IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Reserved on : 03.09.2013
Date of Decision: 26.11.2013

1. **L.P.A. No. 153 of 2008**

Bakhashi Ram and others ..Appellants

Versus

Satwant Singh Manak and others ..Respondents

2. **L.P.A. No. 154 of 2008**

Darshan Singh and others ..Appellants

Versus

Satwant Singh Manak and others ..Respondents

3. **L.P.A. No. 155 of 2008**

Bachan Singh Randhawa and others ..Appellants

Versus

Satwant Singh Manak and others ..Respondents

4. **L.P.A. No. 181 of 2008**

State of Punjab ..Appellant

Versus

Satwant Singh Manak and others ..Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Puneet Bali, Senior Advocate with
Mr. Vaibhav Jain and Mr. APS Sandhu, Advocates
for the appellants in LPA No. 153 and 155 of 2008.

Mr. H.S.Hooda, Sr. Advocate with
Mr. G.S.Hooda, Advocate
for the appellant in LPA No. 154 of 2008.

Mr. Anupinder Singh Grewal, Addl. Advocate General, Punjab for the appellants (in LPA No. 181 of 2008) and for the State of Punjab in other connected cases.

Mr. R.S.Bains, Advocate, for respondent No.1.

Mr. Sumeet Goel, Advocate for respondent No.3-C.B.I.

Mr. G.H.S.Dhillon, Advocate, for respondents No. 14 &15 in LPA No. 154 of 2008.

****

SANJAY KISHAN KAUL, CHIEF JUSTICE

Original petitioner, namely, Satwant Singh Manak, was a Constable in the Punjab Police. On facing certain disciplinary proceedings, he claims to have had a change of heart and seeks to portray what he claims are police excesses in the form of fake encounters to which he claims to have been an eye witness.

FACTS

2. The writ petition has originally been framed under Articles 226/227 of the Constitution of India seeking a writ in the nature of mandamus directing respondent No.2 i.e. Director General of Central Bureau of Investigation, New Delhi, to register 10 separate F.I.Rs. regarding 10 murders stated to have been caused from time to time by respondents No. 3 to 9, who are former or serving officers of the police force of Punjab and further praying that the family of the deceased may be awarded compensation of ₹ 2,00,000/- each. The averments in this behalf in the writ petitions are material. The petitioner was recruited as a Constable in the Punjab Police and claims to have been allotted black-cat duty. The petitioner claims that as per the instructions of his superiors he went to the groups of terrorists and collected their information and many terrorists wanted by the police had been captured by the petitioner with the help of black-cats of

Punjab Police. Respondents No. 3 to 9 are alleged to have physically and mentally tortured these persons and later on murdered them in C.I.A. Staff Moga, Police Station City Moga, Police Station Mehna etc. in separate incidents and some of the deceased were shown to have been killed in false police encounters in records for which even Commendation Certificates were issued by D.I.G./respondent No.2 including to the petitioner.

3. The petitioner was, however, arrested on 12.04.1993 in the evening at C.I.A. Staff Moga. A member of Parliament from Bhatinda, is stated to have intervened on behalf of the petitioner as also the relative of the petitioner but later on the petitioner was arrested in three cases i.e. in false police encounters having arms without licences and others and later on the department served a notice to the petitioner alleging absence from duty from 21.06.1992. The petitioner claims that he alongwith other police officers on 25.07.1992 carried out a raid in which terrorist Lakhwinder Singh Lakha was arrested while other terrorists escaped. However, later on Lakhwinder Singh Lakha was shown to be arrested and encountered in the vicinity of Police Station Sadak and a Czechoslovakia made gun was alleged to have been recovered from his possession. The petitioner claims that he had played an important role in the arrest of Lakhwinder Singh Lakha but no award or promotion was awarded to him. Some other similarly situated police officials were also not granted award or promotion etc.

Superintendent of Police (Operation)-respondent No. 7 is stated to have handed over a letter dated 12.04.1993 regarding anti-terrorist duty of the petitioner for which the petitioner demanded funds for going to Nanital for collecting information, but respondent No. 7 informed that there was no source of funds and directed the petitioner to raid the house of Zora Singh under Police Station Mehna to take custody of Poppy-husk and after the sale

of the same may go to Nanital. The petitioner states that he did so but later on Zora Singh complained against the petitioner before respondents No. 14 and 3. It is stated that the petitioner was involved by Zora Singh and a conspiracy was hatched to implicate the petitioner in false cases and the petitioner infact was arrested. The petitioner claims to have gone through torture. The allegations stated to have been leveled against the petitioner were that he had committed robbery etc. and the police while keeping the petitioner in illegal custody implicated him in false police encounter case under Section 307 of the Indian Penal Code and another case under Sections 25/54/59 of the Arms Act, 1959 as also case under Section 382 of the Indian Penal Code.

4. The allegations against respondents No. 4 to 9 contained in paras No. 14 to 18 and thereafter in paras No. 19 to 23 are as under:-

> "14. That the deceased Nirmal Singh Nimma resident of village Rajeana, Tehsil Moga, District Faridkot, physically tortured by Inspector Gurmej Singh Dhola, respondent No.4 and Bachan Singh Randhawa, Deputy Superintendent of Police respondent No.3 and later on killed him.
>
> 15. That deceased Baljit Singh, resident of village Vadha Ghar was physically tortured by Deputy Superintendent of Police Bachan Singh Randhawa respondent No.3 and Inspector Gurmej Singh Dhola respondent No.4.
>
> 16. That Kulwant Singh alias Kanta, resident of village Ghumiara, District Faridkot, was illegally tortured by Inspector Gurmej Singh Dhola respondent No.4 and Assistant Sub Inspector Surjit Singh and later on killed.
>
> 17. That Baljinder Singh Bijliwala, resident of village Ghumiara, District Faridkot was illegally physically tortured by Inspector Gurmej Singh Bhola respondent No.4, Sub Inspector Hardial Singh Malhi respondent No. 7, Head Constable Om Parkash

respondent No. 9, Deputy Superintendent of Police Bachan Singh Randhawa, respondent No.3 and later on killed by them.

18. That Kartar Singh resident of village Karmitti, Tehsil Ferozepur Cantt., District Ferozepur was physically tortured and later on killed by Sub Inspector Darshan Singh alias Lahor respondent No.5, Deputy Superintendent of Police Bachan Singh Randhawa respondent No.3 and Sub Inspector Hardial Singh Malhi respondent No. 7.

19. That Bahal Singh, resident of village Padhari, Tehsil Zira, District Ferozepur and his brother were killed by Sub Inspector Baldev Singh, Head Constable Gurdev Singh, respondent No. 8, who was gunman of Deputy Superintendent of Police Bachan Singh Randhawa and also by the Deputy Superintendent of Police Bachan Singh Randhawa respondent No.3.

20. That Satwant Singh Sodhi, an All India Sikh Student Federation's activist resident of village Chaugawan, Tehsil Moga, District Faridkot Police Station Mehna physically tortured and killed by the Deputy Superintendent of Police Bachan Singh Randhawa respondent No.3 and his Gunman Head Constable Gurdev Singh respondent No. 8 and Sub Inspector Hardial Singh Malhi respondent No. 7.

21. That Gurmukh Singh resident of Langeana, Tehsil Moga, District Faridkot, Police Station Bagha Purana physically tortured and killed by Inspector Gurmej Singh Dhola, respondent No.4 and Deputy Superintendent of Police Bachan Singh Randhawa respondent No. 3.

22. That Gurcharan Singh resident of Bedi Nagar, Mohalla of Moga, District Faridkot was physically tortured and killed by Sub Inspector Darshan Singh Lahor respondent No. 5, Sub Inspector Hardial Singh Malhi respondent No. 7, Head Constable Dalwinder Singh No. 1146, respondent No.6 and Deputy Superintendent of Police Bachan Singh Randhawa respondent No.3.

23. That Nachhattar Singh Fauji, resident of village and Post Office Daudhar, Tehsil Moga, District Faridkot, was physically tortured and killed by Sub Inspector Darshan Singh Lahor respondent No.5, Sub Inspector Hardial Singh Malhi respondent No. 7 and Deputy Superintendent of Police Bachan Singh Randhawa respondent No.3."

5. We have considered it appropriate to reproduce the averments because of their very sketchy nature without any details or particulars and in the background of petitioner really having become renegade on account of his being charged of various offences. It is only at that stage that the petitioner sought to take up the role of crusader having participated in all the activities.

6. The only other averments have been made in paras No. 24 to 26 as under:-

"**24**. That it is pertinent to mention here that all the ten deceased mentioned supra were physically tortured and murdered by the above said police officers in presence of the petitioner from time to time in various Police Stations and C.I.A. Staff but all the above said police officers for getting promotion in the Department and cash awards from the Police Department committed the murders and some of them deceased were shown killed in police encounters at different places in police nakas whereas no real police encounter took place of the deceased with the Punjab Police parties.

25. That the above said police officers disposed of some of the dead bodies of the deceased without showing these into police record.

