IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND;MEGHALAYA;MANIPUR; TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

CRIMINAL REVISION PETITION NO. 386 OF 2009

Shri Pallab Das,
Son of Late Durgadhar Das,
Resident of Maligaon Gate No.1,
Guwahati-781 011,
Assam

..... ***PETITIONER***

-VERSUS-

1. Central Bureau of Investigation,
C.G.O Complex, MSO Building Of Block,
2nd Floor, Salt Lake, Calcutta 94

2. The State of Assam

3. Shri Mridul Phukan @ Samar Kakati
Resident of Sepon, JB Road,
P.S. Sepon,
Dist- Sivasagar, Assam

..... ***RESPONDENTS***

P R E S E N T
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MRS. JUSTICE ANIMA HAZARIKA

For the petitioner : Mr AK Bhattacharyya,
Senior Advocate
Mr KK Bhattacharyya,
Mr AK Choudhury,
Mr S Dutta,
Advocates

For the respondents : Mr AC Buragohain,
Standing Counsel,
CBI,
Mr Z Kamar,
Public Prosecutor,
Assam,
Mr Chetan Sharma,
Sr. Advocate
Mr M Vashisht,
Mr S Vashist,
Mr J Roy,
Advocates

Dates of hearing : 25.1.2012, 8.2.2012, 9.2.2012, 10.2.2012, 10.2.2012, 14.5.2012, 15.5.2012, 16.5.2012 & 29.5.2012

Date of judgment :

JUDGMENT & ORDER
(CAV)

Amitava Roy, J

This petition in a revisional attire proffers unique features of impeachment of the investigation of a sensational episode of assassination of a reputed journalist of the State who fell to multiple bullet injuries in the process of consorting his minor son back home from his school one fateful afternoon.

2. The recorded challenge laid by the brother of the deceased though is against the verdict of acquittal of the respondent No.3 indicted in Sessions Case No. 136(K)/03 vide judgment and order dated 28.7.2009 rendered by the learned Sessions Judge, Kamrup District, Guwahati, assiduous insistence for further investigation as the singular relief permeated the long drawn assertions on his behalf to espouse, as perceived, an uncompromising societal cause. While the investigating agency, the Central Bureau of Investigation (for short, hereinafter referred to as 'the CBI') and the State of Assam have endorsed the investigative pursuit, the

maintainability of the petition in the present form and the tenability of the challenge in general have been sought to be vociferously assailed on behalf of the respondent No.3.

3. We have heard Mr AK Bhattacharyya, Senior Advocate assisted by Mr KK Bhattacharyya, Advocate for the petitioner; Mr AC Buragohain, learned Standing Counsel, CBI and Mr Z Kamar, learned Public Prosecutor, Assam for respondent Nos. 1 and 2 respectively. We have heard as well Mr Chetan Sharma, Senior Advocate assisted by Mr M Vashisht, Mr S Vashisht and Mr J Roy, Advocates for the respondent No.3.

4. The genesis of the prosecution case is traceable to the gory incident of 17.5.96 at about 2.45 p.m. in which Parag Kumar Das, the then Executive Editor of the Assamese daily "Asomiya Pratidin" was shot at near Rajgarh Road, Railway Gate in Guwahati in the State of Assam. The occurrence took place in front of the Asom Jatiya Vidyalaya at Rajgarh, Guwahati under Chandmari Police Station when the victim had gone to the school to escort back home his son Master Rohan Das @ Rishi (then aged about 8 years), a student of Class V of the institution. The injured on being rushed to the Guwahati Medical College & Hospital immediately thereafter, was declared to have been brought dead. In the incident not only the deceased received

multiple bullet injuries, his son was hit as well by a bullet in his right hand.

5. On receipt of the information about the incident immediately thereafter from an unknown caller, Sri Rameswar Lalung, the then Officer-in-Charge of Chandmari P.S. under the jurisdiction whereof the incident had occurred, rushed to the site along with other police officers/ personnel and eventually an FIR was lodged by him, whereupon Chandmari P.S. Case No. 207/96 under Section 302/326/34 of the Indian Penal Code (for short, hereinafter referred to as 'the IPC') read with Section 27 of the Arms Act, 1959 was registered. As the FIR would, amongst others, disclose, a telephonic information about the incident had prior thereto been incorporated vide G.D. Entry No. 473 dated 17.5.96 and that the police on reaching the place of occurrence had arranged for the removal of the injured to the Guwahati Medical College & Hospital in the police patrol vehicle for immediate medical attention. The FIR reveals as well that on preliminary enquiries made at the spot, it appeared that the assailants who had fired at the slain journalist and his son had come in a Maruti Car and had left the site in it after the occurrence.

6. It was quite sometime thereafter that the Government of Assam vide Notification No. PLA-171/96/32-A dated 23.10.96 decided to hand over the investigation of the case to the CBI. This initiative having been concurred upon by the Government of India vide its Notification No. 228/19/97-AVD.II/New Delhi dated 29.4.97, CBI Case No. R.C.4/SCB/97-Cal dated 25.7.97 was registered treating the FIR of Chandmari P.S. Case No. 207/96 as the FIR of the said CBI Case as well. Sri S.K. Das, Inspector of Police, CBI, SCB-Calcutta was entrusted with the responsibility of the investigation. Evidently, there was a time lag of approximately fourteen months at this change over.

7. Be that as it may, the CBI submitted its chargesheet in the case on 24.11.2000 against four persons, namely,

1) Nayan Das @ Guli Das
2) Mridul Phukan @ Samar Kakati (respondent No.3 herein)
3) Biswajit Saikia @ Tapan Dutta
4) Diganta Kr. Baruah

8. Whereas the persons at serial Nos. (1) and (2) were recorded to be absconding, those at serial Nos.(3) and (4) were not sent up for trial since they were dead by then. The chargesheet disclosed the following salient features of the revelations in course of the investigation:-

i) The case before being handed over to it was investigated by the Chandmari Police Station.

ii) The deceased Parag Kumar Das at the time of his death was the Executive Editor of the vernacular daily "Asomiya Pratidin".

iii) As a journalist, the deceased, by his bold publications in the media columns and incisive criticisms of the contemporary policies of the Government, its administrative instrumentalities and functionaries, was a cynosure of the common masses and was, thus, a messianic personality for them vis-à-vis the socioeconomic problems consternating the State and its common people.

iv) He along with some of his friends formed a representative body titled "Manab Adhikar Sangram Samity" (for short, MASS) at Guwahati in 1991, amongst others, to take up documentation work on violation of human rights by the police and the Army.

v) The deceased was critical about the State policy ushering the surrender of United Liberation Front of Assam (for short, 'ULFA') activists and through his columns vociferously aired his views against them i.e. the members of the surrendered ULFA activists (for short, 'SULFA').

vi) His criticism of the death of one Binu Chetia, a candidate in fray in the State Assembly Election, 1996

sponsored by Congress (I) infuriated the SULFA leaders so much so that some of the activists of that group under the leadership of the persons arrayed at Serial Nos. 3 and 4 of the chargesheet along with others visited the office of "Asomiya Pratidin" and met him (deceased) to publish their counter criticism in the same daily. However, as the deceased refused to accede to their demand, heated arguments ensued following which the SULFA leaders left the place threatening him (deceased).

vii) Prior thereto, the SULFA activists had protested to the newspaper through a fax message demanding discontinuance of publication of different articles of the deceased criticizing their unit or their activities.

viii) The persons at serial Nos. 1 and 2 of the chargesheet were very close to each other and had good relations with those at serial Nos. 3 and 4 and other upper Assam based SULFA activists.

ix) They also procured sophisticated firearms of different nature from various sources.

x) The chargesheeted person at serial No. 2 had vowed to take revenge against the death of Binu Chetia in presence of witnesses while visiting his (Binu Chetia) house after his death. This was a few days prior to the incident.

xi) Three to four days prior to the incident, the chargesheeted person at Serial No. 2 (respondent No.3 herein) had tried to engage an individual named Kajal Khan to eliminate the deceased but the mission failed as the former refused to part with the amount as demanded.

xii) The chargesheeted person at Serial Nos. 1 and 2 were not found at their place of stay during 16.5.96 to 18.5.96 and were moving at different places of Guwahati and near the place of occurrence prior to the incident.

xiii) The chargesheeted person at Serial No.1 had come from Dibrugarh on 16.5.96 and it transpired that he was then carrying a kit bag which contained a small sophisticated firearm, the front portion whereof had multiple bores. He on that date took shelter in a house near the place of occurrence. On 18.5.96 he was seen leaving Guwahati in a Dibrugarh bound bus along with the said kit bag containing firearms. The description of one of the assailants including his physical features as well as wearing apparels matched with that of his.

xiv) The chargesheeted person at Serial No. 2 had procured a sophisticated firearm from Dibrugarh area prior to the incident. He had also a few more licensed and unlicensed firearms. He was also too much annoyed and irritated with the deceased for his

publications against the SULFA leaders in his newspaper.

xv) The chargesheeted person at Serial Nos. 3 and 4 were found at Guwahati on the date of the incident and at the place of occurrence with other accused persons in the same Neptune Blue Maruti 800 Car at the time of the occurrence. The vehicle which did not have any number plate was used in the commission of the offence and was found abandoned near the place of occurrence. Its glasses were covered with dark film. The car, however, could not be traced.

xvi) The chargesheeted person at Serial No. 2 had expressed relief and pleasure on the death of Parag Kr. Das in course of his visit at a Mosque at Moran to attend a feast.

xvii) The photographs of the chargesheeted persons were identified by the witnesses from a bunch of photographs of suspected SULFA activists. The witnesses stated that the chargesheeted persons at Serial Nos. 1 and 2 fired upon the deceased resulting in his death and the injury in the right hand of his son. They further stated that the chargesheeted person at Serial No. 3 was sitting beside the driver in the Neptune Blue Maruti 800 Car and the chargesheeted person at Serial No. 4 was in the driver's seat.

xviii) The deceased sustained multiple bullet injuries from the firearms of the assailants.

xix) 14 empty bullets of different calibers were recovered from the place of occurrence indicating that the assailants had used two different firearms and bullets in the commission of the offence as was endorsed by the opinion of the medico-legal and ballistic experts.

xx) The chargesheeted persons at Serial Nos. 3 and 4 were, during the investigation, killed by unknown miscreants on 10.8.98 and 31.12.98 respectively.

xxi) No incriminating material/ evidence could be collected against Pramod Gogoi @ Baba and Prabin Sarma who had been arrested by the Assam Police on suspicion on 6.6.96 and 17.3.97.

xxii) No evidence could also be collected against the suspects—Sri Bitupan Deuri @ Binay Barua @ Kamal; Sri Prafulla Bora @ Dhekial Phukan; Sri Kajal Khan @ Harish suggesting their involvement in the incident.

9. The CBI, thus, concluded that from the evidence collected in course of the investigation a *prima facie* case had been made out against the chargesheeted persons at Serial Nos. 1 and 2 that they had fired at the deceased by using two firearms causing severe bullet injuries to which he ultimately succumbed.

The son of the deceased, Rohan Das also sustained severe bullet injuries on his right hand. The chargesheeted persons at Serial Nos. 3 and 4 were present in the Neptune Blue Maruti Car used by the assailants for the commission of the crime. Whereas the chargesheeted person at Serial No.4 drove the car to reach the place of occurrence, the same was retreated soon thereafter from the spot. The CBI mentioned that as meanwhile the chargesheeted persons at Serial Nos. 3 and 4 were dead, they could not be sent up for trial and, thus, laid the chargesheet under Section 302/326/34 IPC read with Section 27 of the Arms Act, 1959 against Nayan Das @ Guli and Mridul Phukan @ Samar Kakati (respondent No.3 herein) to stand trial in due course of law.

