

W.P. No. 4183 of 2011 and M.P. No. 1 of 2011

C.Ve. Shanmugam v. State of T.N.

2011 SCC OnLine Mad 1881 : (2012) 1 Mad LJ 376

(BEFORE D. HARIPARANTHAMAN, J.)

C.Ve. Shanmugam ..... Petitioner

v.

1. The State of Tamil Nadu Rep. by the Secretary to Government Home Department Secretariat, Fort St. George, Chennai - 600 009.
2. The Deputy Superintendent of Police Kottakuppam Sub-Division Villupuram District. Tamil Nadu. (Cr. No. 164/2006 registered by Rosanai P.S., Tindivanam)
3. The Director Central Bureau of Investigation New Delhi.
4. The Joint Director and Head of Zone Central Bureau of Investigation III Floor, E.V.K. Sampath Building College Road, Chennai - 600 006.
5. The Deputy Superintendent of Police Tindivanam Sub-Division Villupuram District, Tamil Nadu.
6. V. Sudhakar
7. S. Srinivasan

(R6 and R7 impleaded as per order dated 14.09.2011 in M.P. Nos. 2 and 3 of 2011 in W.P. No. 4183 of 2011) ..... Respondents

For Petitioner: Mr. B. Kumar Senior Counsel for Mr. Anand David

For Respondents 1, 2 and 5: Mr. I. Subramanian Public Prosecutor Assisted by Mr. M.C. Swamy Special Government Pleader Mr. Maharajan Additional Public Prosecutor

For Respondents 3 and 4: Mr. N. Chandra Sekaran Special Public Prosecutor for CBI

For Respondent 6 : Mr. S. Anantha Narayan

For Respondent 7 : Mr. Ashok Kumar Senior Counsel for Mr. P. Gopiraja

W.P. No. 4183 of 2011 and M.P. No. 1 of 2011

Decided on October 29, 2011

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to transfer the investigation of the case in Cr. No. 164/2006 in Roshanai Police Station now pending investigation on the file of the second respondent to the third respondent and direct the third respondent to thoroughly investigate the case and take action in accordance with law.

ORDER

The petitioner herein is now the Education Minister in the State of Tamil Nadu. His political party, namely, All India Anna Dravida Munnetra Kazhagam (shortly "AIADMK") emerged victorious when the results were declared for the Elections to the Tamil Nadu State Legislative Assembly on 13.05.2011. The petitioner was also the Minister in the State of Tamil Nadu for Education and Commercial Tax Department during the period 2001-2006. He contested in Tindivanam Constituency for the MLA Election that took place on 08.05.2006. His rival candidate, namely, Mr. N.M.

Karunanidhi belongs to Pattali Makkal Katchi (shortly "PMK").

2. The brief facts leading to the filing of the writ petition are as follows:

(a) The residence of the petitioner is at No. 1, Mottaiyan Street, Tindivanam, Villupuram District. On 08.05.2006 at about 09.30 p.m., the petitioner, his two brothers namely Mr. C.V. Radhakrishnan and Mr. C.V. Babu and persons belonging to his political party were sitting under the shamiana that was put up in front of the petitioner's house. At that time, a group of persons came in two vehicles pelted beer bottles on the persons sitting in front of the house of the petitioner and attacked the petitioner and others with deadly weapons and also caused damages to two cars, one belongs to the petitioner and the other belongs to one of his party men, who was sitting there. In the said attack, one Mr. Muruganandham, who is the brother-in-law of the petitioner's brother Mr. C.V. Babu, succumbed to injuries. Another person by name Mr. V.V.R. Mahesh was also injured in the attack. The petitioner went beneath his car in order to save his life. Thereafter, the group fled away from the scene of occurrence through their vehicles.

(b) The petitioner lodged a complaint at Rosanai Police Station, Tindivanam at about 02.00 a.m. on 09.05.2006 and the same was registered as FIR in Crime No. 164/2006 under Sections 147, 148, 302, 307, 506(ii), 324, 323, 120(B) and 427 IPC. In the FIR, it is alleged that Dr. Ramadass, Founder Leader of PMK, Mr. Srinivasan, brother of Dr. Ramadass, Dr. Anbumani Ramadass, the then Union Minister and son of Dr. Ramadass and Dr. Parasuram, son-in-law of Dr. Ramadass conspired to murder the petitioner and at their instance, the group led by Mr. N.R. Raghu and Mr. N.M. Karunanidhi attacked the petitioner and others, who were sitting in front of the house of the petitioner, leading to the death of Muruganandham. It is also alleged in the FIR that Dr. Ramadass, Founder Leader of PMK and Dr. Anbumani Ramadass, the then Union Minister and son of Dr. Ramadass, spoke during the Election Campaign that the petitioner could be finished of. As per the FIR, the attack was led by one Mr. N.R. Raghu, who belongs to PMK and who is the sister's son of Dr. Ramadass and Mr. N.M. Karunanidhi, the rival candidate, who contested against the petitioner in Tindivanam Constituency, as PMK candidate, who is also related to Dr. Ramadass, with a group of about 15 persons, with deadly weapons. It is further alleged that before the said incident, one Mr. Preethiban, grand son of Dr. Ramadass, came in a Red Colour Ford Car and on his information about the availability of the petitioner, the said group came and attacked the petitioner and others. The aforesaid seven persons, namely, Dr. Ramadass, Dr. Anbumani Ramadass, Srinivasan, Dr. Parasuraman, N.R. Raghu, N.M. Karunanidhi and Preethiban are specifically named in the FIR as accused.

