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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 103 OF 2009

HIMANSHU KUMAR AND OTHERS ...Petitioner (s)

Versus

STATE OF CHHATTISGARH AND OTHERS ...Respondent(s)

J U D G M E N T

J.B. PARDIWALA, J. :

1. This writ petition under Article 32 of the Constitution of India relates to the alleged massacre that took place on 17th September 2009 and 1st October 2009 respectively in the villages of Gachhanpalli, Gompad and Belpocha respectively situated in the district of Dantewada, State of Chhattisgarh.

2. It is the case of the writ petitioners that the Chhattisgarh Police, Special Police Officers (SPOs), the activists of Salwa Judum (group of vigilantes sponsored by the Chhattisgarh Government) and the Paramilitary Forces consisting of the CRPF

and the CoBRA Battalions are responsible for the alleged brutal massacre of the tribals in the respective villages referred to above.

3. In the aforesaid context, the writ petitioners have prayed for the following reliefs :

> *"(a) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents to have the CBI take over the investigation and prosecution with respect to the complaints made by the petitioners and others with respect to the massacres that took place on 17.9.2009 and 1.10.2009 as set out in this petition;*
>
> *(b) Pass an order directing the payment of compensation to the victims and their families for the extra judicial executions, for the looting of their properties, for the burning of their houses and other losses suffered by the victims on account of the unlawful activities of the respondents and their agents;*
>
> *(c) Pass any such further order or orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances stated herein above."*

4. By way of the Criminal M.P. No. 3173 of 2010, further reliefs have been prayed for as under :

> *"(a) Order directing the State of Chhattisgarh to constitute and notify a Special Investigation Team (SIT) headed by Shri Sankar Sen (IPS) Dr.K.S.Subramanian, IPS and Mr.Rajneesh Rai, DIG and such other officers as the SIT may deem necessary with additional directions for the proper functioning of the SIT as given by the Supreme Court in the case of NHRC vs. State of Gujarat (2009) 6 SCC 342, 767).*
>
> *(b) Order directing the State of Chhattisgarh to*

produce Petitioners 2-12 at Delhi and hand them over to Dr.Mohini Giri, Chairperson, Guild for Services, 'Shubham', C-25, Qutab Institutional Area, New Delhi;

(c) Order permitting the petitioner no.1 and the advocates for the petitioner no.1 along with their interpreters to meet the petitioners 2-12 at the Guild for Services, New Delhi in the presence of Dr.Mohini Giri;

(d) Order requesting Dr.Mohini Giri, Chairperson, Guild for Services, New Delhi, to interview the petitioners and make a report to this Court."

5. The facts giving rise to the present writ petition may be summarised as under :

6. The writ petitioner no.1, namely Himanshu Kumar, claims himself to be running an NGO in the name of Vanvasi Chetna Ashram, Kanwalnar – Dantewada Chhattisgarh. He claims to be running an NGO for the welfare and development of the tribals residing in the Bastar region. He also claims to be rendering help to the other tribals of the Dantewada district of Chhattisgarh.

7. The writ petitioners nos. 2 to 13 respectively are the kith and kin of the victims of the alleged massacre.

8. It is the case of the petitioner no.1 that after the two horrifying incidents referred to above, the tribals are in a state of shock. They constantly remain under the fear of being killed by the Special Forces referred to above.

9. It is his case that with a view to help the tribals and seek justice for them, he took up the cause and thought fit to prefer

the present writ petition seeking an investigation into the alleged massacre through the Central Bureau of Investigation (CBI) and an appropriate compensation to be paid to the victims and their families.

10. It is the case of the petitioner no.1 that he helped the tribals to lodge their respective complaints as regards the alleged mass killings that took place on 17th September 2009 and 1st October 2009 respectively.

11. According to the petitioner no.1, the tongue and other parts of the body, such as, the upper limbs, lower limbs, etc. of the family members of the petitioners nos.2 to 13 respectively were chopped off by the security force. It is alleged that the security forces did not spare even the infants. It is also alleged that the breast of a 70-year-old tribal woman were chopped off and was stabbed to death by the members of the police forces. It is also alleged that a 2-year-old infant was brutally murdered. The houses of the tribals were burnt. Money and properties were looted.

12. It has been further pointed out that on 8th January 2009, 19 people were killed by the above referred forces at the village Singaram, Tehsil Konta, District Dantewada.

13. On 18th March 2008, 3 tribals were killed at Matwada, Salwa Judum Camp, District Bijapur, by the Chhattisgarh Police

and SPOs.

14. It has been pointed out that with respect to the aforesaid two incidents, the matter was taken up by the National Human Rights Commission.

15. It is the case of the petitioner no.1 that as the Special Forces and the State of Chhattisgarh itself are involved in the alleged brutal massacre of the tribals, the investigation of all the complaints should be at the instance of none other than the CBI.

16. In the memorandum of the writ petition, the information as regards the relationship between the petitioners nos.2 to 13 respectively and the deceased has been furnished as under :

Petitioner No.	Relation with the deceased	Village of the deceased	Name of deceased	Date of Killings
2 Soyam Rama	Paternal Uncle Paternal Aunt Niece Niece Nephew	Gompad Gompad Gompad Gompad Gompad	Madvi Bajaar Madvi Subi Ku. Madvi Mutti Smt Kartam Kunni Madvi Enka	01.10.09 01.10.09 01.10.09 01.10.09 01.10.09
3 Shri Kunjam Hidma	Son	Belpocha	Kunjam Hurra	01.10.09
4 Shri Madavi Hidma	Brother	Gachhanpalli	Madvi Hadma	17.09.09
5 Shri Madavi Sukda	Son	Gachhanpalli	Madvi Deva	17.09.09
6 Shri Madavi Pojja	Aunt	Gachhanpalli	Dudhi Moye	17.09.09

7 Shri Soyam Dulla	Son	Gompad	Soyam Subba	01.10.09
8 Smt. Muchaki Sukdi	Husband	Nulkatong	Muchaki Mukka	01.10.09
9 Madavi Hurre	Sister	Gachhanpalli	Dudhi Moye	17.09.09
10 Shri Madavi Raja	Father	Gachhanpalli	Madvi Dora	17.09.09
11 Smt.Madkam Muke	Husband	Gachhanpalli	Madkam Chula	17.09.09
12 Shri Kowasi Kosa	Father	Gachhanpalli	Kowasi Ganga	17.09.09
13 Sodhi Sambo	Himself	Gompad	Petitioner No.13 Himself (injured for shooting)	01.10.09

17. The details of the alleged killings on different dates have also been furnished in the memorandum of the writ petition. However, we may not verbatim reproduce the same in our order.

18. The details on the First Information Reports are as under :

Sl. No.	FIR No., Date, PS, Sections	Complainant(s)	Accused	Gist of allegations	Gist of Final Report	Present Status
1	2	3	4	5	6	7
01	PS-Bhejji Dt. - 18.09.2009 Crime No. 04/2009 Sec.- 147, 148, 149, 307 IPC, 25, 27 Arms Act.	Shri Ravindra Singh, Assistant Commndt. 201 Cobra Bn.	Unknown Maoist Cadres and Sangam Members.	On information about the presence of Naxal cadres, an anti naxal operation was launched on 16.9.2009 from PS Bhejji towards Gachchanpalli,	According to the Investigating Officer, even after a long search, no accused were found and on no possibility of finding the accused in near future, the	The closure report was accepted on 26.10.2010 by the learned Chief Judicial Magistrate, Dantewada.

				Aitrajpad and Entapad by the Security forces. The Maoists made an attempt to kill the Sfs by Gun-fire, failing so, ran away burning their hideouts.	closure report was forwarded on 20.10.2010 to the learned CJM, Dantewada having jurisdiction.	
02	PS-Chintagufa Dt. - 20.09.2009 Crime No. 10/2009 Sec.- 307, 395, 397, 147, 148, 149, 302 IPC, 25, 27 Arms Act, 3, 4 Explosive Subs. Act.	Shri Premprakash Awadhiya, Sub Inspector PS. - Sukma	Unknown Uniformed female and male naxalites about 200-300 in number.	On 16.09.2009, the police party left for Singanmadgu for Anti Naxal operation from police station Chintagufa. On the morning of 17.09.2009, when the party reached the dense forests of Singanmadgu, the camp of Naxalites was seen from where some weapons and other items were recovered. Ahead of that, further, there was an EoF of SFs with Maoists, where a dead body of a Maoists was recovered. There after a while 200-300 unknown Naxalites again cordoned the police party and attacked the Security forces, in which Assistant Commandant Shriram Manoranjan, Assistant Commandant Shri Rakesh Kumar Chaurasiya, Sub Inspector Shri Sushil Kumar Varma, Head Constable Lalit Kumar, Constable Manoharlal Chandra and Constable Uday Kumar Yadav of CoBRA company were martyred and four others – Constable Satpal, Constable Harish Thakur,	According to the Investigating Officer, even after a long search, no accused were found and on no possibility of finding the accused in near future, the closure report was forwarded on 20.10.2010 to the learned CJM, Dantewada having jurisdiction.	The closure report was accepted on 26.10.2010 by the learned Chief Judicial Magistrate, Dantewada.

				Constable Kamalvoshe and Constable Mohammad Husain Quraishi were of CoBRA company also injured.		
03.	PS-Bhejji Dt. - 25.11.2009 Crime No. 05/2009 Sec.- 147, 148, 149, 307 IPC, 25, 27 Arms Act.	Shri Matram Bariha, Head Constable – 156 PS. - Bhejji	Unknown Uniformed Naxalites in large numbers.	On the information of increased Maoist activities and presence of hideout camps of armed Naxalites in Gompad village PS Bhejji, three teams of CoBRA 201 Bn. Departed on an anti Naxal operation on 30.09.2009 from injram. On 01.10.2009 this combined party was attacked in form an ambush by Naxalites in Gompad with objectives of killing the SFs.	According to the Investigating Officer, even after a long search, no accused were found and on no possibility of finding the accused in near future, the closure report was forwarded on 20.10.2010 to the learned CJM, Dantewada having jurisdiction.	The closure report was accepted on 26.10.2010 by the learned Chief Judicial Magistrate, Dantewada.
04.	PS-Bhejji Dt. - 08.01.2010 Crime No. 01/2010 Sec.- 396, 397 IPC, 25, 27 Arms Act.	Shri Soyam Rama Add. - Gompad	Unknown Armed Uniformed persons 20-25. Absconding accused - 1-Venktesh s/o Unknown 2-Rajesh alias Joga s/o Unknown 3-Vijay alias Ekanna 4-Savitri Bai w/o Unknown 5-Manila w/o Unknown 6-Bhima s/o Unknown 7-Jayram s/o Unknown 8-Samita w/o Chandrana 9-Bhaskar alias Rajesh s/o Venkteswerlu 10-Kavita d/o Jayram	On 08.01.2010 on information of applicant Soyam Rama s/o Soyam Kanna resident Gompad village, a FIR-01/2010 under sec.396, 397 IPC, 25, 27 Arms Act was registered in PS Bhejji and taken into investigation against unknown Naxalites causing murder of 7 deceased named – Madvi Bazar, Madvi Subbi, Madvi Mutti, Kattam Kanni, Madvi Enka, Soyam Subba and Soyam Jogi.	Charge sheet filed on 09.09.2010 against 10 named absconding accused u/sec. 396, 397 IPC, 25, 27 Arms Act.	Permanent Non-Bailable Warrant has been issued against the accused by the Hon'ble Judicial Magistrate First Class (JMFC) Konta.
05.	PS-Bhejji Dt. - 21.02.2010 Crime No. 06/2010 Sec.- 147, 148, 149, 302 IPC, 25, 27	Shri Maadvi Hadma Add.- Gachchanpalli village.	20-25 Unknown Uniformed person carrying gun and banda.	On 21.02.2010 on report of applicant Madvi Hadma resident of Gachchanpalli FIR No.-06/2010 under sections – 147, 148, 149,	Charge sheet filed on 09.09.2010 against 10 named absconding accused u/sec. 147, 148, 149,	Permanent Non-Bailable Warrant has been issued against the accused by the Hon'ble Judicial

	Arms Act.			302 IPC & 25, 27 Arms Act was registered at PS-Bhejji against unknown Naxalites for murder of Madvi Hidma, Madvi Joga, Kawasi Ganga, Madkami Chula & Dudhi Muye.	302 IPC, 25, 27 Arms Act.	Magistrate First Class (JMFC) Konta.
06.	PS-Bhejji Dt. - 22.02.2010 Crime No. 07/2010 Sec.- 147, 148, 149, 302 IPC, 25, 27 Arms Act.	Shri Komram Lachcha Add.- Chintagufa	Unknown number of 20-30 persons holding gun in uniform. Absconding accused - 1-Venktesh s/o Unknown 2-Rajesh alias Joga s/o Unknown 3-Vijay alias Ekanna 4-Savitri Bai w/o Unknown 5-Manila w/o Unknown 6-Bhima s/o Unknown 7-Jayram s/o Unknown 8-Samita w/o Chandrana 9-Bhaskar alias Rajesh s/o Venkteswerlu 10-Kavita d/o Jayram	On 21.02.2010 on report of applicant Madvi Hadma resident of Gachchanpalli FIR No.-06/2010 under sections – 147, 148, 149, 302 IPC & 25, 27 Arms Act was registered at PS-Bhejji against unknown Naxalites for murder of Madvi Hidma, Madvi Joga, Kawasi Ganga, Madkami Chula & Dudhi Muye.	Charge sheet filed on 09.09.2010 against 10 named absconding accused u/sec. 147, 148, 149, 302 IPC, 25, 27 Arms Act.	Permanent Non-Bailable Warrant has been issued against the accused by the Hon'ble Judicial Magistrate First Class (JMFC) Konta.

19. It is the case of the petitioners that after the registration of the FIRs referred to above, no action has been taken by the police. No one came to be arrested. No proper investigation has been undertaken. Not a single statement of any of the eye-witnesses has been recorded. In such circumstances referred to above, the writ petitioners are here before this Court with the present writ petition seeking relief of investigation of all the FIRs through the CBI. The petitioners also seek compensation from

the Government for the alleged atrocities and massacre.