10. In due course, the case was committed to the Court of the learned District & Sessions Judge, Kamrup, Guwahati for trial. Meanwhile, Nayan Das @ Guli having expired, charge was framed under the aforementioned provisions of law against Mridul Phukan @ Samar Kakati (respondent No.3) to which he pleaded 'not guilty' and claimed to be tried.

11. At the trial, the prosecution examined 49 witnesses including the Investigating Officer, the doctor who had performed

the post mortem examination, the then Officer-in-Charge, Chandmari Police Station who had lodged the FIR on the date of the incident and the officers of the Forensic institution associated with the investigation. The respondent No.3 was thereafter examined exhaustively under Section 313 of the Criminal Procedure Code (for short, hereinafter referred to as 'the Code') and his consistent plea was one of total denial of the imputations and the incriminating materials to which his attention was drawn. He, however, opted against adducing any witness in defence.

12. Meanwhile, before conclusion of the investigation by the CBI and submission of the chargesheet as adverted to hereinabove, a Public Interest Litigation [W.P(PIL) No. 26/2000] was instituted before this Court by four revered and prominent citizens of the State seeking its intervention to direct it (CBI) to expedite the investigation and prosecute the culprits involved in the incident. During the pendency of this petition as the chargesheet was submitted on 24.11.2000, it was disposed of on 4.1.2001 with a direction to the learned Trial Court to proceed with the trial of the case expeditiously, if necessary on day to day basis. The CBI was also directed to prosecute the accused persons diligently.

13. The records demonstrate that thereafter an interim application being M.C. No. 2035/2006 was filed complaining of the delay in the trial seeking appropriate and/or additional directions from this Court in connection therewith. By order dated 22.6.2006, after hearing the learned counsel for the applicants and the CBI, this interim application was disposed of with the following directions:

i) The CBI authorities at Guwahati would entrust an officer, not below the rank of S.P. to monitor the progress of the case and to ensure compliance of the orders that may be passed by the learned Sessions Judge. A report about compliance of this direction would be forwarded to the Registrar General of this Court by the CBI without loss of time;

ii) The learned Sessions Judge, Kamrup, Guwahati was directed to hear the case on day-to-day basis without adjourning the same as far as may be practicable;

iii) The learned Sessions Judge, Kamrup, Guwahati would pass appropriate orders in accordance with the provisions of the Code of Criminal Procedure for procuring the attendance of the witnesses and the orders/ directions, summons and/or warrant of

arrest-- bailable or non-bailable that would be issued by the learned Sessions Judge would be executed by the CBI with all earnestness;

iv) The learned Sessions Judge would allow the family members of the deceased to appoint a lawyer to be present in the Court during the proceedings of the case without active participation, if such a prayer was made by any of the members of the family of the deceased.

14. While granting liberty to the petitioners to approach this Court again, if so advised, as the above extract would demonstrate, the learned Trial Court was directed to allow the family members of the deceased to appoint a lawyer to be present in Court during the proceedings of the case without active participation, if such a prayer was made by any of the members of the family.

15. Pursuant to this leave, as the records of the learned Trial Court would reveal, Mr Pallav Kataky and Mr Manas Haloi, Advocates represented the family members of the deceased at the trial. At the conclusion of the trial, the learned Sessions Judge, Kamrup at Guwahati by the judgment and order dated

28.7.2009 acquitted the respondent No.3 of the charges following an elaborate analysis of the evidence on record and other materials bearing thereon. The learned Court below was of the unhesitant view that the prosecution had failed to adduce credible evidence to prove any of the charges levelled against the respondent No.3 beyond the pale of doubt. While arriving at this conclusion the learned Trial Court dwelt upon, amongst others, on the aspect of lack of identification of the assailants, non-availability of the Neptune Blue Maruti 800 Car, obscurity hedging the claimed seizure of the empty cartridges from the place of occurrence etc.

16. A surge of public upheaval ensued triggered by the mass perception that the CBI in particular had failed a genuine social cause. Inept and somnolent disposition of the State Government in facilitating impliedly such a travesty of justice appeared to be the instant conclusion. Absence of any step either by the State of Assam or the CBI to assail this unacceptable outcome seemed to consolidate these deductions. It was in this setting that by letter dated 28.8.2009 addressed to the Chief Justice of this Court, Prof. (Dr.) D.P. Barooah, Former Vice Chancellor, Gauhati University, Guwahati implored judicial

intervention to uphold the majesty of the rule of law and secure the enduring faith of the society in the justice dispensing system.

17. Responding to this appeal, Criminal Revision Petition No. 377/2009 (Suo motu) was registered thereon and notice was issued to the learned Public Prosecutor, Assam as well as the learned Standing Counsel, CBI. Later, an Amicus Curiae was also appointed to assist the Court. While this matter was pending and in progress, the brother of the deceased, Pallab Kumar Das filed a petition under Section 397 and 401 of the CrPC on 14.10.2009 seeking the following reliefs:

i) Annulment of the judgment and order dated 28.7.2009 passed by the learned District & Sessions Judge, Kamrup, Guwhaati I n Sessions Case No. 136(K)/2003.

ii) Remand of the case for re-trial to the learned Sessions Judge, Kamrup with a direction to it to consider as to whether there was a scope to re-investigate the case in the interest of justice and fairplay.

iii) To pass such further order other order/orders as maybe deemed fit and proper.

This petition was registered as Criminal Revision Petition No. 386/2009.

18. For some time thereafter both the proceedings were taken up together and eventually by order dated 15.9.2010, Criminal Revision Petition (Suo motu) No. 377/2009 was disposed of taking note of the pendency of Criminal Revision Petition No. 386/2009. According to the learned Division Bench passing the said order, the suo motu revision petition was not necessary to be continued with in the face of the Criminal Revision Petition No. 386/2009 instituted by the brother of the deceased. Arguments have, thus, been advanced by the learned counsel for the parties in the above factual premise in the surviving Criminal Revision Petition No. 386/2009.

19. The CBI as well as the respondent No.3 have offered their affidavits in the instant proceedings. In the face of the detailed arguments exchanged on all conceivable facets of the debate, it is inessential to dilate on the pleaded contentions to avoid repetition. Suffice it is to state that whereas the petitioner has endeavoured to highlight the failings of the investigating agency and the omissions of the learned Trial Court, the CBI in essence has insisted that utmost endeavours had been made by it to pursue all probable dimensions of scrutiny and bring on record the available materials unearthed in the process. Refuting the imputation of any deficiency in the investigation, it has

insistently contended that at no point of time any infirmity/ lapse either of the investigation or the trial had been brought to the notice of the Court either by the counsel representing the victim family or had been deciphered by the learned Court below.

20. The respondent No.3 while in addition to questioning the locus of the petitioner as well as the maintainability of the petition, has with detailed reference to the evidence of the witnesses examined by the prosecution, asserted that the reliefs prayed for are wholly misconceived. Pointing out the severely constricted scope of scrutiny by this Court in the exercise of its revisional jurisdiction, the answering respondent has underlined the obvious impermissibility of further investigation in the teeth of his acquittal on overwhelming considerations recorded by the learned Trial Court on an indepth appreciation of the materials on record. While reiterating that the learned counsel representing the family of the victim did never protest against the adequacy and/or the quality of the investigation or the trial and that thereby the present challenge is hit by conduct *estoppel* and issue *estoppel*, it has been urged that the petition ought to be dismissed to accord him practical alleviation from the protracted agony and decimating humiliation stemming from unproved accusations and the procrastinated ordeal over the years.

21. The learned senior counsel for the petitioner in the above factual backdrop has insistently urged that as the investigation conducted by the CBI in the case in hand is apparently lacunical, faulty and biased, thus, leaving various vital aspects bearing on the gruesome incident of murder unexplored, it is a fit case in which this Court in the exercise of its revisional as well as inherent jurisdiction ought to direct further investigation to espouse a public cause and consolidate the confidence of the society in the justice delivery regime. Contending that having regard to the materials on record, the impugned judgment and order recording acquittal of the respondent No.3 cannot be faulted with, it being obvious from the said decision that the learned Court below too had failed to confront the investigating agency as well as the prosecution with the patent lapses and failings on both counts, thus, camouflaging the vital facts bearing on the incident, this Court ought to exercise its appellate jurisdiction as contemplated in Section 401 of the Code of Criminal Procedure coupled with its inherent powers in the interest of justice. While contending that any direction for further investigation would not *ipso facto* be prejudicial for the respondent No.3, Mr Bhattacharyya assiduously emphasized that having regard to the facts and

circumstances attendant on the incident, this Court ought to satisfy is conscience on the genuineness and adequacy of the investigation and pass appropriate orders to uphold the cause of justice. Highlighting in particular that the CBI in course of the investigation had totally disregarded the materials collected by the Assam Police in course of its investigation in the case and had not only cited two of the four persons identified by it (Assam Police) as the perpetrators of the crime to be witnesses, Mr Bhattacharyya maintained that it (CBI) inexplicably did not chargesheet the remaining two and intriguingly left out of the probe the Neptune Blue Maruti Car used in the commission of the offence and found abandoned subsequent thereto at the site thereof. On the other hand, the testimony of the Investigating Officer (P.W.49) to the effect that this vehicle had been dispatched to Siliguri is clearly suggestive of a biased investigation by the CBI to shield the offenders, this step being even otherwise impermissible in law by all means, he urged. Mr Bhattacharyya was also critical of the learned Trial Court in this regard and contended that it overlooked this vital aspect as well resulting in the failure of justice.

22. The learned senior counsel urged that not only the role of unauthorized firearms held by the respondent No.3 and

other persons, as the statements of the witnesses recorded under Section 161 CrPC by the Assam Police revealed, remained unexplored and uninvestigated by the CBI, the fear psychosis expressed by some witnesses to disclose *inter alia* the identity of the assailants was also left unattended by the investigating agency as well as by the Trial Court. According to Mr Bhattacharyya, had the CBI endeavoured to fathom the overall role of Mouth @ Subham Saikia, the roots of the conspiracy for murder would have been duly unearthed and on its failure/ omission to do so as well as to seize the firearms used in the crime a societal cause was severely undermined, thereby warranting a direction for further investigation. Mr Bhattacharyya underlined that not only the State's responsibility with the handing over of the investigation to the CBI did not end therewith, its failure to protect the witnesses so as to enable them to speak the truth before the investigating agency as well as the Court resulted in a travesty of justice. In the same vein, Mr Bhattacharyya emphasized that a Court's duty is not discharged by casually accepting the statements/ disclosures in the police investigation and it is not supposed to act as a by stander submitting itself to the vagaries of the agencies entrusted in law to disenter the truth and unveil the offenders to sustain a social order governed by the rule of law.

