

(2010) 01 KL CK 0119

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 31031 and 37407 of 2009

George Muthoot

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 143, 147, 149, 201, 279

Citation : (2010) 1 ILR (Ker) 441 : (2010) 1 KLT 399

Hon'ble Judges : S.R. Bannurmath, C.J;Thottathil B. Radhakrishnan, J

Bench : Division Bench

Advocate : Bechu Kurian Thomas and Paul Jacob, for the Appellant; V.G. Govindan Nair, Director General of Prosecution and M.V.S. Namboothiry, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bannurmath, C.J.—The role of a victim, including his family members, of a heinous crime, during investigation and trial in the present criminal justice delivery system and incidentally, the role of higher/superior courts in respect of investigation at the initial stage of filing of final report by the investigating agency are the subject matter of this Writ Petition.

2. The writ petitioner, unfortunate father of deceased Paul in homicidal attack and death, has approached this Court under Article 226 of the Constitution of India seeking a direction for investigation in Cr. No. 197/09 of Nedumudi Police Station, Alappuzha by an independent investigating agency like Central Bureau of Investigation.

3. Taking into consideration the fact that investigation in this case is complete and final report (charge sheet) is filed by the investigation before the Magistrate, the brief and necessary facts as per prosecution, for our purpose, are as follows:

4. The petitioner, M.G. George Muthoot along with his three sons including deceased Paul are running one of the largest business groups in India hailing from Kerala, having more than 1000 branches all over India with assets estimated at more than Rs. 20,000 crores. It is undisputed that though originally this group was engaged in Gold loan business, over the years has entered into various other businesses.

5. It is stated that the deceased, based in Delhi till April, 2009, had come down to Kerala in May, 2009 to take charge of construction and plantation division.

6. On the night of 21.08.2009 at about 12.30 midnight the family was informed by the driver by name Shibu (driver of Paul's car) that Paul was brutally attacked and lying in pool of blood.

7. The eldest son of petitioner rushes to Alappuzha Medical College Hospital, finds Paul dead and also learns that another person Manu, alleged to be travelling with deceased Paul is also injured and admitted to hospital in unconscious state.

8. According to investigation, at 3.00 A.M. on the basis of first information given by the driver, Shibu a case in Crime No. 197/2009 is registered at jurisdictional police station at Nedumudi and investigation's taken up and now final report (charge sheet) is also filed.

9. In order to understand the case, it is necessary to note the contents of the first information (original is in Malayalam and we have looked into the uncontroverted translation in English as one of us (S.R. Bannurmath, C.J.) is not conversant with Malayalam).

10. The gist of the translated first information reads as follows:

Deposition given by Shibu Thomas, 32 years, residing at rented house Siva Kripa, Chakkamadam Line, Kaloorkathrikadavu Road, Ernakulam coming from Vandanath House, IXth Ward, Kanjiyar Panchayat, Ayyappankovil Village, Udumbanchola Taluk, Idukki District to P.A. Alaphonse, Sub Inspector, Nedumudi Police Station at 3.00 on 22.8.2009.

I am working as a driver at Cardamom County Hotel of Muthoot at Thekkady. Now I am working at Muthoot Office at Kadavanthara Ernakulam. 3 persons known to Paul Sir came from Trivandrum to see the Executive Director Paul sir in KL01-AS-8407 Ford Endeavour black coloured Car. Thereafter Paul Sir along with them from Avenue Regent Hotel to the flat and from there went with them in the car they came and went to Mararikulam the property taken for the resort. All of them consumed liquor there. About 11.30 at night sir and two persons with him got into the car they came. Since one person consumed too much liquor hence he was taken the Scorpio car being No. KL6-D-3174 of the sir driven by me. Sir came in the car they came with, to Pamba Villa resort at Chambakulam. I was directed to take the key of said resort from the office of Muthoot Backwater Cruise (MBC) below the Pallathuruthy bridge. I drove the vehicle from

