

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

**I.A.Nos.1 to 8 of 2023 in W.P.(PIL).No.173 of 2019**  
**I.A.Nos.1 to 10 of 2023 in W.P.(PIL).No.174 of 2019**  
**I.A.Nos.1 to 10 of 2023 in W.P.(PIL).No.175 of 2019**  
**I.A.Nos.1 to 10 of 2023 in W.P.(PIL).No.181 of 2019**  
**I.A.Nos.1 to 11 of 2023 in W.P.(PIL).No.183 of 2019**  
**I.A.Nos.1 to 10 of 2023 in W.P.(PIL).No.185 of 2019**

**And**

**W.P.No.46884 of 2022**

**COMMON ORDER:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. D.Prakash Reddy, learned *Amicus Curiae*.

Ms. Vrinda Grover, learned Senior Counsel represents  
Ms. Vasudha Nagaraj, learned counsel for the petitioner in  
W.P. (PIL).No.173 of 2019.

Mr. K. Vivek Reddy, learned Senior Counsel represents  
Mr. Manoj Reddy Keshi Reddy, learned counsel for the  
impleading applicants in I.A.Nos.1 and 8 of 2023 in W.P. (PIL)  
No.173 of 2019 and I.A.No.5 of 2023 in W.P. (PIL) No.183 of  
2019.

Mr. R.N.Hemendranath Reddy, learned Senior Counsel  
represents Mr. Sannapaneni Lohit, learned counsel for the

impleading petitioners in I.A.No.7 of 2023 in W.P. (PIL).No.173 of 2019; I.A.Nos.4, 7 and 8 of 2023 in W.P. (PIL).No.174 of 2019; I.A.Nos.3, 9 and 10 of 2023 in W.P. (PIL).No.175 of 2019; I.A.Nos.4, 5 and 7 of 2023 in W.P. (PIL).No.181 of 2019; I.A.Nos.7, 8 and 9 of 2023 in W.P. (PIL).No.183 of 2019 and I.A.Nos.1, 4 and 6 of 2023 in W.P. (PIL).No.185 of 2019.

Mr. H.Venugopal, learned Senior Counsel represents Mr. Nalla Mukunda Reddy and Mr. Vadlakonda Ravi Kumar Reddy, learned counsel for the impleading petitioners in I.A.Nos.3 and 6 of 2023 in W.P. (PIL).No.173 of 2019; I.A.Nos.3, 6, 9 and 10 of 2023 in W.P. (PIL).No.174 of 2019; I.A.Nos.1, 5, 7 and 8 of 2023 in W.P. (PIL).No.175 of 2019; I.A.Nos.2, 9 and 10 of 2023 in W.P. (PIL).No.181 of 2019; I.A.Nos.2, 4, 6 and 11 of 2023 in W.P. (PIL).No.183 of 2019 and I.A.Nos.2, 7, 8 and 10 of 2023 in W.P. (PIL).No.185 of 2019.

Ms. B.Rachna Reddy, learned Senior Counsel represents Mr. Rahul Yerramreddy, learned counsel for implead petitioner in I.A.No.5 of 2023 in W.P. (PIL).No.173 of 2019; I.A.Nos.2 and 5 of 2023 in W.P. (PIL).No.174 of 2019;

I.A.Nos.2 and 7 of 2023 in W.P. (PIL).No.175 of 2019;  
I.A.Nos.2 and 6 of 2023 in W.P. (PIL).No.181 of 2019;  
I.A.Nos.3 and 4 of 2023 in W.P. (PIL).No.183 of 2019;  
I.A.Nos.3 and 9 of 2023 in W.P. (PIL).No.185 of 2019.

Mr. P.Sri Raghuram, learned Senior Counsel represents Mr. P.Sri Ram, learned counsel and Mr. N.Naveen Kumar, learned counsel for the impleading petitioners in I.A.Nos.2 and 4 of 2023 in W.P. (PIL) No.173 of 2019.

Mr. M. Venkanna, learned counsel appears for the petitioners in W.P.(PIL).No.175 of 2019.

Mr. M.A. Shakeel, learned counsel appears for the petitioners in W.P. (PIL).No.185 of 2019.

Mr. P.V. Krishnamachary, learned counsel appears for the petitioners in W.P.No.46884 of 2022.

Mr. Harender Pershad, learned Senior Counsel and Special Government Pleader attached to the office of learned Advocate General, appears for the State.