26. That the petitioner requested about the false encounters to the then Senior Superintendent of Police, Faridkot, Mr. Jaswinder Singh and later on Mr. M.K.Tiwari and at present Ishwar Chander and also Deputy Inspector General of Police, Ferozepur Range, Ferozepur, Mr. Bakhshi Ram but no action

has been taken by the Punjab Police against the guilty police officers till today."

The aforesaid is the sum and substance of the petition followed by the prayer clause.

7. The petitioner alongwith the petition has also annexed the F.I.Rs. of various incidents and learned counsel for the petitioner took us through the F.I.Rs. to state that the story of encounter is false as the bullet injuries are of such nature as could have been occasioned only in close proximity or that the story of escape set up was false.

WHAT IS THE PETITION REALLY ABOUT:

8. If the writ petition is read out as a whole, the clear impression which emerges is as under:-

i) The petitioner was carrying out anti-terrorists operation.

ii) In the process of such anti-terrorist operation he actively participated without any funds.

iii) The petitioner was participating even in collecting monies improperly

for carrying out his task.

iv) The petitioner was unhappy by not getting monetary benefits and promotion which accrued to him.

v) The petitioner was charged for various offences which made him upset.

vi) The petitioner decided to become a crusader to bring to light the encounter cases after having been party to the same, as he was an eye witness.

vii) The petitioner wants all the police officers to be prosecuted, himself to be given protection and compensation to the families of the deceased.

9. If one may say, especially in the absence of any legal heirs of the deceased, the present petition was really in the nature of Public Interest Litigation. If it was so, it was to be listed before the appropriate Bench dealing with the Public Interest Litigations. However, the learned Single Judge vide the impugned order dated 01.04.2008 proceeded to deal with the matter and while noticing the history states that the petitioner was called upon to satisfy whether such a petition could be in public interest. An endeavour was also made to withdraw the writ petition by filing an application, but the learned Single Judge directed that the application be taken up with the main case as the controversy raised in the petition was in larger public interest. On the next date, the petitioner appeared and stated that he did not wish to withdraw the petition but on the other hand claimed that there was pressure on him to withdraw it. It was once again observed that the controversy raised in the petition was found to be in larger public interest. The learned Single Judge was thus fully conscious of the fact that he had given a colour of Public Interest Litigation to the present petition required to be dealt with by the First Division Bench of this Court. He had proceeded to analyze the merits of the case. It was, however, never formally styled as a Public Interest Litigation.

10. We may note, with grave reservation, the initial observation of the learned Single Judge which seeks to suggest that the learned Single Judge was keen to decide the petition, but somehow the petition was not put up before him because there was fault of the Registry in not putting up the

case for hearing. Without there being any administrative enquiry, the observations have been made that things have been managed in the office that is why the case was not put up before the learned Single Judge.

11. The second aspect which emerges from the order dated 01.04.2008 is apparently the stand of the State which was that if deemed proper there could be independent investigation but that should be carried out by a Special Investigation Team and there was no need to engage an independent agency like the Central Bureau of Investigation. The private respondents of course protested against any such investigation at the behest of the petitioner.

12. The learned Single Judge seeks to take a cue from the observations of the Hon'ble Supreme Court in case **R.S.Sodhi Vs. State of U.P. and others,**, **AIR 1994 Supreme Court 38,** where 10 persons were reportedly killed in encounters allegedly between the Punjab militants and local police, wherein independent investigations were observed to be required. Since in the present case, the allegations have been made against the police and its officers, similar line of action has been observed to be required.

APPELLANT(S) CASE

13. Learned senior counsel for the appellants Shri Puneet Bali had serious objections to the tone and tenor of the observations made by the learned Single Judge which are said to be based upon his general perceptions rather than the concerns relating to the facts of the present case as pleaded. In this context, a reference has been made to the observations that some of the persons who had so died had been shown to be in police custody and were statedly being moved during the course of investigations when

encounters are shown to have taken place. This is succeeded by the following observations:-

> "This had been followed as a usual and routine practice by the Punjab Police either to show that a terrorist while being carried from one place to another had escaped or had died in an encounter while police party was taking a particular person and is ambushed by a terrorist outfit. The strange phenomena as would be noticeable in all these cases would be that none of the police officials would even receive a scratch while bullets are fired leading to deaths of some terrorists. Is it normally possible? I say nothing in this regard."

14. The submission of learned Senior Counsel for the appellants is that the State of Punjab went through difficult times when police had to play pivotal role which has infact brought back the State from a precipice. The observations of the aforesaid nature are thus alleged to have been made completely ignoring this aspect while ridiculing the efforts put in by the Punjab Police labeling them as usual and routine practice of encounters while the learned Single Judge says- "I say nothing in this regard". All has been said and that too inappropriately and incorrectly.

15. The learned Single Judge thereafter has proceeded to discuss the individual F.I.Rs. and Post Mortem Reports. While dealing with the incident of Satwant Singh, who escaped from the police custody and he being declared proclaimed offender and proceedings consigned to records on 10.10.1994, the plea that the petitioner could not have been a party to the said encounter as claimed by him as at that time he was on Santry Duty in C.I.A. Staff Unit at Moga, has been brushed aside by stating that the same may not need any comment from the Court which could be a subject matter of investigation. The important aspect is that even in the sketchy facts given by the petitioner, it was found that the petitioner was not even at the site -

albeit in one of the cases. What credence could be given to the version of such a petitioner? The sweeping observations of the Court are especially encompassed in the following paragraphs of the judgment:-

> "It is not appropriate for this Court to comment whether such a story would sound probable or possible. In far too many cases the police is ambushed and escaped without any injury even without a scratch. It leads to a death of a terrorist either in custody or who had ambushed the police party. Perhaps, the police is not aware of what happens during ambush as it is yet to encounter any real one. In any case, that would be a matter which would need investigation. There is a loud cry raised by none other than a person who was concededly a part of police set up. He may be a disgruntled person having been dismissed and may have his own axe to grind. But, he, has given names of some persons who concededly have been either killed in an encounter or are shown to have been escaped from police custody. The requirement is to find out the truth. Were these genuine encounters leading to death of these persons or their escapes? Or were these persons killed and shown to have either escaped or killed in a fake encounter? That has not apparently been properly investigated. The FIRs registered by the police were one sided. The usual mode of investigation is to close the case after declaring the person escaped as proclaimed offender. Why should not it be taken to logical conclusion to trace out such persons who are shown to have escaped as they had made a serious attempt on the lives of the police officials. Should the State rest content by getting them declared as proclaimed offenders? Should not the State be interested in carrying out further investigation as to where they had escaped to bring the case to logical conclusion? The State apparently has failed in its duty. The reasons are not far too many to seek. Obviously, the police officers who are alleged to have stage managed these encounter(s) would have no interest to properly investigate the matters. As observed by the Hon'ble Supreme Court, to entrust investigation to State police would not lead to any fair outcome and would lack credibility. If one is to

look around, one may not able to find many officers of Punjab Police free from taints who could be entrusted with investigation and can be expected to be independent. Generally, the Courts in such like cases are requested to entrust investigation to Vigilance set up of the State on the ground that it can be expected to be free from influences. It is recently been in news as is disclosed to this Court that head of the Vigilance is himself facing prosecution for almost similar allegations. He is reportedly being investigated for a case of fake encounter of a death of son of one retired I.A.S. officer. Ofcourse, he was in service when his son was allegedly killed/escaped from custody. Even otherwise, it is not desirable for the Court to constitute special investigation team or to name a particular officer in this regard. How identical is this case to the case of R.S.Sodhi (supra) decided by Hon'ble Supreme Court? I may, thus, borrow the wording from the case wherein it is observed that, however faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. The matter is required to be looked from this angle to see if any fair investigation by the State police or under its control is possible in this case or not? The State committed to rule of law should not shy away from getting the matters investigated."

16. On reading of the aforesaid paragraphs, it is pointed out that not only all these observations are sweeping but completely uncalled for and demeaning the work put in by the Punjab Police during difficult days especially when it is alleged that:-

i) The police is not aware of what happens during ambush as it is yet to encounter any real one.

ii) The petitioner may be disgruntled person having been dismissed and may have his own axe to grind but he has given the names of some persons who have concededly been either

killed in an encounter or have been shown to have escaped from the police custody.

iii) The F.I.Rs. registered by the police are one sided.

iv) The usual mode of investigation is to close the case after declaring the person escaped as proclaimed offender.

v) If one was to look around, one may be not able to find many officers of Punjab Police free from taints who could be entrusted with investigation which can be expected to be independent.

vi) The matter can not be entrusted to the Vigilance set up because it has been recently in the news as disclosed to this Court that Head of the Vigilance is himself facing prosecution for almost similar allegations being investigated for a case of fake encounter of the death of son of one retired I.A.S. officer.

vii) However, faithfully the police may carry out the investigation; the same will lack credibility since the allegations are against them.

17. It is on the basis of such generalization that the learned Single Judge is stated to have arrived at the opinion that no fair and just investigation is possible under the State Police or any team that the State may constitute as a 'Special Team'.

