242 CWP-25168-2021

SANT GURMEET RAM RAHIM SINGH

VERSUS

STATE OF PUNJAB AND OTHERS

Present: Mr. Sonia Mathur, Senior Advocate with
Mr. Amit Tiwari, Mr. Jitendra Khurana,
Mr. Harish Chabbra, Mr. Divik Mathur and
Mr. Nikhil Chandra Jaiswal, Advocates,
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl. A.G., Punjab,
for respondent No.1.

Mr. Dheeraj Jain, Senior Panel Counsel, Govt. of India,
for respondent No.2-Union of India.

Mr. Rajeev Anand, Advocate,
for respondent No.3-C.B.I.

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Order Reserved on: 13.12.2023
Pronounced on: 11.03.2024

VINOD S. BHARDWAJ , J.

Validity of the notification dated 06.09.2018 issued by the State of Punjab, vide which the consent given to respondent No.3-Central Bureau of Investigation (hereinafter referred to as the 'CBI') to investigate three FIRs of sacrilege cases i.e. FIRs No.63, 117 and 128 of 2015 registered at Police Station Bajakhana, Faridkot has been withdrawn is under challenge in the present petition on the grounds that the same is in violation of the law laid down by the Hon'ble

Supreme Court prohibiting withdrawal of a case registered by the CBI wherein investigation has commenced.

FACTS AS PER PETITION

Three different incidents of sacrilege of Shri Guru Granth Sahib that occurred during June to October 2015 in District Faridkot, Punjab(hereinafter referred to as "Sacrilege Cases"). FIR No.63 dated 02.06.2015 was registered under Section 295-A read with Section 380 of the IPC at Police Station Bajakhana, District Faridkot on a complaint given by one Gora Singh, Granthi of Gurudwara Singh Sahib at village Burj Jawahar Singh Wala, wherein it was alleged that scripture/Swaroop of Holy Shri Guru Granth Sahib Ji had been desecrated and the same was missing from Peeda Sahib.

Second incident of sacrilege was reported to have occurred on 24.09.2015 and 25.09.2015, wherein posters containing derogatory remarks about Holy Shri Guru Granth Sahib Ji and other Sikh Religious leaders were found pasted outside the SGPC managed Gurudwara in Bargari. The said posters had a reference also to the previous incident of missing of Holy Shri Guru Granth Sahib Ji from Village Burj Jawahar Singh Wala. Hence, FIR No. 117 of 2015 was registered at Police Station Bajakhana, District Faridkot in this regard.

The third incident dated 12.10.2015 resulted in registration of FIR No.128 of 2015 at Police Station Bajakhana, District Faridkot. This incident pertained to recovery of 112 torn pages (224 Angs) of Holy Shri Guru Granth Sahib Ji around the Gurudwara situated at village Bargari. Recurrence of these three incidents of desecration of Shri Guru Granth Sahib Ji in quick succession led to an unrest in the State of Punjab and protestors collected the torn pages of Holy Shri Guru Granth Sahib Ji and started continuous protests and

demonstrations at Kotkapura Crossing in District Faridkot. As the crowd became unruly, it started causing a serious law and order problem. The protestors later turned violent and caused damage to the public property forcing the police to eventually resort to firing to disperse the unruly crowd. In addition to the above firing incident at the Kotkapura Crossing, another similar firing incident also took place at village Behbal Kalan. Two FIRs i.e. FIR No.129 dated 14.10.2015 under Section 307 of IPC and the FIR No.130 dated 21.10.2015 under Sections 302, 307 read with Section 34 of IPC were registered at Police Station Bajakhana, District Faridkot.

The earlier three FIRs of incidents of desecration are described together as the “Sacrilege Cases” while the above two cases pertaining to the firing due to the incident of violence during the demonstrations against the desecration of Holy Shri Guru Granth Sahib Ji are described hereinafter as the "Police Firing Cases," for easy reference.

Initial investigation in all these five cases was carried out by the Punjab Police. The religious hardliners and the highly placed clergy took possession of the torn pages of Holy Shri Guru Granth Sahib Ji and did not allow either the SGPC or the Police to lift fingerprints from the said torn pages. It was also revealed during initial investigations that one Rupinder Singh of village Panjgrahi was the person who vociferously and prominently led the agitation against taking fingerprints from the torn pages of Holy Shri Guru Granth Sahib Ji.

Considering the gravity of the situation and the larger public sentiments, the Government of Punjab appointed Justice Jora Singh (Retd.) as a ‘One-Man Commission’ on 16.10.2015 to inquire into the incidents of Sacrilege and Police Firing that took place on 14.10.2015 at Kotkapura Crossing and

Behbal Kalan. The term of the Commission was to expire on 30.06.2016, however, one day prior to the said date i.e. on 29.06.2016, the Commission submitted its report. It has been averred that there is no material available with the petitioner to ascertain whether the said report submitted by Justice Jora Singh (Retd.) as a 'One-Man Commission' has been accepted and/or rejected by the Government of Punjab.

On the same day i.e. the date of appointment of the One-Man Commission on 16.10.2015, the police claimed to have intercepted a call from the above Rupinder Singh (Main protestor against taking of fingerprints) to his brother Jaswinder Singh, in which they were talking about the torn pages and remaining 'Angs' of Holy Shri Guru Granth Sahib Ji. Thereafter, 115 torn pages (230 Angs) were recovered by the police on 18.10.2015 from one Beant Singh, who was identified to be an associate of above Rupinder Singh. Both the brothers i.e. Rupinder Singh and Jaswinder Singh were arrested on 20.10.2015 in case FIR No.128 of 2015(sacrilege case) and were remanded to police custody till 26.10.2015.

The abovesaid suspects are stated to have got their confessions recorded, while in police custody, that they felt hurt due to the pardon extended by the Akal Takhat to the petitioner, who is Head of a Dera known as Dera Sacha Sauda situated in Sirsa (Haryana) and having its Ashrams/Deras in the State of Punjab as well as in the adjacent States. Due to their dis-satisfaction from the failure of Akal Takhat to protect the sentiments of the Sikh Community, they had thrown the torn pages of Holy Shri Guru Granth Sahib Ji in the streets.

The Director, Bureau of Investigation, Punjab also held a press conference wherein he referred to various telephone calls made by Rupinder

Singh to persons sitting abroad in Australia and Dubai. A foreign link of funding the above said incidents was noticed and such funding could not be satisfactorily explained by the suspects Rupinder Singh and Jaswinder Singh. A recovery of Angs/pages was also effected at their instances alongwith evidence of the transcript of the conversation held by them, with the persons sitting abroad. The accused Rupinder Singh was strong opponent of the forensic investigation and to lifting of fingerprints from the torn pages of Holy Shri Guru Granth Sahib Ji, on the pretext that use of chemical should not be permitted on Holy Shri Guru Granth Sahib Ji which are "A*ngs*" of the Guru Himself, with a motive to stall scientific investigation, which could have brought evidence against him and established his connection to the crime. The participation of Rupinder Singh and Jaswinder Singh, in commission of offences, thus was declared by the Director, Bureau of Investigation and he referred to the above evidence in the Press Note and during the Press briefing. However, the suspects found an unexpected, undue and undeserving support from the radical Sikh leaders as well as the political leadership under which an application dated 02.11.2015 had to be moved by the Deputy Superintendent of Police, Sub Division, Faridkot, before the Illaqa Magistrate, for seeking release of the abovesaid two suspects. The Magistrate thereafter passed the said order since no request for any further remand was being made but it was specifically clarified that the said order or release should not be perceived as an order of discharge. The Government of Punjab also gave consent for transfer of investigation of the three sacrilege FIRs to be conducted by the CBI vide notification No.7/521/13-2H4/619055/1 dated 02.11.2015 read with Notification No.228/52/2015/AVD-II dated 29.10.2015. Pursuant thereto, the three cases relating to sacrilege of Holy Shri Guru Granth Sahib Ji were

transferred to the CBI for investigation. In furtherance thereof, the CBI registered the said cases with itself and renumbered the same as RC13(S)/2015/SC.III/ND; RC14(S)/2015/SC.III/ND and RC15(S)/2015/SC.III/ ND, all dated 13.11.2015, respectively.

It is further averred that the level of the pressure exerted on investigating agency can be gauged from the mere fact that even the State Agencies did not bring the evidence, in the form of confession made by Rupinder Singh; his reluctance and non-allowing the Investigating Agency to obtain fingerprints from the torn pages of Holy Shri Guru Granth Sahib Ji; the call details and recordings/transcripts thereof which could establish their foreign links alongwith the refusal of the suspects to submit themselves to polygraph test etc. and collected by them during the course of investigation, to the notice of Justice Jora Singh (Retd.) Commission which submitted its report on 29.06.2016.

Being given huge prominence, the issue of sacrilege became one of the prime agenda during the elections and figured prominently in the manifesto prepared by the leading political parties contesting elections in the State of Punjab.

After a new political dispensation settled in as Government, it looked into the report submitted by 'One-Man Commission' headed by Justice Jora Singh (Retd.) and was of an opinion that the Commission had not answered the key questions referred to it. The report submitted by the 'One-Man Commission' was not accepted as being inconclusive. They thus decided to set-up another Inquiry Commission into the incidents of sacrilege as well as the police firing cases at Kotkapura Crossing and Behbal Kalan. Another notification dated 14.04.2017 was

issued by the State Government appointing a 'One-Man Commission' headed by Justice Ranjit Singh (Retd.). The terms of reference thereof are extracted as under:

> *"a. Conduct an enquiry into the cases of sacrilege of Sri Guru Granth Sahib Ji, Srimad Bhagwad Gita Ji and Holy Quaran Sharif Ji;*
>
> *b. Enquire into the detailed facts and circumstances and chronology of events of what actually happened and to identify as a matter of fact the role played by various persons;*
>
> *c. Enquire into the truth of what occurred in such incidents and factual role of the persons who may have been involved.*
>
> *d. Enquire into the firing of Kotkapura on 14.10.2015 and village Behbalkalan, District Faridkot, in which two persons died; and Identify and enquire into the role of the Police officers/Officials in incomplete/ inconclusive investigations into the earlier incidents of sacrileges so far."*

It is further averred that notwithstanding the appointment of new Commission that had already been notified by the State Government and investigation already having been transferred and that the process of law ought to have been adhered to, the Investigating Agency headed by an IPS officer started using coercive tactics to extract confessions against the petitioner and his followers with an object to implicate them in the cases of sacrilege, despite the initial investigation conducted by the police indicating the involvement of Rupinder Singh and Jaswinder Singh in conspiracy with foreign links.

Aggrieved of the misdirected investigation to frame the Dera and its followers, certain complaints were submitted by the persons sought to be implicated in the said case and one CRM-M-44093 of 2017 dated 16.11.2017 was filed by one Sarabjit Kaur before this Court casting aspersions against the role and conduct of the Head of the Special Investigating Team (SIT) constituted for

investigation of the sacrilege cases in Punjab. It was stated specifically that she had been maliciously targeted and was being subjected to harassment and torture to extract false confessions against the followers of Dera Sacha Sauda and also to implicate Dera followers in the murder of her husband.

It is further averred that the SIT went to an extent of a forcible illegal detention, akin to an abduction, of a person namely Mahinder Pal @ Bittu on 07.06.2018, from Himachal Pradesh without following the due process of law and without even informing the Himachal Police and detained him till 10.06.2018 when his arrest was finally shown in some case bearing FIR No.33 of 2011 registered at Police Station Moga. The abovesaid Mahinder Pal @ Bittu was confined in inhumane conditions and was subjected to 3rd degree torture to extract confession from him for commission of acts of sacrilege.

It is alleged that the process of implication of the followers of Dera Sacha Sauda started due to pressure on the ruling political dispensation and for settling personal grudge.

It has also been averred that the said Mahinder Pal @ Bittu, who was shown to be arrested by Punjab Police on 10.06.2018 in relation with FIR No.33 of 2011 registered at Police Station Moga was eventually murdered, while in judicial custody, on 22.06.2019 at New District Jail, Nabha leading to registration of case FIR No.101 dated 22.06.2019 at Police Station Sadar Nabha. The deceased was alleged to have been subjected to cruelty and torture by the Punjab police in an attempt to build up their case against the Dera. Aggrieved of such conduct and unfair as well as partisan approach of the agency, one CWP-23220-2021 was filed by Santosh Rani widow of Mahinder Pal @ Bittu for seeking a fair investigation into the murder of her husband-Mahinder Pal @ Bittu. She levelled

specific allegations against the SIT about the extreme torture meted out to her husband and allegations of high level conspiracy in elimination of Mahinder Pal @ Bittu which is of huge significance since the entire prosecution against the petitioner is now based on a confession of said Mahinder Pal @ Bittu, while in custody.

It is further averred that the second 'One-Man Commission' also completed its inquiry and submitted its report on 30.06.2018 and concluded that there was no independent lead regarding the three sacrilege cases and that the report dealt with the circumstance leading to the Faridkot incidents of sacrilege based solely on the illegal and fabricated disclosure/confessions extracted by the police. It is further averred that no notice under the Commission of Inquiries Act, 1952 had been given to any person related to Dera Sacha Sauda at any point, prior to submission of the report or recording any finding. It is further contended that until the above inquiry, the participation/involvement of Dera Sacha Sauda was never indicted or indicated in either the cases of sacrilege or in the cases of police firing incidents, in any manner whatsoever.

It is averred that simultaneously, between November 2015 to June 2018 i.e. from handing over investigation to the CBI and till submission of report by the second 'One-Man Commission', the CBI proceeded further with the investigation in continuation of the investigation already conducted by the State Police including the statements and evidence collected by the State Police during the investigation of Sacrilege Cases i.e. FIR No.63, 117 and 128 of 2015 (Renumbered as RC13(S)/2015/SC.III/ND), RC14(S)/2015/SC.III/ND & RC15(S)/2015/SC.III/ND. An application for seeking police remand of Mahinder Pal @ Bittu, Sukhjinder @ Sunny and Shakti Singh in RC-13, who had already

been arrested by the Punjab Police in relation to the investigation of the said FIRs, was moved before the Special Judicial Magistrate, CBI, Mohali on 06.07.2018. The suspects were remanded to custody of the CBI till 13.07.2018. All scientific tests including the tests like handwriting examination of writings on the posters, lie detection test/polygraph test etc. were conducted on the suspects till 28.08.2018 and as per the outcome of the said tests, the admissions and confessions got recorded by the suspects during police custody were found to be untrue.

It is also additionally submitted that on 09.07.2018, during the course of investigation, the CBI also recorded a statement of one Gopal Krishan, a follower of the Dera and resident of village Bargari under Section 161 Cr.P.C. No averment or allegation was made in the aforesaid statement about the involvement of Dera followers in the sacrilege case. The said witness rather alleged torture by the Punjab police and denied identifying Shakti Singh and that his statement recorded before the Magistrate had been given under pressure and fear of the police.

Statement of one Pardeep Sharma resident of Burj Jawahar Singh Wala was also recorded by the Central Bureau of Investigation (CBI) on 11.07.2018 which also absolved the followers of Dera from the allegations relating to the acts of sacrilege.

Upon consideration of the evidence collected by the CBI during the course of investigation, a closure report was prepared by the CBI. The facts discovered during investigation and their conclusion in the closure report are extracted as under:-

> *"That out of the aforesaid 10 suspects namely S/Sh. Mahinderpal @ Bittu (since expired), Sukhjinder Singh @ Sunny and Shakti Singh had been taken on remand in RC 13(S)/2015/SC-III/ND. The remaining 07 persons namely S/Sh. Randeep Singh @ Neela, Ranjit Singh @ Bhola, Baljit Singh, Narendra Sharma, Nissan Singh, Pradeep @ Raju and Sandeep @ Bittu were questioned in Faridkot jail while they were in judicial custody of Moga police case after obtaining the orders of this Ld Court. That as discussed above CFSL, New Delhi vide report No.**CFSL-2016/D-376 dated 27.8.2018 given a negative report with respect to the hand writing of all the aforesaid 10 persons for having written/prepared the derogatory posters. CFSL vide report No.CFSL-2016/D-376 (R) dated 28.8.2018 given a negative report with respect to the finger prints of all the aforesaid 10 persons on comparison with fingerprints available on derogatory poster**."*

It is also averred in the petition that the suspects Mahinder Pal @ Bittu; Sukhjinder Singh @ Sunny and Shakti Singh had volunteered to undergo a lie detection test and all other scientific tests and their consent had been duly recorded before the Court. After the Court granted its permission, their 'lie detection test' (polygraph examination) and 'layered voice analysis test' had been conducted by the experts of CFSL New Delhi at new District Jail Nabha. Vide its report No.CFSL2018/FPD-885 dated 24.08.2018 forwarded vide letter No.2918 dated 27.08.2018, the CFSL opined that the said persons were deposing truthfully in their answers to the crime related issues. Layered Voice Analysis Report dated 04.09.2018 also opined that no deception was indicated in the voice of the above suspects while denying their involvement in the sacrilege of Shri Guru Granth Sahib.

It was also recorded that there was no eye witness who had seen any of the above persons to have committed theft of Shri Guru Granth Sahib from the

Gurudwara premises on 01.06.2015 or noticed their presence in the immediate vicinity of the scene of crime. No recovery of any part of Shri Guru Granth Sahib was effected from or at the disclosure of the above said persons. Even though the Punjab police suggested that the said evidence had been destroyed, however, there was no evidence in that regard as well.

The Dera or its followers were hence not accused and there was no evidence to suggest their involvement in the said offence. The Dera however had become an eye-sore on account of earlier instances which escalated on release of Dera Sacha Sauda Movie titled as "Messenger of God", "MSG-II" on 18.09.2015. The Government of Punjab bowed to the protesters and notwithstanding that the Central Board of Film Certification had issued a certification for the release of the said movie, it passed orders against screening of the same. The deceased Mahinder Pal @ Bittu, as aforesaid, had organized a protest against the said ban orders since the same were not tenable and were in violation of law and freedom of expression. He was actively involved in securing release and screening of the said movie around the time when the derogatory posters were pasted outside Bargari Gurudwara at around 7 PM on 24.9.2015. The said posters were in the nature of an explicit warning to the Sikhs not to create any hindrance for the release of the movie and were allegedly written by some Dera followers. The poster also claimed that the remaining 'Angs' of Shri Guru Granth Sahib were in their possession at Bargari village and that if anybody could trace the same, he would be suitably rewarded. A threat was also extended that if any obstruction is created in the release of the movie, the remaining 'Angs' would be scattered at Bargari. Due to efforts of Mahinder Pal @ Bittu, the Government expressed that it did not intend to impose any ban on the screening of the movie whereupon the

Dharna at Kotkapura and Moga were discontinued w.e.f. 24.09.2015. The Akal Takhat, the Supreme Religious Body for taking decisions as regards punishment to be imposed upon religious offenders, also announced pardon to the head of Dera Sacha Sauda i.e. the petitioner herein on 24.9.2015 in relation to an earlier incident where the petitioner allegedly appeared dressed as a Sikh Guru.

Notwithstanding the said background, the screening of the film was stopped on 14.10.2015, after the law and order problem which erupted in the city, due to scattering of torn pages of Shri Guru Granth Sahib at village Bargari on 12.10.2015. The scattering of the torn 'Angs' of Shri Guru Granth Sahib was as had been described in the posters that had been pasted earlier. It is averred that there was no occasion or reason for the followers of the Dera to do any such act as the poster claimed scattering of 'Angs' only in case the screening of the movie is disrupted. Since the screening had been going on without any disruptions till then, hence, there was no occasion for any acts to be done.

It is also averred that even though the case of the Punjab police was specific that one Alto car bearing registration No.PB-30-R-6480 was used by Shakti Singh, a suspect, for the alleged theft of Shri Guru Granth Sahib, however, the said vehicle was found to have been purchased in the name of Ravinder Singh son of Basant Singh i.e. brother of Shakti Singh on 28.8.2016. It was later registered in his name with the Regional Transport Authority, Faridkot vide the aforesaid registration number on 04.10.2016. Hence, when the purchase of the vehicle had taken place only in August 2016, there was no occasion for the said vehicle to have been used in commission of the offence in October 2015 by him. Similarly, the Indigo Car bearing registration No.PB-11-W-7114 was alleged to have been used by Mahinder Pal @ Bittu, for carrying stolen Shri Guru Granth

Sahib for desecration in the year 2015 but the same was sold in favour of Devender Singh son of Mahinder Pal by Rajender Kumar Chaula alias Happy, the erstwhile owner of the vehicle, only in January 2017. Hence, the entire prosecution version with respect to the manner of commission of offence, the alleged role attributed and their involvement suffers from patent defect and discrepancies that were incurable and established false implication of the Dera followers, under the pressure of the hardliners.

That during the aforesaid pendency, State of Punjab also issued a Notification dated 24.8.2018 giving the consent for investigation of police firing cases i.e. FIR Nos.129 and 130 to be conducted by the CBI. However, notwithstanding the above said notification, the CBI did not re-register any case nor any notification was issued by the Central Government under Section 5 of the Delhi Special Police Establishment Act, 1946. There was thus no initiation of any investigation by the CBI in the firing case, unlike in the matters of the sacrilege cases.

However, the issue failed to settle down and rather gained momentum. The sentiments of people in the State of Punjab were being encashed by the political dispensation. The State Assembly thereafter passed a resolution to withdraw the notification transferring investigation from CBI in all sacrilege cases as also the cases relating to police firing and to entrust the same to the Special Investigation Team (SIT) dated 28.08.2018. The relevant extract of the resolution passed by the Punjab State Legislative Assembly reads thus:-

> *“That in regard to disrespect to Sh. Guru Granth Sahib at Kotakpura Bargari, Behbal Kalan etc. Police Firing and disrespect incidents related case which was given to CBI by Punjab*

Government should be taken back and the investigation be given to Special Investigation Team for action."

