

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Writ Petition No.13395 of 2012 (O&M)

Date of decision: 23.12.2014

Hans Raj Chauhan @ Hakiki Hans son of Ballu Ram Chauhan,  
resident of Ward No.11, Bazigar Mohalla, Tohana, District  
Fatehabad.

... Petitioner

versus

State of Haryana through Home Secretary, Civil Secretariat,  
Chandigarh, and others.

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr.Navkiran Singh, Advocate,  
for the petitioner.

Mr. Sudeep Mahajan, Assistant Advocate General,  
Haryana.

Mr. Sukhdeep Singh Sandhu, with  
Mr. Ankit Joshi, Advocate,  
for respondent No.4-CBI.

Mr. S.K. Garg Narwana, Senior Advocate,  
with Mr. Teevar Sharma Dumerkha, Advocate,  
for respondent No.5.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

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**K.Kannan, J.**

**I. Writ Petition: A plea for CBI investigation**

1. The petitioner seeks for marking an enquiry to CBI the allegations of commission of IPC offence of causing grievous

injuries of castration to the petitioner and to 400 other males at the Dera Sacha Sauda headed by Sant Gurmeet Ram Rahim, arrayed as the 5<sup>th</sup> respondent (subsequently impleaded). The imputation is that the 5<sup>th</sup> respondent has induced the petitioner and several others with the hope that such emasculation would lead to realization of God. The petitioner claimed that he had been the inmate since the year 1990 and took the 5<sup>th</sup> respondent as a spiritual guru and it was only on account of his influence on him that he underwent the surgery of castration and he is now weaned out of his influence and in a position to objectively see the harm to himself. Several other persons who have been similarly castrated continue to remain within the ashram at his *gufa* and in settlements surrounding the ashram. The petitioner would claim that he has sought the assistance of the lawyers for Human Rights International to espouse his cause since he is himself under threat for his life by the 5<sup>th</sup> respondent. On the petition complaining of castration and a plea before the court that he was under threat for life, this court, while ordering notice of motion, directed that the Senior Superintendent of Police, Fatehabad, to look into the averments made in the petition and the threat perception of the petitioner and take a decision regarding the grant of security to him. There had been also an independent application moved subsequently in CM No.9687 of 2012 with a prayer for the medical examination of the petitioner.

**II. Prima facie proof of castration of the petitioner secured**

2. The court had constituted a Board comprising of the Medical Superintendent, General Hospital, Sector 16, Chandigarh and other doctors for submission of report in a sealed cover. The DSP, Tohana, District Fatehabad, had also filed immediately an affidavit, disclosing that the petitioner had been provided with an effective security by the police Fatehabad. The report filed from the hospital was also taken on record on 11.02.2013 and assigned a distinct Mark 'A'. The report of the hospital bears out that no testes are present in the scrotum and possibility of castration cannot be ruled out.

**III. Information of castration collected of 7 other persons owing allegiance to the Ashram**

3. Replies have been filed by the DSP (Headquarters), Sirsa, stating that no complaint had been moved to the local police but after the receipt of the present petition from the court, the local police itself conducted an enquiry from 7 allegedly castrated persons, namely, (i) Nirmal Singh, (ii) Kuldeep Singh, (iii) Krishan Lal, (iv) Jagdev Singh, (v) Iqbal Singh, (vi) Avinash Kumar and (vii) Radhey Shyam. The persons named at serial Nos.1 to 3 are detained in Ambala Jail pending trial against them for some criminal offences and the remaining four persons had gone out of station. The reply concludes that the police is prepared to carry out whatever directions which the court would give. When the 5<sup>th</sup> respondent had

also been joined in the proceedings and when the reply was filed, it was elicited through the counsel appearing on behalf of the 5<sup>th</sup> respondent that Krishan Lal, who had been detailed in the jail has since been released on bail, the court had directed through order dated 04.02.2014 that enquiry shall be made and an affidavit by the investigating officer be filed in court within two weeks. It was also directed that the person who had gone out of station could also be attempted to be contacted. The 5<sup>th</sup> respondent has filed written statement contending that no notice or representation or complaint had ever been made by the petitioner to any authority or the police regarding the allegations mentioned in the petition. He would also respond to other allegations of kidnapping and murder against the 5<sup>th</sup> respondent as motivated and false. Joining issues on the petitioner's contentions that he was castrated at the Dera along with 15 other Sadhus in the year 2000, the 5<sup>th</sup> respondent has denied that he had caused to make any such infliction of injuries to the petitioner or any other person at the Dera. The 5<sup>th</sup> respondent, however, submits that the petitioner used to visit the dera functions along with the followers of Dera Sacha sauda from Tohana and used to sing bhajans in the functions. He would also deny the averments in the petition that one Vinod Kumar and another, Sudhir were also castrated.

