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Krishnan vs State of Kerala,

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Court : Kerala

Decided On : Sep-30-2019

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : WP(C)/10265/2019

Appellant : Krishnan

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present: THE HON'BLE MR. JUSTICE B.SUDHEENDRA KUMAR Monday,the 30th September, 2019/ 8th Aswina, 1941 PETITIONER/S:

1. Krishnan, S/o. Koran, aged 54 years, House No. 3888, Post Kanjiradukkam - 675 531, Via.Anandashramam, Kasaragod District, Kerala

2. Mrs. Balamani, W/o.Krishsnan, aged 41 years, House Wife, House No. 3888, Post Kanjiradukkam - 675 531, Via. Anandashramam, Kasaragod District , Kerala

3. Sathyanarayanan, S/o Kannan, aged 54 years, Jkurangara Veedu, Post Kanjiradukkam - 675 531, Via. Anandashramam, Kasaragod District.

4. Mrs. Latha.P., W/o.Sathyanarayanan, aged 39 years, Housewife, Kurangara Veedu, Post Kanjiradukkam - 675 531, Via.Anandashramam, Kasaragod. By Adv. Sri. Asaf Ali Adv. Smt. Laliza T.Y, RESPONDENT/S: RESPONDENT/S:

1. The State of Kerala, represented by Additional Chief Secretary to Government, Department of Home and Vigilance, Government of -: 2 :- Kerala, Thiruvananthapuram PIN -

2. The State Police Chief, Police Head Quarters, Thiruvananthapuram PIN - 695 001

3. The Station House Officer, Bekal Police Station, BEKAL - 671 318

4. The SPE/CBI, Thiruvananthapuram, represented by Standing Counsel, Central Bureau of Investigation, High Court of Kerala, Ernakulam, Kochi - 682 031

5. The Director, Central Bureau of Investigation, New Delhi - 110 R1-5 By Sri. Suman Chakravarthy, Sr. Public Prosecutor OTHER PRESENT:

Sri. Manjeri Sreedharan Nair & Sr. Government Pleader Sri. Sasthamangalam Ajith Kumar Special Public Prosecutor for CBI THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.09.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -: 3 :-

JUDGMENT

The above writ petition was filed by the parents of two Youth Congress leaders, namely, Kripesh, aged 21 years and Sarath Lal, aged 24 years, who were brutally murdered on 17.02.2019 at about 7.45 p.m. by the accused persons, who are

CPM workers, at a place called Kallyottu in Periya Villege, Kasargod.

2. In connection with the incident, Crime

No.81/2019 was registered in Bakel Police Station for the offence punishable under Section 302 IPC, on the very same day on the basis of the first information statement given by Sreekumar (CW1). Thereafter, the investigation was handed over to the Deputy Superintendent of Police, Crime Branch on 18.02.2019 as per the order of the

-: 4 :- District Police Chief, Kasaragod, where it was re- registered as Crime No.75/CB/KNR &KSD/2019 of Crime Branch, Kasargod. The offences alleged are punishable under Sections 143, 147, 148, 341, 326, 201, 212, 120B, 118 and 302 r/w Section 149 IPC.

3. The prosecution allegation is that in furtherance of the criminal conspiracy by A1 to A9 and A11, A1 to A8 committed the murder of deceased Kripesh and Sarath Lal on 17.02.2019 at about 7.45 p.m. by attacking with iron pipes and swords.

4. The autopsy on the bodies of the accused was conducted at the Medical College, Periya on 18.02.2019. A1 was arrested on 19.02.2019 on his -: 5 :- surrender before the Investigating Officer. A2 was arrested on 20.02.2019 on his surrender before the Investigating Officer. A3 to A7 were arrested on 21.02.2019 on their surrender before the Investigating

Officer. Thereafter, on the basis of the disclosure statement given by A1, four G.I. pipes and one sword were recovered from a well on 20.02.2019. On the basis of the disclosure statement given by A4, one sword was recovered and on the basis of the disclosure statement given by A7, another sword was recovered on 22.02.2019.

5. A Special Investigation Team headed by the Deputy Superintendent of Police had conducted the investigation. After completing the investigation, the final report was filed before the court on 20.05.2019. -: 6 :-

6. In the above Writ Petition, the prayer is to issue a writ of Mandamus directing the 4 th respondent to conduct the investigation of the above said case on various grounds.