**(i) IMPLEAD PETITIONS:**

2. In W.P. (PIL) No.173 of 2019, I.A.No.1 of 2023 has been filed by the father of the deceased Disha, namely Mr. Pothula Sridhar Reddy, seeking his impleadment as respondent No.7. I.A.Nos.2 and 3 of 2023 have been filed by Telangana State Police Officers' Association and Retired Police Officers' Association of Telugu States seeking their impleadment as respondents. I.A.Nos.4 to 8 of 2023 have been filed by A.Sreedhar Kumar, Konda Narasimha Reddy, Kore Venkateswarlu, Dharamkar Janakiram, S.Aravindh Goud, Balu Rathod, D.Srikanth, Mohammed Sirajuddin, Kocherla Ravi, Shaik Lal Madhar and Vasam Surender, part of the police party which accompanied the deceased to the scene of crime.

3. In W.P. (PIL) No.174 of 2019, I.A.Nos.1 to 10 of 2023 have been filed by Vasam Surender, Kore Venkateswarlu, Balu Rathod, Kocherla Ravi, Konda Narasimha Reddy, D.Srikanth, Mohammed Sirajuddin, Shaik Lal Madhar, S.Aravindh Goud and Dharamkar Janakiram respectively, part

of the police party which accompanied the deceased to the scene of crime.

4. In W.P. (PIL) No.175 of 2019, I.A.Nos.1 to 10 of 2023 have been filed by D.Srikanth, Konda Narasimha Reddy, Shaik Lal Madhar, Vasam Surender, Balu Rathod, Kocherla Ravi, Kore Venkateswarlu, Mohammed Sirajuddin, Dharamkar Janakiram, and S.Aravind Goud, part of the police party which accompanied the deceased to the scene of crime.

5. In W.P. (PIL) No.181 of 2019, I.A.Nos.1 to 10 of 2023 have been filed by Vasam Surender, Kore Venkateswarlu, Kocherla Ravi, Shaik Lal Madhar, Dharamkar Janakiram, Konda Narasimha Reddy, S.Aravind Goud, Mohammed Sirajuddin, D.Srikanth and Balu Rathod respectively, part of the police party which accompanied the deceased to the scene of crime.

6. In W.P. (PIL) No.183 of 2019, I.A.Nos.1 to 11 of 2023 have been filed by A.Sreedhar Kumar, Balu Rathod, Konda Narasimha Reddy, Kore Venkateswarlu, Vasam Surender, D.Srikanth, Dharamkar Janakiram, Shaik Lal Madhar,

S.Aravind Goud, Kocherla Ravi and Mohammed Sirajuddin respectively, part of the police party which accompanied the deceased to the scene of crime.

7. In W.P. (PIL) No.185 of 2019, I.A.Nos.1 to 10 of 2023 have been filed by Mohammed Sirajuddin, Balu Rathod, Konda Narasimha Reddy, Kocherla Ravi, Vasam Surender, Shaik Lal Madhar, D.Srikanth, Dharamkar Janakiram, Kore Venkateswarlu and S.Aravind Goud respectively, part of the police party which accompanied the deceased to the scene of crime.

8. Writ Petition No.46884 of 2022 is filed by the family members of the accused, namely Mr. Pinjari Hussain, father of Mohammed Arif; Jollu Lakshmi, mother of Jollu Naveen; Jollu Manemma, wife of Jollu Shiva and Chinthakuntla Renuka, wife of Chintakuntla Chennakeshavulu. The respondents in the aforesaid writ petitions are State of Telangana, rep. by its Principal Secretary, Home Department; the Director General of Police; the Commissioner of Police, Cyberabad, Rachakonda Commissionerate; the Station House Officer, Shadnagar Police Station, Shadnagar, Cyberabad;

Viswanath Channappa Sajjanar, Ex-Police Commissioner; and Vasam Surender, Konda Narasimha Reddy, Shaik Lal Madhar, Mohammed Sirajuddin, Kocherla Ravi, Kore Venkateswarlu, Dharamkar Janakiram, Balu Rathod and D.Srikanth, part of the police party which accompanied the deceased to the scene of crime.

**(ii) BACKGROUND FACTS:**

9. On the fateful night of 27.11.2019, a 26 year old Doctor Ms.Disha (identity concealed) was reported missing from around 9.44 p.m. Thereupon, a missing woman complaint vide crime No.480 of 2019 was registered in Shamshabad Police Station. In the early hours of morning on 28.11.2019, a charred body of Ms.Disha was found on the outskirts of Hyderabad. According to reports, she had been gang raped and burnt to death. A case was registered vide crime No.784 of 2019 in Shadnagar Police Station, Cyberabad for offences under Section 120B, 366, 393, 506, 376D, 302, 201 read with Section 34 IPC. On 29.11.2019, the Cyberabad police arrested four persons in connection with the said case, namely Mohammed Areef, Jollu Naveen, Jollu Shiva and Chintakunta

Chennakeshavulu @ Chenna (hereinafter referred to as 'accused') on the basis of purported identification through C.C.TV footage.