(c) After the attack, when others fled away from the scene of occurrence, one Mr. Kumaran @ Kumaravel, who was apprehended at the scene of occurrence, was handed over by the petitioner to the Inspector of Police, Rosanai Police Station. Kumaran was one among the persons in the group which attacked the petitioner and others.

(d) The Deputy Superintendent of Police, Tindivanam completed the investigation and laid final report on 29.12.2007 before the Judicial Magistrate No. 1, Tindivanam. In the final report, 15 persons are shown as accused and A1 is the deceased Raghu, who died on 26.02.2007. Except the deceased N.R. Raghu, all the persons named in the FIR were deleted in the final report. The petitioner was not put on notice about the deletion of persons named in the FIR. The Judicial Magistrate No. 1, Tindivanam committed the case to the Principal Sessions Court, Villupuram vide PRC No. 2/2008. In turn, the Principal Sessions Judge, Villupuram made over the case to the Fast Track Court - I, Tindivanam.

(e) The petitioner herein approached the Fast Track Court by filing CrI.M.P. No. 108/2008 in S.C. No. 103/2008 under Section 173(8) Cr.P.C., for further investigation and the same was dismissed on 28.08.2009.

(f) Challenging the same, the petitioner filed revision petition in CrI.R.C. No. 939/2009 before this Court. This Court, on 21.01.2010, allowed the revision petition in the following terms:

"27. In view of the foregoing discussions, the revision petition is allowed in the following terms: -

1. The order of the learned Judicial Magistrate No. I, Tindivanam taking cognizance on the final report submitted by the 1<sup>st</sup> respondent police is hereby set aside;
2. The order of the learned Judicial Magistrate No. I, Tindivanam committing the case to the Court of Sessions is also set aside.
3. The impugned order of the learned Sessions Judge is set aside.
4. The matter is remitted back to the learned Judicial Magistrate No. I, Tindivanam, who shall issue notice to the petitioner, permit him to file appropriate protest petition or objections, and after sufficient opportunity to the petitioner, the FIR named accused and the respondents 2 to 15 to make their submissions and then to pass appropriate order on the final report.
5. The learned Additional Sessions Judge, Fast Track Court No. I, Tindivanam is directed to dispatch the case records forthwith to the learned Judicial Magistrate No. I, Tindivanam."

(g) On remand by this Court, the petitioner filed a protest petition against the investigation conducted by the Deputy Superintendent of Police, Tindivanam and another petition seeking further investigation. Both the petitions namely CrI.M.P. Nos. 2118 and 2119 of 2010 were disposed of by the Judicial Magistrate No. 1, Tindivanam on 09.11.2010, after hearing the 14 surviving accused in the charge sheet and all the persons named in the FIR, who were deleted in the final report. The Judicial Magistrate No. 1, Tindivanam disposed the aforesaid applications with the following findings:

"1. This court disagrees with the final report of the first respondent/investigation officer in Cr. No. 164 of 2006 on the file of Roshanai Police Station, for the aforementioned reasons.

2. The protest petition bearing CrI.M.P. No. 2118 of 2010 filed by the defacto complainant is maintainable.
3. The Petition U/s.173(8) of Cr.P.C. seeking for further investigation at the instance of defacto complainant is maintainable in law.
4. This Court hereby direct the first respondent/investigation officer to conduct further investigation in Cr. No. 164 of 2006, on the file of Roshanai Police Station in accordance with law and further this Court herewith forwarding the protest petition filed by the defacto complainant bearing Cr.M.P. No. 2118 of 2010 for investigation, U/s. 156(3) of Code of Criminal Procedure.

5. In view of the similar relief granted in fourth findings, stated supra, the petitioner

U/s.173(8) of Cr.P.C. filed by the defacto complainant becomes infructuous.

In fine, these petitions disposed accordingly.”

(h) Thereafter, the Superintendent of Police, Villupuram transferred the investigation to the Deputy Superintendent of Police, Kottakuppam, for further investigation.

(i) While the Deputy Superintendent of Police, Kottakuppam conducted further investigation, the petitioner has filed the present writ petition seeking transfer of investigation of the case in Crime No. 164/2006 on the file of Rosanai Police Station, Villupuram District to Central Bureau of Investigation (CBI). One of the accused in the charge sheet namely V. Sudhakar, got impleaded as sixth respondent. One of the persons named in the FIR namely, S. Srinivasan, got impleaded as seventh respondent in the writ petition.

3. Heard the submissions made on either side.

4. The learned Senior Counsel for the petitioner submitted as follows:

(i) There was no proper investigation in this case, particularly after the third week of May 2006, as the PMK was an ally of the then Ruling Party. The family of the victim lost confidence in the investigation.

(ii) When the petitioner complained in the FIR that Raghu and Karunanidhi led the group and attacked the petitioner and others, with deadly weapons, the Investigating Officer got a second statement from the eye witnesses Devanathan and Sekar @ Packiaraj to the effect that they did not see Raghu and Karunanidhi at the scene of occurrence, contradicting their earlier statements. Neither Raghu nor Karunanidhi were arrested. Though the anticipatory bail application of Raghu was dismissed, Raghu was not arrested till his unnatural death on 26.02.2007.

(iii) When the petitioner complained categorically that the attack on the petitioner was at the instance of and pursuant to the conspiracy of the persons named in the FIR, there was no investigation on the conspiracy angle.

