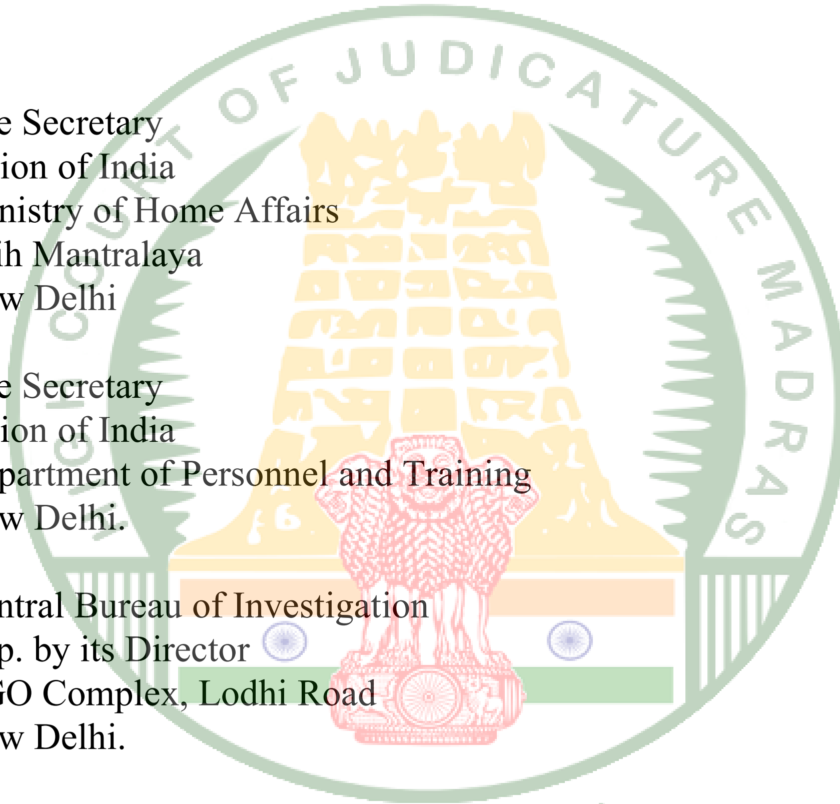
To



1. The Secretary
Union of India
Ministry of Home Affairs
Grih Mantralaya
New Delhi

2. The Secretary
Union of India
Department of Personnel and Training
New Delhi.

3. Central Bureau of Investigation
Rep. by its Director
CGO Complex, Lodhi Road
New Delhi.

4. The Secretary
State of Tamil Nadu
Department of Home
Fort St. George
Chennai – 600 009.

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5. Additional Superintendent of Police
Economic Offences Wing, III Floor
Rajaji Salai, Besant Nagar
Chennai – 600 090.