Mararikulam. When I came to Pallathuruthy Office and asked for the key they said that as per the call of sir the keys were taken there. So I went by vehicle to Chambakulam following the sir. Sir was going at high speed. I went after him. When I reached about 2 kms east of Pallathuruthy bridge. I saw the car driven by the sir parked in the left side of the road and I stopped the car. Then I saw that one tempo traveler and about 10 to 15 persons are surrounding the car of the sir. On seeing stopping my vehicle they suddenly get into the tempo traveler and drove towards Alappuzha side. Then I and the person with me got down from the car. Then the person with me said that Paul sir is lying there, and I and the person with me lifted the Paul sir and the Paul sir was drenched in blood. And the sir was taken to the car driven by me the Scorpio KL6-D-3174. Deep wounds were seen below the neck and back of the sir. We heard a murmur sound from the road side. We saw that one person along with the sir in the car was trying to get up of the marshy land on the northern side of the road. We helped him up. He was taken in my car and suddenly took to MCH Alappuzha. The person with me and the other person along with the sir came in his vehicle behind me. When we reached Alappuzha SD college they overtook me and went towards south through NH. Even though I sounded my horn and indicator they drove off towards south without stopping. I reached with Paul sir and the other person at the MCH Alappuzha. On reaching hospital, the doctor examined and said that the Paul sir is dead. Then the time was 12.50. The dead body was transferred to mortuary. The accompanying person was admitted there. He was murdered by a group of persons with some deadly weapon stabbing and cutting with intention to kill the sir out of vengeance. The group consisting of 10 to 15 persons. All of them wear pants and shirts. All of them were youngsters. I can recognize some of them. The occurrence was at about 12.15 night on 21.08.09. The car in which I took the sir is at MCH College Alappuzha. The place of occurrence is at about 3 1/2 Kms.

11. After the registration of the case, investigation procedure like inquest of the dead body of Paul is carried out so also post-mortem is carried out. Statements of various witnesses are recorded and in all, as per final report, 25 persons are accused of having some role in the undisputed homicidal attack and death of Paul.

12. It is interesting to note, as this investigation is going on, on the very next date of incident, i.e., 23.8.2009, it appears, the Home Minister informs media that investigation (?) so far carried out reveals involvement of "quotation gang" and details of investigation will be disclosed by the investigating agency on the next day.

13. On 24.8.2009, the Inspector General of Police, holds press-media conference and reveals entire probable history as to how and why Paul was murdered. (At the request of the petitioner and with consent of learned Director General of Prosecution for State, we have seen the vedio recording of this press conference in the open court and as the statement of the Inspector General of Police was in Malayalam, perused the undisputed translation also.)

14. It is somewhat shocking to note that when investigation started rolling hardly 24 hours after the murder of Paul, accused yet to be even identified, the Inspector General who is neither the investigating officer nor in charge of investigation, in the press/media conference, gives vivid picture of how and why the deceased was attacked by 22 persons; how many vehicles were involved; the details of some persons accompanying the deceased in the car and also some persons following in other cars. He also emphatically says that some of the alleged accused were members of quotation gang and A24 -Omprakash and A25 Rajesh - are notorious and wanted criminals who were with the deceased in the car on the fateful night. He also speaks about motive aspect. According to him, Paul was driving a Ford Endeavour car, which hit a motorcycle driven by one Aji at Pallathuruthy and after the accident, without stopping Paul sped away; few people (some of the accused - members of quotation gang) travelling in a tempo traveler who came to spot and after helping the motorcycle rider, chased Paul's car and at a distance of 2 1/2 km. thereafter found Ford Endeavour parked by road side; they parked tempo traveller and questioned Paul's conduct in not stopping after accident with motorcycle and after verbal exchange, one of them stabbed Paul; and the passengers in tempo traveller were all drunk and have stabbed Paul under sudden alcoholic intoxication (?). He further states that the assault was due to sudden provocation by deceased himself. He even describes the murder weapon as "S" shaped sharp weapon.

15. This press/media statement by a responsible higher police officer of the rank of Inspector General, giving minute details of the incident including involvement of two tempo travellers (by some of the accused), Ford Endeavour driven by deceased Paul with two or one person (doubtful) and also a Scorpio and one Santro belonging to quotation group of Changanassery team, another Scorpio belonging to deceased Paul, as well as definite statement as to who were in which car, the "S" shape of weapon used when admittedly no autopsy was conducted and especially, even motive, that is, sudden intoxication reaction or sudden provocation by the deceased resulting in one of the accused stabbing the deceased, etc. when the first information of Shibu, the driver of Paul (alleged to be driving another vehicle) etc, that too, within short time of incident does not even indicate at this definite findings of the Inspector General of Police and when investigation had just begun, appears to be strange and has created doubt in the mind of not only the father of deceased (petitioner) but also with media people and in turn, public.

