

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF NOVEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.4319 OF 2020

C/W

CRIMINAL PETITION NO.5014 OF 2020

CRIMINAL PETITION NO.5495 OF 2020

IN CRIMINAL PETITION NO.4319 OF 2020

BETWEEN:

SRI PRONAB MOHANTY
AGED 75 YEARS
INSPECTOR GENERAL OF POLICE
LOKAYUKTA
BANGALORE-560001

...PETITIONER

(BY SRI:B.V. ACHARYA, SENIOR ADVOCATE FOR
Ms: IRFANA NAZEER, ADVOCATE)

AND:

- 1 . THE CENTRAL BUREAU OF INVESTIGATION
SPECIAL CRIME BRANCH
CHENNAI-600090
- 2 . MASTER NEHAL GANAPATHY
SON OF LATE SHRI M K GANAPATHY
AGED ABOUT 19 YEARS,
- 3 . SHRI M K KUSHALAPPA

S/O LATE M M KUSHALAPPA
AGED ABOUT 75 YEARS,

- 4 . SMT PONAMMA
W/O SHRI M.K. KUSHALAPPA
AGED ABOUT 73 YEARS
5. SMT. SABITHA
DAUGHTER OF SHRI M.K. KUSHALAPPA
AGED ABOUT 46 YEARS
RESIDENT OF NO.7
WHISPERING GARDENS
KYALASANAHALLI MAIN ROAD
KOTHANUR POST
BANGALORE-560077
6. SHRI M.K. MUCHAIAH
S/O OF SHRI M.K.KUSHALAPPA
AGED ABOUT 45 YEARS

RESPONDENTS 2,3,4 & 6 ARE RESIDENTS OF
RANGASAMUDRA VILLAGE AND POST
SOMWARPET TALUK
KODAGU DISTRICT-571234.

...RESPONDENTS

(BY SRI: P. PRASANNA KUMAR, SPECIAL PP FOR R1;
R2-SERVED;
SRI: MURTHY.D.NAIK, ADVOCATE FOR R3 TO R6)

THIS CRIMINAL PETITION IS FILED U/S.482 OF CR.P.C
PRAYING TO A)QUASH THE PROCEEDINGS IN CR.NO.89/2016
AND UDR NO.9/2016 AND SUBSEQUENTLY REGISTERED AS
RC.NO.2/2017/CBI/SCB/CHENNAI AGAINST THIS PETITIONER,
IN CONFORMITY WITH THE CLOSURE REPORT DATED
30.10.2019 AT ANNEXURE-B HERETO B) QUASH AND SET
ASIDE THE ORDER DATED 28.08.2020 PASSED BY THE LXXXI

ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-82)
BANGALORE IN PCR.NO.56/2019 (ANNEXURE-A HERETO).

IN CRIMINAL PETITION NO.5014 OF 2020

BETWEEN

SRI K J GEORGE
S/O KELACHANDRA CHACKO JOSEPH
AGED ABOUT 71 YEARS
FORMER MINISTER OF URBAN PLANNING
AND DEVELOPMENT
R/O PENTHOUSE 7TH FLOOR
ST. ANDREW BUILDING
EMBASSY GOLF LINKS
BUSINESS PARK
INDIRANAGAR
KORAMANGALA RING ROAD
BANGALORE 560071

...PETITIONER

(BY SRI: ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SRI: SRINIVAS RAO .S.S., ADVOCATE)

AND:

- 1 . CENTRAL BUREAU OF INVESTIGATION
SPL. CRIME BRANCH
CHENNAI
REPRESENTED BY ITS STANDING COUNSEL
CBI OFFICE, HEBBAL
BANGALORE-560024.
- 2 . SRI NEHAL GANAPATHY
S/O LATE M.K. GANAPATHY
AGED ABOUT 19 YEARS
R/O RANGASAMUDRA VILLAGE
AND POST, SOMWARPET TALUK
KODAGU DISTRICT-571236

3 . SRI M.K. KUSHALAPA
S/O LATE M.M. KUSHALALPPA
AGED ABOUT 75 YEARS

4 . SMT. M PONNAMMA
W/O M.K. KUSHALAPPA
AGED ABOUT 73 YEARS

5 . SMT. SABITHA
D/O M.K. KUSHALAPPA
AGED ABOUT 46 YEARS
W/O SRI SANJAY KATH
R/O NO.7
WHISPERING GREENS
KYALASANAHALI MAIN ROAD,
KOTHANUR POST
BANGALORE-560077

6 . SRI M.K. MACHAIAH
S/O M.K. KUSHALAPPA
AGED ABOUT 45 YEARS

RESPONDENTS 3,4 & 6 ARE RESIDENTS OF
RANGASAMUDRA VILLAGE AND POST
SOMWARPET TALUK
KODAGU DISTRICT-571236.

...RESPONDENTS

(BY SRI: P. PRASANNA KUMAR, SPECIAL PP FOR R1;
SRI: MURTHY D.NAIK, ADVOCATE FOR R3 TO R6)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO QUASH THE ORDER PASSED BY THE LEARNED
LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
BENGALURU (CCH-82) AND SPECIAL COURT EXCLUSIVELY TO
DEAL WITH CRIMINAL CASE RELATED TO ELECTED MPs/MLAs IN
THE STATE, IN PCR NO.56/2019 DATED 28.08.2020 AND ENTIRE
PROCEEDINGS AGAINST THE PETITIONER.

IN CRIMINAL PETITION NO.5495 OF 2020

BETWEEN

SRI AM PRASAD
AGED 60 YEARS
DGP, FIRE AND EMERGENCY SERVICES
BENGALURU 560001

...PETITIONER

(BY SRI: C.H. JADHAV, SENIOR ADVOCATE FOR
SRI: CHETAN JADHAV, ADVOCATE)

AND:

- 1 . THE CENTRAL BUREAU OF INVESTIGATION
SPECIAL CRIME BRANCH
CHENNAI 600090
- 2 . MASTER NEHAL GANAPATHY
S/O LATE SRI M.K. GANAPATHY
AGED ABOUT 19 YEARS
R/AT RANGASAMUDRA VILLAGE POST
SOMWARPET TALUK
KODAGU DISTRICT-571234
- 3 . SRI M.K. KUSHALAPPA
S/O LATE SRI: M.K. GANAPATHY,
AGED ABOUT 75 YEARS
R/AT RANGASAMUDRA VILLAGE POST
SOMWARPET TALUK
KODAGU DISTRICT 571234
- 4 . SMT. PONAMMA
W/O SRI: M.K. KUSHALAPPA
AGED ABOUT 73 YEARS
R/AT RANGASAMUDRA VILLAGE POST
SOMWARPET TALUK
KODAGU DISTRICT 571234

5 . SMT. SABITHA
D/O SRI M.K. KUSHALAPPA
AGED ABOUT 46 YEARS
R/AT NO.7
WHISPERING GARDENS
KYALASANAHALLI MAIN ROAD
KOTHANUR POST
BENGALURU 5600077

6 . SRI M.K. MACHAIAH
S/O SRI M.K. KUSHALAPPA
AGED ABOUT 45 YEARS
R/AT RANGASAMUDRA VILLAGE POST
SOMWARLPET TALUK
KODAGU DISTRICT 571234

...RESPONDENTS

(BY SRI: P. PRASANNA KUMAR, SPECIAL PP FOR R1;
VIDE ORDER DATED 19.10.2020 NOTICT TO R2
IS DISPENSED WITH;
SRI: MURTHY.D.NAIK, ADVOCATE FOR R3 TO R6)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO A) QUASH THE ORDER DATED 28.08.2020
PASSED BY THE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE (CCH-82), BENGALURU IN PCR NO.56/2019 TAKING
COGNIZANCE OF THE OFFENCE PUNISHABLE UNDER SECTION
306 R/W 34 OF IPC AGAINST THE PETITIONER. B) QUASH THE
ENTIRE PROCEEDINGS IN SPL.C.C.NO.431/2020 PENDING
BEFORE THE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, (CCH-82), BENGALURU.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 21.10.2020 AND COMING ON FOR
PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCE,
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These three petitions are filed by accused Nos.1 to 3 in Spl.C.C.No.431/2020 on the file of learned LXXXI Addl. City Civil and Sessions Judge, Bengaluru (Special Court exclusively to deal with criminal cases related to elected MPs/MLAs in the State of Karnataka) (hereinafter referred to as 'Special Court') seeking to quash the proceedings in Cr.No.89/2016 and UDR No.9/2016, subsequently registered as R.C.No.2/2017/CBI/SCB/CHENNAI and also to set-aside the order dated 28.08.2020 passed by the Special court in PCR No.56/2019 and to quash the entire proceedings in Spl.C.C.No.431/2020.

2. By the impugned order, the Special Court has rejected the closure report filed by respondent No.1/CBI and has taken cognizance of the offence punishable under section 306 r/w section 34 IPC and issued summons to the petitioners/accused Nos.1 to 3.

3. Accused No.1 was the Minister for Urban Planning and Development, Government of Karnataka; accused No.2 was the

IGP Lokayukta, Bengaluru City and accused No.3 was the ADGP State Intelligence, Bengaluru City at the relevant point of time.