It is also averred that the above said resolution was claimed to be based on the independent report submitted by Justice Ranjit Singh Commission, however, the said report was based on the information supplied by Ranbir Singh Khatra, IPS, against whom various allegations of abusing his status and misuse of authority had been leveled and petitions had been filed pointing out numerous illegalities committed by him. The consent for transfer of the investigation of 'sacrilege cases' along with 'police firing incidents' was thereafter withdrawn vide Notification No.7/521/2013-2H4/4901 dated 6.9.2018 and the same was sent to the Under Secretary, Government of India, Ministry of Personnel, Public Grievance and Training for further necessary action.

Vires of the aforesaid resolution and notification were subject matter of challenge in different writ petitions bearing CWP No.23285, 25837, 25838, 27015 and 28001 of 2018 for withdrawal of police firing cases. A further demand was made in the said petitions that investigation of the cases should be continued to be conducted by the CBI. It is averred that none of the accused or complainants in the three sacrilege cases or the Dera Sacha Sauda or the petitioner herein or any of his followers were parties to these writ petitions. It is averred that while adjudicating the said writ petitions, this Court observed that the CBI did not carry out any further investigation and that even though the said observation may have been correctly recorded with respect to the 'police firing cases' however, the said finding would not apply to the 'sacrilege cases' where substantive investigation had been conducted by the CBI. At the stage of consideration of the said writ petitions, neither the petitioner nor any of his followers were accused, hence, there was no occasion for the petitioner to have raised any challenge to the

resolution or the notification withdrawing the investigation of the cases from CBI or to transfer investigation to the Special Investigation Team constituted by the Government of Punjab. The above said writ petitions were decided by this Court vide judgment dated 25.01.2019. Notwithstanding the above said basic distinction between the 'firing incident cases' as also the 'sacrilege cases' and oblivious of the fact that regular cases had already been registered by the CBI and investigation conducted into, with respect to the sacrilege cases, the High Court recorded its observations as under:-

> *"None of the learned counsel referred to any judgment in order to show that there was any fetter on power of State Govt. to withdraw consent in such cases where investigation was transferred from State Police to CBI. Besides, due to withdrawal of consent, investigation would continue with one investigation agency and not partially with two separate agencies. The chain of events shows that some are inextricably linked, thus this court does not feel the necessity to interfere in the decision of the State Govt. to withdraw investigation from CBI or to set-aside consequent notifications."*

It is also averred that even though the Court referred to the 'sacrilege case', however, the judgment is not in relation to the subject matter or based upon the complete facts. It is further averred that the judgment by the Hon'ble Court was not in consonance with the judgments of the Hon'ble Supreme Court in the matter of ***K. Chandrasekhar Vs. State of Kerala, (1998) 5 SCC 223*** and that the Bench of this Court had not been assisted on the said aspect.

A review application bearing RA-CW-225-2020 was thereafter filed by one of the accused in sacrilege cases which was also dismissed by holding as under:-

> *"Since applicant was not a party, he cannot seek recall or review of the order passed by this court in view of Section 362 Cr.P.C.*

> *xxxxxxxx Applicant, particularly one who was not a party to the case, cannot seek re-hearing of the matter. In case he felt that he had any independent cause of action, he could always avail appropriate remedy."*

The petitioner claims that he had no connection/role or involvement in the said FIRs even at that stage. The petitioner claims to have derived the information about all these developments/proceedings only after the SIT formed by the Government of Punjab obtained production warrant of the petitioner in one of the FIRs in sacrilege cases on 25.10.2021. Hence, the necessity arose for filing of the present petition.

It is further averred in the writ petition that as per the information furnished by CBI to the Special Judge, Mohali, the notification No.228/52/2015-AVD-II issued under Section 5 of the Delhi Special Police Establishment Act, 1946, had not been de-notified by the Government of India, hence, only the CBI had the power to investigate the matter in its entirety after registration of the regular cases. Accordingly, the CBI submitted its final report No.02 of 2019 dated 29.6.2019 under Section 173 Cr.P.C. in FIR Nos.RC-13(S)/2015/SC.III/ND, RC-14(S)/2015/SC-III/ND and RC-15(S)/2015/SC-III/ND. A closure report was filed against Mahinder Pal @ Bittu (since deceased), Sukhjinder Singh @ Sunny and Shakti Singh after carrying out detailed investigation, collection of evidence and after obtaining the report from the CFSL as per the scientific investigation conducted by them. The relevant extract of the conclusion drawn by the CBI in its cancellation report is as under:-

> *"In view of the above, despite doing all our efforts, covering all aspects in the investigation to detect these cases, so far* ***no clue leading to detection of these cases could be found. No eyewitness of the crime could be found. The cases remained undetected.***

> ***Involvement of S/Sh Mahinderpal @ Bittu (since expired), Sukhjinder Singh @ Sunny and Shakti Singh in the above mentioned cases, prima-facie could not be found in the crime due to want of evidence as discussed in foregoing paras****. Moreover, the Govt. of Punjab, vide notification dated 06.09.2018 had withdrawn its consent for the investigation of these cases given to CBI, u/s 6 of DSPE Act 1948."*
>
> *(emphasis added)*

It is averred that even after filing of the closure report on 4.7.2019 by the CBI, the special Director General of Police-cum-Director Bureau of Investigation of Punjab supplied some information and material/evidence regarding the case alongwith his letter No.31555/crime/Inv.2 dated 29.7.2019. Pursuant to the receipt of the said letter from the Bureau of Investigation, CBI moved an application before the Court to keep the proceedings in the closure report in abeyance as new leads had been received and the said evidence needed to be investigated as well. Even though a closure report had already been filed by the CBI prior to the above letter, however, there is no averment that the investigation conducted by it was defective or improper or failed to take note of relevant evidence. The above said communication is claimed of vital significance since the conduct of State of Punjab shows its acknowledgment that only the CBI was competent to invoke its powers on cases registered with it. The sharing of lead with CBI, in the year 2019, despite notification of withdrawal of 06.09.2018, establishes the true and correct understanding of the laws by the State Government.

A status report on the additional input of the State of Punjab was subsequently furnished by the CBI to the Special Judge, Punjab in a sealed cover with a prayer not to hand over a copy thereof to the Punjab Police. The Special

Judicial Magistrate, CBI, Punjab rejected the prayer of the Government of Punjab for seeking a copy of the said status report and dismissed it by recording reasons that the matter was being investigated in a proper manner.

It is averred that oblivious of the position in law and that the investigation in the said cases was being conducted scientifically and logically by the CBI, the SIT also initiated investigation in the above said three FIRs. The evidence, including the testimonies of the witnesses and the case diaries of investigation conducted by the CBI, the mobile data, CDRs, polygraph test reports and also the tests on the basis whereof CBI had submitted its closure report exonerating the suspects named therein, were collected by the SIT. Statement of one Pardeep Kumar Sharma was recorded by the SIT under Section 161 Cr.P.C. on 3.7.2020. The said Pardeep Kumar Sharma was introduced as a witness to the extra judicial confession made by Sukhjinder Singh @ Sunny, Randeep @ Neela and Shakti Singh. In the above said extra judicial confession, which is claimed to be bereft of any probative value, it was alleged that the above said three persons namely Sukhjinder Singh @ Sunny, Randeep @ Neela and Shakti Singh had confessed to Pardeep Kumar Sharma that they along with Mahinder Pal @ Bittu (since deceased), Pradeep Klair, Harsh Dhuri, Sandeep Bareta and Sandeep Bata had committed the offence of sacrilege. It is stated that even in the aforesaid extra judicial confession of Pardeep Kumar Sharma, there was no reference against the petitioner. Relevant part of the aforesaid statement of Pardeep Kumar Sharma is extracted as under:-

> *"Stated that, I am resident of above stated address and doing job at Petrol Pump at Moga. Whole my family is Premi (follower of Dera Sacha Sauda), I remained as Bhangidas of Village. In the year 2015, there were Diwans (congregation of Sikhs) of Harjinder Singh*

Manjhi. We, Premis, were protesting him because Harjinder Singh Manjhi in his congregations spoke against the Premis. As the schedule of his congregations were scheduled, Premis including me, Gurdev Singh, Sukhdev Singh Jattana, etc. gathered and made protest. We met with Gopal Krishan, resident of Bargari, a member of 25-members Committee of Premis, who directed us to go to Police Station Baja Khana for information, so we have given information to Police Station that Harjinder Singh Manjhi is abusing our Pita Ji (Guru-Sant Gurmeet Singh Ram Rahim), so kindly stop his congregation. Baja Khana police had visited on the spot on the same day and arranged compromise between both the sections. Gurudwara Committee had taken the responsibility that during congregation, Bhai Harjinder Manjhi will not utter a single word against Dera Sirsa and Sant Gurmeet Ram Rahim Singh. Upon this assurance, both the factions agreed. Harjinder Manjhi organized his congregations from 7 p.m. to 10 p.m. from 20th March 2015 to 22nd March 2015. Sangat of nearby villages attended the congregation. On the last date of congregation, Harjinder Manjhi in the beginning told while explaining the tenets of "Sikhi", that only such Sikhs of Guru may sit in the congregation who has not adorned any locket or thread(Taweet). He further told that whoever is not true sikh, he may leave the congregation, due to this some of the persons had removed the lockets of the Dera Sacha Sauda that they had worn in their neck and placed near the money box (Gulak) and some of them being influenced, concealed and lockets under the carpet. All the Premis grieved due to this incidence. I, Gurdev Singh Premi and Sukhdev Singh Jattana went to Bargadi and informed all this incident to Gopal Krishan, President of Bargadi Block. After hearing us, he told that it is beyond his control, so we have to meet Mahinder Pal Bittu at Kotkapura. We all went to Dera Sacha Sauda Kotkapura and informed Mahinder Pal Bittu about the incident of abuses made by Harjinder Singh Manjhi against the Premis and about removal of the lockets in his congregation. He

> *after hearing us, in front of us, informed Harsh Dhuri, Pardeep Kaler, Sandeep Bareta etc., who are members of National Committee of Dera, about the atrocities upon us and insult of the locket of our Pita Ji, then he told Mahinder Pal Bittu that "as these fuckers of sisters (Bhenchoda) sich dogs were "Kachera" have insulted by mingling our Guru's lockets into the dust, similarly their Guru must also be mingled in the dust". And we have to avenge for insult of our Guru in the same village Burj Jawahar Singh Wala. After hearing all the discussion, we returned home. After that, at the time of release of MSG-2 movie, I was on duty at a shopping mall of Dera Sacha Sauda at Kotkapura. Here, Sukhjinder Singh alias Sunny, Randeep Singh alias Neela, Shakti Singh, who were main coterie of Mahinder Pal Bittu, met me in Dera and told me that Premis of Burj Jawahar Singh Wala failed to do anything but we have taken care of respect of our Pita Ji, we avenged the disrespect made to our Pita Ji at congregation at Burj Jawahar Singh Wala by stealing the Granth of these so called fuckers of their sisters, sikhs, by affixing the posters, challenging them and by scattering the torn pages of their Guru in the streets. I have already told about it number of times and today also what I have stated are true facts. You have recorded my statement. I read it and accept it to be true."*

It is also averred that even the CBI had recorded statement of said Pardeep Kumar Sharma during the course of its investigation on 11.7.2018, however, in his said statement, he does not make any reference, much less any accusation of any kind whatsoever against the petitioner herein or against the suspects above.

The relevant statement of Pardeep Kumar Sharma, recorded by the CBI on 11.7.2018 is extracted as under:-

> "*I am as detailed above. Upon your asking, stated that, I am follower of Dera Sacha Sauda. Late Shri Gurdev Singh told me to go to police station so that Harjinder Singh Manjhi in his diwan(congregation of*

Sikhs) would not utter anything against our Baba. We, number of villagers went there and made a request to Police and I too signed the same. At that time, Manjit Ram was the Bhangidas (head of Premis) of Village. At that time, I was working at Naam Charcha Ghar canteen near village Ramsar Dhilwan, I used to stay there from 8 a.m. till evening. On the last day of his congregation, Harjinder Manjhi had hurled abuses to our Guru, resulting into putting off the lockets of Dera by some Premis. There was a discussion about it in the village, I came to know that Mani, wife of Harbans Singh, aged 35 years, our neighbor, had also put off the locket. There was no specific reaction on this issue among the Premis of village.

None of the villager had informed the higher committee about this issue.

It is stated further that there was a Protest (Dharna) at the time of release of movie, Messenger-2, in the Kotkapura. I was at the Canteen and I did not attend the protest. I did not watch the movie, Messenger-2, as I was busy. I came in touch with Mahinder Pal alias Bittu, who is member of 45-members state committee, at the last ceremony (Bhog) of Gurdev. Bittu had got me a job in Dera's mall at Kotkapura.

It is stated further that as far as I remember, after the murder of Gurdev, I went to stationary shop of Gopal in village Bargadi for the purchase of some articles. During discussion there, he told me that one person had taken paper and marker from him. At that time, Gopal was bent down to counter and delivered paper and marker, so Gopal failed to see the face of that person. This discussion was regarding derogatory posters affixed at village Burj Jawahar Singh Wala. As I told him, why he did not inform the police, he replied, as he was not aware about the identity of the person who took paper and marker, then how could he tell this to police.

Stated on further asking. on 30th August 2017, Dalbir Singh SHO has summoned me at Moga, he asked me regarding sacrilege of Guru Granth Sahib and affixation of posters. I told,

Gopal has knowledge about it, then police also brought Gopal for enquiry. 6-7 months prior to it, I was taken away at Mansa and interrogated but at that time I was not aware about the incident of Gopal, so I did not tell anything to Police.

Stated on further asking, I knew Sunny of Kotkapura but I did not see him at village Burj Jawahar Singh Wala at any point of time."

It is thus averred that an improvised extra judicial confession of Pardeep Kumar Sharma was recorded by the SIT under Section 161 Cr.P.C., on 3.7.2020 to implicate the petitioner. A supplementary statement of Pardeep Kumar Sharma was thereafter recorded on 6.7.2020 on the pretext that in his statement dated 3.7.2020 he had forgotten to tell that Mahinder Pal @ Bittu (since deceased) had also told him that the acts of sacrilege were committed by them, on instructions of the petitioner herein. Hence, the name of the petitioner was introduced, during the course of investigation, for the first time by virtue of the aforesaid supplementary extra judicial confession of Pardeep Kumar Sharma which was recorded on 6.7.2020. The relevant extract of supplementary statement is reproduced here-in-after below:-

"Stated that I am resident of above stated address. I have recorded my statement on 03.07.2020. On that day, I forgot to state that the actually the person behind incident of stealing of pious Swaroop of Sri Guru Granth Sahib by Dera Premis on 01.06.2015 from our village Burj Jawahar Singh Wala and committed the sacrilege by scattering its parts in village Bargadi, is Gurmeet Singh Ram Rahim, Head of Dera Sacha Sauda, because as and when I met with Mahinder Pal Bittu in Naam Charcha ghar Kotkapura, he always stated that we will definitely avenge the incident of disrespect of our Pita Ji and putting his signs to dust in congregation by Manjhi in your village, by scattering the parts of Guru of Sikh in the village Jawahar Singh Wala. Mahinder Pal Bittu was member of 45-

> *members committee of the Dera and whatever work he directed, that was order of Gurmeet Ram Rahim, Head of Dera. At the asking of Gurmeet Ram Rahim, his followers committed sacrilege by stealing the pious Swaroop of Guru Granth Sahib from village Burj Jawahar Singh Wala. Mahinder Pal Bittu had made a telephonic call in front of me and told that I have talked with Pita Ji, Gurmeet Ram Rahim, who told that as these Sikh dogs have put my name and sign to dust, same treatment be given to there Granth Sahib by putting it to dust, so that, lesson be given to these persons. Gurmeet Singh Ram Rahim, head of the Dera Sirsa, is the real culprit of this act and he be arrested and punished severely".*

It is further submitted that immediately on 6.7.2020, the SIT entered a DDR No.10 at Police Station Bajakhana and arrayed the petitioner as an accused in the said FIR No.63 of 2015 and a voluminous charge sheet relying on the aforementioned hearsay statement of Pardeep Kumar Sharma was filed on the same day nominating the petitioner as an additional accused. It was mentioned in the said report that the arrest of the petitioner was pending and that a supplementary report under Section 173(8) Cr.P.C. shall be presented after securing arrest of the petitioner.

The petitioner filed the present petition raising various grounds including the legality of the action taken by the respondent-State of Punjab in constituting the SIT, the validity of the withdrawal of the notification whereby the cases already transferred to the CBI are sought to be re-investigated from the SIT constituted by the State of Punjab notwithstanding that regular cases in furtherance to the notification had already been registered by the CBI, wherein investigation had already been completed and a final report had been filed in 2019 i.e. much before the supplementary statement of Pardeep Kumar Sharma had been

recorded on 6.7.2020. Hence, on the said date, the investigation in the 'sacrilege cases' in question had already been concluded by the CBI.

REPLY BY RESPONDENTS

Short reply to the writ petition, by way of affidavit of Mukhwinder Singh Bhullar, PPS, Deputy Commissioner of Police, Amritsar-cum-Member, Special Investigation Team, has been filed. So far as the issue in relation to three sacrilege cases i.e. FIRs No.63 of 2015; 117 of 2015 and 128 of 2015 is concerned, it is averred that investigation of the same was handed over to the Special Investigation Team constituted by the Director, Bureau of Investigation, Punjab, as per the order of this Court dated 04.01.2021 in CRM-M No.19785 of 2020. The relevant extract thereof reads thus:-

> ***"68****. Consequently, in conclusion, this petition is disposed of with it being held as follows, (and directions accordingly given):-*
>
> *(i) In view of the judgment of this court dated 25.01.2019, passed in CWP No. 23285 of 2018 and connected petitions, including CWP no. 28001 of 2018, investigation continued by the CBI after the notification of the Punjab Government dated 06.09.2018 withdrawing consent for investigation, is held to be without jurisdiction, as the said notification withdrawing such consent has been upheld by this court;*
>
> *(ii) In view of the fact that the respondent-State of Punjab itself, through learned senior counsel appearing for it, has very categorically made a statement before this court that nonetheless the SIT constituted for investigation in the said FIR, would be willing to look at all the evidence gathered by the CBI and present a supplementary report in that regard under the provisions of sub-section (8) of Section 173 of the Cr.P.C. along with the evidence gathered by the CBI, (also giving its own opinion thereupon in such report), the respondent-CBI is directed to handover all case diaries and evidence gathered by it in the context of investigation in the said*

FIR no. 63 of 2015, to the Punjab Police, within one month from today, with the learned Special Judge, CBI, Punjab, at Mohali, also directed to return all material received by his court from the CBI, to the CBI, to enable it to further transfer it to the Punjab Police; All proceedings before that court, after September 06, 2018, are held to be unsustainable and non-est, in the light of the notification of that date and the judgment dated 25.01.2019;

(iii) The closure report submitted by the CBI on 04.07.2019 to that court shall consequently be discarded, though the evidence presented along with that report, would naturally be taken into consideration by the learned Judicial Magistrate at Faridkot, upon it being presented by the Punjab Police, along with its supplementary report;

(iv) The SIT constituted on 22.04.2020, shall now be presided over/headed by an office other than Sh. R.S. Khatra IPS, in terms of what has been observed in paragraph 65 hereinabove;

(v) Consequent upon the statement made on behalf of the State of Punjab and the directions given hereinbefore by this court for handing over all evidence and other necessary material including case diaries, by the CBI to the Punjab Police, the Punjab Police shall submit a supplementary report to the court at Faridkot, which court would then, in its wisdom, examine such report and all evidence gathered by both agencies, as is presented before it, and pass an appropriate order thereupon;

(vi) Consequently, as such supplementary report is to be considered by the learned court at Faridkot, the impugned order passed by that court, summoning the petitioner and other accused to appear before it is set aside, along with any other orders that would have been subsequently passed, pursuant to the impugned order (on or after July 06, 2020).

69*. Naturally, in view of the fact that all material and evidence gathered by both agencies is to be considered by the learned Judicial Magistrate at Faridkot upon submission of a report under Section*

173 (8) of the Cr.P.C., the contents of neither the impugned report dated 06.07.2020, nor any evidence gathered by the CBI, is being commented upon by this court in any manner whatsoever, with the competent court at Faridkot to go through such evidence in its own wisdom and to thereafter pass orders as it considers appropriate.

The petition is disposed of as above; it being partly allowed to the extent of the impugned order, Annexure P-15 dated 06.07.2020, being set aside, but with arguments raised on behalf of the petitioner and the CBI, to allow the Bureau to continue investigation in the matter, rejected."