STANCE OF THE STATE OF CHHATTISGARH :

20. The State of Chhattisgarh has refuted all the allegations levelled in the memorandum of the writ petition by filing counter-affidavit duly affirmed through one Shri Vimal Kumar Bais, Deputy Superintendent of Police, Headquarter – Dantewada, Chhattisgarh, dated 4th February 2010. The affidavit minutely deals with all the incidents referred to by the petitioners in the memorandum of the writ petition. We quote the same as under :

> *"5. That the State of Chhattisgarh is facing menace of Naxalism which has been termed as a number one security threat to nation's integrity and sovereignty by the Hon'ble Prime Minister of India. The State Police with help of paramilitary forces have to tackle the Naxalism and most of the organizations concerning Naxalite movements have also been banned. The State of Chhattisgarh has lost precious life of its personnel while defending the State. In last two years, the security personnel who are killed by Naxalite in the State of Chhattisgarh would be in the range of 300. In the District of Dantewada alone, sixty-five police personnel have died. The State of Chhattisgarh has also stated in its earlier affidavit that these writ petitions are filed by Naxal sympathizers. In fact, the State of Chhattisgarh verily believes that mountains of complaints are filed so as to detract the police personnel from tackling the menace of Naxalism. The police personnel have lost their lives while combating the menace of Naxalite activities. A cavalcade of entire police personnel was ambushed in which even one S.P. died.*

PARAWISE REPLY :

1. The contents of paragraph No.1 of the writ petition are denied and the attack on the police party by the Naxalites have been sought to be given the connotation of 'massacre'. The State of Chhattisgarh have explained the three incidents of 17.09.09 and 01.10.09 with Naxalites in detail in the subsequent paragraphs. The word 'massacre' is being used in a cursory manner without revealing the true nature of the incidents on 17.09.2009 and 01.10.2009.

RE : INCIDENT OF 17.09.09 [GACHANPALLI] :

A team of CoBRA Battalion along with other police officials started off for village Gachanpalli at around 07:45 PM on 16.09.2009, when the police party reached village Gachanpalli and cordoned off the Naxal camp and at around 5.30 AM, the Naxalite opened fire indiscriminately. The police had no option but to retaliate in self defence. However even after ceasefire, 150-200 Naxalites were able to retreat into dense forest. Several arms and ammunitions were recovered from Naxals including Naxal uniforms. At present, it is registered as Crime No.4/09 under Sec. 147, 148, 149, 307, I.P.C. and 25/27 Arms Act at P.S. Bhejji of Gachanpalli and the investigation is carried on by the CID.

RE : INCIDENT OF 17.09.09 VILLAGE - SINGANPALLI :

The Police Force headed by Devnath Sonkunwar started off for Singanmadgu and while patrolling on 16.09.2009, they found a Naxal Camp in the jungle of Singanmadgu in the early hours of morning. There was incessant firing from 200-300 uniformed Naxalites. The police had to opened fire in his self defence. It would be relevant to mention that many police personnel including Kobra AC Manoranjan Singh, AC Shri Rakesh Chaurasiya, Shri Uday Kumar Yadav were shot dead. Thus precious lives of police personnel were lost in the cross-fire and the firing continued till 08:00 PM on 18.09.2009. Further

enforcement of police personnel were also sought. An FIR No.10/2009 was also registered by P.S. Chintagupha on 20.09.2009. The case was later on shifted to C.I.D. for further investigation in accordance with the recommendations of the NHRC in Nandini Sunder's case. One dead body of Madavi Deva was identified who died during the cross fire between the Naxalites and the Police.

It would be relevant to mention that S.P. Office have received complaints of Madavi Hidma S/o Madavi Kosa, Kawasi Kosa son of late Kawasi Ganga, Madkam Muke wife of Markam Chula, Madavi Raza son of Madavi Joga, all belonging to Gachanpalli. The nature of complaints is full of suspicion because all the complaints are in same format and typed in same manner, giving arise to suspicion that certain organizations sympathetic to Naxalites or Naxalite-oriented organizations are behind the lodging of such complaints. These complaints are being investigated and veracity of those complaints are doubtful as they are in fixed format and typed in same manner. In any way, on 10.12.2009 even a visit was made to Gachanpalli to record the statements of Complainants. However no Complainants were found on 10.12.2009 as the Naxalites persuaded the Complainants to not to cooperate with the police. Now the Additional S.P. Dantewada has been entrusted with the job of completing the Investigation in a speedy manner.

<u>RE: INCIDENT OF 01.10.2009 [GOMPAD INCIDENT]</u> :

A team of security forces consisting of COBRA, local police and SPOs had started off on 30.09.2009 for Gompad village on the information of a naxal camp being run near village. When police party was about to reach the village at 06:30 AM on 01.10.2009, it came under heavy fire by Naxalites. The attack was repulsed and place was searched. Police did not find anybody. Afterwards the village was also searched but everyone fled away. The above incident is being investigated by Bhejji PS after registration of FIR No.05/09 under Sec.147, 148, 149, 307 IPC and 25, 27 Arms Act. The case has been transferred to CID for investigation.

The SP office received complaints of Soyam Dula son of late Soyam Dula, Soyam Rama son of late Soyam Kanna, Mrs. Sodi Sambo wife of Sodi Badra, all belonging to Gompad village, all of them desirous of registration of crime against security forces for alleged killing of their relatives. The reason for holding further investigation in the manner is because the complaints are filed after much delay of the alleged crime and secondly, all the complaints are in a fixed format and typed in same manner giving rise to suspicion that those complaints have been engineered by Naxals frontal organizations to derail the investigation.

It is also a moot point to note that during the course of investigation, S.D.O.P. Konta and his team had visited the alleged Complainants but those Complainants were untraceable. The State of Chhattisgarh is of the firm belief that those Complainants are only working at the behest of Naxalites and are even under threat of Naxalites. The State of Chhattisgarh thought that since petitioner No. 1 is in active contact with complainants and has even chosen to file writ petition before this Hon'ble Court, it would be advisable that petitioner No. 1 himself comes forth with all the complainants to expedite the investigations. However this request of police, to cooperate in the investigation, is being adversely commented upon by the petitioner No. 1 before this Hon'ble Court.

Crime No. 05/2009 under Sec. 147, 148, 149, 307 IPC and Sec.27/27 of Arms Act has been registered on the report of Security Forces whereas Crime No. 01/2010 under Sec. 396, 397 IPC has been registered in this regard as per the enquiry based on application made by Soyam Rama. The case is now investigated by C.I.D. in accordance with the recommendation of NHRC in Nandini Sunder's case.

2. The contents of paragraph No.2 of the writ petition are vehemently denied. It would be evident that the aforesaid two incidents of 17.09.2009 and one incident of 01.10.2009 have also brought untold misery and deprivation of police personnel and several police personnel have lost their lives. The contents of paragraph No.2 about alleged massacre is

completely misleading and truth of the matter is mat petitioner No.1 after the Naxalite incident has instigated villagers to lodge complaints. It is denied that a woman had her breast cut-off and two year old infant was brutally murdered. Similarly it is also denied that blind man of 70 years old was executed.

3. & 4. The contents of paragraphs No.3 & 4 of the writ petition are denied as long as they pertain to the incidents of 17.09.2009 and 01.10.2009. The FIR relating to the incidents of 17.09.2009 and that of 01.10.2009 have already been transferred to C.I.D. in accordance with the NHRC recommendations in Nandini Sunder's Case. The State of Chhattisgarh would follow the NHRC recommendation regarding the incidents of 17.09.2009 and 01.10.2009 and transfer of case to the CBI is completely unwarranted. In any case, whether a matter could be transferred to CBI or not is pending before the Constitution Bench of this Hon'ble Court and the judgement is still awaited.

5. In response to the contents of paragraph No.5 of the writ petition, it is stated that writ petitions concerning incidents dated 18.03.2008 at District Bijapur and 08.01.2009 at District Dantewada are already pending before the Hon'ble High Court as Writ Petition Nos.211/2008 & 363/2009 respectively. The Hon'ble High Court of Chhattisgarh is in seisen of the matter and the deponent has already traversed the pleadings before the Chhattisgarh High Court.

6. The contents of paragraph No.6 of the writ petition are denied for want of knowledge.

7. In response to the contents of paragraph No.7 of the writ petition, it is submitted that incident of 17.01.2009 is already explained in the preceding paragraphs and therefore it requires no further reply. The facts have been completely distorted and are stated in false manner. It has already been stated that Madavi Deva was the uniformed Naxalite whose body found from the site while the incident on 17.09.09 at Singampali. As regards case of burning in hot oil of Muchaki Deva, though no complaint has been made to police. It is only found in a press release dated 30.10.2009 of the fact finding team of PUCL

(Chhattisgarh), PUDR (Delhi, Vanvasi Chetna Ashram (Dantewada), Human Rights Law Network (Chhatisgarh), Action Aid (Orissa), Manna Adhikar (Malkangiri) and Zilla Adhivasi Ekta Sangh (Malkangiri), that Muchaki Deva has been taken to Bhadrachalam by members of the fact finding team. However this entire allegation of burning in hot oil is turned out to be a totally concocted story as evident from the article published in Hindustan Times in which doctors of Bhadrachalam have denied to have seen such a burn case at all. As far as the allegation of certain persons being 'tied' and paraded Is concerned, it is maintained that when security forces reached to the village Gachanpalli, after repulsing the attack, no one was found and everybody had fled to the jungle. It is the Naxalites who are unleashing terror and the blame is put on the State. It is reiterated that the entire efforts seems to eulogize the Naxalite movement and to bring every effort to curtail Naxalism in poor light.

The incident of 01.10.2009 has been explained in detail in the preceding paragraphs and the facts stated in the paragraph under Reply are totally distorted and far from truth.

As regards allegation of 8 arrested and two missing, it could be said that an FIR No.27/2009 dated 02.10.2009, P.S. Konta, has been registered which is relatable to attack by Naxalites on security forces in the jungle of Nulkatong on 01.10.2009. In above incident, two dead bodies were recovered and eight people had been arrested. The two dead bodies were brought to P.S. Konta and inquest by Executive Magistrate and post-mortem report was made as per provisions of law.

The alleged killings at Chintagufa (the other one than that of Siganpalli) came to the knowledge to the State of Chhattisgarh only after the receipt of this writ petition and same is being investigated upon.

The recognition of Panda Soma and Ganga of Asarguda village are completely misplaced. It is reiterated that no person by the name of Ganga of Asarguda village have been SPO in police record of

Dantewada. Panda Soma was killed in blast by Naxalites on 06.05.2009 and there is also a death certificate to that effect. Thus the presence of Panda Soma on 01.10.2009 is completely falsified. The allegations of looting, burning of houses, harassment & torture by the security forces are also denied vehemently.

8. The contents of paragraph No.8 of the writ petition are denied. There have been no extra judicial killings and in fact several police personnel have also lost their lives. The Petitioners No.2 to 13 may not like go to the police station but they can certainly go to Magistrate for registration of FIR under Section 156(3) of the Code of Criminal Procedure. The judicial system even at the grass-root level is independent and would be in position to monitor the investigation in an effective manner.

9. & Ors. In response to the contents of paragraphs No.9, 11, 12, 13, 14, 15, 17, 18, 19, 20 and 21 of the writ petition, it is submitted that the complaint are under investigation and the stories are more in the nature of 'make-believe'. The true incident has already been narrated in the preceding paragraph. The Complainants have not been found whenever the places of their residence is visited by the investigating authorities. The S.P., Dantewada, made a request to the petitioner No.1 to furnish the details of Complainants or produce the Complainants themselves so that further investigation could take place. However petitioner No.1 has taken umbrage, which would be evident from the pleadings before this Hon'ble Court. In fact, the police is not getting any assistance from the petitioner No.1 who claims to be representatives of petitioners No.2 to 13.

10. In response to the complaint filed by Kunjan Hidma as mentioned in the contents of paragraph No.10 of the writ petition, an enquiry was instituted and enquiry report has been submitted by S.D.O.P. Konta. It has been stated that nobody was found by the police personnel when they visited village Belpocha on 07.12.2009. It is relevant to mention that village Belpocha is situated only 14 kms from P.S. Konta but the Complainant did not report the matter

at P.S. Konta.

It is strange that killing of his son Kunjam Hurra was not reported to the police, even though the village Dhondhara is situated nearby. The village men of Dhondhara Sarpanch Markam Krishana, former Sarpanch Markam Sitaram, Punam Naraiya were interrogated about the alleged incident. They refused to have any knowledge about the incident. Thus no evidence was found and the complaint was found to be false after discreet enquiry.

16. In response to the contents of paragraph No.16 of the writ petition, it is submitted that an enquiry report was submitted by S.D.O.P., Konta in which it is stated that S.D.O.P. Konta tried to contact the Complainant at village Nulkatong on 09.11.2009 but no one was found in the village. It is relevant to mention that the two dead bodies of unknown naxals were brought to P.S. Konta and an inquest was also prepared by the Executive Magistrate. Nobody had turned up for identification of dead bodies for almost three days. An FIR No.27/2009 under Sec.147, 148, 149, 307 IPC read with Sec.25 & 27 of Arms Act have been registered at P.S. Konta. Now the Addl. S.P. Dantewada has been given charge to hold the enquiry in speedy manner.

22. The contents of paragraph No.22 of the writ petition are denied. It is respectfully submitted that the villagers are living in state of fear from Naxalites and not from the State.

23. The contents of paragraph No.23 of the writ petition are vehementiy denied. The State of Chhattisgarh believes that story of hot boil is not seriously believed even by the petitioner No.1 and is a fiction.

24. The contents of paragraph No.24 of the writ petition are denied. Certain matters are subjudice before Hon'ble High Court of Chhattisgarh at Bilaspur while in others the Complainants have not come forward and did not cooperate in the investigation. The State of Chhattisgarh is committed to register an FIR and even hold investigation provided the

Complainants cooperate in the investigation process. In any case at the F.I.R.s concerning incidents of 17.09.09 and 01.10.09 have been duly registered and investigations are going on.