16. According to petitioner, due to shock of losing his grown up son and as investigation was yet to be completed and having faith in police machinery, he and family members watched and waited for some time, later seeing the strange way investigation is proceeding and especially after filing of final report, as the case put forth by the investigation agency is full of inconsistencies, improbabilities and doubtful in nature and in spite of his repeated requests to probe properly as nothing was done, he is forced to approach this Court invoking Article 226 of the Constitution of India jurisdiction seeking investigation by

another independent agency like Central Bureau of Investigation.

17. This petition is vehemently opposed by the respondent-State through learned Director General of Prosecution. At the outset relying upon the pronouncements of Apex Court, it is contended that the law regarding jurisdiction and power of police carrying out investigation is well settled. He submits that as investigation is absolute power of police, neither the courts can intervene nor direct the police to reinvestigate or investigate in a particular way. He submits that the present investigating agency has done its best in investigating the crime, after going through all the possible angles and the guilt of the accused has to be proved only during trial and as such, mere suspicion and doubt by looking into or probing the evidence so far gathered would hamper the trial of the accused detected or said to be involved in the crime. It is contended that mere discrepancies here and there emerging from various statements of witnesses recorded during investigation, are not sufficient to hold that investigation is faulty or false. He also contended that mere doubts expressed by the victim's father (petitioner) or possible theory put up by him, cannot be basis for interference by courts at this stage. He further drew our attention to the provisions of Delhi Special Establishment Act, especially Section 6, to contend that the Delhi Special Police (CBI) cannot conduct investigation outside its normal jurisdiction unless the concerned State (where crime has taken place, case is registered and investigation carried out by local police) gives its consent. It is submitted that as financial implications like liabilities of payment of compensation to victim or his family, defending prosecution for malicious investigation which may be filed by accused after acquittal by a court, would be with State, it is not proper or justifiable for this Court to order new investigation or fresh probe by C.B.I. It is argued that even before this Court, there is absolutely no material placed on record or no clues are even indicated by the petitioner to show that the investigation so far carried out is either faulty or not proper or mala fide and in the absence of any definite material as to any other person being involved in the crime, only on the basis of mere suspicion or surmises, it is not open for this Court to entrust the investigation to C.B.I. On these, among other grounds, it is contended that the Writ Petition and prayers therein are not maintainable.

18. Incidentally it is to be noted that after filing of the final report by the police before the jurisdictional Magistrate, the Magistrate noted certain discrepancies and suspicion about the investigation and as such by order dated 8.12.2009 held that there are many missing links and certain areas are to be unearthed and further investigation is required and as such investigation is incomplete. Hence, returned the final report and directed police to complete investigation properly. This order of the Magistrate is challenged before this Court in W.P.(C) No. 37407 of 2009 on various grounds questioning the limited jurisdiction of Magistrate under the Code of Criminal Procedure over investigation and illegality of return of final report with further direction to probe further.

19. Since the contentions in both the cases are interlinked we have heard them

together.

20. We have heard both petitioner's counsel, learned Director General of Prosecution and Standing Counsel for C.B.I. in detail.

21. Before discussion of rival contentions on the merits of the case, we would like to address ourselves on the legal issues raised.

22. We are in full agreement with learned Director General of Prosecution on following legal aspects well established by various pronouncements of the Honourable Supreme Court:

(a) It is statutory obligation and duty of the police to investigate into crime and the courts normally ought not to interfere and guide the investigation agency as to in what manner the investigation should be proceeded (emphasis by us),

(b) that investigation of a case and further investigation if required is the prerogative of the investigating agency; and

(c) that mere suspicion or doubt will not be sufficient to unsettle the investigation so far carried out, by either directing for further probe or reinvestigation by same or another investigating agency like C.B.I.

23. We have perused various pronouncements relied upon by both the sides.

24. At the outset, as we have no dispute as to the law laid down to the aforesaid position and though we are aware of effect on the present investigation by looking into some factual positions, for the reasons stated below we deemed it proper to look into the investigation material for limited purpose and wherever necessary to find the assertions of either side is correct or not.