23. The learned senior counsel contended relying on the decision of the Apex Court in *Bhagwan Dass –vs- State (NCT of Delhi)*, **(2011) 6 SCC 396** that in terms thereof the statements made in course of the investigation under Section 161 CrPC constitute substantial evidence and on that premise, laboured to draw our attention thereto as recorded by the CBI to reinforce his criticism of the sloppy and bathetic investigation razing a public cause stemming from a sordid and gory incident of murder stirring mass conscience. According to the learned senior counsel, the State of Assam and the CBI having failed to prefer an appeal against the decision of acquittal, the brother of the deceased had to take up the cudgel for securing justice to his (deceased) family by invoking the revisional and inherent jurisdiction of this Court and, thus, his *locus standi* in the attendant factual premise is unquestionable. Comparative projections of the statements/ testimony of the witnesses on the basis of their versions before the investigating agency and at the trial were cited with particular reference to the areas of deficiency in the investigation, prosecution and trial to demonstrate the obvious necessity of a further investigation. To buttress the challenge, Mr Bhattacharyya relied on the following judicial pronouncements:-

(a) *Raghunandan –vs- State of U.P.*, **AIR 1974 SC 463**

(b) *The State –vs- Mehar Singh & Ors.*, **1974 Crl. J. 970**

(c) *Ram Lal Narang –vs- State (Delhi Administration)*, **(1979) 2 SCC 322**

(d) *P.S.R. Sadhanantham –vs- Arunachalam & Anr.*, **(1980) 3 SCC 141**

(e) *Randhir Singh Rana –vs- State (Delhi Administration)*, **(1997) 1 SCC 361**

(f) *K. Chandrasekhar –vs- State of Kerala & Ors.*, **(1998) 5 SCC 223**

(g) *Hasanbhai Valibhai Quershi –vs- State of Gujarat & Ors.*, **(2004) 5 SCC 347**

(h) *State of Orissa –vs- Mahima @ Mahimananda Mishra & Ors.*, **(2007) 15 SCC 580**

(i) *Nirmal Singh Kahlon –vs- State of Punjab & Ors.*, **(2009) 1 SCC 441**

(j) *Rama Chaudhary –vs- State of Bihar*, **(2009) 6 SCC 346**

(k) *National Human Rights Commission –vs- State of Gujarat & Ors.*, **(2009) 6 SCC 767**

(l) *Bhagwan Dass –vs- State (NCT of Delhi)*, **(2011) 6 SCC 396**.

24. Mr Buragohain, learned Standing Counsel, CBI in reply insisted that the investigation had been proper and cannot be faulted with. He, however, underlined that the exercise having been handed over to the CBI after over a year of the occurrence, the time lag did cause a serious set back in the initiatives taken in connection therewith. However, all endeavours inspite thereof had been made to ensure that the process is as comprehensive

and searching as feasible, he pleaded. The learned Standing Counsel fully endorsed the findings in the investigation as reflected in the chargesheet submitted by the CBI supported by the statements and documents collected in course of the investigation. Mr Buragohain relied on the decision of the Apex Court in *Jayendra Saraswati Swamigal @ Subramaniam –vs- State of Tamil Nadu*, **(2008) 10 SCC 180**.

25. Mr Kamar, learned Public Prosecutor maintained that as the investigation had been handed over to the CBI, the State of Assam logically could not be accused of any lapse or default in connection therewith. Refuting the imputation of indifference and apathy of the State in extending a protective guarantee to the witnesses to fearlessly testify before the investigating agency and at the trial, the learned Public Prosecutor also dismissed the accusation of inaction on its (State of Assam) part in not preferring an appeal against the decision of acquittal. Mr Kamar relying on the decision of the Apex Court in *Lalu Prasad Yadav & Anr. –vs- State of Bihar & Anr.*, **(2010) 5 SCC 1**, maintained that as the investigation and the prosecution had been conducted by the CBI, any such appeal by the State of Assam is impermissible in law.

26. In his emphatic response, Mr Sharma has questioned the maintainability of the proceedings contending absence of *locus standi* of the petitioner to lodge the revision petition, the victim's son having attained majority at the time of its institution. According to the learned senior counsel, the petitioner though the younger brother of the deceased, is not a Class-I heir of his and, thus, is not comprehended within the purview of the expression 'victim' as defined in Section 2 (wa) of the Code of Criminal Procedure, 1973 (as amended). Without prejudice to this, Mr Sharma has urged that in any view of the matter, the revision petition having been filed before 31.12.2009 i.e. before the date on and from which Section 372 of the Cr.P.C. was amended by the Code of Criminal Procedure (Amendment) Act, 2008, it cannot be construed to be an appeal and, thus, in the teeth of the stringently constricted jurisdiction of this Court under Section 397 and 401 of the Cr.P.C., re-appreciation of the evidence on record is impermissible. As the grounds taken in the revision petition pertain to lack of proper appreciation of the evidence on record, those are obviously untenable being beyond the ambit of scrutiny in the exercise of the revisional jurisdiction of this Court, he urged. Mr Sharma contended that as the respondent No.3 has been tried and acquitted on the basis of the materials on record by the learned Trial Court, no resort either to

the writ jurisdiction or the inherent power of this Court under Section 482 Cr.P.C. is available, as is being insisted upon. Further, the family members of the deceased having been allowed by this Court to participate in the proceedings at the trial and they not having expressed any reservation or demur qua the quality of the investigation, the pleas to the contrary urged before this Court ought not to be taken cognizance of. Profusely referring to the various provisions under Chapter-XII and XVII of the Cr.P.C. bearing on the scope and content of investigation and charge contemplated therein, the learned senior counsel has insisted that not only a re-investigation of the case is barred in law, further investigation though allowable in limited eventualities at the instance of the investigating agency or by the orders of the Court on its request, the same would at this stage tantamount to fresh indictment of the respondent No.3 exposing him to the risk of conviction, a consequence legally incomprehensible following his acquittal.

27. Adverting to the alleged shortfalls in the investigation and prosecution highlighted on behalf of the petitioner, Mr Sharma has urged that the police statements of the witnesses as well as their evidence at the trial would belie the hypothesis of fear psychosis, want of probe into the role of 'Mouth',

identification of the assailants, circulation of the firearms and the Neptune Blue Maruti Car and, thus, in absence of any contention raised by the family members in this regard before the learned Court below, this Court would not entertain the same. Referring to the written arguments submitted on behalf of the family members of the deceased before the learned Court below, Mr Sharma has underlined that their pronounced approval of the sufficiency and the quality of the investigation undertaken as discernible therefrom renders it impermissible for the petitioner to contend obversely, being barred by conduct and issue *estoppel*. The learned senior counsel maintained that the cavil vis-à-vis the investigation centering around the Neptune Blue Maruti Car at this distant point of time is wholly misplaced, the vehicle over the years having disintegrated into its elements. Besides, the vehicle not being the pivot of the incident, the prosecution having failed to adduce adequate evidence on the other decisive aspects viz. the weapon of assault, identification of the assailants etc., the supposed omission in the probe vis-à-vis the vehicle is not of any definitive significance, he asserted. According to Mr Sharma, the evidence with regard to the incident as a whole is irreparably shaky and in the face of the irreconcilable contradictions with regard to the number of assailants, their identification, description of the firearms as well

as of the vehicle allegedly used in the perpetration of the crime, the insistence for further investigation at this distant point of time is wholly illogical and absurd. The learned Trial Court having acquitted the respondent No.3 acting on the evidence adduced at the trial, the prayer for further investigation at the instance of a private party relying on the police statements of the witnesses is patently fallacious, he pleaded. Mr Sharma has urged that this notwithstanding, a combined reading of the statements/ evidence of the witnesses during the investigation and at the trial does not only fail to incriminate the respondent No.3 vis-à-vis the charges levelled against him, the same also does not warrant the necessity of further investigation. Contending that neither the son of the deceased who had been injured in the incident, nor, amongst others, close friends and confidants of his (deceased) did disclose any apprehension to testify the truth, in absence of any statement of theirs to implicate the respondent No.3 in the crime, the prayer for further investigation which evidently has the potential of exposing him (respondent No.3) to fresh probe is unsustainable in law and ought to be rejected. Mr Sharma has instead maintained that as the respondent No.3 had been, without any fault of his, illegally branded as an accused and harassed and humiliated in connection therewith for last 16 years, he is entitled to

compensation for the damages suffered from malicious prosecution and that this Court ought to pass appropriate orders to that effect.

28. To endorse his arguments, Mr Sharma placed reliance on the following decisions of the Apex Court as well as of this Court:

i) *K., Chinnaswamy Reddy –vs- State of Andhra Pradesh & Anr.,* **AIR 1962 SC 1788**;
ii) *Thakur Ram & Ors. –vs- State of Bihar,* **AIR 1966 SC 911**
iii) *Mahendra Pratap Singh –vs- Sarju Singh & Anr.,* AIR **1968 SC 707**
iv) *Gunwantlal –vs- The State of Madhya Pradesh,* **(1972) 2 SCC 194**
v) *Satyendra Nath Dutta & Anr. –vs- Ra Narain***, (1975) 3 SCC 398**
vi) *Punjab & Haryana High Court Bar Association –vs- State of Punjab & Ors***., (1996) 4 SCC 742**
vii) *Daulat Ram –vs- State of Haryana,* **(1996) 11 SCC 711**
viii) *Randhir Singh Rana –vs- State (Delhi Administration),* **(1997) 1 SCC 361**
ix) *Vijender –vs- State of Delhi***, (1997) 6 SCC 171**
x) *Bilal Ahmed Kaloo –vs- State of A.P.,* **(1997) 7 SCC 431**
xi) *Mohd. Zahid –vs- Govt. of NCT of Delhi,* **(1998) 5 SCC 419**

xii) *T.N. Dhakkal –vs- James Basnett & Anr.*, **(2001) 10 SCC 419**

xiii) *Jagannath Choudhary & Ors. –vs- Ramayan Singh & Anr.,* **(2002) 5 SCC 659**

xiv) *Bindeshwari Prasad Singh @ B.P. Singh & Ors. –vs- State of Bihar (Now Jharkhand) & Anr.,* **(2002) 6 SCC 650**

xv) *Varada Rama Mohna Rao –vs- State of A.P.*, **(2004) 4 SCC 427**

xvi) *Ram Swaroop & Ors. –vs- State of Rajasthan,* **(2004) 13 SCC 134**

xvii) *Hydru –vs- State of Kerala,* **(2004) 13 SCC 374**

xviii) *Shankerbhai Laljibhai Rot –vs- State of Gujarat,* **(2004) 13 SCC 487**

xix) *Satyajit Banerjee & Ors. –vs- State of W.B. & Ors*., **(2005) 1 SCC 115**

xx) *Popular Muthiah –vs- State*, (**2006) 7 SCC 296**

xxi) *Sakiri Vasu –vs- State of Uttar Pradesh & Ors*. **(2008) 2 SCC 409**

xxii) *Reeta Nag –vs- State of West Bengal & Ors*., **(2009) 9 SCC 129**

xxiii) *K. Ramachandran –vs- V.N. Rajan & Anr*., **(2009) 14 SCC 569**

xxiv) *State of Uttar Pradesh –vs- Krishna Master & Ors.,* **(2010) 12 SCC 324**

xxv) *Hardeep Singh –vs- State of Madhya Pradesh,* **(2012) 1 SCC 748**

xxvi) *Budul Ahmed –vs- Kutub Ali Mazumdar & Ors*., **2009 (2) GLT 940**

29. The documented factual matrix and the weighty competing arguments have received our anxious consideration. Resolution of certain fringe issues at the threshold is indispensable to steward the adjudicative pursuit.