4. As per the averments made in the petitions, deceased M.K. Ganapathy was serving in Karnataka Police as Deputy Superintendent of Police in the office of Inspector General at Mangaluru. He committed suicide on 07.07.2016 in Room No.315 of Sri Vinayaka Lodge, Madikeri. The father of the deceased Sri. M.K. Kushalappa lodged a report before Madikeri police and a case was registered as UDR No.9/2016. In the said complaint, he alleged that while the deceased was earlier working at Bengaluru, his wife and children were residing in Mangaluru; during that period, he was ignored by his wife; she was ill-treating him even after returning to Mangaluru as Dy.S.P. He further alleged that deceased was suffering from depression inspite of his promotion and posting at Mangaluru, he was not leading peaceful life and therefore, he committed suicide.

5. Regarding the same incident, the son of the deceased filed a complaint before Kushalnagar police. The same was not registered in view of pendency of UDR No.9/2016. Aggrieved by

the non-registration of the complaint, the son of the deceased namely, respondent No.2 herein filed a private complaint in PCR No.167/2016. The learned Magistrate referred the complaint for investigation under section 156(3) Cr.P.C. and accordingly FIR in Cr.No.89/2016 was registered in Madikeri police station. Accused Nos.2 and 3 approached this Court under section 482 Cr.P.C. in CrI.P.No.5285/2016 seeking to quash the above FIR. This petition was withdrawn with certain observations and in terms thereof, the DG and IGP, Karnataka entrusted the investigation to CID. In the mean-while, the father(respondent No.3) and one of the brothers of the deceased(respondent No.6 herein) filed W.P.Nos.49434-49435/2015 before the High Court of Karnataka seeking direction to entrust the investigation to CBI. These petitions were dismissed. The appeals preferred against the order of the Single Judge were also dismissed by the High Court. The father and brother of the deceased carried the matter to Hon'ble Supreme Court contending that they apprehended foul play in the matter and that it could be a case of murder, even though the complainants earlier learnt it to be a suicide. It was also contended that the deceased soon before his death in a

television interview had named the accused persons from whom he apprehended danger to his life. In view of this submission, the Hon'ble Supreme Court directed the investigation to be handed over to CBI.

6. In the course of investigation, the CBI recorded statements of 108 witnesses including the family members of the deceased, his colleagues as well as various witnesses acquainted with various cases dealt by the deceased and on collecting the CDs of the interview given by the deceased came to conclusion that there was no foul play in the death of the deceased and it was a clear case of suicide. The CBI recorded its further opinion that the deceased was depressed due to various family problems. He was taking treatment for depression and neuro related problems and there is no evidence to show that accused Nos.1 to 3 instigated, provoked or compelled him to commit suicide and accordingly filed a closure report under section 173 Cr.P.C. This report has been rejected by the Special Court which is impugned in these petitions.

7. Elaborate arguments are advanced by Sri. B. V.Acharya, Sri. Ashok Haranahalli and Sri. C.H. Jadhav, learned Senior Counsels on behalf of respective accused Nos.2, 1 and 3 and have placed reliance on large number of authorities, relevant of which will be referred to in the course of this order.

8. Sri. P. Prasanna Kumar, learned Special Public Prosecutor appearing for respondent No.1-CBI has made his submissions and has also referred to series of authorities to support his submissions.

9. Sri. Murthy D. Naik, learned counsel argued in support of the impugned order on behalf of respondent Nos.3 to 6 and has placed reliance on authorities to buttress his arguments.

10. Leading the arguments, Sri. B.V. Acharya, learned Senior Counsel appearing for accused No.2 as well as other Senior Counsels raised a preliminary objection regarding the correctness of the procedure followed by the Special Court in rejecting the final report submitted by CBI. It is contended that

the procedure followed by the Special Court is contrary to the provisions of the Code and the well settled principles laid down by this Court as well as the Apex Court. In support of his submissions, learned Senior Counsel has placed reliance on the decision in GANGULA ASHOK AND ANOTHER v. STATE OF A.P.,(2002) 2 SCC 504 and has contended that the Special Court has committed an error in taking cognizance of the alleged offence without the matter being referred under section 193 Cr.P.C. Further placing reliance on the decision of this Court in SRI. VIVEK AND ANOTHER v. THE STATE OF KARNATAKA BY KUNIGAL POLICE STATION AND ANOTHER, 2017 SCC ONLINE KAR 4725 and DR. RAVI KUMAR v. MRS. K.M.C. VASANTHA AND ANOTHER', ILR 2018 KAR 1725, it is argued that in the absence of the protest petition, challenging the closure report, the learned Magistrate could not have issued summons to the petitioners.

11. These legal contentions, in my view, do not merit acceptance. Undisputedly, the final report was filed by the investigating agency pursuant to the orders of the Hon'ble

Supreme Court in Crl.A.Nos.1571-1572/2017. The report was filed under section 173 Cr.P.C.. The procedure to be followed in accepting or rejecting 'B' summary report is concerned, following the decision of the Hon'ble Supreme Court in KAMALAPATI TRIVEDI V. STATE OF WEST BENGAL', (1980) SCC (2) 91, this Court in 'DR. RAVI KUMAR V. MRS. K.M.C. VASANTHA AND ANOTHER', ILR 2018 KAR 1725, has enumerated certain guidelines to be followed by the courts and the Magistrate as under:-

"5. xxxxxxxxxxxxxxxxxxxx It is well recognized principle of law that, once the police submit 'B' Summary Report and protest petition is filed to the same, irrespective of contents of the protest petition, the court has to examine the contents of 'B' Summary Report so as to ascertain whether the police have done investigation in a proper manner or not and if the court is of the opinion that the investigation has not been conducted properly, the court has got some options to be followed, which are,-

- i) "The court after going through the contents of the investigating papers, filed u/s 173 of Cr.P.C., is of the opinion that the investigation has not*

been done properly, the court has no jurisdiction to direct the Police to file the charge sheet however, the Court may direct the Police for re or further investigation and submit a report, which power is inherent under section 156(3) of Cr.P.C, but before taking cognizance such exercise has to be done. This my view is supported by the decisions of the Hon'ble Apex Court in a decision reported in AIR 1968 S.C. 117 between Abhinandan Jha and Dinesh Mishra (para 15) and also Full Bench decision of Apex Court reported in (1980) SCC 91 between Kamalapati Trivedi and State of West Bengal.

- ii) If the court is of the opinion that the material available in the 'B' Summary Report makes out a cognizable case against the accused and the same is sufficient to take cognizance, and to issue process, then the court has to record its opinion under Sec.204 of Cr.P.C., and the Court has got power to take cognizance on the contents of 'B' Summary Report and to proceed against the accused, by issuance of process.*
- iii) If the court is of the opinion that the 'B' Summary Report submitted by the Police has to*

be rejected, then by expressing its judicious opinion, after applying its mind to the contents of 'B' report, the court has to reject the 'B' Summary Report.

- iv) *After rejection of the 'B' Summary Report, the court has to look into the private complaint or Protest Petition as the case may be, and contents therein to ascertain whether the allegations made in the Private complaint or in the Protest Petition constitute any cognizable offence, and then it can take cognizance of those offences and thereafter, provide opportunity to the complainant to give Sworn Statement and also record the statements of the witnesses if any on the side of the complainant as per the mandate of Sec.200 Cr.P.C."*

12. In a recent decision rendered by the Hon'ble Apex Court in VISHNU KUMAR TIWARI v. STATE OF UTTAR PRADESH THROUGH SECRETARY, HOME CIVIL SECRETARIAT, LUCKNOW AND ANOTHER, (2019) 8 SCC 27 has reiterated the above procedure and has held that "1) *a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter,*

do one of three things: (a) he may decide that there is no sufficient ground for proceeding further and drop action; (b) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (c) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

13. In the instant cases, the Special Court has taken recourse to option (b) and has taken cognizance of the offence based on the material collected by the investigating agency and has issued process to the accused. Since cognizance has been taken and process has been issued based on the police report, the court is not required to consider the protest petition or the initial complaint, as such, there is no procedural irregularity in

the order passed by the Special Court. As a result, the contention urged by learned Senior Counsel appearing for the petitioners/accused Nos.1 to 3 in this regard is rejected.

