



Reportable

Criminal Appeal No. _____ **of 2026**

(@ Special Leave Petition (Crl.) No. 5763 of 2026)

Kusumavati Gowda **Appellant**

Vs.

The Government of Karnataka & Ors. Respondents

JUDGMENT

SANJEEV SACHDEVA, J.

1. Leave Granted.
2. Father of a 17 year old girl who was brutally raped and then murdered had filed the subject Writ Petition being WP No. 3301 of 2024, seeking a direction to the Central Bureau of Investigation¹ to reinvestigate/denovo investigate Cr.No.250/2012 originally registered by the Belthangady Police as per the Complaint dated 09.10.2012 & First Information Report² in Crime No.250/2012 dated 09.10.2012 and re-

¹ CBI for short² FIR for short

registered as FIR No.RC.2(S)/2014/CBI/SCB/CHENNAI dated 07.03.2014 by CBI, SCB Chennai to ensure that the real perpetrators of the crime are booked and prosecuted to render justice to the Victim. After the passing of the impugned order by the High Court, the original petitioner i.e. the father of the victim passed away and the present appeal was presented and prosecuted by the mother of the victim.

3. Complaint Cr.No.250/2012 was originally registered by the Belthangady Police for the missing minor daughter of the complainant, the father of the girl, but subsequently the offences punishable under section 376 and 302 Indian Penal Code³ were added.

4. The writ petitioner i.e. father of the deceased was an agriculturist by profession and also a class II Public Works Department contractor resident of Dharmasthala Village, Belthangady Taluk, D.K. District. His family consisted of his wife, 5 children, his aged parents. The deceased victim was his second daughter aged about 17 years at the time of the incident. She was studying in 2nd year of Pre-University Course at Sri. Dharmasthala Manjunatheshwara College Dharmasthala.

³ IPC for short

5. As per the writ petitioner, the deceased used to go to college by bus from Nethravathi Bathing Ghat by 8.00 am and she would come back usually at 2.00 pm. On 09.10.2012 as always she left her Home to go to the college at 8.00 am. On that day there was a function in the house of her relative, whose house was very close to her house and all the family members of the deceased had gone to attend the function.

6. As per the writ petitioner, while going to college she informed her mother that she would not carry her lunchbox and she would return from the college at 2.00 pm. On the fateful day i.e., 09.10.2012, returning from college, she got down from the bus around 04.15 pm near Mannasanka bus stop and walked towards her house. She was last seen by her uncle and aunt who were coming in the opposite direction in their jeep and waved at her. Around 07.00 pm the mother of the deceased found that she had not returned home or attended the function at their relative's. The mother of the deceased informed her father. Immediately thereafter the father and his relatives and well-wishers reached the Nethravathi Bathing Ghat and enquired from the locals. Getting no clue about the deceased, they all started to search for the deceased in and around the place, however unsuccessfully. Thereafter, the writ petitioner went to the Jurisdictional Belthangady Police Station and lodged a missing complaint.

7. On the next day i.e. 10.10.2012 some locals found a dead body of a girl in a thick bush near Mannasanka in a half naked condition and her left hand was found tied to a stem of a tree using a shawl/veil of her college uniform. The body was identified by the writ petitioner and his relatives as that of the missing girl. As per the Writ Petitioner, the dead body was found at the same spot where the search was carried out by the writ petitioner, his family member and villagers on the previous day. After the body was found a Complaint was filed by the uncle of the deceased Jagadish Gowda. Based on the complaint, subject FIR No.250/2012 was altered and offences punishable under sections 376 and 302 IPC were added.

8. Upon hearing about the incident and the death of the minor girl, large number of people gathered at the place. The police personnel attached to the Belthangady police station visited the spot and shifted the dead body to Belthangady General Hospital. Post-mortem was conducted by Dr. Adam (CW-8/PW-12) with the assistance of Dr. Rashmi (CW-9/PW-34) in Spl.C.C.No.203/2016. Both the Doctors opined that the deceased had sustained abrasions and contusions over upper arm, forearm and both hands and strangulation mark, measuring 7 inches was present horizontally at the centre of the neck and further that her vulva and vagina was lacerated

with bleeding and mud particles found over vulva and vagina. Hymen was torn and the time since death was estimated to be 24 to 36 hours.

9. On 11.10.2012 one Santhosh Rao was caught by Mallik Jain and Ashrith Jain (CW-39 and CW-40) near the stairs of Bhahubali Statute and was handed over to the Belthangady police. He was projected by the local police to be the one who committed the gruesome rape and murder of the deceased. Santhosh Rao was manhandled and assaulted by general public. He was subjected to medical examination and few injuries were found on his body. It was suspected that those injuries were caused by the deceased with her finger nails therefore he was sent for thorough medical examination to the K.S. Hegde Medical Academy, Mangalore. Dr. Mahabala Shetty (CW-10/PW-14) conducted the medical examination of Santhosh Rao and found 17 injuries of different ages on his body and opined that though he was suffering from phimosis he was capable of performing sexual intercourse.

10. Santhosh Rao was arrested on 13.10.2012 by the Jurisdictional Belthangady Police. During the course of investigation, his alleged voluntary statement was recorded and preliminary investigation was also conducted by them. As per the prosecution, he was working at a Hotel at Sringeri till last week of September 2012 and he was removed from the job

due to unsatisfactory work by the owner of the Hotel, therefore he had come to Dharmasthala and was sitting near the stairs of Bahubali statue on 11.10.2012 when he was caught by 2 persons who handed him over to the Jurisdictional Belthangady Police.

11. As per the Writ Petitioner (father of the victim), Santhosh Rao was falsely implicated and it was suspected by the Writ Petitioner, his family and general public that 3 persons who were highly influential and moneyed persons in the locality had committed the offence. They therefore requested the Jurisdictional Belthangady Police to conduct a thorough investigation into the matter. It was contended that, it was their perception that Santhosh Rao was an innocent person and had nothing to do with the crime.