4. Pursuant to the directions given by this court on 04.02.2014, Rajender Kumar Meena, IPS, Assistant Superintendent of Police, Sirsa, has filed reply by way of an affidavit that he had examined all the 7 persons named in the petition. By that time, a petition had also been filed by the lawyers for Human Rights International giving a list of 166 names with the father's name, place of residence, date of birth and educational status of persons, who were alleged to have been castrated at the instance of the 5<sup>th</sup> respondent on similar promises of scope for attainment of higher spiritual powers. The report of the Assistant Superintendent of Police, however, was only with reference to the statements elicited from the 7 persons named by the petitioner. The reply would show that (i) Nirmal Singh had stated that he had faith in *Dera Sacha Sauda*. His testicles had no doubt been removed but it was on account of some injuries which had suffered during his childhood and the removal was on medical advice; (ii) Kuldeep Singh would state that he also used to visit the dera but never lived at the dera permanently and that he had got himself castrated prior to June, 1990 without any pressure and out of his own sweet will and that he was living a normal life; (iii) Krishan Lal had stated that on a visit to Haridwar on a spiritual pilgrim a vasectomy had been done in 1975-76 without his consent, he had developed some infection and fell ill and at that time, the doctor removed his testicles; (iv) Jagdev Singh

would state that he had been initiated to mantra in 1985 from *Dera Sacha Sauda* and he is observing brahamcharya from 1988 and that in order to dwell deep in spiritualism, he got himself castrated without any pressure and out of his own sweet will and that he was living a normal life; (v) Iqbal Singh would also state that he had castration done on his own will and the 5<sup>th</sup> respondent did not instigate him; (vi) Avinash Kumar would state that he never asked his guruji to perform vasectomy and that he was living a happy life; and (vi) Radhey Sham had also stated that he had taken his mantra from guruji's predecessor in 1976 and on being motivated by other old followers and “to adorn spiritualism, he got himself vasectomy in the year 1989 out of his free volition” (sic). All these persons reported that they did not want to get themselves medically examined. While the persons at serial Nos.(i) to (iii) would deny that their own castration had anything to do with spiritual pursuits, the persons at serial Nos. (iv) to (vii) would state that they had spiritual inclinations and the castration was done on the advice of their fellow devotees. For persons at serial Nos.6 and 7, the statement makes reference to vasectomy and makes no reference to castration. The statements of various persons have been filed along with reply filed by him. Of the 7 persons, Iqbal Singh hails from Rajasthan and some persons hail from Punjab and some from Haryana.

**IV. Petitioner's contention: 5<sup>th</sup> respondent enjoys enormous influence and never appears in court during trial of heinous offences alleged against him**

5. On 13.10.2014, there was a representation made on behalf of the petitioner that he had no confidence in the State police and would state that it was only interested in protecting the 5<sup>th</sup> respondent. It was also stated in court that earlier cases against the 5<sup>th</sup> respondent for alleged commission of heinous offences punishable under Sections 302 and 376 were not properly pursued and after the investigation was entrusted to CBI, they laid the charges against the 5<sup>th</sup> respondent and his followers and the cases are pending since 2002 onwards but they have not made any headway. The cases are being adjourned from time to time on account of delay in tactics practiced by the 5<sup>th</sup> respondent. Since the petitioner was expressing his want of confidence in the police and making reference to the attempt by the police to protect the 5<sup>th</sup> respondent, I had called for copies of the proceedings from the court where the cases were pending, namely, from the CBI Court at Panchkula. The extracts of the zimini orders for the last 1 year in all the cases have been dispatched to this court. The copies received from the Court have revealed the following.