14. Coming to the merits, the impugned order and the process issued by the Special Court are challenged by the respective accused on the following grounds:-

- i) The impugned order is perverse and contrary to the material on record. It is contended that although the Special Court while exercising power under section 190(1)(b) of the Code is not bound by the opinion of the Investigating Officer, yet the Magistrate or the Special Court while rejecting the report is required to exercise judicious discretion based on law, logic and reason which is lacking in the instant case. It is argued that the Special Court has proceeded on the assumption that since the accused were occupying position superior to the deceased, they deemed to have exercised authority and control over the deceased.

ii) The material collected by the investigating agency do not disclose ingredients of the offence under section 306 IPC or section 34 of IPC. In order to prosecute a person for abetment of a thing or offence there should be instigation of any person to do that thing or the abettor should engage with one or more person or persons in any conspiracy for doing of that thing or intentionally aid by any act or illegal omission, the doing of that thing. That apart, there must be proximity between the alleged act of abetment and suicide. Learned Senior Counsels would submit that the various incidents referred to in the final report were remote in point of time and none of the accused persons were either related or concerned with these incidents.

iii) The Special Court has overlooked the statements of several colleagues and superiors of the deceased as well as the service records of the deceased. Learned Senior Counsels emphatically submitted that the

material on record clearly disclose that the deceased was suffering from serious mental issues and family problems which was the immediate and proximate cause for the deceased to commit suicide. These aspects have not been considered by the Special Court, which has resulted in failure of justice. In the course of arguments, learned Senior Counsels extensively referred to the statements of the immediate relatives of the deceased as well as office colleagues and other witnesses examined by the Investigating agency to bring home the point that the only reason for the deceased to commit suicide was his mental sickness, depression, family problems and his obsession for executive posting as opined by the Investigating agency.

iv) It is argued that the reasoning assigned by the Special Court to differ with the view taken by the Investigating agency is perverse and is not based on the evidence collected by the Investigating agency

and for all these reasons, the impugned order as well as the proceedings initiated against the petitioners deserve to be quashed.

- v) Finally, placing reliance on the ratio laid down in *D.DEVARAJA vs. OWAIS SABEER HUSSAIN, 2020 SCC Online SC 517*, it is contended that in view of the allegations that the accused Nos.2 and 3 had acted in excess of duty, issuance of process to them without prior sanction under section 197 of the Code of Criminal Procedure, 1972 and/or Section 170 of the Karnataka Police Act is wholly illegal and without jurisdiction.

15. Sri Prasanna Kumar, learned Special Public Prosecutor for respondent No.1 would submit that the CBI has conducted thorough investigation from all angles to rule out the possibility of any foul play in the death of the deceased. Referring to the material collected by the CBI, learned counsel pointed out that the records clearly indicate that the deceased did not work under any of the accused persons at any point of

time. The deceased was punished 15 times departmentally. He was suffering from mental issues. The medical records indicate that he was treated for gradual onset of atrophy of temporal lobe and depression. The family members of the deceased themselves had given inputs to the Investigating Agency to arrive at an opinion that the deceased was suffering from depression. The deceased was never called to Lokayuktha Office for inquiry. None of the accused were associated with the deceased. The circumstances narrated by the deceased in T.V interview were remote in point of time and therefore, the CBI had rightly submitted the closure report as the involvement of the petitioners in the alleged offence has not been made out and under the said circumstances, there was no basis for the Special court to reject the closure report.

16. Sri Murthy D. Naik, learned counsel for respondent Nos.3 to 6 however argued in support of the impugned order contending that the trial judge has rightly rejected the closure report and taken cognizance as there was sufficient material produced along with the final report by the CBI. Referring to the

statements of CW.1, CW.3, CW.4, CW.6, CW.8, CW.29, CW.30 and CW.34, learned counsel emphasized that the statements of these witnesses shed light on the complicity of the petitioners in the alleged offence and therefore, the trial judge is justified in issuing summons to the petitioners. He has taken strong exception to the use of the expression that "the impugned order is highly colorable and biased" in para 9 of the petition in CrI.P.4139/2020.

17. Further, placing reliance on the decision in *VISHNU KUMAR TIWARI VS. STATE OF U.P AND ANOTHER, (2019) 3 SCC (Cri) 269*, learned counsel argued that "The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply

his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See India Carat (P) Ltd. v. State of Karnataka.]”, but the High Court in exercise of its revisional jurisdiction cannot interfere with the same only because it forms a different opinion on the same material. Further, referring to the observation in RAMESH KUMAR VS. STATE OF CHATTISGARH, (2001) 9 SCC 618, learned counsel pointed out that “where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred.”

18. On the question of requirement of sanction, learned counsel referred to para 69 of the decision in D.DEVARAJA VS. OWAIS SABEER HUSSAIN, 2020 SCC ONLINE SC 517, which

reads, "Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.". Thus he prayed for dismissal of the petitions.

19. I have bestowed my anxious thought to the submissions made at the Bar and have carefully scrutinized the material on record and the proceedings conducted by the learned Special Judge.

20. In the light of the contentions urged by the parties, the points that arise for consideration are:-

1. Whether in the light of the material collected by CBI, the Special Court was justified in rejecting the closure report and taking cognizance of the

alleged offence punishable under section 306

IPC r/w 34 of IPC ?

2. Whether the final report filed by respondent No.1-CBI and the material produced along with the report prima-facie make out the ingredients of the offence under section 306 IPC insofar as the petitioners are concerned ?

21. POINT NOS.1 and 2:

Both these points are taken up for discussion together. At the outset, it is relevant to note that the Special Court on examining the final report submitted by CBI, has recorded its appreciation to the investigating agency and has observed that *"this Court intends to place on record the appreciation of the investigation done by CBI in the case."* Thereafter, the Special Court has made a reference to the opinion formed by the Investigating agency and has observed that the CBI has investigated the case from various angles and has specifically considered the following issues viz.,

1. Kadri PS Democratic Youth Federation of India(DYFI) incident;
2. Kadri PS- Kulshekar Church Attack incident;
3. Posting to Yeshwanthpur P.S. and Encounter case;
4. Posting to Madiwala P.S.-Advocate -Police clash;
5. Rajagopalnagar PS-Theft case;
6. Inspection of the case properties in Madiwala P.S. by Shri. B.S. Santhakumar, ACP;
7. Complaint against Shri Ganapathy at Lokayuktha
8. Depressed state of mind of Shri Ganapathy.

22. In para 16 of the impugned order, the Special Court has held as under:-

16. It is not in dispute that the accused No.1 was the Minister for Urban Planning and Development, Government of Karnataka and he was Home Minister of Government of Karnataka at the relevant time. It is also undisputed fact that the accused No.2 and 3 are IPS officers and they are higher officers of the deceased in the Police Department, even though it may true that the deceased was not working under the accused No.2 and 3 at the time alleged by the

deceased in his interview to the media and also at the time of death of the deceased by committing suicide."

23. But contrary to this observation, in para 18, learned Special Judge has held that:

" 18. In the Closure report itself the address of the accused No.2 and 3 are mentioned as IGP Lokayuktha, Bengaluru City, Karnataka and ADGP State Intelligence, Bengaluru City, Karnataka respectively. Hence it cannot be ruled out at this stage that the accused No.1 to 3 had some controlling authority on the service of the deceased when he was working in Police department."

24. Here itself, it may be noted that even though the learned Special Judge agrees with the conclusion arrived at by the Investigating agency that the deceased did not work under any one of the accused at any point of time, yet, merely because the accused were occupying higher positions, the learned Special Judge proceeds on the assumption that the accused had controlling authority over the deceased and therefore there is a prima-facie case to proceed against them under section 306 IPC.

25. The learned Special Judge has thereafter extracted the provision of sections 306 and 107 IPC and considering the

statements of the father, wife, son, brother and sister of the deceased has held that *"the cumulative effect of the statements given by the father, wife, son, sister and co-brother of the deceased, who are CWs-1, 3, 4, 6 and 8 respectively in the case, clearly go to show that the deceased was subjected to mental harassment by the accused No.1 to 3 earlier to his death."* After coming to the above conclusion, the learned Special Judge considered the statement of the reporter who took the interview of the deceased and the statement of the Managing Director of Tv9 and jumped to the conclusion that *"such statement of CW29 also prima-facie shows that the accused No.1 might have been reason for suicidal death of the deceased."*

26. Learned Special Judge has referred to the statements of various leaders of the Christian community examined by the CBI and has drawn the inference in para 35 of the impugned order as under:-

"If the statements of CW40 and CW42 are considered together, it is clear that even though the cases regarding the incident of attack on Church were withdrawn in the year 2011, thereafter in the year 2013 when the accused No.1 became the Home Minister of State Government, he visited the Church

at Mangaluru. This material on record prima facie shows that the deceased had suffered harassment at the hand of the accused No.1 after the accused No.1 becoming Home Minister."

27. Here again, it has to be noted that merely on the ground that accused No.1 had visited Mangaluru in 2013, five years after the church attack incident, learned Special Judge proceeds to hold that the deceased had suffered harassment at the hands of accused No.1. Further, he records that the statements of the above witnesses, who are Christians connected with the concerned Churches, prima-facie show that even in the year 2016, the deceased had been suffering harassment for the reason that he failed to properly handle the incident of attack on Churches when he was the Police Inspector in the jurisdictional Police Station in Mangaluru and thus the learned Judge concludes that the allegations regarding Mangaluru Church attack incident was in the mind of the deceased on the date of his death.