(iv) At the earliest point of time, Kumaran who was apprehended at the scene of occurrence confessed that prior to reaching the scene of occurrence, the accused went to the house of Dr. Ramadass and afterwards to the Nelmandi of Srinivasan, the brother of Dr. Ramadass. He stated that Karunanidhi was also present there, but however, he was not aware what they spoke. All these aspects could give sufficient lead to the investigation towards conspiracy angle, but nothing in that direction was done by the Investigating Officer. In view of such approach, the conspiracy angle was given a go by.

(v) After the death of N.R. Raghu, the investigating Officer made N.R. Raghu as the person who led the attack and made him as A1 in the final report, while investigation proceeded in a direction before his death to extricate him from the offence.

(vi) Before filing final report deleting the persons named in the FIR, none of them were interrogated and no statements were recorded from them.

(vii) Inaction on the part of the investigation was cited as noted by this Court in the order dated 25.09.2007 in CrI.O.P. No. 27746 of 2007.

(viii) The important piece of evidence is collecting the details of calls made by the

accused, including the persons named in the FIR, from the cell phones, to establish conspiracy, but the same was not done.

(ix) He pointed out that the second respondent herein filed a counter affidavit on behalf of the prosecution and on behalf of the respondents 1 and 5 stating that collection of electronic evidence, such as video and audio cassettes of the speeches of Dr. Ramadass and Dr. Anbumani Ramadass during the campaign in relation to the election to Tamil Nadu Legislative Assembly in May 2006 ended in failure. It is not impossible to collect video and audio cassettes of speech of Dr. Ramadass and Dr. Anbumani Ramadass.

(x) Likewise, when it is alleged in the FIR that Preethiban, the grand son of Dr. Ramadass and son of Dr. Parasuram came in Red Colour Ford Car, the second respondent stated that there was no Red Colour Ford Car with registration No. TN51-1155, as per the details provided by the Motor Vehicle Registering Authorities at Nagapattinam and Mayiladuthurai. Instead of getting the details of all Red Colour Ford Cars, the Investigating Officer confined investigation to Red Colour Ford Cars with registration No. TN51. The accused could come with bogus registration plate numbers and the colour of the Car is more relevant.

(xi) It is not that the Investigating Officer is not aware of all these things. Due to the political pressure exerted from high level, honest and proper investigation did not take place. He brought to my notice a news item published in a Tamil Daily viz., Murasoli in this regard.

(xii) When the learned Magistrate directed the Deputy Superintendent of Police, Tindivanam to conduct further investigation in the order dated 09.11.2010 in CrI.M.P. Nos. 2118 and 2119 of 2010, the second respondent herein conducted further investigation and hence, the further investigation conducted by the second respondent is without authority and jurisdiction.

(xiii) The investigation proceeded on the basis that the motive for attack on 08.05.2006 was some alleged incident that took place at Avvaiyarkuppam on the same day itself viz., 08.05.2006, in which, C.V. Radhakrishnan, the brother of the petitioner and other AIADMK party men attempted to assault N.R. Raghu and other PMK persons and they escaped in their Cars. According to the police, that was the motive for N.R. Raghu to organise the attack on the petitioner. According to the learned Senior Counsel, no such incident took place or even if any incident took place at Avvaiyarkuppam on 08.05.2006 during the polling that could have been a trivial one, as no FIR was lodged by N.R. Raghu or anyone else on the alleged incident.

(xiv) The learned Senior Counsel for the petitioner further submitted that the said incident could not have been the motive to attack the petitioner, as the attack was not directed against the brother of the petitioner C.V. Radhakrishnan, but the murderous attack was aimed at the petitioner as per the prosecution. Thus the investigation, according to the learned senior counsel for the petitioner, did not proceed in a proper direction and it was not a honest investigation.

(xv) Further, it was submitted by the learned Senior Counsel for the petitioner that besides the petitioner, statements recorded from the two brothers of the petitioner namely, C.V. Radhakrishnan and C.V. Babu, who were eye witnesses, on 15.05.2006 corroborate the version of the petitioner and also the statement of Devanathan and Sekar @ Packiaraj, eye witnesses, recorded at the earliest point of time on 09.05.2006 supported the version of the petitioner. The Investigating Officer failed to proceed

based on these materials.

(xvi) The learned Senior Counsel for the petitioner also relied on some judgments of the Honourable Supreme Court in support of his submissions seeking transfer of investigation to CBI, on the ground that investigation including further investigation was not done properly and honestly due to political pressure and extraneous influence.

(xvii) Though the prayer in the writ petition is transfer of investigation to CBI, the learned Senior Counsel for the petitioner submitted that transfer could be made either to CBI or CBCID under the State Government.

5. The learned Public Prosecutor supported the case of the petitioner. He submitted that the investigation was not an impartial one. He argued that the details of confession made by Kumaran (A2) was not investigated properly. His further submission was that there was no explanation from the Investigating Officer for examining Devanathan again after 20 days resiling from his earlier version. He pointed out that on 09.05.2006, Devanathan, an eye witness gave a statement corroborating the version of the petitioner. But he resiled from the same in another statement on 29.05.2006. No reason was given for recording such a statement again from the same person after 20 days. He also pointed out that three statements were recorded from Magesh, another eye witness, who was also injured. In the further investigation ordered by the Judicial Magistrate in the order dated 09.11.2010, the second respondent failed to investigate as to why statements were recorded twice from Devanathan and thrice from Magesh.