6. Ever since the respective institutions of cases on 27.10.2007 before the CBI Court, there has not been a single

instance when the 5<sup>th</sup> respondent has appeared in person in court. There have been consistent applications seeking for exemption from personal appearance and the Court has been acceding to such requests. The RC case 5 (s) in CBI Versus Baba Gurmeet Ram and others had been instituted in the year 2002. RC 8 and 10(s) had been instituted in the year 2003. On each one of the dates of hearing, it can be noticed that a plea on behalf of the 5<sup>th</sup> respondent is either he is unwell or that he was busy in connection with the religious ceremony or that he had to go to other places like Jaipur, Rajasthan or Mumbai or Bangalore. There have been also attempts to secure statement of the 5<sup>th</sup> respondent through video conferencing but he was pleading for exemption from such recording as well. The file would reveal that the respondent has never made himself available in the last 1 year for any occasion in court nor has he given a statement when an offer for video recording was also provided to him.

**V. State police' slackness in investigation against 5<sup>th</sup> respondent too evident to evoke confidence**

7. Finding that the statements recorded from some of the persons have not helped the police to make any headway, I had on 17.11.2014 passed an order that there could be no attempt to close an enquiry by merely recording statements that the persons who have undergone castration have all subjected themselves to such



mutilation by consent. Noticing that emasculation was a very serious offence, I directed the police to make a full-fledged enquiry on the circumstances under which such surgeries were made and the persons, who are responsible for such surgeries. The Advocate General, who was present in court on 17.11.2014, assured the court that a fresh enquiry would be undertaken on the basis of complaint already received and would submit an interim report on the adjourned date. When I reminded the counsel appearing on behalf of the 5<sup>th</sup> respondent that his own conduct before the CBI Court of not appearing at any hearing and the 5<sup>th</sup> respondent's propensity to find some excuses not to be present betrayed his unwillingness to cooperate with the process of law, the senior counsel gave an assurance that his client will cooperate with any investigation and allow for access to ashram without causing any hindrance, if any information was sought.

8. The proceedings of the court, as entered on 17.11.2014, could leave no manner of doubt to the State police that it was expected to make further enquiries with the persons who had already been examined to gather details of the persons who had carried out surgeries and undertake a fresh examination in the light of the records already available, particularly of the details furnished in court through the Lawyers for Human Rights International that had given full details of names, father's name, date of birth, village and

profession of 166 persons, who were said to have been castrated on the influence or or at the instance of the 5<sup>th</sup> respondent. When the Advocate General was taking time in court for carrying out a detailed investigation and when the counsel for the 5<sup>th</sup> respondent had also given an undertaking in court that he would give access to any person coming to Ashram for collecting information regarding the complaint, it was expected that the police enquired not merely the 7 persons from whom statements have been recorded but must have gathered details of the Surgeons, who had carried out the castration and also interrogated the 5<sup>th</sup> respondent himself to gather required details. More important information could have been secured from the petitioner himself, besides recording statement from any of the office bearers of the Lawyers for Human Rights International regarding the source of information for the names of 166 persons submitted in court with all appropriate details of their places of residences and the circumstances under which they had undergone castration if ever such admission or proof was available.

9. On 17.12.2014 when the matter came up for hearing, the State has given an interim report by way of affidavit through the Superintendent of Police, Sirsa in purported compliance of the directions given on 17.11.2014. The report states that the police was attempting to set up a medical team and engaging in communication to the PGIMS, Rohtak, G.H. Sirsa and ultimately set up a Board of

Doctors, who could assist them to elicit medical, psychological and psychiatric examination and counselling for allegedly castrated persons. The report would suggest that although the petitioner had alleged in the petition that 400 persons had been castrated, he had given only 7 names in the petition and when the statement was attempted to be taken from Kuldeep Singh and Nirmal Singh, who had been lodged at the Central Jail at Ambala, they refused to get themselves examined by the Board of Doctors. The remaining 5 persons had been served with notices to appear at the General Hospital at Sirsa on 13.12.2014 before the DSP (Headquarters), Sirsa and the Board of Doctors, but none of them had turned up. A separate communication was said to have been issued also to the petitioner himself and through him a list of 166 persons (inclusive of 7 persons who had already been examined) had been collected only on 15.12.2014. The reply records the fact that the doctors will be willing to be associated for finalizing the enquiry and taking appropriate action against all persons that may be found guilty in the case. The petitioner is a person who affirms that he has been castrated. There is a definite averment that castration was at the instance of the 5<sup>th</sup> respondent and he had undergone a mutilation of the testicles on a practice of deception and promise by the 5<sup>th</sup> respondent that such an act would pave way for realization of God. The medical examination conducted through court on express orders