7. Heard.

8. The learned Standing Counsel for the CBI has submitted that the CBI is prepared to investigate the case, if a direction in this regard is issued by this Court.

9. It has been argued by the learned counsel for the petitioners that even though there was allegation that four GI pipes and three swords were used by the accused -: 7 :-

persons to inflict injuries on the deceased, the statement of CW198 Dr. Gopalakrishna Pillai, the Forensic Surgeon, who conducted the autopsy on the body of the deceased persons, is that none of the injuries on the deceased persons could be caused with the GI pipes and hence the only inference possible is that the prosecution suppressed the genesis of the prosecution case. On the other hand, the learned Director General of Prosecution has argued that the prosecution does not have a contention that any injury was inflicted on the injured with the GI pipes and

hence the argument of the learned counsel for the petitioners cannot be accepted.

10. The prosecution allegation in brief as revealed from the charge-sheet is that on 14-2-2019 in between -: 8 :- 3.40 p.m. and 5.40 p.m., A1 to A9 and A11 committed criminal conspiracy at the bus waiting shed in a place

called Echiledukkam in Peria Village and pursuant to the said criminal conspiracy, A1 to A8 on 17-2-2019 reached the arecanut plantation on the side of Kalliyothvara-Thannithodu Public Road, near to the KSEB Sub Station, Peria, and waited there for the deceased and when the deceased persons reached there in a motor cycle driven by the deceased Kripesh with the deceased Sarath Lal as pillion rider in between 7.36 p.m. and 7.45 p.m. on 17-2-2019, A1 (Peethambaran) beat with an iron pipe and restrained the deceased persons and thereafter, A3 (Suresh), A4 (Anilkumar) and A7 (Aswin) with swords and A1(Peethambharan), A2

(Saji C. George), A5 (Gijin) and A8 (Subheesh) with iron pipes cut and beat the

-: 9 :- deceased, causing fatal injuries on Kripesh and Sarath Lal and as a consequence, Kripesh and Sarath Lal succumbed to the injuries at or about the same time. 11 . Thus, it is clear from the charge-sheet that A1(Peethambaran), A2 (Saji C. George), A5 (Gijin) and A8(Subheesh) beat the deceased persons with GI pipes.

12. CW198 Dr.Gopalakrishna Pillai, the

Forensic Surgeon, who conducted the autopsy on the body of the deceased persons stated that none of the injuries found on the body of the deceased Kripesh and deceased Sarath Lal could be caused by any of the iron pipes. It appears that eventhough the recovery of one sword and four GI pipes was effected on 20-2-2019 and the -: 10 :- recovery of two other swords was effected on 22-2-2019, the said weapons were not shown to the Forensic Surgeon who conducted the autopsy, eventhough the statement of the Forensic Surgeon was recorded on 23.2.2019. It is not discernible as to why the weapons were not shown to the Forensic Surgeon when he was questioned eventhough the weapons were available at that time after the recovery. Thereafter, on 27-3-2019, the

Forensic Surgeon inspected the weapons without removing the sealed plastic covers as permitted by the Court. The Forensic Surgeon, after inspecting the GI pipes on 27-3-2019, opined that none of the injuries on the body of the deceased persons could be caused with the said blunt weapons. Even in a case where two young persons were brutally murdered, the Investigating Officer

-: 11 :- did not incline to question the Forensic Surgeon, who conducted the autopsy on the body of the deceased persons showing the weapons, eventhough the weapons were readily available at the time of recording the statement of the Forensic Surgeon on 23.2.2019, which

had, no doubt, caused serious prejudice to the investigation. Eventhough the additional statement of the Forensic Surgeon was recorded by the Investigating Officer on 27-3-2019, the statement filed by the Investigating Officer before this

Court on 10-4-2019 would clearly show that the Investigating Officer had casually filed the statement ignoring the opinion of the

Forensic Surgeon that the injuries on the deceased persons could not be caused with the blunt weapons. In Paragraph 13 of the statement dated 10-4-2019, the -: 12 :-

Investigating Officer stated that all accused persons attacked the pillion rider Sarath Lal with their weapons. The report further states that Suresh (A3) and Anil (A4) hacked him with their swords many times and Peethambaran (A1), Saji C. George (A2) , Gijin (A5) and Subheesh (A8) attacked Sarath Lal with their weapons. In paragraph No.27 of the statement dated 10-4-2019 also, it was stated stated that A1 (Peethambaran) slashed the victim with the iron pipe, A2 (Saji C.George) slashed the deceased with an iron pipe, A5 (Gijin) slashed Sarath Lal with iron pipe. The statement in the above report that A1, A2 and A5 inflicted injuries on deceased Sarath Lal with iron pipes is against the statement given by the Forensic Surgeon on 27-3-2019.