It is averred that the validity of the impugned notification dated 06.09.2018 has already been upheld in CWP No.23285 of 2018 and the submissions of CBI to permit them to continue with the investigation in the said matter, had already been rejected. The issues having already been dealt with and decided by this Court, the same cannot be reopened in a subsequent writ petition. It is also averred that in compliance of the directions issued by this Court, the Special Investigation Team took the investigation in the above-mentioned cases and received the entire case record from the Central Bureau of Investigation. It examined the entire material available on record including the material collected by the Central Bureau of Investigation and thereafter, proceeded further in the matter and gathered additional evidence. Sincere efforts in collection of evidence were made despite lapse of 6 years. In the process of conducting investigation, intimation to the general public was also given vide publication dated 18.05.2021 to get their statements recorded whereupon a large number of persons appeared before the Special Investigation Team, to get their statements recorded under Sections 161 as well as under 164 Cr.P.C. Based on the evidence collected during the course of the investigation, accused Sukhjinder Singh @ Sunny Kanda, Shakti Singh, Baljit Singh, Ranjit Singh @ Bhola, Nishan Singh and Pardeep Singh @

Raju Dodhi were nominated in case FIR No.128 of 2015 vide DDR No.34, dated 15.05.2021. They were arrested and produced before the Illaqa Magistrate, Faridkot. One Alto Car (White colour) bearing registration No.PB 47-D 3609 was also recovered on 18.05.2021. The same was registered in the name of Smt. Suman Rani w/o Sukhjinder Singh @ Sunny and had been used in commission of crime by the accused persons. They used the above-said vehicle to reach at Village Dhilwan where they were joined by accused Nishan Singh and Baljit Singh, who had brought Shri Guru Granth Sahib from the outer house of accused Baljit Singh in another 'A-Star' car bearing registration No.PB-04-N 3921, registered in the name of accused Nishan Singh S/o Mohinder Singh. The said car was also taken in the police possession on the same day. This car was used by the accused persons for strewing the holy pages of Shri Guru Granth Sahib.

It is also averred that one motorcycle having registration no. PB 4N-6655, registered in the name of Pardeep Singh S/o Jaspal Singh was used for throwing about 100 pages of Shri Guru Granth Sahib in the water channel near Bahmanwala Village. The same were also taken into possession. As per the evidence collected, these holy pages had been handed over to Pardeep Singh for strewing them in village Hari Nau, however, he did not execute the plan of strewing them in Village Hari Nau and rather decided to dispose them off in the water channel. Another car, make Tata Indigo (black colour) bearing No.PB 11-Z-7114 was also taken into possession on 12.06.2021 as the same was used by co-accused Mahinder Pal @ Bittu to dispose of the remaining part of Shri Guru Granth Sahib in the Deviwala Sewage drain. A route map regarding usage of aforementioned vehicles was also prepared to understand the time and manner in which the same were used to commit the crime.

The co-accused Shakti Singh was taken to the stationery shop i.e. shop from where he had purchased ten 'A-4' size papers as well as one 'Reynolds Black Marker', a few days prior to the incident of pasting of posters. The statement of Gopal Krishan was also recorded and he identified Shakti to be the person who purchased the said articles. A spot identification was also got carried out by the accused. The crime scene recreation process was also carried out at the instance of the said accused.

The Special Investigation Team also moved an application before the Illaqa Magistrate, Faridkot on 01.06.2021 for seeking permission to take sample handwritings of accused- Sukhjinder Singh @ Sunny for getting the same compared with the handwritings on recovered derogatory posters. The same was allowed, whereupon sample handwriting of the accused was obtained and same was sent to FSL, Mohali along with the original posters. A report has also been received from the FSL, which corroborates the prosecution case and is a substantive corroborative piece of evidence against the accused persons. A charge sheet in case FIR No.128 of 2015 was thereafter filed before the Illaqa Magistrate, Faridkot upon completion of investigation and after receiving the requisite sanction from the State Government on 09.07.2021. It has also been specifically mentioned that the investigation was carried out in a free and fair manner and as per the directions issued by the Hon'ble Court. Even the evidence gathered by the Central Bureau of Investigation was taken into consideration by the Special Investigation Team before forming its own opinion. Reference of the same is also made in the final report. Further, the above-said accused namely Sukhjinder Singh @ Sunny had approached this Court by filing CRM-M No.26008 of 2021 against the order granting permission to the Special Investigation Team for taking sample

handwriting which was dismissed vide order dated 19.07.2021 whereupon a charge-sheet was presented in the above-said FIR No.117 of 2015 on 20.07.2021. The same is also pending consideration before the Illaqa Magistrate. He submits that one witness namely Pardeep Kumar Sharma had appeared before the Illaqa Magistrate and got his statement recorded under Section 164 Cr.P.C on 18.10.2021, wherein he indicted the petitioner. After recording the aforesaid statement, an application was moved by the Special Investigation Team before the Illaqa Magistrate for issuance of production warrants of the petitioner. The said application was accepted and production warrants of the petitioner were issued on 25.10.2021. The above-said production warrants were also challenged by the petitioner in CRWP No.10342 of 2021. Vide order dated 28.10.2021, the Special Investigation Team was directed to visit Sonariya Jail, Rohtak, for joining the petitioner in connection with the investigation of these cases, where the petitioner had been lodged pursuant to his conviction in other matters. The Special Investigation Team interrogated the petitioner on 08.11.2021 and he was joined in the investigation of case FIR No.63 of 2015. It was suspected and deduced from the response of the petitioner to the questions that the management of the Dera had vital information which could facilitate investigation of the said case. Accordingly, Vice President of Dera Sacha Sauda, Sirsa, was called to join investigation. However, despite three notices issued under Section 160 Cr.P.C, he did not come present to join therein. The Special Investigation Team went again to Sonariya Jail to interrogate the petitioner. However, he was found unavailable. At the same time, Dr. P.R. Nain, Vice President of the Dera Sacha Sauda to whom notices under Section 160 Cr.P.C had been issued, filed CWP No.24828 of 2021 to avoid the joining of investigation. Vide order dated 09.12.2021, the High Court

directed the Special Investigation Team to visit Dera Sacha Sauda, Sirsa, to associate him in the pending investigation. In compliance thereto, the Special Investigation Team visited the Dera Sacha Sauda and joined the Vice President in the investigation. The petitioner was again associated on 14.12.2021 and thereafter on completion of investigation, a supplementary chargesheet in FIR No.63 of 2015 was presented against the petitioner and other accused persons before the Judicial Magistrate, Ist Class, Faridkot, which is also stated to be pending. Hence all these three cases were interconnected and were executed in a well hatched conspiracy. The petitioner was nominated as an accused in FIR No.117 of 2015 and FIR No.128 of 2015 at Police Station Bajakhana vide DDR No.22 dated 27.02.2022.

It is averred that insufficient or lack of evidence is not a ground to quash the challan or FIR. The evaluation of evidence, its quality and quantity is to be done by the trial Court and the same is not in the domain of writ court under Article 226. It has also been averred that the petitioner suffers from criminal antecedents and already stands convicted in three different FIRs. It was, thus, prayed that the writ petition be dismissed as being devoid of merits.

RESPONSE OF RESPONDENT NO.3-CBI

A separate reply on behalf of the Central Bureau of Investigation-respondent No.3 has also been filed, wherein it has been averred that the stand of the respondent about the withdrawal of the consent having been upheld by the Supreme Court is incorrect. The order dated 25.01.2019 passed by this Court in CWP No.23285 of 2018 was challenged by Central Bureau of Investigation before the Hon'ble Supreme Court in SLP (Civil) No.4897-4901 of 2020. Vide its order dated 20.02.2020, the Hon'ble Supreme Court dismissed SLP on the ground

of delay. However, question of law was left open. A review petition was also thereafter filed before the Hon'ble Supreme Court, however, the same was also dismissed vide order dated 16.03.2021. It is thus averred that the question of law, as to whether the State can withdraw consent once Central Bureau of Investigation has proceeded with the investigation by re-registering the offence, is still open. The details with respect to the investigation conducted by the CBI were also mentioned in the said reply. It is averred that some torn 'Angs' (pages) of Shri Guru Granth Sahib were recovered by the members of Gurudwara Sabha of Village Bargari. Investigation also revealed that before Punjab Police could take those torn 'Angs' in its possession, the same were taken away by the Jathebandis/religious hard-liners and kept at Kotkapura Chowk. This fact had also not come on record, during the investigation of Central Bureau of Investigation, that Rupinder Singh had insisted against lifting of fingerprints from the torn 'Angs'. Torn Angs could only be seized by Punjab Police on 17.10.2015 and during this period, these 'Angs' were handled by a number of persons. Resultantly, fingerprints could not be lifted from the torn 'Ang's during the CBI Investigation. It is further averred that total number of torn 'Angs' has a quantitative dispute. While initially the number of torn 'Angs' was found to be 112 but the Punjab Police recorded these to be 115, without offering any explanation for increase in the torn 'Angs'. The Punjab Police had also arrested one Rupinder Singh and his brother Jaswinder Singh. During investigation by the Central Bureau of Investigation, it had not come on record that Rupinder Singh had confessed before the Punjab Police about tearing and throwing the 'Angs' of Shri Guru Granth Sahib at Gurudwara of Village Bargari. Notwithstanding the claims made by the Punjab Police about Rupinder Singh and his brother

Jaswinder Singh planned receiving foreign aid and foreign money to connect the offence, the money referring the receipt of funds was looked into and no incriminating material was found therein. It was averred that Rupinder Singh and Jaswinder Singh were later on released on the basis of an application dated 02.11.2015 filed by Sukhdev Singh Brar.

While referring to the report submitted by the Justice (Retd.) Zora Singh Commission of Inquiry, it was averred that Commission of Inquiry had not issued notices/summons to Central Bureau of Investigation for apprising progress of three cases and the said report was not made available to the Central Bureau of Investigation by the State of Punjab. The copy of the said report was however not supplied to the Central Bureau of Investigation. The same had however been annexed with CWP No.27015 of 2018 filed by Charanjeet Singh before this Court. Even the said report discussed the role of Rupinder Singh and Jaswinder Singh at page 21 and concluded that there is no gainsaying the fact that the suspects have not been tracked down till date. There is no mention of any confession by Rupinder Singh and/or his not allowing taking fingerprints from the torn pages. Nothing has been averred with respect to establishment of his foreign links as well. It was also averred that late Mahinder Pal @ Bittu, Sukhjinder Singh @ Sunny and Shakti Singh (followers of Dera Sacha Sauda), who were arrested by the CBI in sacrilege cases, were interconnected during the course of investigation and that no incriminating evidence was exhibited. Mahinder Pal @ Bittu was arrested by the Punjab Police in FIR No.33 of 2011 and was also arrested by the Central Bureau of Investigation in the aforesaid three sacrilege cases by the Punjab Police. A reference is also made to CWP No.23220 of 2021 filed by Mrs. Santosh Kumari W/o Late Mahinder Pal @ Bittu before this Court

for further investigation in FIR No.101, dated 22.06.2019 at Police Station Nabha relating to murder of her husband Mahinder Pal @ Bittu while in new District Jail, Nabha. It is submitted that late Mahinder Pal @ Bittu had made confessional statement under Section 164 Cr.P.C in FIR No.33 of 2015 about his complicity. Such facts were shared by Sh. Ranbir Singh Khatra, DIG, Punjab Police with Central Bureau of Investigation. The said confessional statement was forwarded by the Punjab Police to the Central Bureau of Investigation. However, during interrogation/examination of the same, the other accused namely Sukhjinder Singh @ Sunny and Shakti Singh also stated that they were forced by the Punjab Police to make the confessional statement and they had no role in the sacrilege cases. Their polygraph examination was also conducted and their stand was found consistent with their statements made before the Central Bureau of Investigation.

The statement of Gopal Krishan S/o Ram Niwas was also recorded under Section 161 Cr.P.C and the response of Shakti Singh was not found deceptive. Statement of Pradeep Sharma was also recorded on 11.07.2018, wherein he averred that he had not implicated any follower of Dera Sacha Sauda in sacrilege cases. It was also averred that Mahinder Pal @ Bittu, Sukhjinder Singh @ Sunny and Ranjit Singh @ Bhola were present at Fun Plaza Mall, Kotakpura on 24.09.2015 in connection with release of movie 'MSG-2'. However, the detail as regards the vehicles used in the commission of offence are not being linked to the accused was reiterated. Further assertion has been made that the State of Punjab could not have de-notified the FIRs that had already been registered by the Central Bureau of Investigation in view of the judgment passed by the Hon'ble Supreme Court in the matter ***K. Chandrasekhar Vs. State of Kerala(Supra)***, as well as judgment in the matter of ***Kazi Lhendup Dorji Vs.***

***Central Bureau of Investigation*, 1994 Supp. (2) SCC 116** and in lieu of the same Central Bureau of Investigation alone was competent to investigate the said matter and to file a final report and conduction of investigation by the Special Investigation Team was contrary to the law laid down by the Hon'ble Supreme Court.

ARGUMENTS BY THE PETITIONER

The learned counsel for the petitioner has advanced her submissions to the effect that initiation of the investigation and/or handing over the investigation thereof to the SIT as per the notification issued by the Government of Punjab is contrary to the law laid down by the Hon'ble Supreme Court in the judgments of ***K. Chandrasekhar and Kazi Lhendup Dorji's cases (supra)***. She contends that as per the settled law laid down by the Hon'ble Supreme Court, once a notification for transferring investigation of the case has been issued and a subsequent notification is issued by the Central Bureau of Investigation for registering of a regular case, investigation of the same has to be concluded by the Central Bureau of Investigation and a final report can only be filed by the Central Bureau of Investigation. The investigation thereof cannot thereafter be transferred to any other agency and that only the Central Bureau of Investigation is the Competent Authority. Reliance is placed on the following extract of the aforesaid judgments of **K. Chandrasekhar (Supra)** to substantiate the arguments:-

> *"**23.** Since, in the present case, unlike that of Kazi Lhendup Dorji (supra), the consent was withdrawn after report under Section 173(2) Criminal Procedure Code, 1973 was filed on completion of investigation as the State Government would like to further investigate into the case, the question which still remains to be answered is whether this distinguishing fact alters the principal laid down therein. To answer this question it will be necessary to refer to*

Section 173 of the Code which, so far as it is relevant for our present purposes, reads as under :-

"73. Report of police office on completion of investigation.-

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognisance of the offence on a police report, a report in the form prescribed by the State Government, sating -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

(6) xx xx xx

(7) xx xx xx

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the

police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

24. *From a plain reading of the above Section it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right of ‘further’ investigation under sub-section (8) but not ‘fresh investigation” or ‘re-investigation’. That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated June 27, 1996 (quoted earlier) that the consent was being withdrawn in public interest to order a re-investigation of the case by a special team of State police officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a “further investigation of the case” instead of “re-investigation of the case”. The dictionary meaning of “further” (when used as an adjective) is “additional”; more; supplemental.” “Further” investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab-initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a “further” report or reports - and not fresh report or reports - regarding the “further” evidence obtained during such investigation. Once it is accepted-and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji, 1994(2) RCR (Criminal) 553 (supra) - that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that “further investigation” is a continuation of such*

investigation which culminates in a further police report under sub-section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the C.B.I. alone with can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law. In view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given under Section 6 of the Act and whether consent given for investigating into Crime No. 246/94 was redundant in view of the general consent earlier given by the State of Kerala.

25. *Even if we were to hold that the State Government had the requisite power and authority to issue the impugned notification, still the same would be liable to be quashed on the ground of mala fide exercise of power. Eloquent proof thereof is furnished by the following facts and circumstances as appearing on the record :-*

(i) While requesting the Director General of Police, Thiruvananthapuram, to transfer the case to C.B.I. for investigation by his letter dated 30.11.94, Shri Mathew, the Deputy Inspector General of Police (who, as noticed earlier, impleaded himself as a respondent in the writ petitions filed by the accused - appellants in the High Court) stated as under :-

(1) The incidents of this case are spread over the three States of Kerala, Tamil Nadu and Karnataka and foreign locations like Colombo and Male.

(2) There is reason to believe that strategically important information about the IAF/Armed Forces (R&D Wing) have been passed on by the espionage chain to unfriendly countries. The complicity of senior military personnel is very likely. The State police may not be able to question them, conduct search in their office, etc.

(3) There is information (not fully authenticated) about the involvement of a senior officer.

Due to the above mentioned reasons, I do not think the Special Team now in charge of the case could be able to do full justice to the case. This is a fit case to be transferred to the Central Bureau of Investigation who are better equipped and also have the advantage of being a Central Police investigating outfit.

(emphasis supplied)

That on the basis of the above letter the Director General of Police recommended investigation by the CBI and the Government of Kerala in its turn issued the notification dated December 2, 1994 (quoted earlier) would be evident from the explanatory note appended thereto. If the above formidable impediments stood in the way of the State Government to get the case properly investigated by its police and impelled it to hand over the investigation to the C.B.I. it is hardly conceivable that the State Government would be able to pursue the investigation effectively as those impediments would still be there. Mr. Shanti Bhushan, however, contended, relying upon the following statement made by Shri K. Dasan, an Additional Secretary to the Government of Kerala in his counter-affidavit (filed on February 20, 1997 in Criminal Appeal No. 489 of 1997).

> *"Having regard to the question of public importance involved in this matter the Government ordered that further investigation should be taken by a Special team handed by senior officials of Kerala State police assisted by senior Officials of the Intelligence Bureau, RAW and intelligence wing in the defence organisation of Govt. of India" that there would be no difficulty in carrying on an effective and purposeful investigation with the assistance of the related organisation of the Central Government. Having regard to the stand taken by the Central Government that they are satisfied with the report of investigation of the C.B.I. we are not prepared to accept the above statement in absence of any*

supporting affidavit on behalf of the Government of India or any of those organisations;

(ii) On a careful perusal of the police report submitted by the C.B.I. on completion of the investigation (which runs through more than 100 pages) we find that it has made a detailed investigation from all possible angles before drawing the conclusion that the allegations of espionage did not stand proved and were found to be false. Mr. Shanti Bhushan, however, drew our attention to certain passages from that report to contend that C.B.I. only "investigated the investigation" (to use the words of Mr. Shanti Bhushan), which had been carried on for less than three weeks by the Kerala Police and the Intelligence Bureau of the Central Government, in its (C.B.I.'s) anxiety to establish that the statements of the accused-appellants recorded by the Kerala police and the Intelligence Bureau could not be accepted as correct. He also drew our attention to pages 7 to 15 of the counter-affidavit filed by Shri T.P. Sen Kumar, Deputy Inspector General of Police, Kerala (in Criminal Appeal No. 491 of 1997), wherein detailed reasons have been given for not accepting the police report submitted by the C.B.I. and for the State Government's decision to withdrawn the consent. After having gone through the relevant averments made in those pages we find that the main endeavour of Shri Sen Kumar has been to demonstrate that the conclusions arrived at by the C.B.I. from the materials collected during investigation were wrong and not that the investigation was ill directed or that the materials collected in course thereof were insufficient or irrelevant. If the State Government found that the conclusions drawn by the C.B.I. were not proper, the only course left to the State Government, in our opinion, was to ask the Central Government to take a different view of the materials collected during investigation and persuade it to lodge a complaint in accordance with

Section 13 of the I.O.S. Act. The contention of Mr.Shanti Bhusan that the C.B.I. only "investigated into the investigation" is also without any basis whatsoever for we find that keeping in view the statements made by some of the accused-appellants, the C.B.I. sought for the assistance of Interpol and got a number of persons examined by them in Sri Lanka and Maldives [besides a number of witnesses in India, who were examined by it (C.B.I.)]. Further, we find that the State Government did not canvass any satisfactory ground justifying further investigation, while seeking permission of the Chief Judicial Magistrate for the purpose;

(iii) Though the investigation of the case centered round espionage activities in I.S.R.O.no complaint was made by it to that effect nor did it raise any grievance on that score. On the contrary, from the police report submitted by the C.B.I. we find that several scientists of this organisation were examined and from the statements made by those officers the C.B.I. drew the following conclusion :-

"The sum and substance of the aforesaid statements is that ISRO does not have a system of classifying drawings/documents. In other words, the documents/drawings are not marked as Top Secret, Secret, Confidential or Classified etc. Further, ISRO follows an open door policy in regard to the issue of documents to the scientists. Since ISRO, is a research-oriented organisation, any scientist wanting to study any document is free to go to the Documentation Cell/Library and study the documents. As regards the issue of documents to various Divisions, the procedure was that only the copies used to be issued to the various divisions on indent after duly entering the same in the Documentation Issue Registers. During investigation, it has been revealed that Fabrication Divn. where accused Sasikumaran was working, various drawings running into 16,800 sheets were issued and after his transfer to SAP, Ahmedabad on 7.11.1994, all the

copies of the drawings were found to be intact. Nambi Narayan being a senior scientist, though had access to the drawings, but at no stage any drawings/documents were found to have been issued to him. They have also stated it was usual for scientists to take the documents/drawings required for any meetings/discussions to their houses for study purposes. In these circumstances, the allegation that Nambi Narayan and Sasikumaran might have passed on the documents to a third party, is found to be false."

It further appears that at the instance of C.B.I., a Committee of senior Scientists was constituted to ascertain whether any classified documents of the organisation were stolen or found missing and their report shows that there were no such missing documents. There cannot, therefore, be any scope for further investigation in respect of purported espionage activities in that organisation in respect of which only the Kerala police would have jurisdiction to investigate;

(iv) The Government of India, by supporting the case of the writ petitioners (the accused-appellants) in the High Court, and filing some of these appeals in this Court and an affidavit in connection therewith has, in no uncertain terms, made it abundantly clear that they are satisfied with the investigation conducted by the C.B.I. and they strongly oppose any attempt on the part of the State Government to further investigate into the matter by its police. In spite thereof the State Government has been pursuing the matter zealously and strongly defending their action, knowing fully well that a prosecution can be launched by or at the instance of Central Government only. Having known the stand of the Government of India it was expected of the Government of Kerala to withdraw the impugned notification, for in the ultimate analysis any further investigation by it would be an exercise in futility; and

(v) Though, [as held by this Court in Jamuna v. State of Bihar, AIR 1974 Supreme Court 1822), the duty of the Investigating Agency is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth, yet the Kerala Government wants the instant case to be further investigated by a team nominated by it with the avowed object of establishing that the accused- appellants are guilty, even after the investigating agency of its choice, the C.B.I., found that no case had been made out against them. This will be evident from the following passage from the Order dated December 13, 1996 passed by the Chief Judicial Magistrate, Thiruvananthapuram while granting permission to the Kerala Police to further investigate:-

"The report submitted by the Director General of Police discloses the fact that he has got reliable information that the conclusions arrived at by the C.B.I. during investigation were not correct. If the case is further investigated more evidence can be collected which would point towards the guilt of the accused."