have filed that the petitioner has no testicles and he may have been castrated by surgery. There is surely a denial that the 5<sup>th</sup> respondent had any role to play. The petitioner has made available in court such of 166 names with all details. When there was a definite direction from the court that appropriate investigation must be conducted and the 5<sup>th</sup> respondent himself has offered full cooperation, one would expect the police to first record the statement from the petitioner himself immediately after the court passed the order, recorded a statement from the 5<sup>th</sup> respondent about his version to know whether there was any other inmate in the Ashram who was castrated and whether he had any knowledge of the same and spread the net of investigation to the specified 166 persons, apart from 7 persons from whom statements have been recorded. The police takes one whole month to report to court that they had sent a communication to the petitioner to provide that particulars and that particulars were given on 15.12.2014. None of the members of the Lawyers for Human Rights International had been examined to identify the other 159 persons out of the 166 persons said to have been castrated and taken their statements.

**VI. Emasculation is a violation of human rights**

10. Genital mutilation of reproductive organs including tentacles is a very serious act. This practice however is prevalent in various parts of the world for various reasons. In India, the eunuchs

or the *hijras*, as they are called, are a community of transgenders, some of whom voluntarily undergo privation of their sexual organs. It is different pathetic story to which we are not concerned about, right now in this case, but the surgeries are mostly done by quacks and the sexual reconstruction surgeries (SRS) are still practiced covertly, exposing the victims to serious and harmful medical conditions. Genital mutilation in women in several of African tribes and in some Arab countries are said to be prevalent and the United Nations Study Group has called for global awareness against such practice and the imperatives of putting an end to these despicable practices. The United Nations General Assembly adopted a resolution in December 2012 on the elimination of genital mutilation. In 2010, WHO ordered, “global strategy to stop healthcare providers from performing female genital mutilation.” In **National Legal Services Authority Versus Union of India and others in WP (civil) No.400 of 2012, dated 15.04.2014** laid down directives and recognized the TGs as a third category gender and recommended to Government several healthcare initiatives and employment opportunities and specific reservation for them. According to the survey carried out by Salvation of Oppressed Eunuchs (SOOE) the number of eunuchs in India is around 19 lakhs as of March 2011, but none in the Government or in the courts had tried to stop the practice of castration. The reference to genital

mutilation for women and the global concern for castration for eunuchs as serious melodies are brought out here only to underscore the view point that even voluntary privation of the reproductive organs are not acceptable. To TGs, who have indescribable agony of being trapped between two sexes-of a male in female body or a female in a male body, there could be emotional compulsion for SRS. If they are perceived as gross violation of human rights and the public outcry is to centre-stage their problems only to bring a dignified living to them, a normal person losing his sexual organ on the belief that he will be spiritually transcended but if such elevation does not arrive, the condition is too poignant for words. If the practice of castration must proliferate also to normally sexed human beings, by being enticed by promise to salvation or nirvana, it may not be merely taken that some persons have volunteered themselves to such privation and, therefore, there are no offences meant and the persons, who are responsible either for carrying out such surgeries, other than medical reasons, could be exculpated.

**VII. There could be no consent to castration for a normal person; the performer or abettor commits offence**

11. Emasculation for a normal human being is torture. There could be no invitation to being subjected to torture. No doctor nor a spiritual guru take the willingness of a person to be subjected to removal of testicles as coming within the excepted line of defence under *volenti non-fit injuria*. The Indian Penal Code itself carves out

certain general exceptions when the acts done of good faith for a person's benefit could not be an offence. Section 88 of the Indian Penal Code reads thus:-

**“88. Act not intended to cause death, done by consent in good faith for person's benefit.-**Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending in good faith, Z's benefit performs that operation on Z, with Z's consent. A has committed no offence.”