-: 13 :-

13. The Forensic Surgeon Dr. Gopalakrishsna Pillai stated that since he could not touch the swords, he was not in a position to say anything about its sharpness or

heavyness. The Forensic Surgeon could not express any opinion as to whether the swords recovered in this case could be used to inflict any of the injuries found on the body of the deceased. The non-questioning of the Forensic Surgeon with reference to the weapons recovered is a circumstance indicating that there was no proper and effective investigation even in a case where two young persons were brutally murdered, as rightly submitted by the learned counsel for the petitioners.

14. The Investigating Officer has filed an additional statement on 18-09-2019 in which it was stated thus:

-: 14 :- The accused 1,5, and 8 assaulted Sarath Lal, but blunt objects had not touched his body, but it hit on the motor cycle, which was seen fallen near Sarath Lal. These injuries are scientifically noted by the FSL Office and has detected

marks of beating on the motor cycle.

15. However, the charge-sheet filed by the police would clearly show that A1, A2, A5 and A8 beat the

deceased Sarath Lal with GI Pipes. It is not stated anywhere in the charge-sheet that eventhough there was an attempt to beat deceased Sarath Lal by A1, A2, A5 and A8, the weapons did not touch the body of Sarath Lal. It appears that the above statement given by the Investigating Officer is contrary and inconsistent with the -: 15 :- charge-sheet filed by the same officer.

16. On going through the injuries sustained by the deceased persons also, it can be seen that none of the ante- mortem injuries referred to in the post-mortem certificates could be caused by GI pipes.

17. The ante-mortem injuries referred to in the post-mortem certificate of deceased Kripesh are extracted hereunder:-

1. Chop wound 13.5x2 cm horizontally placed on the top

> of head across the midline; marginal contusion of the edges of the wound was minimal; the skull underneath showed a through and through cut injury 13 cm long involving the parietal bones. The wound was directed from front to back of head (overhanging upper edge) causing a cut injury in the dura, 8x5 cm, through which, the brain matter was bulging out. There was a laceration 5.5x3.5 cm involving the right parietal lobe -: 16 :- of brain close to the midline. Plenty of pin point bleeding points were seen in the white matter of the cerebral hemispheres and cerebellum. Brain was oedematous.

2. Graze Abrasion 1x0.6 cm on the forehead, 1 cm above the outer end of right eyebrow.

3. Abrasion 2x2 cm on the forehead, 4.5 cm above the midline part of right eyebrow.

4. Abrasion 1x0.3 cm, just below the outer end of right eyebrow.

5. Multiple small abrasions on the right cheek.

6. Multiple small abrasions on the inner aspect of right elbow.

7. Abrasion 3x 0.3 cm horizontal on the back of right forearm, 12 cm below elbow.

8. Abrasion 0.8x0.5 cm on the front or right forearm, 8 cm above the wrist.

9. Linear abrasion 6 cm long on the back of left forearm, at its middle. 10.Abrasion 2x2 cm on the front of left knee. -: 17 :-

11. Abrasion 2x1.5 cm on the outer aspect of left leg, 5 cm below the knee.

12. Abrasion 2.5x1.5 cm, on the left leg, 7 cm below inj.no.11.

13. Graze abrasion 4x2 cm on the leg, 2cm below injury no.12.

14. Abrasion 1x0.5 cm on the front of right leg, at its middle.

15. Abrasion 0.7x0.5 cm on the outer aspect of right buttock, at its lower part. The ante-mortem injuries sustained by deceased Sarath Lal are extracted hereunder:-

1. Incised wound 16x1.5 cm obliquely placed on the

> left side of head, the front inner end being on the forehead, 4 cm above the middle part of left eyebrow; the back end of the wound was 2 cm to the right of the left parietal eminence; the skull underneath showed a through and through cut injury involving the frontal and left parietal bone and ending at the lambdoid suture... There was a cut injury of the brain 9x1x4 cm involving the frontal, parietal and occipital lobe just under the skull injury. There was subarachnoid bleeding involving the left half of the brain. Bran was oedematous. -: 18 :-

2. Incised wound 14x3.5 cm obliquely placed on the

right side of neck and face, cutting away the right ear lobule (which was missing). The upper front end was on the cheek, 5 cm to the right of the mouth and the lower outer end was 8 cm below the mastoid process; it had a depth of 3 cm at the upper end and 4 cm at the lower end; maxillary and facial arteries were found servered; the mandibular condyle was found cut and separated from the bone.