(emphasis supplied)

and from the order of detention dated September 6, 1997 passed against the appellant Mariyam Rashida by Mr. Mohan Kumar, Additional Chief Secretary, Government of Kerala. The said order reads as under :-

"WHEREAS Smt. Mariyam Rasheeda who is a Maldivian National, a foreigner, is an accused in Crime No. 246/94 of Vanchiyoor Police Station, Thiruvananthapuram.

WHEREAS in the judgment dated 27.12.1996 in O.P. Nos. 12747/96, 14248/96, 15363/96 and 16358/96 the Hon'ble High Court of Kerala said that the order of Government of Kerala to conduct further investigation in the above crime case is valid.

WHEREAS the Government of Kerala have taken steps to obtain the formal permission of the Chief Judicial Magistrate, Thiruvananthapuram to conduct further investigation.

AND WHEREAS the Government of Kerala are satisfied that there is sufficient evidence to proceed against the said Mariyam Rasheeda for the offence under Section 3 and 4 of the Official Secrets Act and for the purpose of further investigation, her continued presence in India is absolutely necessary and that she is likely to abscond and act in a manner prejudicial to the defence of India and the security of India, unless detained.

NOW THEREFORE the Government of Kerala hereby order the aforesaid Smt. Mariyam Rasheeda be detained under Section 3(1)(a) and (b) of the National Security Act, 1980 (Act No. 65 of 1980) in the Central Prison, Viyyoor, Thrissur."

(emphasis supplied)

If before taking up further investigation an opinion has already been formed regarding the guilt of the accused and, that too, at a stage when the commission of the offence itself it yet to be proved, it is obvious that the investigation cannot and will not be fair - and its outcome appears to be a foregone conclusion."

Relevant extract in the case of ***Kazi Lhendup Dorji Versus The Central Bureau of Investigation(Supra)*** *is as under:-*

16. Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. [See : Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union, 1953 SCR 439, at pages 447-448]. Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the

> *issuance of the order of revocation. The impugned Notification dated January 7, 1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by C.B.I. prior to withdrawal of consent under the impugned Notification dated January 7, 1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the C.B.I. was competent to complete the investigation in the cases registered by it against respondent No. 4 and other persons and submit the report under Section 173 Criminal Procedure Code, 1973 in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act."*

It is argued that in the earlier round of litigation that arose consequent to the notification issued by the Government of Punjab withdrawing the notification transferring investigation to the Central Bureau of Investigation, the judgment of the Hon'ble Supreme Court in the cases mentioned above (supra) were merely noticed and the same had not been adverted to nor was the ratio considered or applied to the facts of the present case. Hence, a mere adjudication of the *lis* would not operate as a prohibition against the petitioner to raise a fresh challenge to the Notification in the present petition and that the said judgment would not operate as a bar against re-examination and adjudication of the legal issue. She vehemently argued that the order of the single Judge in CWP No.23285 of 2018 dated 25.01.2019 was challenged by the Central Bureau of Investigation before the Hon'ble Supreme Court. While dismissing the said SLP, the Hon'ble Supreme Court kept the question of law open. Consequently, the issue of law has thus not been finally adjudicated, hence, the judgment passed earlier would be

hit by the principle of *sub silentio* and would not be applicable against the petitioner.

While referring to the above judgment of this Court passed in CWP-No.23285 of 2018, learned counsel for the petitioner has argued that only a superficial reference has been made to the above said judgments and no distinction has been drawn from the judgments of the Supreme Court to conclude as to how and under what circumstances, the ratio of the judgments of the Hon'ble Supreme Court in the (supra) matters would not be applicable. Relevant extract of judgment dated 25.01.2019 in CWP No.23285 of 2018, titled as ***Charanjit Singh and another Versus State of Punjab and others***, is extracted as under:-

> *"The issue of withdrawal of consent pursuant to resolution passed in Vidhan Sabha on 28.8.2018 and notifications issued pursuant thereto needs to be dealt with first. In the case of Kazi Lehndup Dorji's case (supra) a notification under section 6 of the DSPE Act, 1946 was issued conveying consent of the Govt. of Sikkim enabling members of DSPE to exercise powers and jurisdiction on whole of the State of Sikkim for investigation of offences punishable under various provisions of the Indian Penal Code specified in the notification as well as offences under the Prevention of Corruption Act. Similar consent in respect of offences under various other enactments was given by the Govt. of Sikkim vide notifications dated 20.10.1976, 10.07.1979, 24.12.1983, 28.6.1984 and 10.12.1984. Respondent No.4 therein, remained Chief Minister of Sikkim from the year 1979 till 11.5.1984. On 26.5.1984 a case was registered by the CBI under relevant provisions of Prevention of Corruption Act alleging that he had acquired assets disproportionate to his known sources of income. On 7.8.1984 another FIR was registered against him alleging that he alongwith P.K.Pardhan, Secretary, Rural Development, by corrupt and illegal means and by abusing their position as public servants had caused pecuniary advantage to private parties and*

corresponding loss to the Govt. They had awarded contracts to the tune of 1,62,31,630/- to private parties for implementing rural water supply scheme on higher rates ignoring recommendations of the Rural Development Department. The CBI commenced its investigation. However, respondent No.4 again became Chief Minister of Sikkim in March, 1985. A notification was issued on 7.1.1987 during his tenure, notifying that all consents given on behalf of State Govt. under various notifications issued from the year 1976 to 1984 under section 6 of the Act, were withdrawn. Despite requests made by Govt. of India, Govt. of Sikkim did not permit further investigation by CBI under Prevention of Corruption Act. As a consequence, CBI issued notification dated 7.1.1987 suspending further action in two cases under the Prevention of Corruption Act. Kazi Lehndum Dorji, who happened to be former Chief Minister of Sikkim challenged the withdrawal of investigation and notification dated 7.1.1987 in this respect, his plea being that there was no provision under the Act which empowered the State Govt. to withdraw the consent once accorded for investigation of cases by CBI. In the counter affidavit filed by the Govt. of India, a stand was taken that withdrawal of consent by State Govt. had caused grave injustice to the investigation conducted by the CBI creating impediment in its way for filing report under section 173 of CrPC. Govt. of India also submitted that process once initiated ought not to be stalled and investigation must be allowed to reach its logical conclusion. Thus there was no scope of withdrawing the consent once granted. In other words, Govt. of India supported the plea of Kazi Lehndum Dorji, the petitioner therein. After consideration of the entire issue, Hon'ble Supreme Court allowed the writ petition holding that the notification withdrawing the consent would operate prospectively and not apply to cases which were pending, thus permitting the CBI to file its report under section 173 CrPC on the basis of investigation conducted by it.

It appears that the facts of instant care are on different footing. Firstly, section 6 notification issued in Dorji's case (supra) was in respect of class of cases extending jurisdiction of CBI in respect of certain offences all over the State of Sikkim. In view of vesting of this power in CBI, it registered FIRs on its own under the Prevention of Corruption Act against a former Chief Minister. This was by virtue of the amplitude of the general notifications issued under section 6 empowering the CBI to investigate certain offences in relation to crimes under IPC, Prevention of Corruption Act and some other enactments committed anywhere in State of Sikkim. These notifications were issued during the period from 1976 to 1984.

In the instant case, however, FIRs were registered by the State police prior to the notification(s) handing over the investigation of specific FIRs to CBI. In other words, consent was accorded only in respect of investigation pertaining to FIRs, detail of which is as under:- i) FIR No.63 dated 2.6.2015 u/s 295-A, 380 IPC PS Baja Khana. ii) FIR No.117 dated 25.9.2015 u/s 295-A IPC PS Baja Khana. iii) FIR No.128 dated 12.10.2015 u/s 295, 120-B IPC PS Baja Khana. During pendency of investigation pursuant to above FIRs, a decision was taken by the State Govt. to invoke provisions of section 6 of the DSPE Act and handover the same to CBI. As the entrustment was made to CBI at initial stage, it was expected that the same would proceed swiftly. However, this did not happen. Another notification was issued in the year 2018 to hand-over the investigation of two other FIRs to CBI. Before CBI could proceed further, impugned decision was taken by the Vidhan Sabha to take back investigation of all cases and two notifications of even date i.e. 06.09.2018 were issued.

On the other hand in Dorji's case, it appears the investigation was nearing culmination. For this reason, Hon'ble the Supreme Court permitted CBI to file its report under section 173 CrPC. It needs to be emphasized that in Dorji's case, FIRs were registered by

the CBI suo motu by virtue of general power vested in it by various notifications. Relevant para of said judgment is as under:-

> ***"16**. Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. [See : Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union, 1953 SCR 439, at pages 447-448]. Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned Notification dated January 7, 1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by C.B.I. prior to withdrawal of consent under the impugned Notification dated January 7, 1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the C.B.I. was competent to complete the investigation in the cases registered by it against respondent No. 4 and other persons and submit the report under Section 173 Criminal Procedure Code in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act."*

As regards observations made in the aforesaid para regarding withdrawal of consent to operate prospectively, same were in context of entire class of offences mentioned in the notifications issued from time to time; meaning thereby, the cases which had been registered by the CBI of its own in view of the general power vested in it over entire State of Sikkim, investigation would continue with it. However, it would be prevented from registering any further FIRs in view of

withdrawal of consent by notification dated 7.1.1987. It was thus held that the said notification dated 7.1.1987 would not preclude the CBI from submitting its report under section 173 CrPC before the competent court. So far as prospective operation of the notification was concerned, it remained unaffected. In view this, the court did not feel it necessary to go into the question whether provisions of Section 21 of General Clauses Act could be invoked in relation to consent given under section 6 of the Act.

In the instant case, as FIRs had already been registered by the State police and notifications issued in the year 2015 did not give a general power to the CBI to register cases apart from the FIRs specified in the notifications, the question of prospective operation of notification withdrawing consent would not arise. A clear distinction can be drawn in this regard vis-à-vis the notifications issued in Dorji's case. In the instant case, consent of State of Punjab was in respect of specific FIRs and in fact amounted to transfer of investigation from one investigating agency to another. Present is not a case where this Court has been called upon to test a situation where State has granted consent to CBI to register cases on its own in respect of a class of offences. On the other hand, the notification withdrawing the consent is pursuant to resolution passed by the Vidhan Sabha which in clear terms states that the investigation of cases given to CBI needed to be taken back. Besides, during the course of hearing, this Court called for the case diary of the CBI and perused the same. It was evident that investigation in the cases had hardly made any headway. From the judgment in Dorji's case, however, it appears that the investigation was nearing culmination as CBI was permitted to file its final report under section 173 CrPC. Even during the course of hearing of said case, Govt. of India took a specific stand that withdrawal of investigation had seriously affected the case as CBI was unable to file its report under section 173 CrPC. It is evident that the CBI had already reached a conclusion that the accused therein had acquired assets disproportionate to their known

sources of income and that they had by corrupt means and abusing their position, caused pecuniary advantage to private parties and loss to the State exchequer."

Further, while dealing with the aspect of the Review Application, it is argued that even at the stage of review, the reasons for dismissal thereof were altogether different i.e. that a different person had moved a Review Application in that case. Hence, the dismissal of the said Review Application was for technical reasons and not on merits. Relevant extract of the order passed in the said Review Application is reproduced hereinafter below:

".....Even otherwise, scope of review jurisdiction under Order 47 Rule 1 CPC is limited. Applicant, particularly one who was not a party to the case, cannot seek re-hearing of the matter. In case he felt that he had any independent cause of action, he could always avail appropriate remedy. Present application is, thus, not only mis-conceived but frivolous in nature. It cannot be ruled out that it has been filed with some oblique motive....."

Further, while referring to the order passed by this Court in CRM-M-19785 of 2020, it is argued that the said petition was dismissed by this Court on the grounds of maintainability by relying on the judgment in writ petition. Hence, the legal issue was never examined in light of the judgments of the Hon'ble Supreme Court. The relevant extract of the judgment passed by the Hon'ble Single Judge in CRM-M-19785 of 2020 is extracted as under:

".52. Having heard the arguments of all learned counsel, it is appropriate to again observe at this stage that in fact upon a perusal of the judgment of this court in CWP no.28001 of 2018 and connected cases, dated 25.01.2019, I had not been inclined even to hear the matters in detail as regards the issue of validity of the withdrawal of consent by the State of Punjab vide its notification dated 06.09.2018, that matter already having been adjudicated upon

by a coordinate Bench, with the SLP filed against that judgment having been dismissed (as already observed hereinafore).

Yet, with Mr. Ghai, learned senior counsel appearing for the petitioner, having insisted that since the prayer in the petition was for quashing of the report submitted by the SIT constituted in the Punjab Police, under the provisions of 173 of the Cr.P.C., which obviously was at a stage much after the aforesaid judgment was delivered, and with him having submitted that in view of that other arguments also need to be noticed as would be raised by him, including the validity of the said notification, the contentions raised on both sides, even with regard thereto, have been duly noticed hereinabove.

53. Having said that, it needs to be reiterated, yet again, that with this court having already upheld the validity of the said notification pursuant to a resolution of the Punjab Legislative Assembly dated 28.08.2018, any other Bench of this court would be lacking inherent jurisdiction to again hear the matter qua that issue at least.

Even though Mr. Ghai strenuously argued that the judgments of the Supreme Court in Gurbir Singh and K.Chandrashekhars' cases (supra), were not brought to the notice of the Bench hearing those petitions, that again would make no difference, in view of the fact that though non-reference to any law laid down may render a particular judgment to be per incuriam as regards the proposition of law itself that may have arisen in that particular case/set of cases, yet, firstly, as regards the judgment itself qua that particular issue pertaining to a particular occurrence itself, it would be deemed to be a judgment in rem and would be stare decisis for the purpose of that particular occurrence.

Further in any case, even a review petition having been filed by the present petitioner, in CWP no.23285 of 2018 (decided along with CWP no.28001 of 2018 on 25.01.2019), the said review application has also been dismissed by a detailed order dated 23.11.2020, by the same Bench.

54. It is specifically to be noticed that though one of the reasons for dismissal of that review application is that the present petitioner (who had filed the review application bearing no. RA-CW-225-2020), was not a party to those petitions decided on 25.01.2019, however, his Lordship has duly noticed the judgments cited in the review application, including in Gurbir Singh and K.Chandrashekhars' cases (supra), along with other judgments cited, and has held specifically that the circumstances of those cases were different to the present circumstances, in which pursuant to a resolution passed by the Vidhan Sabha, the State Government issued a notification withdrawing the case from the CBI (withdrawing consent), with it reiterated that the said judgment (dated 25.01.2019) had specifically noticed that the investigation made by the CBI 'had actually not made any headway'. (Thus, even the contention of Mr. Ghai to the effect that the closure report of the CBI had showed that it had gathered evidence well before the notification issued by the State Government on 06.09.2018, would make no difference as regards the jurisdiction of this court (coordinate Bench) in reopening the issue qua such withdrawal of such consent).

Xx xx xxx xxxxxxxx

56. Coming to the argument with regard to the review application filed before the Supreme Court; mere pendency of a review application seeking a review of the order dated 20.02.2020 passed in SLP no.807 of 2020, would not empower this court to assume jurisdiction qua the matter already settled by a coordinate Bench on 25.01.2019, with even the review application filed before this court on 23.11.2020 having been dismissed.

Hence, the arguments raised by Mr. Ghai learned senior counsel appearing for the petitioner, as also Mr. Sumeet Goel, learned counsel for the CBI, to the effect that since a review application is pending before the Supreme Court, the CBI would have jurisdiction to continue with the investigation, despite this court vide the judgment dated January 25, 2019 having upheld the notification

withdrawing the case from the CBI, is an argument that has to be empathetically rejected and is so rejected.

57. Therefore the argument of Mr. Ghai that the withdrawal of consent by the State Government vide its notification dated 06.09.2018 is bad in law, is also an unsustainable argument before this court, that being an issue emphatically decided by this court vide the aforesaid judgment, as also vide the order passed in the review application filed by the petitioner.

In fact, the following passage from the judgment dated 25.01.2019 has been reproduced in the 'review order' dated 23.11.2020:-

> *"In view of the observations made above, this Court does not find any infirmity with the decision taken by Punjab Govt. to withdraw the consent under section 6 of the Act pursuant to resolution of the Vidhan Sabha. In the instant case, the CBI did not seriously oppose the withdrawal of consent. Even in its reply, it meekly stated that the matter was under investigation and did not question the validity of notifications withdrawing the consent for investigation by it. On the other hand, it forwarded the notifications to Government of India for further necessary action. Para 4 and prayer clause of the reply read as under:-*
>
> > *"4. That the Govt. of Punjab, vide another Notification No.7/521/2013-2H4/4901 dated 06.09.2018 had also withdrawn its consent for the investigation of above mentioned 03 cases. The copy of said notification was sent to the Under Secretary, Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, New Delhi for further necessary action.*
> >
> > *That in view of the submission made in the foregoing paragraphs, it is submitted that appropriate directions/orders as deemed appropriate by this Hon'ble Court may kindly be passed."*

On a specific query being put to CBI counsel about the status of investigations despite lapse of almost three years, no clear answer was forthcoming."

58. Thus, though one reason for upholding the notification dated 06.09.2018 may have been on account of the CBI not having brought before this court the extent of the investigation carried out by it (as it now seems to have presented before the 'Special CBI Court' in the closure report presented on 04.07.2019, Annexure P-5), yet, while dismissing the review application on 23.11.2020, it has been specifically observed by the co-ordinate Bench (before the aforesaid reproduction), that neither the judgments in Gurbir Singh or K.Chandrashekhars' cases (supra), could help the case of the review applicant (i.e. the present petitioner), as in Chandrashekhars' case the CBI had almost completed the investigation, whereas in this case it had not completed the investigation and consequently withdrawal of the consent by the Punjab Government was to be upheld.

59. Other than that, what was specifically held in the judgment dated 25.01.2019, as pointed out by Mr. Raval, needs to be reproduced here again to reject the contention made by learned senior counsel appearing for the petitioner, (that despite a direction to the SIT to conclude its investigation, the CBI had never been debarred by this court from continuing investigation). That passage reads as follows:-

> *"In view of the observations made above, this court does not find any infirmity with the decision taken by the Punjab Government to withdraw the consent under Section 6 of the Act pursuant to resolution of the Vidhan Sabha. In the instant case, the CBI did not seriously oppose the withdrawal of consent. Even in its reply, it meekly stated that the matter was under investigation and did not question the validity of notifications withdrawing the consent for investigation by it."*

Consequently, this court in any case cannot again go into the same issue of withdrawal of consent vide the notification dated 06.09.2018, again.

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66. As regards the contention, even on behalf of the CBI, that since the question of law was left open in the order dismissing the SLP (with the said SLP having been dismissed only on grounds of delay), therefore the CBI should be allowed to investigate, the said order is reproduced as follows:-

"Permission to file Special Leave Petitions is granted.

The Special Leave Petitions are dismissed on the ground of delay.However, the question of law is left open. Pending application stands disposed of."

Undoubtedly and obviously the question of law has been left open by their Lordships, but as regards the notification issued pursuant to the resolution of the Punjab Assembly dated 28.02.2018, which resolution was subject matter in CWP no.28001 of 2018, that cannot be re-agitated before this court at least. The matter as regards that issue is stare decisis and it would be beyond the 'jurisdiction' of any coordinate Bench of this court to go into that matter again. If that were not so, litigation can be opened and re-opened again and again, qua the same occurrence itself, leading to no end of such litigation. Therefore, if a petitioner in a different petition (who was not a petitioner in the earlier set of petitions decided), raises the issue again, qua the same occurrence itself, i.e. in this case investigation by the CBI into the occurrence leading to registration of FIR no.63 of 2015 at Police Station Bajakhana, District Faridkot, on June 02, 2015, that would not be permissible as regards this court at least. If any judgment on that issue is required to be cited, the one referred to by Mr. Raval, learned senior counsel appearing for the State, in the case of the State of Rajasthan v. Milap Chand Jain (2013) 14 SCC 562, can be cited.

> *It also may be observed here, even as has been held in Kunhayammed vs. State of Karela (2000) 6 SCC 359, that though dismissal of a Special Leave Petition without anything stated on the merits of the case, would not amount to ratio decidendi being laid down by the Supreme Court (and obviously not so when the question of law itself has been left open), however, the SLP having been dismissed for any reason, with the judgment of this court therefore not having been interfered with, the question that has been decided in such judgment, on the question of the notification as is in issue (dated 06.09.2018), would be stare decisis qua this court."*

It is thus argued that in none of the above cases, this Court has dealt with the said legal issue and have upheld the notification without dealing with law. Moreover, the petitioner was not an accused in those cases at the stages when the matter was brought before this Court. Therefore, there was no occasion for the petitioner to approach this Court at any prior time to challenge the notification/action taken by the Government of Punjab.

While adverting to the merits of the present case, counsel for the petitioner has contended that even on merits, the case of the respondent-State is based merely on a confession of a co-accused, recorded by the SIT, while the said accused was in custody in another case bearing FIR No.33 of 2011, Police Station Moga. It is contended that reliance had been placed on the statement of one Pardeep Kumar Sharma, who further submitted that he was informed about the alleged conspiracy being hatched by one Mahinder Pal @ Bittu (since deceased), who had further claimed to be present at the Dera Sacha Sauda when a decision in this regard was taken is inadmissible. Further, there is no recovery of any nature whatsoever and no link evidence to establish the association of the petitioner in the alleged conspiracy.