A doctor can never defend an action of a person who seeks for removal of his testicles on a plea that the patient said that he wanted to reach God or see God. The Constitution of India has included Chapter IVA setting out through the Constitution 42<sup>nd</sup> amendment Fundamental Duties. It includes a duty, “to develop the scientific

temper, humanism and the spirit of inquiry and reform.” (Article 51A(h). There could, therefore, be no justification for any doctor to say that he performed a surgery because someone goaded by the faith that removal of an organ can obtain salvation to him. All faith in matters of religion are subject to public order, morality and health. The issue of whether castration will make room for salvation cannot be a matter of faith, the same way as whether a person is dead or in a trance akin to *samadhi*, cannot be a matter of faith. Superstitions are now a constitutional anathema. Courts cannot be privies to perpetration of harm on blind faith in the name of religion. It is important to remember the freedom of religion has its inbuilt limitations under Art 25 of the Constitution.

12. The issue of whether there can be consent to be castrated by a normal human being who has no physical ailment could be examined by posing a question if one could consent to be harmed or tortured. ***In Donovan [1934] 2 K.B. 498***, the appellant was charged with indecent and common assault upon a girl whom he had beaten with her consent for his own sexual gratification. In delivering the judgment of the Court of Criminal Appeal Swift J., after citing the passage in the judgment of Cave J. in *Coney* said, at p. 507: "If an act is unlawful in the sense of being in itself a criminal act, it is plain that it cannot be rendered lawful because the person to whose detriment it is done consents to it. No person can license another to



commit a crime. So far as the criminal law is concerned, therefore, where the act charged is in itself unlawful, it can never be necessary to prove absence of consent on the part of the person wronged in order to obtain the conviction of the wrongdoer. There are, however, many acts in themselves harmless and lawful which become unlawful only if they are done without the consent of the person affected. What is, in one case, an innocent act of familiarity or affection, may, in another, be an assault, for no other reason than in the one case there is consent, and in the other consent is absent. As a general rule, although it is a rule to which there are well established exceptions, it is an unlawful act to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence, and when such an act is proved, consent is immaterial.” The poser of whether a person could consent to be tortured was before the House of Lords in England in **R. Versus Brown and other appeals-(1993) 2 ALL ER 75**, where the appellants belonged to a group of sadomasochistic homosexuals, who over a 10 year period from 1978 willingly participated in the commission of acts of violence against each other, including genital torture, for sexual pleasure. The passive partner or victim in each case consented to the acts being committed and suffered no permanent injury. The activities took place in private at a number of different locations, including rooms equipped as torture chambers at

the homes of three of the appellants. The appellants were tried on charges of assault occasioning actual bodily harm, contrary to Section 47(a) of the Offences against the Person Act, 1861. The trial Court acquitted them but the Court of Appeal and still further the House of Lords by a majority view, rendered the conviction and held that inflicted injuries were neither transient nor trifling, notwithstanding that the acts were committed in private, the person on whom the injuries were inflicted consented to the acts and no permanent injury was sustained by them. The Act of 1861, their Lordships held, outlawed unlawful wounding as offence any actual bodily harm and that public policy required that society be protected by criminal sanctions against a cult of violence which contained the danger of the proselytization and corruption of young men and the potential for the infliction of serious injury. Section 320 of IPC that defines grievous hurt to include emasculation and Section 322 that makes a person who voluntarily causes such hurt which he intends to cause or knows himself to be likely to cause as a person being guilty for such conduct and Section 325 imposing a punishment for causing such grievous hurt come under the same genre as the English Law of Offences against Persons Act, 1861, the same principle would apply.

**VIII. There shall be no bar of limitation for registering a complaint of commission of cognizable offence**

13. The work must begin with registration of the complaint

by first taking the statement from the petitioner, if it has not been already done. The Supreme Court has held in **Udai Shankar Awasthi Versus State of U.P. and another-(2013)2 SCC 435** that principle of condonation of delay is based on the general rule of the criminal justice system which states that a crime never dies, as has been explained by way of the legal maxim, *nullum tempus aut locus occurrit regi* (lapse of time is no bar to the Crown for the purpose of it initiating proceeding against offenders). A criminal offence is considered as a wrong against the State and also the society as a whole, even though the same has been committed against an individual. The court observed, “The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision, however, the same may not itself be a ground for dismissing the complaint at the threshold. Moreover, the issue of limitation must be examined in light of the gravity of the charge in question. (Vide: **Japani Sahoo Versus Chandra Sekhar Mohanty-AIR 2007 SC 2762; Sajjan Kumar Versus Central Bureau of Investigation -(2010) 9 SCC 368;** and **Noida Entrepreneurs Association Versus Noida and others-AIR 2011 SC 2112)**. In **Mrs. Sarah Mathew Versus The Institute of Cardio Vascular Diseases-2014 (2) SCC 62,** the Supreme Court explained “The contention that Section 468 should be interpreted to mean that where the Magistrate does not take