10. On 02.12.2019, the police sought the custody of the accused. Thereupon, Judicial Magistrate of First Class, Shadnagar granted ten days judicial custody in respect of the accused. The accused were taken to scene of crime as part of investigation, where the accused died in an exchange of fire when they purportedly tried to escape the lawful custody.

11. One Ms. K.Sajaya, a social activist as well as several other activists and women rights activists addressed a letter petition to Chief Justice of this Court, which was registered as W.P. (PIL) No.173 of 2019. In the said letter petition, grievance was made about extra-judicial killing of the accused, who were allegedly involved in rape and murder of Ms.Disha. A Division Bench of this Court by an order dated 06.12.2019 issued directions for video recording of post-mortem and preservation of bodies of accused.

12. A Special Investigation Team (SIT) was constituted on 08.12.2019 by the State of Telangana. In W.P. (PIL) No.173 of



2019, a Division Bench of this Court vide order dated 09.12.2019 issued direction for transferring bodies of accused to Gandhi Hospital, Secunderabad. A direction was issued to learned Advocate General for the State of Telangana to inform this Court as to whether the guidelines laid down by Supreme Court in **Peoples' Union for Civil Liberties vs. State of Maharashtra**<sup>1</sup> have been adhered to in toto.

13. In W.P. (Crl) No.348 of 2019 (G.S.Mani and another vs. Union of India), the Supreme Court issued notice on 12.12.2019 and directed constitution of Commission of Inquiry to be headed by Justice V.S.Sirpurkar, Former Judge of Supreme Court to enquire into circumstances in which accused were killed on 06.12.2019. The Supreme Court interdicted any other Court or authority from enquiring into, pending the Commission of Inquiry. However, the Supreme Court permitted the investigation which was being conducted by the SIT to continue.

14. In W.P. (Crl) No.364 of 2019 (K.Sajaya and others vs. State of Telangana), the Supreme Court by an order dated

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<sup>1</sup> (2014) 10 SCC 635

17.12.2019 directed the petitioners to approach this Court for collection of evidence. Thereupon, an I.A., was filed before this Court in which various directions were issued for collection, preservation and handing over of evidence to Commission of Inquiry.

15. In W.P. (Crl) No.348 of 2019 (G.S.Mani and another vs. Union of India), the Supreme Court by an order dated 10.01.2020 set out the terms of reference which read as under:

1. To inquire into the alleged incident resulting in the death of four persons on 6<sup>th</sup> December, 2019 in Hyderabad, namely, Mohammed Arif, Chintakunta Chennakeshavulu, Jolu Shiva and Jollu Naveen, who were arrested in connection with the rape and murder of a young veterinary lady doctor, while they were in the custody of the police.
2. To inquire into the circumstances that led to the death of the aforementioned four persons and to ascertain as to whether any offence appears to have been committed in the course. If yes, to fix responsibility of erring officials.

16. The Commission of Inquiry appointed by the Supreme Court held proceedings between 03.02.2020 to January, 2022. Thereafter the Commission of Inquiry, on 28.01.2022 submitted its Comprehensive Report, wherein it was

concluded that the accused were deliberately fired upon with an intent to cause their death and with the knowledge that the firing would invariably result in the death of the deceased suspect. The Commission, therefore, directed that Shaik Lal Madhar, Mohammed Sirajuddin and Kocherla Ravi (petitioners in I.A.No.7 of 2023 in W.P. (PIL) No.173 of 2019 seeking impleadment) be tried for an offence under Section 302 IPC. It was further held that the said officers cannot take shelter under Section 76 IPC and exception to Section 300 IPC. It was further directed that all ten police officers namely, V.Surender, K.Narasimha Reddy, Shaik Lal Madhar, Mohammed Sirajuddin, Kocherla Ravi, K.Venkateshwarlu, S.Arvind Goud, D.Janakiram, R.Balu Rathod and D.Srikanth (petitioners in I.A.Nos.8, 5, 7 and 6 of 2023 respectively in W.P. (PIL) No.173 of 2019 seeking impleadment) are to be tried for offences under Section 302 IPC read with Section 34 IPC, 201 read with Section 302 IPC and 34 IPC.