She also contends that initially the respondents-State of Punjab nominated one Rupinder Singh alongwith his brother Jaswinder Singh as accused and a press conference was held by the highly placed police officials of the State of Punjab. In the said version, there was no involvement and/or allegation against the petitioner. After the investigation of the State of Punjab failed to proceed any further, the decision to transfer the investigation to the Central Bureau of Investigation was taken and the notification under the Delhi Special Police Establishment Act, 1946 was issued by the respondent-State of Punjab. Contrary to the claim made by the respondent-State of Punjab that no investigation had been conducted by the respondent-Central Bureau of Investigation and on in depth scientific investigation was conducted by the Central Bureau of Investigation after recording the statements of all material witnesses/accused cited by the State of Punjab. Even polygraph tests of the suspects, who were detained, had been conducted, wherein they were confronted with earlier statements and they have specifically disclosed that the statements recorded earlier by the State Police were under the pressure and they disowned their said statements. Further, the results of the polygraph test also corroborated that the suspects were not lying about the said incident. The aspect of foreign funding of the entire incident was also examined and there was no evidence to link the activities of Rupinder Singh and his brother Jaswinder Singh to any foreign funding.

After having examined the evidence collected by the State as well as the statements of the witnesses and the suspects cited by the Punjab Police, the Central Bureau of Investigation had prepared a closure report on 04.07.2019. It was only after when the said developments came to the knowledge of the respondent-Authorities and on account of the changed political scenario, where

hardliners were pressurizing the Government, that a decision was taken to withdraw the notification. It is contended that even till that date, the petitioner was not nominated as an accused in any of the cases. The name of the petitioner did not figure as accused on the evidence collected except after recording a supplementary statement of Pardeep Kumar Sharma, which is nothing more than a hearsay version. In the absence of any corroborative piece of evidence or any link evidence that may have been collected on such disclosure, such statement cannot be given any credit. It having no evidentiary value, is liable to be ignored.

It is also argued that the implication of the petitioner in the abovesaid cases was on account of political compulsions and only to appease the hardliners, the support whereof was required by the political dispensation of the State. The issue, having attained great political ramifications, was crucial and the entire election was being contested on and around the incidents that took place in Bargari and/or Kotkapura in relation to the firing. The supporters of the petitioner were roped in the case only to pacify the clergy and hardliners from earlier incident wherein the petitioner had appeared in a congregation dressed up in an attire which was perceived by the Sikh clergy as an act of impersonation of 10th Sikh Guru. Hence, in order to subvert the rising sentiments in the society, the petitioner has been found to be an easy scapegoat.

She further submits that the respondent-State is trying to confuse between two separate notifications that had been issued by the respondent-State of Punjab i.e. one in relation to the incident of sacrilege wherein three FIRs resulting in registration of three different regular cases by Central Bureau of Investigation were involved, while two incidents related to the firing incidents at Kotkapura. The issues that were agitated before the Writ Court pertained to the notification

about the firing incident at Kotkapura and were not in relation to the sacrilege incidents of Bargari. The said cases are also distinguishable from the case in hand inasmuch as in the said notification, no separate notification under Section 5 of the Delhi Special Police Establishment Act, 1946 was issued by the Central Government and no regular case had been registered. *Per contra*, a regular case has already been registered by the Central Bureau of Investigation in the incidents of sacrilege at Bajakhana and investigation had already commenced and had made much headway before the steps were initiated by the respondent-State of Punjab to issue a subsequent notification to withdraw the notification issued earlier.

While supporting her argument as regards entitlement/permissibility with the State to withdraw consent given under the Delhi Special Establishment Act, 1946, reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of ***Kazi Lhendup Dorji's case(supra)***. The relevant paragraphs of the said judgments are extracted as under:-

> *"3. By his letter dated October 20, 1976, addressed to the Deputy Secretary to the Government of India, Department of Personnel and Administrative Reforms, the Chief Secretary to the Government of Sikkim conveyed the consent of the Government of Sikkim under Section 6 of the Act to the members of the D.S.P.E. in exercising powers and jurisdiction on the whole of the State of Sikkim for the investigation of the offences punishable under various provisions of the Indian Penal Code specified therein as well as offences under the Prevention of Corruption Act, 1947. Similar consent in respect of offences under other enactments was conveyed by letter of the Chief Secretary, Government of Sikkim, dated July 10, 1979 and the orders of the Government of Sikkim dated December 24, 1983, June 28, 1984 and December 10, 1984.*
>
> *4. Respondent No. 4 was the Chief Minister of Sikkim during the period 1979 to 1984. He ceased to be the Chief Minister on May 11,*

1984. On May 26, 1984, a case [RC.5/84-CIU(A)] was registered by the C.B.I. for offences punishable under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947. The allegations, in brief, were that Respondent No. 4,

while acting as the Chief Minister of the State of Sikkim and thus being a public servant, had acquired assets disproportionate to his known sources of income. On August 7, 1984, another case [RC.8/84-CIU(A)] was registered by C.B.I. for offences punishable under Section 120B Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947, against respondent No. 4 and others. The allegations, in brief, were that respondent No. 4 and Shri P. K. Pradhan, the then Secretary Rural Development Department, Government of Sikkim, by corrupt or illegal means or by otherwise abusing their position as public servants in conspiracy with other persons caused pecuniary advantage to the private parties and the corresponding loss to the Government of Sikkim and further that these persons entered into a criminal conspiracy with other private persons and awarded contracts to the tune of Rs. 1,62,31,630/- to the private parties for implementing Rural Water Supply Scheme under the minimum need programme during 1983-84 on higher rates and had ignored the recommendations of the concerned Rural Development Department officials on this point. After registering these two cases C.B.I. started investigation and while the matters were under investigation respondent No. 4 again became the Chief Minister of Sikkim in March, 1985. By Notification dated January 7, 1987, when the respondent No. 4 was the Chief Minister of Sikkim, it was notified that all consents of or on behalf of the State Government under letters dated October 20, 1976 and July 10, 1979 and orders dated December 24, 1983, June 28, 1984 and December 10, 1984 for investigation of offences by C.B.I. under Section 6 of the Act, are withdrawn and stand cancelled with immediate effect. In spite of requests made by officials of the Government of India in their letters

dated October 17, 1988, December 12, 1988 and February 10, 1989 and the Ministers of State in the Ministry of Personnel, Public Grievances and Pensions in letters dated March 9, 1989 and September 16, 1992, the Government of Sikkim did not agree to permit investigation by C.B.I. in respect of cases under the Prevention of Corruption Act and declined to give consent for such investigation. As a consequence of the Notification dated January 7, 1987, C.B.I. suspended further action in the aforementioned two cases registered against respondent No. 4. The petitioner, who happens to be a former Chief Minister of Sikkim, has filed this writ petition, by way of public interest litigation, wherein he has sought various reliefs including the quashing of the Notification dated January 7, 1987. The petitioner has submitted that there is no provision under the Act which empowers the State Government to withdraw the consent which has been accorded and that impugned Notification dated January 7, 1987, withdrawing the consent is in violation of the provisions of the Act.

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16. Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. [See :Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers Union, 1953 SCR 439, at pages 447-448]. Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned Notification dated January 7, 1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by C.B.I. prior to withdrawal of consent under the impugned Notification dated January 7, 1987, had to be completed and it was not affected by the said withdrawal of

consent. In other words, the C.B.I. was competent to complete the investigation in the cases registered by it against respondent No. 4 and other persons and submit the report under Section 173 Criminal Procedure Code, 1973 in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act.

17. The writ petition is, therefore, allowed and it is declared that the Notification dated January 7, 1987, withdrawing the consent given by the Government of Sikkim under letters dated October 20, 1976, and July 10, 1979 and orders dated December 24, 1983, June 28, 1984, and December 10, 1984, under Section 6 of the Act, operates only prospectively and the said withdrawal would not apply to cases which were pending investigation on the date of issuance of the said Notification. The Notification dated January 7, 1987, does not preclude the C.B.I. from submitting the report in the competent court under Section173 Criminal Procedure Code, 1973 on the basis of the investigation conducted by it in RC.5/84-CIU(A) and RC.8/84-CIU(A).”

Referring to the abovesaid, it is submitted that in case of ***Kazi Lhendup Dorji’s case(supra)***, the Chief Secretary to the Government of Sikkim had conveyed the consent of Sikkim for the investigation of the offences punishable under the various provisions of the IPC and Prevention of Corruption Act, 1947. The erstwhile Chief Minister had awarded certain contracts for which a case had been registered by the CBI. However, during the pendency of the investigation, the said person became a Chief Minister again and issued a notification in January 1987 for withdrawing the consent given by the State. The writ petition in the form of public interest litigation was filed contending that the Act did not empower the State to take away the consent once granted. Hon’ble the Supreme Court has held that an order of revoking consent can only have

prospective operation and would not effect matters in which action has been initiated prior to issuance of the order of revocation. Investigation that was started by the Central Bureau of Investigation had to be concluded by it and withdrawal of the notification does not preclude the Central Bureau of Investigation from submitting supplementary challan under Section 173 Cr.P.C. on the basis of investigation conducted by it.

Reliance was also placed on the judgment of this Court in ***Gurbir Singh Versus Union of India***, ***1997 SCC Online P&H 932.*** The relevant paragraphs thereof are extracted as under:-

> ***"13.*** *Section 3 of the Delhi Special Police Establishment Act, 1946, authorises the Central Government to specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment by notification in the official gazette. By such notification, the Delhi Special Police Establishment gets the authority to investigate the offences or the class of offences specified therein. This power of investigation which is conferred on the Delhi Special Police Establishment can be extended by the Central Government to any area or a State. If the power is so extended by the Central Government in exercise of its powers under Section 5, the same need not be by any notification. Central Government need pass an order alone. This power of the Central Government to extend activities of the Delhi Special Police Establishment to a State can be made with the consent of the State concerned. Section 6 states:—*
>
> > *"Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State."*
>
> *This provisions does not contemplate any notification to be issued by the Government of the State giving its consent for the Delhi Special*

> *Police Establishment to carry out the investigation in the State. When the State Government gives its consent to have any particular case which took place within its territory, to be investigated by the Delhi Special Police Establishment, the Central Government may order the said establishment to carry out the investigation. In the instant case, Government of Punjab gave its consent, in writing, to the Central Government to extend the jurisdiction of the members of the Delhi Special Police Establishment for the investigation of offences mentioned therein. Following the consent given by the State Government, Central Government, by order, extended the jurisdiction of the Delhi Special Police Establishment to Punjab for investigating the cases. Thereupon, two F.I.Rs. mentioned earlier, were registered on February 25, 1997. Thereafter came notifications of February 26, 1997 and February 28, 1997. By these notifications, the State Government wanted to withdraw the consent given earlier on February 7, 1997. This is not permissible in the light of the decision of the Supreme Court in Kazi Lhendup Dorji v. The Central Bureau of Investigation, 1994 (2) RCR (Crl.) 553 : JT 1994 (3) S.C. 140. Therein their lordships have categorically held that an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not effect matters in which action has been initiated prior to the issuance of the order of revocation. In view of this statement of law, the latter notifications issued by the Punjab Government can in no way interfere with the investigation of Crime 7/97 and Crime 8/97 registered by the Central Bureau of Investigation."*

Factually in the above matter, the Government of Punjab gave its consent on 07.02.1997 to the Central Government extending jurisdiction of CBI. Thereafter, the CBI registered two FIRs on 25.02.1997 against the Principal Secretary to the Chief Minister and certain unknown officials. While the first FIR was in relation to possession of disproportionate assets to his known sources of

income, the second FIR related to illegality in allocation of land and the Government funds to the Punjab Cricket Association. The Government of Punjab issued notifications on 26.02.1997 and 28.02.1997 rescinding sanctions granted to the CBI and withdrawing its consent. The CBI has however refused to stop investigation despite this objection of the State. A writ petition (PIL) had been filed before the Courts alleging that the Government of Punjab was interfering with investigation of the CBI and a notification had been issued to refrain the CBI from conducting investigation.

It was held by this Court that the State Government was not entitled to withdraw the consent and that any such order of withdrawal/revocation could not have a retrospective effect. It was held that the CBI was justified in continuing investigation.

She further placed reliance on the judgment of the Hon'ble Supreme Court in case **K. Chandrashekhar's case(supra).** The relevant paragraphs thereof have already been reproduced earlier.

Briefly, the facts of the said case are that Shri S. Vijayan, an Inspector of Police, arrested and took Mariyam Rasheeda, who had come to India on a visit from Maldives, into custody on the allegation that she continued to stay in India even after the expiry of her visa. The act being in violation of the Foreigners Act, 1946 and the Order of 1948, a case was registered against her. Another complaint was got registered on the allegation that she, in collusion with certain Indians and foreigners, had committed acts prejudicial to the safety and sovereignty of India. The cases were handed over to be investigated by the Central Bureau of Investigation. A charge-sheet was filed after completion of investigation which ended in a judgment of acquittal while for the other case, the

CBI filed a closure report under Section 173(2) Cr.P.C. The said report was accepted and the suspects were discharged. The Government of Kerala decided to withdraw the consent given earlier to the CBI for investigation and constituted a special team for further investigation. The said decision of the State of Kerala was subject matter of challenge before the High Court which was dismissed on the ground that the withdrawal of consent was an act of executive and not a piece of conditional legislation. The said judgment was under challenge before the Hon'ble Supreme Court wherein it was reiterated by the Hon'ble Supreme Court that an investigation once started by the CBI by grant of consent under Section 6 of the Delhi Special Police Establishment Act is to be completed notwithstanding withdrawal of consent. If the State finds that conclusions of the CBI were not proper, the only course left is to ask Central Govt. to take a different view of the materials collected during investigation and persuade accordingly. It was held that any further investigation could be made by the CBI alone and therefore, withdrawal of the notification to enable the State police to further investigate the case is patently invalid.

It is also contended that the single Judge of this Court, while dealing with CWP No.23285 of 2018 upheld the withdrawal of notification by observing that no investigation had been conducted by the CBI despite the notification having been issued transferring the investigation vide notification dated 2.11.2015. The said observation recorded by the Hon'ble single Judge was factually incorrect inasmuch as the following substantial investigation had been conducted by the CBI:-

> *"(i) Psychological assessment test of 18 persons carried out by CFSL expert to verify statements made by them.*
>
> *(ii) Polygraph lie detection test of 5 persons.*

(iii) Dump data of various mobile towers was thoroughly analysed, their users had been traced and verified with respect to their activities.

(iv) IO's of all 53 cases of sacrilege in the State of Punjab were contacted and discussion was held with them. Many persons accused of other sacrilege incidents were questioned.

*(v) The persons who were working under **MANREGA Scheme** in Gurudwara premises on 01.06.2015 were traced and examined. The shop owners having shops in front of Gurudwara were examined.*

(vi) Fingerprint and specimen handwriting of 49 persons were collected. Chance/latent fingerprints were developed from said posters by the expert of CFSL Delhi.

*(vii) CBI also announced a **reward** of **10 lakhs** in **May 2016** for giving any information leading to the accused/guilty in any of the three cases.*

*(viii) Consequent upon the information received from Punjab police regarding involvement of Mohinderpal @ Bittu etc. in sacrilege incidents, out of 10 suspects, 3 suspects had been taken on **police remand.** The remaining seven persons were questioned in Faridkot Jail.*

*(ix) **Lie detection test, Psychological assessment test, Layered voice analyses test, Handwriting comparison, Finger Print comparison** were conducted upon these accused persons. **Details of vehicle** alleged to be used in crime were obtained. All relevant facts were investigated. However, subsequent to the information received by the DGP of Bureau of Investigation to CBI vide letter dated 29.07.2019, the **investigation was sought to be kept open by CBI under section 173(8)** of the Code."*

Hence, an erroneous factual aspect had been noticed by this Court in concluding against the CBI. It is further submitted that even subsequent to

withdrawal of consent on 06.09.2018, no SIT was constituted and there was no investigation by the SIT between the period from 07.09.2018 to 01.07.2020 and the purported investigation commenced only on 02.07.2020. Even the said investigation was faulty and did not take into consideration the admissibility of evidence and has rather placed reliance on the hearsay.

That the judgments passed in earlier CWP No.23285 of 2018 dated 25.01.2019 and CRM-M No.19785 of 2020 dated 04.01.2021 are hence not applicable and binding precedents for adjudication of the present writ petition.

She also argues that the said judgments cannot be deemed to be a binding precedents since they would be hit by the principles of *per incurium* and *sub silentio.* The High Court being a protector of rights and liberty of the individual exercises its writ jurisdiction under Articles 226 of the Constitution of India to catch an abuse of power by the State. The doctrine of judicial discipline mandates that the settled legal principle is to be followed by the Court, however, settled legal propositions were not properly considered by this Court in its judgment dated 25.01.2019. It is thus submitted that once an error is noticed at any later stage by this Court, it cannot be helpless in rectifying the same and watch in silence, perpetuation of an illegality and deprivation of a citizen of his rights. Reliance in this regard was placed on the judgment in the matter of ***A.R. Antulay Versus RS Nayak (1988) 2 SCC 602*****.** The relevant parts thereof are extracted as under:-

> *"46. The appellant should not suffer on account of the direction of this Court based upon an error leading to conferment of jurisdiction.*
>
> *47. In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984,*

were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper-book. He argued that since the transfers have been made under section 407, the procedure would be that given in section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that them decision was not, made per incuriam as submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. State of Bihar (1955) 2 SCR 603 at p. 623 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.

48. According to Shri Jethmalani, the doctrine of per incuriam has no application in the same proceedings. We are unable to accept this contention. We are of the opinion that this Court is not powerless to correct its error which has the effect of depriving a citizen of his

fundamental rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental rights of a citizen or any legal right of the petitioner. See the observations in Prem Chand Garg v. Excise Commr. U.P. Allahabad, 1963 Suppl (1) SCR 885.

49. In support of the contention that an order of this Court be it administrative or judicial which is violative of fundamental right can always be corrected by this Court when attention of the Court is drawn to this infirmity, it is instructive to refer to the decision of this Court in Prem Chand Garg v. Excise Commr. U.P., Allahabad (supra). This is a decision by a Bench of five learned Judges. Gajendragadkar, J. spoke for four learned Judges including himself and Shah, J. expressed a dissenting opinion. The question was whether Rule 12 Order 35 of the Supreme Court Rules empowered the Supreme Court in writ petitions under Article 32 to require the petitioner to furnish security for the costs of the respondent. Article 145 of the Constitution provides for the rules to be made subject to any law made by Parliament and Rule 12 was framed thereunder. The petitioner contended that the rule was invalid as it placed obstructions on the fundamental right guaranteed under Article 32 to move the Supreme Court for the enforcement of fundamental rights. This rule as well as the judicial order dismissing the petition under Article 32 of the Constitution for non-compliance with Rule 12 Order 35 of the Supreme Court Rules was held invalid. In order to appreciate the significance of this point and the actual ratio of that decision so far as it is relevant for our present purpose it is necessary to refer to a few facts of that decision. The petitioner and 8 others who were partners of M/s. Industrial Chemical Corporation, Ghaziabad, had filed under Article 32 of the Constitution a petition

impeaching the validity of the order passed by the Excise Commissioner refusing permission to the Distillery to supply power alcohol to the said petitioners. The petition was admitted on 12th December, 1961 and a rule was ordered to be issued to the respondents, the Excise Commissioner of U.P., Allahabad, and the State of U.P. At the time when the rule was issued, this Court directed under the impugned rule that the petitioners should deposit a security of Rs. 2,500/- in cash within six weeks. According to the practice of this Court prevailing since 1959, this order was treated as a condition precedent for issuing rule nisi to the impleaded respondents. The petitioners found it difficult to raise the amount and so on January 24, 1962, they moved this Court for modification of the said order as to security. This application was dismissed, but the petitioners were given further time to deposit the said amount by March 26, 1962. This order was passed on March 15, 1962. The petitioners then tried to collect the requisite fund, but failed in their efforts and that led to the said petition filed on March 24, 1962 by the said petitioners. The petitioners contended that the impugned rule, in so far as it related to the giving of security, was ultra vires, because it contravened the fundamental right guaranteed to the petitioners under Article 32 of the Constitution. There were two orders, namely, one for security of costs and another for the dismissal of the previous application under Article 32 of the Constitution.

50. This Court by majority held that Rule 12 Order 35 of the Supreme Court Rules was invalid in so far as it related to the furnishing of security. The right to move the Supreme Court, it was emphasised, under Article 32 was an absolute right and the content of this right could not be circumscribed or impaired on any ground and an order for furnishing security for the respondent's costs retarded the assertion or vindication of the fundamental right under Article 32 and contravened the said right. The fact that the rule was discretionary did not alter the position. Though Article 142(l)

empowers the Supreme Court to pass any order to do complete justice between the parties, the Court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(l) and Article 32 arose. Gajendragadkar, J. speaking for the majority of the Judges of this Court said that Article 142(l) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At page 899 of the Reports, Gajendragadkar, J. reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice." But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must, not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws (Emphasis supplied). The Court therefore, held that it was not possible to hold that Article 142(l) conferred upon this Court powers which could contravene the provisions of Article 32. It follows, therefore, that the directions given by this Court on 16th February, 1984, on the ground of expeditious trial by transferring Special Case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the Court of Special Judge, Greater Bombay, Shri S. B. Sule, to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court was contrary to the relevant statutory provision, namely, section 7(2) of the Criminal Law Amendment Act, 1952 and as such violative of Article 21 of the Constitution. Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among the special cases, without any guideline as to which cases required speedier

justice. If that was so as in Prem Chand Garg's case, that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the Court is drawn the Court has always the power and the obligation to correct it ex debito justitiae and treat the second application by its inherent power as a power of review to correct the original mistake. No suitor should suffer for the wrong of the Court. This Court in Prem Chand Garg's case struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution but also struck down the judicial order passed by the Court for non-deposit of such security in the subsequent stage of the same proceeding when attention of the Court to the infirmity of the rule was drawn. It may be mentioned that Shah, J. was of the opinion that rule 12 was not violative. For the present controversy it is not necessary to deal with this aspect of the matter.