12. Due to public outcry and considering the sensitivity of the matter, on 12.12.2012, the Government of Karnataka handed over the investigation of Crime No.250/2012 to its Criminal Investigation Department⁴. The CID conducted investigation through its investigating officer Rudramuni, Dy.S.P. (H&B Wing) CID, Bengaluni (CW.30/PW-16). After completion of investigation, CID filed a charge sheet for the offences punishable under

⁴ CID for short.

sections 376, 302 and 201 IPC alleging that Santhosh Rao had committed the rape and murder of the deceased and destroyed the evidence.

13. As per the Writ Petitioner, the CID never conducted the investigation in a proper and perspective manner and shielded the real perpetrators of the crime by blaming an innocent person who had nothing to do with the crime. As per the writ Petitioner, he and his relatives had specifically stated before the CID about the role of the few suspected to be involved in the crime. However, as per the Writ Petitioner, the CID never bothered to secure their presence for the purpose of interrogation and the final report was filed alleging that Santhosh Rao had committed the rape and murder of the deceased and destroyed evidence in order to conceal the crime.

14. As per the Writ Petitioner, there was a huge outcry and agitation by the General Public alleging that the law enforcing agency was shielding the real perpetrators of the crime and hushing up of the case and that they had implicated an innocent person who had nothing to do with the crime. Due to public pressure and outcry, the Government of Karnataka on 06.11.2013 handed over the case to CBI, SCB Chennai for further investigation. CBI filed an FIR in RC.2(S)2014/CBI/SCB/Ch. dated 07.03.2014 under sections 376 and 302 IPC before the XVII ACMM Court Bengaluru.

15. As per the writ petitioner, during the course of investigation the CBI summoned the suspected persons i.e. Deeraj Jain, Mallik Jain and Uday Kumar Jain. As per the Investigating Officer⁵ of CBI, they were subjected to Polygraph and Brain Mapping Tests. Upon completion of investigation, the I.O. attached to the CBI filed the charge sheet before the CBI Court at Bengaluru concurring with the previous investigation conducted by the Belthangady Police as well as the CID and pinpointed the role of Santhosh Rao for the commission of offences and gave a clean chit to the 3 suspected persons named by the family of the deceased.

16. As per the Writ Petitioner, the manner in which investigation was conducted by the CBI, jurisdictional police and the CID indicated that they were shielding real culprits in the crime and had implicated an innocent person based on unsubstantiated, tailored materials and concocted stories.

17. During the course of the trial, the writ petitioner filed an application to summon the 3 suspected persons as accused on the ground that there was material on record to establish that that they had committed the offences of rape and murder of his minor daughter. The Sessions Court by its order dt, 19.11.2016 directed issuance of summons to Mallik Jain, Deeraj Jain and

⁵ IO for short.

Uday Jain of Belthangady Taluk. Said order was challenged by those 3 suspects before the High Court of Karnataka at Bengaluru in Crl.P.No.8678/2016.

18. The Writ petitioner (Pw1) also filed an application for further investigation. Said application was supported by the Public Prosecutor representing CBI as well as the counsel for Santhosh Rao. Said application was allowed by the Sessions Court on 07.02.2017. Though the order dated 07.02.2017, was not against any specific individual, it was challenged by Dhiraj Jain, Uday Jain and Mallik Jain before the High Court of Karnataka at Bengaluru in Spl.C.C.No.203/2016. In the meantime the writ petitioner filed W.P.No.2208/2018 (GM-RES) for re investigation of the Crime No.250/2012 due to certain subsequent developments. By its Order dated 27.01.2021, the High Court dismissed the Writ Petition filed by the Writ Petitioner and allowed the petition filed by Dhiraj Jain, Uday Jain and Mallik Jain.

19. The trial, thereafter continued before the Sessions Court at Bengaluru. During the trial, the Special Public Prosecutor representing the CBI filed an application Under 319 of Criminal Procedure Code, seeking to implead Mallik Jain, Dhiraj Jain and Uday Jain as additional accused. Said application was dismissed by the Sessions Court on 04.10.2021.

20. During the course of trial, prosecution examined 35 witnesses on behalf of the prosecution and marked Exhibits Ex. P-1 to Ex. P-40 documents and Material Objects (MO-1 to MO-26) were also marked. Defence did not produce any documents or lead any evidence on its behalf.

21. By order dated 16.06.2023 in Spl.C.C.No.203/2016, the Sessions Court acquitted Santhosh Rao for the offences punishable under sections 376, 302 and 201 of the IPC. The Sessions Court also directed the acquittal committee to initiate action against the erring officials.

22. The Sessions Court in its judgment, while acquitting Santhosh Rao held that the prosecution had failed to prove that the accused had committed the acts alleged against him. Further, that there was no evidence to connect the accused with the crime. There were no circumstances to connect the accused with the charges levelled against him. The charges levelled remained unproved. The Sessions Court further held that the investigation was not properly conducted in the Golden Hour. The doctor who collected the vaginal swab virtually demolished the entire case of the prosecution at the inception.

23. In the above facts and circumstances, the Writ petitioner, filed the subject Writ Petition under Articles 226 and 227 of the Constitution of

India read with Section 482 of the Code of Criminal Procedure seeking for a direction to the CBI to conduct a reinvestigation/ de novo inquiry in Cr.No.250/2012 by constituting a Special Investigation Team or Cell.

24. The judgment of the Sessions Court of acquittal was appealed against, but the appeal was dismissed by the same bench that heard and dismissed the subject Writ Petition. Subject Writ Petition has been dismissed by order dated 30.08.2024, impugned herein.