28. It is further observed in the impugned order that the interview given by the deceased to the media immediately prior

to committing suicide, prima facie shows that there was harassment by accused No.1 and accused Nos.2 and 3. Even though the learned Special Judge referred to the statements of the Medical Officers who treated the deceased for his Psychological ailment namely, CW-48 Dr. Kiran Kumar, Professor of Psychiatry in A.J. Institute of Medical Sciences, Mangaluru, CW-50 Dr. Saurabh Rai N., Department of Neurology, A.J. Hospital, his conclusion is that *"even if the above referred statements are considered, there is no prima-facie material to show that the deceased was suffering from any mental depression."* Ultimately, he holds that even though the Kulasekara Church attach incident occurred in the year 2008 and the entire issue was closed in the year 2011, since accused No.1 became the Home Minister in 2013 and thereafter visited the church, there is nexus between the deceased committing suicide and the alleged harassment by accused Nos.1 to 3. According to the learned Special Judge, *"The act of alleged harassment of accused Nos.1 to 3 is continuing act."*

29. The fallacy in the reasoning of the learned Special Judge is further exemplified in the subsequent observation made in para 49 which reads as under:-

"Hence at this stage, unless the matter is considered on merits on trial, this Court cannot come to the conclusion that there is no abetment of the deceased by the accused Nos.1 to 3 to commit suicide, only for the reason that there is no act of abetment to commit suicide by the accused Nos.1 to 3 immediately earlier to the deceased committing suicide."

30. Added to that, in para 56, learned Special Judge has further observed *"therefore, at this stage, there is no reason to believe that there is prima facie material forthcoming against the accused No.1 to 3 to show that they abetted the deceased to commit suicide, even though there was no immediate act committed by them for such abetment'.*

31. Finally with regard to the requirement of sanction for the prosecution of accused Nos.2 and 3 under section 197 Cr.P.C and section 170 of Police Act and with regard to applicability of section 34 IPC are concerned, the learned Special Judge has

observed that *"in order to convict a person vicariously liable under sec. 34 or sec.149 of IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. In the case on hand, it is pertinent to note at this stage that even though the accused No.2 and 3 are not the higher officers of the deceased at the time of his interview to the media, the deceased made allegations against the accused No.1 to 3 together. The point as to whether there was any common intention or not in the accused No.1 to 3 in committing the alleged act of abetment to commit suicide is the matter to be considered while framing charge"*. With this reasoning, the learned Special Judge rejected the final report filed by the CBI and took cognisance of the alleged offence under section 306 r/w 34 IPC against all the three accused persons and issued summons.

32. It could be seen from this order that even though the learned Special Judge found from the records that that deceased did not work under the accused persons at any point of time and the church attack cases were withdrawn in 2011 much earlier to accused No.1 becoming the Hon'ble Minister and that there was

no evidence of abetment by accused Nos.1 to 3 immediately prior to the suicide, yet, merely on the basis that at the time of interview, the deceased had made allegations against accused Nos.1 to 3 together, learned Special Judge proceeded to issue summons to them.

33. A reading of the impugned order on the face of it reveals that the Special Court has misdirected itself in rejecting the closure report and issuing summons to the petitioners/accused Nos.1 to 3. The reasonings assigned in support of its conclusion appear to be patently perverse and contrary to the voluminous evidence collected by the investigating agency as is evident from the final report filed by CBI. In the light of this material, if the opinion formed by the investigating officer is perused, it is seen that the investigating officer has justified his report assigning cogent reasons for coming to the conclusion that the evidence collected by him did not prima-facie show any abetment by the accused driving the deceased to commit suicide. In order to appreciate the reasons assigned by the CBI for submitting the closure report, it may be

necessary to extract the allegations levelled against the accused and the opinion reached by the investigating officer which reads as under:-

34. Allegation against Shri K.J. George, Minister (A-1) is;

When Shri George(A1) the then Minister visited Mangalore, a group of Christians met George and made complaint against Shri M.K.Ganapathy, Dy.SP that in 2008, Ganapathy had registered false cases against them when he was posted in Mangalore and this has resulted in great hardship to them.

In this regard, Shri K.J. George (A-1) was questioned and relevant case records were collected and concerned witnesses were examined. Though it is a fact that Shri. M.K. Ganapathy, while working as Inspector of Police at Mangalore during 2008 had registered few cases against the members of Christian community in connection with Kulshekara Church attack incident, later these cases were withdrawn and closed by the Government of Karnataka in the year 2011. However, the apprehensions of the deceased that A1 was having grudge over

him as he registered cases against people belonging to Christian Community is found farfetched theory. While the entire issues were closed in the year 2011 itself, raising such allegations against A-1 after almost five years does not carry any weight.

Though the deceased Ganapathy had alleged harassment from A-1 for an incident occurred in 2008, it is pertinent to mention that A-1 Shri K.J.George while serving as Minister has denied sanction to prosecute Shri M.K. Ganapathy (Accused in CBI cases), when the same was sought by CBI in the year 2015 in connection with his role in Advocate-Police clash issue in the City Civil Court Complex, Bangalore. This would clearly show that A-1 cannot be stated to have developed hatred and harassed him for the incident happened in 2008. Further, during 2013 Shri Ganapathy was suspended for 30 days in connection with an incident happened while he was serving in Rajagopalnagar P.S where it was found that he had deliberately recorded the missing amount as Rs.24,000/- instead of 1.5 Crores and did not inform senior supervisory officer about the actual loss which was later found out, a lenient view was taken

on the deceased and his suspension was revoked when deceased called on A-1 when A-1 was the Home Minister. This would also show that A-1 was not carrying any grudge over the deceased and rather helped him.

35. Allegation against Shri Pronab Mohanty, IPS (A-2) is;

Shri M.K. Ganapathy during his interview on the day of his committing suicide, had alleged that Shri Pronab Mohanty, IPS used to demand/pressurize too much money when Ganapathy was serving in Madiwala under Shri. Subbana, ACP, Shri. Harsha, DCP and Shri Pronab Mohanty, IG purposefully, used to publish negative news against him in "Bangalore Mirror" news paper and repeatedly spoiled his name (Madiwala missing case properties issue in which Departmental Enquiry was tried against Shri Ganapathy and three other inspectors). He also alleged that "Pronab Mohanty was close to Shri K.J. George and he was kept in Lokayuktha by Shri K.J. George to adjust cases and they joined together to harass good officers and whatever happened to Ganapathy, they should be held responsible.

In this regard, Shri Pronab Mohanty, IPS (A-2) was examined in detail by CBI. Examination of Shri Pronab Mohanty revealed that deceased Ganapathy was working as Inspector in Madiwala P.S. during 2013 and at that time A-2 was working as Joint Commissioner of Police (Crime). It is pertinent to mention that the alleged demand of money by A-2 took place three years back and after three years the deceased had made these allegations. It is pertinent to mention that during the relevant time deceased was not working under A-2 and hence unlikely to have demanded money as alleged by him. Further the deceased had not spelt out the purpose or context for which the money was allegedly demanded. Hence, allegations in this regard were found to be not true. Similarly, the allegations that the IG used to make Bangalore mirror news paper to publish false and damaging news against him also found to be false and baseless. In this regard, all relevant witnesses including media personnel were examined. At the time of promotion of deceased as Dy.SP, A-2 was serving in Lok Ayuktha as IGP and the fact that they did not object his promotion would also shown that A-2 was not

vindictive on the deceased as alleged by him before the media on the eve of his death.

Investigation shows that the allegations levelled by the deceased against A-2 were far from truth and based on his perceived imagination and due to his depressed state of mind.

36. Allegation against Shri A.M. Prasad, IPS (A-3) is;

The deceased has said in interview as below:

"The deceased had alleged in the interview that while working as IG in Mangalcre, A-3 used to insist Ganapathy to send vehicle to pick up and drop A-3s son who was studying in Udupi during weekends. When Ganapathy refused to accede to the request of IG he started harassing him including sending Human Rights people to the police station to verify illegal detention etc.

Further the deceased Ganapathy made allegation that Shri. A.M. Prasad (A-3) and Pronab Mohanty (A-2) were close to Shri K.J.George (A-1) who kept both A-2 &A-3 near him for his

support. They joined together to harass good officers. Whatever happened to him, they are responsible.”

In this regard, Shri A.M. Prasad, IPS (A-3) was examined in detail. His examination shows that the son of A-3 was pursuing his Engineering education with MIT Manipal, Udupi during 2006-2010 and was staying in the college hostel. Investigation did not reveal anything confirming the above allegation. Further considering the fact that the son of A-3 had completed his education in 2010 and the allegations are raised in 2016 i.e., after six years, in the absence of specific inputs, the allegations could not be substantiated. Further during his time A-3 was serving as IG and there were many Dy.SPs working under him and during the relevant time the deceased was also working in Mangalore. Hence, it is highly unlikely that A-3 had asked the deceased who is working in Mangalore to provide vehicle for his son who studying in Manipal University, Udupi. Further in few instances of dereliction in duty departmental actions was initiated against Shri M.K.Ganapathy and during that time A-3 was the IG of Police, Mangalore and this made the

deceased to think that A-3 was responsible for the punishment awarded to him in the departmental proceedings. There is no basis for the above allegation. Further as a senior police officer in-charge of intelligence Wing, it is the duty A-3 to inform/interact with the government including A-1 who was the Home Minister then. Hence the allegation in this regard is also not having any basis.