51. The power of the Court to correct an error subsequently has been reiterated by a decision of a bench of nine Judges of this Court in Naresh Shridhar Mirajkar v. State of Maharashtra, (1966) 3 SCR 744. The facts were different and not quite relevant for our present purposes but in order to appreciate the contentions urged, it will be appropriate to refer to certain portions of the same. There was a suit for defamation against the editor of a weekly newspaper, which was filed in the original side of the High Court. One of the witnesses prayed that the Court may order that publicity should not be given to his evidence in the press as his business would be affected. After hearing arguments, the trial Judge passed an oral order prohibiting the publication of the evidence of the witness. A reporter of the weekly along with other journalists moved this Court under Article 32 of the Constitution challenging the validity of the order. It was contended that: (1) the High Court did not have inherent power to pass the order; (2) the impugned order violated the fundamental

rights of the petitioners under Article 19(l)(a); and (iii) the order was amenable to the writ jurisdiction of this Court under Article 32 of the Constitution.

52. It was held by Gajendragadkar, C.J. for himself and five other learned Judges that the order was within the inherent power of the High Court. Sarkar, J. was of the view that the High Court had power to prevent publication of proceedings and it was a facet of the power to hold a trial in camera and stems from it. Shah, J. was, however, of the view that the Code of Civil Procedure contained no express provision authorising the Court to hold its proceedings in camera, but if excessive publicity itself operates as an instrument of injustice, the Court has inherent jurisdiction to pass an order excluding the public when the nature of the case necessitates such a course to be adopted. Hidayatullah, J. was, however, of the view that a Court which was holding a public trial from which the public was not excluded, could not suppress the publication of the deposition of a witness, heard not in camera but in open Court, on the request of the witness that his business would suffer. Sarkar, J. further reiterated that if a judicial tribunal makes an order which it has jurisdiction to make by applying a law which is valid in all respects, that order cannot offend a fundamental right. An order which is within the jurisdiction of the tribunal which made it, if the tribunal had jurisdiction to decide the matters that were litigated before it and if the law which it applied in making the order was a valid law, could not be interfered with. It was reiterated that the tribunal having this jurisdiction does not act without jurisdiction if it makes an error in the application of the law.

53. Hidayatullah, J. observed at page 790 (of 1966 (3) SCR 744 : at p. 28 of AIR 1967 Supreme Court 1) of the report that in Prem Chand Garg's case the rule required the furnishing of security in petition under Article 32 and it was held to abridge the fundamental rights. But it was said that the rule was struck down and not the judicial decision which was only revised. That may be so. But a

judicial decision based on such a rule is not any better and offends the fundamental rights just the same and not less so because it happens to be a judicial order. If there be no appropriate remedy to get such an order removed because the Court has no superior, it does not mean that the order is made good. When judged under the Constitution it is still a void order although it may bind parties unless set aside. Hidayatullah, J. reiterated that procedural safeguards are as important as other safeguards. Hidayatullah, J. reiterated that the order committed a breach of the fundamental right of freedom of speech and expression. We are, therefore, of the opinion that the appropriate order would be to recall the directions contained in the order dated 16th February, 1984.

54. In considering the question whether in a subsequent proceeding we can go to the validity or otherwise of a previous decision on a question of law inter-parties, it may be instructive to refer to the decision of this Court in Smt, Ujjam Bai v. State of U.P. (1963) 1 SCR 778. There, the petitioner was a partner in a firm which carried on the business of manufacture and sale of hand-made bidis. On December 14, 1957, the State Government issued a notification under section 4(l)(b) of the U.P. Sales Tax Act, 1948. By a subsequent notification dated 25th November, 1958, handmade and machine-made bidis were unconditionally exempted from payment of sales tax. The Sales Tax Officer had sent a notice to the firm for the assessment of tax on sale of bidis during the assessment period 1st of April, 1958 to June 30, 1958. The firm claimed that the notification dated 14th December, 1957 had exempted bidis from payment of sales tax and that, therefore, it was not liable to pay sales tax on the sale of bidis. This position was not accepted by the Sales Tax Officer who passed certain orders. The firm appealed under Section 9 of the Act to the Judge (Appeals) Sales Tax, but that was dismissed. The firm moved the High Court under Article 226 of the Constitution. The High Court took the view that the firm had another remedy under the Act and the Sales Tax Officer had not committed any apparent error

in interpreting the notification of December 14, 1957. The appeal against the order of the High Court on a certificate under Article 133(l)(a) of the Constitution was dismissed by this Court for non-prosecution and the firm filed an application for a restoration of the appeal and condonation of delay. During the pendency of that appeal another petition was filed under Article 32 of the Constitution for the enforcement of the fundamental right under Articles 19(l)(g) and 31 of the Constitution. Before the Constitution Bench which heard the matter a preliminary objection was raised against the maintainability of the petition and the correctness of the decision of this Court in Kailash Nath v. State of U.P., AIR 1957 Supreme Court 790 relied upon by the petitioner was challenged. The learned Judges referred the case to a larger Bench. It was held by this Court by a majority of five learned Judges that the answer to the questions must be in the negative. The case of Kailash Nath was not correctly decided and the decision was not sustainable on the authorities on which it was based. Das, J. speaking for himself observed that the right to move this Court by appropriate proceedings for the enforcement of fundamental rights conferred by Part III of the Constitution was itself a guaranteed fundamental right and this Court was not trammelled by procedural technicalities in making an order or issuing a writ for the enforcement of such rights. The question, however, was whether, a quasi-judicial authority which made an order in the undoubted exercise of its jurisdiction in pursuance of a provision of law which was intra vires, an error of law or fact committed by that authority could not be impeached otherwise than on appeal, unless the erroneous determination related to a matter on which the jurisdiction of that body depended It was held that a tribunal might lack jurisdiction if it was improperly constituted. In such a case, the characteristic attribute of a judicial act or decision was that it binds, whether right or wrong, and no question of the enforcement of a fundamental right could arise on an

application under Article 32. Subba Rao, J. was, however, unable to agree.

55. Shri Jethmalani urged that the directions given on 16th February, 1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created under section 7(l) of the 1952 Act read with section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar's case (supra) which was a binding precedent. A mistake on the part of the Court shall not cause prejudice to any one. He further added that the primary duty of every Court is to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a judge designated by the State Government was not so injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and(2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions.

i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.

ii) The right of revision to the High Court under section 9 of the Criminal Law Amendment Act.

iii) The right of first appeal to the High Court under the same section.

iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary."

It is further submitted that once this Court held that the proceedings before a criminal court were not maintainable, there is no occasion for it to have gone into the merits of the Notification and to thereupon by commenting on the merits thereof. Nonetheless, despite the Court having proceeded further, it failed to notice the correct facts and the true import and effect of the judgment.

MALAFIDE AND MALICIOUS PROSECUTION

It has been argued by learned counsel appearing on behalf of the petitioner that Articles 14 and 21 of the Constitution of India mandate a right to fair investigation and that the same has been blatantly violated in the present case. The abovesaid act of withdrawal of the Notification was propelled by political considerations and under pressure of the religious hardliners. A malafide exercise of the power with dominant object to implicate the petitioner and depriving him of his social life by injuring his reputation, purely for paving a way for political gain ought not to be protected or promoted. While substantiating the circumstances depicting existence of malafide, learned counsel has argued that the role of Rupinder Singh and Jaswinder Singh who were the suspects and arrested, based on the call interception, has not been investigated any further. The instances originally cited by the police indicating their involvement in commission of the offences were as under:-

(i) Rupinder Singh did not allow the police to collect fingerprints from the scattered Angs(pages) from Shri Guru Granth Sahib alleging that the chemical could not be permitted to be spread on the sacrilege Angs of Shri Guru Granth Sahib.

(ii) Calls between Rupinder Singh and his brother Jaswinder Singh were intercepted, the transcription whereof was relied upon by the police to assert that they were talking about the torn pages and the remaining parts of Shri Guru Granth Sahib.

(iii) That both Rupinder Singh and Jaswinder Singh were arrested in case FIR No.128 of 2015 (one of the sacrilege case) and Rupinder Singh confessed that the acts of sacrilege were carried out to provoke the Sikhs against the petitioner since he was dis-satisfied with the pardon granted to the petitioner by the Akal Takhat. Since the followers of the Dera were in majority in Bargari, hence, the Angs were scattered there.

(iv) An application was moved for conducting lie detection test and polygraph test of Rupinder Singh and Jaswinder Singh, however, they did not consent to subjecting themselves to the said test. An inference ought to have been drawn against the said suspects.

(v) The police moved an application for releasing the said accused under pressure from the Sikh radicals but the Judge only granted bail and declined to discharge the said accused.

(vi) The respondent-State of Punjab did not bring the complete evidence either to the notice of Justice Jora Singh Commission or to the notice of Justice Ranjit Singh Commission. The said information was withheld without assigning any reasons.

(vii) Furthermore, the Ministers in the erstwhile Government visited the villages of Rupinder Singh and Jaswinder Singh (the original suspects) on 05.09.2018 and announced a cash price of Rs.15 lakhs.

(viii) The Notification for withdrawal of transfer of the cases was issued on the following day i.e. 06.09.2018, in close proximity to conferring of accolade on the prime suspects earlier.

(ix) Even though the final report has been filed by the SIT on 06.07.2020, however, no details of the investigation conducted and the confession of the accused Rupinder Singh and Jaswinder Singh has been disclosed. The SIT thus has chosen to not reveal any information or disclose any explanation as to why the two brothers, who were prime accused, were left off the hook from the entire investigation and even in its report filed before the court.

(x) There is also no basis as to on what considerations, the said suspects were found to be innocent or not involved.

(xi) It is also submitted that one Gurdev Singh, follower of the Dera Sacha Sauda, who was suspected in the sacrilege case, was shot at by the radicals, but he was never interrogated at any point of time and after his death, police exerted pressure on Sarabjeet Kaur widow of Gurdev Singh to implicate the follower of Dera Sacha Sauda in the murder of her husband against which a complaint was filed to the Director General of Police.

(xii) It is submitted that one Mahinder Pal @ Bittu was abducted by the SIT from Himachal Pradesh on 07.06.2018. A DDR No.62 was lodged by his family members at Police Station Palampur. His arrest was shown to

have taken place in FIR No.33 of 2011 on 10.06.2018 which was in relation to destruction of public property and not in relation to the sacrilege cases. The said Mahinder Pal @ Bittu is alleged to have confessed to the acts of sacrilege on 12.06.2018 and his statement under Section 164 Cr.P.C. was recorded in case FIR No.33 of 2011 on 20.06.2018. The respondent-State withheld the abovesaid information from the Central Bureau of Investigation but forwarded the same to Justice Ranjit Singh Commission.

(xiii) The said Mahinder Pal @ Bittu had consented for polygraph and lie detection test and his answers were found truthful and non-incriminating. They reflected that he had been subjected to pressure and coercion by the Punjab police.

(xiv) Further, the abovesaid Mahinder Pal @ Bittu was killed on 22.06.2019 and a diary was recovered from his cell that was handed over to his family members and therein declaration alleging torture by the police officials was found. CWP No.23220 of 2021 was filed by the wife of Mahinder Pal @ Bittu for directing further investigation in case FIR No.101 of 2019 regarding his murder and investigation into the allegation of torture by the Punjab officials made in the diary. The said writ petition was disposed of vide order dated 18.08.2022 directing constitution of SIT to be headed by an officer of rank not below the ADGP and members not below the rank of SSP who are to carry out the investigation to submit the further report to the concerned court.

(xv) The scientific evidence collected by the CBI through scientific polygraphic test, fingerprint and handwriting expert etc. were not even

considered by the respondent-State. The Central Bureau of Investigation filed a closure report with regard to accused Mahinder Pal @ Bittu and Sukhjinder Singh after considering the entire evidence.

(xvi) The mischief of the respondent can also be gauged from the fact that the case is based upon testimony of the said Pardeep Kumar. Significantly, the said Pradeep Kumar was interrogated by the Punjab police in sacrilege cases in January 2017 and was called again in August 2017 where he pleaded ignorance but disclosed that one Gopal may have knowledge about the fixation of posters. Hence, an exculpatory confession was made. The abovesaid Pradeep Kumar was also called by the CBI on 11.07.2018 where he had disclosed that someone had taken paper and marker from the shop of one Gopal. After five years of the abovesaid instance on 03.07.2020, the abovesaid Pradeep Kumar is stated to have made revelation against the sacrilege cases to the SIT without mentioning the name of the petitioner anywhere. However, in a quick succession, a second statement of Pradeep Kumar was recorded on 06.07.2020 (i.e. after 03 days) wherein he named the petitioner as a conspirator. The chargesheet was filed on the same day by arraying the petitioner as an accused without any further evidence. Statement of the aforesaid Pradeep Kumar was recorded under Section 164 Cr.P.C. on 18.10.2021. At no point of time any legal evidence has been collected and the entire background has been conveniently ignored. Significantly, even the said statement of Pradeep Kumar notifying the petitioner as a conspirator is based upon an averment that Mahinder Pal @ Bittu (who was murdered on 22.06.2019 in custody) had informed about the

involvement of the petitioner. Thus, the abovesaid evidence is nothing more than a hearsay which such information cannot be even verified since the informer Mahinder Pal @ Bittu died more than one year prior to recording of the said statement made on 06.07.2020. It is submitted that the petitioner had also joined investigation on 28.10.2021 and had been interrogated thrice by the SIT, however, no substantial questions had been put to him and a supplementary chargesheet was filed in FIR No.63 of 2015 arraying the petitioner as an accused merely on the basis of testimony of Pradeep Kumar.

(xvii) The incident in question took place in the year 2015 and an extensive investigation was conducted by the Punjab police before the cases were handed over the CBI and even thereafter by the SIT. Two independent Commissions had also been formed to inquire into the said incident, however, no witness came-forth to make any deposition and miraculously after a period of 6 years some new witnesses surfaced. It was argued that a statement after six years of the incident cannot be taken as a gospel truth without even caring to inquire into the validity thereof considering that there was an inordinate delay of six years in such witness turning out before the police for getting the statement recorded and no explanation has been furnished as to why the said witness never tried to contact or come forward before any other investigating agency earlier in point of time.

All these circumstances were referred to claim that the investigating agency has chosen to consciously disregard the primary rules of investigation and ascertaining the admissibility of evidence solely for the implication of the

petitioner and to satisfy vested political interest and religious hardliners into implicating the petitioner for acts and incidents for which there is no evidence.

ARGUMENTS OF RESPONDENT

Learned counsel for the respondent-State, on the other hand, has argued that the present petition is liable to be dismissed since the issues have already been decided by this Court vide a detailed order passed in CWP-23285 of 2018. He contends that a batch of writ petitions was decided by this Court vide a common judgment in relation to the incidents of sacrilege of religious scriptures as well as the violence that ensued thereafter. Reference was made to the prayer made in the Civil Writ Petition No.28001 of 2018 which sought quashing of the resolution dated 28.08.2018 passed by the Legislative Assembly seeking to withdraw the investigation already entrusted to the Central Bureau of Investigation vide Notification dated 02.11.2015. Reference is made to the following extracts of the abovesaid judgment in CWP No.23285 of 2018 titled as **Charanjit Singh and others Versus State of Punjab and others**, decided on 25.01.2019:-

> *"6. CWP No.28001 of 2018 has been preferred for seeking a writ in the nature of certiorari to quash resolution dated 28.8.2018 (P-19) passed by the Legislative Assembly seeking to withdraw investigation already entrusted to the Central Bureau of Investigation in FIR No.63 dated 2.6.2015 u/s 295-A, 380 IPC, FIR No.117 dated 25.9.2015 u/s 295A IPC and FIR No.128 dated 12.10.2015 u/s 295, 120-B IPC, PS Baja Khana, Distt. Faridkot vide notification dated 2.11.2015, as also other FIRs entrusted to CBI by a notification issued in the year 2018.*
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> *25. The issue of withdrawal of consent pursuant to resolution passed in Vidhan Sabha on 28.8.2018 and notifications issued pursuant*

thereto needs to be dealt with first. In the case of Kazi Lehndup Dorji's case (supra) a notification under section 6 of the DSPE Act, 1946 was issued conveying consent of the Govt. of Sikkim enabling members of DSPE to exercise powers and jurisdiction on whole of the State of Sikkim for investigation of offences punishable under various provisions of the Indian Penal Code specified in the notification as well as offences under the Prevention of Corruption Act. Similar consent in respect of offences under various other enactments was given by the Govt. of Sikkim vide notifications dated 20.10.1976, 10.07.1979, 24.12.1983, 28.6.1984 and 10.12.1984. Respondent No.4 therein, remained Chief Minister of Sikkim from the year 1979 till 11.5.1984. On 26.5.1984 a case was registered by the CBI under relevant provisions of Prevention of Corruption Act alleging that he had acquired assets disproportionate to his known sources of income. On 7.8.1984 another FIR was registered against him alleging that he alongwith P.K.Pardhan, Secretary, Rural Development, by corrupt and illegal means and by abusing their position as public servants had caused pecuniary advantage to private parties and corresponding loss to the Govt. They had awarded contracts to the tune of 1,62,31,630/- to private parties for implementing rural water supply scheme on higher rates ignoring recommendations of the Rural Development Department. The CBI commenced its investigation. However, respondent No.4 again became Chief Minister of Sikkim in March, 1985. A notification was issued on 7.1.1987 during his tenure, notifying that all consents given on behalf of State Govt. under various notifications issued from the year 1976 to 1984 under section 6 of the Act, were withdrawn. Despite requests made by Govt. of India, Govt. of Sikkim did not permit further investigation by CBI under Prevention of Corruption Act. As a consequence, CBI issued notification dated 7.1.1987 suspending further action in two cases under the Prevention of Corruption Act. Kazi Lhendup Dorji, who happened to be former Chief Minister of Sikkim challenged the withdrawal of investigation

and notification dated 7.1.1987 in this respect, his plea being that there was no provision under the Act which empowered the State Govt. to withdraw the consent once accorded for investigation of cases by CBI. In the counter affidavit filed by the Govt. of India, a stand was taken that withdrawal of consent by State Govt. had caused grave injustice to the investigation conducted by the CBI creating impediment in its way for filing report under section 173 of CrPC. Govt. of India also submitted that process once initiated ought not to be stalled and investigation must be allowed to reach its logical conclusion. Thus there was no scope of withdrawing the consent once granted. In other words, Govt. of India supported the plea of Kazi Lehndum Dorji, the petitioner therein. After consideration of the entire issue, Hon'ble Supreme Court allowed the writ petition holding that the notification withdrawing the consent would operate prospectively and not apply to cases which were pending, thus permitting the CBI to file its report under section 173 CrPC on the basis of investigation conducted by it. It appears that the facts of instant care are on different footing. Firstly, section 6 notification issued in Dorji's case (supra) was in respect of class of cases extending jurisdiction of CBI in respect of certain offences all over the State of Sikkim. In view of vesting of this power in CBI, it registered FIRs on its own under the Prevention of Corruption Act against a former Chief Minister. This was by virtue of the amplitude of the general notifications issued under section 6 empowering the CBI to investigate certain offences in relation to crimes under IPC, Prevention of Corruption Act and some other enactments committed anywhere in State of Sikkim. These notifications were issued during the period from 1976 to 1984. In the instant case, however, FIRs were registered by the State police prior to the notification(s) handing over the investigation of specific FIRs to CBI. In other words, consent was accorded only in respect of investigation pertaining to FIRs, detail of which is as under:- i) FIR No.63 dated 2.6.2015 u/s 295-A, 380 IPC PS Baja Khana. ii) FIR No.117 dated

25.9.2015 u/s 295-A IPC PS Baja Khana. iii) FIR No.128 dated 12.10.2015 u/s 295, 120-B IPC PS Baja Khana.

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On the other hand in Dorji's case, it appears the investigation was nearing culmination. For this reason, Hon'ble the Supreme Court permitted CBI to file its report under section 173 CrPC. It needs to be emphasized that in Dorji's case, FIRs were registered by the CBI suo motu by virtue of general power vested in it by various notifications. Relevant para of said judgment is as under:- "16. Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. [See : Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union, 1953 SCR 439, at pages 447-448]. Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned Notification dated January 7, 1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by C.B.I. prior to withdrawal of consent under the impugned Notification dated January 7, 1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the C.B.I. was competent to complete the investigation in the cases registered by it against respondent No. 4 and other persons and submit the report under Section 173 Criminal Procedure Code in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act."

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In the instant case, as FIRs had already been registered by the State police and notifications issued in the year 2015 did not give a general power to the CBI to register cases apart from the FIRs specified in the notifications, the question of prospective operation of notification withdrawing consent would not arise. A clear distinction can be drawn in this regard vis-à-vis the notifications issued in Dorji's case. In the instant case, consent of State of Punjab was in respect of specific FIRs and in fact amounted to transfer of investigation from one investigating agency to another. Present is not a case where this Court has been called upon to test a situation where State has granted consent to CBI to register cases on its own in respect of a class of offences. On the other hand, the notification withdrawing the consent is pursuant to resolution passed by the Vidhan Sabha which in clear terms states that the investigation of cases given to CBI needed to be taken back. Besides, during the course of hearing, this Court called for the case diary of the CBI and perused the same. It was evident that investigation in the cases had hardly made any headway. From the judgment in Dorji's case, however, it appears that the investigation was nearing culmination as CBI was permitted to file its final report under section 173 CrPC. Even during the course of hearing of said case, Govt. of India took a specific stand that withdrawal of investigation had seriously affected the case as CBI was unable to file its report under section 173 CrPC. It is evident that the CBI had already reached a conclusion that the accused therein had acquired assets disproportionate to their known sources of income and that they had by corrupt means and abusing their position, caused pecuniary advantage to private parties and loss to the State exchequer.