25. In the impugned order dated 30.08.2024, the Writ Court has held that *‘The acquittal judgment has a logical connection with the begging question in the sense that if Santhosh Rao was not the one who committed crime, there must be somebody else. This definitely demands reinvestigation.’*

26. The High Court in the impugned order while dismissing the petition referred to the Judgment of the Supreme Court in *Vinay Tyagi vs Irshad Ali @Deepak and Others (2013) 5 SCC 762* to hold that *“there cannot be second word with the proposition that the power to direct fresh investigation or reinvestigation or denovo investigation falls within the domain of the High Court under section 482 of Cr.P.C or Article 226 of the Constitution of India.”* However, thereafter relied upon the judgment of the Supreme Court in *Popular Muthiah vs State (2006) 7 SCC 296* to finally

hold that *“medical evidence cannot be improved, and so also the forensic evidence. It is doubtful that evidence that could not be collected at the golden hour is still available. No useful purpose would be served even if reinvestigation is permitted.”*

27. It may be noticed that the Sessions Court in its judgment has extensively dealt with the Post-Mortem Report and noticed that the death was due to asphyxia as a result of compression on neck and that the victim had been raped. The doctor had opined that the victim had revolted at the time of sexual assault on her and the injuries were caused during coitus. The inquest report disclosed that the body of the deceased was found in an isolated place between thick bushes. The body was half naked and hands of the deceased were tied to a stem of a tree with a blue chudidar shawl and the chudidar top was found in a torn condition. As per the inquest report, the deceased was forcefully dragged into the bushes, raped and later on strangled and murdered. The Post-Mortem Report disclosed the nature of injuries sustained and the struggle put up by the deceased.

28. The Sessions Court noticed that the entire case of the prosecution was based on circumstantial evidence. The Sessions Court found that there was no evidence to show that the accused Santhosh Rao was even seen in the locality. On the other hand, there was evidence on record and deposition

by witnesses with regard to some boys in the area prior to the incident talking that *it would be difficult to do anything there*. The Sessions Court also found that there were several pieces of garments of the victim which were missing. The Session Court noticed that the school bag which was placed near the deceased and the books inside were intact in spite of heavy rain.

29. The writ petitioner had not made any allegation against Santhosh Rao, who had been prosecuted, on the other hand, had suspected involvement of the three boys referred to above.

30. The Session Court observed that Santhosh Rao was apprehended by one of the three boys along with others, three days after the incident. Malik Jain asked Santhosh Rao to come to his office but Santhosh Rao refused to go. However, Malik Jain held him and wanted to forcibly take him to his office. Santhosh Rao escaped and started to run away but was apprehended by public and assaulted and later taken to the police station. The assault by the public explained the injuries found on the medical examination of Santhosh Rao.

31. The Session Court also observed that the offence had taken place close to the main road where there was constant vehicular movement and

crowded with people till the evening. Even there was a bus stop opposite Prakruthi Chikithsalaya which was adjacent to the main road and a watchman was always present at the main gate, even CCTV Cameras were installed. The Session Court noticed that though details of tower dump of various mobile numbers were collected by the first investigating officer but same were not handed over to the successor. Even CCTV footage, from the camera installed at the main gate of Prakruthi Chikithsalaya was not collected or looked into.

32. The Session Court noticed that the inner garments on the body of the deceased were missing. The investigating officer had seized only the school bag but not the books. The seizure of the school bag and the condition of the books was necessary to ascertain as to whether the offence took place at the spot where the body was recovered or somewhere else and the body was later dumped at the spot. On the day of the incident there was heavy rain and the body was recovered from an open area. If the body was present at the spot, where it was discovered a day later, with a school bag containing books lying beside it, there was no way that the school bag and the books would not have got wet. It has come in evidence that the bag and the books were in a dry condition which established that the offence was committed somewhere else and the body and the books were later

brought to the spot from where they were recovered. It has also come in evidence that the investigating officer did not seize the chit found at the spot or refer it to the handwriting expert to verify the handwriting. The post-mortem was not video graphed and there is no mention about the condition of the watch worn by the deceased which could have helped in establishing the time of the offence. Even the spot where the body was found was not video graphed. Though, the undergarments of the victim were not found at the spot, a fresh set was later collected by the investigating officer from the house of the victim from the family members of the victim on a subsequent date and sent for forensic examination, obviously on which no blood-stain, was found. The crucial medical evidence such as vaginal swab had been purposefully disintegrated to save the real culprits. The innerwear of the victim, umbrella, slippers were not traced and recovered by the investigating agency.

33. It was established that Santhosh Rao had sustained several injuries on his body when he was apprehended by the public, beaten and handed over to the police. The Session Court found that the injuries sustained on the body of Santhosh Rao were caused when he was apprehended and the clothes recovered from Santhosh Rao did not contain any blood or seminal stains.

34. The Session Court also noticed the contention of the counsel for Santhosh Rao that he was being falsely implicated at the instance of Malik Jain and Ashith Jain who had falsely implicated him. Malik Jain was one of the persons who as per the Writ Petitioner, was suspected to have committed the offence. Instead of examining his role, he was cited as a prosecution witness.

35. Further, the counsel for Santhosh Rao before the Sessions Court contended that the prosecution had deliberately not cited and examined material witnesses Ashrath Khalid and Kumari Veersha to screen the real culprits. The prime witness of the case Ravi Pujari who caught the accused was mysteriously murdered.

36. The body of the victim was not found by the writ petitioner and others who had extensively searched the same spot a day earlier which clearly showed that the victim was abducted to some other place and after committing rape and murder was brought back and dumped at the site. The CCTV footages were not secured. The belongings of the victim found at the spot had also been planted.

37. The Sessions Court held in its judgment as under:-

“112. As stated earlier, the entire case of the prosecution has to prove the guilt of the accused beyond reasonable doubt by

establishing the circumstances which connects the accused with the crime. Accordingly to the prosecution case, there are no eye witnesses who have seen the accused in the vicinity prior to the incident, nor the deceased was seen with the accused prior to her missing. As such, the theory of last seen is ruled out in this case. The other circumstances as pointed out by the learned PP is that the arrest of the accused confessional statement of the accused leading to discovery of fact, nail scratch marks on the body of the accused and the accused being 4 in his statements.