25. It is to be noted that maintaining law and order in a State is the constitutional obligation of the State. No doubt, investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. If an offence is alleged to have been committed, it is the bounden duty of the executive to investigate into the crime and bring the offender to book. The concept of punishment is deterrent both for the actual criminals involved and also to send warning to those who are nurturing idea of committing similar crimes. There cannot be any dispute that unless the citizens feel safe, assured about criminal justice by proper investigation apprehending and punishing the real criminals, the State obligation is not discharged.

26. If one looks into history of criminal justice delivery system in India especially after independence, the picture is very bleak and sorrowful. The conviction rate in India is hardly 30 to 40%. These figures, when compared to other nations like USA, UK, France and Germany where conviction rate is almost 80 to 90%, would definitely indicate that something is wrong somewhere in our criminal justice delivery system.

27. It cannot be disputed that our present day criminal justice delivery system borrowed from British system is partially responsible for the low rate of convictions, increase in crimes and people losing faith in the efficacy of the system. The age old method of investigation, too many restrictions in investigations, appreciation of evidence by the courts with blinkers and with narrow compartmentalized minds, stretching the theory of proof beyond reasonable doubt too far, over-importance given to right of silence to the accused, overzealous attempt to protect only rights of the accused during trial, inordinate delays in completing investigation and trial, have all, in our view, contributed to the problems. It is again the undisputable bitter truth that as people are losing faith in the system, they are leaning towards taking law in their hands, sometimes even engaging/hiring goondas or anti-social criminals, who are now given an honourable title "quotation and protection agencies".

28. Noting all these facts and hue and cry raised by intellectuals, jurists, NGOs and public, in the year 2000, the Government of India constituted a committee headed by an intellectual giant in legal field Dr. Justice V.S. Malimath to suggest and recommend on reforms of the criminal justice system especially for simplification of judicial procedure and practice with main object of restoring the faith and confidence of common man in the criminal justice system, by protecting innocent and victims and by unsparingly punishing the real culprits. The report of the Committee with recommendations, was submitted to Government of India in the year 2002. Unfortunately, except here and there, none of the valuable suggestions have been considered or implemented.

29. Be that as it may, the fact of our reference to this report in the present context is regarding the plight of a victim and his family members.

30. In the present criminal justice delivery system, except for filing a first information, giving evidence in court and sometimes getting compensation, there is absolutely no major role for the victims including family members especially in heinous crimes like murder, rape etc.

31. As stated and emphasised by Dr. Justice V.S. Malimath Committee, "quest for truth" should be the motto, guiding star and fundamental duty of the investigation agency and the courts. But unfortunately as commented by the Committee, the basic need is to have well trained, well equipped and more importantly, independent investigating agency. Secondly, if criminal proceedings have to be fair for both the parties, i.e., victim and the accused, it is not sufficient only to protect innocents from punishment or punishing the culprits, the aim and object must be basically to give justice to the victim of the crime also. But, unfortunately, as noted above, once criminal investigation starts rolling, the victim has no major role to play to get justice for the wrong done to him/her. As observed by the Committee,

The investigation process is exclusively a police function and the victim has a role only if the police consider it necessary. Though it appears there are

administrative instruction given by police department of certain States to give information on progress of investigation to the victims when asked for. Otherwise till police final report is filed and many times even thereafter the victim does not know what is happening.

32. Though we find that as victims of crime are important players in criminal justice administration both as complainant/informant and as a witness, it is unfortunate that despite the system being heavily dependent on the victim, criminal justice has been concerned only with the offender and his interest almost subordinating or disregarding the interests of victim.

33. Honourable Justice K.T. Thomas in the case of State of Gujarat and Another Vs. Hon"ble High Court of Gujarat, observed that "criminal justice would look hollow if justice is not done to the victim of crime".

34. In our view, the recommendations made by Dr. Justice V.S. Malimath Committee in this regard requires immediate implementation. Some of the recommendations of the committee like active participation of victim in the progress during investigation especially in heinous crimes, his participation at the time of consideration of grant of bail and being represented by a counsel even during trial are worth considering.

35. As such, we hold that the victim has every right to question the correctness of the investigation, especially in heinous crimes, indicating not imaginary but definite suspicion about the veracity of the investigation.