cognizance within the period of limitation it must be treated as having the object of giving quietus to petty offences in the Indian Penal Code is untenable. Some offences which fall within the periods of limitation specified in Section 468 of the Cr.P.C are serious. It could never have been the intention of the legislature to accord quietus to such offences.” It is therefore irrelevant that a complaint has come nearly 12 years after the incident. There is no bar of limitation for registering a complaint. They could at best be taken among other circumstances for assessing the truth of complaint

**IX. The course that the investigation may take**

14. There is a fairly a large ground to cover: (i) the person against whom the allegation is made would require to be interrogated; (ii) the persons, who have furnished the information regarding a specified number of persons with their identity would require to be interrogated to elicit the source of information; (iii) if there is credibility in the version, the persons whose names are given would require to be identified and their statements recorded; (iv) the information regarding who performed surgeries will have to be obtained and the circumstances or the places of such surgeries must also be elicited: (v) If credible information is secured that castration has been done, the question of whether it was voluntary or not or whether any person prevailed on the persons undergoing such

emasculatation would be a secondary piece of information that would require to be still collected. This is so because a doctor pleading for consent has justification for undertaking such surgery is really a matter of general exception where the burden will be on the person pleading for such exception. This is also in view of the fact that Section 111 of the Evidence Act sets out the rule of presumption between persons in relation of active confidence. The said Section reads thus:-

**“111. Proof of good faith in transactions where one party is in relation of active confidence.-**Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.”

It has been laid down in several decisions that a master to a servant or a guru to disciple is in a position of active confidence and a proof of good faith must be placed on the person who is in a position to control the activities of another. In a typical master-disciple situation, it shall be the master who has to explain that there was no undue influence practiced. On the other hand, undue influence must be presumed.

**X. Justification for CBI investigation**

15. This court had not found anyone guilty. That is just not the scope of the writ petition. However, I have materials before me that the complaint is serious. It is at the instance of a person who has suffered a privation of an organ. The abnegation of his own sexual identity has cast a serious psychological scar to the person. He narrates his own misery not to be confined to him but to several other persons, who are muted by fear that if they raise their voice, they will be done away with. There had been such a fear expressed in this court and the court has provided police protection. A large number of persons, who are said to have been affected, are spread over several States. The victims are from Punjab, Haryana and Rajasthan. It is not known whether the persons belonged to other States are also involved. The imperatives for tightening the rigour of investigation is unexceptional. The State police has done no credit to itself by allowing grass to grow under its feet and nibbling at the periphery and conducting investigation which is worthless. I am not surprised at the petitioner's apprehension that they feel overwhelmed by the large following that the 5<sup>th</sup> respondent has within or without the State. In a democracy, numbers mean everything. The clout that a person enjoys with patronage lying outside the spiritual circles can make even a powerful police force go limp and effete. The Court processes have already suffered in its attempt to prosecute the 5<sup>th</sup>

respondent in three other cases. 12 years on and still no hope for a conclusion of the trial. Not in one single instance could the accused be brought before court. On the other hand, we had reports of the State police complaining of law and order situation if the accused were to be brought to court; there were incidents of persons claiming to be disciples who shot themselves in court complex or died in pitiful state under the gaze of public, after slogan raising that they cannot bear the agony of their master being taken to court. Acts of breast beating and public wailing are occurrences, we have seen aplenty in the near past when public bigwigs were incarcerated. Leaders for whom persons are prepared to die are persons who are cringing for attention that it is in the show of their loyalty that salvation lies. It is a leader who must show the correct way to his own disciples and interrogation, if it may become essential of the 5<sup>th</sup> respondent, he cannot leave a trail of destruction and public display of anger by misguided persons. I have fortunately in this case the 5<sup>th</sup> respondent supported through a responsible senior counsel who assures the court that he will give full cooperation to the investigation. If I may add the cooperation would include even an exhortation to the disciples of the spiritual guru that they shall maintain calm and no harm is made while carrying out investigation. The disciples must know that the allegations made are serious and the investigation to be therefore serious. They cannot be derailed by