113. One of the strongest circumstances relied upon by the prosecution is the arrest of the accused by CW. 39 and 40 and thereafter his voluntary statement alleged to have made before the I.O. as per Ex P39. Based on the disclosure statement, the I.O. said to have recovered the clothes of the accused. Ex. P 15 is the mahazar drawn by the I.O. at the instance of the accused in the presence of mahazar witnesses CW 36 Ramanna Gowda (Given up) and PW 15-Maxim Crusta. The evidence of PW 15 discloses that on 13.10.2012 around 3.30 p.m. he had been to police station to see the accused. At that time, he was asked to be as a witness to the recovery mahazar. Accordingly accused took them near Dharmasthala Nature Care Hospital and lead them towards Kallasanka about 200 meters far. The accused showed a place and stated that he committed the murder of the deceased and from there he took them little far and showed his belongings

and later in the police station, he gave his shirt and pant to the police.

114. Corresponding to the evidence of PW15, the Police Inspector of Belthangadi PW 33-Mr. Bhaskar Rai L.G. deposed about recording the voluntary statement of the accused as per Ex P39 and drawing Ex P15 and 16 Mahazar and recovery of MO 4 to 14 articles does not belongs to the victim and they are the belongings of the accused itself.

115. As per Ex. P19, DNA report issued by FSL, Madiwala, Bengaluru discloses that 6 hair samples were found in the Panche sent at item No. 15 belonging to the accused and out of 6 hair samples, one hair sample belongs to a different individual of male sex. It is also disclosed that the deceased blood sample matches with the nails sent at item No.6 belonging to the deceased. Absolutely, there is no positive evidence against the accused in the DNA report, which is placed at Ex. P 19 No seminal stains were detected nor the hair of victim was found the cloths of accused.

116. However, the forensic psychological assessment report placed at Ex. P 21 issued by CFSL Chennai discloses that on the basis of forensic psychological assessment and behavior analysis interview, they inferred that the accused was deceptive in his statements and PW 23 Dr. Rupaali opined that the accused appears to have involved in committing the crime. But in the cross examination the witness has admitted that a person would be annoyed if he is asked irrelevant questions

repeatedly. Therefore, without there being any circumstances to connect the accused, one cannot assume unilaterally, that the accused has involved, in the crime merely he is deceptive in making statements and much reliance cannot be placed on the evidence of PW 23.

117. Ex. P22 FSL test report issued after examining the clothes of the deceased and the vaginal swab. It was opined that the soil found on the articles and the soil found in the vaginal swab are similar. Further opined that the soil was not found on the clothes of the accused. Except the findings given in respect of the similarity of the soil found on the articles, nothing has been stated in the report, which would connect the accused with the crime. Although the doctor has pointed out nail scratch injuries on the body of accused, yet it has come on the record that those injuries are caused when the accused was apprehended and beaten up by the public. The nails of the victim did not contain any skin tissues or blood marks of the accused during nails examination. Except the confessional statement of the accused, there is no any evidence to connect the accused with the crime.

120. In the present case, the place where the body of the victim was found was discovered by the public. As per the evidence given by the witnesses, nearly around two thousand

to three thousand people had witnessed the said place after finding the body of the victim. It is not the case of prosecution the said body was recovered at the instance of the accused only. Rather the witnesses who made search along with the complainant have categorically deposed that they had search the place where the body was found on the previous day and they did not find the body of the victim and also they did not see any tent nearby to the place.

121. From the plain reading of confessional statement of the accused, it would appear that cloths and belongings of the accused were recovered as disclosed by the accused near the scene of occurrence and also said to have shown the place where he committed rape and murder. Surprisingly, nothing has been recovered from the place of occurrence, which incriminates the accused. If at all the rape has occurred in the said place, what prevented the I.O. to call a team of experts to find any clues such as hairs of the accused, foot prints, piece of cloth, struggle marks etc. Even assuming for a while that, if belonging of the accused is recovered pursuant to the disclosure statement, it would have made the fact of recovery of belongings only, as admissible under Section 27 of the Indian Evidence Act. It will not make the entire so called disclosure statement of the accused as admissible.

122. Except the voluntary statement of the accused, there are no witnesses to speak about the presence of accused in the scene of occurrence or in the vicinity. No last seen theory has

been set up by the prosecution. The prosecution is heavily burdened to prove the alleged rape committed on the victim and in turn need to connect the accused with the said act. In this regard the observation made by the doctor PW.12 assumes much importance.

Section 376 of IPC

123. The observation made by PW 12 - Dr. Adam, the Medical Officer, General Hospital Belthangadi discloses the following:-

“Vulva and vagina lacerated with bleeding, mud particles seen over vulva and vagina. Public hair present matted. Hymen torn, edematous with bleeding. Vagina admits defendants No.2, figures bleeding present. Uterus Antiverted with normal size.”

124. The fact that the victim undergoing penetrative sexual assault has not disputed by the defense, but it is their contention that the act of rape is done by three to four persons and it is not an act done by a single person. It is also their contention that the victim has been carried away somewhere else, raped, murdered and then brought thrown into the bushes at Mannasanka. Hence with the evidence of PW.12- Doctor and the evidence given by the witnesses who has seen the body of the victim, a conclusion can be drawn that the victim has undergone penetrative sexual assault and consequently she was strangulated to death. Whether, the

prosecution has able to establish that it is accused who is responsible for the said acts. The answer to this question would be in the negative for the following reasons.

125. Firstly, the evidence of PW. 18 - Scientific Officer, Vinod J. Lakkappan, FSL Madiwala, Bengaluru discloses the following:-

“Item number 7, that is, the deceased's vaginal swab, did not yield any results in the DNA test due to improper storage. A medical officer should dry and pack the vaginal swab properly; this information is known to all doctors.

Even though we submitted the said vaginal swab for testing, due to the presence of fungus in it, we did not get any results.”