25. to 27. The contents of paragraphs No.25 & 26 of the writ petition are denied and this subject matter is already part of the writ petition filed before Hon'ble High Court of Chhattisgarh.

28.1 The contents of paragraph No.28.1 of the writ petition are denied and incidents of 17.01.2009 and 01.10.2009 have already been dealt with in the preceding paragraphs.

28.2 & 28.3 The contents of paragraph No.28.2 of the writ petition are vehemently denied. The FIRs have been registered and an investigation has been transferred to the C.I.D. in accordance with the recommendations of the NHRC in Nandani Sunder's case. It is also settled proposition of law that there may not be more than one FIR regarding the same incident and once an FIR is registered, then the subsequent complaints about the same incident would be termed as statements under Sec.161 of the Code of Criminal Procedure. Even if the second FIR is registered about the same incident, it would have little effect on the overall investigation of the case. The State of Chhattisgarh is cognizant of the complaints and has even stated to the petitioner No.1 herein to come forward with the Complainants so that there statements could be recorded and investigation is duly completed. The State of Chhattisgarh reiterates that if the Complainants or the Petitioners come forward then the State would readily record their statements and even register separate FIRs apart from the FIRs registered by the Police so far.

28.4 The contents of paragraph No.28.4 of the writ petition are denied because the investigation is done in the proper manner and there is no apparent irregularity or omission in the investigation which would warrant investigation by the CBI. In any case, whether an investigation could be made by CBI at the direction of the Hon'ble Court is pending consideration before the Constitution Bench.

28.5 The contents of paragraph No.28.5 of the writ petition are vehemently denied. The police has duly registered the FIRs and investigation is conducted in accordance with the NHRC recommendations in Nandini Sunder's case. It is the Naxals who have attacked the posse of policemen and this allegation of 'massacre' is invoked for misleading this Hon'ble Court.

28.6 The contents of paragraph No.28.6 of the writ petition are denied. The Complainants are in touch with the petitioner No.1 and the State of Chhattisgarh reiterates that if the Complainants come forward then their statements shall be recorded and investigation shall be done accordingly. However the Complainants have played truant. Normally one FIR is registered for one incident and subsequent complaints are recorded as statements under Sec.161 of the Code of Criminal Procedure and investigation takes place accordingly. Even if a formal separate FIR is registered, the Complainants and some of the Petitioners shall have to come forward to cooperate with the investigation.

28.7 The contents of paragraph No.28.7 of the writ petition are vague and hence denied.

28.8 The contents of paragraph No.28.8 of the writ petition are denied. It is respectfully submitted that word 'massacre' is misnomer. The State has not violated Articles 14, 19 and 21 of the Constitution of India."

21. We take notice of the fact that an affidavit-in-rejoinder has been filed, duly affirmed by the petitioner no.1, to the aforesaid reply filed by the State of Chhattisgarh. In the rejoinder, the petitioner no.1 has once again reiterated what has been stated in the writ petition.

CoBRA 201 BATTALION :

22. An affidavit-in-reply has also been filed on behalf of the respondent no. 3, duly affirmed by one Shri Dilip Kumar Kotia (201 CoBRA Bn. - SAF). Few relevant averments made in the reply are as under :

> *"7(1)Regarding Gachanpalli murders: No civilian was killed or injured by the CoBRA/SAF troops. The killing of 02 years old child and 01 blind man of 70 years are denied. However, it is the known fact that naxalites often use civilians as human shield. It is further submitted that the CoBRA troops fired on provocation of naxalites in self defence and to defend themselves at Gachanpalli on 17/09/09 when they were ambushed by the naxalites. Hence, the probability of naxalities themselves indulging in these acts of terrorizing the locals to coerce them to join their naxal movement can not be ruled out.*
>
> *(2) Regarding the case of Madvi Deva: The troops of CoBRA 201 Bn did not carry out operation in village Singhanaplli on 17/09/09. It is submitted that one of the naxalites who was wearing a black naxal uniform and carrying a muzzle loaded gun was killed in an encounter with the CoBRA/SAF Bn at the time of unearthing of naxalite gun factory at Singhanmadugu. His dead body was later on brought to PS Chintagufa Distt. Dantewada for post mortem and further legal action. FIR No. 10/2009 dated 20/9/2009 u/s 307, 395, 397 of IPC, Sections 25/27 Arms Act and Sections 3,4 of Explosives Act was also lodged with PS Chintagufa (Dantewada) about the incident. It is to mention here that if the said person was Madavi Deva of Singhanpalli village then he was definitely a naxalite and not an innocent civilian. It is further mentioned here that during the course of unearthing the Arms factory of naxalites and returning back our troops were ambushed by the naxalites near village Singhanmadugu where 06 brave commandos of CoBRA/SAF have lost their precious lives and body of*

those martyrs recovered only on 19/09/09 morning. The troops of CoBRA/SAF had no option except to retaliate which lasted for about one and a half hour.

(3) Regarding Burnt in hot oil: The troops of CoBRA Bn./CRPF had neither conducted any operation at village Ondherpara nor committed any act as alleged. Hence, the allegation against this Force is totally false and frivolous.

(4) Regarding Tying and parading: The allegation against the Force personnel is totally false as no person was apprehended or arrested during the operation.

(5) Regarding Force displacement and terror: There are frequent reports of murder and torture of innocent people by naxalite cadres to terrorize the masses in the name Maoist ideology and it has also been informed by intelligence sources that naxalites are seen in security force uniforms in this region. Hence, the probability of naxalites themselves having indulged in these acts of terrorizing the tribals to coerce to support and join their naxal movement cannot be ruled out. It seems to be parts of naxals psychological war fare against the security forces with intention to stall and jeopardize the ongoing operations against them in their strong hold areas.

(6) Regarding Gompada 'encounter' dated 1/10/09: On the basis of intelligence received from sources regarding presence of naxalites in the village of Gompad under the jurisdiction of PS Bheji on dated 30/09/09 special joint operation was planned involving party of SAF 201 Bn., Civil Police and SPOs. The party was given task to carry out cordon and search at Gompad Village. The troops were carrying man pack (bag containing various items of troops) and all the other logistic and administrative support items sufficient for 03 days duration. Accordingly, CoBRA/SAF troops comprising AC-02, SOs-04, Other Ranks-66, HC/RO-02 under the command of Shri Ravindra Singh Shekhawat, Asstt. Comdt. alongwith one ASI of civil police, 08 constable of civil police and 21 SPOs left from the base camp of PS Bheji on

30/09/09. When CoBRA/SAF troops were about 01 Km short of village Gompad at about 0630 hrs on 01/10/09 naxalites ambushed the troops and opened heavy fire. CoBRA/SAF troops had no other option and were forced to retaliate the fire which lasted for about 20 minutes and naxalites fled away from the ambush site. When the naxalites were fleeing they were seen carrying their injured colleagues. After the naxalites fled away, the area was thoroughly searched by our troops and Hand grenade-02, Tiffin bomb-01, Solar panel-01, fired case of 7.62 x 51 mm carts-03, Detonator-02, Cap-01 were recovered from the ambush site which were left by naxalites in hurry while fleeing the site. Troops moved further and searched village Gompad where no villager was found. Then our troops returned back. However it is submitted that due to strong action against the naxalites by the CoBRA/SAF Bn in the joint operation since 16/09/09 onward in the interior naxal affected and dominant villages destroying and unearthing the Arms factory of the naxalites, the naxalites have lost the ground and baffled. And this strong action of the CoBRA/SAF Bn was highly appreciated and published in the local newspapers. Hence, the petitioners in connivance with the naxalites have falsely alleged against the local police and SAF 201 to stall the operations against naxalities with well thought out nefarious designs.

(7) Regarding more killings: Neither our Force carried out any operations at Chintagufa on 01/10/2009 nor killed or injured any innocent civilians. The allegation is false. Hence, allegation is vehemently denied.

(8) Regarding travails of a 2 years old: No civilian or child was bodily harmed/tortured by Force personnel during the operations. The allegation against CoBRA/SAF Force is totally false and fabricated. Hence, vehemently denied.

(9) Regarding 8 arrested and 2 missing: Force of this 201 CoBRA/SAF Unit was neither deployed for operational duty in Mukundtong and Junitong villages nor they have committed any such act mentioned in allegation. Hence, vehemently denied.

(10) Regarding looting and burning of property and houses: Force personnel of 201 CoBRA(SAF) Bn. neither looted nor stolen any property/money from any of the houses during operation. Rather the naxalites burnt down their own training infrastructure and hide outs when Force personnel carried out operations at their location. The allegations against Force personnel are fabricated and totally false as they were carrying sufficient ration and other items required for their personal use during the operations.

(11) Regarding harassment and torture: No civilian was either harassed or tortured during the operation by 201 CoBRA(SAF) Bn. as alleged. Hence, this allegation against the Force personnel is false and denied.

(12) Regarding presence of SPOs and Salwa Judum leader with security forces: Personnel of 201 CoBRA (SAF) did not conduct operation in Mukudtong village and hence no question of Salwa Judum leader accompanying them. However, CoBRA personnel carried out operation in Gomapada village on 1/10/09 alongwith civil police and SPOs.

(13) Regarding forced displacement and terror: No houses were damaged/ burnt by the Force personnel and no forcible displacement of villagers carried out. Hence, this allegation against Force personnel is totally false and denied.

8. In reply to para-8, it is submitted that no civilian was killed or tortured by the SAF 201 personnel and all the allegations against this Force are false and fabricated. It is the duty of the Paramilitary Force to step in aid of the people and not to harass them or to commit any activity derogatory to the human rights. In fact, the Force is operating at the risk of life of their personnel engaged in protecting life and property of the citizens.

9. In reply to para 9, it is submitted that the allegation is false, hence denied. In fact the troops were ambushed near this village Gompad and after

an exchange of fire the troops seized Hand Grenade-02 Nos, Tiffin Bomb-01,Booby trap-1 Solar Panel-01, fired cases of 7.62x51 mm cart-03, detonator-02, Cap-01.

10. In reply to para 10, it is submitted that the troops of 201 CoBRA (SAF) Bn. did not carry out any operation at Dhodhra. The allegations are totally false, baseless, hence denied.

11. In reply to para 11, it is submitted that no civilian was either caught or killed by this Unit personnel neither any money was ever looted. However, on 17/09/2009 our troops were ambushed by the naxalites in Gachanpalli and the troops retaliated in self defence. This allegation against 201 CoBRA (SAF) Bn. is false and baseless and hence denied.

12. In reply to para 12, it is submitted that the allegation is false as no such act was committed by 201 CoBRA (SAF) Bn. and hence denied.

13. In reply to para 13, it is submitted that the allegations are totally false as no such act was committed by 201 CoBRA (SAF) Bn. and hence denied.

14. In reply to para 14, it is submitted that the allegation is totally false as no such acts were committed by 201 CoBRA (SAF) Bn. No person was beaten, stabbed or killed by the Force personnel. No property was looted or burnt. However, the vagueness or truthfulness of the allegations leveled in the petition is borne out by the fact that the name and number of the petitioner given in the para does not tally with the list of petitioners in the cause title of the Writ Petition.

15. In reply to para 15, it is submitted that the allegation is totally false as no such act was committed by 201 CoBRA (SAF) Bn. However, the name and number of the petitioner given in the para does not tally with the list of petitioners in the writ petition.

16. In reply to para 16, it is submitted that the Force of 201 CoBRA (SAF) Bn. did not carry out any

operation in village Nulkatong on 1/10/09. Hence, the allegation against this Unit is totally incorrect and baseless. However, the name and number of the petitioner given in the para does not tally with the list of petitioners in the writ petition.

17. In reply to para 17, it is submitted that 201 CoBRA (SAF) Bn. personnel did not kill villagers or burnt their houses. However, on 17/9/09 201 CoBRA (SAF) Bn. personnel carried out operation in village Gachanpalli during which our personnel were ambushed by heavily armed naxalites and the personnel retaliated back in self defence.

18. In reply to para 18, it is submitted that 201 CoBRA (SAF) Bn. personnel did not kill villagers nor burnt their houses. However, on 17/9/09 201 CoBRA (SAF) Bn. personnel carried out operation in village Gachanpalli during which our personnel were ambushed by heavily armed naxalites and the personnel retaliated back in self defence.

19. In reply to para 19, it is submitted that 201 CoBRA (SAF) Bn. personnel did not kill villagers or burnt their houses. However, on 17/9/09 201 CoBRA (SAF) Bn. personnel carried out operation in village Gachanpalli during which our personnel were ambushed by heavily armed naxalites and the personnel retaliated back in self defence.

20. In reply to para 20, it is submitted that the allegation is false and denied. Although 201 CoBRA (SAF) had carried out operation in village Gompada on 1/10/09 but no such act was committed by SAF personnel.

21. In reply to para 21, it is submitted that one of the naxalites who was wearing a black naxal uniform and carrying a muzzle loading gun was killed in encounter with this Unit personnel at the time of unearthing of naxalites gun factory at Singhanmadugu on 17/09/09. His dead body was later on brought to PS Chintagufa and handed over to Police Station for post mortem and further action. A Copy of the photograph of the said militant is placed

at Annexure R 12. In this connection FIR No.10/2009 dated 20/9/2009 was also lodged with PS Chintagufa (Dantewada). It is also mentioned here that while returning back after unearthing the arms factory of naxalities, our troops were ambushed by naxalites in which six commandos of this unit lost their precious lives.

22. In reply to para 22, it is submitted that naxalite cadres have been often wearing security force uniform to terrorize the masses to defame the security forces and demoralize them and as such the allegation is false and denied.

23. In reply to para 23, it is submitted that 201 CoBRA (SAF) troops did not carry out any operation in village Onderpara. Hence, the allegation is denied.

24. No comments are offered in reply to para 24.

25. In reply to para 25, it is submitted that CRPF is not involved in any incident as alleged and hence denied.

26. In reply to para 26, it is submitted that this point does not pertain to CRPF/ SAF Unit. Hence, the allegation is denied.

27. In reply to para 27, it is submitted that this point does not pertain to this CRPF/ SAF Unit. Hence, the allegation is denied.