3. Abraded contusion 8x0.5 cm across the top of right shoulder, at its middle.

4. Linear abrasion 8cm long, on the outer aspect of right upper arm, 10 cm below the tip of shoulder.

5. Incised wound 9x3.5 cm obliquely placed on the back of right forearm, 7 cm below the elbow, there was a superficial cut on the ulna bone underneath.

6. Superficial incised wound 6x2 cm oblique on the back of right forearm, just above the wrist.

7. Incised wound 7x1.3 cm oblique on the back of right wrist, cutting the ulna bone into two, ulnar artery was found servered.

8. Incised wound 4x1.5 cm on the back of right forefinger, cutting the bone into two. -: 19 :-

9. Abrasion 2x1.5 cm on the back of the left upper arm, just above the elbow.

10. Abrasion 8x0.3 cm oblique on the outer aspect of right thigh, at its middle.

11. Graze abrasion 6x3.5 cm, on the thigh, 3 cm below inj.no.10.

12. Abrasion 2.5x1 cm on the front of right knee.

13. Abrasion 3.5x0.5 cm just below the right knee.

14. Incised wound 10x3 cm obliquely placed on the outer aspect of right leg, 3 cm below the knee; upper end of tibia was partially cut underneath. Anterior tibial artery was served.

15. Incised wound 10x3.5 cm on the front and outer aspect of right leg 7 cm below inj. no.14.

16. Incised wound 11x4 cm oblique on the front of right leg, 4 cm below inj.no.15. The bone tibia was cut into two and the bone fibula was partially cut. Anterior tibial artery was found cut into two.

17. Incised wound 7x2.5 cm on the front of right leg. 3 cm below injury no.16, both tibia and fibula -: 20 :- were cut into two, anterior tibial artery was served.

18. Superficial incised wound 6.5x1.5 cm on the front of leg just above the ankle and 1 cm below inj.no.17.

19. Incised wound 7x2 cm on the outer aspect of top of left foot 2 cm above the toes; bone underneath showed a superficial cut.

20. Incised wound 3x0.5 cm vertically on the top of left second toe, cutting its nail also.

18. Thus, it appears from the post-mortem

certificates that none of the injuries sustained by the deceased could be caused by any blunt weapon. The Forensic Surgeon also opined the same. Even after that, report dated 10-4-2019 was filed by the Investigating Officer before this Court stating that the GI pipes were used to inflict injuries on deceased Sarath Lal by A1, A2

-: 21 :- and A5. This is another circumstance indicating the casual manner of conducting the investigation.

19. Since no injury could be inflicted on the

deceased with the GI pipes recovered at the instance of the first accused, it has to be held that the Investigating Officer filed the charge-sheet in a pre-conceived manner, believing and accepting the version given by the first accused, without even conducting any proper and effective investigation. That apart, if the trial is permitted to be continued on the basis of the above said charge- sheet filed by the

Investigating Officer, the chance for conviction is very bleak, since the charge is against the materials collected by the prosecution. No recovery was effected at the instance of A2, A5 and A8. No material was also collected by the prosecution to connect A2, A5 -: 22 :-

and A8 with the commission of the offence. Without any incriminating material against A2, A5 and A8, the charge- sheet was filed against them and they remain inside the jail without taking any effective step to be enlarged on bail. At this juncture, it is also pertinent to note that accused Nos. 1 to 7 were arrested only after their

surrender before the Investigating Officer. The above circumstances would also affect the credibility and instill confidence in the investigation.

20. Having gone through the materials discussed

above, it appears that the Investigating Officer filed the charge-sheet blindly, without conducting any proper and effective investigation to find out the truth, believing the version of the first accused as gospel truth. Without -: 23 :- questioning the Forensic Surgeon showing the swords, it is not possible to state that the injuries found on the body of the deceased were inflicted with the said swords. Having gone through the materials, it appears that the genesis of the incident was suppressed by the prosecution. It is not discernible as to why A2, A5 and A8 were made as accused in the crime without having any legal material against them. Even the dresses worn by them were not seized stating that the 5th accused had given confession statement that he and A8 (Subheesh) burned the clothes of all the accused except the clothes of Gijin (A5) at a place near Veluthoni. It has been submitted by the learned Director General of Prosecution that the other accused persons did not give any such statement in respect of their dresses. It appears that the Investigating Officer -: 24 :- believed the version of A5 as gospel truth and declined to conduct any investigation in this regard.