Similarly, the visits of Human Rights Officials to the police station headed Shri Ganapathy has nothing to do with A-1 and A-3 and even according to M.K. Ganapathy nothing had come out of these alleged visits by Human Rights Officials. Similarly, the allegations that A-1 to A-3 have joined hands and harassed him etc are also appears to have been made without any logic or sound basis. In this regard, relevant materials/documents from Lok Ayuktha (Police and Judicial Wing), Human Rights Commission, Police Departments were collected and perused. It is pertinent to mention that during the relevant time Shri. M.K. Ganapathy was also promoted as Dy.SP and there were no adverse reports by A1 to A3 or by any other authorities. Further

during investigation the Annual Confidential Reports of Shri M.K. Ganapathy from the year 2010 were also collected and perused. There were no adverse comments or negative reports against Shri M.K. Ganapathy."

37. Further it is averred in the Final report that:-

"M.K. Ganapathy had committed suicide within a month from the receipt of this SMS. This would clearly shows that Shri. M.K.Ganapathy was under severe stress and depression due to his strained relationship with his wife.

Investigation shows that Ganapathy approached AJ Hospital, Mangalore on 15.04.2016 with complaints of headache, loss of memory and slight depression and he had consulted Dr. Kiran Kumar, Psychiatrist and again he also consulted him on 23.06.2016 for the same problem. He also consulted Dr. Smruthi, Neuro-Psychiatrist in AJ Hospital for the same reason.

Prior to consulting Dr. Smruthi, in AJ Hospital, Mangalore, Shri M.K. Ganapathy has approached Dr.Sandip Deshpande, Psychiatrist, in Bangalore, with the reference of his sister Smt.

Sabitha. But during that time, he consulted him with pseudonymous name of Manjunath Kumarappa, Aged 50 working as ASI at Mandya. He also complained about poor memory which was disturbing him. In this connection, all relevant records were collected and concerned witnesses were examined.

Hence, investigation clearly shows that Shri M.K. Ganapathy was having psychological issues and was under mental depression for quite some time prior to his death and was undergoing treatment. Further, besides official issues there appears to be more personal issues causing mental agony as seen from the SMS sent by his wife to him. Investigation also shows that Shri M.K.Ganapathy was staying away from his family for a long time for various reasons and combination of various issues has resulted in mental depression and was in a confused state of mind."

38. On consideration of the entire material on record, I find that the closure report submitted by CBI is well founded and the material collected during investigation does not lead to any

conclusion other than the one recorded by CBI for the following reasons:

39. Undisputedly, the deceased was a Police Officer of the rank of Deputy Superintendent of Police. The material collected by the Investigating agency disclose that he joined the services on 26.08.1994 and during his tenure, he was posted at different places mostly on executive posts. It is not in dispute that he committed suicide on 07.07.2016. It is important to note that soon after the incident, the father of deceased lodged a report before Madikeri Police Station. In this complaint, the father of the deceased in unequivocal terms alleged that when the deceased was working in Bengaluru, his wife and children were residing in Mangaluru and during this period, he was ignored by his wife and she was ill-treating him even after returning to Mangaluru.

40. As already noted above, earlier to his promotion as DyS.P., the deceased was residing in Bengaluru all alone and during this time, his wife and children were residing in Mangaluru. The father of the deceased has specifically stated in

the complaint lodged by him on 07.07.2016 that the deceased told him couple of months ago that inspite of being promoted and returning to Mangaluru, *due to family differences, he was not leading peaceful life.* He was categorical in his statement that *his son committed suicide on account of frustration and depression.* Thus at the earliest instance, there were no allegations whatsoever that the deceased committed suicide on account of the alleged harassment caused by any one of the accused.

41. Secondly, two days after the incident, the son of the deceased filed a private complaint before the magistrate alleging that the jurisdictional police were not receiving his complaint. Even in this private complaint, except alleging that before his father's tragic death, his father made a dying declaration before the media naming the above accused viz., Sri. K.J. George, Sri. P.C. Mohanty and Sri. A.M. Prasad, no other allegations are found in the said complaint. From the averments made in the complaint, it is evident that the source of information for the son of the deceased to implicate the petitioners was the interview

given by the deceased. Whether this interview could be made the basis to take cognisance of the offence would be discussed later. But at this juncture, suffice it to note that no specific allegations were made against the petitioners even by the son of the deceased at the earliest point of time.

42. Thirdly, if the statement of wife of the deceased is considered, in her statement recorded under section 161 Cr.P.C., she has lauded that "*her husband Ganapathy loved his job and was very fond of wearing his uniform and thereby, to render public service.*" Though in this statement, she has alleged that the deceased was telling her that while he was working at Kadri police station, he faced communal law and order situation at Kulashekara Church, yet, in her further statement, she has stated that the "*manner of handling of the riotous situation as well as the whole communal issue was appreciated by the Senior Police Officers.*" She has further stated that while the deceased was working in Mangaluru, he was telling her that the son of an IG was studying in Manipal college and that the IG asked him to send a private car and since the deceased being an upright

officer, did not yield to his command after seeing the last interview of her husband, she came to know that it was accused No.3 who had demanded the car from the deceased. She has also stated that during his tenure, her husband had killed a rowdy element Shri Prashant within his police limits. Even in this regard, she has stated that the action of her husband was appreciated by his senior Police Officers and the public.

43. If the statement of the wife of the deceased is believed, it goes to show that handling of communal issue and killing a rowdy element in the police encounter by the deceased were appreciated by his senior officer. If so, the observation of the Special Court that the statement of the wife of the deceased prima-facie showed harassment to the deceased being contrary to this statement cannot stand.

44. It is also significant to note that in her statement, the wife of the deceased has stated that her husband with the help of his batchmate, got transferred to Madiwala police station and her further statement reads: *"There also as always, he had support of the local political leaders and community heads.*

Whenever he had holidays, he used to visit them at Mangaluru and conversely, whenever they got a chance she alongwith her two sons used to visit Bengaluru, stayed with him." This statement goes to show that she never lived with her husband and occasionally the deceased used to visit them. Be that as it may, in her further statement, she has stated that while the deceased was working in Rajagopal nagar Police Station, he was kept under suspension and at that time, he stayed with them. Her further statement is relevant which reads as under:-

"xxxxxxxHe told me that after his suspension, he met Shri George several times. He used to tell me that he explained his way of handling the Church matter to Shri George, but every time, he was insulted by Shri George. He always met Shri George in his office. Basically, Shri Ganapathy wanted Executive postings and for this purpose, he used to meet the politicians, including Shri George."

(underlining supplied)

45. If this statement is believed, it goes to show that the deceased himself used to meet accused No.1 to impress upon

him as to how he had handled the church attack cases so as to get executive post. This statement has been misread by the Special Court to mean that the accused No.1 himself was harassing the deceased on account of handling the church issue. The Special Court has conveniently ignored the finding of the Investigating Officer that the suspension of the deceased was revoked by accused No.1 even though the charge against him was of very serious nature. Therefore, the reasoning of the Special court that the statement of the wife of the deceased discloses that accused No.1 was holding grudge against the deceased is patently baseless and contrary to the material on record.

46. Fourthly, with regard to accused No.3, she has alleged in her statement that "*deceased met accused No.3 for executive posting and he was asked to stand outside and accused No.3 told him that he would never give executive posting to the deceased.*" If this statement is believed, it goes to show that since the deceased was denied executive posting by accused No.3, he was feeling insulted and humiliated by accused No.3.

This act, as rightly contended by learned Senior Counsel for the petitioners, could not be taken as an act of abetment of suicide, rather, it only shows the uprightness of accused No.3 in refusing to yield to the solicitations of the deceased. The tenor of statement of the wife of the deceased clearly indicate that aspirations of the deceased all throughout were to get executive posting. He was infact obsessed with executive posting. Her statement suggests that the deceased had no personal grievance against accused No.1, rather, he was on visiting terms with accused No.1 and he was approaching him for the posting of his choice. Therefore, the reasoning of the Special Judge that accused No.1 was continuously harassing the deceased is palpably wrong. The real reason for the deceased to commit suicide is stated by his wife in the following words:

"In the year 2016, he got his promotion as Dy.SP and posted at Mangalore. We were only too happy to receive him to be with us in the family, but that only became a dream, as he again he suffered mental torture, because he was not given his liking Executive posting(uniformed service) but posted to Non-Executive post once again."

(underlining supplied)

47. From the above statement, it is evident that the deceased suffered mental torture for not getting executive posting of his liking and not on account of harassment by accused Nos.1 to 3 as held by learned Special Judge.

48. It is really unfortunate that the learned Special Judge failed to consider the real import of the statements given by the family members of the deceased, instead by making a sweeping observation that the wife of the deceased has also made allegations of harassment against accused Nos.1 to 3, has proceeded to hold that there is prima-facie material to show the involvement of the accused in the suicide committed by the deceased.