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In view of the observations made above, this Court does not find any infirmity with the decision taken by Punjab Govt. to withdraw the consent under section 6 of the Act pursuant to resolution of the Vidhan Sabha. In the instant case, the CBI did not seriously oppose

the withdrawal of consent. Even in its reply, it meekly stated that the matter was under investigation and did not question the validity of notifications withdrawing the consent for investigation by it. On the other hand, it forwarded the notifications to Government of India for further necessary action. Para 4 and prayer clause of the reply read as under:- "4. That the Govt. of Punjab, vide another Notification No. 7/521/2013-2H4/4901 dated 06.09.2018 had also withdrawn its consent for the investigation of above mentioned 03 cases. The copy of said notification was sent to the Under Secretary, Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, New Delhi for further necessary action. That in view of the submission made in the foregoing paragraphs, it is submitted that appropriate directions/orders as deemed appropriate by this Hon'ble Court may kindly be passed." On a specific query being put to CBI counsel about the status of investigations despite lapse of almost three years, no clear answer was forthcoming. None of the learned counsel referred to any judgment in order to show that there was any fetter on power of State Govt. to withdraw consent in such cases where investigation was transferred from State police to CBI. Besides, due to withdrawal of consent, investigation would continue with one investigation agency and not partially with two separate agencies. The chain of events shows that same are inextricably linked, thus this court does not feel the necessity to interfere in the decision of the State Govt. to withdraw investigation from CBI or to set-aside consequent notifications. In the eventuality, investigation had proceeded in right earnest, probably need for setting up of separate Commission would not have arisen. It cannot be lost sight of that incidents of sacrilege and violence were primarily criminal offences, for probing into which right course of action would be investigation by an expert agency and not a roving enquiry by a Commission. The machinery which is at command of the investigating agency can only unravel the modus operandi and conspiracy, if any, behind such

> *crimes. Any Commission would be seriously handicapped despite the powers vested in it by 1952 Act. It need not be over emphasized that once an FIR is registered, all powers vested in the investigating agency to summon, arrest, interrogate and use other forensic methods to arrive at correct conclusion, come into operation. The FIRs in the instant case were registered without much delay. Thus it was expected of the investigating agencies to proceed with required promptitude obviating the necessity of setting up a Commission for the purpose. Inordinate delay in conducting the investigation results in apprehension in the minds of general public and unnecessary politicization of the issues. As held in Abdul Rehman Antulay's case (supra) it is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible, as Article 21 encompasses right to speedy investigation and trial and same is in public interest."*

Relying on the same, it is contended that the judgment in the matter of ***Kazi Lhendup Dorji's case(supra)*** and others have already been considered by this Court and have been distinguished after observing that the said judgment would not be applicable to the facts of the present case. It was noted that the CBI was nearing completion in the said case of ***Kazi Lhendup Dorji's case(supra)*** and was hence permitted to file a final report under Section 173 Cr.P.C. whereas in the present case, no investigation had been conducted by the Central Bureau of Investigation. A specific query was posed by the Court to the counsel representing the Central Bureau of Investigation over the period of three years and there was no answer given then. The said factual aspect noticed by this Court at the time of passing of the said judgment, cannot be ignored. It is argued that once a single Notification had been issued for withdrawal of the entrustment of cases to the CBI and the said Notification has already been upheld, there is no occasion or reason for revisiting the said proposition as it would amount to a review of a judgment,

which has already attained finality, by a Bench of an equal strength. Judicial discipline warrants that every accused/suspect remains bound by the proposition of law as upheld, notwithstanding as to who raised challenge to the same and that each accused cannot be granted permission to re-agitate the same issue by way of separate writ petitions as any such attempt can be viewed to be an attempt at 'forum shopping'. It is also submitted that such attempt would have an effect of diluting finality of a judgment on the issue giving opportunity to a mischievous litigant to take advantage thereof. He contends that against the said judgment dated 25.01.2019, 2 LPAs i.e. LPA No.329 of 2019, titled as ***Charanjit Singh and another Versus State of Punjab and others*** and LPA No.692 of 2019 titled as ***Inspector Pardeep Singh Versus State of Punjab and others*** by the Central Bureau of Investigation were filed. The Division Bench of this Court dismissed the said appeals as not being maintainable since the jurisdiction exercised by the Single Bench was largely a criminal jurisdiction. A review petition was thereafter preferred in the said case by referring to the judgments in the matter of ***Gurbir Singh's case(supra)*** as well as ***K. Chandrasekhar's case (supra)*** and that the said review petition was also dismissed after noticing that the applicant was not a party and he could not seek recall or review of the order passed by the Court in light of Section 362 Cr.P.C. and the applicant not being a party could not be permitted to seek re-hearing of the case on merits and that in the event he had any independent cause of action, he could always avail an appropriate remedy. It was reiterated that the Court had recorded a finding that the Central Bureau of Investigation had not made any head-way and the records of the FIR had been perused and CBI was noticed to have merely forwarded the Notification issued by the Government. He further contends that the respondent-CBI had preferred a Special Leave Petition

against the said judgment before the Hon'ble Supreme Court and the said SLP was also dismissed. The judgment has hence attained finality.

He also submits that even though question of law had been kept open, however, the said question of law cannot be re-examined by the High Court and the said question is left open only for Hon'ble the Supreme Court. In support of his above argument, he has placed reliance on the judgment of the Gujarat High Court, titled as **Commissioner of Income Tax-I Versus ITEGRA Engineering India Limited,** reported as **2013 SCC Online Guj. 7389**. The relevant extract of the said judgment reads thus:-

> *"[10] Now so far as the submission made by learned counsel appearing on behalf of the revenue that though against the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra), as such, Special Leave to Appeal was preferred before the Hon'ble Supreme Court and the same came to be dismissed by the Hon'ble Supreme Court on the ground of delay and kept the question of law open, this Court may consider the question of law raised on merits is concerned, the same cannot be accepted. It is required to be noted that as such, consideration of the question raised with respect to set off of unabsorbed depreciation on merits, there is a direct decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra). Against the said decision, the Special Leave to Appeal was preferred and the same came to be dismissed on the ground of delay and the Hon'ble Supreme Court kept the question of law open. Therefore, it can not be said that the said question of law is kept open by the Hon'ble Supreme Court to consider subsequently by this Court Coordinate Bench. It can be said that the said question of law is kept open by the Hon'ble Supreme Court to consider subsequently in other cases by the Hon'ble Supreme Court, So far as this Court is concerned, the*

decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra) is binding unless a contrary view is taken and the matter is referred to the Larger Bench. In view of the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra) which has been relied upon by the learned ITAT while passing the impugned judgment and order, as such, no question of law much less any substantial question of law arises now."

Reference is also made to the judgment of the Gujarat High Court in the matter of ***Hemal Ishwarbhai Patel Versus Veer Narmad South Gujarat University and others, 2016 SCC Online Guj 10037***. The relevant extract thereof reads thus:-

"18. *The bone of contention turned out was that when the Supreme Court did not interfere, but kept the question of law open, whether it was permissible for this Court to take a different view. It was attempted to contend by learned advocate for the University in a naive way that the Supreme Court had not dismissed the SLP, but used the words 'not inclined to interfere'. One fails to fathom, what differentiation learned advocate wanted to establish thereby. It was harped that becuase of clarification by the Supreme Court about keeping the question of law open, this Court can take differfent view and may take a departure in light of facts of the present case.*

19. *It was in futility that learned counsel for the University relied on these decisions-in (M/s) Avanti Organization Vs Competent Authority and Additoinal Collector, Urban Land Ceiling, Rajkot [1989 (1) GLH 400], in Patel Forum Jitendrabhai Vs State of Gujarat being Letters Patent Appeal No.1309 of 2015 decided on 23rd March, 2016, in The Saurashtra University thorugh Registrar Vs Gautambhai Nareshbai Chaudhari being Letters Patent Appeal No.1351 of 2012 decided on 27th August, 2013 and in B.S. Manjunath Vs V.Kannan [2014 (3) KantLJ 198]. Another decision in*

Gujarat Secondary Education Board Vs Mihir Satishbhai Padmani in Letters Patent Appeal No.646 of 2016 was pressed into service with misconception about its application as the facts therein were totally different and could in no way support the respondent in his contention that a view different than the Supreme Court has taken in SLP in Siddharth Ashvinbhai Parekh (supra) could be taken.

20. *The question as to the precedential effect of the observation and clarification of the Supreme Court when it in its order provides that though the Special Leave Petition is dismissed but question of law is kept open, was considered by the binding Division Bench judgment of this Court in Collector Vs Liquidator-Petrofills Cooperative Limited being Miscellaneous Civil Application (For Review) No.1412 of 2015 decided on 23rd October, 2015.*

21. *A clear answer is provided from the discussion from paragraph 26 to 28, reproduced hereinbelow.*

"The question therefore is, in the present case was the SLP dismissed by citing reasons or was a simplicitor order of dismissal. We have reproduced the order of SLP in the earlier portion of this judgment. The order records that on facts of this case, the Court was not inclined to exercise jurisdiction under Article 136 of the Constitution of India. While therefore, dismissing the SLP the Court proceeded to observe However, the question of law is kept open. In our understanding neither the expression that on the facts of the case, the Court was not inclined to exercise jurisdiction under Article 136 or that the question of law is kept open, would indicate the reasons for not entertaining the SLP. As has been observed in case of Kunhayammed and others v. State of Kerala and another [(2000) 6 Supreme Court Cases 359] and Gangadhara Palo v. Revenue Divisional Officer and another [(2011) 4 Supreme Court Cases 602], SLP can be dismissed for variety of grounds, could be on the ground of delay, latches, equity or simply because the Supreme Court thinks in a given set of facts, it is not appropriate to exercise discretionary power to entertain the SLP. The thrust of the order was that the Court

was not inclined to exercise jurisdiction under Article 136 of the Constitution. Mere expression of disinclination coined in a slightly different phraseology does not amount to giving reasons." (Para 26)

22. *The Division Bench next stated,*

"Further the expression question of law is kept open would only guard against any future contention that the Supreme Court had confirmed the ratio of the judgement under challenge whereby either giving rise to a possible contention of merger or that even in future cases, Supreme Court would be precluded from considering such an issue in better facts." (Para 26)

23. *It was elaborated and explained,*

"When the Supreme Court records that the question of law is kept open, undoubtedly it is meant to be reconsidered in future by the Supreme Court only. The question of law, as correctly contended by Shri P. Chidambaram, is not kept open for the High Court. This is precisely what was held and observed by the Division Bench of this Court in an unreported decision in Tax Appeal No. 380/2013 dated 9/12/2013. We are in full agreement with the view expressed therein. It was a case where an issue of unabsorbed depreciation under section 32(2) of the Income Tax Act, 1961, was raised by the Revenue before the High Court. An identical issue was already decided by the High Court in case of General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax reported in (2013) 354 ITR 244(Guj) by allowing the appeal of the assessee and setting aside the order of the Commissioner. The judgement of the High Court was carried in appeal before the Supreme Court. The Supreme Court dismissed the SLP making it clear that the question of law is kept open. When a similar question came up before the High Court in the Tax Appeal, the Revenue argued that when the Supreme Court has left the question of law open, it would be open for the High Court to reconsider the issue

regardless of the judgement of another Division Bench in case of General Motors Pvt. Ltd.(supra). It was in this background, Division Bench made the following observations:

> *"(10) Now so far as the submission made by learned counsel appearing on behalf of the revenue that though against the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra), as such, Special Leave to Appeal was preferred before the Hon'ble Supreme Court and the same came to be dismissed by the Hon'ble Supreme Court on the ground of delay and kept the question of law open, this Court may consider the question of law raised on merits is concerned, the same cannot be accepted. It is required to be noted that as such, consideration of the question raised with respect to set off of unabsorbed depreciation on merits, there is a direct decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra). Against the said decision, the Special Leave to Appeal was preferred and the same came to be dismissed on the ground of delay and the Hon'ble Supreme Court kept the question of law open. Therefore, it can not be said that the said question of law is kept open by the Hon'ble Supreme Court to consider subsequently by this Court Coordinate Bench. It can be said that the said question of law is kept open by the Hon'ble Supreme Court to consider subsequently in other cases by the Hon'ble Supreme Court. So far as this Court is concerned, the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra) is binding unless a contrary view is taken and the matter is referred to the*

Larger Bench. In view of the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd Vs. Deputy Commissioner of Income Tax (supra) which has been relied upon by the learned ITAT while passing the impugned judgment and order, as such, no question of law much less any substantial question of law arises now."

24. *The Division Bench ruled about correct legal position thus,*

"We are in full agreement with the view so expressed and in our understanding brings about a correct legal position. When a question of law is kept open by the Supreme Court not entertaining a SLP against the judgement of the High Court, in fact, what is done is neither to confirm nor to dilute the ratio of the judgement under challenge. That however, does not mean that the High Court in a future case is allowed to take a fresh view ignoring the law of precedence. It only means that the Supreme Court refused to bind itself or put its seal on the ratio propounded by the High Court in the judgement under challenge. Therefore, when an identical question comes up before the same High Court and is presented for consideration before a Bench of coordinate strength, by virtue of principles of law of precedence, the Bench would be bound by the ratio of the earlier judgement of the High Court, unless persuaded to refer it to a larger Bench. This is precisely what has been recorded by the Division Bench in the said case and this is why the Bench was of the opinion that it had either to follow the ratio in case of General Motors or make a reference to the larger Bench. This per-se however, would not mean that the review consideration is shut out, if the review is otherwise maintainable. Normally, in almost all the cases, the same Bench would be reconsidering the matter on the grounds raised in the review petition. If in the process, it is found that the proposition of law laid down suffers from some error

apparent on face of the record, review certainly would be available. In other words, if a decision has become final, it would continue to bind the Bench of coordinate strength of the same High Court in future though in SLP the Supreme Court it might have been observed that the question of law is kept open. But when a review petition comes before the same Bench, it is the judgement in review which is being criticised. It would have the same limitations as in any other case of review where SLP may not have been filed. Nothing more nothing less. In other words, the expression question of law is kept open does not put any additional fetters on the High Court exercising review powers." (Para 28)

25. *As recorded above, by comparing the facts on record, the theory that the present case offers different facts could hardly be countenanced. Nor the aspect of special feature of case hold good. As noticed from the comparison of facts of both the case, they were similar wherein both the students were proceeded in same way on similar nature of charge. The principle of 'no evidence' and the attended reasoning supplied by the Division Bench apply to the present case with equal force.*

26. *When the Apex Court does not entertain any Special Leave Petition while observing that it was keeping the question of law decided to be kept open, such question would be treated to have been left open for the Supreme Court only. As far as the High Court is concerned, it would be bound by the judgment not interfered with in the Special Leave Petition as per the law of precedence. In the subsequent case with similar facts and identical issue, the decision not interfered with by the Supreme Court would bind and the different view would be prohibited to be taken on the spacious ground that the question of law kept open, which was the liberty reserved by the Supreme Court for itself only. Therefore, in the instant case when Division Bench judgment in Siddharth Ashvinbhai Parekh (supra) was left untouched by the Supreme Court but the*

question of law was kept open, in the subsequent case considered by this Court where the facts were even otherwise found to be similar and the issue identical, this Court is bound by the decision in Siddharth Ashvinbhai Parekh (supra).”

It is further argued by the learned State Counsel that the accused/suspects made a subsequent attempt to impugn the proceedings, after submission of the final report by the SIT on 06.07.2020 under Section 173 Cr.P.C. in case FIR No.63 of 2015 registered at Police Station Bajakhana alongwith all consequential proceedings since production warrants of the petitioner(therein) had been sought. A CRM-M-19785 of 2020, titled as Sukhwinder Singh @ Sunny Versus State of Punjab and another was filed before the High Court which was also dismissed vide judgment dated 04.01.2021 by placing reliance on the order dated 25.01.2019 passed earlier in CWP No.23285 of 2018, titled as Charanjit Singh and others Versus State of Punjab and others. A contention raised by the petitioner(therein) was to the effect that he was not a party in the earlier filed writ petitions decided by this Court vide a common judgment and that he would thus have a right to file a fresh and independent petition on a renewed cause, this Court recorded that this Court had earlier ruled on the validity of the Notifications and upheld the same.

He further submits that even though the judgments of the Hon'ble Supreme Court in the matter of ***Gurbir Singh’s case(supra)*** as well as ***K. Chandrasekhar’s case case(supra)*** may not have been brought to the notice of the Bench hearing those petitions, however, the same would not make any difference as the proposition of law was duly considered and the judgment cannot be said *per incuriam.* It was held that the reasons for upholding of the

Notification dated 06.09.2018 cannot be re-opened or re-agitated in a challenge before a Co-ordinate Bench and that such judgment has to be challenged only in the appellate hierarchy. This Court cannot go again into the same issue of withdrawal of consent and that a submission of a closure report by the CBI on 04.07.2019 before the Special Judge, CBI would be inconsequential since the Notification withdrawing the cases had already been issued by the Govt. of Punjab on 06.09.2018. The Central Bureau of Investigation was thus bound to hand over all the case files pertaining to its investigation to the Punjab police and that it did not do so notwithstanding dismissal of the SLP filed by the Central Bureau of Investigation itself. The Central Bureau of Investigation thus had no further concern, right or entitlement to continue with its investigation and/or to file a final report under Section 173 Cr.P.C. It was also noticed that the counsel appearing on behalf of the State of Punjab had also made a statement that the SIT is willing to look into the evidence gathered by the CBI and to present a supplementary report after evaluation thereof. An order was passed to the effect that the closure report submitted by the Central Bureau of Investigation on 04.07.2019 ought to be discarded. He submits that even the said judgment in CRM-M-19785 of 2020 was a subject matter of challenge before the Hon'ble Supreme Court in Special Leave to Appeal(Criminal) No.1038 of 2021 which came up for hearing on 23.02.2021 and the same was dismissed. The order passed by this Court was upheld. He also argues that the issue of withdrawal of the Notification by the legislative assembly having been upheld twice by the High Court and the SLP dismissed on both the occasions, a third attempt to seek re-opening of the matter should not be entertained. He argues that the doctrine of *stare decisis* mandates that one has to stand by the decisions and not to disturb

what has been settled. The abovesaid doctrine "*stare decisis et non quieta movere*" holds that the things which have been often adjudged ought to rest in peace. The abovesaid doctrine, which originated in England, and is the basis of common law is also firmly routed in all leading jurisprudence. It is also important to further the need of fair and expeditious adjudication by eliminating the need to re-adjudicate every proposition in every case and is regarded as rule of policy which promotes predictability, certainty, uniformity and stability. Any earlier decision may, therefore, be over-ruled only if the Court comes to the conclusion that it is manifestly wrong and not upon a mere suggestion that if the matters were *res integra*, the members of the later Court may arrive at a different conclusion. The abovesaid doctrine of *stare decisis* does not mandate that the earlier decision or decisions of long standing should have considered and either accepted or rejected the particular argument which is advanced in the case in hand. It is sufficient for invoking the rule that a certain decision was arrived at on a question which arose or was argued, no matter on what reason/basis, the decision was arrived at by the Courts. It would be unnecessary to enquire or determine as to what was the rationale of the earlier decision.

It is also argued that so far as the merits of the investigation are concerned, the said argument and the discrepancies argued by the counsel for the petitioner cannot be gone into at this stage since the petitioner has not prayed for quashing of the FIR or the final report that has been filed. The prayer made in the present petition is only for seeking direction to ensure free and fair investigation without any malafides, malice and political inference and contending that the Notification dated 06.09.2018 withdrawing the consent in relation to sacrilege cases was *sans* the authority of law as interpreted by the Hon'ble Supreme Court

in the abovesaid judgments. It is contended that when the final report had already been filed on 06.07.2020 by the respondent-State, wherein the petitioner had been named as an accused, yet, he chose not to impugn the final report or seek quashing of the investigation as well as the final report against him, he cannot comment upon the legality, admissibility and validity of the evidence collected or its evidentiary value. The said aspect is only required to be gone into by the trial Court.

It is also argued that the petitioner has not levelled any allegation of malice, mischief or malafide against any individual and has not expressed any *bias* by any person against him. General and unsubstantiated submissions which are not corroborated by any cogent and convincing objective evidence cannot be the foundation of presumption of an institutional *bias.* No such person has been impleaded as a party by name and that there have been successive changes in the political dispensation and a State during this period and the petitioner cannot allege a *bias* by the entire State machinery and the investigating agencies with no basis to support the allegations.