126. Normally in a case of rape, the opinion of the expert plays crucial role in arriving at right conclusion. Either the victim has to depose about the acts or the medical evidence shall disclose about the penetration. In the case on hand, neither the victim is alive to speak about the acts, nor the medial evidence is properly collected and preserved. When there is no clue for the investigation agency about the assailants, the expert report examining the vaginal swab would be a best piece of evidence to connect the accused with the crime. The evidence of the expert clearly indicates that the vaginal swab sent for the purpose of examination, was not properly preserved and sent. Hence, no results were obtained. That apart in the cross-examination, PW.18 admitted that in

item no. 18, nails of the deceased did not contain the blood or skin particles of the accused.

127. Secondly, the evidence of PW.12 doctor while examining the accused Santhosh Rao indicates the following:

“Pennies well developed, erection+propuse not retracting back. No injuries seen over genitals. Public hair collected and sent to examination and his blood group was B Negative. Further in the cross examination it was admitted by the witness that the accused was suffering from Phimosis decease and he cannot perform coitus easily and the process would be painful.”

128. Similarly, PW. 14 Dr. Mahabala Shetty who examined the accused gave similar findings as that of PW.12. In the cross examination, PW. 14 admitted that a person having phimosis decease would suffer severe pain in his private part if he commits rape on minor girl. In such a case there might be chances of ripping of the foreskin causing injuries. Strangely, both the doctors have no noticed any injuries on the private part of the accused. Apart from the evidence of the doctors, the material witnesses have categorically deposed that the accused is nowhere connected with the alleged crime and he has been falsely implicated. These circumstances create serious doubt in the case of prosecution and failed to connect the accused with the alleged rape.

Section 302 of IPC

129. *In so far as the charge against the accused having committing the murder of the victim girl, the prosecution has relied upon the disclosure statement made by the accused and recovery of articles. Except the recovery of the clothes made under Ex P. 15 /Mahazar, there are no eye witnesses or circumstantial witnesses to the incident. All along the parents of the deceased, residents of Belthangadi and even the police officers have admitted in their evidence to the effect that the names of PW.29- Mallik Jain, PW.31- Ashrith Jain, Uday Jain and Neeraj Jain were taken by the witnesses holding them responsible for the crime.*

130. *Interestingly, it is PW. 29 and 31 who have caught the accused near Gomata Statue stairs and handed him over to the police. It is also brought on record that the accused was badly beaten up by the public at the time of his arrest. To this effect the I.O. has also deposed in his evidence that the accused was badly injured and he was taken to the hospital for treatment. The entire story of arrest of the accused is fully surrounded with suspicious circumstances. Except the arrest of the accused, absolutely there are no other reliable circumstances to connect the accused with the crime. In this regard, I wish to extract some of incriminating circumstances as spoken by the witnesses in their evidence.*

136. *These aforesaid instances indicate that the parents of the deceased, near relatives and the people of Belthangadi*

have taken the names of the aforesaid persons about their alleged involvement in the crime. However, no materials are on record to show that the I.O. has conducted investigation, subjected these suspected persons to interrogation and has done some investigation in respect of the allegations made against them.

138. Reverting back to the allegations levelled against the accused, there are no circumstances which would connect the accused with the alleged crime. The evidence of PW. 1 to 28 does not disclose any incriminating evidence against the accused. Though the evidence of PW.29 and 31 discloses that they found suspicious in the movements of the accused and caught him and handed over him to the police, yet the suspicious doubt in the mind of this Court to accept their evidence.

139. Although the recovery mahazar witness PW.15 and the I.O. who recorded the voluntary statement of accused and recovered the articles, disclosed some sort of evidence against the accused in respect of he showing the place of rape and murder and producing the articles before the police, yet the prosecution has failed to connect the accused with the crime. The clothes which are recovered from the accused alleged to have worn at the time of incident did not contain any kind of stains and mud particles. Further, the evidence of PW.1 clearly discloses that the undergarments of the victim were not

found near the body and therefore, the police had received an undergarment of the deceased from the house. This admissions given by the father of the deceased creates much suspicion in the case of prosecution.

140. The investigation officer has failed to recover the CC TV footages from the front gate of Nature cure Hospital and did not recovered the umbrella, slippers, and the inner garments of the victim. The vaginal swab collected was disintegrated and not fit for test. In spite of these lapses, the prosecution has failed to make out any circumstances to connect the accused with the crime and the circumstances as brought out from the case remained unproved. None of the circumstances connects the accused with the crime, A person accused of an offence cannot be convicted merely on the basis of suspicion and he can be convicted only on legal evidence and not on surmises and conjecture.

142. From the materials available on record, it is quite manifest that the accused is nowhere connected to the present crime. There are no material on record to hold that the accused single handedly dragged the victim girl inside the bushes and committed penetrative sexual assault on her and thereafter, by using the school gat he strangled her to death. Except the recovery of the clothes of the accused under Ex. P15, absolutely there are no materials on record to connect the accused with the crime. Contrary to the case of

prosecution, the Doctor who has examined the accused has given opinion that the accused was suffering from Phimosi disease [retraction of perpetual skin was difficult], which makes the prosecution case much worse.

143. The prosecution fails to prove that the accused has committed the acts alleged against him. Absolutely, there is no evidence to connect the accused with the crime. There are no circumstances to connect the accused with the charges levelled against him. The charges levelled remained unproved. The investigation is not properly conducted in the golden hour. The doctor who collected the vaginal swab virtually demolished the entire case of the prosecution at the inception.”

(emphasis supplied)

38. It may also be noticed that PW 9 Janardhan had deposed that on the day of incident, the victim carried a black Umbrella. On 09.10.2012, he had seen the deceased walking towards her house and she was carrying an Umbrella and bag. The Police did not recover the said Umbrella. Her bag was recovered, however the books inside did not get wet though it had rained. Her clothes also did not get wet, which raises a doubt as to whether the crime was committed at the spot where her body was recovered or it was brought there later. This is not noticed by any of the investigating officers.