36. This takes us to the next question, as to the jurisdiction of the superior courts issuing direction taking away investigation from local police to entrust investigation to an independent agency like CBI and at what stage.

37. The learned Counsel for the petitioner and learned Director General of Prosecution have relied upon number of pronouncements of the Honourable Supreme Court for and against. On detailed perusal of these pronouncements, one thing is certain. The superior courts have to decide such question based on facts and circumstances of each case and no straight jacket formula can be made. In fact, the latest unreported pronouncement of the Honourable Supreme Court in W.P.(C) No. 6 of 2007 in the case of Rubabuddin Sheikh v. State of Gujarat has considered in detail earlier pronouncements reported in R.S. Sodhi Vs. State of U.P. and others, , Kashmeri Devi Vs. Delhi Administration and Another, and Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, , Inder Singh Vs. State of Punjab and Others, , Gudalure M.J. Cherian and Others Vs. Union of India (UOI) and Others, , Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others, , Vineet Narain and others Vs. Union of India and another, ; Union of India and Others Vs. Sushil Kumar Modi and Others, , Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others, , Hari Singh Vs. The State of U.P., , Aleque Padamsee and Others Vs. Union of India (UOI) and Others, and M.C. Mehta Vs. Union of India (UOI) and Others, and observed thus:

This decision (R.S. Sodhi's case) clearly helps the writ petitioner for handing over the investigation to the CBI Authorities or any other independent agency. It is an admitted position in the present case that the accusations are directed against the local police personnel in which High Police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility, however faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI authorities would be an appropriate authority to investigate the case. In Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, , this Court at para. 8 observed:

...We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like C.B.I.

In Kashmeri Devi v. Delhi Administration (supra), this Court held that in a case where the police had not acted fairly and in fact acted in partisan manner to shield real culprits, it would be proper and interest of justice will be served if such investigation is handed over to the C.B.I. authorities or an independent agency for proper investigation of the case. In this case, taking into consideration the grave allegations made against the high police officials of the State in respect of which some of them have already been in custody, we feel it proper and appropriate and in the interest of justice even at this stage, that is, when the charge sheet has already been submitted, the investigation shall be transferred to the C.B.I. Authorities for proper and thorough investigation of the case. In Kashmeri Devi (supra), this Court also observed as follows:

Since according to the respondent charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers u/s 173(8) Cr.P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an

independent and objective matter and it will further submit additional charge sheet, if any, in accordance with law.

In Gudalure M.J. Cherian (*supra*), in that case also the charge sheet was submitted but in spite of that, in view of the peculiar facts of that case, the investigation was transferred from the file of the Sessions Judge, Moradabad to Sessions Judge, Delhi. In spite of such fact that the charge sheet was filed in that case, this Court directed the CBI to hold further investigation in spite of the offences committed. In this case at page 400 this Court observed:

...The investigation having been completed by the police and the charge sheet submitted to the court, it is not for this Court ordinarily to reopen the investigation specially by entrusting the same to a specialized agency like C.B.I. We are also conscious that of late the demand for C.B.I. investigation even in police cases is on the increase. Nevertheless - in a given situation, to do justice between the parties and to instill confidence in the public mind - it may become necessary to ask the C.B.I. to investigate a crime. It only shows the efficiency and the independence of the agency.

In this connection, we may reiterate the decision of this Court in the case of P.& H. High Court Bar Association (*supra*) strongly relied on by the learned senior counsel appearing for the writ petitioner. A reference of the para of the said decision on which reliance could be placed has already been made in Para No. 32 from which it would be evident that in order to do complete justice in the matter and to instill confidence in the public mind, this Court felt it necessary to have investigations through the specialized agency like the C.B.I.

Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr. Rohatgi learned senior counsel appearing for the State of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to the C.B.I. or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like C.B.I. It cannot be said that after the charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like C.B.I. Keeping this discussion in mind, that is to say, in an appropriate case, the court is empowered to hand over the investigation to an independent agency like the C.B.I., even when the charge sheet has been submitted, we now deal with the facts of this case whether such investigation should be transferred to the C.B.I. Authorities or any other independent agency in spite of the fact that the charge sheet has been submitted in court.