6. The learned counsel for the sixth respondent submitted that the Public Prosecutor colluded with the petitioner instead of supporting the police and the investigation done by them. He submitted that in view of the interim order in this writ petition, the further investigation is hampered and the right to speedy trial guaranteed to the sixth respondent was violated. The learned counsel relied on PSO 141 and submitted that the Superintendent of Police has power to transfer the investigation from one officer to another officer subordinate to him. Hence, there was nothing illegal in the further investigation being conducted by the second respondent, when the second respondent did it, pursuant to the order of the Superintendent of Police, Villupuram.

7. The learned Senior Counsel for the seventh respondent submitted that since the Public Prosecutor failed to support the police, he had to support the investigation. He submitted that there was nothing wrong in recording second statements, when the Investigating Officer entertained doubt. He pointed out that in the FIR, the petitioner stated that one Mari was injured at the scene of occurrence and later it was corrected in his statement that it was not Mari and it was Magesh. Hence the second statement could have been recorded. He submitted that eye witnesses 45 - 51 in the final report spoke about the motive for the attack and the motive was the incident that took place at Avvaiyarkuppam on 08.05.2006 during the polling. The learned Senior Counsel further submitted that this Court could not interfere with the further investigation and let there be a final report based on further investigation and if the petitioner was not satisfied, he has remedy to file protest petition thereon. The learned Senior Counsel vehemently contended that transfer of investigation to CBI is not warranted, as it would amount to interfering with the further investigation that is being carried on by the second respondent. The learned Senior Counsel further submitted that nobody, including the Courts, could interfere with the investigation by the police.

8. I have considered the submissions made on either side and perused the case diary produced by the learned Public Prosecutor.

9. The question that arises for consideration is as to whether the investigation could be transferred to CBI or CBCID, at this stage.

10. The law is well settled. Investigation of crime is the domain of the Police and normally, this Court could not interfere in the matter of investigation by the Police on cognizable offence. The power of this Court under Article 226 of the Constitution of India for transferring investigation to CBI is limited and the same should be exercised sparingly, cautiously and in situations, which warrant to provide credibility and instil confidence in investigations. This Court can issue directions for prompt investigation in appropriate cases, but cannot issue directions to proceed in a particular way or to submit report that is in accordance with its views.

11. The Constitution Bench of the Honourable Supreme Court, in para 44 of its judgment in *STATE OF WEST BENGAL v. THE COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS, WEST BENGAL* [2010 (2) SCALE 467 : 2010 (3) SCC 571] has broadly set out the guidelines in the matter relating to transfer of investigation to CBI. The facts leading to the said judgment is that a carnage took place in a village in the State of West Bengal, wherein 11 persons belonging to one political party were killed by the assailants from other political party. The High Court held that in the background of the case, it has strong reservations about the impartiality and fairness in the investigation by the State Police and that because of the political fall out, no useful purpose would be served in continuing with the investigation by the State Investigating Agency. The High Court handed over the investigation into the said incident to CBI. The same was questioned before the Honourable Supreme Court on the ground that the order of the High Court was contrary to the constitutional provisions relating to federal structure and the separation of powers between the various organs of the State and the handing over of the investigation to CBI without the consent of the State was illegal. The Honourable Supreme Court confirmed the order of the High Court and rejected the contentions of the appellant therein. It has been held that the Supreme Court under Article 32 of the Constitution of India and the High Court under Article 226 of the Constitution of India are duty bound to exercise its power of judicial review in proper cases to protect the fundamental rights of the citizens and sustained the order of the High Court. In my view, the said judgment squarely applies to the facts of this case. Para 44(ii) of the said judgment is relevant for this case and the same is extracted hereunder:

"44. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(i) ...

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State."

The note of caution issued by the Honourable Supreme Court in para 46 of the said judgment is also extracted hereunder:

"46.....despite wide powers conferred by Articles 32 and 226 of the Constitution,

while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar 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 power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations.....”

12. Therefore, the facts of this case as borne out from the records have to be looked into in the light of the aforesaid guidelines of the Honourable Supreme Court.

13. As per the case diary, the details of the investigation are as follows: -

(i) Mr. Sekar, Inspector of Police, Rosanai Police Station, commenced the investigation, after registration of FIR in Crime No. 164/2006 at 02.00 a.m., on 09.05.2006. On 09.05.2006, he recorded statements from the eye witnesses namely, V.S. Devanathan, who was the AIADMK Town Secretary, Tindivanam and Sekar under Section 161 Cr.P.C. Their statements corroborate the version of the petitioner in the FIR. The Inspector of Police also recorded confession statement from the accused Kumaran, who was handed over by the petitioner.

(ii) On 09.05.2006, the Superintendent of Police, Villupuram District transferred the investigation to the Deputy Superintendent of Police, Kallakurichi, namely Mr. Balasubramanian.

(iii) On 10.05.2006, the Deputy Superintendent of Police, Kallakurichi recorded a statement from the petitioner. He also arrested one Siva at Pondicherry, who was one among the group of persons, who attacked the petitioner and others with lethal weapons and recorded a confession statement from him. Since Siva also got injured in the incident, he was admitted in the Government Hospital, Tindivanam by the Police Personnel of Rosanai Police Station and subsequently, he was shifted to Government Hospital, Pondicherry for further treatment. He absconded from the Government Hospital, Pondicherry, but subsequently, he was arrested at Pondicherry.