REPLY ON GROUNDS :

28. 28.1: In reply to para 28.1, it is submitted that the grounds made by the petitioners are false and fabricated because none of the act mentioned in the Writ Petition have been committed by the troops of this SAF/CRPF unit. However, being a specialized armed force of the union, the troops are deployed to enforce the law of the land and to protect the life and property to common people. There are frequent reports of civilian killings and torture of innocent by naxalite cadres wearing security forces' uniforms to terrorize the masses in the name of maoist ideology and they

might have indulged in such acts to defame the security forces and demoralize them with the intention to stall and derail operations in their strong hold areas.

28.2: No comments are offered in reply to para 28.2.

28.3 to 28.9: No comments are offered in reply to para 28.3 to 28.9

PRAYER :

a) That the petitioner's request for CBI enquiry appears to be intended to delay the criminal investigation already being conducted by the State police against the naxalites. Hence, the prayer deserves not to be entertained.

b) It is most respectfully and humbly submitted that the consideration and/or granting the petitioners' prayer for award of compensation to such naxalite who was in naxalite uniform as well as having muzzle loaded gun as killed by the 201 CoBRA/SAF Bn in village Singhanmadugu is totally misplaced and it is bonafide believed that Govt. funds i.e. the tax payers' hard earned money does not deserve to be spent for awarding compensation to those who have lost lives while being part of insurgent naxal acts which will in turn demoralize the Forces fighting naxalites whose duty is to protect the life and property of the people and to safeguard integrity and security of the country. Hence, this prayer of the petitioners also deserves to be rejected. Hence, Writ Petition deserves to be dismissed with heavy cost on the petitioners for having urged and alleged baseless, false and unsustainable allegations."

23. We also take notice of one further affidavit-in-reply filed on behalf of the respondent no.3, duly affirmed by Shri Barun Kumar Sahu, Director (Personnel), Police-II Division, Ministry of Home Affairs. We quote the averments made therein as under :

"2. I say that I have read and understood the contents mentioned in the affidavit dated 22.04.2010 filed by the Petitioner and that the petitioner has filed the affidavit under reply to prove the existence of No.9 Smt.Madavi Hurre in the Writ Petition as she could not be produced before the Hon'ble Court by the petitioner. It is stated that the petitioner has filed several copies of the pages of the Tehalka magazine on the basis of which he is trying to prove the existence of the petitioner in question. The magazine or newspaper are not the primary evidence or authentic proof of any material or fact and have no exclusive evidentiary value. Hence, the production of copies of the pages of Tehalka magazine are inadmissible and same are opposed. Also that the petitioner no.1 has been trying since the very beginning to blame the security Forces, fighting with naxalities, with the imaginary charge of atrocities/ arsons which they have miserably failed in proving and also trying to unnecessary lengthen the litigation by putting up various miscellaneous applications without any relevance to the case. The manner in which false allegations have been made from time to time against the security forces is a matter of record. The whole attempt is to demoralize the security forces by tarnishing their image and shaking their confidence. It is also pertinent to mention here that the authenticity of Tehalka magazine, which the petitioner is relying upon cannot believed as the dates mentioned in magazine are not correct.

PARAWISE REPLY :

1. The contents of para 1 need no comments.

2 The reply to the contents of para 2 it is stated that the name of Madavi Hurre is only mentioned in the list of petitioners and there is no mention in the writ petition that she has suffered any loss or injury at the hands of security forces. The Writ petition does not make a mention that she is the wife of Madvi Deva. The petitioner has tried to prove her existence on the basis of her thumb impression on the vakalatnama but

the document is not produced as Annexure. Hence, the fact cannot be admitted as proved. The petitioner has failed to produce the witness in the court. If she is available, there should not be any objection in her production before the Hon'ble court. The fact of visit of the Madavi Hurre to Delhi on 20.10.2009 is not proved at all. On the other hand it is also humbly stated that all the 10 petitioners produced have not blamed the CRPF/ COBRA (SAF) of any of the killing/ atrocities as alleged by the petitioner no.1 in the writ petition.

3. In reply to the contents of para 3 to 8 , I say that the Tehalka Magazine (7th November, 2009 at P/37) have published the photograph of a lady with a child in her lap. The magazine describes her to be resident of village Singanmadgu whereas she has been shown as resident of village : Ganchapalli now the petitioner has also added that she is resident of Village Singanpalli/Singanmadgu. The contradiction in name of villages is apparent and hence unbelievable. The magazine has stated in this report that the incident had taken place on October 17, which is wrong and magazine have published it without verifying the facts which clearly shows that the main intention of the petitioner is to malign the image of the security Forces, CRPF/COBRA (SAF) engaged in anti-naxal operations, it is also pertinent to mention here that the Petitioner has only mentioned names of persons who according to him met the lady and interviewed her but still could not establish her signing the writ petition and hence cannot be relied upon.

4. In reply to the contents of para 9, I say that in almost all the applications/affidavits, the petitioner no.1 is seen to be initiating or at times one Shri Pushkar Raj of PUCL is seen to be asking for impleadment on various reasons the same which shows that the other petitioners i.e. 2 to 13 have been unnecessarily included on the behest where as 10 petitioners who were produced before the Hon'ble Court have not blamed the CRPF/COBRA (SAF) personnel for any of the atrocities committed as alleged in the writ petition. A copy of the list of applications made by petitioner no.l & Shri Pushkar Raj is enclosed herewith as Annexure-A/1.

It is also pertinent to mention here that on 06.04.2010, in an incident, the naxalites have killed 75 CRPF personnel. The death of 75 CRPF personnel and one civil police personnel on 6/4/2010 clearly indicates the menace of naxalism in State of Chattisgarh and the troops are engaged to fight naxalism to protect the integrity and in fact the very existence of the democratic system. Now the petitioner with his interviews to various electronic media channels like NDTV India through its various discussion forunis has tried to malign the image of the CRPF/COBRA (SAF) by blaming them whereas the matter is subjudice before the Hon'ble Supreme Court, hence, the petitioner himself had taken up the role of Judge in this matter, which clearly shows the intentions of the petitioner no. 1 in the matter."

24. We may now look into the affidavit duly affirmed by Shri Rajesh Kukreja, Additional Superintendent of Police, Headquarter Dantewada, Chhattisgarh. In this affidavit, the information as regards the compensation paid to the members of the family of the deceased has been furnished. We quote the same as under :

"3. It is submitted that in the affidavit dated 23.04.2010 the petitioner has stated that Madvi Hurre is a resident of Singanpalli/Singanmadgu which is different from the name of the village (Gacchanpalli) mentioned in the Writ Petition. In the same affidavit the petitioner has mentioned Late Madvi Deva was the husband of petitioner no.9. This is different from the name of husband mentioned in the Writ Petition which is Madvi Hurra.

4. It is submitted that on further investigation regarding petitioner no. 9 has revealed that there is no such person by the name of Madvi Hurre in village Singanpalli/ Singanmadgu. This is also confirmed by

the Tehsildar, Konta Sub Division. A copy of report and certificate issued by the Tehsildar Konta, Sarpanch and Secretary of Burkalanka Gram Panchayat and Secretary Gram Panchayat Pentapar is collectively enclosed and as marked as Annexure R-1. There is no such person as per the voter's list of village Gacchanpalli and Singanmadgu. A copy of voters list of Village Ganchapalli and Singanmadgu are collectively enclosed herewith and the same is marked as Annexure R-2.

5. It is further submitted that further investigation and enquiries have revealed that the petitioner No.6 is Madvi Pojja is still in Andhra Pradesh.

6. It is submitted that a sum of Rs.4,00,000/- has been sanctioned to be paid to the petitioner no.2 Soyam Rama vide Collector Dantewada order no. 752 dated 4.03.2010 as compensation for death of four members of his family.

7. It is submitted that a sum of Rs.1,00,000/- has been sanctioned to be paid to the petitioner no. 4 Madvi Hidma son of Madvi Podiya vide Collector Dantewada order no. 756 dated 4.03.2010 as compensation for death of his cousin brother of his family.

8. It is submitted that in the 164 statement recorded on 11.03.2010, the petitioner no. 5 (Madvi Sukda) has stated that his son was killed three years ago whereas in the complaint filed with the writ petition he has stated that his son was killed on 17.09.2009. Since the two statements are different hence further investigation is being conducted to arrive at the truth. For the reasons mentioned above no compensation has been paid to petitioner no. 5.

9. It is submitted that a sum of Rs. One lakh has been sanctioned to be paid to the family member (Dudhi Bhima) of petitioner no. 6 vide Collector Dantewada order no. 756 dated 4.03.2010 towards compensation for death of his cousin brother of his family.

10. It is submitted that a sum of Rs.Two lakh has been sanctioned to be paid to the petitioner no. 7 vide Collector Dantewada order no. 752 dated 4.03.2010 as compensation for death of two members of his family.

11. It is submitted that compensation has not been paid to petitioner no. 3 & 8 since investigation is being carried out.

12. It Is submitted that a sum of Rs.1,00,000/- has been sanctioned to be paid to the Petitioner no. 10 (Madavi Raja) vide Collector — Dantewada Order No.756 dated 04.03.2010.

13. It is submitted that a sum of Rs.1,00,000/- has been sanctioned to be paid to the Petitioner No.11 - Smt. Madkam Muke vide Collector - Dantewada Order No.756 dated 04.03.2010.

14. It is submitted that a sum of Rs.1,00,000/- has been sanctioned to be paid to the Petitioner No.12 — Shri Kowasi Kosa vide Collector - Dantewada Order No.756 dated 04.03.2010.

15. It is submitted that a sum of Rs.10,000/- has been sanctioned to the Petitioner No.13 - Smt. Sodi Sambo for sustaining injury vide Collector - Dantewada Order No.889 dated 11.03.2010 .

16. It is respectfully submitted that further investigation in the cases registered are being carried out by the State CID."

SUMMATION OF THE STANCE OF THE RESPONDENTS :

25. Thus, if we have to sum up the stance of the respondents, then the same is that the entire case put up by the writ petitioners portraying the incidents of 17th September 2009 and

1st October 2009 respectively as a brutal massacre by the members of the different Police and Paramilitary Forces is palpably false. All the averments made in the memorandum of the writ petition are *ex facie* false and fabricated. An attempt has been made to mislead this Court. False allegations have been levelled on the police and the paramilitary forces with a *mala fide* intention to change the narrative of the incidents, i.e. to portray the dreaded Left Wing Extremists (Naxals), who were waging an armed rebellion against the security forces of the country and threatening the sovereignty and integrity of the country, as innocent tribal victims being massacred by the security forces.

26. It is the case of the respondents that this false narrative of the massacre of innocent tribals by the security forces was created to somehow achieve immediate cessation of the advancement of the security forces against the concerned armed Left Wing Extremists. The purpose and motive of the present writ petitioners was also to derail the ongoing efforts of the security forces in neutralizing the Left Wing Extremism movement and the armed Left Wing Extremists; to deprive the dignity and credibility of the security forces; to lower the morale of the security agencies by portraying them as demons and national villains, i.e. slayers of innocent tribal people; and to foist false cases on them so that in future such false cases would act as a

deterrent. In short, the case of the respondent is that the entire writ petition is nothing but a fraud played upon with the Court.

27. All the First Information Reports were thoroughly investigated and charge sheets have been filed in the concerned courts for different offences under the Indian Penal Code, 1860 (for short, "the IPC") and other enactments. All the accused persons named in the charge sheets have been shown as absconding. It is not that the investigation has not been carried out. The filing of the charge sheets is *prima facie* material to put the accused persons named therein on trial. The charge sheets filed against the accused persons named therein bear eloquent testimony to the fact that the allegations levelled against the police and paramilitary forces are absolutely false and reckless.

28. The petitioners have miserably failed to point out as to in what manner the investigation carried out could be said to be perfunctory. Without even studying the charge sheets how can it be asserted on their part that nothing has been done by the investigating agencies. Even for the purpose of making out a case for further investigation, the infirmities in the charge sheets must be pointed out to the satisfaction of the Court. Nothing of that sort has been pointed out to this Court.

SUBMISSIONS ON BEHALF OF THE WRIT PETITIONERS :

29. Mr. Colin Gonsalves, the learned senior counsel appearing for the petitioners, vehemently submitted that the alleged brutal incidents of killing of the tribals should be investigated through the CBI. He would submit that the family members of the petitioners were killed in cold-blood by the Chhattisgarh Police, Special Police Officers (SPOs) appointed by the Chhattisgarh Government in collusion with the activists of the Salwa Judum (group of vigilantes sponsored by the Chhattisgarh Government) and the Central Paramilitary Forces consisting of the CRPF and the CoBRA Battalion, in two separate attacks dated 17th September 2009 and 1st October 2009 respectively.

30. Mr. Gonsalves would submit that the State of Chhattisgarh and the Chhattisgarh Police have not done anything so far despite the fact that the eye-witnesses have identified the accused persons in some of the cases. He would submit that not a single eye-witness has been called so far for the purpose of recording of his statement. The learned senior counsel would submit that the only hope is the CBI.

31. In such circumstances referred to above, Mr. Gonsalves prays that this Court may issue a mandamus directing the CBI to carry out the investigation of all the First Information Reports referred to above.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :

32. Mr. Tushar Mehta, the learned Solicitor General appearing for the Union of India, on the other hand, has vehemently opposed the present writ petition. He would submit that the petition deserves to be rejected not only with exemplary costs, but each of the petitioners should be held guilty of levelling false charges of offence and of giving false and fabricated evidence before this Court with an intention to procure conviction for a capital offence or for life imprisonment against the personnel of security forces with a view to screen off the actual offenders of the Left Wing (Naxal) terrorism.

33. Mr. Mehta would submit that if such palpably false and motivated writ petition at the instance of an NGO is entertained by this Court, then the same may lead to disastrous results as the very morale of the different police and paramilitary forces fighting against the Naxals would be shaken.

34. Mr. Mehta, in the course of his submissions, highlighted a very shocking picture as to how the Naxalites, over a period of

time, have brutally killed the members of the police forces. According to Mr. Mehta, the mastermind behind this writ petition is the petitioner no.1 claiming to run an NGO for the welfare and interest of the tribals. According to Mr. Mehta, the petitioners nos.2 to 13 are absolutely rustic and illiterate tribals. It is at the instigation of the petitioner no.1 that they might have thought fit to join as the petitioners.