30. The instant petition is one by the brother of the deceased seeking to invoke the jurisdiction of this Court under Section 397 read with Section 401 of the Cr.P.C. Apparently on the date of its institution i.e. 14.10.2009, the son of the deceased who was also injured in the same incident had attained majority and, thus, was entitled, subject to the prescribed legal regulations, to file the petition. That this revision petition cannot be treated to be an appeal is also indisputable. The proviso to Section 372 Cr.P.C. vesting a victim as comprehended therein with such a right against an order of acquittal or conviction for a lesser offence or inadequate compensation had been enforced with effect from 31.12.2009 vide the Code of Criminal Procedure (Amendment) Act, 2008. In that perspective, the definition of the expression 'victim' as provided in Section 2(wa) also inserted on and from the said date would be inapplicable to the present proceedings so as to limit its ambit to the person who had suffered any loss or injury caused by reason of the act or omission for which the accused person had been charged

including his/or her guardian or legal heir. In that view of the matter, this Court by order dated 22.6.2006 rendered in MC 2035/2006 arising out of PIL 26/2000 having permitted the Trial Court to allow the family members of the deceased to participate in the trial to the extent permitted thereby, we are of the view that the petitioner as his (deceased) brother would be a person aggrieved, thus, having the necessary locus in law to lodge the instant petition.

31. Noticeably, this Court while permitting the family members of the deceased to participate in the trial did not identify any person in particular as its representative therefor and conceived it to be one composite unit. Having regard to the fact that the jurisdiction under Section 397 Cr.P.C. can be exercised by this Court even suo motu for satisfying itself as regards the correctness, legality or propriety of any finding of any subordinate criminal court or examine the records of its proceedings, we comprehend that the plea of want of *locus standi* of the petitioner is not of any sustainable efficacy. In absence of any material on record to repudiate the acceptability of the petitioner as a member of the aggrieved family in view of his representative status, we are not inclined to sustain the

challenge to the maintainability of the petition on the ground of want of his locus.

32. In an almost identical fact situation albeit in the context of an appeal under Article 136 of the Constitution of India, the Apex Court had dwelt on details on the theme of access jurisdiction in *P.S.R. Sadhanantham –vs- Arunachalam & Anr.*, **(1980) 3 SCC 141** . The text thereof reveals that the petitioner therein though was convicted under Section 302 and 148 IPC, the jurisdictional High Court in appeal acquitted him of the charges. As the State concerned did not prefer an appeal, the brother of the deceased who was neither a complainant nor the first informant, filed a special leave petition under Article 136 of the Constitution of India before the Apex Court. Not only this petition was entertained, by its eventual verdict the conviction awarded by the Trial Court was restored.

33. The petitioner thereafter approached the Hon'ble Apex Court under Article 32 contending that it had no power to grant special leave to the brother of the deceased and, thus, the conviction was illegal and in essence violative of the fundamental right to life guaranteed under Article 21. Rejecting this plea on behalf of the petitioner, Hon'ble Krishna Iyer, J observed against

the contention that the brother of the deceased or any other high minded citizen would be an officious meddler having no business or grievance when the commission of grievous crime goes unpunished. His Lordship enunciated that there is a spiritual sensitivity of our criminal justice system which approves of the view that a wrong done to anyone is a wrong done to oneself, although for pragmatic considerations the law leashes the right to initiate proceedings in some situations. That the deep concern of the law is to track down, try and punish the culprit and if found not guilty, to acquit the accused, was underlined. Ruling that no dogmatic proscription of leave under Article 136 to a non-party applicant can be laid down inflexibly, for access to justice is not a cloistered virtue, His Lordship proclaimed that the narrow limits into the concept of 'person aggrieved' and 'standing' set in vintage English Law needs liberalization in this nation's democratic situation. His Lordship guarded against processual obsolescence when our Constitution highlights social justice as a goal.

34. Hon'ble R.S. Pathak, J expressing for himself as well as Hon'ble A.D. Koshal, J in supplementing the rendering affirmed that crime is an illegal act which amounts to a wrong against the public welfare and is, thus, deemed by law to be

harmful to society in general, even though its immediate victim is an individual. Observing that murder injures primarily the particular victim, but its blatant disregard of human life puts it beyond the matter of mere compensation between the murderer and the victim's family, His Lordship acknowledged that the criminal law envisages the State as a prosecutor. Qua the restricted right of appeal of interested persons aside the State, His Lordship ruled that the fetters so imposed are prompted by the reluctance to expose a person who had been acquitted by a competent Court of a criminal charge to the anxiety and tension of a further examination of the case. Noticing the singular eventualities as enumerated by the Law Commission under which a person aggrieved could be permitted to initiate such proceedings as recommended by it, His Lordship in the perspective of Article 136 of the Constitution of India, observed that in every case the court would be bound to consider the interest which brings such a person to court and whether the interest of the public community will benefit by the grant of special leave and concluded that the Court should entertain a special leave petition filed by a private party other than the complainant in those cases only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petitioning for special leave for

reasons not bearing on public interest but prompted by private influence, want of bonafide and other extraneous considerations. The abyss and expanse of the access philosophy quo locus propounded by these profound comprehensions is all permeating.

35. That barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for it to take all the steps necessary for bringing the person, who has acted against the social interests of the community, to book had been accented upon earlier by the Apex Court in *Thakur Ram –vs- State of Bihar* (supra) relied upon on behalf of the respondent No.3. Our determination in the case in hand qua the issue of *locus standi*, thus, in the overall legal perspective decipherable from the ratio in *P.S.R. Sadhanantham* (supra), in our comprehension, stands fortified.

36. Another peripheral facet bearing on this debate cannot be disregarded. The gruesome incident was reported on the very same date with the Chandmari Police Station whereupon Chandmari P.S. Case No. 207/96 under Section 302/326/34 IPC read with Section 27 of the Arms Act, 1959 was registered. While the investigation by the Assam Police was

continuing, at the instance of the State Government the investigation was decided to be entrusted to the CBI on 23.10.96. The decision having been concurred upon by the Central Government on 29.4.97, CBI Case No. R.C.4/SCB/97-Cal dated 25.7.97 was registered on the same First Information Report. On the completion of the investigation, the CBI submitted the chargesheet on 24.11.2000. The investigation in the case admittedly, thus, had been conducted by the CBI.

37. In *Lalu Prasad Yadav & Anr. -vs- State of Bihar & Ors.*, **(2010) 5 SCC 1**, the question raised before the Hon'ble Supreme Court was regarding maintainability of an appeal filed by the State of Bihar against the order acquitting him along with others charged under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. The primary objection against the maintainability of the appeal was based on Section 378(2) Cr.P.C., the investigation having been conducted by the CBI. The High Court having negated the plea, the matter reached the Apex Court. On an interpretation of Section 378(1) and (2) Cr.P.C., their Lordships of the Apex Court proclaimed that the Legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two

types of cases referred to in sub-section (2) is the central government and the authority of the state government in relation to such cases has been excluded. As the case had been investigated by the CBI, it was held that as a necessary corollary the State Government was not competent to direct its public prosecutor to present the appeal from the judgment passed by the Trial Court.

38. Adverting to the case in hand, it was thus not permissible for the State of Assam to prefer any appeal against the order of acquittal rendered by the learned Trial Court. The CBI as well for reasons not disclosed refrained from filing such appeal.

39. The judgment was delivered on 28.7.2009 and the certified copy available on records discloses that the same was applied for on very next date i.e. 29.7.2009 and the same being ready on 31.7.2009, it was delivered on the very same date. The revision petition was filed eventually on 14.10.2009, approximately a fortnight prior to the expiry of the period of limitation prescribed therefor. Obviously thus, the petitioner did wait for a reasonable time for the CBI to prefer the appeal, if so advised, and eventually approached this Court in absence of any initiative by it in that regard.

40. It is a matter of record that the family members of the deceased at the trial were represented by Advocates of their choice who, amongst others, had filed a detailed written argument on their behalf which by virtue of Section 314 Cr.P.C. forms a part of the proceedings. A perusal of the written argument exhibits an indepth analysis of the evidence—oral and documentary, adduced at the trial witnesswise including, amongst others, the aspect of identification of the assailants as well as circumstantial evidence comprehending the vehicle said to be involved. The pleas taken in the written arguments have been sought to be buttressed by decisions of the Apex Court bearing, amongst others, on the guidelines/ norms in the matter of identification of the accused persons through photographs by witnesses. Conclusions on the basis of elaborate evaluation of the materials on record in support of arraignment of the persons sent up for trial by the CBI were highlighted. Though it was emphasized upon that the respondent No.3 was one of the assailants as identified by the students of the school and that the charge against him had been proved beyond reasonable doubt, the narration does not bear even a semblance of remonstrance against the quality and effectiveness of the investigation conducted by the CBI. No deficiency intentional or

otherwise, in the exercise undertaken by this agency, was even remotely or implicitly adverted to.

41. This assumes vital significance in the backdrop of the permission granted by this Court to the family members of the deceased to participate in the long drawn trial and, that too, being represented by persons instructed in law. No reservation, to reiterate, was expressed, as the records would testify, on behalf of the family members highlighting any deficiency, defect, shortcoming in the investigation as is now being sought to be projected in their minutest details. Though noticeably the family members of the deceased in terms of the order of this Court were not permitted active participation in view of the representation by the learned counsel of their choice, this omission on their part cannot be lightly overlooked. This failure on the part of the family members of the deceased, thus, unavoidably cannot be disregarded vis-à-vis the pleas now raised on behalf of the petitioner (deceased's brother) on these aspects.

42. Noticeably, in course of the arguments on behalf of the petitioner no assailment either of the impugned judgment and order or his (respondent No.3) acquittal, having regard to the evidence on record, had been made. The insistence for further

investigation, as has been repeatedly emphasized, was founded on the projected deficiencies and failure of the CBI in conducting the investigation and the mode of prosecution. That further investigation sought for is to espouse a social cause and not necessarily to indict the respondent No.3 has also been continually underlined.

43. Be that as it may, the impugned judgment and order evinces that the learned Trial Court on a detailed appreciation of the evidence on record was particularly left unpersuaded with the identity of the respondent No.3 as one of the assailants as alleged and relying on the cardinal principal of criminal jurisprudence that suspicion however strong cannot take the place of proof, returned the finding that the prosecution had failed to adduce credible evidence to establish the charge against him beyond the pale of doubt and recorded his acquittal.

44. Significantly, though the revision seeks annulment of this decision and a consequential re-trial with a direction to the learned Trial Court to examine the scope of re-investigation of the case, the relief, in course of the arguments, had been persistently confined to one for a direction for further investigation alone. To reiterate, the validity of the impugned

judgment and order and the legality of the acquittal of the respondent No.3 throughout remained unimpeached.

45. The Apex Court in *Gunwantlal* (supra), *Bilal Ahmed Kaloo* (supra) and in *Hydru* (supra) has consistently disapproved the endeavour of raising before it pleas not urged before the lower forum.

46. In the above legal and factual premise, the assertions against entertainment of the grievance based on pointed defaults and deficiencies on the part of the investigating agency raised for the first time before this Court merits serious consideration. The procedural precepts administering judicial adjudication predicate certitude, discipline and finality thereof. In the exercise of appellate or revisional jurisdiction any transgression of such canonical tenets enjoined therefor by law on grounds or contentions in departure from or in variance of those urged in the proceedings of the Court of the first instance thus ought to be guarded against.

47. The above caveat notwithstanding, it is felt expedient in the atypical factual setting as well as the plentitutde of the deliberations to examine in details the projected aspects of

alleged pitfalls in the investigation of the case by the CBI resulting in eventual acquittal of the respondent No.3.