21. Three motor cycles and three cars were parked

by the accused persons near to the place of occurrence. Even then, nobody could witness the incident. CW97 stated that the present accused and other four persons travelled in a convoy, just before the incident in this case. However, the said four persons were not made as accused. Instead, the Investigating Officer filed a statement stating

that CW97 cannot be fully believed. It is not discernible as to how the Investigating Officer can say at this stage that CW97 cannot be believed once the prosecution relied on the statement of CW97 and filed it before the Court. It further appears that there was a meeting -: 25 :- convened by A1 Peethambaran just one hour prior to the incident in this case and in that meeting, CW150 took part. A2, A9 and A5 also attended the meeting. The above said meeting was just one hour prior to the incident. Immediately after the said meeting also, A1 called CW150 over phone. However, CW150 was not made as

a conspirator. Madhu, Hari (CW110), Vikraman, Chandran, Krishnan, CW150 and Raju had also taken part in the above said meeting conducted by the first accused just one hour prior to the incident. However, the above said persons were also not made as accused. The prosecution contends that the above meeting was not for any criminal conspiracy, but was only in connection with some other internal issue relating to CPM party.

-: 26 :-

22. It is alleged by the prosecution in the final

report that the incident in this case occurred due to the personal vendanda of A1 towards Sarath Lal and Kripesh as he sustained an injury in an attack by the deceased and others. A crime was also registered in this regard as crime No. 20 of 2019 of Bekal Police Station. Ext. P14 is the FIR in the said crime which would show that Peethambaran

sustained only fracture on his hand in the incident. According to the prosecution, the above incident led to the present incident. However, the learned counsel for the petitioners would contend that the incident in this case was organised and

executed by CPM leaders and without the assistance of the CPM leaders, this incident could not

have been planned and executed. Admittedly, the deceased persons were leaders of Youth Congress and -: 27 :- the accused persons were the leaders of CPM, which is the ruling party in Kerala. The FIR registered in this case would clearly show that the murder in this case was a political murder. It appears that the top CPM leaders in the District, namely, A12, A13 and A14 reached at Velutholi, immediately after the crime, for receiving accused Nos. 1 to 8, who took part in the twin murder. It

is stated in the report dated 10-4-2019 by the Investigating Officer that A1, A5, A6 and A7 were taken to the CPM party office at Velutholi after the incident and the other accused except Subheesh (A8) stayed at the house of A12. It is stated that on the next day evening, the said four accused persons were taken back from the party office to Velutholi. All the accused persons were leaders of CPM party. A12 to A14, who received A1 to A8

-: 28 :-

after the incident, were also leaders of CPM party. The learned Director General of Prosecution has submitted that any person can come to the party office at any time. In this case also, the above said accused came to the party office just like any other person. Since the party office is open to all persons, it cannot be said that the accused came to the party office only because the CPM party planned and executed the twin murder, is the submission of the learned Director General of Prosecution. However, it is not discernible as to why the local party leaders reached at Velutholi and took the accused to the party office after the incident if the twin murder was planned and executed by the first accused Peethambaran alone,

without the support of CPM party. This is a circumstance indicating that the contention of the -: 29 :- petitioners that the twin murder in this case was planned and executed not by the first accused alone, but by the CPM party, is probable.

23. The Apex Court in Sujatha Ravi Kiran @

Sujatasahu v. State of Kerala and Others [AIR 2016 SC 2277 : 2016 KHC 6344 relied on the decision of the Constitution Bench in State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others [2010 (1) KHC 841 : AIR 2010 SC 1476] and held that when the High Court after

considering the materials on record comes to a conclusion

that such materials do disclose a prima facie case calling for an investigation by CBI, an order directing CBI investigation will be justified. -: 30 :-

24. The Apex Court in Sivakumar E. v. Union of

India and others (AIR 2018 SC 2486 : 2018 KHC 6448) relied on the decision of the Apex Court in Dharam Pal v. State of Haryana and others [2016 KHC 6123 : AIR 2016 SC 618] and held that the court can direct investigation by CBI or some other investigating agency for the purpose of ensuring that there is fair investigation and a fair trial. If there is no fair investigation, there cannot have a fair trial.