35. Mr. Mehta would submit that this petition is of the year 2009. Almost 13 years have passed by till this date. However, it is very shocking to know that none of the petitioners have any idea about the investigation which has already been carried out by the police with respect to each of the FIRs.

36. Mr. Mehta invited the attention of this Court to one order passed by a Coordinate Bench dated 15th February 2010. The same reads thus :

> *"O R D E R*
>
> *The Chief Secretary, in terms of our directions, has filed his Report, which shall form part of the record and to be put in a sealed cover.*
>
> *On 8.2.2010, after hearing the parties, we have issued the following directions :*
>
> > *"Learned senior counsel appearing on behalf of the petitioners submits that after the adjournment of this Writ Petition on 5th February, 2010 Petitioner Nos. 2 to 13 were illegally taken into custody or*

caused their disappearance by the respondent-police. Learned counsel appearing for the State of Chhatisgarh seriously disputes the correctness of the assertion made by the learned senior counsel about the police being responsible for causing the disappearance of Petitioner Nos. 2 to 13.

We at this stage do not propose to express any opinion whatsoever on this issue relating to the alleged disappearance of the Petitioner Nos. 2 to 13.

Be that as it may, we would like to examine the Petitioner Nos. 2 to 13 and hear their version as to what transpired in the matter after we have heard and adjourned the hearing of this petition on 5th February, 2010 or prior thereto.

The interest of justice requires the production of Petitioner Nos. 2 to 13 in this Court. We, accordingly, direct Respondent No.1 to produce the Petitioner Nos. 2 to 13 in this Court on 15th February, 2010 for the purpose of further hearing of this petition.

The Chief Secretary, State of Chhatisgarh is directed to ensure the compliance of this Order and submit his own report on or before 15th February, 2010."

Pursuant to our directions the first respondent produced six out of 13 petitioners, namely, Shri Soyam Rama, Shri Kunjam Hidma, Shri Madavi Hidma, Shri Soyam Dulla, Smt. Muchki Sukri and Smt. Sodhi Sambo (Petitioner Nos. 2, 3, 4, 7, 8 and 13 respectively). We are informed that the six petitioners who are produced before us today speak only 'Gondi language' and no other language. In the circumstances, it would not be possible for us even to elicit any information from them and interact with them.

We are of the view that their security is a paramount consideration.

It is equally important that they should be allowed to express themselves freely without being influenced by any outside agencies or individuals.

In the circumstances, we consider it appropriate to request Mr. G.P. Mittal, District Judge-I, Tis Hazari, Delhi to record their statements in the presence of the interpreter, namely, Mohan Sinha, as well as the first petitioner Mr. Himanshu Kumar, who is stated to be conversant with their language. The District Judge shall first satisfy to himself that the petitioners, who are required to be examined by him are not under any pressure or threat from any quarter whatsoever. We also request the District Judge to ensure their safety as along as they are in Delhi, for which purpose the Union of India shall comply with such directions as may be issued by the District Judge from time to time. The learned Attorney General for India has stated before us that in terms of the directions to be issued by the District Judge, the Union of India shall ensure their safety and protection.

We also permit the learned counsel for the petitioner Shri Colin Gonsalves or any other lawyer to be nominated by him to be present in the proceedings before the District Judge along with counsel for the Union of India and the counsel for the State of Chhatisgarh.

We make it very clear that the District Judge shall proceed to record the statement only after being satisfied to himself that the persons produced before him are free from any pressure and are capable of making statement freely without being influenced by any of the outside agency/parties. The learned District Judge is requested to arrange for a videography of the entire proceedings.

The Registrar Judicial will immediately convey this order to the District Judge. Copy of this order shall also be given to the counsel for all the parties. List this matter tomorrow at 1-15 p.m. in Court for further directions."

37. According to Mr. Mehta, in context with the aforesaid order, various statements of the petitioners came to be recorded by the District Judge-I and Sessions Judge, Delhi. The plain reading of such statements of the petitioners would indicate that they have no idea as to what has been stated in the memorandum of the writ petition and for what reasons the writ petition came to be filed. The statements recorded by the Judicial Officer in accordance with the directions issued by a Coordinate Bench of this Court *vide* the order referred to above, destroys the entire case put up by the writ petitioner no.1.

38. Mr. Mehta urged before this Court to take a strict view of the matter. Mr. Mehta also pointed out that the Union of India has filed an Interlocutory Application No. 52290 of 2022 seeking appropriate action against the petitioners. We shall look into and deal with the Interlocutory Application a little later.

39. In such circumstances referred to above, Mr. Mehta prays that this writ petition may be rejected with exemplary costs and appropriate action may be taken against the writ petitioners.

SUBMISSIONS ON BEHALF OF THE STATE OF CHHATTISGARH :

40. Mr. Sumeer Sodhi, the learned counsel appearing for the State of Chhattisgarh, has also vehemently opposed this writ petition. In a written note provided to us, Mr. Sodhi has

highlighted in what manner the Chhattisgarh Police carried out the investigation of both the incidents and also the details as regards the registration of the FIRs. The same reads thus :

"Crime No.: 04/2009
Police Station: Bhejji
Date of Registration: 18/09/2009
Sections: 147, 148, 149, 307 IPC; 25, 27 Arms Act.
Date of Incident: 17.09.2009.

Complainant: Shri Ravindra Singh, Assistant Commdt. 201 Cobra Bn.

Accused: Unknown Maoist Cadres and Sangam Members

Allegations: On information about the presencc of Naxal cadres, an anti-naxal operation was launched on 16.09.2009 from PS Bhejji towards Gachchanpalli, Aitrajpad and Entapad by the Security forces. Naxals made a life threatening attack on security forces near Gachchanpalli and run away putting their shelter on fire.

Gist of Final Report : Even after a long search no accused were found and on no possibility of finding in near future, closure report was filed before the Hon'ble court on 20.10.2010.

Present Status: According to the closure report presented by the investigating officer, even after a long search no accused were found and on no possibility of finding in near future closure report is accepted on 26.10.2010 by the learned chief Judicial Magistrate.

Crime No.: 10/2009 :

Police Station: Chintagufa

Date of Registration: 20/09/2009

Sections: 395, 397, 147, 148, 149, 302 IPC; 25, 27 Arms Act; 3,4 Explosive. Subs. Act.

Date of Incident: 17.09.2009 and 18.09.2009.

Complainant: Shri Premprakash Awadhiya, Sub Inspector, PS.-Sukma

Accused: Unknown Uniformed female and male naxalites about 200-300.

Allegations: On 16/09/2009, the police party left for Singanmadgu for Anti Naxal operation from police station Chintagufa. On the morning of 17/09/2009, when the party reached the dense forests of Singanmadgu, the camp of Naxalites were seen and exchange of fire took place. After encounter in search of the place of incident weapons and a body of naxal was recovered. Then after a while one km ahead 200-300 unknown Naxalites again cordoned the police party and attacked the Security forces, in which - Assistant Commandant Shriram Manoranjan, Assistant Commandant Shri Rakesh Kumar Chaurasiya, Sub Inspector Shri Sushil Kumar Varma, Head-Constable Lalit Kumar, Constable Manoharlal Chandra and Constable Uday Kumar Yaday of Cobra Company were martyred and four others Constable Satpal, Constable Harish Thakur, Constable Kamalvoshe and Constable Mohammad Husain Quraishi were also injured.

Gist of Final Report: According to the investigating officer, even after a long search no accused were found and since there was no possibility of finding in near future, closure report has been filed before the Hon'ble Trial court on 20.10.2010.

Present Status: According to the closure report presented by the investigating officer, even after a long search no accused were found and on no possibility of

finding in near future closure report is accepted on 26.10.2010 by the learned Chief Judicial Magistrate.

<u>Crime No.: 06/2010</u>

Police Station: Bhejji

Date of Registration: 21/02/2010

Sections: 147, 148, 149, 302 IPC; 25, 27 Arms Act.

Date of Incident: Approximately three-four months ago at 7.00 am in the morning from the date of incident, (therefore, probable incident here is 01.10.2009)

Complainant: Shri Maadvi Hadma Address: Gachhanpalli (Petitioner No. 4)

Accused: 20-25 Unknown uniformed person holding gun and banda.

Absconding accused-

1-Venktesh s/o Unknown

2-Rajesh alias Joga s/o Unknown

3-Vijay alias Vijay alias Ekanna

4-Savitri Bhai w/o Unknown

5-Manila w/o Unknown

6-Bhima s/o Unknown

7-Jayram s/o Unknown

8-Samita w/o Chandrana

9-Bhaskar alias Rajesh s/o Venkteshwerlu

10-Kavita D/o jayram

Allegations: On 21/02/2010 upon report of applicant Madvi Hadma, resident of Gachchanpalli, FIR No.06/2010 u/s 147, 148, 149, 302 IPC & 25, 27 Arms Act was registered at Police Station Bhejji against unknown naxalites for murder of Madvi Hidma, Madvi Joga, Kawasi Ganga, Madkami Chula & Dudhi Muye.

Gist of Final Report: Chargesheet filed on 09/09/2010 against 10 named absconding accused u/sec.147, 148, 149, 302 IPC; 25, 27 Arms Act.

Present Status: Permanent warrant has been issued against the absconding accused by the Hon'ble Judicial Magistrate First Class Konta.

INCIDENT 2: 01.10.2009 (Gompad)

6. In respect of the incident dated 01.10.2010 that took place at Gompad, the State of Chhattisgarh has already registered following FIRs against the offences committed on that day. The details of the FIRs are:

Crime No.: 05/2009

Police Station: Bhejji

Date of Registration: 25/11/2009

Sections: 147, 148, 149, 307 IPC; 25, 27 Arms Act.

Date of Incident: 01.10.2009.

Complainant: Shri Matram Bariha, Head Constable, PS.-Bhejji

Accused: Unknown Uniformed Naxalites in large numbers.

Allegations: On the information of increased activities and camps of armed naxalites in Gompad village PS Bhejji, three teams of Cobra 201 Bn departed on an anti naxal operation on 30/09/2009 from injram. On 01.10.2009 this combined party was ambushed by Naxalites in Gompad.

Gist of Final Report: According to the investigating officer, even after a long search no accused were found and on no possibility of finding in near future closure report is filed before the Hon'ble court on 20.10.2010

Present Status : According to the closure report presented by the investigating officer, even after a long

search no accused were found and on no possibility of finding in near future closure report is accepted on 26.10.2010 by the learned Chief Judicial Magistrate.

Crime No.: 01/2010

Police Station: Bhejji

Date of Registration : 08/01/2010

Sections : 396, 397 IPC, 25, 27 Arms Act.

Date of Incident : Approximately a week before Deewali.

Complainant : Shri Soyam Rama (Petitioner No.2)

Accused : Unknown Armed uniformed person 20-25
Absconding accused-

1-Venktesh s/o Unknown
2-Rajesh alias Joga s/o Unknown
3-Vijay alias Vijay alias Ekanna
4-Savitri Bhai w/o Unknown
5-Manila w/o Unknown
6-Bhima s/o Unknown
7-Jayram s/o Unknown
8-Samita w/o Chandrana
9-Bhaskar alias Rajesh s/o Venkteshwerlu
10-Kavita D/o Jayram

Allegations: On 08/01/2010 upon information of applicant Soyam Rama s/o Soyam Kanna resident Gompad village, a FIR-01/2010 u/s 396, 397 IPC, 25, 27 Arms Act was registered in PS Bhejji and taken into investigation against unknown naxalites causing murder of 7 deceased named - Madvi Bazar, Madvi Subbi, Madvi Mutti, Kattam Kanni, Madvi Enka, Soyam Subba and Soyam Jogi.

Gist of Final Report: Chargesheet filed on 09/09/2010 against 10 named absconding accused u/s 396, 397 IPC; 25, 27 Arms Act.

Present Status: Permanent warrant has been issued against the absconding accused by the Hon'ble

Judicial Magistrate First Class Konta.

<u>Crime No.: 07 2010</u>

Police Station: Bhejji

Date of Registration: 22/02/2010

Sections: 147, 148, 149, 302 IPC, 25, 27 Arms Act.

Date of Incident: A approximately five months ago in the morning from the date of incident, (therefore, probable incident here is 01.10.2009)

Complainant: Shri. Komram Lachcha, Address-Chintagufa

Accused: 20-25 Unknown uniformed person holding gun and banda.

Absconding accused-
1-Venktesh s/o Unknown
2-Rajesh alias Joga s/o Unknown
3-Vijay alias Vijay alias Ekanna
4-Savitri Bhai w/o Unknown
5-Manila w/o Unknown
6-Bhima s/o Unknown
7-Jayram s/o Unknown
8-Samita w/o Chandrana
9-Bhaskar alias Rajesh s/o Venkteshwerlu
10-Kavita D/o Jayram

Allegations: On 22/02/2010 upon report of applicant Komram Lachcha, resident of Chintagufa, FIR No.07/2010 u/s 147, 148, 149, 302 IPC & 25, 27 Arms Act was registered at PS - Bhejji against unknown naxalites for murder of Komram Mutta.

Gist of Final Report: Chargesheet filed on 09/09/2010 against 10 named absconding accused u/sec.147, 148, 149, 302 IPC & 25, 27 Arms Act.

Present Status: Permanent warrant has been issued against the absconding accused by the Hon'ble Judicial Magistrate First Class Konta."

41. Mr. Sodhi also highlighted the following contradictions and anomalies in the case of the petitioners :

"1. Hot oil theory retracted:

Petitioner claimed in the Writ Petition at Page E of the Synopsis and Page 9 of the Petition Paper book that one Muchki Deva (60yrs) of Ondhepara was grazing cattle on the morning of 17th September. He was caught, beaten and dragged into the village by security forces. He was hanged upside down from a tree and a pot of oil was lit below and he was dropped into it. As a result, the upper part of his body was severely burnt and he had developed maggots in his wounds.