ARGUMENTS BY THE CBI

Learned counsel for the respondent-Central Bureau of Investigation has, however, argued that the Central Bureau of Investigation had registered regular cases in pursuance of Section 5 of the Delhi Special Police Establishment Act, 1946 and the Notification dated 05.11.2015 issued by the Govt. of India as regards the Notification dated 02.11.2015 issued by the Govt. of Punjab transferring the said cases to the CBI. When the investigation was transferred to the Central Bureau of Investigation, there was no specific hint or lead about the offender and there were various theories propounded regarding the suspects in the

case. Extensive, scientific and factual information was carried out by the Central Bureau of Investigation before arriving at the conclusions drawn in the closure report filed before the Special Judicial Magistrate, CBI, SAS Nagar, Mohali on 04.07.2019. The details of the investigation conducted by the CBI have already been extracted above and that it was wrong that no investigation has been conducted by the CBI for the prolonged period of three years during 02.11.2015 to 06.09.2018. The proceedings undertaken by the CBI are annotated as under:-

> *". In May 2016, an award of Rs.10 lakh was announced by CBI for giving any lead in the investigation.*
>
> - *On 04.10.2016 Forensic Psychological Assessment of 18-persons disclosed they were not hiding information.*
> - *On 15.09.2016 Fingerprint Examination Report revealed that no fingerprint could be developed from the posters pasted in Bargari, prints compared to the specimen could not be matched.*
> - *On 29.06.2017 in Fingerprint Examination Report it is revealed that fingerprints found on posters does not match the specimen.*
> - *In the Polygraph Examination Report-26.12.2017, Gora Singh, Swranjit Kaur, Gurmukh Singh, Jaswinder Singh and Amandeep Singh were found truthful in their answers.*
> - *Punjab Police gave information to CBI that Mahinderpal had disclosed about conspiracy in act of sacrilege.*
> - *Mahinderpal @ Bittu, Sukhjinder and Shakti Singh stated that the confession given to the Punjab Police was coerced.*
> - *The Polygraph Examination Report-24.08.2018 shows that Mahinderpal @ Bittu, Sukhjinder and Shakti Singh were found truthful in their answers.*
> - *Fingerprint Examination Report-28.08.2018-shows that fingerprints of 10 person claimed by Punjab Police which*

included Mahinderpal @ Bittu, Sukhjinder and Shakti Singh did not match.

- *The Handwriting Examination did not match with the 10 persons claimed by Punjab Police to be involved.*
- *The Layered Voice Analysis Report-31.08.2018-shows no deception in voice of Mahinderpal @ Bittu, Sukhjinder and Shakti Singh denying their involvement in crime.*
- *The dump date of mobile towers where the acts took place was collected and all the mobile phones in the vicinity were traced but nothing incriminating was found.*
- *CDR of mobile number of connected persons were collected but nothing useful came out.*
- *The Alto Car No.PB-30-R-6480 allegedly used in theft of Guru Granth Sahib was registered with the RTO Faridkot on 14.10.2016 prior to that it was registered under No.DL-3CH-1517."*

He further argues that the position in law is settled by the Hon'ble Supreme Court specifically to the effect that once a regular case has been registered by the CBI and it has commenced investigation, only the CBI is competent to submit a final report under Section 173 Cr.P.C. and no other investigating agency can usurp to itself the said power. He also refers to the judgment in the matter of ***Kunhayammed and others Versus State of Kerala and another, 2000(6) Supreme Court Cases 359*** while dealing with the aspect as to the impact of keeping a question of law open. The relevant paragraphs thereof are extracted as under:-

> ***"12.*** *The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by inferior Court, tribunal or authority was subjected to a*

remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

xx xx xx xx

27. *A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the Courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the Court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the apex Court of the country. No*

> *Court or tribunal or parties would have the liberty of taking of canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court."*

Referring to paragraph 27, he contends that leaving of a question of law open, while dismissing the Special Leave Petition, leaves it open to said High Court as well. Once, the Hon'ble Supreme Court does not exercise its discretionary jurisdiction, the doctrine of "merger" would not get attracted and cannot be construed as a declaration of law. Such dismissal of SLP can only be construed that the Hon'ble Supreme Court did not deem it fit and appropriate for grant of leave. The same cannot be construed that an argument could be advanced in the High Court that the Hon'ble Supreme Court has to be understood as not to have differed in law with the High Court. Hence, a mere dismissal of the SLP is not a ratification of position in law and that the High Court is at liberty to examine the said position in law on an issue brought before it whether in the same case or in any other case. He illustrates the same by the example that if instead of another accused (petitioner-Sant Gurmeet Ram Rahim Singh) would have preferred any petition against any similar case of withdrawal of transferred investigation by a

State Government, the abovesaid judgment could not be deemed to be a binding judgment on a legal principle and that if the legal principle could have been reopened on a distinct independent case, the same legal principle would also apply to the case filed by any other co-accused.

REBUTTAL ARGUMENT BY THE PETITIONER

Rebutting the above arguments by the State of Punjab, counsel for the petitioner contends that the principles of *per incuriam* or *stare decisis* would not be applicable in the present case and that the argument is being advanced on the strength of the principles of *sub silentio.* While *stare decisis* gives enforceability to a settled judgment, the principles of *sub silentio g*et attracted when a particular point of law involved in the decision is not perceived by the Court. Hence, a mere reference, which is not coupled with making a particular point of the matter in question, would be deemed to be in silence and are open to reconsideration in any other case. She contends that even though the doctrine of precedent (*stare decisis)* occupies an important position in the organization of judicial system but the same has no precedential value when the same has been applied without any consideration to the applicable law or an argument. The precedents that are passed *sub silentio* are of little or no authority and that it is well-recognized as an exception to the doctrine of precedents. She contends that the issue as regards the power of the Central Bureau of Investigation to furnish the final report, as per the settled law, was neither involved nor agitated or under adjudication before this Court in the earlier litigation and that when the validity of the final report came under challenge in CRM-M-19785-2020, this Court did not venture into the same and held that the petition was not maintainable since the issue had already been decided. She contends that any further comment on merit,

once the petition has been held to be not maintainable, is required to be ignored in law as well. Thus, at none of the two available opportunities, this Court examined the scope of the powers vested in the Central Bureau of Investigation to submit a final report in a matter transferred to it. She has further made a reference to a subsequent judgment passed by this Court in the matter of ***Gurdeep Singh Versus State of Punjab and others*** in CWP No.17459 of 2019, decided on 09.04.2021. It is contended that quashing of the FIRs in the firing incidents was a subject matter of challenge in the abovesaid writ petition. A plea of maintainability, in light of the judgment rendered by this Court in CWP-23285 of 2018 decided on 25.01.2019, was considered and upon consideration of the said argument, this Court over-ruled the objection of maintainability by holding that the issue pertained to the jurisdiction of a Court and as to whether such jurisdiction or discretion should be exercised by it or not. It was held that the question of maintainability cannot be taken as a convenient means of avoiding consideration or adjudication of a grievance of an accused person and held that the decision in CRM-M-19785 of 2020 cannot be said to be a binding precedent as the said Bench had followed the judgment rendered in CWP-23285 of 2018 and the same can thus be construed only as a decision on the *lis.* The abovesaid judgment in CRM-M-19785 of 2020 was held to be *per incuriam* and proceeded to examine the legitimacy of the resolution and proceeded to observe that the legislature had no power to issue direction to the executive to take a particular decision in a particular manner in day-to-day administration and particularly regarding the interference in the process or modalities of investigation for crime. Acceptance of such an argument of the State would go against the very basic concept of separation of powers which has been declared as a basic structure of the

Constitution of India. The State executive had earlier taken a voluntary decision of referring the investigation to the CBI but it was later merely following the resolution of Vidhan Sabha dated 28.08.2018 and hence, the withdrawal of investigation from the CBI cannot be upheld merely because such a decision is based on a resolution passed by the Vidhan Sabha. The State proceeded to withdraw the investigation by citing delay in completion of investigation by the CBI and bereft of analysing the scope of statutory provisions vis-a-vis the power of the State Government to cancel the consent already granted to the CBI investigation in a particular case and after the Government had already issued the statutory Notification notifying the CBI to be the competent investigating agency. The judgments passed in CWP No.23285 of 2018 as well as in CRM-M-19785 of 2020 have thus held by this Court to be of no precedential value on any of the law point dealt with in the said judgment and it was also observed that even though the Hon'ble Supreme Court may have dismissed the SLP filed by the CBI, however, since the law point has been kept open the precedential value of the said judgment diminishes even further. The operative part of the said judgment reads thus:-

> ***"43.*** *The very first argument of the counsel for the State is qua the maintainability of the present petitions and continuation thereof by raising the plea that accused has no right to choose the investigation agency. Relying upon the judgment of a Coordinate Bench of this Court rendered in CWP No. 23285 of 2018 decided on 25.1.2019, the counsel has submitted that this has been so held by the said Coordinate Bench of this Court in the above said judgment; which relates to this bunch of FIRs only; and the prayer for transfer of investigation to CBI has already been declined vide the above said judgment. In view of the arguments of the Counsel for the petitioner*

that the said judgment of coordinate bench is not relevant for the purpose of the present case because the present petitions have emerged only after the expectation expressed by that bench in that judgment were belied by the respondent, this court intended not to delve deep into that judgment. However, the counsel for respondents-state reiterated the said judgment to be binding upon this court submitting that everything has already been settled by that judgment. Since after carefully reading the said judgment, this Court had expressed some reservations qua the value of the said judgment as a valid precedent, therefore, the counsel for the State was requested to be specific whether he was relying upon the said judgment as a 'precedent' or as a final decision of a lis between the parties regarding the issues decided in that case. In response, the counsel for the State has submitted that he was relying upon the said judgment on both the counts. Counsel for the State has submitted that the said judgment dealt with FIR No. 129 dated 7.8.2018, registered at Police Station City Kotkapura, which is also the subject matter of the present petition, and has specifically upheld the withdrawal of investigation by the state from CBI. After considering the matter, the said bench has also declined the prayer for reference of the investigation to the CBI in some other cases relating to the sacrilege and similar violence. It has been also held in that case that the accused does not have a right of choosing an investigation agency or an investigation officer. Moreover, the said judgment has become final after challenge right upto the Supreme Court. Further submission of counsel for the State in this regard is that the said judgment has already been followed by another Coordinate Bench of this Court (Brother Justice Amol Rattan Singh) while delivering the judgment on 4.1.2021 in CRM-M No.19785 of 2020. Hence, the judgment is binding upon this Court as a precedent also. In view of the reiterating arguments of the counsel for the state-respondent; this court is constrained to consider the issue of the said judgment being a valid precedent as well. When questioned about reliance in the said

judgment upon resolution of Vidhan Sabha; and consequent notification by state only on the basis of that resolution without any further application of mind, the counsel for the State has submitted that the said judgment has rightly relied upon the resolution passed by the State Legislative Assembly to uphold the withdrawal of the investigation from the CBI. The matter was put-up before the Vidhan Sabha with the report of the second Inquiry Commission along with action taken report and therefore, the Legislature was competent to have discussions on the report of the Commission and to pass the resolution.

xx xx xx xx

49. *Hence, it is clear that even the subsequent Coordinate Bench; while deciding the above said CRM-M No. 19785 of 2020; has expressed itself to consider the judgment by earlier Coordinate Bench in CWP No. 23285 of 2018 to be* ***per incurium****, though followed the same as a decision on a lis involved in that writ petition.*

50. *Regarding reliance by the coordinate bench on resolution of Vidhan Sabha to uphold the decision to withdraw the investigation from CBI, although counsel for the State emphasized that the Legislature was considering the report of the second Inquiry Commission along with action taken report of the Government; and thus was within its authority to pass a resolution as conclusion of discussion, however, counsel could not take his argument any further than saying so. He could not proceed further to say that the Legislature has power to issue direction to the Executive to take a particular decision in a particular manner in day to day administration; and particularly regarding the interference in the process or modality of investigation of a crime. Acceptance of this argument of the state goes against the very basic Constitutional concept of "Separation of Powers"; which has been declared a basic feature of the Constitution of India. The counsel for the state has failed to cite any express provision from the Constitution of India which might have conferred any such powers on the State Legislative*

Assembly. Needless to say, that when the state executive had taken a voluntary decision in this regard in the first instance by applying its own mind, it had referred the investigation to the CBI on 24.08.2018.

However, subsequently; only by following the resolution of Vidhan Sabha dated 28.08.2018 which was passed in quick succession just after 4 days; and specifically citing the said resolution as the reason; the earlier decision was reversed and the notifications dated 06.09.2018 to withdraw the investigation from CBI were issued by the state executive. The resolution of Vidhan Sabha would not attach any extra sanctity or significance to such an executive decision nor shall any such resolution of Vidhan Sabha take the decision of executive out from the purview of Judicial Review. Such a decision has to be tested independently and cannot be upheld merely because it is based upon resolution of Vidhan Sabha. While testing the validity of the state action independently and vis-a-vis the statutory provisions, the issue seems to have been dealt with keeping in view the expediency; by citing delay in completion of investigation by CBI; and not by analyzing the scope of statutory provisions vis-à-vis the power of the State Govt. to cancel the consent already granted to the CBI investigation in a particular case, after the Union Government had already issued the statutory notification notifying the CBI to be the competent investigating agency. Even the issue of prospectively seems to have been interpreted inversely. Hence, while having all reverence qua the majesty of the judgment as a decision on the lis between the parties and qua the FIRs involved in that writ petition, this court finds itself unable to follow the same as a 'precedent' on any of the law point dealt with in that judgment."

She thus argues that the precedential value of the said judgments has already been adversely commented upon by this Court and it was ruled that the Vidhan Sabha does not have the authority to exercise executive powers and that it

cannot issue a mandate to the executive to steer investigation and/or skip between various investigating agencies.

CONSIDERATION

I have heard learned counsel for the respective parties and have gone through the relevant documents appended along with the writ petition.

It is evident from a perusal of the facts noticed above that the Hon'ble Supreme Court has repeatedly held that once an investigation has been entrusted to the CBI and it has registered a regular case thereon, the final report is to be filed by the Central Bureau of Investigation only. It is apparent that even though the matter in the matter of ***Kazi Lhendup Dorji's case(supra)*** was noticed by the Single Judge, however, the same was distinguished on a factual aspect and the issue as regards the entitlement of any other agency to investigate and submit a final report in the matter has not been dealt with. The judgments in the matters of ***Gurbir Singh and K. Chandrasekhar's cases(supra)***, were not brought to the notice of the Court at that stage and were brought up for consideration only at the time of the review. However, the review was dismissed on the ground of maintainability since a person other than the original petitioner had preferred the review petition.

It is also seen that the point of distinction, relied upon by the Single Judge in his judgment dated 25.01.2019 passed in CWP-23285 of 2019, was on a basis that no investigation had been conducted by the Central Bureau of Investigation till that time. The said fact however stands rebutted as per the response filed by the Central Bureau of Investigation and notably extracted in the precedent paras, which indicate that there was a substantive scientific fact finding

investigation conducted by the Central Bureau of Investigation and that a closure report was recommended by the Central Bureau of Investigation soon thereafter.

A prime question which arises for consideration of this Court is whether there is a finality of a judgment giving rise to the principle of *stare-decisis* or that the principle of *sub-silentio*, if not '*per incurium',* would be attracted to the facts of the present case.

A decision passes *sub-silentio* when a particular point of law involved in it is not perceived by the Court or is present to its mind and a *lis* is decided on certain other aspects or factors. On a *prima-facie* test, there is a reference to the judgment of the Hon'ble Supreme Court and a distinction is drawn but the rationality of the point of law and its applicability are ordinarily required to be examined before a decision can be said to be binding.

Use of '*sub-silentio'* as an exception to doctrine of precedents is recognized as a valid principle. The decision has not proceeded on the issue or consideration of the relevant statutory provisions or the legal issue. The said issue was neither framed nor can it be presumed to have been answered, instead of any indirect reference to the same. A binding precedential value to a judgment can be attached only when the judgment deals with the said issue and makes a pronouncement. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in the matter of ***State of U.P Versus Jeet S. Bisht,*** reported as ***(2007) 6 SCC 586***. The relevant extract thereof reads thus-

> *"18. No doubt in the aforesaid decision various direction have been given by this Court but in our opinion that was done without any discussion as to whether such directions can validly be given by the Court at all. The decision therefore passed sub silentio. The meaning of a judgment sub silentio has been explained by this Court in*

Municipal Corporation of Delhi Vs. Gurnam Kaur (1989) 1 SCC 101 [LQ/SC/1988/456] (vide paras 11 and 12) as follows:-

> *"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.*
>
> *In General v. Worth of Paris Ltd. (k) (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimants debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided without argument, without reference to the crucial words of the rule, and without any citation of authority, it was not binding and would not be followed. Precedents sub silentio and*

> *without argument are of no moment. This rule has ever since been followed.*
>
> *xx xx xx xx*
>
> *21. It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent.*
>
> *22. In Municipal Committee, Amritsar vs. Hazara Singh, AIR 1975 SC 1087 [LQ/SC/1975/92] , the Supreme Court observed that only a statement of law in a decision is binding. In State of Punjab vs. Baldev Singh, 1999 (6) SCC 172, this Court observed that everything in a decision is not a precedent. In Delhi Administration vs. Manoharlal, AIR 2002 SC 3088 [LQ/SC/2002/886] , the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In Divisional Controller, KSRTC vs. Mahadeva Shetty 2003 (7) SCC 197 [LQ/SC/2003/730] , this Court observed as follows:*
>
> > *..The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle, upon which the case was decided".*

The judgment dated 25.01.2019 *prima facie* does not seem to satisfy the underlying tests before a judgment may be held as a binding precedent. There would be no difficulty to test the judgment of single Judge if the issue brought before this Court would have been wholly unrelated. However, the petitioner (herein) is an accused in the same case and aggrieved of the same Notification.

Hence, to certain extent, it may not be appropriate for a Bench of co-equal strength to completely disregard the same as well.

Still further, a subsequent judgment of this Court, in the matter of ***Gurdeep Singh's case(supra)***, by a Single Judge, observed that the judgment passed earlier(i.e. CWP No.23285 of 2018 and CRM-M-19785 of 2020) do not have any precedential value and should only be considered as a *lis* decided. The said judgment has not been set aside so far. As such, the argument of the State about the precedential value of the earlier judgment and their enforceability on the principle of *stare decisis* becomes questionable. A deviation from the settled legal position, in a solitary judgment, may not be sufficient to attract a precedential value, solely on the strength of the doctrine of *stare decisis,* more so when a binding legal precedent may have not been under consideration of the said Court.

At the same time, an additional issue also arises for consideration of this Court, though not raised, as to whether the State Legislature could exercise the executive power and steer the executive to act in a particular manner and that too in matters pertaining to investigation of criminal cases. Chapter II of the Constitution of India deals with The Executive and its extent is prescribed under Article 162. State legislature, on the other hand, is dealt under Chapter III of the Constitution of India.

The doctrine of separation of powers is recognized as a basic structure of the Constitution of India and the State legislative has to legislate on the subjects under its frame. The doctrine mandates that same person should not form more than one organ of the State and should not exercise the function of other organ of the State. While passing a resolution, by the Legislative Assembly,

it has to be seen as to whether the same is within the competence of the State legislature as per the power conferred upon it by the Constitution.

An assembly route can not be adopted to do what the competent authority under Constitution cannot do and be permitted to be devised as a means to over-reach law and the boundaries of Constitutional bodies. Even though power may appear tempting but its exercise has to be shouldered with rationality and not as a means of an aggression reflecting constitutional over-reach. While legislative may discuss an issue, highlight deficiencies, condemn certain aspects, it does not become the executive and take decision for the executive as well.

Needless to mention that such authority to change the investigating agencies has often been deprecated in numerous precedents and even the constitutional courts are called upon not to steer the investigation.

In the instant case, the notification withdrawing the investigation merely refers to the resolution passed by the Vidhan Sabha and does not reflect any decision making or consideration on the part of the competent Authority. Apparently, there was no material available even before the State Legislative Assembly on the basis whereof the Legislative Assembly could be stated to be well-equipped to comment on the stage and the quality of investigation conducted by the Central Bureau of Investigation. The separation of powers, which is also a basic structure of Constitution of India, prohibits over-reach of authority by any of the wings of the State into the territories demarcated for the others to exercise.

It is also noticed that while the State relies on the binding value to the earlier decisions rendered in CWP No.23285 of 2018 dated 25.01.2019 as well as CRM-M-19785 of 2020 decided on 04.01.2021, the later judgment by a single Bench, in the matter of ***Gurdeep Singh's case(supra)*** dilates on the same and

dilutes the precedential value thereof. At the same time, the legal implication and effect with respect to a "question of law kept open" also needs to be examined and answered.

Since there is a divergence of opinion as regards the validity and sanctity of the Notification as well as the enforceability of the resolution passed by the Punjab Vidhan Sabha to withdraw the investigation from the CBI by two different single Benches of this Court alongwith certain ancillary issues that emanate from the divergent views, I am of the view that it may not be appropriate for a single Bench to test the veracity of the decision(s) passed earlier by single Benches of this Court. Therefore, the Registry is directed to put up the reference on the questions raised herein-after-below before Hon'ble the Acting Chief Justice to constitute an appropriate larger Bench, as his Lordship thinks fit, to answer the questions formulated below:-

i) Whether the Legislative Assembly of a State is competent to issue directions to the State Executive, by passing a resolution, for carrying out investigation in a criminal case through or by any specific agency and as to whether exercise of such a jurisdiction would amount to steering of an investigation?

ii) Whether it is open to the High Court to re-examine the question of law kept open by the Hon'ble Supreme Court, while dismissing a Special Leave Petition, in a subsequent petition instituted by another accused before the High Court ?

iii) Whether the State is competent and empowered to withdraw its Notification transferring investigation to the CBI, after registration of

a regular case by the CBI or whether final report in such registered cases can only be submitted by the Central Bureau of Investigation?

iv) Whether principle of '*sub-silentio'* would be applicable when the Notification of withdrawal has been upheld by this Court, in another petition filed by other accused, aggrieved of same Notification or whether it operates as a binding precedent for all accused?

Since the aforesaid issues are being referred for consideration by a larger Bench, it is deemed appropriate to issue an *interim* direction, to balance the equities. Hence, further proceedings before the trial Court against the petitioner (herein), in the abovesaid sacrilege cases, in FIRs No.63, 117 and 128 of 2015 registered at Police Station Bajakhana, Faridkot, shall remain stayed till further orders.

March 11, 2024 **(VINOD S. BHARDWAJ)**
seema **JUDGE**