17. The Supreme Court by an order dated 20.05.2022 passed in W.P. (Crl) No.348 of 2019 directed that W.P. (PIL) No.173 of 2019 be revived in the High Court. The relevant order is extracted for facility of reference:

4. During the course of the hearing, it was brought to our notice that a PIL regarding the same matter is pending before the High Court of Telangana. However, because of the pendency of the present petition before this Court, no orders were passed by the High Court of Telangana. In view of the fact that the Commission appointed by us has already completed the inquiry and filed the Report, we are of the considered opinion that it would be expedient for the same to be taken up by the High Court of Telangana in the PIL pending before it.

5. We, therefore, direct the Registry of this Court to immediately transfer the entire material forwarded by the Inquiry Commission, including the Report, to the High Court.

6. The parties would be at liberty to make their submissions before the High Court. After considering the submissions of the parties, the High Court is requested to take appropriate action at its end.

18. In the aforesaid background of facts, the writ petitions arise for our consideration.

**(iii) RELIEFS IN THE WRIT PETITIONS:**

19. In W.P. (PIL) No.173 of 2019 (on a letter addressed by K.Sajaya, a social activist as well as several other activists and women rights activists), *inter alia* the following reliefs have been claimed:

- i) To constitute an independent Court monitored Committee for examination of FIRs registered in the case;
- ii) To ensure in all circumstances, compliance to the guidelines issued by Supreme Court in **PUCL** (supra); and
- iii) To arrest the police personnel who participated in the killing of accused for offence under Section 302 IPC and to hand over the investigation to Central Bureau of Investigation (CBI).

20. In W.P. (PIL) No.174 of 2019 (on a letter addressed by Mr. Sudarshan Malugari, Advocate and General Secretary, Telangana High Court Advocates' Association), *inter alia* the following reliefs have been claimed:

- i) To constitute a Judicial Commission with a sitting Judge of the High Court and to fix responsibility and to take stringent action against the police personnel found guilty of negligence including penal punishment and removal from service;
- ii) To direct Union of India and the State of Telangana to constitute High Power Committee consisting of former/present Supreme Court Judges/High Court Judges, Police Heads, Political Heads, Psychologists and Social Reformers to propose recommendation to Government of India and to the State of Telangana in view of brutal offences against children and women; and
- iii) To make suitable amendments in the existing law to nib the possible offences in the bud.

21. In W.P. (PIL) No.175 of 2019 (filed by K.Raghavendra Prasad, Member of Indian Association of Peoples' Lawyers of

the Andhra Pradesh and Telangana State Chapter), *inter alia* the following reliefs have been claimed:

- i) To declare the action of killing of accused under the guise of encounter killing as without jurisdiction of police authorities and to register a case against police officials under Section 302 IPC; and
- ii) To conduct a Judicial Inquiry by appointing a sitting or retired Judge and to submit a Report to this Court within a stipulated time and to pay compensation of Rs.50 lakh each to the family members of the accused.

22. In W.P. (PIL) No.181 of 2019 (filed by Prof. Gaddam Laxman, President of Civil Liberties Committee, Telangana State), the petitioner has prayed for following reliefs:

- i) The brutal killing of the accused is illegal, arbitrary and to declare the action of the police authorities in registering crime No.803 of 2019 for offence under Section 307 IPC against the accused who had died as arbitrary, discriminatory and violative of law; and
- ii) For a direction to entrust the investigation to CBI and to declare the constitution of SIT as per G.O.Ms.No.173, dated 08.12.2019 as illegal and contrary to law.

23. In W.P. (PIL) No.183 of 2019 (Prof. Rama Shankarnarayan Melkote, Retired Professor of Osmania University), the petitioner has prayed for the following reliefs:

- i) The Union of India be directed to constitute SIT comprising of Senior Police Officers from outside the State of

- Telangana, who have a proven and credible track record to enable a fair and impartial investigation; and
- ii) To register FIR for an offence under Section 302 IPC against the concerned police officers.

24. In W.P. (PIL) No.185 of 2019 (filed by Prof. P.L.Vishweshwer Rao, Professor and claiming to be the public spirited person), the petitioner *inter alia* has prayed for a declaration that extra-judicial killing of accused is illegal, arbitrary and unconstitutional and has sought for a direction to register FIR under Section 302 IPC.