threats or activities which can vitiate the atmosphere. The course of action could have been merely to direct the State police to register a complaint and carry on with the investigation. In this case, however, the materials brought out show that the victims spread over several States. The person against whom allegations are made is a highly acclaimed person and at least a person who has a large public following. The past experience has been that his presence in court is seen as a torture to the disciples who have killed themselves. If the matter transcends the State boundaries and the imputation is serious, then it would be only appropriate that the matter is entrusted to CBI to register a complaint and carry out the investigation in the light of the observations made above. In **State of West Bengal Versus Committee for Protection of Democratic Rights-(2010) 3 SCC 571**, the Supreme Court has laid down the justifying circumstance when an investigation could be entrusted to the CBI. It has observed as follows:-

“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 instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise 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).

**X1. The need to monitor investigation**

16. If the matter were to be merely left with the CBI and if the case against the 5<sup>th</sup> respondent for offences under Sections 302 and 376 which are pending from the year 2003 is any indication, it may not conclude at all. There is a need to oversee the investigation and ensure it is being proceeded with in accordance with law and no force or influence is being brought against the investigating officials

by interested persons. The circumstances when such a control could be exercised was dealt with by the Supreme Court in **Babubhai Jamnadas Patel Versus State of Gujarat and others-(2009) 9 SCC 610** while detailing the appropriate cases while the court may monitor investigation when satisfied that either investigation is not being proceeded with or being interfered with by interested persons, the Supreme Court held that the court could monitor the investigation in its exercise of the power under Article 226 of the Constitution. The Supreme Court was considering that the court's power in the law laid down already in **S.N. Sharma Versus Bipen Kumar Tiwari-1970(1) SCC 653** that no doubt the police had unfettered power to investigate all cases where they suspect that the cognizable offence had been committed but the power of the court under Article 226 could be exercised to monitor the investigation. In **Kashmiri Devi Versus Delhi Administration-1988 Suppl.482**, even when a charge sheet had also been submitted by the investigating agency, the magistrate was seen as as competent to direct CBI to make a proper and thorough investigation in an independent and objective manner, in exercise of the power under Section 173(8) Cr.P.C. In **State of Bihar and another Versus Ranchi Zila Samta Party and another-1996 (3) SCC 682**, the Supreme Court's power to have an overall control and supervision over the investigation by the CBI was upheld. In the same judgment, the Supreme Court has

examined several other situations when the High Court's power to supervise the investigation from CBI was upheld. In a recent decision in **Bharti Tamang Versus Union of India-2013(13) SCALE 108**, where the deficiencies in investigation or prosecution was visible or could be perceived by lifting the veil, the court should deal with the same with iron hand. The court held in para 60 as follows:-

“It can safely be concluded in appropriate case where this court feels that the investigation by the police authorities is not a proper direction and in order to do complete justice in the case and as a high profile officials are involved in the said crime, it is always open to the court to hand over the investigation to an independent agency like CBI.”

17. Under the circumstances, I direct the entire files are transmitted to CBI which is arrayed as respondent No.4 in this case and the CBI shall register the case and take over the investigation and submit a status report periodically as the court directs and firstly within a period of two months. I also appoint Shri Anupam Gupta, Senior Counsel as Amicus Curiae to bring to light the high points and deficiencies in the reports and help the court formulate appropriate guidance throughout the investigation and a smooth course of trial, if the investigation leads to a trial course. The

Registry shall prepare copy of the paper book and supply the same to the senior counsel. The investigating Agency is also at liberty to approach the court at any time for any direction, if there is any obstruction or difficulty in carrying out their tasks in relation to this case.

18. The writ petition is disposed of on the above terms.

19. Call on 02.03.2015 for submission of interim report by CBI.



**(K.KANNAN)  
JUDGE**

**23.12.2014**

sanjeev

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