38. This detailed discussions and law indicated by Apex Court, in our view, fully

answers against the objections of the State and in favour of the petitioner. We hasten to add that merely because the Honourable Supreme Court observed and permitted investigation by C.B.I., the same cannot be and should not be the only yardstick.

39. Having noted the various pronouncements we have still ventured into further probe of investigation, only to satisfy ourselves as to whether investigation is done properly or not.

40. As we observed earlier, the superior court has a duty to go through investigation material without probing into deep to find out prima facie whether investigation is going in proper direction or not and if not, what steps to be taken.

41. As such we have perused the entire investigation as revealed from final report and accompanying records, for the limited purpose to find out whether there is any genuine doubt or suspicious circumstances as put forth by the petitioner in the investigation and our findings are as follows:

(a) As already noted, the incident in question has taken place in the midnight around 12.30 of 21.8.2009. The first information is recorded at 3 AM and the first informant is Shibu Thomas, driver of the deceased Paul. According to first information, in the fateful night, the deceased along with his three friends (not named but now identified as Manu CW2, Omprakash A24 and Rajesh A25) from Trivandrum went to various places/hotels in a black Ford Endeavour car KL-01-AS-8407 and consumed liquor at one or two places and went to Mararikulam resort and again consumed liquor. At that place, as one of the friends (Manu) was in highly imbibed state, deceased Paul drove away with two persons (Omprakash A24 and Rajesh A25) in Ford Endeavour car and Shibu the driver was asked to follow and bring (Manu) in Scorpio car. At Pamba Villa resort it is stated that Paul asked the driver to get the keys of rooms of Pamba Villa resort from the office of Muthoot Backwater Cruise near Pallathuruthy bridge. As such it is stated that Shibu went to get keys and after getting the same started following car driven by deceased. According to him, at some point deceased went away in high speed leaving behind Shibu in Scorpio and as he followed the car and came near the place of incident saw the Ford Endeavour car of deceased parked on the left side of road and also there was one tempo traveller. He saw that 10 to 15 persons had surrounded the car of the deceased and on seeing arrival of Shibu, they went away in the tempo traveller towards Alappuzha.

42. After the departure of said 10 to 15 persons, the passenger of Scorpio (Manu) and driver Shibu got down and noticed deceased lying down in pool of blood. They lifted him and kept him in Scorpio. They also noticed another person who was travelling with deceased struggling to get up from a marshy land slightly away from the spot. Both Paul and Manu were taken in Scorpio to Medical College Hospital, Alappuzha. The other friends (accompanying the deceased) after travelling some distance in another car suddenly went away in different direction.

43. In the hospital Paul was declared dead at about 12.50 and the other injured was admitted to hospital. Thereafter he is giving the first information and asserted that there were 10 to 15 young persons and some of them he could recognize, have murdered Paul.

44. On the basis of this information, the police registered a case in Cr. No. 197/09 at 3 a.m. on 22.8.2009 for the offences under Sections 341, 143, 147, 149, 324 and 302 of the Indian Penal Code. In the column No. 7 as to details of known/suspected/unknown persons - it is noted as 10 to 15 known persons without mentioning single name.

45. It is to be noticed that the conduct and statement of this first informant himself is highly suspicious and contradictory to his additional statement recorded again by police on the very same day. Though he says deceased was with his three friends throughout night having drinks at two or three places, he does not know their names, nor does he know names of any one of the 10 to 15 assailants though claims to be known to him.

46. Of course we are aware that first information is not an encyclopedia of entire incident. In our view, minimum truthful statements as to who was in what car, what happened on the way, why in spite of deceased known to his driver as heavily drunk and also consuming narcotics was allowed to drive Ford vehicle along with two other drunk friends when the driver Shibu was with them are something mystery. More surprising is the explanation of this witness in going away from the spot along with one of the drunk persons at the crucial time for getting some keys which were not in office and already sent to Pamba Vally resort where deceased and his friends had already gone and again appear at the scene after murder is a mystery.