25. In W.P. No.46884 of 2022 (filed by family members of the accused, namely Mr. Pinjari Hussain, father of Mohammed Arif; Jollu Lakshmi, mother of Jollu Naveen; Jollu Manemma, wife of Jollu Shiva and Chinthakuntla Renuka, wife of Chintakuntla Chennakeshavulu), the following reliefs have been framed:

- a) To declare the action of the respondents herein for extra judicial killings of the deceased/suspects 1. Mohammad Arif 2. Jollu Shiva 3. Jollu Naveen and 4. Chintakuntla Chennakeshavulu in the alleged fake encounter on 06/12/2019 at Chatanpalli, Shadnagar, Mahabubnagar District, as being illegal, arbitrary and discriminatory violation of Article 21 of

- the Constitution of India and violation of the Rule of law;
- b) To declare the action of the respondents herein in registering FIR No.803/2019 U/s.307 of IPC and other section of law against deceased instead of registering crime against police who fired and killed the deceased suspects under Sections 302, 201 r/w 34 of IPC and other section of law as being, illegal, arbitrary and discriminatory and violation of law Article 21 of the Constitution of India and Rule of law;
- c) To direct the concerned police to register FIR against the respondents No.5 to 15 and to direct the Respondent No.1 herein to entrust the investigation to CBI or NIA for fair investigation and take necessary disciplinary action against all concerned; and
- d) To direct respondent No.1 to pay compensation and damages to the deceased/suspects family members to the tune of Rs 1,00,00,000/- (Rupees One Crore only) each family for the brutal murder of the four deceased/ suspects who were in judicial custody in Disha Rape and murder Case;

**(iv) SUBMISSIONS ON BEHALF OF PETITIONER SEEKING  
IMPLEADMENT IN I.A.NO.5 OF 2023 IN WP (PIL) NO.183  
OF 2019:**

26. Learned Senior Counsel for the Inspector and Sub-inspector, who were part of the police team accompanying the accused, has submitted that the closure report has been filed



by SIT in F.I.R. No.803 of 2019 on 05.02.2021. It is submitted that once a closure report is filed, an accused has right against re-investigation in him and such a right can only be disturbed by a constitutional Court exercising its extraordinary jurisdiction. It is further submitted that whenever re-investigation by CBI is granted, the accused have to be given an opportunity to be heard. It is also submitted that right to reputation is a fundamental right and in case, any of the prayer sought for in the writ petitions, is allowed, it would seriously infringe on the right of the petitioner to reputation. It is also contended that public interest litigation is not adversarial process and in any case, the petitioner seeking impleadment can assist the Court and can be heard as an intervenor. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **K.Chandrasekhar vs. State of Kerala**<sup>2</sup>, **State of Punjab vs. Davinder Pal Singh Bhullar**<sup>3</sup> and **Vinay Tyagi vs. Irshad Ali**<sup>4</sup>.

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<sup>2</sup> (1998) 5 SCC 223

<sup>3</sup> (2011) 14 SCC 770

<sup>4</sup> (2013) 5 SCC 762

**(v) SUBMISSIONS ON BEHALF OF PETITIONERS SEEKING IMPLEADMENT IN I.A.NO.7 OF 2023 IN W.P. (PIL).NO.173 OF 2019; I.A.NOS.4, 7 AND 8 OF 2023 IN W.P. (PIL).NO.174 OF 2019; I.A.NOS.3, 9 AND 10 OF 2023 IN W.P. (PIL).NO.175 OF 2019; I.A.NOS.4, 5 AND 7 OF 2023 IN W.P. (PIL).NO.181 OF 2019; I.A.NOS.7, 8 AND 9 OF 2023 IN W.P. (PIL).NO.183 OF 2019 AND I.A.NOS.1, 4 AND 6 OF 2023 IN W.P. (PIL).NO.185 OF 2019:**

27. Learned Senior Counsel for the impleading petitioners submitted that an indefeasible right has accrued to the impleading petitioners on filing the closure report dated 05.02.2021 by the SIT, which cannot be taken away without hearing the impleading petitioners. It is further submitted that no judicial order can ever be passed by any Court without providing a reasonable opportunity of being heard to the person likely to be affected by such an order and particularly when the same would result in drastic consequences. It is also submitted that since the investigation is sought by a specialised agency, this Court may exercise the discretion in favour of affected parties by granting them opportunity of hearing. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Divine Retreat Centre vs. State of**

**Kerala<sup>5</sup>, Samaj Parivartan Samudaya vs. State of Karnataka<sup>6</sup>** and on a decision of the Full Bench of the Allahabad High Court in **Jagannath Verma vs. State of Uttar Pradesh<sup>7</sup>**.