18. The learned Senior Counsel for the appellant, in order to establish the falsity of the allegations in the petition and the same being a motivated exercise, prepared a Chart qua the persons who are alleged to have been eliminated in the following manner:-

Name of Person	Allegations leveled/against in writ petition	Criminal Case/FIR	True factual position
Kartar Singh of village Karmitti	Physically tortured by SI Darshan Singh & DSP Bachan Singh Randhawa and SI Hardial Singh Malhi and later on killed		Died in the year 1979. Death Certificate Annexure A-1 at page 378.
Nirmal Singh Nimma of village and Post Office Rajeana,	Physically tortured by Gurmej Singh Dhola and Bachan Singh Randhawa and later killed in year 1992-93.	FIR No. 113 of 1991, P.S.Bagha Purana. His brother moved application for abatement before JMIC, Moga.	Came out of jail in 1995. Died on 8.11.1995. Death Certificate Annexure A-2 at page 379.
Baljinder Singh Bijliwala, of village Ghumiara.	Physically torturned by Inspector Gurmej Singh Dhola, SI Hardial Singh Malhi, Constable Om Parkash and DSP Bachan Singh Randhawa and later on killed.	Arrested after encounter on 1/2.4.1992 at P.S.Sadar Faridkot. **Petitioner received commendation certificate in this case.**	Managed to escape from custody in an ambush FIR No. 31 of 4.4.1992 at PS Sadar Faridkot.
Gurcharan Singh of Bedi Nagar, Moga.	Tortured by S.D.Darshan Singh Lahore, SI Hardial Singh Malhi, Head constable Dalwinder Singh and DSP Bachan Singh Randhawa and later on killed.		No person by the said name lived in the locality during 1990 to 1993 as per certificate of Local Registrar Birth and Death. Annexure A-4 at page 381.
Baljit Singh resident of village Vadda Ghar	Physically tortured by Gurmej Singh Dhola and Bachan Singh Randhawa and later killed.	Arrested in FIR No.65 dated 28.11.1991 P.S.Sadar Moga, FIR No. 108/29.11.1992 at PS Sadar Moga.	Managed to escape from custody on 28/29.11.1991 Declared Proclaimed offender by JMIC Moga on 6.12.1993.
Satwant Singh Sodhi, resident of village and Post Office Chaugawan	AIISSF activist tortured and killed by DSP Bachan Singh Randhawa and by his Gunman H.C.Gurdev Singh and S.I. Hardial Singh.	Arrested on 27.9.1991 in FIR No. 40/4.8.1991 Police Station Badhni Kalan. Managed to escape from Police custody on 27.9.1991 P.S.Badhni Kalan.	Challan against him put to Court on 14.6.1992; Declared Proclaimed offender by JMIC Moga on 15.4.1994.
Kulwant Singh Kanta of Ghumiara.	Physically tortured by Gurmej Singh Dhola and Inspector Surjt Singh and later on killed.	Police party taking one Baldev Singh for recovery ambushed by militants; both killed in cross fire.	Untrace report accepted by trial Court.
Gurmukh Singh resident of village Langeana and Bahal Singh of village Padhari	Killed by DSP Bachan Singh Randhawa and Inspector Gurmej Singh Dhola.	FIR No. 61/6.10.1991 Heavy ammunition recovered like AK-56, other rifles and more than 220 empty rounds seized from spot after encounter.	Both killed in encounter on 5.10.1991 when they ambushed police party of P.S.Mehna; In this encounter four militants were killed.
Nachhatter Singh Fauji of Daudhar		FIR No. 28 of 19.5.1993 A criminal writ petition by grandmother of Amarjeet Singh dismissed by Hon'ble Supreme Court on 4.8.1997.	Killed in encounter on 18/19.5.1993 when police party carrying one Santokh Singh was ambushed. Santokh Singh managed to escape from custody while four other militants were killed in the said encounter; out of four killed, one identified as Nachhatter Singh and other Amarjit Singh.

19. The emphasis of the learned Senior Counsel is that though there is no need for the State to shy-away from an impartial investigation, at the behest of the petitioner, on the basis of such fake allegations no police officer should face the ordeal of further investigation. Such an exercise, it was pleaded, would only demoralize the police force and demean the exercise carried out by them. In the case of Kartar Singh of village Karmitti, he had already died in the year 1979. Nirmal Singh Nimma came out of jail in the year 1995 and subsequently died due to natural causes in his native village. No person by the name of Gurcharan Singh lived in the locality during 1990 to 1993 as per certificate of Local Registrar, Births & Death. Baljit Singh and Satwant Singh managed to escape and were declared proclaimed offenders. For Kulwant Singh Kanta, untrace report was accepted by the trial Court. Thus even the facts cited by the petitioner are stated to be not tallying.

20. In order to repel the impression sought to be created by the petitioner and the general observations made by the learned Judge qua police action, the chart of deaths caused of civilians and policemen alongwith number of encounters, have been reproduced as under:-

	Year				**Total**
	1990	**1991**	**1992**	**1993**	
CIVILIAN KILLED	2467	2591	1518	48	6624
POLICEMEN KILLED	506	497	252	25	1280
NUMBER OF ENCOUNTERS	746	1282	1399	571	3998

21. The gravity of the problem is stated to be apparent from the details of arms and ammunition recovered from extremists/terrorists in Punjab during the relevant period i.e. from 1990 to 1993 which are as under:-

Period	Revolver/ Pistol	Rifle-AK-47 & Ors.	LMG/SMG/ MMG/GPM	Hand Grenade	Cartgs.	Bombs	Rocket	Rocket Launcher	Mouser	Explosive Material (Kgs.)
1990	867	989	55	265	105736	179	107	40	64	494.280
1991	1070	1631	30	180	75245	228	107	12	119	268.075
1992	1052	1497	35	268	56618	266	108	48	119	1785.860
1993	592	768	41	381	54981	163	78	24	75	2768.200
Total	**3581**	**1927**	**161**	**1094**	**292580**	**836**	**400**	**124**	**377**	**5316.415**

22. It is thus the submission of learned Senior Counsel for the appellants that at the behest of the petitioner (now respondent No.1), who alleges to have been part of the process, claims to have witnessed the encounters, yet never spoken out earlier the investigation has been directed. The aforesaid chart shows that the encounters had occurred. The petitioner being frustrated by not getting monetary funds and promotions which he thought ought to have accrued to him by reason of participation in anti-terrorists operations and finally being charged himself, the exercise sought to be carried out in pursuance of the impugned order cannot be sustained.

23. Learned Senior Counsel for the appellants further submitted that the sweeping directions as per the impugned order cannot be sustained in view of the observations of the Supreme Court in **Divine Retreat Centre Vs. State of Kerala and others 2008(3) Supreme Court Cases 542,** to the effect that the sweeping directions issued by the Court are in the nature of ordering an inquisition against the appellant and the persons connected with it to find out as to whether they have committed any cognizable offence and such a course is impermissible in law.

24. Learned Senior Counsel also submitted that the background, character and antecedents of the petitioner (now respondent No.1) cannot be ignored who has three criminal cases registered against him being F.I.R. No. 16 dated 21.03.1993, under Sections 383/342/34 of Indian Penal Code,

Police Station Sadar Moga, FIR No. 31 dated 23.05.1993 under Sections 307/148/149 of Indian Penal Code and 25/54/59 of the Arms Act, Police Station Sadar Moga and FIR No. 32 dated 23.05.1993 under Sections 25/54/59 of the Arms Act, Police Station Sadar Moga. The departmental proceedings were initiated against the petitioner for absence for the period 21.06.1992 to 15.07.1994 and he was ultimately dismissed from service. All these facts were not fully disclosed in the petition and thus the petitioner had not come with clean hands before the Court.

25. Not only this, none of the relative or the kith and kin of the persons alleged to have been killed were brought before the Court and the general allegations were made primarily against D.S.P. Bachan Singh Randhawa (now dead) and Inspector Gurmej Singh Dhola, two middle rung police officials, who have been targeted only because they arrested the petitioner in criminal cases. We may, however, add that after the judgment had been reserved in the appeal, an endeavour was made by the learned counsel appearing for respondent No.1 by filing C.M. No. 3977-LPA of 2013 on behalf of family members of the persons to meet the allegations at that stage. We, however, did not entertain the application in the Letters Patent Appeal but made it clear that if there were any independent rights of these persons, we would not foreclose such rights.

26. Learned Senior Counsel for the appellants also pointed out that the stand of the Central Bureau of Investigation itself would show the futility of the exercise sought to be carried out in pursuance to the order of the learned Single Judge. The order was stayed by the Division Bench in the present appeal. The C.B.I. has been categorical that the whole petition revolves around the personal grievances of the petitioner against the superior officers under whom he was working. There was lack of specific

information with regard to the time, date and in what manner the offences were committed, the allegations being vague in nature with no explanation coming forth as to why the petitioner kept mum for such a long time after the commission of the alleged offence. The heavily overburdened C.B.I., it was pleaded by the agency, should not be burdened with the investigation of such a nature and the C.B.I. expressed its opinion that it was not feasible for it to undertake investigation of the cases relating to the allegations made in the present petitions which lacks authenticated proof and evidence with regard to the commission of crime.