25. The Constitution Bench in State of West Bengal (supra) held thus:-

> 45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under -: 31 :- Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

46. Before parting with the case, we deem it

> necessary to emphasise that despite wide powers conferred by Article 32 and Article 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 -: 32 :- 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 extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil 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 -: 33 :- the process lose its credibility and purpose with unsatisfactory investigations.

26. The Division Bench of this Court in State of Kerala and Others v. C.P. Mohammed and Others [2019

(4) KHC 359 (DB)] held that it is not in all cases where a

complainant is dissatisfied with the progress of an investigation that a CBI investigation will be directed by the High Court and the person complaining of an improper investigation will ordinarily be relegated to his alternate remedy of approaching the criminal court under the Code of Criminal Procedure.

27. The learned Director General of Prosecution

relied on the decision in Vinay Tyagi v. Irshad Ali @ Deepak and Others [(2013) 5 SCC 762] and submitted that in case the higher courts pass an order for fresh, -: 34 :-

de novo or re-investigation in a case relating to an offence for which the Investigating Agency has already filed a report in terms of Section 173 (2) of Cr.P.C., the court 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.

28. The extraordinary power for issuing a

mandamus for investigation by CBI must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice.

29. The Apex Court in Shivakumar E. (supra) held

that Constitution Court can direct for further investigation -: 35 :-

or investigation by some other investigating agency for the purpose of ensuring that there is fair investigation and fair trial. The fair trial may be quite difficult unless there is a fair investigation. It is the bounden duty of a court of law to uphold the truth and the truth means absence of deceit, absence of fraud and in a criminal investigation, a real and fair investigation, not an investigation that reveals itself as a sham one. The Apex Court further held in Sivakumar E (supra) that the stage of the case cannot be the governing factor for transfering the case for investigation to CBI. Thus, it is clear that even after filing the final report, once the

court finds that the investigation was not fair, the court can order a transfer of the investigation to the CBI.

30. The Apex Court in Mithilesh Kumar Singh v. -: 36 :- State of Rajasthan and Others [2015 KHC 5259 : 2015(9) SCC 795] held thus:

> The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent. -: 37 :-

31. The Full court in State of West Bengal (supra)

held thus in paragraph No.3:-

> Upon consideration of the affidavit filed in opposition by the State Government, the High Court felt that in the background of the case it had strong reservations about the impartiality and fairness in the investigation by the State police because of the political fallout, therefore, no useful purpose would be served in continuing with the investigation by the State Investigating Agency. Moreover, even if the investigation was conducted fairly and truthfully by the State Police, it would still be viewed with suspicion because of the allegation that all the assailants were members of the ruling party. Having regard to all these circumstances, the High Court deemed it appropriate to hand over the investigation into the said incident to the CBI.

32. In this case, the deceased persons were the leaders of Youth congress and the accused persons were the -: 38 :-

leaders of CPM, which is the ruling party in Kerala. The circumstances already pointed out by this Court would impel this Court to hold that the investigation in this case was sham. This court is satisfied that the charge- sheet filed on the strength of the said investigation cannot lead to a fair trial. All the accused persons were leaders of CPM,

which is the ruling party in Kerala. Therefore, the credibility and confidence of the petitioners in the investigation had been lost, particularly when the deceased persons were the leaders of congress party. There is also no allegation that the petitioners have any design behind the prayer for transfer of investigation to the CBI. Having gone through the relevant inputs, I am satisfied that the petitioners do not have any design behind the prayer for transfer of investigation to the CBI.

-: 39 :- Considering the facts and circumstances of the case, this court has strong reservations about the impartiality and fairness in the investigation by the State Police because of the political fallout.

33. Even though the learned counsel for the

petitioners had advanced other arguments also, I am not inclined to advert to the said arguments, as the above said materials are sufficient to hold that there was no fair investigation. Having gone through the relevant inputs, I am of the considered view that the materials on record would lead to a conclusion that such materials do disclose a primafacie case calling for an investigation by the CBI.