**(vi) SUBMISSIONS ON BEHALF OF PETITIONERS SEEKING IMPLEADMENT IN I.A.NOS.3 AND 6 OF 2023 IN W.P. (PIL).NO.173 OF 2019; I.A.NOS.3, 6, 9 AND 10 OF 2023 IN W.P. (PIL).NO.174 OF 2019; I.A.NOS.1, 5, 7 AND 8 OF 2023 IN W.P. (PIL).NO.175 OF 2019; I.A.NOS.2, 9 AND 10 OF 2023 IN W.P. (PIL).NO.181 OF 2019; I.A.NOS.2, 4, 6 AND 11 OF 2023 IN W.P. (PIL).NO.183 OF 2019 AND I.A.NOS.2, 7, 8 AND 10 OF 2023 IN W.P. (PIL).NO.185 OF 2019:**

28. Learned Senior Counsel for the impleading petitioners has submitted that the petitioners in I.A.Nos.3 and 6 of 2023 in W.P. (PIL) No.173 of 2019 have not participated in the exchange of fire as they were handlers of the accused. It is submitted that in the peculiar facts and circumstance of the case, an opportunity of hearing may be afforded to the impleading petitioners.

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<sup>5</sup> (2008) 3 SCC 542

<sup>6</sup> (2012) 7 SCC 407

<sup>7</sup> 2014 SCC OnLine SC All 859 : 2014 (3) MWN (Cr.) 161 (FB) (All)

**(vii) SUBMISSIONS ON BEHALF OF PETITIONERS SEEKING IMPLEADMENT IN I.A.NO.5 OF 2023 IN W.P.(PIL).NO.173 OF 2019; I.A.NOS.2 AND 5 OF 2023 IN W.P.(PIL).NO.174 OF 2019; I.A.NOS.2 AND 7 OF 2023 IN W.P.(PIL).NO.175 OF 2019; I.A.NOS.2 AND 6 OF 2023 IN W.P.(PIL).NO.181 OF 2019; I.A.NOS.3 AND 4 OF 2023 IN W.P.(PIL).NO.183 OF 2019; I.A.NOS.3 AND 9 OF 2023 IN W.P.(PIL).NO.185 OF 2019:**

29. Learned Senior Counsel for the impleading petitioners has submitted that the impleading petitioners in the peculiar facts of the case have a right to be heard. It is submitted that second FIR with regard to same incident cannot be filed. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Prabha Mathur vs. Pramod Aggarwal**<sup>8</sup> and **Krishna Lal Chawla vs. State of Uttar Pradesh**<sup>9</sup>.

**(viii) SUBMISSIONS ON BEHALF OF PETITIONERS:**

30. Learned Counsel for the petitioners submitted that at the stage of registration of FIR, prospective accused have neither any right of hearing, nor principles of natural justice are applicable at the stage of registration of FIR. It is further

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<sup>8</sup> (2008) 9 SCC 469

<sup>9</sup> (2021) 5 SCC 435

submitted that contention of the impleading petitioners is based on the complete misinterpretation of Closure Report filed by SIT and the FIR ought to have been registered under Section 302 IPC instead of Section 307 IPC. Our attention has also been invited to the order dated 10.01.2020 passed by Supreme Court in W.P. (CrI) No.348 of 2019 and it has been submitted that the Supreme Court has tasked the Commission of Inquiry to ascertain the true nature of the event and to fix the responsibility of erring officials.

31. It is contended that the guidelines laid down in **PUCL** (supra) by the Supreme Court had been flouted and the FIR No.803 of 2019 has been registered under Section 307 IPC to arrive at a pre-determined conclusion. It is further contended that the submission of the impleading petitioners that the second FIR cannot be filed, is misconceived and filing of the counter complaint is not prohibited in law. It is also contended that findings of the Inquiry Commission disclose commission of a cognizable offence and therefore, the same has to be used as a basis to register FIR against the erring police officials for offence under Section 302 IPC. In support of the aforesaid submissions, reliance has been placed on the

decision of the Supreme Court in **Anju Chaudhary vs. State of Uttar Pradesh**<sup>10</sup> and **State Bank of India vs. Rajesh Agarwal**<sup>11</sup>. Reference has also been made to a Full Bench decision of Chattisgarh High Court in **Dhananjay Kumar vs. State of Chattisgarh**<sup>12</sup> as well as decision of Supreme Court in **Extra-judicial Execution Victim Families Association vs. Union of India**<sup>13</sup>.