(iv) On 13.05.2006, the Deputy Superintendent of Police, Kallakurichi recorded a statement under Section 161 Cr.P.C. from V.V.R. Mahesh of AIADMK, who was an eye witness to the occurrence and he was also injured in the said attack. The Deputy Superintendent of Police seized the blood stained shirt of V.V.R. Mahesh.

(v) On 13.05.2006, the results of the Election to the Tamil Nadu Legislative Assembly were declared. The petitioner was the successful candidate in the Election. But his political party lost the power. The political party that was supported by PMK came to power.

(vi) On 15.05.2006, the Deputy Superintendent of Police also recorded statements from C.V. Babu and C.V. Radhakrishnan, the brothers of the petitioner. Their statements corroborate the version of the petitioner in the FIR.

(vii) On 15.05.2006, five persons namely, Nanda @ Nandakumar, Sudhakar S/o. Vinayagam, Ramesh, Sudhakar S/o. Rathinavel and Prabhu @ Prabhakaran surrendered before the Deputy Superintendent of Police and confessed about their involvement in the Crime that took place on 08.05.2006 at 09.30 p.m., in front of the

petitioner's residence. Their statements were also recorded by the Deputy Superintendent of Police. The statements recorded from the aforesaid five accused point out that the attack was organised by N.R. Raghu and that N.R. Raghu actively participated in the entire process of attack. The confession statements of Kumaran and Siva do also point out the lead role played by N.R. Raghu. These statements disclose the use of cell phones by N.R. Raghu and other accused prior to the occurrence and that those accused and N.R. Raghu went to the house of Dr. Ramadass and thereafter, went to the Nelmandi of Srinivasan, prior to the occurrence.

(viii) However, from 22.05.2006 onwards, the entire course of investigation changed. A second statement was recorded from V.V.R. Mahesh on 22.05.2006. In the second statement, he stated that neither N.R. Raghu nor N.M. Karunanidhi was present at the scene of occurrence. Similar statements were recorded from Vinothkumar, Senthilkumar, Abbasmanthiri, Dr. Ganesan, Muralidharan, Dheenadhayalan, who belong to AIADMK and who were present at the scene of occurrence, to the effect that neither N.R. Raghu nor N.M. Karunanidhi was present at the scene of occurrence. A second statement from Devanathan was recorded on 29.05.2006 to the effect that he did not see N.R. Raghu and N.M. Karunanidhi when the attack took place.

(ix) On 05.06.2006, statements were recorded from one Mr. Tharani, Personal Assistant to the petitioner and Mr. K. Rajaram, another Personal Assistant to the petitioner, who were present at the scene of occurrence. They stated that there was no identifiable person in the said group. Likewise, a statement was recorded on 07.06.2006 from one Mr. K.V.N. Venkatesan, who was present at the scene of occurrence, on the same lines. A statement from Mr. Sivakumar, Driver of the petitioner, who was also present at the scene of occurrence was recorded on 08.06.2006 on the same lines that there was no identifiable person in the group. The purpose of the statements seems to show that the prominent persons, namely, Raghu and Karunanidhi, were not seen in the group that made murderous attack and that therefore all these statements are identically worded stating that no identifiable person was seen in the group.

(x) During June 2006, statements were recorded from persons residing in the Mottaiyan Street and from persons having some business interest in or near Mottaiyan Street and all of them stated that they did not witness the incident and did not see the persons, who involved in the attack. Thereafter, that is after June 2006, almost nothing took place in the investigation.

(xi) On 18.12.2006, Raghu filed Criminal Original Petition in CrI.O.P. No. 31287 of 2006 before this Court for anticipatory bail and the same was dismissed as withdrawn on 22.12.2006. Thereafter, Raghu moved an application for anticipatory bail in CrI.O.P. No. 626 of 2007 and the same was dismissed by this Court on 22.01.2007. Para 5 of the said order dated 22.01.2007 is extracted hereunder:

"5.A perusal of the FIR, I find that there are specific overt acts and usage of deadly weapons by the petitioner and in such circumstances, when the investigation is pending, I do not find any merits in the petition. Therefore, the petition is dismissed."

(xii) In these circumstances, Raghu died on 26.02.2007 in suspicious circumstances. Though anticipatory bail application was dismissed and Raghu was alleged with commission of overt act in the FIR and statements from eye witnesses recorded at the earliest point of time and the statements from accused persons on 15.05.2006 point out the lead role played by Raghu, he was not arrested till his death.

(xiii) While so, the investigation was transferred by the Superintendent of Police, Villupuram from the Deputy Superintendent of Police, Kallakurichi to the Deputy Superintendent of Police, Tindivanam, on 31.07.2007.

(xiv) In September 2007, Senthil, Selvam and Sowrirajan filed Criminal Original Petition in CrI.O.P. No. 27746 of 2007 for anticipatory bail. On 25.09.2007, this Court dismissed the said petition. The order dated 25.09.2007 passed in CrI.O.P. No. 27746 of 2007, which is heavily relied on by the learned Senior Counsel for the petitioner, reads as follows:

"The petitioners, who apprehend arrest in a case in crime No. 164 of 2006 on the file of the respondent police having been booked for the offences punishable under sections 147, 148, 302, 307, 506(ii), 324, 323, 120(B) and 427 IPC, move this application seeking anticipatory bail. It is a case of day light murder which allegedly took place on 8.5.2006.

2. The respondent police has wantonly slept over, inspite of the fact that sufficient clue is found in the FIR about the role of the accused. The C.D file speaks volumes about the inaction on the part of the respondent police. For about one year and four months, the respondent police has not cared to properly investigate this matter and lay final report. If this is the state of affairs in the matter of investigation by the responsible investigating agency, public at large will definitely lose faith in the criminal justice system.