In the result, this Writ Petition stands allowed and the investigation in Crime No.75/CB/KNR &KSD/2019 of -: 40 :- Crime Branch, Kasaragod (Crime No. 81 of 2019 of Bekal Police Station) stands transferred to the Central Bureau of Investigation for investigation, setting aside the final report already filed. The Superintendent of Central Bureau of Investigation shall take over and continue the investigation forthwith, in accordance with law. The second respondent is directed to provide all support and facility to the Superintendent of Central Bureau of Investigation, Thiruvanantapuram, for facilitating proper and effective investigation.

Dated this the 30th day of September, 2019. Sd/-B.Sudheendra Kumar, Judge. ani/dl/stk /true copy/ -: 41 :- APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT 32(A): TRUE COPY OF THE STATEMENT OF KRISHNAN. EXHIBIT P1 TRUE COPY OF THE POST-MORTEM CERTIFICATE DATED 19.02.2019 OF KRIPESH ISSUED BY ACADEMY OF MEDICAL SCIENCE PARIYARAM. EXHIBIT P1 A TRUE COPY OF THE POST-MORTEM CERTIFICATE DATED 19.02.2019 OF SARATH LAL @ JOSHY ISSUED BY ACADEMY OF MEDICAL SCIENCE PARIYARAM. EXHIBIT P2 TRUE COPY OF THE STATEMENT DATED 17.02.2019 OF SREEKUMAR LODGED TO POLICE. EXHIBIT P2 A TRUE COPY OF THE F.I.R NO.81/2019 DATED 17.02.2019 OF BAKEL POLICE STATION. EXHIBIT P3 TRUE COPY OF THE ORDER DATED 21.02.2019 NO.E5-24499/2019 ISSUED BY SECOND RESPONDENT. EXHIBIT P4 TRUE COPY OF THE RE-REGISTERED F.I.R.0075/2019 DATED 21.02.2019 REGISTERED BY CRIME BRANCH. EXHIBIT P5 COPY OF THE NEWS REPORT PUBLISHED BY MALAYALA MANORAMA DATED 24.02.2019. EXHIBIT P5 A COPY OF THE NEWS REPORT DATED 21.02.2019 PUBLISHED BY THE HINDU DAILY. -: 42 :- EXHIBIT P5 B COPY OF THE NEWS REPORT PUBLISHED BY MALAYA MANORAMA DAILY DATED 21.02.2019. EXHIBIT P5 C COPY OF THE NEWS REPORT PUBLISHED BY MALAYA MANORAMA DAILY DATED 21.02.2019. EXHIBIT P5 D COPY OF THE NEW REPORT PUBLISHED BY MALAYA MANORAMA DAILY DATED 04.03.2019. EXHIBIT P5 E COPY OF THE NEWS REPORT PUBLISHED BY MALAYA MANORAMA DAILY DATED 04.03.2019. EXHIBIT P6 TRUE COPY OF THE ORDER NO.G1-113/19 CB- TR, DATED 24.02.2019 ISSUED BY SECOND RESPONDENT. EXHIBIT P7 COPY OF THE NEWS REPORT PUBLISHED BY THE MATHRUBHUMI DAILY DATED 24.02.2019. EXHIBIT P7 A COPY OF THE NEW REPORT PUBLISHED BY "MALABAR VARTHA" DAILY DATED 19.02.2019. EXHIBIT P8 NEWS REPORT PUBLISHED NEW INDIAN EXPRESS DAILY DATED 22.02.2019. EXHIBIT P8 A COPY OF THE NEWS REPORT PUBLISHED BY MATHRUBHUMI DAILY DATED 22.02.2019. EXHIBIT P8 B COPY OF THE NEWS REPORT PUBLISHED BY MATHRUBHUMI DAILY DATED 25.02.2019. EXHIBIT P9 TRUE COPY OF THE CUSTODY APPLICATION

DATED 20.03.2019 BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE NO.2, HOSDURG AND THE ORDER MADE THEREON.

EXHIBIT P10 TRUE COPY OF THE APPLICATION DATED 21.03.2019 FILED BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE COURT NO.2, HOSDURG. -: 43 :- EXHIBIT P10 A TRUE COPY OF THE ORDER NO.CMP. 330/2019 DATED 22.03.2019 BY THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE NO.2, HOSDURG. EXHIBIT P11 TRUE COPY OF THE COMPLAINT DATED 18.07.2018 MADE BY LATE KRIPESH TO THE SUPERINTENDENT OF POLICE, KASARAGOD. EXHIBIT P11 A TRUE COPY OF THE F.I.R.NO.417/2018 DATED 03.10.2018 OF BAKEL POLICE STATION. EXHIBIT P12 TRUE COPY OF THE RTI INFORMATION DATED 24.11.2017 ISSUED BY DISTRICT POLICE CHIEF, KANNUR. EXHIBIT P13 TRUE COPY OF THE REPRESENTATION DATED 07.03.2019 SENT TO RESPONDENT NO.1 AND 2. EXHIBIT P14 TRUE COPY OF THE FIR DT.5-1-2019 NO.20/2019 OF BAKEL POLICE STATION. EXHIBIT P15 TRUE COPY OF THE APPLICATION VIDE NO.CMP