49. The Special Court has also failed to note the fact that the relationship between the deceased and his wife was not cordial and apparently for this reason, she did not take up the issue with any authorities, rather, the father and son of the deceased have been pursuing the matter. But as already highlighted above, the father of the deceased at an undisputed point of time has alleged that the deceased was ill-treated by his

wife. Even the statement of the close friend of the deceased goes to show that his son had once slapped him. This is reflected in the statement of one B. Divya Darshan, a police officer working in the same department. According to his witness, he used to visit M.K. Ganapathy(deceased) everyday as he was the only friend of the deceased and they used to have dinner and drinks together. He has stated that during their interaction, he asked about his family and he came to know that his son had once slapped him in a wordily discussion. In the wake of these facts emanating from the statements of the deceased, the learned Special Judge has misdirected himself in holding that the statements of the father, wife, son and brother of the deceased prima-facie disclosed harassment by accused Nos.1 to 3.

50. One of the brothers of the deceased M.K. Thimmaiah has also stated that the relationship between the deceased and his wife soured with the lapse of time, his wife demanded lot of money for him citing household expenses. His wife did not want to stay with him at all. Ganapathy was complaining to him that his wife was insisting him to take his share of property from his

father and sell it. She was insisting that she required Rs.50 lakhs on the pretext to admit her son Nehal to Aeronautical Engineering Course. His wife forced him to sell the properties and purchase an apartment in Mangalureu. Some part of the money were given to repay the loan of her father. The money was transferred from his salary account to her account. His wife has taken the entire money from him with a promise to move to the new apartment. However, after taking all his money, she insisted that he should not come to the new apartment with her and children. Though he continued to stay in the same house, as his wife was not providing food to him, he was taking food from outside.

51. Further, he has stated that medical treatment was given to the deceased before his death and earlier he was having memory loss for which he was taking treatment. Even this statement has not been considered by the learned Special Judge, instead, by placing reliance on the selective portions of the statements, the trial judge has concluded that the family members have also alleged harassment by the accused persons,

which finding does not find support in any of the statements referred by the Special Court.

52. Lastly, the learned Special Judge has relied on the statement of one of the sister of the deceased. The extracted portions of her statement would indicate that her statement is nothing but the opinion formed by her after watching the T.V. interview given by the deceased. She has not cited any specific instance wherein accused No.1 or other accused have been harassing the deceased so as to drive him to commit suicide. As a result, the conclusions arrived at by the learned Special Judge that the statements of the immediate relatives of the deceased prima-facie disclose that the deceased was subjected to harassment by all the accused has turned out to be baseless and perverse.

53. Another aspect which appears to have strongly weighed in the mind of the Special Court is the evidence collected by the Investigating agency regarding the church attack case. Based on the statements of various witnesses examined by the Investigating agency in connection with this

incident, learned Special Judge has inferred that since the deceased had booked cases against the members of the Christian community, the deceased was continuously harassed by accused No.1, which according to the learned Special Judge is one of the predominant reason for the deceased to commit suicide.

54. This conclusion in my view is outrightly preposterous and contrary to the statements of the witnesses cited in the final report. I have gone through the statements of the witnesses especially the statements of CWs. 36, 37, 38, 40, 42, 43 referred in the impugned order and I find that the learned Special Judge has not only misread these statements but has also taken a distorted view of the entire case. This is evident from the statement of CW-42 Sri. John Richard Lobo, the then MLA from Mangaluru when being asked as to whether any complaint was lodged against the deceased had unequivocally stated " *we had not represented about the matter of the year 2008 Church attacks with Home Minister George during his year 2013 visit to Mangaluru as already the cases were withdrawn in 2011.*"

55. Undisputedly, the church attack had taken place in the year 2008 when the BJP Government was in power in the State. Accused No.1 was neither a constituent of the Government nor was he the Home Minister at the relevant time. It is not in dispute that he became the Home Minister in the year 2013. By then the cases were withdrawn by the BJP Government in 2011 and it was a closed chapter. In 2013, accused No.1 could not have done anything in the matter and therefore there was no occasion for anyone to rake up this issue. In this regard CW-38- Father Valerian Pinto, the then Parish Priest of Holy Cross Church, Kulshekar has stated thus:-

"I state that during the year 2013, once Sri K.J. George, Minister, came to our Diocese and had tea at the Reformatory and some Christian Leaders came and met him."

56. The above statement clearly indicates that during his visit to Mangaluru in 2013, accused No.1 visited Bishop's house and met some Christian Leaders of his party. According to this witness, even the Bishop was not present and accused No.1 was taken to refectory and was offered tea. There is nothing in the

statements of any of the witnesses to indicate that during his visit, accused No.1 had any discussion with any members of the public. No one had complained to him about the deceased. Even otherwise, it does not stand to reason that in respect an incident which had taken place in 2008, anyone would complain to accused No.1 against the deceased especially when all the cases were withdrawn in 2011.

In the light of these facts there is absolutely no basis to hold that A1 was antagonized against the deceased on account of Church attack case handled by him as held by the Special Court.

57. In this context, it is relevant to note that CW-43 Fr. Victor Machado the Parish Priest of Holy Cross church, Kulshekar in 2016, wherein the alleged incident had taken place had state thus:

"Sometimes during the year 2016, a person visited me in the Church and introduced himself as Ganapthy, Police Officer. He further told me that he was the Inspector of Kadri P.S. during the Kulshekar church Attack incident in the year 2008, but he was not against the Christians. He showed me the photo of Infant Jesus

in his mobile and requested me to recommend for his executive posting in Mangaluru....

By this time, one of our Church Officials Sri Praveen Patrao was waiting to see me and to recognize Ganapathy, I call Sri Praveen Patrao. Sri Praveen Patrao immediately identified him as the person who was the Inspector of Kadri P.S. at the time of Church attack incident and hence, I requested Sri. Praveen Patrao to deal with Ganapathy."

58. Sri. Praveen Patro CW-37 has corroborated the above statement and has stated that:-

"In the early months of 2016(I think it may be March to mid May), as I had gone to my church office(Kuishekar) to meet the current parish priest Fr. Victor Machado, I found a person in civil dress sitting in front of him and discussing. I was about to turn back when Fr. Victor requested me to come inside and asked me to find out what the gentleman sitting in front him wanted from him as Fr. Victor was unable to understand the person(Ganapathy) speaking.....

Mr. Ganapathy was going on speaking something about church attack, unfortunately, we were unable to understand anything of it. I was very hesitant to speak

to him yet I found out that he was not in sound mind as he was unable to express properly what he wanted.....
Fr. Victor did not understand anything of what Mr. Ganapathy demanded and he asked me to verify with him. Mr. Ganapathy did not recognize me and asked me who I am. I told him that I am Praveen, the Vice President of the church. The moment I said my name, he started pleading me to write a favourable letter to the IGP of Western Range, and recommend his name through local MLA Mr. J.R. Lobo, so that he can come back to work in Kadri Police Station.

(underlining supplied)

Later after a few days (I think his last call was about a week or so before his death), he called me couple of times requesting me to speak to local MLAS and local Ministers."

59. This statement gives an inkling into the frame of mind of the deceased that in the year 2016 he was desperately trying for an executive posting and he wanted the Christian leaders to put in a word with local MLA. John Richard Lobo and the Home Minister-accused No.1 who also happened to be Christians. He was showing the video of him praying to Infant Jesus only to gain the confidence of Christian Leaders. Unfortunately, even

this statement is construed by the learned Special Judge as an instance of harassment by accused No.1.

60. The state of mind of the deceased at the relevant time is spoken to by one of his close associate Divya Darshan a Police Officer. According to him about 10 days before the death, when he contacted the deceased in Mangaluru, he was not in a position to recognize him and asked him 'Who are you'. He has specifically stated that:-

"During the above contact, I met him in his office. He was very thin. I took him for a ride. He was not well. I asked him as to what was his problem. He said that Shri Ivan D'Souza, MLC and Shri J.R. Lobo, MLA of Mangaluru told bad things about him to Shri K.J. George. In my opinion, he had handled the church attacks well and reasonably. After about 15 minutes, he repeated the above statement about people complaining about him to Shri K.J. George. The next day, I met him and told that I have a friend Shaju(Shri Vincent Joseph Nelliya) and he will discuss with Shri K.J. George and solve the problem. In the meantime, M.K. Ganapathy went and met church priests. He had a video of himself praying Jesus on his phone and had shown the same thing to the priests and

apologized them. He requested them to help him get a posting by talking to Mr. George. He also had a church attack video in his mobile phone."

(underlining supplied)

61. This statement would indicate that the deceased was haunted by the church attack and appears to have been suffering from guilt factor and therefore to expiate himself, he appears to have visited the very same church and apologized to the priest for the acts done by him and requested them to get a posting to him by talking to accused No.1. The purpose of his visit appeared to be to get an appointment with accused No.1 for posting. This cannot be construed as an act of harassment by accused No.1.

62. The material collected by the Investigating agency manifest that in 2016, the deceased was suffering from serious mental imbalance and had even suffered loss of memory and was suffering from delusions of persecution and paranoia. There is abundant evidence in this regard which I would discuss later. The learned Special Judge has conveniently overlooked this important evidence and by misreading the statements of the above witnesses

has erroneously held that on account of church attack, deceased was continuously harassed by accused No.1, eventhough there was not even a shred of evidence to connect A1 to the Church attack cases registered by the deceased.