3. Directing the respondent police to properly investigate this matter and file a final report within a short while, the application moved by these petitioners seeking anticipatory bail in a case of day light pending investigation murder stands dismissed."

(xv) In the said order, this Court noted that the CD file speaks volumes about the inaction on the part of the respondent Police and that for about one year and four months, the respondent police has not cared to properly investigate the matter and lay final report. This Court also opined that the people would definitely lose faith in the criminal justice system, if this is the state of affairs in the matter of investigation.

(xvi) Only after the anticipatory bail application was rejected, as stated above, Senthil and Sowrirajan were arrested on 29.09.2007 and confession statements were recorded. Selvam was arrested on 03.10.2007 and confession statement was recorded. Thereafter, on 09.10.2007, Kuppuswamy, Tamil Selvan, Sakthi and Lingeswaran were arrested and confession statement was recorded from Kuppusamy.

(xvii) On 15.11.2007, the Deputy Superintendent of Police, Tindivanam recorded in the case diary that neither Dr. Ramadass nor his family members involved in the murder case.

(xviii) Final report was filed on 29.12.2007 before the Judicial Magistrate No. 1, Tindivanam arraying 15 accused as A1 to A15, wherein Raghu was shown as A1, while deleting Dr. Ramadass and others named in the FIR from the case.

The aforesaid facts as disclosed in the case diary make it clear that the investigation was not conducted properly, honestly and impartially.

14. The Honourable Supreme Court in para 29 of its judgment in *VINEET NARAIN v. UNION OF INDIA* [1998 (1) SCC 226], has quoted with approval the judgment of Lord Denning in *R. v. METROPOLITAN POLICE COMMISSIONER* [1968 (1) ALL ER 763] about

the duties of the Police Officers in the matter of investigation of a crime and the relevant passage is extracted hereunder:

"29.... The agencies concerned must bear in mind and, if needed, be reminded of the caution administered by Lord Denning in this behalf in *R. v. Metropolitan Police Commr.* indicating the duty of the Commissioner of Police, Lord Denning stated thus: (All ER p.769)

I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, .... I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.

The nature of such a proceeding in a court of law was also indicated by Lord Denning, as under:

A question may be raised as to the machinery by which he could be compelled to do his duty. On principle, it seems to me that once a duty exists, there should be a means of enforcing it. This duty can be enforced. I think, either by action at the suit of the Attorney General: or by the prerogative order of mandamus.

After quoting the passage, the Honourable Supreme Court held that "there can hardly be any doubt that the obligation of the police in our constitutional scheme is no less".

15. But the aforesaid narration of facts that emerged from the records would reveal that the Tamil Nadu State Police failed the test that is formulated in the above passage, warranting transfer of investigation to CBI.

16. I have already recorded that after June 2006, there was a total inertia and inaction on the part of investigation for about 1 = years. Raghu was not arrested until his death, though his anticipatory bail application was dismissed. Likewise, three accused, namely, Senthil, Sowrirajan and Selvam were arrested after about 1= years only after their anticipatory bail applications were dismissed. Two cars used by the accused for the attack were seized only after about 1= years. In fact, the order dated 25.09.2007 passed by this Court in CrI.O.P. No. 27746 of 2007 is sufficient to order change of investigation to CBI. The said order is extracted above. Likewise, the order of this Court dated 21.01.2010 in CrI.R.C. No. 939 of 2009 and the order dated 09.11.2010 of the Judicial Magistrate No. 1, Tindivanam, passed in CrI.M.P. Nos. 2118 and 2119 of 2010 also provide sufficient ground for change of investigation to CBI.

17. From the reading of the CD file, after 3<sup>rd</sup> week of May 2006, an attempt was made in the investigation by recording statements that Raghu and Karunanidhi were not present at the scene of occurrence, while Kumaran @ Kumaravel, who was apprehended at the scene of occurrence gave a confession statement on 09.05.2006 that Raghu led the attack and that the five persons namely Nanda @ Nandakumar, Sudhakar S/o. Vinayagam, Ramesh, Sudhakar S/o. Rathinavel and Prabhu @

Prabhakaran, who surrendered before the Police on 15.05.2006 gave confession statements that Raghu led the attack; besides the petitioner in the FIR on 09.05.2006 and his brother Radhakrishnan and Babu, eye witnesses, in their statements on 15.05.2006 stated that Raghu and Karunanidhi led the attack and that two other eye witnesses Devanathan and Sekar gave statements on 09.05.2006 stating that Raghu and Karunanidhi led the attack. There was total inaction on the part of investigation for more than a year. After the death of Raghu, the blame was again shifted on Raghu and statements were recorded thereafter that Raghu led the attack. Thus, I find substantial force in the submission of the learned Senior Counsel for the petitioner that the investigation was not conducted properly.

18. As rightly contended by the learned Senior Counsel for the petitioner, the second statement from the eye witnesses were recorded in a short span, with a view to go scot free the accused Raghu who led the murderous attack. After the demise of Raghu, the investigation proceeded that Raghu led the attack. In the modern days, the call details from the cell phones are the valuable materials for the investigation of a crime. But the Investigating Officer failed to seize the cell phones used by the accused, though they made statements about the use of cell phones for communication. The details of the calls in the cell phones would also provide a valuable input on the conspiracy. Hence, the submissions of the learned Senior Counsel for the petitioner that the investigation was not honest and impartial, could not be brushed aside.