48. The exhaustive arguments offered on behalf of the petitioner had been noticeably laced with impassioned plea for a scrutiny of the evidence on record with reference to the various aspects of failure and omission on the part of the investigating agency decisively rendering the probe radarless, abortive and impotent, thus, trivializing a public cause to extinction. Profuse reference to the statements of the witnesses under Section 161 of the Code has also been made affirming the permissibility thereof in the context of the essentiality of further investigation emphasizing the court's duty to satisfy its conscience on the genuineness and adequacy of the investigation and not to act as a by stander regardless of its inquest for the truth. While no challenge to the decision of acquittal of the respondent No.3 did figure in course of the arguments, repeated reference to the inherent and extraordinary writ jurisdiction of this Court had been made insisting for a direction for further investigation of the case for a complete and comprehensive inquisition of the episode to engender public confidence in the process and justice to the cause of the community at large. That the ultimate relief sought is only for further investigation of the case and neither for

reinvestigation thereof nor for interference with the decision of acquittal of the respondent No.3 has been repeatedly underlined.

49. To reiterate, while the State of Assam in view of the investigation conducted by the CBI pleaded that no appeal by it against the verdict of the learned Trial Court was permissible under the law, the investigation conducted was duly endorsed on behalf of the CBI. Apart from assiduous assertions on behalf of the respondent No.3 highlighting the severely constricted scope of scrutiny by this Court qua the issues involved, having regard to the precedential tethers vis-à-vis Section 397 and Section 401 of the Code, it had been maintained with reference to the grounds of challenge that invocation of the inherent powers and/or the writ/ supervisory jurisdiction under Article 226/227 of the Constitution of India is not allowable as well. That at the trial the family members of the deceased though duly represented by their learned counsel, the sufficiency and adequacy of the investigation had remained unquestioned and that instead the evidence on the basis of the revelations therefrom had been unreservedly relied upon demanding conviction of the respondent No.3 has been emphasized upon to contend conduct and issue estoppel.

50. Understandably, the judgment of acquittal has been endorsed on all counts asserting lack of any evidence whatsoever testifying the culpability and/or complicity of the respondent No.3 in the incident. Inadmissibility of statements under Section 161 Cr.P.C. prohibiting a perusal thereof to examine the same in juxtaposition with the evidence at the trial for examining the deficiencies and/or loopholes in the investigation has been underlined. Futility of further investigation at this distant point of time, without prejudice to these, has been repeatedly asserted lest any direction to that effect may result in abuse of the process of this Court and an implicit exposure of the respondent No.3 to a fresh inquisitive drill and possible indictment in the face of his qualified acquittal on the same charge may ensue.

51. Such rival orientations notwithstanding, the learned counsel for the parties have traversed the evidence on record as well as the statements recorded under Section 161 of the Code in buttressal of their competing assertions. Whereas it has been maintained on behalf of the petitioner that a cumulative evaluation thereof justifies a direction for further investigation, the plea on behalf of the respondent No.3 is in negation thereof. Having regard to the legal perspective of the challenge laid, an inquest of the jurisdictional parameters vis-à-vis the

adjudication as well as the relief of further investigation is indispensable. An overall survey of the judicial pronouncements cited at the Bar bearing on such essential facets is, thus, the imperative.

52. Most of the authorities dwelling on the content and ambit of the revisional jurisdiction of this Court under Section 397/402 of the Code are referable to challenges against decisions of acquittal by a private party, the State or the investigating agencies having omitted to do so. The judicially enunciated principles being strikingly consistent, it is considered inessential to dilate on the decisions individually. Instead a synopsis of the expositions would cater to the present adjudicative exigencies. The curial consensus on the contours of judicial intervention in the exercise of revisional jurisdiction is founded on the doctrine of *ex debito justitae* to correct a manifest illegality and error of procedure resulting in gross and flagrant miscarriage of justice. Various circumstances, illustrative though, have been recognized warranting invocation of the revisional jurisdiction in the advancement of the cause of justice, the power being discretionary in nature and conditioned singularly to achieve this avowed purpose. This jurisdiction, as the precedential enjoinment mandate, is not exercisable to

correct a view of a subordinate court based on a perceived erroneous appreciation of evidence suggesting different deductions. Re-appreciation of evidence is also barred and barring exceptional exigencies, resort thereto is prohibited even if a serious offence may thereby go unpunished.

53. In *Janata Dal –vs- H.S. Chowdhary,* **(1992) 4 SCC 305,** the Apex Court while reflecting on the object and purport of revisional jurisdiction under Section 401 of the Code had observed that it was paternal or supervisory in nature in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment resulting in on one hand, or on the other in some underserved hardship to individuals. Their Lordships propounded that the controlling power of the High Court is discretionary and must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case. Adverting to the inherent power of the Court under Section 482 of the Code, the Apex Court observed that the same though unrestricted and undefined, should not be capriciously or arbitrarily exercised, but ought to be done *ex debito justitiae* to

do real and substantial justice for the administration of which alone the Courts exist. That the powers possessed by the High Court under Section 482 of the Code are really wide and the very plentitude of the same requires great caution in its exercise was duly underscored. These pristine principles that have stood the test of time over the years and embodied in paragraphs 130, 131 and 132 of the decision deserve extraction :

> "130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal courts—a kind of paternal or supervisory jurisdiction—in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being give to the said facts and circumstances which vary greatly from case to case.
>
> 131. Section 482 which corresponds to Section 561-A of the old Code and to Section 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers has its source in the maxim "*Quadolex aliquid alicui concedit, concedere videtur id since quo ipsa, ess uon potest*" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

> 132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.".

54. In *K. Chinnaswamy Reddy* (supra), their Lordships while dilating on the extent of revisional jurisdiction qua a challenge to the acquittal of an accused by a private complainant, recalled its observations in *D. Stephens –vs- Nosibolla,* **AIR 1951 SC 196** that such an intervention is comprehended only in exceptional cases where the interests of public justice require the same for correction of a manifest illegality or for prevention of a gross miscarriage of justice. A word of caution in the context of Section 439 (4) of the Code [now Section 401 (3)] was sounded that in invocation of such powers it is not open to a High Court to convert a finding of acquittal into one of conviction and that this cannot be presaged even indirectly by ordering retrial. Some of the circumstances

justifying interference with a finding of acquittal in the exercise of revisional jurisdiction were cited i.e. where the Trial Court has no jurisdiction to try the case but has still acquitted the accused, or where the Trial Court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal Court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible, or where material evidence has been overlooked either by the Trial Court or by the appeal Court, or where the acquittal is based on a compounding of the offence which is invalid under the law. These eventualities, their Lordships underlined, were illustrative and other situations akin thereto were construable as exceptional circumstances justifying interference with an order of acquittal in the exercise of revisional jurisdiction.

55. Later in time, the Apex Court in *Jagannath Choudhary & Ors.* (supra) in reiteration of the aforestated elucidations ruled against exercise of revisional jurisdiction unless the order assailed suffered from any infirmity rendering it completely perverse or unacceptable resulting in failure of justice. While emphasizing that the discretion ingrained in the revisional jurisdiction has to be essentially judicious and not arbitrary, their Lordships underlined that in the exercise thereof

the Court ought not to act as an appellate forum where scrutiny of evidence is possible, there being, however, no restrictive limitation in the invocation of the revisional power in the event of a discernible failure of justice demanding correctional initiative. That the revisional jurisdiction of the High Court is the alter ego of its power of superintendence on the administrative side and that it can at any stage even on its own motion, if it so desires, call for the records of the subordinate court and examine them was reaffirmed.

56. Judicial intervention in the exercise of revisional jurisdiction against an order of acquittal in the interest of public justice for correction of a manifest illegality or for prevention of miscarriage of justice was ruled by the Apex Court in *Bindeshwari Prasad Singh* (supra). Reiterating the circumscribed limits of revisional jurisdiction of a Court qua a challenge to the acquittal of an accused by a private party, their Lordships in *Hydru* (supra) affirmed that no interference was permissible even if upon reappraisal of evidence a view different from the one adopted by the Trial Court was possible.

57. Responding to the imputation of the revisionist that no effort either by the prosecuting agency or the Court had been deliberately made to examine the victims as well as the witnesses

resulting in the acquittal of the petitioner and that a fresh trial ought to be conducted in *T.N. Dhakkal* (supra), their Lordships observed that though it was an obligation of the prosecution or the defence to adduce the best possible evidence, in case either of them fail to do so or deliberately withhold it and the Court is of the opinion that in order to find out the truth and render a just decision examination of some other witnesses not produced before it was necessary, it may at any state of the proceedings or trial direct examination of such witnesses to prevent miscarriage of justice taking recourse to Section 540 of the Code (now Section 311). That in exercise of the powers under Section 401 of the Code, the High Court has the jurisdiction to examine the proceedings of the inferior Court(s) if necessary was also underlined. Their Lordships, however, in the contextual facts and being satisfied that there was no evidence whatsoever before the Trial Court to link the appellant with the alleged offence concluded that the order of acquittal did not suffer from any perversity or unreasonableness. The decision of the jurisdictional High Court to the contrary was, thus, interfered with.

58. The principles thus judicially propounded though irrefutably restrict and regulate the exercise of revisional jurisdiction contemplated by the Code, the utilisatin thereof is

indubitably available to correct gross miscarriage of justice resulting from manifest illegality and error of procedure. It is, thus, the cause of justice that is paramount and determinative of the invocation of the revisional jurisdiction even qua an order of acquittal in exceptional eventualities but assuredly to uncompromisingly uphold the same (cause of justice) for the administration whereof the Courts exist. The judicially enjoined impedimenta, thus, is not absolute in terms but severely restrictive and is noticeably limited to the process of scrutiny contemplated vis-à-vis the order impugned.

59. This assumes significance in the instant case in the face of the relief for the further investigation sans any impeachment of the acquittal of the respondent No.3. The overwhelming judicially predicated inhibitions in the exercise of revisional jurisdiction under the Act notwithstanding, the permissibility thereunder to examine the correctness, legality and propriety of an order of a subordinate forum as well as examination of regularity of the proceedings thereof envisages, in our estimate, a very constricted scope of analysis of the relevant materials on record to determine the tenability or otherwise of the request for further investigation on the defined touchstone of

gross miscarriage of justice occasioned by manifest illegality and error of procedure.

60. To reiterate, the parties have adverted, amongst others, to the statements of several witnesses recorded by the CBI under Section 161 of the Code to contend for and against the permissibility and/or necessity of further investigation. In contradistinction to the elucidation qua the use of a statement made before a police officer during investigation in a criminal trial i.e. for the purpose of contradiction of a witness examined by the prosecution by the accused and with the permission of the Court by the prosecution to impeach his/ her credibility in accordance with Section 145 of the Evidence Act, 1872 and also in the contingencies envisaged under Section 27 or Section 32(1) thereof and that it cannot be relied upon as substantive evidence at the trial as held in *Vijender* (supra) and in *Ramswaroop* (supra), the Apex Court in *Bhagwan Dass* (supra) seem to have struck a different note. In the appeal witnessing a challenge to the conviction of the appellant for murder of his own daughter, the textual facts divulged that his mother had stated before the police that he had told her that he had killed the deceased. The mother of the appellant who had appeared as a witness at the trial in cross-examination when confronted with this statement

to the police denied to have made the same. In this context, their Lordships observed that the statement of the mother to the police could be taken into consideration in view of the proviso to Section 162 (1) of the Code and that her subsequent denial in Court was not believable because she obviously had an after thought and wanted to save her son from punishment. That this witness had stated before the police that the dead body of the deceased was removed from the bed and placed on the floor was also taken note of. Their Lordships held that this statement of the witness made before the police could be taken into consideration in view of the proviso to Section 162 (1) of the Code and concluded that the same embodied an extra judicial confession of the appellant/ accused to his mother (witness). The fact that this witness was declared hostile by the prosecution as she had resiled from her earlier statement to the police though noticed, her statements under Section 161 of the Code were accepted and her testimony in Court was discarded. Though this decision does not *per se* propound a principle of law vis-à-vis the use of statements made before police and recorded under Section 161 Cr.P.C. in course of the investigation in general terms, it unmistakably is suggestive of the relevance and probative worth thereof as unambiguously endorsed by the Apex Court. Having regard to the state of law in this regard as on date, reference to

the statements of the witnesses in the case in hand cannot be *ipso facto* repudiated as fallacious and misconceived.