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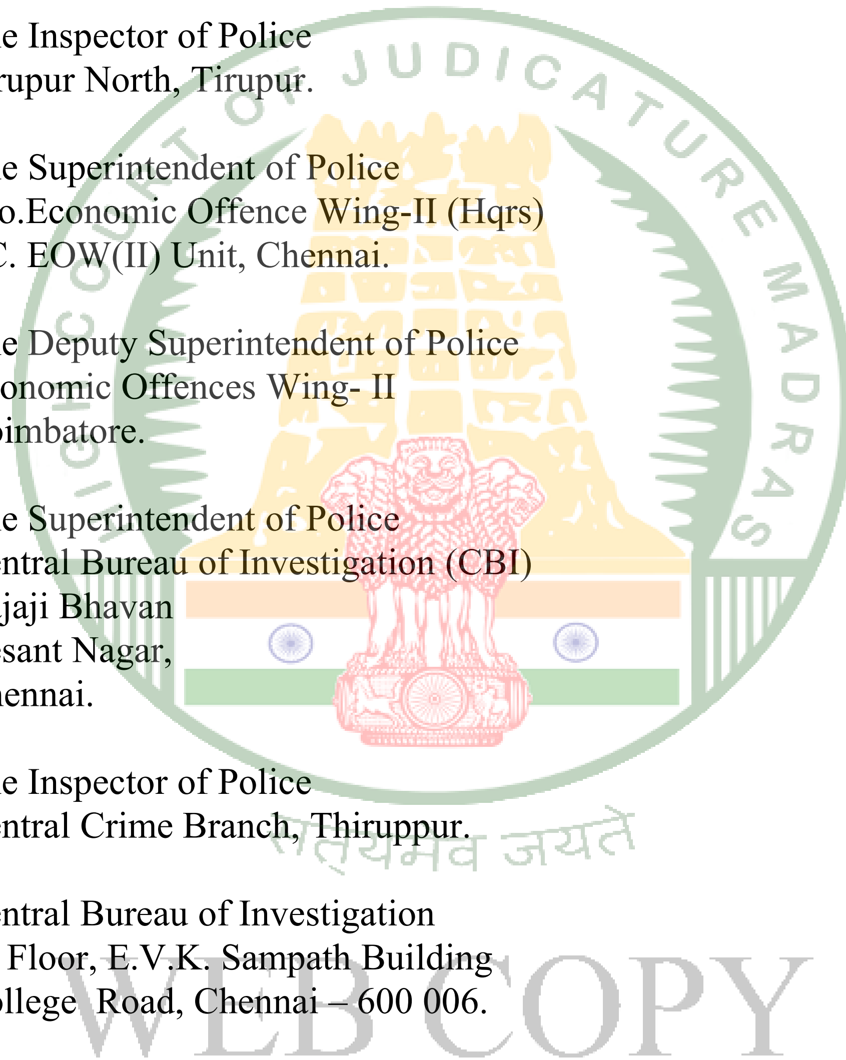
6. The Additional Superintendent of Police
CBI, E.O.W., Shastri Bhavan
Chennai.

7. The Deputy Superintendent of Police
Tirupur North
Tirupur.

8. The Inspector of Police
Tirupur North, Tirupur.



9. The Superintendent of Police
O/o.Economic Offence Wing-II (Hqrs)
I/C. EOW(II) Unit, Chennai.

10. The Deputy Superintendent of Police
Economic Offences Wing- II
Coimbatore.

11. The Superintendent of Police
Central Bureau of Investigation (CBI)
Rajaji Bhavan
Besant Nagar,
Chennai.

12. The Inspector of Police
Central Crime Branch, Thiruppur.

13. Central Bureau of Investigation
III Floor, E.V.K. Sampath Building
College Road, Chennai – 600 006.

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14. The Superintendent of Police
CBI-E.O.W., Shastri Bhavan
Chennai.

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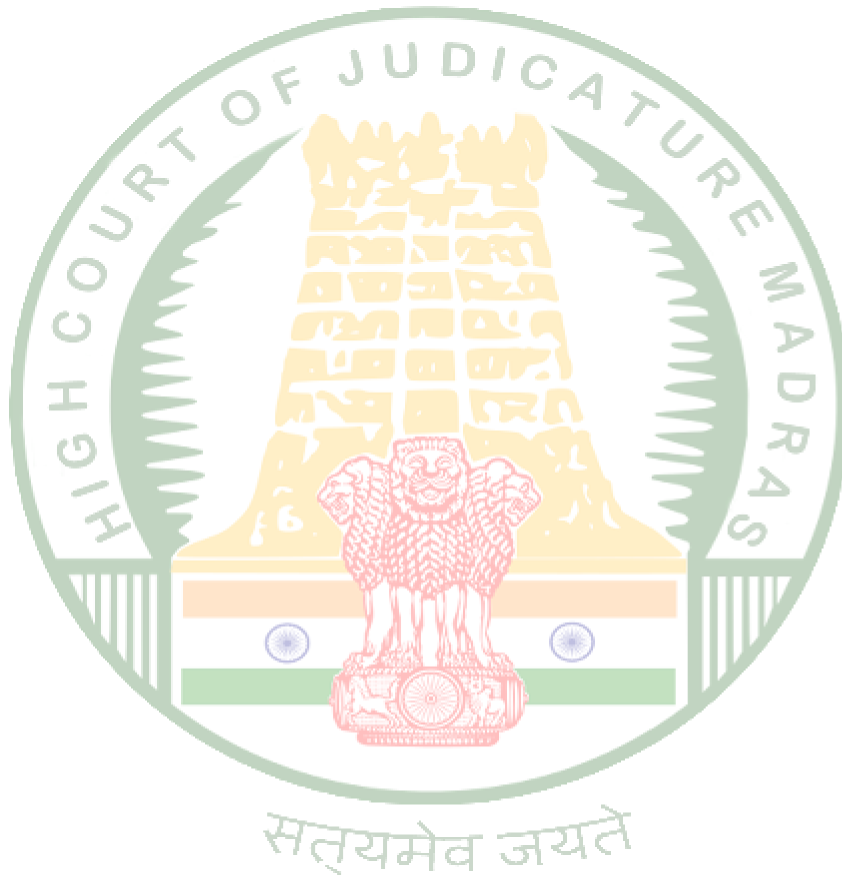
15. Deputy Superintendent of Police
    CBCID, Vellore Range
    Vellore.