However, thereafter the Petitioners filed an Application before this Hon'ble Court dated 02.02.2010 bearing Crl.M.P. No. 3173/2010 seeking directions from this Hon'ble Court. In the said Application, the Petitioners retracted the Hot Oil Theory in Paragraph 18 of the Application stating that it was a mistake that took place during translations. It was now claimed that Muchki was burnt by electrocution by attaching wires to his head.

It is important to note that the present Writ Petition was filed on around 27.10.2009, notice by this Court was issued on 23.11.2009 on the basis of the contents of the Writ Petition, and the Interlocutory Application bearing Cri. MP No. 3173.2010 was moved on 02.02.2010. Therefore, it is pertinent to note that Petitioners have changed their stand multiple times in respect of serious allegations levelled against the defence forces of the country and the Chhattisgarh Police Department.

2. Contradictions in complaint vis-a-vis Sec. 164 Statements about killings -

Petitioner No. 5 in the complaint filed alongwith the present Writ Petition at Page 35 of the Paperbook has

alleged that his son was killed on 17.09.2009 by SPOs. It is pertinent to note that the State of Chhattisgarh in its affidavit dated 30.08.2010 has stated in paragraph 8 that in Statement of Petitioner No. 5 recorded under Section 164 of the Criminal Procedure Code, 1973 on 11.03.2010, he has stated that his son was killed three years ago.

3. False narrative sought to be created in Petitioner's Written submissions -

A plain reading of Paragraph 13 of the Written Submissions filed by the Petitioner creates a brutal impression of the security forces to the effect that Petitioner No.13's two year old grandchild was killed after chopping off the child's fingers. The purported cyclostyle complaint of Petitioner No. 13 is at Page 53 whereas her statement recorded under orders of this Court can be found at Page 171 of the Paperbook. A perusal of both these documents reveals that no such case was ever made out by Sodhi Sambo i.e. Petitioner No. 13.

4. Non-corroboration of contents of Writ Petition with statements made by the Petitioners before District Judge appointed by this Court —

Looking at the seriousness of the allegations contained in the Writ Petition, which were vehemently denied by the State, this Court directed that statements of Petitioner Nos. 2-13 be recorded by a District Judge at New Delhi. A bare perusal of the statements made by the Petitioners reveal that none of the Petitioners corroborate the allegations made in the writ petition. Further the petitioners do not even say that their relatives were killed by uniformed persons. - Ref can be made to the Statements - Page 154 onwards

5. No Affidavit of authorisation of Petitioners No. 2 to 13

It is pertinent to note that the present petition has been filed by the Petitioner No. 1 (Himanshu Kumar) on behalf of Petitioner No. 2 to 13. However, there is

> *no affidavit on record whereby Petitioners No. 2 to 13 have authorised Petitioner No. 1."*

42. In such circumstances referred to above, Mr. Sodhi prays that there being no merit in the present writ petition, the same may be rejected with exemplary costs and appropriate actions against each of the writ petitioners for misleading the Court and fabricating false evidence.

ANALYSIS :

43. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether any case has been made out by the writ petitioners for the investigation of the two incidents through the CBI.

POSITION OF LAW :

44. It is now settled law that if a citizen, who is a *de facto* complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking. A Constitution Bench of this Court, in the case of the ***State of West Bengal and others v. Committee for Protection***

of Democratic Rights, West Bengal, reported in (2010) 3 SCC 571, has made the following observations pointing out the situations where the prayer for investigation by the CBI should be allowed :

> *"70.... In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such powers 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 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."*
>
> (emphasis supplied)

45. In the above decision, it was also pointed out that the same court in ***Secretary, Minor Irrigation & Rural Engineering Services, U.P. v. Sahngoo Ram Arya & Anr.***, (2002) 5 SCC 521, had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a *prima facie* case calling for an

investigation by the CBI or any other similar agency.

46. In an appropriate case when the Court feels that the investigation by the police authorities is not in a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to handover the investigation to an independent agency like the CBI. By now it is well-settled that even after the filing of the charge sheet the court is empowered in an appropriate case to handover the investigation to an independent agency like the CBI.

47. The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India *qua* the issuance of directions to the CBI to conduct investigation must be exercised with great caution as underlined by this Court in the case of ***Committee for Protection of Democratic Rights, West Bengal*** (*supra*) as adverted to herein above, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in the investigation or where the incident may have national or

international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or re-investigation, submission of the charge sheet *ipso facto* or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

48. The above principle has been reiterated in ***K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai***, (2013) 12 SCC 480. Dr. B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held :

> "13. …This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such

> investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. …"

49. Elaborating on this principle, this Court further observed:

> "17. … the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

50. The Court reiterated that an investigation may be transferred to the CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies." This observation must be read with the observations made by the Constitution Bench in the case of ***Committee for Protection of Democratic Rights, West Bengal*** (supra), that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

51. In ***Romila Thapar v. Union of India***, (2018) 10 SCC 753, one of us, A.M. Khanwilkar, J., speaking for a three-Judge

Bench of this Court (Dr. D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in ***Narmada Bai v. State of Gujarat***, (2011) 5 SCC 79, ***Sanjiv Rajendra Bhatt v. Union of India***, (2016) 1 SCC 1, ***E. Sivakumar v. Union of India***, (2018) 7 SCC 365, and ***Divine Retreat Centre v. State of Kerala***, 2008) 3 SCC 542. This Court observed:

> "30…the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court- monitored investigation."

52. It has been held by this Court in ***CBI & another v. Rajesh Gandhi and another***, 1997 Cr.L.J 63, that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

53. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances". In

assessing the plea urged by the petitioner that the investigation must be transferred to the CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power.

54. Bearing in mind the position of law as discussed above, we now proceed to consider, whether in the facts of the present case, more particularly, from the materials on record, it has been *prima facie* established that it is a fit case for allowing the prayers of the writ petitioners for investigation by the CBI.

55. We are really taken by surprise that the learned senior counsel appearing for the writ petitioners is absolutely oblivious of the fact that all the FIRs were investigated by the concerned investigating agencies and, at the end of the investigation, charge sheets came to be filed in different courts of the State of Chhattisgarh for the offences under the IPC like murder, dacoity, etc.

56. We are of the view, having regard to the materials on record, that no case, worth the name for further investigation or re-investigation, could also be said to have been made out.

57. The filing of the charge sheets at the conclusion of the investigation into the various FIRs referred to above would indicate that the alleged massacre was at the end of the Naxalites (Maoists). The materials collected in the form of the

charge sheets substantiate the case put up by the respondents that the villagers were attacked and killed by the Naxalites. There is not an iota of material figuring in the investigation on the basis of which even a finger can be pointed towards the members of the police force.

58. If we go by the tenor of the writ petition, it gives an impression that proper investigation is not being done and, therefore, the same should be handed over to the CBI. However, the fact is that the investigation has already been carried out and charge sheets have been filed. Unfortunately, neither the learned senior counsel appearing for the writ petitioners nor any of the writ petitioners, more particularly, the writ petitioner no.1, the protagonist behind the filing of the present writ petition, running an NGO, has any idea about the charge sheets and the materials collected in the course of the investigation. If the investigation has already been carried out and charge sheets have been filed and if the court has to now consider the plea of the writ petitioners, then the same would become a case of further investigation.

59. We shall highlight as to why we are saying so as above. We come back to the order passed by a Coordinate Bench of this Court dated 15th February 2010. Pursuant to the same, the statements of the petitioners were recorded by the District and

Sessions Judge, Delhi. We may quote one such statement recorded by the District and Sessions Judge of the petitioner no.2, namely, Soyam Rama. We quote the entire statement as under :

"Present:

Petitioner No.1 Himansu Kumar alongwith Counsel Shri Colin Gonslaves. Sr. Advocate alongwith Shri Divya Jyoti, Advocate.

Shri Atul Jha Advocate alongwith Shri D.K. Sinha Advocate, Counsel for State of Chattisgarh.

Shri P.K. Dey, Advocate on behalf of UOI alongwith Shri Jitender, Advocate.

Shri R.K. Tanwar, Addl. PP for Govt. of NCT of Delhi alongwith Shri Navin Kumar, Asstt.Public Prosecutor

At 3:49 p.m., order dated 15.2.2010 passed by the Hon'ble Supreme Court in Writ Petition (Cr.) 103/09 titled as Himanshu Kumar & Ors vs. State of Chattishgarh, was received in my office titled as Himanshu Kr. & Ors.

Before that, I had received a telephonic call from Mr. T.Sivadasan, Registrar (Judicial), informing me about the order passed by the Hon'ble Supreme Court.

At about 5 pm., the file of the writ petition was received. Thereafter corrigendum of this order, wherein, name of petitioner No.8 was mentioned at page 2 of the order was also received. At about 6 pm the petitioners had reached my court No.301. The counsel for the parties aforementioned were also present. I have talked to the Counsels for the parties as well as petitioner No.1 in the court and have explained that I

shall be talking to each of the petitioners. Except the petitioners, all the persons including the counsel were requested to move out of the court room. I got down from the dias and talked to the petitioners through petitioner No.1 Himanshu Kumar. I tried to make petitioners comfortable and served them with tea and biscuits. I have enquired from them if there was any fear or pressure from any quarter which they have negatived. I have told the petitioners present that I would be calling them one by one for the purpose of recording their statements in the adjoining Room No.302 in Tis Hazari Court.

In the first instance, petitioner No.2 Shri Soyam Rama has been called. Apart from the abovenamed Counsel for the parties, petitioner No.1 Shri Himanshu Kumar and interpreter Shri Mohan Sinha have also been called in room No.302. Petitioner No.2 has been made to sit in the middle of the petitioner No.1 and Shri Mohan Sinha, the interpreters.

Let statement of Sh. Soyam Rama be recorded.

Question: What is your name ?

Ans. : My name is Soyam Rama

Question: Where do you stay?

Ans. I am resident of village Gompad.

Q. Do you have any proof of identity:

Ans. I do not have one.

Q. Do you know for what purpose you have been brought here ?

A. The persons from our family have died and therefore, I have come.

Q. Has anybody put any pressure upon you to make any particular statement ? Has anybody terrorized you?

Ans. ***Nobody has pressurized or terrorized me****.*

Q. Do you want to make a statement of your own free will ?

A. Yes.

(I am satisfied that Shri Soyam Rama is not under any pressure coercion or terror to make the statement.)

I feel that the statement being made by him is out of his free will.

Let the statement be recorded on oath. The oath be also administered to both the interpreters.

Statement of Shri Soyam Rama s/o Shri Soyam Kanna, aged 38 years r/o village Gopade, on S.A. (through interpreter Shri Mohan Sinha, in presence of petitioner Himanshu Kumar. Both the interpreters have also stated on oath that whatever shall be asked from the witness and his answers shall be interpreted correctly & truly).

On. 1.10.2009, there was a firing in the house of my paternal uncle Madhvi Bajaar. In the firing, my paternal uncle Madvi Bajaar and paternal aunt Smt. Madvi Sudvi Subi and niece Madvi Muddi and Smt. Kartan Katti were killed. One more person, whose name I cannot tell, was also killed in the firing. We had run away from the spot and therefore, could not see as to who had opened fire.

Question: Are you sure that this firing had taken place on 1.10.2009 or before that ?

Ans. I am sure, the firing had taken place on 01.10.2009.

Some other persons were also killed, but not in my presence.

Question: Can you say, if any other weapon was used in the above mentioned killing or it was only by bullets ?

Ans. ***In the first instance, the above named four persons were stabbed with knife and thereafter, they were shot with bullets.***

Question: Can you tell the description of the firearm if the same was a big gun or a pistol ?

Ans. I cannot tell the same. I heard the shot and then ran away.

Question: Who had caused the said injury and who had opened the fire ?

Ans. ***The persons who stabbed the above stated persons and opened fire, had come from the Jungle.*** *I ran away after the above stated persons were stabbed and fire was opened.*

Question: Would you be in a position to identify the assailants.

Ans. ***I would not be in a position to identify them****.*

Question: Do you want to say anything else.

Ans. I do not want to say anything further.

Left thumb impression of Soyam Rama

Sd/-
District Judge-I/Delhi
15.02.2010
Sh. G.P.MITTAL
District Judge-I & Sessions Judge

(We have interpreted the questions and answers truly and have gone through the statement of the witness recorded above.

The same is correct

Sd/- *Sd/-*
(Himanshu Kumar) *D.J.,-1/15-2-2010*
Sh. G.P.MITTAL
District Judge-I & Sessions Judge

Sd/-
(Mohan Sinha)"

(emphasis supplied)

60. All other statements of the rest of the writ petitioners are on the same line and footing.

61. When we called upon Mr. Gonsalves to make us understand as to why his clients had to make such statements before the Judicial Officer, a very curious reply came from Mr. Gonsalves. According to Mr. Gonsalves, the entire mode and manner in which the statements were recorded by the Judicial Officer of the rank of District and Sessions Judge was absolutely incorrect. According to the learned senior counsel, specific questions ought to have been put by the Judicial Officer to each of the writ petitioners while recording their statements in accordance with the directions issued by this Court *vide* order dated 15th February 2010 referred to above.

62. We are afraid, we are not in a position to accept such submission after a period of almost 12 years. The statements we

are referring to recorded by the Judicial Officer are of the year 2010. Not once in the last 12 years any grievance has been made either orally or in writing before this Court as regards the mode and manner of recording of the statements. It is for the first time in 12 years that such a grievance has been made. Had the writ petitioners raised such a plea at the appropriate time and contemporaneously as regards the mode and manner of the recording of the statements, this Court would have passed necessary orders asking the Judicial Officer to record the further statements in a particular manner. It is too late in the day now to cast any insinuations or aspersions against the Judicial Officer of the rank of District and Sessions Judge, who had acted under the directions of this Court.

63. What we are trying to convey is that the statements of the petitioners nos.2 to 13 recorded before the Judicial Officer demolishes the entire case put up by the petitioner no.1, who is running an NGO.

64. It appears from the materials on record that all those persons who have been arraigned as accused and against whom charge sheets have been filed are absconding. It is now for the concerned trial court to take appropriate steps in this regard. If the persons named as accused in the charge sheets are absconding, then it is expected of the investigating agency to

take necessary steps for their arrest. In any view of the matter, it is now for the trial court to do the needful in accordance with law.