39. PW12 Dr. Adam had deposed that there was undigested food in the stomach of the deceased. As per his opinion she must have consumed food at about 6.00 pm. He further stated that the deceased might have died after the lapse of 6 hours from the time of consumption of food. PW8 Janavi had deposed that the deceased did not have any food till 4.00 pm. she is stated to have died at about 12.00 midnight. The Investigating offices did not notice that if Santhosh Rao had kidnapped her and committed the offence at the spot, it was not possible for him to have kept it hidden till midnight when she died. Particularly when the place from where her body was recovered was close to a main road, with number of persons passing through and also when several villagers were searching for her at that very spot. The manner in which the investigation was done raises a doubt as to whether there was involvement of more than one person in the commission of offence.

40. During the pendency of the Trial, the Writ Petitioner had filed an application before the Sessions Court praying for further investigation. The Sessions Judge by order dated 07.02.2017 held as under:

“5. Now the complainant has filed this application with the grounds on which he wanted that the further investigation to be ordered by the Court. On perusal of these averments of the application, I am of the opinion that the contention of Pw. 1

that there are serious lapses on the part of the in not conducting proper investigation is forthcoming on record.

6. In this case all the observations made by the Pw. 1 are borne out from the records and even in my opinion also there are serious lapses on the part of the C.B.I, in not conducting proper investigation. Even the doctor who had not properly observed the materials which could have thrown proper light on the case of the prosecution and the D.N.A. Expert stated about presence of hair of another person in the material lungi. The witnesses have stated that one lady-Yashodha had seen four persons talking together near the scene of occurrence that they cannot do in the broad day light and that particular witness is not examined by the C.B.I.

7. Further the material witness-Ravi Poojari is murdered and the same is also not noticed by the C.B.I. The place of arrest of the present accused is also a matter which is not properly probed into. Further it is very interesting to note that the main accused are the persons who have held this accused and produced before the police and during the arrest the public have assaulted to the present accused and he sustained injuries.

8. Further the doctor has stated to the effect that the accused is suffering from Phimosis, which is not properly appreciated by the Investigation Officer and the doctor has stated that there was no injury to the private part of the accused. If at all such a heinous crime according to the prosecution is

committed by this accused alone, the depth of injuries that he would have sustained would have forth coming in the medical evidence of the doctor. Further it is also brought in the evidence that a girl would have taken from that particular road and before reaching that place there is a water stream, above which the girl has to be taken and the physical strength of that particular girl compared with the accused is also an important aspect. The C.B.I, ought to have considered whether it is possible for one person or not.

9. *Further all the witnesses have stated that on the date of the alleged incident, there was rain and the clothes of the victim were not stained with mud and the bag was not wet, even the books were not wet. Further the underwear of the victim was not secured. It is also material that the important thing which is the under wear of the victim was not found near by the dead body and the witnesses have stated that the police have collected the underwear from the house. This also shows that if at all the crime was committed on that particular spot, what happened to that particular underwear is also not investigated.*

10. *Further if the accused is a person of unsound mind, he ought not to have taken the girl to an area where any public access was not easily available there. He ought not to have thought of that thing if his medical condition was not proper. He was not secured at the place of incident. Further the witnesses have categorically stated that this accused was not*

found near by the place of incident. Further it is stated that four days prior to the incident he came to that area, then how could he put up a hut and reside there.

11. Further in this case one girl who accompanied the deceased in the bus till her stop was not examined by the CBI who ought to have brought some light to the case, when there is agitation in the local limits, the C.B.I, police ought to have probed into the matter as to why there is so much of making of Bandh and agitation that the real culprits are not secured even though the present accused was arrested by the police is a material thing that the C.B.I, ought to have considered. The investigation of the C.B.I, shows that they have recorded only the statement of the witnesses whom they like, but they have left out the statements of the material witnesses. Even they have not enquired the witnesses whose statements was recorded by the Belthangady Police or the C.O.D. This shows that the proper investigation is not conducted by the C.B.I. These are the materials on which the C.B.I, has to conduct the investigation because it will show proper light on the case of the prosecution. This is not a simple case, but it is a case of brutal rape and murder.

12. Further on perusal of the medical report on record, it could be gathered that it cannot be an act of one person. Further the intention behind the engineering mind of the accused has to be looked into. The persons who have committed rape have filled the private part of the victim with

mud and this shows that the intention behind them is to avoid the evidence to be collected by the Investigation Officer. Further what was the necessity for the doctor to conduct the postmortem of such a serious case during night time without proper lighting facility as evidenced by his statement and evidence which also an important point.

13. The witnesses have categorically stated the names of the persons who have committed the crime, but the C.B.I, has not properly probed into that particular aspect. Even the agitation was continued for a long period of one year which is also not considered by the C.B.I. If at all there was nothing against this doubted persons, then why there was such a big hue and cry for justice. In this case all these aspects goes to show that the C.B.I., has not properly conducted the investigation and this Court want to know about the finding of the C.B.I., which it has to answer by conducting proper impartial investigation. Thus the Court has to refer this matter for further investigation and the C.B.I, has to answer all these queries.

14. Further I have received some documents from Nagarika Seva Trust Office, Guruvayana Kere, wherein this particular case was also discussed along with other matters and the same is also kept in the record of this particular case which shows that no proper investigation is conducted by the C.B.I, as per the information of the local public also.

15. Further the Sessions Judge is having power to order for further investigation as provided under Section 178(3) of Cr.P.C. In this regard I rely upon the citation reported in AIR 2004 SC 2078 between *Hasanbhai Valighai Qureshi Vs. State of Gujarath and Others*. Hence, in my opinion the Court can order for further investigation in this matter. Hence acting under Section 178(3) of Cr.P.C., the court has to observe that the C.B.L, has to probe into the matter and to conduct fair and proper investigation by considering all the observations made in this order and also by examining the proper witnesses and the documents and also the relevant C.D.Rs of the persons against whom the allegations are made and thereafter submit the report without fail within 24.04.2017, because the accused is in judicial custody and the trial cannot be stopped by giving enormous time to the C.B.I., Hence the C.B.I, to take this matter on priority basis and conduct investigation and submit the report by 24.04.2017. Hence, I proceed to pass the following

ORDER:

The C.B.I, to take this matter on priority basis and conduct further investigation by considering the observations made in the order and submit the report by 24.04.2017. Office is directed to intimate this order to the learned Public Prosecutor and to the C.B.I., forth with.”