63. It is really shocking to note that based on this incident, the learned Special Judge has even gone to the extent of holding that *"there is nexus between the reason for the deceased to commit suicide and the alleged harassment by accused Nos.1 to 3"*. In the absence of any evidence to show that there was any common intention on the part of accused Nos.2 and 3 to harass the deceased on account of the alleged church attack, the conclusion drawn by the learned Special Judge is far fetched and cannot be sustained.

64. Coming to the mental state of the deceased at the relevant time, the learned Special Judge has extracted the statements of the psychiatrist and the medical officers who treated the deceased and has conveniently brushed it aside saying that *"there is no prima-facie material to show that the deceased was*

suffering from any mental depression.” This inference once again is contrary to the statements of the medical officers as well as the documentary evidence collected by the Investigating agency during the course of investigation. In this regard, it may be relevant to refer to the statements of CW-48, Dr Sandeep Deshpande, Consultant Psychiatrist, Malieshwaram. His statement reads thus:-

“ On 08.03.2016, a person by name Manjunath Kumarappa aged 50 years came to my clinic. He had come alone.. His complaint was he was not able to remember day-to-day activities and stress, at work(policing job). He complained about bad health i.e., on/off chest pain and ear blocks for many years. I did an assessment and did not find any co-morbid(co-existing) psychiatric illness(Other than some somatic preoccupation) to explain his complaint.....I recommended few tests and neuro physical assessment and referred him to Dr. Keshav Kumar, Neuro Psychologist of NIMHANS and I prescribed him (1) Neorbion forte(2)Eliwel 10 mg which were low dose anti-depression and multivitamin tablets for 30 days and instructed him to return then next month and to bring his wife on the next visit to ascertain the background history, attitude and behaviour of Manjunath through his wife, who spends much time with him. But he never came back to me.”

It is seen from the records that the deceased had approached CW-48 with pseudonym.

65. CW-49 Dr. Kiran Kumar, Professor of Psychiatry in A.J. Institute of Medical Science, Mangaluru. In his statement under section 161 Cr.P.C. has stated thus:-

" Sri M.K. Ganapathy, who was working in Karnataka Police Department, came to me in the month of June 2016 complaint of Headache, loss of memory and slight depression. Before, coming to me, he was seen by Dr. Smruthi & Dr. Scuarab Rai at A.J. Hospital when I asked him as what was his real problem he told me that he was involved in fake encounter and involved in Kulshekara Church Attack. From, then he was some sort of stresses from his department. He further told me as to can you name anybody specifically responsible for the problems, for which he replied in negative and told me that whoever working in Police Department has to face the above said problems commonly. On being further asked, he told that he does not have any kind of family problem which lead to above kind of problems. After some sort of counseling, I sent him.

On 23.6.2016, he came to me second time and when I asked him, how he is feeling now for which he replied that his headache is decreased, but did not get any respite from loss of memory. So, I prescribed him Sesertalina and Amitryptline tablets for a period of about four weeks for improvement of loss of memory power. During the said visit, he was with me for about 15 minutes. I observed that he behaved normally and found to be in relaxing mood.

66. CW-50 Doctor Saurabh Rai N., Department of Neurology, BLK Super Specialty Hospital, New Delhi has stated thus:-

"On 15.4.2016 Sri.M.K. Ganapathi had come to our hospital for treatment and he was referred to me for treatment. He had come alone. He was well dressed, his beard clean shave and had maintained good hygiene. He told me he was employed in the Police Department and complained about gradual onset of forgetfulness. He said he was unable to remember conversations. As noticed by his friends, his memory was declining and this problem was interfering in his work in office. When I enquired him as to whether any other members of his family is having same problem, he told me no. To ascertain the reason/cause for his forgetfulness/absent mindedness recommended at a CT scan (brain). After subjected for said examination and brought the reports. On verification of the CT scan report (brain), I suspected Atrophy of the temporal lobe on both sides. A provisional diagnosis of minimal neuro cognitive impairment was made to confirm the same, I instructed him to get MRI scan also which

he did not do and not shown to me and referred him to Dr. Smruthi, Neuro Psychiatrist of the same Hospital and prescribed him 'Donepezil Tablet' to be taken for 15 days.

67. These statements which are duly supported by the medical records clinchingly point out that the deceased was suffering from Neurotic disorder, loss of memory and depression. Even laymen who came in contact with him have observed the abnormal behavior of the deceased. As already noted above, Divya Darshan his own close friend and colleague stated that the deceased was unable to recognize him. According to this witness the deceased was repeatedly telling him "that some Christians are targeting him not to get good posting." His grievance therefore was against Christians in general and not against accused Nos.1 to 3. Even the father of the deceased at an undisputed point of time has alleged that the deceased was suffering from depression and was frustrated in life. In the wake of this overwhelming evidence, the observation of the learned Special Judge that there is no prima-facie case to show that the deceased was suffering from any

mental depression is nothing but perverse and ignoring the obvious.

68. The Special Judge failed to note that even before the Medical Officers, the deceased did not alleged any harassment by the accused. CW-49 is categorical in his statement that when he asked the deceased to name anybody specifically responsible for the problems, the deceased replied in negative. In the light of this evidence, there is absolutely no basis to hold that the deceased was a victim of harassment by accused Nos.1 to 3 as noted by the Special Court.

69. On going through the entire material on record, I find that for the first time, the names of accused Nos.1 to 3 figured in the interview given by him to the reporter of the TV-01. The transcription of the said interview is produced by learned Senior Counsel for the petitioners Sri. B. V. Acharya alongwith a memo. It is stated that it is the copy of the transcript produced by respondent No.2 to 6 before Hon'ble Supreme Court in Criminal Appeal Nos.1571-1572/2017(arising out of Special Leave Petition Nos.10120-10121/2016). As such, there is no dispute with regard

to the authenticity of its contents. This is the only material wherein the deceased has named accused Nos.1 to 3. But a careful reading of this transcript reveal that this interview was given by him to make a public display of the harassment suffered by him in the Police Department and not to pinpoint the accused. In this interview, he referred to eight important cases handled by him during his career as enumerated by the learned Special Judge in the impugned order. The investigating agency has referred to the material relating to each of those cases and has observed that in respect of Kadri PS Democratic Youth Federation of India (DYFI) incident, Sri. A.M. Prasad(accused No.3) had passed a final order on 24.10.2008 in respect of the charge sheet issued against the deceased withholding annual increment of M.K. Ganapathy for a period of three months without affecting the further increment. Undeniably, this is an administrative action taken by accused No.3 and the same cannot be construed as an act of harassment. In respect of Kulshekar Church Attack case, it has been observed that the deceased did not face any action in this regard and did not suffer any loss career wise. As already discussed above, none of the accused were concerned in the said incident.

70. Regarding the Police-Advocate clash within the limits of Madiwala Police station, the records indicate that the CBI had filed charge sheet against 16 police officials including the deceased (accused No.2) under sections 323, 324, 326, 342, 427, 335 r/w 34 IPC. But the Government did not give sanction for prosecution of the above charged police officials including the deceased. As such, even this incident could not have been a reason for the deceased to air his grievance about the treatment given to him in the Department.

71. Regarding Rajagopainagar Police Station Theft case, the then Commissioner of Police Raghavendra Auradkar took disciplinary action against the deceased by placing the deceased under suspension for a period of 30 days. Even though the deceased had specifically named him and several other police officials, the respondents have not chosen to proceed against the said Commissioner or others, apparently for the reason that action was lawfully taken against the deceased for his dereliction of duty.

72. Regarding the Inspection of case properties by Sri. B.S. Santhakumar, ACP, even though prima-facie material was collected showing the missing of large items of properties, yet the Home Department sent a letter dated 10.12.2015 to the DG and IG stating that the charges were not specific and ultimately, the ACP, Madiwala submitted a report to DCP stating no items in respect of four inspectors in the charge memo including the deceased was missing and therefore, no charges were framed against him. Therefore, no action was taken against the deceased.

73. Insofar as, the complaint against the deceased in Lokayukta, the brother of the rowdy sheeter who was killed in the police encounter had lodged a complaint against the deceased and after verification, the complaint was closed during 2016 and the deceased was never called for any enquiry, as such, this matter also could not have been the reason for the deceased to ventilate his grievance in public. Under the said circumstances, merely because the deceased had named the petitioners in the interview, the said interview could not have been taken as the basis for the prosecution of the petitioners for the alleged offences.

74. The manner in which the deceased has narrated various instances in his life would indicate that he himself was feeling relentlessly persecuted by his peers, superiors and political leaders. Though in the lengthy interview, he has named large number of cases dealt by him, a reading of the transcript shows that he was mentally disturbed and completely disoriented. He rambled from one incomplete idea to next, jumping from one topic to another, as a result, final product appear to be incoherent, disjointed, meaningless and absurd and as such, this statement, in my view, could not have been made the basis to incriminate the accused. In this interview, he has not only named the petitioners, but also has named the whole lot of his superiors. This is evident from the excerpts of the interview which are extracted herebelow:-

Then, what happened was, later we got news of changes all across. In Karnataka. Then, what I did was there was my batchmate - Purushottam in Madivala-he had completed two years, two months. So did I. So, we wanted to swap places. I told him: "you introduce your MLA to me and I'll introduce my MLA to you." Then, we did the changing... I went to Madivala and he came to Yeshwantpur.