NO.212/2019 DT.25-2-2019 FILED BY THE INVESTIGATION OFFICER BEFORE THE HON'BLE COURT OF JUDL.I CLASS MAGISTRATE II, HOSDURG SEEKING CUSTODY OF THE 1ST ACCUSED PEETHAMBARAN IN CIRME 81/2019 OF BAKEL POLICE STATION. EXHIBIT P16 TRUE COPY OF THE ORDER DT.20TH FEBRUARY 2019 MADE IN CMP NO.212/2019 OF JUDL.I CLASSMAGISTRATE II,HOSDURG. EXHIBIT P17 TRUE COPY OF THE REPORT DT NIL FILED BY THE INVESTIGATION OFFICER REGARDING THE INCORPORATION OF MR.SAJI.C.GEORGE AS 2ND ACCUSED IN CRIME 81/2019 OF BEKAL POLICE STATION. -: 44 :- EXHIBIT P18 TRUE COPY OF THE REPORT DT.212/2019 FILED BY THE INVESTIGATION OFFICER BEFORE THE COURT OF JUDL.I CLASS MAGISTRATE II, HOSDURG SEEKING CUSTODY OF A2. EXHIBIT P19 TRUE COPY OF THE ORDER DT.21ST FEBRUARY 2019 MADE IN CMP NO.218/2019 OF JUDL.I CLASS MAGISTRATE II, HOSDURG GRANTING CUSTODY OF A2. EXHIBIT P20 TRUE COPY OF REPORT 22-2-2019 FILED BY THE INVESTIGATION OFFICER BEFORE THE COURT OF JUDL.I CLASS MAGISTRATE II.HOSDURG SEEKING CUSTODY

OF A3,A4,A5,A6 AND A7. EXHIBIT P21 TRUE COPY OF REPORT 26-4-2019 FILED BY THE INVESTIGATION OFFICER REGARDING THE INCORPORATION OF MR.MANI ALAKKODE MANI ALIAS MANIKANTAN AS 12TH ACCUSED IN CRIME 81/2019 OF BEKAL POLICE STATION. EXHIBIT P22 TRUE COPY OF REPORT 30-4-2019 FILED BY THE INVESTIGATION OFFICER BEFORE THE COURT OF JUDL.I CLASS MAGISTRATE II.HOSDURG SEEKING CUSTODY OF A12. EXHIBIT P23 TRUE COPY OF REPORT 14-5-2019 FILED BY THE INVESTIGATION OFFICER BEFORE THE COURT OF JUDL.I CLASS MAGISTRATE II.HOSDURG SEEKING CUSTODY OF A13 AND A14.

EXHIBIT P24 CERTIFIED COPY OF THE CHARGE SHEET DATEDEXHIBIT

DATED 20/02/2019. EXHIBIT P27 CERTIFIED COPY OF THE SEIZURE MAHAZAR DATED 21/02/2019. -: 45 :- EXHIBIT P28 CERTIFIED COPY OF THE SEIZURE MAHAZAR DATED 22/02/2019. EXHIBIT P29 CERTIFIED COPY OF THE STATEMENT OF CW 198 DR.GOPALAKRISHNA PILLAI. EXHIBIT P30 TRUE COPY OF THE REMAND REPORT OF A8 SUBEESH. EXHIBIT P31 A TRUE COPY OF THE CONFESSION STATEMENT OF A9 MURALI. EXHIBIT P32 TRUE COPY OF THE STATEMENT OF HARI @ HARIPRASAD S/O.MADHAVAN NAIR RECORDED UNDER SECTION 161 OF CR.PC. Ext. P 32 (a) True copy of the statement of Krishnan EXHIBIT P33: TRUE COPY OF THE 161 STATEMENT OF CW97 KUNJIRAMAN. EXHIBIT P34: TRUE COPY OF THE 161 STATEMENT OF CW 149.

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