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C.V.KARTHIKEYAN, J.

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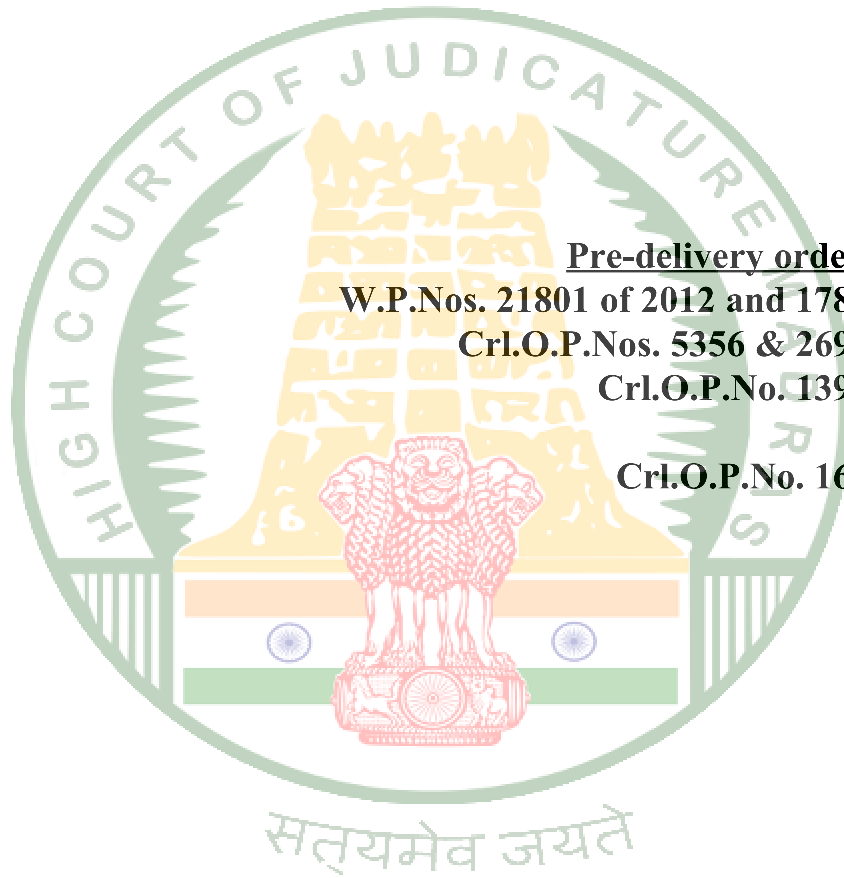

Pre-delivery orders made in
W.P.Nos. 21801 of 2012 and 17856 of 2015
Crl.O.P.Nos. 5356 & 2691 of 2011
Crl.O.P.No. 13904 of 2015
And
Crl.O.P.No. 1661 of 2016

02.11.2021

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