The present petition has been categorized as really a Private Interest Litigation by a frustrated police officer who seeks to blackmail other officers.

27. Learned Senior Counsel for the appellants also emphasized that the learned Single Judge appears to have had an element of preconceived notion and bias while making general allegations against the highly decorated senior officers of the State Police. In this behalf, it was pointed out that the observations against the Head of the Vigilance Department would be legally impermissible and unsustainable in view of the judgment of the Supreme Court in case **State of Punjab Vs. Davinder Pal Singh Bhullar and others AIR 2012 SC 364.** All adverse findings against the officer stand quashed in terms of this judgment.

28. The last aspect emphasized was that the allocation and distribution of judicial work is to be as per the roster assigned by the Chief Justice (the observations made in '**Divine Retreat Centre's** case (supra) as well as in **Davinder Pal Singh Bhullar's** case (supra). By treating this petition as Public Interest Litigation, the matter ought to have been placed before the appropriate Bench but on the other hand the directions have been

issued for a roving enquiry by the Central Bureau of Investigation to find out any cognizable offence committed by any of the officer/official on the basis of completely vague allegations. The Court cannot direct the Central Bureau of Investigation to have a roving enquiry as to whether the person was involved in alleged unlawful activities.

29. We would now like to examine a little more closely the judgments cited by learned Senior Counsel for the appellants.

Judicial pronouncements relied upon by the appellants:

30. (i) **State of Punjab Vs. Devinder Pal Singh Bhullar and others AIR 2012 Supreme Court 364.**

There has been detailed analysis of the jurisdiction of the Bench. While referring to the earlier judicial pronouncements, it was observed that it is the Chief Justice alone who is the master of the Roster and has full power, authority and jurisdiction in the matter of allocation of business of the High Court. Thus, the Chief Justice enjoys a special status and he alone can assign work to a Judge sitting alone and to the Judges sitting in Division Bench or Full Bench and has jurisdiction to decide which case will be heard by which Bench. Strict adherence to this procedure has been held to be essential for maintaining judicial discipline and proper functioning of the Court and no departure from this procedure is permissible. In this context it has been observed in para No. 43 of the aforesaid judgment as under:-

> "**43**. In view of the above, the legal regime, in this respect emerges to the effect that the Bench gets jurisdiction from the assignment made by the Chief Justice and the Judge cannot choose as which matter he should entertain and he cannot entertain a petition in respect of which jurisdiction has not been assigned to him by the Chief Justice as the order passed by the

court may be without jurisdiction and made the Judge coram non-judice."

31. Another dispute examined in the same judgment is as to when the C.B.I. can be directed to enquire into the matter. Before directing the C.B.I. to investigate, the Court must reach a conclusion on the basis of pleadings and material on record that a prima-facie case is made out against the accused. The Court cannot direct C.B.I. to investigate as to whether a person committed an offence as alleged or not. This aspect has been emphasized by learned Senior Counsel for the appellants to submit that in the absence of cogent facts pleaded and the absence of details, the directions contained in the impugned order fall in the category of C.B.I. to investigate whether the person committed an offence as alleged or not despite reservation of the C.B.I. to do so in view of absence of material. The other aspect is the requirement of the satisfaction of the Court that the accused is a very powerful and influential person or that the State Authorities like high police officials are involved in the offence and the investigation has not been proceeded with in proper direction or the investigation had been conducted in a biased manner. On the basis of the facts of the present case it was alleged that the allegations are really against malevolence of the police and it is not that there has been absence of proper investigation. Infact, the appellant claims to be an eye witness aggrieved by non-grant of benefits, against whom disciplinary proceedings were initiated and thus seeks to deviate from the process of enquiry against him while making wild allegations. The conclusion is reflected in para No. 48 which reads as under:-

"**48**. Thus, in view of the above, it is evident that a constitutional court can direct the 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 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."

32. In the facts of the present case, there was an arrest in respect of an F.I.R. registered under the provisions of the Indian Penal Code and the Arms Act read with the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 at Chandigarh. The accused after arrest escaped from custody and thus the challan was filed in the competent Court which declared him as a Proclaimed Offender. The other accused tried were acquitted by giving them the benefit of doubt. The appeal preferred by the State before the High Court was dismissed. However, 20 days after dismissal of the appeal the High Court again took up case suo-motu, directing the authorities to furnish full details of the Proclaimed Offenders and the Bench marked the matter as 'part heard'. The information was given regarding all the Proclaimed Offenders in that case. The High Court directed the Chandigarh Administration to constitute a Special Investigation Team to enquire into all aspects of the proclaimed offenders and submit a status report and also issued notice to the Central Bureau of Investigation. In those proceedings an application was filed by the father of the accused who was alleged to have absconded and whose habeas-corpus petition had already been dismissed six years earlier by the High Court to find out whereabouts

of his son. The reports were called from C.B.I. from time to time and ultimately the State of Punjab, being aggrieved, approached the Supreme Court submitting that it has to espouse the cause of its officers who fought war against terrorism, putting themselves at risk during the troublesome period in the early 1990s. These facts have been referred for the purpose of showing some element of similarity with what is sought to be achieved in the writ petition filed by the original petitioner and in that context in the conclusion it was observed as under:-

> **"78**. The error in the impugned orders of the High Court transgresses judicious discretion. The process adopted by the High Court led to greater injustice than securing the ends of justice. The path charted by the High Court inevitably reflects a biased approach. It was a misplaced sympathy for a cause that can be termed as being inconsistent to the legal framework. Law is an endless process of testing and retesting as said by Justice Cardozo in his conclusion of the Judicial Process, ending in a constant rejection of the dross and retention of whatever is pure and sound. The multi-dimensional defective legal process adopted by the court below cannot be justified on any rational legal principle. The High Court was swayed away by considerations that are legally impermissible and unsustainable."

ii) **Vinay Tyagi Vs. Irshad Ali alias Deepak and others 2013(5) Supreme Court Cases 762:-**

In the aforesaid judgment, question No. 2 raised was answered as under:-

Question No. 2

"Whether the Central Bureau of Investigation (for short 'the CBI') is empowered to conduct 'fresh'/'re-investigation' when the cognizance has already been taken by the Court of competent jurisdiction on the basis of a police report under Section 173 of the Code?

Answer to Question No. 2:-

"54. No investigating agency is empowered to conduct a 'fresh', 'de novo' or 're-investigation' in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned Magistrate."

iii) Divine Retreat Centre Vs. State of Kerala and others
2008(3) Supreme Court Cases 542:-

In the aforesaid judgment, the issue of an order directing the investigation on the basis of vague and indefinite allegations was held to be in the teeth of principles of natural justice. As to recourse under Article 226 of the Constitution of India in this context, it was observed in para No. 56 as under:-

> **"56.** In our view, the whole of public law remedies available under Article 226 of the Constitution of India and the constituent power to issue writs in the nature of mandamus, certiorari, prohibition and quo warranto are neither echoed nor transplanted into Section 482. May be both the powers to issue writs and pass appropriate orders under Section 482 of the Code are conferred upon the High Court but they undoubtedly operate in different fields."

In the context of when a Public Interest Litigation should be entertained in the cases of akin nature where investigation is sought into criminal acts, it was observed in para No. 59 as under:-

> "**59**. We do not propose to burden this judgment with various authoritative pronouncements of this Court laying down the parameters of public interest litigation. Suffice it to recapitulate that this Court uniformly and consistently held that the individual who moves the Court for judicial redress in cases of public interest litigation must be acting bona fide

with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration. The Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular petition filed in court. In S.P. Gupta v. Union of India this Court in clear and unequivocal terms observed that it would be prudent for the constitutional courts to "confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases"

iv) <u>Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others</u> Vs. <u>Sahngoo Ram Arya and another</u> 2002(5) Supreme Court Cases 521:-

In the context of when enquiry can be directed to the C.B.I. by the High Court in exercise of power under Article 226 of the Constitution of India, it was observed in paras No. 5 and 6 as under:-

"5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (supra). This Court in the said judgment at paragraph 174 of the report has held thus:

"**174**. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have

been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law- abiding citizen. Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of 'ifs' and 'buts' and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of *Common Cause* (supra)."

v) <u>Common Cause, A Registered Society Vs. Union of India and others</u> 1999(6) Supreme Court Cases 667:-

Once again while dealing with the matter of directions to the C.B.I. to investigate "any other offence", it was held to be wholly erroneous and not sustainable. It was observed in paras No. 174 to 176 as under:-

"174. The other direction, namely, the direction to the C.B.I. to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to the C.B.I. to investigate whether any person

has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Art, 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21.