(underlining supplied)

41. (1) Dhiraj Jain, (2) Uday Jain and (3) Malik Jain filed a Petition impugning the order dated 07.02.2017 being Criminal Petition No. 8678 of 2016 whereby the Sessions Judge had directed further investigation by the CBI. The High Court in its Judgment dated 27.01.2021, noticed that 18 witnesses had already been examined and there were 44 cited witnesses in the Charge Sheet. The High Court held that as trial had already commenced against the accused and if fresh investigation was ordered, it would deviate from the investigation reports of the Belthangady Police Station, the CID and CBI and therefore it was unwarranted. Further, if relief was granted it would dilute the powers under section 173(8) CrPC. The High Court while setting aside the order reserved the liberty of the prosecution to proceed in respect of an application filed under section 319 CrPC by giving an opportunity to the proposed party.

42. Thereafter an application was filed before the Sessions Court by the prosecution/CBI under section 319 CrPC seeking to add (1) Mallik Jain, (2) Dheeraj Jain and (3) Uday Jain as additional accused in the case. Said application was dismissed by the Sessions Judge on 04.10.2021, holding that there was no material or evidence at all as contemplated under Sec. 319 Cr.P.C. as against the proposed accused so as to proceed against them also. Said order was not appealed against.

43. Thereafter, further evidence was led by the prosecution. Ultimately, as noticed hereinabove, the charged accused Santhosh Rao was acquitted by judgment dated 16.06.2023, holding that the accused was nowhere connected to the crime. There was absolutely no material on record to connect the accused with the crime. The prosecution failed to prove that the accused had committed the acts alleged against him. There were no circumstances to connect the accused with the charges levelled against him.

44. It may be recalled at this juncture that not only the Writ Petitioner but also other witnesses and persons, who though were not cited as witnesses had come forward to share some material information about the crime had all along been contending that Santhosh Rao was not the culprit and the investigating agency had been trying to shield the real culprits. Certain persons who claimed to have material information were not even cited as witnesses and their statements ignored.

45. After the judgment dated 16.06.2023 of the Sessions Court, acquitting Santhosh Rao, the Writ Petitioner filed the subject Writ Petition seeking re-investigation/denovo investigation.

46. Subject Writ Petition has been dismissed by the impugned order dated 30.08.2024. The High Court in the impugned order has held that

“...The acquittal judgment has a logical connection with the begging question in the sense that if Santhosh Rao was not the one who committed crime, there must be somebody else. This definitely demands reinvestigation...”. However, the High Court despite opining that the facts demanded reinvestigation, held that it is doubtful that evidence that could not be collected at the golden hour is still available and that no useful purpose would be served even if reinvestigation was permitted.

47. At this stage, it is apposite to note that on 29.04.2026, this Court had passed an order directing the State of Karnataka to provide adequate protection to 8 potential witnesses listed in the Petitioner’s additional affidavit filed before us, at serial numbers 12-19. The State of Karnataka has complied with the order, found the potential witnesses within 3 weeks of its passing. The State’s ability to successfully locate the witnesses within 3 weeks, raises questions on the inability of 3 investigative agencies to examine these leads when it was timely.

48. It may be noticed that PW-18 Mr. Vinod J Lakkappan, Assistant Director Toxicology Division, Madivala Bengaluru who had conducted the DNA analysis has deposed that *“At the time of receiving the objects by us, we do not open it and see. Apart from the hairs of this Accused, hairs of other persons were also found in Material Object No. 15. In case there are*

an suspicious persons, their blood samples could be collected even now and on its DNA examination, comparison could be made.” His deposition thus shows that if suspected persons are found, the DNA sample collected from the victim’s ‘Chudidhar Top’ marked as material object no.15, can still be matched. Thus the observation of the High Court that it is doubtful that evidence that could not be collected at the golden hour is still available and that no useful purpose would be served even if reinvestigation was permitted is clearly erroneous and cannot be sustained.

49. Material witnesses are available and the hair of other persons found and produced as Material Object No. 15 available and if suspected persons found, their blood sample could be collected and on its DNA examination, comparison can be made.

50. In this backdrop it would be expedient for the ends of justice to examine the law on the question of denovo/reinvestigation and the circumstances under which the same may be ordered.

51. A three judge bench of the Supreme Court in *Neetu Kumar Nagaich v. State of Rajasthan*, (2020) 16 SCC 777 extensively examined and referred to various judgments of the Supreme Court with regard to the power of the Court specially the Constitutional Court to direct a denovo

investigation and the circumstances under which the same could be ordered.

52. The Supreme Court in *Neetu Kumar Nagaich (supra)* held as under:

“10. Normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the investigation has not been conducted in a proper and objective manner, as observed in Kashmeri Devi v. Delhi Admn. [Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482 : 1988 SCC (Cri) 864] , fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. The power may also be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances the court may, in order to prevent miscarriage of criminal justice, direct de novo investigation as observed in Babubhai v. State of Gujarat [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] . A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair. The observations in this context in Babubhai [Babubhai v. State of Gujarat, (2010) 12 SCC

254 : (2011) 1 SCC (Cri) 336] are considered relevant at para 45 as follows: (SCC p. 272)

“45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court [Ganeshbhai Jakshibhai Bharwad v. State of Gujarat, 2009 SCC OnLine Guj 12130] makes a fresh investigation.”

11. *In Bharati Tamang v. Union of India [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] , relief was sought in a writ petition to quash the charge-sheet and the supplementary charge-sheet coupled with a mandamus for a de novo investigation by a Special Investigation Team of competent persons having impeccable credentials to unravel the conspiracy. This Court relied on the following extract from Zahira Habibulla H. Sheikh v. State of Gujarat [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , as follows: (Bharati Tamang case [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] , SCC pp. 594-97, paras 33, 37-38 & 41)*

“33. ... ‘56. ... Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men.