61. Qua the notion of further investigation, prior to the incorporation of sub-Section (8) of Section 173 of the Code of 1973 there was no provision prescribing the procedure to be followed by the police after the submission of a report under Section 173 (2) of the 1898 Code and where fresh facts had come to light requiring further investigation after the Magistrate had taken cognizance of the offence. There was of course no express provision prohibiting the police from launching a fresh investigation into such fresh facts. On the recommendation of the Law Commission in its 41st Report suggesting that the right to the police to make further investigation at that stage ought to be statutorily affirmed, sub-Section (8) to Section 173 of the Code was integrated in the Criminal Procedure Code, 1973 in the following terms:

> "(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).".

62. The recommendation of the Law Commission consequent whereupon the amendment as above was incorporated had underlined that the hindrance in the collection of evidence by the police after submission of the report under Section 173(2) bearing on the guilt or innocence of the accused, as perceived by Courts at times, could be unfair to the prosecution as well as to the accused and that, therefore, the same ought to be legislatively permitted and a report thereof be submitted to the Magistrate with a copy furnished to the accused. Their Lordships of the Apex Court in *Ramlal Narang* (supra) while noticing the background of the insertion of sub-Section (8) to Section 173 of the Code, however, observed that in the interest of independence of Magistracy and the judiciary as well as the purity of administration of criminal justice and the comity of various agencies and the institutions entrusted therewith, it would ordinarily be desirable that the police should inform the Court and seek its formal permission to make further investigation when fresh facts come to light.

63. In *Randhir Singh Rana* (supra), the question posed before the Apex Court was whether a Court even after it had taken cognizance on the receipt of a report by the police under Section 173(1) of the Code, it could on its own ask for further investigation if it was thought necessary to arrive at a just decision. On an indepth survey of the import of Section 156 and 173 of the Code as well as the decisions cited at the Bar, their Lordships answered in the negative.

64. Dwelling on the scope of Section 173(8) of the Code, the Apex Court in *K. Chandrashekhar* (supra) enounced that after submission of the police report under sub-Section (2) on completion of the investigation the police has a right of 'further investigation' under sub-Section (8) but not 'fresh investigation' or 're-investigation'. Elaborating further, their Lordships commented that further investigation contemplated continuation of the earlier investigation and not a fresh investigation or re-investigation to be started *ab initio* wiping out the earlier investigation altogether. These observations were made in the factual context which revealed that the concerned State Government sought to withdraw its consent earlier granted to the CBI which in pursuant thereto had completed the

investigation and submitted its report under Section 173(2) of the Code. Such withdrawal was held to be invalid.

65. That further investigation under Section 173(8) of the Code would entail delay in the trial was not a factor permitting the same was underlined by the Apex Court in *Hasanbhai Valibhai Qureshi* (supra). Their Lordships ruled that under this provision of the code further investigation is permitted even dehors any direction from the Court and, as such, it is open to the police to conduct proper investigation even after the Court had taken cognizance of any offence on the strength of the report earlier submitted. Their Lordships reiterated the observations made in *Ramlal Narang* (supra) that delay in conclusion of the trial should not stand in the way of further investigation if that would help the Court in arriving at the truth and do real, substantial and effective justice and to effect expeditious disposal of the matter. It was, however, construed to be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

66. In *Nirmal Singh Kahlon* (supra) vis-à-vis the process of appointment of Panchayat Secretaries in the State of Punjab

certain irregularities in connection therewith were brought to the notice of the jurisdictional High Court in a writ proceeding. The report that was called for carried an opinion that the entire selection process was required to be set aside and a recommendation was made for an investigation into the whole episode by the Vigilance Department. A First Information Report was thereafter lodged by the Vigilance Department and following an investigation into the same, a chargesheet was submitted. In the face of the chargesheet it was pleaded on behalf of the State of Punjab that the investigation was proposed to be handed over to the CBI which eventually followed. The CBI after being entrusted with the investigation lodged another First Information Report on a wider canvas alleging *inter alia* a deep rooted conspiracy of the perpetrators of the anomalies vitiating the process, an aspect neither referred to nor investigated on the basis of the first FIR. The number of accused persons were also different.

67. Responding to the challenge to the second FIR lodged by the CBI and the investigation undertaken by it on the basis thereof, the Apex Court, amongst others, recalled its observation in *Upkar Singh –vs- Ved Prakash*, **(2004) 13 SCC 292** to the effect that if on further investigation in the face of an existing

complaint a conspiracy larger than the one referred to in it (existing complaint) surfaces, then a fresh complaint on such further investigation is permissible. It was, thus, held that the second FIR lodged by the CBI was maintainable not only because there were different versions but new discovery had also been made on factual foundation. Their Lordships acknowledged that discoveries could be made by the police authorities at subsequent stages and that the same can also surface in another proceeding. It was underlined that if the police authorities did not make a fair investigation and left out the conspiracy aspect of the matter from the purview of its investigation as and when the same surfaced, it was open to the State or the High Court to direct investigation in respect of such an offence which was distinct and separate from the one for which the FIR had already been lodged. Considerable emphasis has been laid on this observation on behalf of the petitioner to maintain that a careful perusal of the evidence and other materials on record would unmistakably demonstrate deliberate omissions and failings on the part of the investigating agency to probe into various vital aspects of the incident and gather definitive clues and inputs to unearth the lethal conspiracy, the persons involved and their modus operandi for execution of their heinous design to eliminate the deceased brutally in the broad daylight. That in the

backdrop of the materials on record further investigation and if necessary a fresh FIR was called for to disinter the truth to secure public justice was, thus, emphasized.

68. In *Reeta Nag* (supra) the question posed before the Apex Court was whether after a chargesheet had been filed by the investigating agency under Section 173(2) of the Code and charge had been framed against some of the accused on the basis thereof and others have been discharged, the Trial Court can direct the investigating authorities to conduct a re-investigation or even further investigation under sub-Section (8) of Section 173 of the Code. Answering in the negative, their Lordships ruled that once a chargesheet is filed under Section 173(2) of the Code and after framing of the charge or discharge of an accused, the Magistrate on the basis of a protest petition take cognizance of the offence complained of or on the application made by the investigating authorities, may permit further investigation under Section 173(8) of the Code. Their Lordships emphatically underlined that a Magistrate could not suo motu direct a further investigation under Section 173(8) of the Code or direct re-investigation into a case. Adverting to the factual facts, their Lordships noticed that the investigating authorities therein had not applied for further investigation and that it was only

upon application filed by the de facto complainant under Section 173(8) that a direction was issued by the learned Magistrate to re-investigate the matter. While holding that such a course of action was beyond the jurisdictional competence of the Magistrate, it was held that not only was such a direction for re-investigation untenable, entertainment of the application filed by the de facto complainant was incompetent.

69. That at this stage in the case in hand no further investigation is either called for having regard to the materials on record and that due to the failure on the part of the petitioner and his family members to question the investigation at the trial such a plea before this Court is clearly untenable has been sought to be reinforced on the basis of this decision.

70. The Apex Court in *Sakiri Vasu* (supra) outlined the distinguished features of Section 156 and Section 173 of the Code pertaining to investigation by the police. Their Lordships held as well that it was open to the person aggrieved by the inaction of the police in not registering the FIR to move the jurisdictional Magistrate for his intervention and direction for registration of the FIR and a proper investigation and further for monitoring the same if warranted and all these are independent

of the power of the investigating officer to further investigate the case in terms of Section 173(8) even after submission of his report. Referring to its decision rendered in *State of Bihar –vs- J.A.C. Saldanha*, **(1980) 1 SCC 554**, it was ruled that the jurisdictional Magistrate, thus, could order reopening of the investigation even after the police had submitted the final report. Their Lordships observed that Section 156(3) of the Code is wide enough to include all such powers in a Magistrate which were necessary for ensuring a proper investigation. Their Lordships reiterated the settled proposition that when a power was given to an authority to do something it included such incidental or implied powers essential to ensure the proper doing of that thing. The expanse of the power of the jurisdictional Magistrate, thus, envisaged to be embedded in Section 156 of the Code in terms of this rendering is to this extent in endorsement of the view taken in *Randhir Singh Rana* (supra) assuredly, however, till the pre-cognizance stage. To the extent that the jurisdictional Magistrate has no authority of his own to direct further investigation after cognizance is taken on the basis of the report submitted under Section 173(2) of the Code, the view expressed in *Randhir Singh Rana* (supra) still prevails. That in view of the express remedies available, amongst others, under Section 156 of the Code for ensuring a proper investigation, filing of a writ petition on an

application under Section 482 of the Code expressing the grievance *inter alia* that proper investigation had not been conducted by the police, ought to be discouraged, was emphasized therein as well.

71. In *Davinder Pal Singh Bhullar & Ors.* (supra), the Apex Court was in seisin of an assailment of the directions issued by the jurisdictional High Court to the CBI to investigate into matters incidental to those based on which a police case had been registered and following a trial, persons indicted had been acquitted. The permissibility as well as desirability of the exercise of power by the High Court under Section 482 of the Code and Article 226 of the Constitution of India in the contextual facts as well as in the general perspective was dwelt upon. To reiterate, in the police case registered, one Balwant Singh Multani had escaped from custody and on the completion of the investigation a challan was filed before the competent Court declaring him to be a proclaimed offender. Three of the chargesheeted accused persons were made to stand trial whereas others including Balwant Singh Multani were not traceable. The charged accused persons having been acquitted, the State unsuccessfully appealed before the jurisdictional High Court. Subsequent thereto, the High Court again took up the case suo

motu and directed the concerned authorities to furnish full details of the proclaimed offenders.