175. "Right to Life," set out in Article 21, means something more than mere survival or animal existence. (See : State of Maharashtra vs. Chandrabhan Tale). This right also includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expression oneself in differ forms, freely moving about and mixing and commingling with fellow human beings. (See : Francis Coralie Mullin v. Administrator Union Territory of Delhi; Olga Tellis v. Bombay Municipal Corporation: AIR 1986 SC180 (paras 33 and 34); Delhi Transport Corporation v. D.T.C. Mazdoor Congress (1991) ILLJ 395 SC (paras 223, 234 and 259): (1991) ILLJ 395 SC). In Kharak Singh v. State of U.P. : 1963 CriLJ 329 , domiciliary visit by the Police was held to be violative of Article 21.

176. A man has, therefore, to be left alone to enjoy "LIFE" without fetters. He cannot be hounded out by the Police or C.B.I. merely to find out whether he has committed any offence or is living as a law-abiding citizen. Even under Article 142 of the Constitution, such a direction cannot be issued. While passing an order under Article 142 of the Constitution, this Court cannot ignore the substantive provision of law much less the constitutional rights available to a person. (See : Supreme Court Bar Association v. Union of India)."

vi) <u>All India Institute of Medical Sciences Employees' Union (Regd.)</u> Vs. <u>Union of India and others</u> 1996 (11) Supreme Court Cases 582:-

In a short order, dealing with the procedure to investigate cognizable offences, it has been observed in paras No. 3 to 5 as under**:-**

"3. The Code of Criminal Procedure, 1973 (for short, the 'Code') prescribes the procedure to investigate into the cognizable offences defined under the Code. In respect of cognizable offence, Chapter XII of the Code prescribes the procedure: information to the police and their powers to investigate the cognizable offence. Sub-section (1) of Section 154 envisages that "every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant: and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf," On such information being received and reduced to writing, the officer in charge of the police station has been empowered under Section 156 to investigate into the cognizable cases. The procedure for investigation has been given under Section 157 of the Code, the details of which are not material. After conducting the investigation prescribed in the manner envisaged in Chapter XII, charge--sheet shall be submitted to the court having jurisdiction to take cognizance of the offence. Section 173 envisages that: (1) Every investigation under this Chapter shall be completed without unnecessary delay. (2) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government giving details therein. Upon receipt of the report, the Court under Section 190 is empowered to take cognizance of the offence. Under Section 173(8), the investigating officer has power to make further investigation into the offence.

4. When the information is laid with the police but no action in that behalf was taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to inquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the concerned police to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that

the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complainant evidence recorded prima facie discloses offence, he is empowered to take cognizance of the offence and would issue process to the accused.

5. In this case, the petitioner had not adopted either of the procedure provided under the Code. As a consequence, without availing of the above procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence. The High Court, therefore, though for different reasons, was justified in refusing to grant the relief as sought for."

vii) <u>State of West Bengal and others</u> Vs. <u>Committee for Protection of Democratic Rights, West Bengal and others</u> 2010(3) Supreme Court Cases 571:-

This is one more case where aspects of direction to C.B.I. to investigate have been held in para No. 70 as under:-

"70. Before parting with the case, we deem it necessary to emphasize that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the

fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

Arguments on behalf of appellants in LPA No. 154 of 2008

33. Mr. H.S.Hooda, learned Senior Counsel while making his submissions for the appellants who had sought leave to file the appeal on account of possibility of they being prejudiced by any enquiry of the Central Bureau of Investigation, as their names figured in the FIRs relating to the encounters, also adopted the submissions of Mr. Puneet Bali, learned Senior Counsel while expounding the propositions on his own way.

Arguments on behalf of State of Punjab in LPA No. 181 of 2008 :

34. Learned Senior Counsel appearing for the State of Punjab also made submissions which infact do not require to be dealt with separately as they are on the same line as what we have discussed aforesaid. He, however, referred to one more judgment in **State of Uttaranchal Vs. Balwant Singh Chaufal and others 2010(3) Supreme Court Cases 402** qua the aspect of abuse of Public Interest Litigation. The aforesaid aspect has been dealt with in para No. 143 onwards of the discussion under the said head. Hon'ble Supreme Court noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the Courts was being blatantly abused by filing some petitions with oblique motives and thus a number of strategies were required to be devised to ensure that the attractive brand name of Public Interest Litigation should not

be allowed to be used for suspicious products of mischief. The proposition of exemplary costs was one such methodology.

Submissions by Mr. R.S.Bains, Advocate on behalf of respondent No.1-original petitioner:

35. Mr. Bains, learned counsel for the original petitioner, relied upon the report of the Supreme Court Appointed Commission in Writ Petition (Crl.) No. 129 of 2012 by the order dated 04.01.2013. This Commission was headed by Justice Santosh Hegde, retired Judge of the Supreme Court as the Chairman and the Members to make enquiries into certain cases of death of victims. The enquiry pertains to the State of Manipur dealing with the role of the State Police and Security Forces especially as the area had been declared as a disturbed area under the Armed Forces (Special Powers) Act, 1958. The report comments adversely on the functioning and the poor understanding of the legal procedure by the Authorities. However, we may note that a large part of the report really deals with the use of AFSPA and to that extent we cannot find much relevance of this report in the given facts of the case.

36. Learned Counsel also referred to a letter dated 29.03.1997 of Justice M.N.Venkatachaliah, former Chief Justice of India, the then Chairperson of the National Human Rights Commission, forming a subject matter of the report on the cases of encounter deaths. In this letter while making reference to the complaint brought to the notice of the Commission by Andhra Pradesh Civil Liberties Committee, it was observed in the context of encounter deaths that the stand taken by the police in all these cases that the deceased persons, on sighting the police, opened fire at them with a view to kill them and were, therefore, guilty of the offence of attempt to murder

under Section 307 of the Indian Penal Code. The police justified the firing and killing as done in the exercise of their right of self-defence. In that context, the Commission decided to recommend the correct procedure to be followed in this behalf by all the States as under:-

> "A) When the Police Officer-In-Charge of a Police Station receives information about the deaths in an encounter between the Police Party and others, he shall enter that information in the appropriate register.
>
> B) The information as received shall be regarded as sufficient to suspect the Commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what, if any, offence was committed and by whom.
>
> C) As the police officers belonging to the same Police Station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as State CID.
>
> D) Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation."

37. Another document brought to our notice is the report of the National Human Rights Commission headed by Justice Ranganath Mishra, as Chairperson, dated 05.11.1996 in the context of the complaint once again by A.P.C.L.C.

38. In the context of the specific complaints given, learned counsel for the original petitioner referred to some of the cases where the Commission observed that to reach a conclusion as to whether there was a true encounter or fake one, the evidence would have to be assessed. There was a prima-facie finding that the version of the complainant appears to be a nearer truth but the Commission would not like to come to any definite conclusion as the cases have to be got investigated and truth has to be

ascertained. The right of a private defence as raised has to be established and in the context of Article 21 of the Constitution of India it was emphasized that the human rights of the innocent citizens and the policemen who fall prey to the illegal activities of the PWG men could not be condoned as they are universal in character. In so far as the legal parameters are to be followed, the observations made in paras No. 26 and 27 coupled with the recommendations are as under:-

> "26. The question for consideration is as to whether the procedure followed as above has the sanction of law. Section 154 Cr.P.C. provides that if information is given orally relating to the commission of a cognizable offence, the officer-in-charge of the Police Station shall reduce it into writing. Section 156 speaks of power of Police officers to investigate cognizable cases. Section 157 provides that if a cognizable offence is suspected from the information received or from other sources, the officer-in-charge of the Police Station shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence and he shall proceed to take up investigation of the case. Section 173 requires the investigation to be completed with expedition and as soon as it is completed to forward the investigation report to the concerned Magistrate. The investigation must be directed to find out if and what offence is committed and as to who are the offenders. If, upon completion of the investigation, it appears to the officer-in-charge of the Police Station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he has to take necessary steps as provided in Section 170 of the Code. In either case, on completion of the investigation, he had to submit a report to the Magistrate. The report of investigation in such cases should be examined thoroughly by the Magistrate so that complete application of the judicial mind is available to ensure just investigation and upright

conclusion. The Magistrate, on consideration of the report, may either accept the same or disagree with the conclusions and call for further investigation as provided in Section 173 (8) of the Code. If the Magistrate accepts the report, he can take cognizance of the offence under Section 190 of the Code.