It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.’ (Zahira Habibulla H. Sheikh case [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , SCC pp. 192-93, para 56)

37. In the decision of Babubhai v. State of Gujarat [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] , in para 40, this Court held that the scheme of investigation particularly Section 173(8) CrPC provides for further investigation and not of reinvestigation but held in para 42 as under: (SCC p. 272)

‘42. Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances.’

38. Therefore, at times of need where this Court finds that an extraordinary or exceptional circumstance arise and the necessity for reinvestigation would be imperative in such extraordinary cases even de novo investigation can be ordered.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, courts have to deal with the same with an iron hand appropriately within the framework of law.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigating Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.”

12. The power of the constitutional court may extend to directing reinvestigation was again noticed in Pooja Pal v. Union of India [Pooja Pal v. Union of India, (2016) 3 SCC 135 : (2016) 1 SCC (Cri) 743] , as follows: (SCC pp. 176-79, paras 87, 90 & 96)

“87. Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role

responsibly and committedly, always accountable to the law-abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

90. *That the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial was reiterated by this Court in Rattiram v. State of M.P. [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] It was postulated that the criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is the perception of a trial from the viewpoint of criminal as well as the victim when judged in the social context.*

96. *The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsised in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation — Basic Perspectives by Paul B. Weston and Renneth M. Wells:*

‘Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and

on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognising that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime—the certainty that a criminal will be discovered, arrested and convicted.’”

13. *In Dharam Pal v. State of Haryana [Dharam Pal v. State of Haryana, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] , it was noticed that the power of the constitutional court to order fresh or de novo investigation could also be exercised after commencement of the trial and the*

examination of some witnesses could not be an impediment, observing as follows: (SCC p. 170, para 25)

“25. ... The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. ... It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative.”

53. The Supreme Court in *Neetu Kumar Nagaich (supra)* held that normally when an investigation has been concluded and police report submitted under Section 173(2) of the Criminal Procedure Code, it is only further investigation that can be ordered under Section 173(8) of the Criminal Procedure Code. But where the Constitutional Court is satisfied that the investigation has not been conducted in a proper and objective manner, fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that truth is revealed. It held that the power to direct fresh investigation may be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances the court may, in order to prevent miscarriage of criminal justice, direct de novo investigation.

54. The Supreme Court held that a fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair. Investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere.

55. Relying upon the decision in *Zahira Habibulla H. Sheikh (supra)*, the Supreme Court in *Neetu Kumar Nagaich (supra)* held that if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, courts have to deal with the same with an iron hand appropriately within the framework of law. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigating Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution. And in exceptional circumstances the Court in order to prevent miscarriage of

criminal justice and if considers necessary may direct for investigation de novo.

56. Reference was also made by the Supreme Court in *Neetu Kumar Nagaich (supra)* to the judgment in *Pooja Pal (supra)* wherein it has been held that a criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse.

57. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

58. The Supreme Court in *Neetu Kumar Nagaich (supra)* also relied upon the decision in *Rattiram (supra)* wherein it was held that the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial and criminal jurisprudence with the passage of time has laid emphasis

on victimology, which fundamentally is the perception of a trial from the viewpoint of criminal as well as the victim when judged in the social context.

59. In a case where a minor girl of 17 years of age is brutally raped and murdered, the manner in which the investigation had progressed and the manner in which the various investigating agencies conducted the investigation and gathered and evaluated the evidence shocks the very conscience of the court. The person who was prosecuted was held to be incapable of committing the offence. Clearly the investigation has been conducted in a manner that causes injustice to the victim. The possibility of the real culprit(s) manipulating the investigation cannot be ruled out. Such lax and improper investigation gives premium to the Investigating Officers who failed to do their job correctly and diligently.

60. Injustice to a person who was falsely charged can always be compensated, however injustice to the victim who was brutally raped and then murdered can never be compensated. Society would be failing in its duty if it does not provide justice to the victim of such a heinous crime by conducting a proper investigation and bringing the real culprits to the book.

61. In view of the above, the appeal is disposed of in the following terms:

- (i) impugned order dated 30.08.2024 in WP No. 3301 of 2024, in so far as it dismisses the Writ Petition filed by Sri Chandappa Gowda, is set aside and
- (ii) a denovo investigation be carried out in Cr.No.250/2012 originally registered by the Belthangady Police as per the Complaint dated 09.10.2012 & First Information Report in Crime No.250/2012 dated 09.10.2012 and re-registered as FIR No.RC.2(S)/2014/CBI/SCB/CHENNAI dated 07.03.2014 by CBI, SCB Chennai; and
- (iii) Respondent No. 1 – State of Karnataka shall constitute a Special Investigation Team comprising efficient investigators, well conversant with the use of modern investigative technology, headed by a senior police officer of the State; and
- (iv) no officer who was part of the investigation teams of the Belthangady Police Station, CID or CBI who had been associated with the earlier investigation shall be part of the Special Investigation Team; and
- (v) Since, Santhosh Rao has already been tried and acquitted by the Sessions Court in the subject FIR, he enjoys the protection of Article 20 (2) of the Constitution of India and Section 300 CrPC from being tried or prosecuted a second time, he shall not be subjected to further investigation or prosecution; and

- (vi) nothing stated herein shall be construed as expressing an opinion, even prima facie, on the role of any individual including Mallik Jain, Deeraj Jain and Uday Jain. The Special Investigating Team shall conduct the investigation without being influenced by anything stated on merits in this order; and
- (vii) fresh investigation shall be concluded within a period of three months and the police report shall be filed before the court concerned in accordance with law, whereafter the matter shall proceed in accordance with law.

62. The appeal is disposed of in the above terms.

.....J.
[SANJAY KUMAR]

.....J.
[SANJEEV SACHDEVA]

New Delhi;
September 21, 2026