72. Acting on the affidavit filed in response to the said direction, the High Court constituted a Special Investigation Team to enquire into all aspects of proclaimed offenders and submit a status report. Notice was also issued to the CBI, whereafter, the High Court directed it to investigate the allegations of Darshan Singh Multani, father of Balwant Singh Multani bearing on the non-traceability of the latter. After a preliminary investigation, the CBI submitted a status report whereupon the State being aggrieved approached the Apex Court questioning the validity of the process initiated after the acquittal was recorded in the police case. It was *inter alia* contended that the process impugned was barred under Section 362 of the Code, the High Court having become *functus officio* following the acquittal and, thus, was incompetent to reopen the case. The application filed by the father of Balwant Singh Multani, the basis of the fresh initiatives by the High Court, was repudiated to be barred by the principles of *res judicata.*

73. Their Lordships in the above factual conspectus observed that the inherent power of a Court cannot be exercised

for doing what is specifically prohibited by the Code. Elucidating that such power contemplated under Section 482 of the Code is saved to secure the ends of justice or to prevent abuse of the process of the Court, their Lordships held that the same can be exercised by the High Court in relation to a matter pending before a criminal court or where a power is exercised by that court under the Code. That inherent power did not contemplate unfettered and arbitrary jurisdiction and instead ought to be exercised sparingly with circumspection in the rarest of rare case was emphasized. It was ruled that such a power ought not to be resorted to if a provision is otherwise available for redressal of the grievance expressed or where alternative remedy is available. Vis-à-vis the jurisdiction of the High Court under Article 226 of the Constitution of India qua investigation in a criminal case, their Lordships expounded that the High Court can always issue appropriate direction if it is convinced that the power of investigation had been exercised by the investigating officer malafide or if a matter had not been investigated at all. Nonetheless, it was held that the High Court even then could not direct the police as to how the investigation is to be conducted but could only insist for the observance of the process as provided in the Code. Adverting to Section 482 of the Code, their Lordships reiterated that in exercise of such power a Court

cannot direct a particular agency to investigate the matter or to investigate a case from a particular angle or by procedure not prescribed in the Code. Reiterating that the inherent jurisdiction can be exercised to prevent miscarriage of justice and to prevent abuse of the process of Court, it was indicated that the word 'process' implied that the proceedings were pending before the subordinate Court and in case the same had attained finality the inherent power could not be exercised and that the party aggrieved ought to approach the appellate/ revisional forum. The orders impugned, thus, were interfered with being adjudged to be a nullity observing that the error inherent in those had transgressed judicious discretion reflecting a biased approach of the High Court.

74. The proponent judicially evolved precepts discernible from the above referred authorities cited at the Bar, thus, evince that in a case governed by the Code though the jurisdictional Magistrate is authorized under Section 156 thereof to address the grievances relating to non-registration of a First Information Report or inaction, indifference or negligence in the initiation and/or conduct of the investigation , once a report is submitted by the investigating agency under Section 173(2) of the Code and a cognizance on the basis thereof is taken, he (jurisdictional

Magistrate) cannot of his own direct it (investigating agency) to conduct further investigation as envisaged by sub-Section (8) thereof. This is notwithstanding the power of the Trial Court under Section 311 of the Code at any stage of the enquiry, trial or other proceedings to summon any person as a witness and/or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined if his evidence appears to it to be essential for a just decision of the case. At the post-cognizance state it is, as has been authoritatively enounced in *Randhir Singh Rana* (supra), only the investigating agency which can launch further investigation in respect of the offence referred to in the report already filed under Section 178 (2) and if further evidence—oral or documentary is obtained in course thereof, forward the same to the jurisdictional Magistrate in the form of a further report (s) to be dealt with in a manner similar to the report originally filed.

75. Qua the scope and amplitude of intervention by a Court in the exercise of its revisional jurisdiction as alluded hereinabove, the same is permissible only to correct manifest illegality and error of procedure to prevent flagrant miscarriage of justice and, that too, in exceptional circumstances as illustratively catalogued, the rigour of such constriction being

more stringent in case of impugnment of a decision of acquittal after trial. The pronouncements to this effect though pronouncedly consistent, limit the proposition to the impeachment of the order (s) involved and do not encompass within the restrictive fold aspects ancillary thereto demanding judicial attention in deserving cases to uphold the cause of justice.

76. In the singular factual premise confronting this Court with the insistent prayer for further investigation sans any challenge to the acquittal of the respondent No.3, we feel disinclined to readily shun a scrutiny of the evidence and other materials on record deliberated upon by the parties for and against such a course of action. To reiterate, the revisionist has left unchallenged, in course of the arguments, the judgment and order of acquittal of the respondent No.3 and in fact none of the aspects of the adjudication had been questioned before us. Nonetheless, having regard to the unique features of the case, we are of the view that independent of the acquittal of the respondent No.3 which is understandably based on the evidence adduced at the trial, the petitioner's grievance vis-à-vis the shortfalls in the investigation of the case can be attended to irrespective, however, of the view to follow on the culmination of

the proposed pursuit. While charting this course, we wish to clarify, the exercise would remain strictly confined only to the aspects highlighted on behalf of the petitioner to substantiate the prayer for further investigation in the interest of justice.

77. As aforestated, though at the cost of repetition significant it is note that the impugned judgment and order acquitting the respondent No. 3 though had been sought to be invalidated at the institution of the instant proceedings, in course of the arguments neither the analysis of the evidence undertaken by the learned Court below nor the findings arrived at had been repudiated. Logically, therefore, it is permissible to proceed on the premise that in the perception of the revisionist as well, no conviction could have been recorded against the respondent No.3 on the basis of the evidence—oral and documentary adduced at the trial. Nevertheless, to ensure an appropriate factual setting for the exercise qua the prayer for further investigation as proposed, a brief appraisal of the adjudication conducted by the learned Court below would not be out of place.

78. As the impugned judgment and order would manifestly demonstrate, the learned Trial Court following a

detailed narration of the facts pertaining to the incident and the investigation as reflected in the chargesheet, determined the points for decision. The testimony of the witnesses examined in course of the trial witnesswise was recorded in all essential particulars and dialectically evaluated on merits. On the aspect of identification of the assailants the evidence of the witnesses, more particularly that of P.W.8, Jyotirmoy Borpujari; P.W.9, Ritupaban Deka; P.W.12, Ajanav Majumdar; P.W.13, Ms Jyotirupa Bora; P.W.17, Dhiraj Kalita and P.W.18, Hema Gogoi as well as the photographs obtained by the investigating agency from the Special Branch, Assam Police, the learned Court below on an evaluation thereof concluded that the same was inadequate to establish the identity of the respondent No.3 to be the assailant beyond all reasonable doubt. In arriving at this conclusion, the learned Trial Court noticed that the prosecution had failed to indicate the source(s) of collection of the photographs which were not accompanied by the negatives thereof. On a forensic appreciation of the evidence of the aforementioned prosecution witnesses, it was held that having regard to the quick succession of events at the site of the incident and want of previous acquaintance of the witnesses with the assailants, their testimony after a considerable lapse of time could not be accepted with certainty in the matter of

identification of the authors of the crime. In this regard, the learned Trial Court also held the view that in absence of previous familiarity of the witnesses with the persons involved and a Test Identification Parade, their identification for the first time in Court by witnesses who claimed to have had a fleeting glimpse of the offenders was inherently of a very weak character. That the prosecution had failed to adduce any evidence as to who had seen, collected and seized the cartridges from the place of occurrence and had sent the same to the Forensic Science Laboratory for examination was also underlined.

79. Vis-à-vis the Neputne Blue Maruti 800 Car, the learned Trial Court adverted to the chargesheet which indicated that two of the chargesheeted accused persons i.e. Biswajit Saikia @ Tapan Dutta and Diganta Kr. Baruah (both killed and did not face trial) were found at Guwahati on the date of the incident and at the place of occurrence with other accused persons in the same vehicle at the time of the incident but it could not be traced out. Reference was also made to a later portion of the narration in the chargesheet to the effect that investigation disclosed that the accused persons had used one Neptune Blue Maruti Car in the commission of the offence and that the same was found abandoned near the place of

occurrence without having any number plate. The learned Trial Court observed that inspite of this revelation from the chargesheet, no evidence had been led by the prosecution as to the whereabouts of this car. The revisionist has been bitterly critical on this aspect alleging a cardinal omission on the part of the learned Court below in not insisting on adduction of evidence by the prosecution regarding the steps taken by the investigating agency to locate the vehicle and work on the clues available to fathom appropriately the conspiracy and the plot leading to the brutal elimination of Sri Parag Das. Be that as it may, having regard to the assessment of the evidence adduced by the prosecution at the trial, we are of the unhesitant opinion that the findings recorded by the learned Trial Court at unassailable and that the impugned judgment and order does not merit interference at this end.

80. Having regard to the premise and the purpose indicated hereinabove to effectuate a comparative evaluation of the assertions for and against the permissibility/ desirability of further investigation based on the materials on record, the scrutiny as adverted to hereinabove would be limited to the following aspects:-

(i) Whether the CBI had disregarded the revelations in the investigation conducted by the Assam Police and had changed the course of the process to favour and/or shield the delinquent (s) ?

(ii) Whether the CBI had deliberately abstained from locating the whereabouts of the Neptune colour Maruti 800 Car abandoned at the place of occurrence, seizing the same and taking necessary follow up steps to unearth the conspiracy for the murder and identify the persons involved in the crime ?

(iii) Whether the CBI had willfully ignored and/or overlooked the factum of possession of unauthorized firearms by the respondent No.3 and other chargesheeted accused persons and had consciously omitted to take imperative measures to investigate the background of the offence and to bring to book all involved in connection therewith?

(iv) Whether the CBI had taken appropriate and adequate steps for the security and safety of the prosecution witnesses who during the investigation though had indicated their awareness of the identity of the assailants and their modus operandi to commit the crime, had

withdrawn themselves expressing apprehension of their liquidation ?

(v) Whether the CBI had deliberately omitted to pursue the investigation to identify the culprits in the face of the role of Subham Saikia @ Mouth on the date of the incident ?

81. We wish to deal with these aspects in seriatim.

Investigation of CBI vis-à-vis the Assam Police :

Sri Rameswar Lalung who admittedly had lodged the FIR on the very date of the incident had stated before the CBI that being entrusted, he did conduct the investigation of the case from 17.5.96 (date of the incident) till 11.6.96 when he was transferred. He stated to have recovered 14 empty cases of bullets at the spot but could not send the same to the Forensic Science Laboratory for paucity of time. He stated to have questioned the people of the locality including the teachers, students and office staff of the school and nearby offices as well as the guardians who had come to take their children from the school. He stated to have been told that four persons had come in a Ash/ Bluish colour Maruti Car and had shot Parag Das from a close range. He stated as well that as per the instructions of his superior officers, he picked up many SULFA boys from

various parts of the city including Sri Dhekial Phukan. He stated to have suspected Sri Bitupan Deori as one of the miscreants. He claimed to have examined one SULFA boy named Hazarika who disclosed that on the date of the incident he along with one Gogoi had gone together to Panbazar in his Maruti 800 Car. The officer stated to have thereafter picked up Pramod Gogoi who had allegedly accompanied Hazarika in the latter's car which was bluish in colour. Mr Lalung, however, expressed that the said car might have or not used in the commission of the crime and, therefore, it was not seized by him. He added to have inferred that Sri Dhekial Phukan, Sri Pramod Gogoi and Sri Bitupan Hazarika were the assailants. Incidentally, this officer had in the FIR also indicated that he had come to learn from the persons available at the scene of the crime on the date of the incident that the assailants who fired at the deceased and his son were in a Maruti Car and had left the site immediately thereafter.

82. This witness in his testimony at the trial was noticeably very brief and limited himself in stating that after having lodged the FIR (Exhibit-1) a case was registered under Section 302/326/34 IPC R/W Section 27 of the Arms Act being Chandmari P.S. Case No. 207/96 and that he had taken up the investigation himself and had pursued the same for a month in

course whereof he had recorded the statements of some witnesses. He also testified about the arrest of one Pramod Gogoi @ Babu in course of the investigation. Noticeably, he did not mention about the Maruti Car allegedly used by the assailants in the commission of the crime.