27. Section 157 (1) requires the officer-in-charge of the police station to apply his mind to the information received and the surrounding circumstances to find out whether there is reason to suspect the commission of a cognizable offence, which he is empowered under Section 156 to investigate. He cannot mechanically accept the information received. When the information received indicates that death was caused in the encounter as a result of the firing by the Police, prima facie the ingredients of Section 299 IPC which defines culpable homicides, are satisfied. This is sufficient to suspect that an offence of culpable homicide has been committed. Thus, Section 157 of the Code is attracted calling for investigation. Any plea like causing of the death in the case does not constitute an offence either because it was done in exercise of the right of private defence or in exercise of the powers of arrest conferred by Section 46 of the Code, can be accepted only after investigating into the facts and circumstances. Section 100 of IPC provides that right of private defence of the body extends to the voluntary causing of death if occasion for exercise of the right falls in anyone of the six categories enumerated in that Section Whether the case falls under anyone of the six categories, can only be ascertained by proper investigation. Similarly, when Section 46 (3) of the Code is invoked, it has to be ascertained as to whether the death of the deceased occurred when he forcibly resisted the endeavour of the Police to arrest him and whether the deceased was accused of an offence punishable with death or imprisonment for life. Without proper investigation, the Police officer cannot say that the causing of the death in the encounter was not an offence either because it was done in exercise of the right of private defence or was done in legitimate exercise of the power conferred by Sec. 46 of the Code. One of the deceased persons in these cases was not at all connected with any criminal case.

Hence, Section 46 could not be invoked in that case. Section 174 of the Code says that when the Police officer in charge of the Police station receives information that a person has been killed by another, he shall make an investigation about the apparent cause of death and submit a report to the District or Sub-Divisional Magistrate and also to take steps to arrange for the autopsy of the body. These provisions indicate that unnatural death has to be taken note of seriously by the Police and required them to find out by investigation the real cause of death. The responsibility is greater when it is the Police that are the cause of unnatural death. There is also a general feeling that most of the encounters are fake. It is, therefore, in public interest that the conduct of the Police involved is subjected to proper scrutiny by investigation. To avoid the possibility of bias, the investigation in such cases should be entrusted to an independent agency like the State CID by a general order of the Government. We are, therefore, of the opinion that when information is received in the Police Station about the causing of the death by the Police officer in an encounter, the officer-in-charge of the Police Station, must, after recording that information, draw the inference that there is reason to suspect the commission of an offence and proceed to investigate the same as required by Section 157 of the Code. If such a procedure is not required to be followed, it would give licence to the Police to kill with impunity any citizen in the name of an encounter by just stating that he acted in 'the right of private defence or under Section 46 of the Code. A procedure which brings about such unjust, unfair and unreasonable consequences cannot be countenanced as being within Article 21 of the Constitution.

29. For the reasons stated above, we make the following recommendations:

i) As the information furnished to the Police officers in charge of the respective Police Stations in each of these cases is sufficient to suspect the commission of a cognizable offence, immediate steps be taken to investigate the facts and circumstances leading to the death of the PWGs, in the light of the elucidation made in this order.

ii) As the Police themselves in the respective cases are involved in perpetrating encounter, it would be appropriate that the cases are made over to some other investigating agency preferably the State CID. As a lot of time has already been lost, we recommend that the investigation be completed within four months from now. If the investigation results in prosecution, steps for speedy trial be taken. We hope compensation would be awarded in cases ending in conviction and sentence.

iii) Deceased Shankariah (Case No.234 *(3)/ 93-94/NHRC)* admittedly was not involved in any pending criminal case and ending his life through the process of alleged encounter was totally unjustified. So far as he is concerned, we are of the view learned Advocate General conceded that our view was right that the State Government should immediately come forward to compensate his widow by payment of compensation of Rs. 1 lakh as done in similar cases and the police involved in killing him should be subjected to investigation and trial depending upon the result of investigation.

iv) We commend to the State Police to change their practice and sensitize everyone in the State to keep the legal position in view and modulate action accordingly. In case the practice continues notwithstanding what we have now said, the quantum of compensation has to be increased in future and stricter view of the situation has to be taken. Being aware of the fact that this practice has been in vogue for years and the people have remained oblivious of the situation, we are not contemplating the award of any interim compensation at this stage."

39. Learned counsel for respondent No.1 also referred to a judgment in case **Niyamavedi Vs. Director, C.B.I. New Delhi 1990 Cr.L.J. Kerala, 2231** where directions had been issued for F.I.Rs. to be registered and the Central Bureau of Investigation to carry out the investigation to find out whether there was any genuine encounter or not.

40. However, learned counsel quoted extensively from five Judges Bench judgment of Andhra Pradesh High Court in **Andhra Pradesh Civil Liberties Committee (APCLC), Vijayawada, Krishna District Vs. Government of A.P. Laws (APH)-2009-2-90.** This important judgment dealt with the social issue of fighting Naxalite ideology and observing that the police repression is attractive and easy to adopt by the Government. It is counter-productive. The cases where self defence is set out and how it should be treated has also to be dealt with extensively. We, would have examined this judgment in more detail here but we were subsequently informed that the directions contained in the impugned judgment were stayed by the Hon'ble Supreme Court in S.L.P. (C) No. 5933 of 2009 vide order dated 04.03.2009 which orders are stated to be continuing.

41. Learned counsel for respondent No.1 has also referred to the judgments of the Supreme Court in **Rubabbuddin Sheikh Vs. State of Gujarat Laws (SC)-2010-1-18,** dealing with the killing of the brother of the petitioner Sohrabuddin Sheikh in the alleged fake encounter and **Narmada Bai Vs. State of Gujarat Laws (SC)-2011-4-42,** being mother of Tulsiram Prajapati alleged to have been killed in the fake encounter. He also referred to the judgments of the Supreme Court in **Ramesh Kumari Vs. State (N.C.T. of Delhi) and others 2006 Crl.L.J. 1622** and **Prithipal Singh etc. Vs. State of Punjab 2011(0) AIJEL-SC-50677** in this context.

In these cases on account of their own facts dealing with the encounter killings, it has been found that in the cases of conspiracy, abduction and killing by the police, there is an extraordinary situation and the remedies require the Court to innovate laws and pass unconventional orders keeping in mind that extraordinary factual situations require extraordinary measures.

42. It is in the context of the aforesaid general principles that learned counsel for the original petitioner sought to canvass that it is not necessary for the Courts to look into the background of the original petitioner or that he kept quite for certain time qua encounter killings but on the other hand should be treated akin to a whistle-blower who being part of the system had decided to break free as his conscious did not permit him to accept what had happened. The passage of time was not disputed nor it was disputed that the original petitioner was not in the service of the establishment at the relevant stage of time. The plea advanced was that the reason why the original petitioner brought the cases to the notice of the Court should not be looked into but only that there had been violation of Article 21 of the Constitution of India by way of encounter killings and all endeavours should be made to have a proper investigation into the alleged crime to get to bottom of the matter. It was thus submitted that may be the original petitioner was disillusioned for one reason or the other with the police but that should not preclude the investigation to be conducted by an independent agency like the Central Bureau of Investigation.

43. Learned counsel for the original petitioner also sought to refer to the post-mortem reports to submit that the greater scrutiny of them would show that the deaths had occurred on account of firing from a close range by reason of nature of wounds found and, thus, the story of deceased being killed in an encounter, was a made up one. A reference has also been made to the F.I.Rs., to suggest the improbability of facts. For example, accused Baljit Singh alias Bali was in lock up of Police Station Sadar Moga when on one side of the wall towards bathroom a hole was found and near to that an iron rod was seen lying there and the allegation was that the accused had run away. In case FIR No. 22, Police Station Badhmi Kalan, a cross firing is

alleged to have occurred. In case FIR No. 61, Police Station Mehna, four sikh youths were alleged to have been found coming on the canal bank/way and were asked to stop and raise their hands, but they started firing towards the police. In a return cross firing four youth Sikhs were killed. He thus, pleaded that there was sufficient material placed on record by the petitioner to substantiate the pleas at least for the purposes of investigation.

44. In so far as the primary objection of the learned Single Judge entertaining the Public Interest Litigation was concerned, his submission was that the petitioner had nothing to do with the same and it was a matter between the Registry and the Court. He submits that even if the roster of sitting provided for such nature of cases to be heard by the Division Benches that alone should not set the judgment at naught. In the alternative, it was pleaded that on the basis of the material on record, the present Division Bench may issue direction on the same material as was before the learned Single Judge. In nut-shell, the learned counsel submits that the impugned judgment does not call for any interference.

OUR OPINION

45. We have also taken some time to give thought to the matter. This is more so on account of the nature of the controversy. On one hand, is the issue of ensuring protection of human rights and prevention of police excesses in the State of Punjab, while on the other hand this has to be balanced in the realm of the ground reality at the relevant period of time and the allegations emanating after considerable delay and that too by a policeman, who has alleged himself to be an eye witness, in essence, a participant, but had a change of heart when he himself was charged. The allegations have to be analyzed closely as to whether there is adequate material placed on record to at least direct the investigation whether by

Central Bureau of Investigation or by the Vigilance Department, since the plea of the affected officers is that there cannot be just a roving enquiry with the object of trying to dig up dirt against them in the absence of even basic material merely at the behest of a renegade police officer. We have thus analyzed the issues under different heads.

SANCTITY OF THE ROSTER

46. The writ petition has been filed under Articles 226 and 227 of the Constitution of India seeking an independent enquiry by the Central Bureau of Investigation qua 10 alleged murders stated to have been caused from time to time by respondents No. 3 to 9 and for compensation to the family members. It is significant to note that this is not a petition filed by the family members. The petition is filed by a Constable of the Punjab Police who felt foul of the police authorities on account of his alleged misconduct, thus in essence has his own axe to grind.