47. It is to be noted that though at earliest point he states that deceased travelled with two friends, in the additional statement changes this version and states only one person went with deceased. The initial version indicates it was A24 Omprakash and A25 Rajesh went with deceased and as Manu (CW2) was highly imbibed condition he was directed by Paul to be taken by Shibu in another car. But now surprisingly at the scene it is Manu who is stated to be found lying in a marshy land nearby, unable to get up and with injuries said he suffered during assault on Paul and stated to be hospitalised. The wound certificate of this person does not indicate he was dead drunk and alleged injury on arm is hardly 3 cm x 2 cm nothing more than a scratch in spite of assertion of the prosecution, he was also assaulted along with deceased by 10 to 15 persons with sharp weapons with resultant single scratch. This story stinks.

48. But what is undigestable is, with this incomplete and self contradictory story of a person who was with Paul prior and appears conveniently after assault is over, without disclosure of names or identity of any of 10 to 15 accused said to be known to him and with this incomplete material, a detailed vivid version or story of incident is given by the Inspector General of Police in a press/media

conference called within hardly 24 hours. The statement given by the I.G. practically tallies with the entire prosecution case now projected in the final report. In our view, the said Inspection General of Police must be clairvoyant, endowed with paranormal powers who can disclose not only entire story of quotation gang unconnected in any way with deceased which was going for assaulting some body else, getting enraged by the alleged hit and run case of deceased vehicle with a motorcyclist little earlier. The I.G. has emphatically stated in the press conference that the attack on deceased by the accused (members of quotation gang) was due to sudden provocation (?) given by the deceased in not stopping his car after hitting a motorcycle and driving and running away. The press statements indicate as if the Inspector General of Police is laying a foundation for the motive and entire future forthcoming prosecution case (fully said to have been revealed after full investigation for more than four months. More surprisingly even before postmortem or recovery of weapon (till then unknown), it is describing as "S" shaped sharp edged weapon. Where from he got this information ? It is a mystery.

49. We do not understand basically what was the need of such press/media conference arranged. The crime has taken hardly 24 hours ago. Motive, involvement and identity of the accused and other details are unknown but still this Inspector General of Police gives a detailed vivid story of the entire before, during and after events of the incident. This press statement is something more than mere suspicious. In our view, basically such pre-investigating conferences should be stopped as the secrecy of investigation is totally lost and accused would be forewarned or even his defence during trial may be jeopardised.

50. Nextly, it is to be noted that the Ford vehicle which the deceased was alleged to have been driving mysteriously disappears and is found at different places and it is now the case of investigating agency that the accused A24 Omprakash and A25 Rajesh drove it away to cause disappearance of the evidence. In the press statement the I.G. says even the owner of this Ford is not Paul and name in records is fictitious and even the documents like RC are bogus. The investigation materials do not disclose how the deceased came in possession of this vehicle and was driving such vehicle.

51. It is also to be noted that the two friends of deceased who were alleged to be with him A24 Omprakash and A25 Rajesh are known criminals, wanted in several serious crimes including attempt to murder, murder etc. and according to driver Shibu, apart from contradictory statement as to in which car they were travelling, whether with him or deceased, their conduct that though they were present all along with deceased, went on drinking bouts and seen the deceased lying in pool of blood and follow Shibu towards Alapuzha, suddenly disappear and surface in a court in Tamil Nadu almost a month later.

52. We find even though they are known criminals wanted by police, their link with deceased, probability of their involvement etc. is not at all investigated and whatever explanations offered are unsatisfactory. Even their tracing and

apprehending is also mysterious. According to police, after about one month, police got information that A24 and A25 have surrendered in Tamil Nadu case in some other case and body production warrant is obtained by the Kerala Police for previous cases and they are brought to Kerala.

53. The learned Counsel for petitioner brought to our notice that an officer of the rank of ACP takes them in custody, travels with them in a police van for 4 or 5 hours and produced them at central jail in Kerala. In normal circumstance, immediately their statements ought to have been recorded as they were with deceased. But that is not done. This is most unusual and especially this is not denied by investigating officer before us. Now surprisingly they are arrayed as A24 and A25 for the offence u/s 201 IPC for taking away the Ford car from scene of offence. If as per first information, they were throughout with deceased in his car and changed car only after incident and in the background of their criminal record attention of I.O. should have been concentrated on them but again unfortunately it is not done. As such we find again justification in the suspicion of petitioner about the veracity of prosecution version so far as the role of these two persons are concerned.