**(ix) SUBMISSIONS ON BEHALF OF THE PETITIONER IN W.P. (PIL) NO.175 OF 2019:**

32. Learned counsel for the petitioner has adopted the submissions made by learned Counsel for the petitioners in other writ petitions. It is contended that impleading petitioners have no locus to seek impleadment. When there are rival versions with regard to an incident, second FIR is not prohibited. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Balaur Singh vs. State of Punjab**<sup>14</sup> and a Division Bench

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<sup>10</sup> (2013) 6 SCC 384

<sup>11</sup> (2023) 6 SCC 1

<sup>12</sup> 2020 SCC OnLine Chh 4

<sup>13</sup> (2017) 8 SCC 417

<sup>14</sup> (1995) 4 SCC 229

decision of this Court in **K.G.Kannabiran vs. Chief Secretary, Government of Andhra Pradesh**<sup>15</sup>.

**(x) SUBMISSIONS OF AMICUS CURIAE:**

33. Learned *Amicus Curiae* has submitted that the procedure prescribed in respect of deaths that occurred due to police encounter, as laid down by Supreme Court in **PUCL** (supra), has not been followed. It is further submitted that FIR ought to have been registered against concerned police officials for an offence under Section 302 IPC. It is contended that at best, subject to discretion of the Court, the impleading petitioners can be heard as intervenors and can be permitted to make submissions as the nature of the proceedings is not adversarial.

**(xi) ANALYSIS:**

34. We have considered the rival submissions and perused the record.

35. In **Union of India vs. W.N.Chadha**<sup>16</sup>, the Special Judge by an order dated 05.02.1990 allowed the application filed by

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<sup>15</sup> 1997 (2) ALD 523 (DB)

<sup>16</sup> 1993 Supp 4 SCC 260

the CBI to issue letter rogatory/request to Switzerland for getting necessary assistance so that investigation can be conducted in Switzerland. Against the aforesaid order, one revision petition was preferred, which was dismissed by Delhi High Court by an order dated 19.12.1990 on the ground that the petitioner had no locus to present the revision petition, but took *suo motu* cognizance of the matter in exercise of powers under Sections 397 and 401 read with Section 482 of CrPC and directed issuance of show cause notice to CBI. The said order was challenged in an appeal before the Supreme Court. In the aforesaid factual context, in paragraph 95 and 98, it was held as under:

**95.** It is relevant and significant to note that a police officer, in charge of a police station, or a police officer making an investigation can make a search or cause search to be made for the reasons to be recorded without any warrant from the Court or without giving the prior notice to anyone or any opportunity of being heard. The basic objective of such a course is to preserve secrecy in the mode of investigation lest the valuable evidence to be unearthed will be either destroyed or lost. We think it unnecessary to make a detailed examination on this aspect except saying that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or



seizure of any property in his possession connected with the crime unless otherwise provided under the law.

**98.** If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

36. Thus, it is evident that the Supreme Court dealt with the powers of a police officer during the course of investigation to make a search for reasons to be recorded, without any warrant from the Court or without giving prior notice to anyone or opportunity of being heard.

37. The principles laid down in **W.N.Chadha** (supra) were quoted with approval in **Anju Choudary** (supra) and in paragraphs 31 and 33, it was held as under:

**31.** The rule of *audi alteram partem* is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others,

specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1860 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the first information report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer-in-charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the officer-in-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be predominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of *audi alteram partem* pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different

reasons: **firstly**, the Code does not provide for any such right at that stage, **secondly**, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in *Union of India v. W.N. Chadha* [1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] clearly spelled out this principle in para 98 of the judgment that reads as under : (SCC p. 293)

“98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.”

**33.** While examining the abovestated principles in conjunction with the scheme of the Code, particularly Sections 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted

upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

38. Thus, the Supreme Court held that at pre-registration stage of an offence, the Code of Criminal Procedure does not contemplate any right of hearing in the accused. It was further held that registration of a cognizable offence is the statutory duty of a police officer in charge of the police station. It was further held that very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It was also held that liberty of individual is not being taken away except by due process of law.

39. Thus, it is well settled in law that under the Scheme of Code of Criminal Procedure, an accused is not provided with any right of hearing at the time of registration of First Information Report.

40. However, in the instant case, for registration of First Registration Report, jurisdiction of this Court under Article 226 of the Constitution has been invoked. A First Information Report was lodged on a complaint made by Sri V.Surender,

ACP, Shadnagar Division, against the accused for offences under Sections 307, 224, 394, 332, 333 IPC read with Section 34 IPC and under Section 74 read with Section 76 of CrPC and Sections 25 (1-B)(a) and 27 of the Arms Act, 1959. The said FIR was investigated by the SIT and a Report dated 05.02.2021 was submitted. The relevant extract of the Report reads as under:

16.11 That the material collected and statements recorded during investigation and discloses that the deceased D1 to D4 were found to be aggressors and involved in the illegal acts of snatching the service pistols from the LWs-4 and 5, assaulting police and panch witnesses and inflicting Grievous and Simple injuries to the LWs-5 and 9 to deter them from discharging their official duties and opened illegal firing using the snatched pistols of LWs-4 and 5 with intent to kill them to escape from their custody of LW-1 who was discharging public functions of statutory duties of investigation under Sections 156, 157 CrPC relating to the case in Cr.No.784/2019 of Shadnagar PS which is a gang rape and murder case which was committed by the accused/deceased D1 to D4. Hence, I am of the opinion that the deceased D1 to D4 being aggressors in a bid to escape from the lawful custody of the police committed an offence liable for

punishment under Sections 307, 332, 333, 394, 224 r/w 34 IPC, Section 25(1B)(a), 27 of the Arms Act.

16.12 That during the course of investigation LWs-14 to 18 who are blood relatives of the deceased D1 to D4 were examined and they have not made any allegations against the LW-1 with regard to the occurrence. Hence, I am of the opinion that there are no malafides on the part of LW-1 in this occurrence except discharging public duties of statutory functions and arrest of the fleeing accused under Section 60 r/w 46 CrPC.

41. The Magistrate under the provisions of Code of Criminal Procedure has no jurisdiction to direct fresh or *de novo* investigation. There are no provisions in the Code which empowers the Magistrate to disturb the status of the accused pending investigation or when the Report is filed, to wipe the Report and its effect in law. It is equally well settled in law that this Court has jurisdiction under Section 482 of the Code of Criminal Procedure or even under Article 226 of the Constitution of India to direct further investigation, fresh or *de novo* or even re-investigation. In **Vinay Tyagi** (supra), in paragraphs 40 and 43, it has been held as under:

**40.** Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state

the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

**40.1.** The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.

**40.2.** A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.

**40.3.** The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in *Bhagwant Singh case* [*Bhagwant Singh v. Commr. of Police*, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.

**40.4.** Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

**40.5.** The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still

not direct the investigating agency to conduct further investigation which it could do on its own.

**40.6.** It has been a procedure of propriety that the police has to seek permission of the court to continue “further investigation” and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.

**43.** At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

42. The petitioners are seeking a fresh investigation into the offence, which this Court is empowered to direct in exercise of powers either under Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure. In addition, an investigation in these writ petitions is sought by CBI. In



**Davinder Pal Singh Bhullar** (supra) in paragraph 75, it has been held as under:

75. Thus, in view of the above, it is evident that a constitutional court can direct CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.

43. At this stage, it is apposite to take note of Rule 16 of the Writ Proceedings Rules, 1977, which is extracted below for the facility of reference:

16 (a) The Court may at any stage of the proceedings, either upon or without any application and on such terms as may appear to be just, order that the name of any party in improperly joined be struck out, and that the name of any person who ought to have been joined or whose presence may be necessary in order to enable the court effectually and completely to adjudicate

upon and settle all the questions in the petition, be added.

(b) At the hearing of the petition or application, any person who desires to be heard in opposition to the petition or application and appears to the court to be a proper person to be heard may be heard, subject to such conditions as to costs as the court may deem fit to impose.

Thus, under the Writ Rules also, this Court has the discretion to permit a person who appears to the Court to be a proper person to be heard.

44. Therefore, in the peculiar facts of the case, we are inclined to permit the implead petitioners to intervene in these proceedings to ensure fairness and justice in the proceedings, particularly when the interest of justice demand a proper representation of affected parties or view points. It is relevant to mention here that the present proceedings are *pro bono publico* in nature and since implead petitioners are interested in the outcome of these proceedings, we are inclined to hear them. It is also relevant to mention that in view of the order dated 29.03.2023 passed by a Division Bench of this Court in I.A.Nos.1, 2, 3, and 4 of 2023 in W.P. (PIL) No.173 of 2019, the impleading petitioners are entitled to be heard.

45. For yet another reason, we are inclined to permit the impleading petitioners as impleading petitioners are already parties in W.P.No.46884 of 2022, in which a similar relief has been sought by the family members of the accused.

**(xii) CONCLUSION:**

46. In view of preceding analysis, it is directed that the impleading petitioners shall be heard as intervenors at the time of final hearing of the writ petitions. It is clarified that any observations made/findings recorded in this order have been made/recorded only for the purposes of deciding the interlocutory applications and shall have no bearing on the merits of the matter.

47. Accordingly, Interlocutory Applications are disposed of.

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**ALOK ARADHE, CJ**

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**ANIL KUMAR JUKANTI, J**

27.12.2023  
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