47. The petition has not been styled as a Public Interest Litigation but effectively is so. That is what it was urged before the learned Single Judge as also before us. As per the Roster assigned by the Chief Justice, such Public Interest Litigation matters are to be heard by the First Bench (in any case by a Division Bench). The learned Single Judge in the impugned order dated 01.04.2008 also proceeded on the basis that there was a larger public interest involved. The learned Single Judge was thus quite conscious of the fact that he had given a colour of Public Interest Litigation to the present petition whereafter he proceeded to analyze merits of the case. It cannot be said that the learned Single Judge was oblivious of the Roster. It is trite to say that the allocation and distribution of the judicial work has to be as per the Roster assigned by the Chief Justice and thus, if the learned Single Judge found that the petition was liable to be treated as a Public Interest

Litigation, then the matter ought to have been placed before the appropriate Bench.

48. The observations made in the **State of Punjab Vs. Davinder Pal Singh Bhullar** case (supra) as well as in **Divine Retreat Centre's** case (supra) are material for this purpose, as the previous judicial precedents were so analyzed to observe that strict adherence to the procedure of hearing matters only assigned to the Bench by the Chief Justice, were essential for maintaining judicial discipline and proper functioning of the Court and no departure from this procedure is permissible. Thus, the learned Single Judge cannot entertain a petition in respect of which jurisdiction has not been assigned to him by the Chief Justice as the order passed by the Court may be without jurisdiction and make the Judge a '*coram non-judice'*. We are thus of the view that the judicial disciple demanded that on having come to a conclusion that the petition must proceed being akin to a Public Interest Litigation, the same should have been directed to be placed before the appropriate Bench as per Roster and it was not for the learned Single Judge to give his opinion in the matter. Such an opinion is effectively by a Judge who is a '*coram non-judice'*.

Qua the issue of roster allocation, in **Divine Retreat Centre's case (supra),** it has been observed by the Supreme Court in paras No. 67 to 69 as under:-

> **The importance of roster**
>
> 67. It is clear from the record that the learned Judge was not dealing with any public interest litigation cases as on the date of entertaining anonymous petition. It is beyond pale of any doubt and controversy that the administrative control of the High Court vests in the Chief Justice is the master of the roster. He alone and it is his prerogative to distribute business of the High Court, both judicial and administrative; that the Chief Justice is

the master of the Court and allocate cases to the Benches so constituted; and the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions; that the Puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice. (See State of Rajasthan v. Prakash Chand).

68. This Court in more than one case expressed its reservation about individual Judges entertaining the communications and petitions addressed to them to pass orders on judicial side. In Bandhua Mukti Morcha v. Union of India the Court in clear and unequivocal terms declared that communications and petitions addressed to a particular Judge are improper and violate the institutional personality of the court. They also embarrass the Judge to whom they are personally addressed.

> 54. ...The fundamental conception of the court must be respected, that it is a single indivisible institution, of united purpose and existing solely for the high constitutional functions for which it has been created. The conception of the court as a loose aggregate of individual Judges, to one or more of whom judicial access may be particularly had, undermines its very existence and endangers its proper and effective functioning". (Bandhua Mukti Morcha case, SCC p. 229, para 54)
>
> (Emphasis supplied)

69. In our view, the learned Judge ought not to have entertained the anonymous petition, contends of which remain unverified and made it basis for setting the law in motion as against the appellant as he was not entrusted with the judicial duty of disposing of PIL matters."

49. We may in this context note the submission of learned counsel for the original petitioner that even if it would be so, nothing precluded this Bench on the basis of the material on record to proceed with the case and adopt the reasoning of the learned Single Judge as the original petitioner

cannot be blamed for this lapse. We are thus not inclined to dismiss the writ petition only on this ground as in view of the submissions we would like to analyze as to what ought to be an appropriate order to be passed on the merits of the case by us dehors the judicial view in the impugned order.

SWEEPING OBSERVATIONS

50. One of the main grievances made by the learned Senior Counsel for the appellants has been that there are wide and sweeping observations of the learned Single Judge dehors the facts on record and the merits of the case seeking to suggest any innate element of bias against the Punjab Police. Learned Senior Counsel has, thus, serious objection to the tone and tenor of the observations made by the learned Single Judge which are sought to be based upon his general perceptions. In para No. 13 above, we have referred to these observations which seek to suggest that the learned Single Judge was of the opinion that it was a 'usual and routine practice' of the Punjab Police to have such an encounter killings, when all the police officials did not receive even a scratch, while all the alleged terrorists died. These observations have been made not in the context of any particular facts.

51. The matter does not rest on these observations but also include the observations made as extracted in para No. 15 aforesaid. The general conduct of the police has been criticized to suggest that the police is not aware of what happens during ambush "as it is yet to encounter real one". This is an aspect which is stated to require investigation. It has been said that the usual mode of investigation is to close the case after declaring the person escaped as a proclaimed offender. The police officers are alleged to have stage managed these encounters. Infact even entrustment of the investigation to the Vigilance set up of the State has been held to be not free from

influences and the example of Head of the Vigilance facing prosecution with similar allegation, has been noticed. The aforesaid allegations have thus been pleaded to be belittling the role of the Punjab Police during difficult days.

52. In our view these observations are uncalled for. Temperance in judicial language cannot be sacrificed at the altar of personal perceptions and that too dehors any specific facts. The fact that Punjab State went through a period of difficult times requiring special efforts to maintain law and order is well known and that the police played a salutary role. In this some excesses may have been possible, but that does not make a rule. If there was inappropriate conduct of certain police officers, the whole police force cannot be painted with the same brush denigrating and belittling their efforts.

53. A reading of the observations of the learned Single Judge do seek to suggest the conclusion which the appellants seek to derive as culled out in para No. 16 aforesaid enumerated from sub paras (i) to (vii) are not without basis. How can one say that the police which has faced so many incidents, does not know what happens during ambush; the F.I.Rs. registered by the police are generally one sided; usual mode of investigation is to close the case after declaring the person escaped as proclaimed offender; it is difficult to find many officers of the Punjab police free from taints who could be entrusted with the investigation etc. The figures set out by learned counsel for the appellants qua the causalities of both civilian and policemen alongwith number of encounters as culled out in para Nos. 20 and 21, speak for themselves. A much greater restraint was the least which was expected on such an issue. All such general observations are dehors the facts on record of the case.

54. There is also another dimension to this aspect. Should a Judge hear a matter where he has already formed an opinion on the subject matter dehors the facts of the case?

55. A Judge is required to submerge his/her private feelings on every aspect of the case. We would like to refer to the observations of Frankfurter, J. in **Public Utilities Commission of the District of Columbia Vs. Pollak 343 US 451** wherein it was observed as under:-

> "The judicial process demands that a Judge move 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. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. 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. But it is also true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, Judges recuse themselves. They do not sit in judgment."

56. The aforesaid view was referred by Ackner L.J. in **Regina Vs. Liverpool City Justices, Ex parte Toppings, (Queen's Bench Division) (1983) 1 W.L.R. 119.**

57. A Division Bench of Delhi High Court has also referred to this view in **Court on its own motion Vs. State 2008(1) J.C.C. 316,** to emphasize the salutary principles of Judges to lay aside their private views in discharging their judicial functions- an aspect achieved through training,

professional habits and self-discipline. Infact, the observations have gone so far as to suggest that where there is ground for believing that such unconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, judges recuse themselves and do not sit in judgment. The reason why we have referred to the aforesaid view is that where there are large number of observations in generality expressing a particular view as to how the functioning of the Punjab police is preconceived by the learned Single Judge obviously there is a sub conscious influence of a perceived notion of its functioning which is not based on the facts of the case and which has given rise to sweeping directions in the present case. If this was the view of the learned Single Judge it was another reason for the learned Single Judge to eschew giving his judicial verdict on the matter.

58. **Duncan Webb** in **NZLawyer** online of 08.11.2013 under an Article "***Where angels fear to tread***" has reviewed Grant Hammond book "Judicial Recusal: Principles, Process and Problems (Hart Publishing, 2009). A number of hard questions in respect of doctrine of judicial recusal have been raised while emphasizing the underlying principle that a Judge must be impartial. In that context, it has been observed that the existence of prior views and ethical or political standpoints increases the likelihood of a problem of bias. The opinions and predispositions which simply form part of the make-up of a Judge cannot be avoided. Thus there cannot be a ground of recusal if a litigant becomes apprehensive when he learnt that his case has to be heard by a Judge who has ruled against parties who were similarly situated in previous cases or has opined on a live question of law extrajudicially in an unhelpful way. However, this is distinct from such

subconscious feelings operating in the ultimate judgment, when facts on record do not support the same.

We say no more!