65. In the overall view of the matter, we have reached to the conclusion that no case, worth the name, has been made out by the writ petitioners for any further investigation much less through an independent agency to be appointed by this Court. In the facts of the above case, we are of the view that the conditions laid down by this Court in the case of ***Committee for Protection of Democratic Rights, West Bengal*** (*supra*) quoted earlier are not fulfilled.

66. The writ petition accordingly fails and is hereby rejected with exemplary costs of Rs. 5,00,000/- (Rupees Five Lakh Only). The requisite amount towards the costs shall be paid by the petitioner no.1 viz. Himanshu Kumar. The petitioner no.1 shall deposit the amount with the Supreme Court Legal Services Authority within a period of 4 weeks from today; failing which, it shall be open for the authority concerned to take appropriate steps in accordance with law for the recovery of the requisite amount. Pending application, if any, stands disposed of.

INTERLOCUTORY APPLICATION NO. 52290 OF 2022

67. This is an application at the instance of the Union of India with the following prayers :

> *"(a) Hold the petitioners guilty of leveling false charges of offence and of giving false and fabricated evidence before this Hon'ble Court with an intention to procure conviction for a capital offence or for life imprisonment against the personnel of security forces and to screen off the actual offenders of Left Wing (Naxal) terrorism;*
>
> *(b) Pass an order directing CBI/NIA or any other central investigating agency or any other monitoring committee, as this Hon'ble Court deems fit and proper, to register an FIR and conduct an in-depth investigation to identify the individuals/organizations, who have been conspiring, abetting and facilitating filing of petitions premised on false and fabricated evidence before this Hon'ble Court as well as before the Hon'ble High Courts with a motive to either deter the security agencies to act against the Left Wing (Naxal) militia by imputing false charges on them or to screen off the Left Wing (Naxal) militia from being brought to justice by creating a false narrative of victimization before the Hon'ble Courts;*
>
> *(c) And direct appropriate action against the Petitioners and other person/s responsible for the aforesaid acts of perjury;*
>
> *(d) Pass any other just and reasonable orders to meet the ends of justice."*

68. We have closely looked into the averments made in the Interlocutory Application.

69. Mr. Tushar Mehta, the learned Solicitor General has pressed this application very hard.

70. Although no particular nomenclature has been given to this application, yet it is apparent that the same is under Section 340 of the Code of Criminal Procedure, 1973 (for short, "the CrPC") read with Section 195 of the CrPC. The Union of India wants this Court to initiate appropriate proceedings against the writ petitioners for the offence of perjury punishable under Section 193 of the IPC. The Union of India vehemently asserts that the writ petitioners are guilty of levelling false charges of various offences and could be said to have fabricated evidence before this Court in a judicial proceedings. The Union of India asserts that the writ petitioner no.1 has affirmed the false averments made in the writ petition on oath. He could be said to have made a false affidavit. The making of false affidavit and giving false evidence comes within the purview of Section 191 of the IPC.

71. Before we proceed to examine this application filed by the Union of India, we must look into few averments made therein :

> *"4. Shockingly, in the petition, the petitioner had portrayed the incidents of 17.9.2009 and 1.10.2009, as an act of not restricted to extra judicial killings, but had sought to portray such acts as act of barbarianism committed by security forces, where the. special operation teams of police and paramilitary forces were alleged to have indulged into torturing,*

looting and outraging the modesty of family members of those encountered. The Petitioners had, thus, on affidavit, narrated incidents alleging it to be gruesome killings and massacres of innocent tribal villagers on 17.9.2009 and 1.10.2009, in the petition.

It is pertinent to mention here that the acts of torture and killings of the villagers have been pleaded to be of such beastly and horrific nature, so as to invoke and instigate an instantaneous response of outrage by this Hon'ble Court, undeniably leading to grant of relief/interim relief as prayed in the petition. In pith and substance, the reliefs prayed were of the nature where operations of security forces were sought to be halted and Left Wing Extremists were sought to be granted legal protection under the narrative of victimization.

8. It is respectfully submitted that a bare perusal of the recordings etc. submitted by the Ld. District Judge before this Hon'ble Court reveals that all the averments made by the petitioner in the petition were ex-facie false and fabricated and it is now clear that all the said deceitful averments were made by the petitioner with malicious and audacious attempt to mislead this Hon'ble court and to obtain orders from this court by playing fraud on its conscience and magnanimity.

9. In the respectful submission of the applicant, it is apparent that the said insolent false averments were made with a malafide objective to change the narrative of the incident and with malicious designs i.e. to portray the dreaded Left Wing Extremists (Naxals), who were waging an armed rebellion against the security forces of the country and threatening the sovereignty and integrity of the country, as innocent tribal victims being massacred by the security forces.

10. This was done with a deceitful design to instigate an instantaneous response of outrage by this Hon'ble Court and mislead it to pass adverse orders against security forces under an erroneous assumption of facts causing an adverse and deterrent effect on the

operations and morale of the security forces. It is submitted that the modus adopted in the instant case, has over the period of time, become a norm where false petitions are filed by individuals and organization who are either supporters of Left Wing Extremism or benefit, financially and politically, from Left Wing Extremist activities and protective orders are obtained from the courts by playing fraud. Further absence of a stern action being taken against them for playing fraud on the court has embolden them who have now made a practice of filing such false and vexatious petitions based on self-serving/self-generated fact finding reports.

11. Aposteriori, it has become clear that this false narrative of a massacre of innocent tribals by security forces was created to somehow achieve immediate cessation of advancement of the security forces against the cornered armed Left Wing Extremists. The said object was sought to be achieved, and was in fact achieved by the petitioner, by misleading this Hon'ble Court and by seeking adverse orders against security forces by portraying false facts/ picture before the court and by playing fraud on this Hon'ble Court.

12. In addition to the same the purpose and motive of the present petition was also to derail the ongoing efforts of security forces in neutralizing the Left Wing Extremism movement and the armed Left Wing Extremists; to take away the dignity and credibility of security forces and the attempts made by them to neutralize the armed rebellion by Left Wing Extremists; to lower the moral of the security agencies by portraying them as demons and national villains, i.e. slayers of innocent tribal people; and to foist false cases on them so that in future the said false cases acts as a deterrent and chilling factor for the rest of the members of the armed forces in planning or participating in a similar operations. It is submitted that all this was done before the highest court of the country and at the altar of the national security. This was a fraud played on the constitutional remedies and an abuse thereof of the highest order.

13. In effect in the respectful submission of the applicant/UOI, it is now also apparent that the present ex-facie false and fraudulent petition was filed to deceit this Hon'ble court and to provide a legal protective shield to the members of Left Wing Extremist outfits. In the respectful submission of the applicant the present petition is nothing but a subterfuge and a part of the conspiracy to cover the offence committed by the Left Wing Extremists and to facilitate unhindered future operations by weakening the security forces which is the only challenge deterring their intentions and operations. The petitioners, in the respectful submission of the applicant, by preferring the instant deceitful petition, have not only conspired and abetted the commissioning of the crime but have also conspired and abetted in covering up the crime and screening the offenders/perpetrators of Left Wing (Naxal) terrorism.

14. It is submitted that scurrilous allegations made against the security personnel of the country have nevertheless has brought about a chilling effect of demoralizing the esprit de corps and self-esteem of the members of the forces, which has been since then acted against national interests.

15. In this perspective, when it is manifested that the present petition was nothing but a fraud on this Hon'ble court, where orders were sought to be obtained from this Hon'ble court through deceitful designs/fabricated and false assertions, it has become incumbent and imperative, both in the interest of justice, as well as, in the interest of security of the nation that the people and organizations involved in playing fraud on constitutional remedies and on whose instance false affidavits, pleadings and evidence have been submitted before this Hon'ble Court are identified and appropriate criminal action is initiated against them. This is necessary to serve as a deterrent against repeating such modus.

22. It is submitted that in the process, the security personal have been made scapegoats to bear the brunt of false accusations. It is an admitted fact that

rarely does any individual security personal comes forward to contest such allegations, since their service protocol deters them from doing so. Unwittingly and unfairly, they become easy targets of such accusations leading to a resigned acceptance of such blemishes as an incident of duty. Such an environment for the functioning of security apparatus in any country is extremely undesirable and in fact dangerous for the security of the nation and its people. The trust reposed by the society in the police and other security personal is coveted and necessary for the smooth functioning of any administration. The law enforcement machinery is not and cannot appear to be blemished. Moreover, it is also a fact that wherever any such machinery is found to be indulging in illegal or irregular activities, this Hon'ble Court and other courts have been prompt and undeterred in taking action against such personal. However, there is an expedient and urgent need to guard against irresponsible, unjustified and by far, brazen false accusations against the security personal."

POSITION OF LAW :

"**Indian Penal Code**

Section 191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Section 192. Fabricating false evidence.—Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any

point material to the result of such proceeding, is said to "to fabricate false evidence".

Section 193. Punishment for false evidence. - Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Code of Criminal Procedure, 1973

Section 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance-

(a) … …. …. …

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

Section 340. Procedure in cases mentioned in section 195. — (1) When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and given evidence before such Magistrate;

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed, -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the court may appoint;

(b) in any other case, by the presiding officer of the court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195."

72. Thus, from the above, it follows that there are two conditions, on fulfillment of which, a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him.

73. In ***K. Karunakaran v. T.V. Eachara Warrier and another***, reported in AIR 1978 SC 290, this Court held in paragraphs 19, 20 and 21 as under :

> *"19. Chapter XXVI of the Code of Criminal Procedure 1973 makes provisions as to offences affecting the administration of justice. Sec. 340, Cr.P.C, with which the chapter opens is the equivalent of the old Section 476 of the Criminal Procedure Code, 1898. The chapter has undergone one significant change with regard to the provision of appeal which was there under the old section 476-B, Cr.P.C. Under Section 476-B, Cr.P.C. (old) there was a right of appeal from the order of a subordinate court to the superior court to which appeals ordinarily lay from an appealable decree or sentence of such former court. Under Section 476-B (old) there would have ordinarily been a right of appeal against the order of the High Court to this Court. There is, however, a distinct departure from that position under Section 341, Cr.P.C. (new) with regard to an appeal against the order of a High Court under Section 340 to this Court. An order of the High Court made under sub-section (1) or sub-section (2) of Section 340 is specifically excluded for the purpose of appeal to the superior court under Section 341 (1), Cr.P.C (new). This is, therefore, a new restriction in the way of the appellant when he approaches this*

Court under Article 136 of the Constitution.

20. Whether, suo motu, or on an application by a party under Section 340 (1), Cr.P.C., a court having been already seized of a matter may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In a proceeding under Section 340 (1), Cr.P.C, the reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the court in the earlier proceedings.

21. At an enquiry held by the court under Section 340 (1), Cr.P.C, irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action."

74. In ***Baban Singh and another v. Jagdish Singh and others***, reported in AIR 1967 SC 68, this Court observed the following in paragraph 7 as under :

"7. The matter has to be considered from three stand points. Does the swearing of the false affidavits amount to an offence under S.199, Indian Penal Code or under either Ss.191 or 192, Indian Penal Code? If it comes under the two latter sections, the present prosecution cannot be sustained, Section 199 deals with a declaration and does not state that the declaration must be on oath. The only condition necessary is that the declaration must be capable of being used as evidence and which any Court of justice or any public servant or other person, is bound or authorized by law to receive as evidence. Section 191 deals with evidence on oath and S.192 with fabricating false evidence. If we consider this matter from the standpoint of S.191, Indian Penal Code the offence is constituted by swearing falsely when one is bound by oath to state the truth because an affidavit

is a declaration made under an oath. The definition of the offence of giving false evidence thus applies to the affidavits. The offence may also fall within S.192. It lays down inter alia that a person is said to fabricate false evidence if he makes a document containing a false statement intending that such false statement may appear in evidence in a judicial proceeding and so appearing in evidence may cause any person who, in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding. When Baban Singh and Dharichhan Kuer made declarations in their affidavits which were tendered in the High Court to be taken into consideration, they intended the statements to appear in evidence in a judicial proceeding, and so appearing, to cause the Court to entertain an erroneous opinion regarding the compromise. In this way their offence came within the words of Ss. 191/192 rather than S.199 of the Indian Penal Code. They were thus prima facie guilty of an offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding."

75. The law under Section 340 of the CrPC on initiating proceedings has been laid down in several of our judgments. Thus in ***Chajoo Ram v. Radhey Shyam***, (1971) 1 SCC 774, this Court, in para 7, stated as under :

"7. … No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge."

76. Similarly in ***Chandrapal Singh and Others v. Maharaj Singh and Another***, (1982) 1 SCC 466, this Court, in para 14, stated as under :

> *"14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199, I.P.C. To illustrate the point, appellant-1 Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out, in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such*

cases complaints under Section 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. The learned Counsel for the respondents told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482, Cr. P.C."

77. Both the aforesaid judgments were referred to and relied upon with approval in ***R.S. Sujatha v. State of Karnataka and Others***, (2011) 5 SCC 689. This Court, after setting down the law laid down in these two judgments concluded:

"18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

78. It is clear through from a reading of the aforesaid judgments that there should be something deliberate - a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise.