3 months after I went to Madivala, there was an ACP, by the name Subbanna, and DCP Harsha. He was kind of demanding,, demanding from us. Forget it, can't speak about it. Let's forget it. He was making

demands... give.. give monies etc. I do not do such things I've worked mostly in Mangaluru,, 10 years.....

Then later, I am not sure he must have heard from the encounter team, he deliberately brought up the encounter case on some TV. Cannot blame the channel-they did not know or ask for it...

They showed it as I demanded money and when I did not get it, I did fake encounter.....

So, when I was deliberately being targeted on fake encounter charges, I went to meet my superior – DG – and made a request to counter the charges. He approved and I approached Suvarna Kasturi TV where I showed clearly that it was not fake encounter.....

Then came elections and a new government, this government... the Congress Government. I did not have anything against anyone – or any party...Congress... BJP.. JD-S.... Everyone was good. I did not have any trouble with anyone, during that time all was good, then I tried for Bangalore in Rajagopalnagar. Because earlier, when I was an inspector in Yeshwantpur, then there was Rajagopalnagar MLA Muniratna- he was a corporator earlier and we got to know each other then, he said you come, and then he gave me a letter and then I got a posting there. But then, in the starting George etc did not know about this. He did not know anything about this. Then, within a month in some meeting in Mangaiuru - he was told about me, some Christians said how when I was posted earlier there, in 2008, he filed case against us, it is causing us trouble, he has filed FIR against us etc etc. I had not gone after the case, I went to court and gave evidence, the case got closed. That's all. Since we were injured, we had medical copies.....

They claim that FIR was done deliberately, and they tried to oust me from the station. Then, they informed the superiors like AM Prasad – Ashiq Mohan Prasad.....

He was very demanding , asking, seeking(gesturing), but I do not do such things. So, when he was told, he was happy, deliberately – stated asking what did I do in Rajgopal Station, on two occasions, they spoke to Human Rights Commission.....

They tried everything, but could not find anything, so after 2-3 months after filing the complaint, they said I was suspended because they could not do anything against me. I had not made a mistake. There was a lot of pressure from the higher ups.. to the Commissioner, other... Yes, Raghavendra,, Commissioner, Raghavendra, Commissioner,, Then what to do when there is lot of pressure, to oust me. So, they pulled me out, and put me as non-executive, in Bangalore, in city officer. As non-executive.

Then I realized, but what to do.. it is George's pressure. Then what could I do, then George. I tried reaching out to him through various means, but no, he was very dismissive, said can't give back posting. I tried through various channels, but he did not relent. I felt really bad about this.

*(A voice off the screen asks. Did George do this)
Yes – it was George all through, he was then the Home Minister too, he got adamant, he did it. He has troubled many people, like this. Similarly, like this, there was another one in Bangalore, an Inspector, similar such thing happened.....*

In Bangalore, one person Pranab Mohanty,, Pranab Mohanty, he also used to make big demand, asking for monies. In Madivala too, he was like that. When ACP

Subbanna & DCP Harsha he Pranab Mohanty was IG, he asked for money. I said no, it went out, he also tried, deliberately, on me, all this happens only in Bengaluru. Like I said, after elections I went back to Rajgopalnagar, when I went back, deliberately they put me on Bangalore Mirror, same encounter case, some three times.....

(Showing a report).... you know what this is.... this was when I was in Madivala station after I got transferred from there, this was published making allegations against 4 Inspectors - saying such items were missing etc.

(Voice off the screen: who got these published) What?? Oh this, that's Pranab Mohanty the IG. Now, he is with the Lokayukta. Those guys wanted these guys there.....

Then, Muslims, they are very good with me, very nice, full support Hindus, they are good Muslims, they are good Christians are hmmm good and ones who know.

75. I have gone through the entire transcript. I do not find anything therein which would prima-facie disclose the elements of instigation or abetment by any one of the accused constituting the ingredients of the offence under section 306 of IPC.

Hon'ble Supreme Court in *RAJESH v.. STATE OF HARAYANA* in CrI.A.No.93/2019(SLP No.8667/2016) dated 18.01.2019 has held as under:-

8. *"The conviction under section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See Amalendu Pal alias Jhantu v. State of West Bengal1).*

9. *The term instigation under Section 107 IPC has been explained in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi2) as follows:*

"16. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , R.C.Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do (2010) 1 SCC 707 (2009) 16 SCC 605: (2010) 3 SCC (Cri.) 367 "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the

consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.)."

76. In the case on hand, the various instances narrated by the deceased during his interview, even if accepted as true, they do not indicate any positive act by any of the accused proximate to the time of the occurrence. All the events narrated by the deceased relate to distant past. None of the accused are directly connected to any of these events. Accused No.1 was no-way in picture when the departmental charges were faced by the deceased and accused Nos.2 and 3, if at all, they have taken any disciplinary action against the deceased, it was in discharge of

their official function for which, they cannot be prosecuted without prior sanction under section 197 IPC and 370 of the Police Act as laid down by the Apex Court in the case of D DEVARAJA V. OWAIS SABEER HUSSAIN, referred supra. That apart, in the case of GURCHARAN SINGH v. STATE OF PUNJAB, 2020 SCC ONLINE SC 796, it is held as under:-

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

77. In the instant case, learned Special Judge has not examined whether the accused had any *mens rea* to commit the crime.

78. Even though, the learned Special Judge has issued summons invoking section 34 IPC, no material is available to show common intention or participation of the accused in the commission of crime. In order to attract section 34 IPC, acts should have been done by several persons in furtherance of common intention. In the absence of any semblance of proof of the ingredient of section 34 IPC, issuance of summons to the accused to face trial for the alleged offence is blatantly illegal and arbitrary. As held by Hon'ble Supreme Court in *M/s. PEPSIFOODS Ltd. & Another vs. SPECIAL JUDICIAL MAGISTRATE & Others* (1998) 5 SCC 749:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made

in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

79. Thus on consideration of the above factual and legal issues arising in these cases, I am of the clear view that the Special Court has misdirected itself in taking cognizance of the alleged offence and issuing summons to the petitioners/accused Nos.1 to 3. The findings and the observations made by the learned Special Judge in the impugned order are perverse to the core as no prudent person could arrive at the conclusion based on the material on record that the petitioners/accused Nos.1 to 3 were

instrumental in driving the deceased to commit suicide. The evidence collected by the investigating agency, even if accepted in its entirety, does not disclose *mens rea* or instigation or conspiracy by the petitioners making out the ingredients of the offence under section 306 r/w 34 of IPC. In the absence of any material to make out the ingredients of the above offence, there was absolutely no reason or justification for the Special Court to reject the well founded report filed by CBI and to take cognizance of the alleged offence and issue summons to the petitioners.

80. Since the material on record does not prima-facie disclose commission of the offence by the petitioners, the action initiated against the petitioners/accused Nos.1 to 3 being wholly illegal, perverse and amounting to abuse of process of court deserves to be quashed. Accordingly, answering the above points in favour of the petitioners/accused Nos.1 to 3, the impugned order dated 28.08.2020 and the entire proceedings pending on the file of learned LXXXI Addl. City Civil and Sessions Judge, Bengaluru(Special Court exclusively to deal with criminal cases related to elected MPs/MLAs in the State of Karnataka) in Spl.C.C.No.431/2020 arising out of Crime No.89/2016 and UDR

No.9/2016 subsequently registered as R.C.No.2/2017/CBI/SCB/CHENNAI are quashed.

81. Regarding the averments made in CrI.P.No.4319/2020 alleging that the impugned order is "colourable and biased", the petitioner has tendered unconditional apology which reads thus:-

MEMO

The undersigned counsel appearing for the petitioner humbly submits as under following:

- 1. The Petitioner in Para 9 of the Petition has averred as under:*

"It is humbly submitted that the..... It is submitted that in the present case, not only is the impugned order highly colorable and biased, but the said order also lacks the application of mind".

- 2. The Respondent 3 to 6 in their objection para 11 has expressed their objection for the usage of words colorable and bias*
- 3. Without admitting or conceding that the said usage of words amounts to contempt of court on the part of the Petitioner, the Petitioner out of abundant caution has filed the present Memo. The Petitioner humbly submits that the intention of the Petitioner is only to emphasis the illegality of the order impugned. The Petitioner had no intention to cast any aspersions to the court concerned. The usage of the said words in inadvertent and is highly regretted. The petitioner has the highest respect to the institution and the stake holders of this institution. Usage of words were wholly unintentional and was bonafide mistake. The Petitioner hereby renders an unconditional apology*

and craves leave of this Hon'ble Court to permit withdrawal of the sentence objected to and any other similar words in the petition.

4. *It is humbly prayed that the present Memo be taken on record and the Petitioner through counsel be permitted to delete the above extracted sentence and also any other objectionable words in the petition in the interest of justice and equity.*

The apology is accepted.

In view of this apology, no further action is called for.

Petitions allowed.

SD/-
JUDGE

*mn/-