ANTECEDENTS OF THE PETITIONER

59. Once a petition partakes the character of a PIL, different principles come to operate. The probity of an individual seeking exercise of the same becomes important. The petitioner in the present case had been part of the Punjab police. He is seeking to rake up the issues qua the alleged encounter killings in respect of FIRs registered mostly in 1991 and one of them in 1993. The writ petition was filed in the year 1994 at a stage when he faced arrest, departmental proceedings and prosecution. Suddenly, his conscious seems to have been awakened simultaneously to the department taking action against him. Till then his conscious had not pricked him. We thus find it difficult to accept the submission of learned counsel for the original petitioner that the original petitioner should be treated as a whistle blower. The original petitioner in the petition has expressed his disappointment on being deprived of both medals and monetary benefits. In essence, his grievance is that while others benefited in various ways from these encounters, he received no such benefit!

60. We have in para No. 8 aforesaid sketched out as to the substance of 'What is the petition really about'? The petitioner becoming unhappy on being denied monetary benefits and promotions as also subsequently being charged for various offences, decided to become a crusader to bring to light the encounter cases after having been party to the same, as he was an eye witness.

61. The Punjab and Haryana High Court had subsequently drawn up "Maintainability of Public Interest Litigation Rules, 2010". Though these

Rules formalized the pre-requisite for maintainability of a Public Interest Litigation, the analogues principles were being applied. No doubt, the complaints relating to violation of Human Rights can form a part of the Public Interest Litigation, but any doubt on antecedents of the person, can disentitle the petition from being maintained. Infact, the aspect of three criminal cases registered against the petitioner and departmental proceedings initiated against him, which ultimately are stated to have resulted in his dismissal from service, were not fully disclosed in the petition, as referred to in para No. 24 aforesaid.

62. In **Divine Retreat Centre Vs. State of Kerala** case (supra), the caution extended for Public Interest Litigations in cases where investigation is sought into criminal acts has been extracted by us while quoting para No. 59 wherein it has been held that where there are oblique motives and personal gains, the Court should not allow itself to be activised at the instance of such person and must reject the application at the threshold especially where there are third parties.

The proceedings at the behest of the original petitioner are clearly an abuse of the process of the Court.

FACTS PLEADED

63. Any case before the Court is to be guided and governed by the facts pleaded. A Judge has no personal knowledge of a case. No personal knowledge or general perceptions be brought out in determination of the issues. The nature of allegations as made, is serious. Thus, material placed in support of the allegations as well as the facts alleged, are material. These have been in extenso reproduced by us in paras No. 4 and 6 aforesaid. There is thus great merit in the plea of the learned Senior Counsel for the

appellants that the averments are devoid of all specific particulars and are sketchy in character. The original petitioner has only annexed the FIRs of various incidents. Even if we examine the sketchy nature of the facts, the factual inaccuracies are quite apparent from the chart set out by learned Senior Counsel for the appellants in para No. 18.

64. Thus for example, Kartar Singh had died in the year 1979. Nirmal Singh came out of jail in 1995 and died soon thereafter in the same year. No person by the name of Gurcharan Singh lived in the locality during 1990 to 1993 as per the certificate of Local Registrar, Births and Deaths. In two other cases, the accused managed to escape from custody while there are untraced reports about other two accused. There are of course cases of persons killed in encounters, but a question mark is sought to be raised by the petitioner qua them by alleging that there were encounter killings. What is probity of these allegations, when numbers of other allegations qua different persons made by the original petitioner have been found to be false? The original petitioner is not an outsider. He is an in-house man who claims to have been associated as an eye witness though he seeks to absolve himself of his wrong doings while simultaneously claiming that he was denied awards and medals.

65. The purpose of an enquiry cannot be, to investigate and have roving and fishing enquiries, trying to somehow find something against the officers. It is in such a context that in **Common Cause, A Registered Society Vs. Union of India case** (supra), it was observed that a direction to the Central Bureau of Investigation to investigate "any other offence" is wholly erroneous and cannot be sustained. There has to be a prima-facie offence found to have been committed or a person's involvement is prima-facie established for a direction to be given and not a direction to the Central

Bureau of Investigation "to investigate whether any person has committed any offence or not". Such a direction has been held to be violative of Article 21 of the Constitution. A man has therefore to be left alone to enjoy "life" without fretters.

66. In **Secretary, Minor Irrigation & Rural Engineering Services Vs. Sahngoo Ram Arya** case(supra), while dealing with the direction to the C.B.I. by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India, it has been expounded that there has to be sufficient material to come to a prima-facie conclusion that there is a need for such an enquiry. What is very pertinent is the observation that it is not even sufficient to have such material and pleadings but on the contrary there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an enquiry by the C.B.I. What to say of need for such an enquiry, there is not even material on record to come to any prima-facie conclusion and the sweeping directions by the learned Single Judge amount to an endeavour at the behest of the original petitioner to just hold a fishing enquiry to find out something. This, in our view, is impermissible.

C.B.I. ENQUIRY

67. It is interesting to note the stand of the Central Bureau of Investigation. The C.B.I. itself stated the futility of the exercise to be carried out as the whole petition revolves around the personal grievance of the petitioner against the superior officers under whom he was working. There was lack of specific information with regard to the time, date and in what manner the offences were committed with no explanation as to why the original petitioner kept mum for such a long time after commission of the

alleged offences. The heavily overburdened C.B.I. pleaded that it should not be burdened with the investigation of such a nature and expressed its opinion that it was not feasible for it to undertake investigation of the cases relating to the allegations made in the present petition which lacks authenticated proof and evidence with regard to the commission of crime.

68. With the aforesaid stand of the C.B.I. coupled with the absence of any material with the petitioner or detailed facts being set out in the petition, there was hardly any occasion for directing investigation by the C.B.I. of that matter. Merely because the original petitioner was unhappy with the department, could not be a ground to take cognizance of his petition and put the burden on the other officers to face C.B.I. enquiry.

69. Infact, whatever allegations were really there, as rightly contended by learned counsel for the appellants, were qua respondents No. 14 and 3, who were responsible for the arrest of the original petitioner. It is thus vendetta at its best!

70. Various judicial pronouncements referred to by learned Senior counsel for the appellants show that the consistent judicial view is not to treat the plea of the C.B.I. investigation lightly and issue them in a routine as rightly observed in **State of Punjab Vs. Davinder Pal Singh Bhullar** case (supra) that a Court cannot direct the C.B.I. to investigate as to whether a person committed an offence as alleged or not. In **Vinay Tyagi Vs. Irshad Ali** case (supra) it has been observed that no investigating agency is empowered to conduct a 'fresh', 'de novo' or 're-investigation' in relation to the offence for which it has already filed a report in terms of Section 173 of the Code of Criminal Procedure. The Code of Criminal Procedure prescribes the procedure to investigate into the cognizable offences defined under that Code as was the procedure set out in **All India Institute of Medical**

Sciences Employees **Vs.** **Union of India** case (supra) and we have extracted the relevant paragraphs of the same.

71. Lastly, the Supreme Court itself has extended a caution in **State of West Bengal** **Vs.** **Committee for Protection of Democratic Rights** case (supra) that such a power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations. Otherwise, C.B.I. would be flooded with a large number of cases and with limited resources, find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations. This caution has been ignored by the learned Single Judge.

CONCLUSION

72. In view of our findings on the different aspects which have emerged for consideration in the appeals, we are of unequivocal view that the petition filed by the original petitioner was clearly an abuse of the process of Court accentuated by his desire for personal gains in the form of monetary and medals awards, his frustration of having been denied the same and the departmental action and criminal prosecution initiated against him. The original petitioner as per his own allegation waited and remained silent but claims to have a change of heart only when he was at the receiving end from his department. The petition seeking to visit whole lot the police officers with serious consequences has been filed with sketchy facts lacking in all material particulars despite the fact that the original petitioner claims to be an eye witness and thus a participant in the same. Such a petition should have been dismissed at the threshold.

73. Learned Single Judge rather than dismissing such a petition, on the basis of his personal perceptions especially qua the Punjab police, has

proceeded to issue wide ranging directions by concluding that the investigation would get to the bottom of the matter. It is not an innocuous direction. The function of such an investigation cannot be to find out whether there was any iota of proof in the allegations of the original petitioner or not. It required at least some appropriate material to be on record with proper averments to come to a conclusion that such an investigation was necessary.

74. We are also of the view that neither were general observations made by the learned Single Judge warranted nor was the learned Single Judge entitled to entertain and adjudicate the PIL (" effectively so") and was thus rather *coram non-judice* as held in **State of Punjab Vs. Davinder Pal Singh Bhullar** case (supra) and **Divine Retreat Centre's** case (supra). We are not satisfied that there is any material which would entitle the original petitioner to similar or other direction from us assuming that we were examining the case de-novo.

We thus allow all the appeals and set aside the impugned order dated 01.04.2008 and dismiss the original writ petition. All the appellants shall also be entitled to costs quantified at ₹ 2,000/- each to be paid by respondent No.1-original petitioner.

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

26.11.2013
'ravinder sharma'

Whether to be referred to the Reporter or not.	✓ Yes	No.