54. The other factor of investigation in respect of alleged hit and run case of deceased vehicle with a motorcyclist, which is projected as motive or atleast starting point of incident. It is alleged that seeing him injured and because of deceased's conduct in not stopping, the accused members of quotation gang who happen to come to the place of accident, got enraged, chased car driven by deceased and killed him is also full of contradictions and grave suspicion, apart from looking like a film story.

55. According to prosecution, immediately after motorcycle accident, the injured Biju (CW3) goes to Nedumudy Police Station and alleged to have given information of the accident resulting grievous injury to him. But surprisingly the police do not record his statement or register a case and it is only later as stated by "IO" on suspicion of that motorcycle accident may have some link with murder of Paul, he goes to the house of Biju, takes a complaint and registers a case under Sections 279 and 338 IPC against unknown driver of a black car. Though, according to him, in first version he saw only a black car hitting his moving motorcycle from behind at dead night, his being seriously injured (fracture of shoulder bone), later he even identifies the make of the car as Ford Endeavour said to have been driven by deceased as the vehicle which hit him in dark night that too from behind and sped away. Apart from this improbable identification even the initial report of both vehicles motorcycle and Ford Endeavour car indicate that no major damages at all, indicating the accident story is improbable, but again, surprisingly some more damages to the vehicles are added in later mahazars. Moreover though the accused from quotation gang are said to have been present as per prosecution, Biju does not even mention presence of any persons at all even without identification at the time of accident.

56. Similarly, the story of object of quotation gang and their presence at the

scene, their assault on deceased due to "sudden and grave provocation" etc. appears to be not only unbelievable but tailor made. In fact the investigation material as per final report itself discloses that they had been hired to assault some body that even after the incident they have not carried or even attempt to carry out quotation work. There are similar many surprises emanating from prosecution story which we need not go into details. Suffice it to say all is not well in the investigation. It is not mere roving/imaginary suspicion of the petitioner but after looking into final report we too find shocking state of affairs. The investigation carried out is suspicious full of many wide gaps and self contradictory.

57. According to us, we feel that to in order to assure the victims of heinous crime an assurance of fair, proper, impartial and complete investigation and to restore faith, it is just and proper to direct the C.B.I. to conduct investigation particularly when gross allegations are made against jurisdictional investigating agency justifiable and as such interest of justice would be better served if C.B.I. investigates the case.

58. Under these circumstances as has been held by Apex Court in the case of Rubabbuddin Sheik (supra) we find that investigation carried out is not fair, it is improper and incomplete apart from suspicious and tailor made. As such we find there is justification in petitioner's contentions to seek direction from this Court for investigation by independent agency like C.B.I.

59. According to us, we feel that in order to assure the victims of heinous crime an assurance of fair, proper, impartial and complete investigation and to restore faith, it is just and proper to direct the C.B.I. to conduct investigation especially when we find gross allegations are made against jurisdictional investigating agency justifiable and as such in our view interest of justice would be better served if C.B.I. investigates the case.

60. Before conclusion, it is to be noted that W.P.(C) No. 37407 of 2009 is filed by the State challenging Exhibit P1 order passed by the learned Magistrate in Crime No. 197 of 2009 on the final report filed by the investigating agency against 25 accused in this very case. It is contended by the learned Director General of Prosecution that the Judicial Magistrate has exceeded his jurisdiction in returning the final report and directing the investigating agency to file a correct and complete report.

61. Without going into the correctness or otherwise of the findings of the learned Magistrate, as to the final report which has been considered by us in the main matter, in the light of well settled law that the Magistrate has no jurisdiction to sift the materials collected during the investigation, as disclosed in the final report, by holding a mini trial. As the law is well settled, we find merit in the Writ Petition filed by the State and allow the same without going into the merits. In the result,

1. Writ Petition W.P.(C) No. 31031 of 2009 is allowed. Even though final report is

filed by local police, we direct them to hand over all the records to CBI authority, which shall make independent investigation and complete the same within six months from the date of taking over the investigation. The CBI shall investigate the case from all angles, take assistance of petitioner or his representative and submit final report to jurisdictional Court. The Registry shall send copies of this judgment to the Director, CBI and the Secretary, Ministry of Home Affairs, New Delhi, forthwith.

2. W.P.(C). No. 37407 of 2009 is allowed quashing the order impugned therein.