79. It is true that an affidavit is 'evidence' within the meaning of Section 191 of the IPC and a person swearing to a false affidavit is guilty of perjury. But the matter does not rest here. Before initiating the proceedings for perjury, the court concerned has to consider whether it would be expedient in the interest of justice to sanction such prosecution. What the courts have to see at this stage is whether there is evidence in support of the allegations made by the Union of India (respondent herein) to justify the initiation of proceedings against the writ petitioners, more particularly, the writ petitioner no.1 herein who had filed the affidavit on behalf of himself and the other writ petitioners and not whether the evidence is sufficient to warrant his conviction. However, this does not mean that the court should not *prima facie* be of the opinion that there are sufficient and reasonable grounds for setting the machinery of criminal law in motion against the accused. As noted above, the Court has further to see that the false statement was deliberate and

conscious and the conviction is reasonably probable or likely. In other words, before sanctioning the prosecution there must be a *prima facie* case of a falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. (see ***S.P. Kohli v. High Court of Punjab & Haryana***, AIR 1978 SC 1753)

80. This Court, in the case of ***Muthu Karuppan, Commissioner of Police, Chennai v. Parithi Ilamvazhuthi and another***, reported in (2011) 5 SCC 496, has held as under :

> *"15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.*
>
> *16. In a series of decisions, this Court held that the enquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of making false statement, more so, the court has to determine as on facts whether it is expedient in the interest of justice to enquire into offence which appears to have been committed."*

81. Section 340 of the CrPC came up for the consideration before a three-Judge Bench of this Court in the case of ***Pritish v. State of Maharashtra***, (2002) 1 SCC 253. In ***Pritish*** (*supra*), this Court was called upon to consider, whether it is mandatory on the part of the court to make a preliminary inquiry under Section 340 of the CrPC before filing a complaint under Section 195 of the CrPC and further, whether the court is required to afford an opportunity of hearing to the person against whom a complaint is filed before a Magistrate for initiating prosecution proceedings. This Court took the view that an opportunity to the would be accused before the filing of the complaint was not mandatory, and observed that the preliminary inquiry was itself not mandatory. The Court observed thus :

> *"9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This subsection has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it*

is expedient in the interest of justice that the offence should further be probed into. <u>If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion</u>. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

10. "Inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Section 2(x)] of the Code the Magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

11. Section 238 of the Code says that the Magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the Magistrate to consider the complaint and the documents sent with it. He may also make such examination of the

accused, as he thinks necessary. Then the Magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the Magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the Magistrate has to proceed to conduct the trial. Until then the inquiry continues before the Magistrate.

12. Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged.

13. The scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. Learned counsel for the appellant contended that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code, to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry.

14. Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party

against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.

x x x x

18. We are unable to agree with the said view of the learned Single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry (vide M.Muthuswamy v. Special Police Establishment [1985 Cri LJ 420 (Mad)]).”

(emphasis supplied)

82. In ***M.S. Sheriff and Another v. State of Madras and Others***, AIR 1954 SC 397, a Constitution Bench of this Court said that no expression on the guilt or innocence of persons

should be made by court while passing an order under Section 340 of CrPC. An exercise at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into. This decision of the Constitution Bench has also been followed in *Pritish* (*supra*) observing that the court, when decides to make a complaint under Section 340, is not to record finding of guilt or innocence of person against whom complaint is to be made before a Magistrate.

83. We may also refer and reply upon the decision of this Court in the case of ***Aarish Asgar Qureshi v. Fareed Ahmed Qureshi and another*,** reported in (2019) 18 SCC 172, wherein this Court discussed and explained the necessary requirements for the purpose of initiation of proceeding under Section 340 read with Section 195(1)(b) of the CrPC. This Court laid much emphasis on two words namely “deliberate” and “intentional”. This Court talked about the requirement of impeachable evidence for the purpose of initiation of proceedings. In other words, this Court took the view that a statement should be made deliberately and consciously and the same should be found to be false as a result of comparing it with unimpeachable evidence,

documentary or otherwise. We quote the relevant observations made by this Court:-

> "10. It is clear therefore from a reading of these judgments that there should be something deliberate - a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise. In the facts of the present case, it is clear that the statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence has not yet been led. Moreover, the report dated 12.11.2011 being a report, which is in the nature of a preliminary investigation report by the investigating officer filed only two days after the F.I.R. is lodged, can in no circumstances be regarded as unimpeachable evidence contrary to the statements that have been made in the anticipatory bail application. ..."
>
> (emphasis supplied)

84. However, in the subsequent decision in the case of ***Sharad Pawar v. Jagmohan Dalmiya***, (2010) 15 SCC 290, while dealing with a similar question as above, a three-Judge Bench of this Court went on to observe as follows :

> *"7. Having heard the learned Senior Counsel for both sides and after perusal of the record, we are of the considered view that before giving a direction to file complaint against Defendants 1 to 6, it was necessary for the learned Single Judge to conduct a preliminary enquiry as contemplated under Section 340 CrPC and also to afford an opportunity of being heard to the defendants, which was admittedly not done.*
>
> *8. We, therefore, in the interest of justice, allow these appeals, set aside the impugned order of the High Court passed in the application filed by Respondent 1-plaintiff under Section 340 CrPC and remit the matter to the learned Single Judge to decide the application under Section 340 CrPC afresh in accordance with law,*

and after affording reasonable opportunity of being heard to the defendants, against whom the learned Single Judge ordered enquiry."

85. Later, the judgment in ***Pritish*** (*supra*) came to be relied upon by a two Judges Bench of this Court in ***Amarsang Nathaji*** (*supra*). While dealing with the propriety of the procedure adopted by the court making a complaint under Section 340 of the CrPC, the Bench in ***Amarsang Nathaji*** observed as follows:

> *"7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See Pritish v. State of Maharashtra [Pritish v. State of Maharashtra, (2002) 1 SCC 253)*

86. The conflict between the two decisions of this Court of equal strength, i.e. ***Pritish*** (*supra*) and *Sharad Pawar* (*supra*), was taken notice of by this Court in the case of the ***State of Punjab v. Jasbir Singh***, (2020) 12 SCC 96. A Bench of two Judges of this Court ultimately thought fit to refer the question to a Larger Bench. The Court observed as under :

"14. In any event, given that the decision of the three-Judge Bench in Sharad Pawar (supra) did not assign any reason as to why it was departing from the opinion expressed by a Coordinate Bench in Pritish (supra) regarding the necessity of a preliminary inquiry under Section 340 of the CrPC, as also the observations made by a Constitution Bench of this Court in Iqbal Singh Marwah (supra), we find it necessary that the present matter be placed before a larger Bench for its consideration, particularly to answer the following questions:

14.1 (i) Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court ?

14.2 (ii) What is the scope and ambit of such preliminary inquiry ?"

87. It appears that the reference on the aforesaid two questions to a larger Bench is still pending.

88. However, we do not intend to dwell upon any further in the aforesaid context i.e. whether it would be expedient in the interests of justice to proceed against the writ petitioners for perjury. We are saying so as we do not want to precipitate this issue any further. We have said in so many words that this is a very serious matter as it relates directly to the security of the nation.

89. In the aforesaid context, we have something else in mind. We propose to look into Section 211 of the IPC. Section 211 of

the IPC is extracted hereunder:-

> *"**Section 211**. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, [imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

90. The essential ingredients for invoking Section 211, I.P.C. are that the complaint must have falsely charged a person with having committed an offence. The complainant, at the time of giving the complaint must have known that there is no just or lawful ground for making a charge against the person. This complaint must have been given with an intention to cause injury to a person.

91. The CrPC does not define what constitutes the making of a "charge" of an offence or what amounts to the "institution of criminal proceedings". But, in our opinion, a false "charge" in this Section must not be understood in any restricted or technical sense, but in its ordinary meaning, of a false accusation made to any authority bound by law to investigate it

or to take any steps in regard to it, such as giving information of it to the superior authorities with a view to investigation or other proceedings, and the institution of criminal proceedings includes the setting of the criminal law in motion. The nature of both expressions, and the difference between them has been explained in lucid terms in the decision of the Full Bench of the Calcutta High Court in the case of ***Karim Buksh v. Queen Emp***, 17 C. 574. It points out that there may be a charge which does not amount to the institution of criminal proceedings "and there may be criminal proceedings which do not necessarily involve a charge" of any offence. As an illustration of the former it points out that a charge made to the Judge of a Civil Court or to public officers of other kinds, in order to obtain sanction to prosecute may well be a charge "but is not the institution of criminal proceedings". It further points out that an aggrieved person may seek to put the criminal law in motion either by making a charge or in the language of the Code giving information to the Police (Section 154 CrPC) "or he may" lay a charge, or as the Code calls it, a complaint (Section 190 CrPC) before a Magistrate".

92. We are referring to Section 211 of the IPC as above keeping in mind the fact that the first information reports lodged by the writ petitioners at the different police stations were investigated and at the end of the investigation, the investigating agency

reached to the conclusion that the police force had no role to play, rather Naxals were responsible for the massacre. *Prima facie*, it could be said that false information was given by the first informants to the police as regards the alleged massacre by the police force.

93. The essential to be satiated in order to attract the offence under Section 211 of the IPC was elucidated by this Court in in ***Santokh Singh & Ors. v. Izhar Hussan & Anr.***, (1973) 2 SCC 406. The relevant paragraph is extracted hereinunder:

> "10. … This section as its marginal note indicates renders punishable false charge of offence with intent to injure. The essential ingredient of an offence under Section 211 IPC is to institute or cause to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. It is frankly conceded by Shri Kohli that the appellant cannot be said to have instituted any criminal proceeding against any person. So that part of Section 211 IPC is eliminated. Now, the expression "falsely charges" in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. To "falsely charge" must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when speaking to prove the false charge by making deposition in support of the charge framed in that trial. The words "falsely charges" have to be read along with the expression "institution of criminal

> proceeding". Both these expressions, being susceptible of analogous meaning should be understood to have been used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be embodied either in a complaint or in a report of a cognizable offence to the police officer or an officer having authority over the person against whom the allegations are made. The statement in order to constitute the "charge" should be made with the intention and object of setting criminal law in motion. ...".

94. Thus, as explained by this Court in ***Santokh Singh v. Izhar Hussain*** (supra), the essential ingredient of an offence under Section 211 IPC is to institute or cause, to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. Now, the expression "falsely charges" in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. "To falsely charge" must refer to the original or initial accusation putting or seeking to put in motion

the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words "falsely charges" have to be, read along with the expression "institution of criminal proceeding". Both these expressions, being susceptible of analogous meaning should be understood to have been used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be' embodied either in a complaint or in a report of a cognizable offence to the police officer or to an officer having authority over the person against whom the allegations are made. The statement in order to constitute the "charges" should be made with the intention and object of setting criminal law in motion.

95. Thus, we leave it to the State of Chhattisgarh/CBI (Central Bureau of Investigation) to take appropriate steps in accordance with law as discussed above in reference to the assertions made in the interim application. We clarify that it shall not be limited only to the offence under Section 211 of the IPC. A case of criminal conspiracy or any other offence under the IPC may also

surface. We may not be understood of having expressed any final opinion on such action/proceedings. We leave it to the better discretion of the State of Chhattisgarh/CBI to act accordingly keeping in mind the seriousness of the entire issue. Thus, the relief prayed for in terms of Para 67(b) hereinabove, of the subject interlocutory application is hereby granted.

96. We have not remained oblivious of Section 195 CrPC while discussing the aforesaid. We make it clear that having regard to the facts of the present case the bar of Section 195 CrPC would not apply if ultimately the State of Chhattisgarh/CBI decides to take appropriate action in accordance with law as discussed above. The issue is no longer *res integra* in view of the decision of this Court in ***M.L. Sethi v. R.P. Kapur***, reported in AIR 1967 SC 528, wherein this Court observed as under:

> "10. In the interpretation of this clause (b) of sub-section (1) of Section 195, considerable emphasis has been laid before us on the expression "in, or in relation to", and it has been urged that the use of the expression "in relation to" very considerably widens the scope of this section and makes it applicable to cases where there can even in future be a proceeding in any court in relation to which the offence under Section 211 IPC, may be alleged to have been committed. A proper interpretation of this provision requires that each ingredient in it be separately examined. This provision bars taking of cognizance if all the following circumstances exist viz. (1) that the offence in respect of which the case is brought falls under Section 211 IPC; (2) that there should be a proceeding in any court; and (3) that the allegation

should be that the offence under Section 211 was committed in, or in relation to, such a proceeding. Unless all the three ingredients exist, the bar under Section 195(1)(b) against taking cognizance by the Magistrate, except on a complaint in writing of a court, will not come into operation. In the present case also, therefore, we have to see whether all these three ingredients were in existence at the time when the Judicial Magistrate at Chandigarh proceeded to take cognizance of the charge under Section 211 IPC against the appellant.

11. There is, of course, no doubt that in the complaint before the Magistrate a charge under Section 211 IPC, against the appellant was included, so that the first ingredient clearly existed. The question on which the decision in the present cases hinges is whether it can be held that any proceeding in any court existed when that Magistrate took cognizance. If any proceeding in any court existed and the offence under Section 211 IPC, in the complaint filed before him was alleged to have been committed in such a proceeding, or in relation to any such proceeding, the Magistrate would have been barred from taking cognizance of the offence. On the other hand, if there was no proceeding in any court at all in which, or in relation to which, the offence under Section 211 could have been alleged to have been committed, this provision barring cognizance would not be attracted at all. 12. In this case, as we have already indicated when enumerating the facts, the complaint of which cognizance was taken by the Judicial Magistrate at Chandigarh was filed on April 11, 1959 and at that stage, the only proceeding that was going on was investigation by the police on the basis of the First Information Report lodged by the appellant before the Inspector-General of Police on December 10, 1958. There is no mention at all that there was, at that stage, any proceeding in any court in respect of that FIR When examining the question whether there is any proceeding in any court, there are three situations that can be envisaged. One is that there may be no proceeding in any court at all. The second is that a proceeding in a court may actually be pending at the point of time when cognizance is sought to be taken of the offence under Section 211 IPC. The third is that, though there

> may be no proceeding pending in any court in which, or in relation, to which the offence under Section 211 IPC could have been committed, there may have been a proceeding which had already concluded and the offence under Section 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under Section 195(1)(b) would come into operation. If there be a proceeding actually pending in any court and the offence under Section 211 IPC is alleged to have been committed in relation to that proceeding, Section 195(1)(b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which may have concluded by the time the question of applying the provisions of Section 195(1)(b) arises, the bar under that provision would apply if it is alleged that the offence under Section 211 IPC, was committed in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195(1)(b) does not require that the proceeding in any court must actually be pending at the time applying this bar arises."

97. With the aforesaid, we dispose of this Interlocutory Application.

..J.
(A.M. KHANWILKAR)

..J.
(J.B. PARDIWALA)

NEW DELHI;
JULY 14, 2022