19. The submissions made by the learned Senior Counsel for the seventh respondent seeking non-interference in the further investigation has no substance, in view of the aforesaid findings rendered by me.

20. The learned Senior Counsel for the seventh respondent submitted that let the further investigation results in the filing of the final report and the petitioner could file a protest petition, if he is not satisfied with the final report.

Already the petitioner suffered seriously due to the improper investigation and the filing of earlier final report without hearing him. Furthermore, the records show that the further investigation is also not done in a satisfactory manner.

21. The learned Senior Counsel for the seventh respondent submitted that there was nothing wrong in recording statements whenever the Investigating Officer entertained doubt. But in this case, the second statements were recorded with a view to extricate Raghu and Karunanidhi from the offence. The haphazard manner in which the investigation took place requires a fresh investigation by CBI. As detailed above, the investigation did not proceed honestly and seems to have been under the extraneous influence by political and other considerations. Hence the submissions of the learned Senior Counsel for the seventh respondent are rejected.

22. Even during further investigation, the second respondent failed to interrogate the persons named in the FIR, except Dr. Ramadass and Dr. Anbumani Ramadass. Even after further investigation was ordered, the second respondent failed to properly investigate on the involvement of red colour Ford Car. While almost all the accused in the final report that was submitted earlier spoke about the use of cell phones prior to the occurrence, no effort was made to seize their cell phones, even during further investigation. Though almost all the accused in the final report spoke that prior to the attack, they went to the house of Dr. Ramadass and the Nelmandi of Srinivasan, the same was not probed at all during further investigation. Kumaran, who was apprehended at the scene of occurrence, also spoke that he, along with others, went to the house of Dr. Ramadass and thereafter to Nelmandi, prior to the occurrence. All

these facts would indicate that the further investigation was not properly and honestly conducted.

23. The submissions of the learned counsel for the sixth respondent that entrustment of investigation with CBI at this stage would hamper the speedy trial and therefore, this Court should not order for investigation by CBI, deserve to be rejected, as I have come to the conclusion that there was no honest and impartial investigation.

24. Likewise, the other submission of the learned counsel for the sixth respondent that the Superintendent of Police has power to transfer the investigation to any subordinate officer and therefore, there is nothing wrong in the second respondent proceeding with further investigation, is not acceptable to me. In the normal course, no one could take objection for the Superintendent of Police, Villupuram changing the Investigating Officer in view of his power of superintendence. But in this case, the Judicial Magistrate passed an order dated 09.11.2010 in CrI.M.P. Nos. 2118 and 2119 of 2010 directing the Deputy Superintendent of Police, Tindivanam, to proceed with further investigation. In these circumstances, the Superintendent of Police could not change the Deputy Superintendent of Police, Tindivanam as Investigating Officer, without taking an appropriate order from the learned Magistrate, if he so desires.

25. The Honourable Supreme Court in its judgments in (a) *KASHMERI DEVI v. DELHI ADMINISTRATION* [1988 (SUPP) SCC 482] (b) *PUNJAB AND HARYANA HIGH COURT BAR ASSOCIATION, CHANDIGARH v. STATE OF PUNJAB* [1994 (1) SCC 616] and (c) *RUBABBUDDIN SHEIKH v. STATE OF GUJARAT* [2010 (2) SCC 200] has held that transfer of investigation to CBI could be ordered to instil confidence in the minds of victims, his family members and general public, if there was no honest and impartial investigation, even if charge sheet was filed before the competent Criminal Court. The relevant paras from those judgments are extracted hereunder:

(a) *KASHMERI DEVI v. DELHI ADMINISTRATION* [1988 (SUPP) SCC 482]

"2. This is an unfortunate case which tends to shake the credibility of police investigation and undermines the faith of common man in Delhi Police which is supposed to protect life and liberty of citizens and maintain law and order. There have been serious allegations of murder by torture against the police and further about the haphazard manner in which the investigation against the accused police officers was investigated with a view to shield the guilty members of the Delhi Police.

7. Since according to the respondents charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge-sheet has been submitted to exercise his powers under Section 173(8) CrPC to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge-sheet, if any, in accordance with law. The appeal stands disposed of accordingly."

(b) *PUNJAB AND HARYANA HIGH COURT BAR ASSOCIATION, CHANDIGARH v. STATE OF PUNJAB* [1994 (1) SCC 616].

"9. We are conscious that the investigation having been completed by the police and charge-sheet submitted to the court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and to instil confidence in the public mind it is necessary, in our view, to have fresh investigation in this case through a specialised

agency like the Central Bureau of Investigation (CBI).”

(c) *RUBABBUDDIN SHEIKH v. STATE OF GUJARAT* [2010 (2) SCC 200]

“52. In *R.S. Sodhi v. State of U.P.* on which reliance was placed by the learned Senior Counsel appearing for the writ petitioner, this Court observed: (SCC pp. 144-45, para 2)

2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation....

(emphasis supplied)

This decision clearly helps the writ petitioner for handing over the investigation to the CBI Authorities or any other independent agency.

53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which the high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

80. .... Since the high police officials of the State of Gujarat are involved and some of them had already been in custody, we are also of the view that it would not be sufficient to instil confidence in the minds of the victims as well as of the public that still the State police authorities would be allowed to continue with the investigation when allegations and offences were mostly against them.

26. The Honourable Supreme Court in para 24 of its judgment in *D. VENKATASUBRAMANIAM v. M.K. MOHAN KRISHNAMACHARI* [2009 (12) SCALE 483] has held that the circumstances under which this Court could interfere in the matter of investigation. In that case, the interference made by High Court on the investigation was set aside by the Honourable Supreme Court on the ground that there was no allegation of inaction on the part of the investigation and that there was no allegation that the investigation was facilitating the accused to go scot-free. In this regard, the

relevant passage from para 24 of the said judgment is extracted hereunder:

"24.....It is not even remotely suggested that there was any deliberate inaction or failure in the matter of discharge of duties by the police. There was no allegation of any subversion of processes of law facilitating the accused to go scot-free nor is there any finding as such recorded by the High Court in its order."

But in the present case, I found that there was inaction on the part of investigation and also this Court in the order dated 25.09.2007 passed in CrI.O.P. No. 27746 of 2007 has noted that there was inaction on the part of the respondent police. I have also found that there was an attempt by the investigation to go scot-free N.R. Raghu by recording a second statement from eye witnesses resiling from the earlier statement. Hence, as per the aforesaid judgment, the transfer of investigation to CBI has to be ordered.

27. Though the learned Senior Counsel for the petitioner argued for transfer of investigation to CBI or CBCID under the State Police, I am not inclined to entrust the matter to CBCID particularly taking into account the position which the petitioner now enjoys as Education Minister in the State. The State Police failed to impartially investigate the matter. Hence, I am not inclined to entrust the matter to CBCID of Tamil Nadu Government.

28. The Honourable Supreme Court in para 11 of its judgment in *SUNIL BATRA v. DELHI ADMINISTRATION* [AIR 1980 SC 1579] has held that in jail offences by jail officials, it shall be made as regular practice to entrust the matter for investigation to CBI. The relevant passage in para 11 of the said judgment is extracted hereunder:

"11..... Indeed, the potential for oblique mutual help between the police and the prison staff makes jail offences by jail officials undetectable; and so, to obviate this possibility, the C.B.I may well be entrusted, as a regular practice, with such cases....."

29. It is also relevant to note that the Honourable Supreme Court in *VINEET NARAIN v. UNION OF INDIA* [1998 (1) SCC 226] has held that there was a complaint of inertia on the part of CBI in matters where accusation made was against the high dignitaries. In that case, raids were conducted by the CBI on the premises of Surender Kumar Jain, his brothers, relatives and businesses and seized two diaries (Jain Diaries) which revealed that high ranking politicians and bureaucrats were the recipients of "Hawala Money" and the money was also passed on to terrorists. But the CBI had shown inertia in proceeding with the investigation. The Honourable Supreme Court also noted that even after the matter was brought to its notice, there was for quiet sometime disinclination was shown by the agency to proceed with the investigation, as the high ranking politicians and bureaucrats were involved. The Honourable Supreme Court devised a method called "Continuing Mandamus" and directed the CBI to report the investigation to the Supreme Court. Then the Supreme Court found that the officers of CBI actively participated in the proceedings and showed a definite improvement as the case progressed and their ability to perform improved once they were assured of protection in the honest discharge of their duties. Ultimately, charge sheets were filed. It is noted in para 15 of the said judgment as follows:

"15. Inertia was the common rule whenever the alleged offender was a powerful person. Thus, it became necessary to take measures to ensure permanency in the remedial effect to prevent reversion to inertia of the agencies in such matters."

But, it is unfortunate that inertia on the part of investigating agencies continue whenever high dignitaries are the alleged offenders. Thus, when allegations are made against high ranking Politicians, Police Officials, Jail Officials etc., the matter shall be entrusted to CBI.

30. The Amicus Curiae appointed by the Honourable Supreme Court at the time of close of the hearing *VINEET NARAIN*'s case (cited supra) urged the Court for directions for the appointment of an authority akin to the Special or Independent Counsel in the United States of America for the investigation of charges in politically sensitive matters. But the Supreme Court felt that the time for the drastic steps has not been come. In my considered view, the time has come that the Supreme Court in a proper case could appoint such an authority. In this regard, para 59 of the said judgment is extracted hereunder:

"59. The learned amicus curiae had urged us to issue directions for the appointment of an authority akin to the Special or Independent Counsel in the United States of America for the investigation of charges in politically sensitive matters and for the prosecution of those cases and to ensure that appointments to sensitive posts in the CBI and other enforcement agencies and transfers therefrom were not made by the political executive. We are of the view that the time for these drastic steps has not come. It is our hope that it never will, for we entertain the belief that the investigative agencies shall function far better now, having regard to all that has happened since these writ petitions were admitted and to the directions which are contained in this judgment. The personnel of the enforcement agencies should not now lack the courage and independence to go about their task as they should, even where those to be investigated are prominent and powerful persons."

31. In these circumstances, I am inclined to entrust the matter to Central Bureau of Investigation for investigation. Accordingly, the third respondent - Director of Central Bureau of Investigation is directed to depute a responsible officer to hold investigation of the case in Crime No. 164 of 2006 on the file of Rosanai Police Station, Tindivanam, Villupuram District, with immediate effect and the respondents 1, 2 and 5 are directed to hand over all the materials collected so far to the CBI and assist the CBI in conducting the investigation. The CBI shall complete the investigation within four months from the date of receipt of a copy of this order and submit its report in accordance with law, as already more than five years have lapsed, since the heinous crime took place in the year 2006.

32. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.