83. P.W.49, Sri Samir Ranjan Bandopadhyay who had conducted the investigation on behalf of the CBI deposed that on being entrusted with the assignment vide order No. SP/CBI/SCB, Kolkata dated 13.8.97, he visited the place of occurrence and prepared a rough sketch thereof and also took necessary photographs of the same with the help of the Police Department of Assam and discussed with it on various aspects. Apart from recording the statements of some students, teachers and other staff of the school near the place of occurrence under Section 161 Cr.P.C., the officer claimed to have examined the inhabitants of the locality who witnessed the incident. He also deposed to have examined the wife, staff and father-in-law of the victim and other members of the family. He stated to have tried once again to locate the involved car through secret sources from various agencies like motor garage, motor sellers, agencies of Assam, Nagaland and West Bengal. The witness stated to have interacted with his counter parts in the Assam Police, consulted

their records and examined and re-examined the persons who had been cited as witnesses in connection with the Chandmari P.S. Case. The officer deposed to have consulted the records of N.F. Railway authorities, Guwahati and different motor garages of Siliguri as well as authorities of the Indian Airlines, Bhutan and Nepal to trace the whereabouts of the car. He also claimed to have requisitioned and obtained from the Special Branch of Assam Police the photographs of the persons suspected to be involved in the case. The witness deposed to have conducted and examined some of the members of the Manab Adhikar Sangram Samity (for short, MASS) and recorded their statements under Section 161 Cr.P.C. and also collected some documents from them. He also claimed to have displayed photographs before the eye witnesses to identify the culprits. That he had examined the suspects in connection with the Chandmari P.S. Case and had also verified their statements was mentioned by him. The witness stated to have verified the statements recorded by the Assam Police and had arranged for Photograph Identification Parade by separate officers. He stated to have collected the post mortem report and the injury report relating to the deceased and his injured son. According to him, 'exhibits' were forwarded to the Central Forensic Science Laboratory for examination and

opinion. He proved the bunch of photographs collected by him from the Special Branch, Assam Police vide Exhibit-6.

84. The witness clarified that the photographs so collected were later on shown to the students of Asom Jatiya Vidyalaya situated at Rajgarh Road for identification of the suspects. He claimed to have collected the essential portion of the GD Entry Book of the Chandmari P.S. and also the relevant entries thereof relating to the incident. According to him, he seized the Maruti 800 Car bearing registration No. AS-01-C-2062 suspected to be involved in the incident and gave it in the zimma of one Md. Nazrul Haque. He stated to have also enquired into the motive of murder of one Mitradev Mahanta to ascertain as to whether it was connected with the murder of Parag Das as there was some information that the vehicle involved in the incident was supplied by one Mitradeb Mahanta and that it had been sent to Siliguri in West Bengal by Railway wagon by him. The witness recited with reference to his Case Diary, portions of the statements of the various hostile witnesses made before him in course of the investigation with which they were confronted at the trial. He stated to have submitted the chargesheet on the completion of the investigation against Nayan Das @ Guli, Mridul Phukan @ Samar Kakati, Biswajit Saikia @ Tapan Dutta and

Diganta Kr. Baruah under Section 302/326/34 IPC read with Section 27 of the Arms Act. He proved the chargesheet, Exhibit-31 and also the letter issued by the S.P., CBI, SCB-Kolkata to the Inspector General of Police, Special Branch, Assam, Kahilipara, Guwahati requesting for photographs and dossiers of the activities of the suspected SULFA activists including that of Nayan Das and Samar Kakati @ Mridul Phukan.

In cross-examination, this witness disclosed that at the time when he took up the charge of the investigation, almost a year had elapsed from the date of the incident. He admitted that at that stage, the Assam Police had examined as many as 44 witnesses and further that Dhekial Phukan, Bitupan Deori, Kajal Khan and Pramod Gogoi were the elicited suspects. The witness stated that the Assam Police had not prepared any sketch map of the place of occurrence and that he did so with the assistance of one A.K. Das, Draughtsman-II, COD, All India Radio, Rajgarh Road, Chandmari. He stated that when the photographs were displayed before the students of the Asom Jatiya Vidyalaya, Rajgarh, some of the students, namely, Ritupaban Deka and Jyotirmoy Borpujari indicated resemblance of accused Mridul Phukan, one of the assailants but they refused to put their signature on the back of the photographs. The witness conceded of not examining any police officer to ascertain when and

wherefrom those photographs had been collected and that he had not applied before the Magistrate to have the statements of the witnesses who on being shown the photographs had indicated resemblance of the persons therein with the accused persons. He also stated that he could not collect the negatives of the photographs and that as none of the suspects was arrested before the photographs could be collected, no Test Identification Parade could also be arranged.

85. The witness stated that as open end warrant had been issued against Dhekial Phukan and Kajal Khan, they were made witnesses in the case. He clarified that he had not mentioned in the chargesheet that the investigation disclosed that the accused persons had used one Neptune blue Maruti 800 Car in the commission of the offence. According to the witness, the statement in the chargesheet that the car was found abandoned near the place of occurrence without having any number plate was only in reference to the allegation to that effect. He, however, admitted that the car was seized and later on given in zimma of one Najrul Haque.

86. The testimony/ statement of this officer when considered in conjunction with the contents of the chargesheet detailing the steps taken in course of the investigation,

demonstrate with sufficient clarity the endeavours made by the investigating agency to identify on the basis of the materials collected the persons who, according to it, had authored the crime and to chargesheet them to stand trial. Noticeably, three out of the four chargesheeted persons were killed before the trial and the respondent No.3 was acquitted of the charges on the conclusion thereof.

87. On a close reading of the evidence of P.W.49 in particular and disclosures stepwise in the investigation as narrated in the chargehseet, there is no cogent, convincing and pursuasive reason assuredly to conclude *per se* that the investigation lacked bonafide and was intentionally misdirected in departure from the lines pursued by the Assam Police. The criticism of the investigation on the ground that the CBI had totally disregarded the revelations in the probe conducted by the Assam Police and that for no reason whatsoever Dhekial Phukan and Kajal Khan, suspects according to it (Assam Police) had been made witnesses only to divert the correct course of enquiry, thus, does not appeal to us. The steps as taken by the CBI in furtherance of the investigation, to reiterate, are not indicative of any malafide on its part in pursuing the same and the grounds urged on behalf of the revisionist does not discredit the exercise

undertaken to render it untrustworthy, inefficient and incomplete on these counts.

Failure to locate the whereabouts of the Neptune Blue Maruti 800 Car.

88. That a Maruti 800 Car had been seen at the place of occurrence at the time of the incident stands adequately established from the evidence and other materials on record. To start with, a reference thereto is available in the FIR based on the account of the eye witnesses. Sri Rameswar Lalung also mentioned about an Ash/ Bluish colour Maruti 800 Car he having come to learn about the same in course of his enquiries at the spot on the date of the occurrence. He, however, had expressed his doubt as to whether the said vehicle had been used in the commission of the crime and stated that he, therefore, did not seize the same. He did omit to mention about this car in his deposition at the trial. As adverted to hereinabove, the Investigating Officer (P.W.49) narrated the steps taken by him to locate the car stated to be involved in the offence. He also clamed to have seized a car bearing registration No. AS-01-C-2062 suspected to be involved in the offence and had given the same in the zimma of one Nazrul Hazque. Though the chargesheet indicates in unequivocal terms that the investigation

had disclosed that the chargesheeted accused persons had used one Neptune Blue Maruti Car in the commission of the offence and that the same was found abandoned near the place of occurrence without having any number plate, it is really intriguing about the non-existence thereof subsequently. Noticeably, the materials on record do not demonstrate that the said vehicle had been seized by the Assam Police immediately after the incident. This assumes significance as the investigation had been taken up by the CBI afresh after 13.8.97 i.e. nearly 14 months after the incident had occurred. The seizure of the vehicle bearing registration No. AS-01-C-2062 does not appear to be of decisive significance as the identity thereof with the vehicle allegedly used in the commission of the offence has not been established. A time lag of over a year, therefore, in our comprehension, has been a considerable setback vis-à-vis this aspect of the investigation.

89. Be that as it may, apt it would be to refer to the excerpts of the other witnesses on the aspect of identity and involvement of this vehicle.

90. P.W.17, Dhiraj Kalita who at the relevant time was a driver of the bus of the Asom Jatiya Vidyalaya, in his statement

before the investigating agency disclosed that while he was taking rest in his vehicle at about 1430/1500 Hrs. on 17.5.96, he suddenly heard the sound of bursting of crackers from the nearby school gate and on peeping through the window of the bus, he saw one man aged about 35 years fallen on the ground and two persons, one tall and the other short, holding firearms. At the trial, this witness stated to have seen three persons shooting at one man with pistols, two of them being tall and one short. He deposed that after the incident they got inside a Maruti Car and went towards Bhangagarh. In cross-examination, he admitted the presence of other cars as well.

91. P.W.11, Umesh Deka who at the relevant time was a chowkidar of the aforementioned school in his statement under Section 161 CrPC stated that on 17.5.96 at about 1440 Hrs. while he was standing in the open courtyard of the institution and watching the P.T. class, he suddenly heard explosions and went outside the school and saw one Ash colour Maruti 800 Car wherefrom one person came out with a fire arm and shot a man successively who fell down and a boy who was accompanying the injured ran back to the school. He stated that he thereafter saw the car leaving towards Bhangagarh. He claimed to have seen four occupants in the car. He, however, could not state as to

whether the car had any number plate or not. His deposition at the trial is more or less in the identical lines.

92. P.W.12, Ajanov Mazumdar, a student of the above mentioned school stated that on the date of the occurrence at about 1435/1440 Hrs. while the P.T. class was in progress, he noticed the deceased standing near the schoolgate as well as the Chowkidar thereat. The witness stated that as the deceased proceeded only a few steps with his son, two persons opened fire on him whereupon the injured fell on the ground. The witness stated to have seen one Ash/ Blue colour Maruti Car parked on the road facing Bhanagarh. The glass of the front door of the car was slightly raised. He stated further that the assailants thereafter got into the said Maruti car through its back door and sped up towards Bhangagarh. In his deposition at the trial this witness referred to the vehicle as a blue colour Maruti Van.

93. P.W.13, Ms. Jyotirupa Bora, also a student of the said school in her statement under Section 161 Cr.P.C. stated that on the date of the occurrence while she was attending the P.T. class, she suddenly heard sound of explosions similar to that of bursting of crackers from the Rajgarh road, whereafter, she saw two persons boarding a Maruti 800 Car of Ash blue colour by

running from the side of the said gate whereafter the car moved towards Bhangagarh side. In her testimony in Court though this witness referred to a Maruti Car in which two persons according to her had fled from the scene, she did not mention the colour thereof.

94. P.W.9, Ritupaban Deka in his statement under Section 161 Cr.P.C. stated that while he was attending P.T. Class along with his classmates on the date of the incident, at about 1430 Hrs. he heard some sound akin to that of bursting of crackers and saw a man aged about 26/27 years holding a firearm along with another armed person firing successively in one direction. The witness stated that both the assailants ran and boarded a dark blue Maruti 800 card which sped away towards Bhangagah. He stated that the glass of the Car was dark coloured and it had no number plate. In his deposition at the trial, he mentioned about one person shooting at somebody and then boarding a vehicle to leave.

95. P.W.18, Hema Gogoi who on the date of the incident was a driver of the Managing Director of 'M/s Technotive Eastern Pvt. Ltd., Rajgarh Road' stated about the presence of a Maruti Car with tinted glass parked opposite to the office gate. The

witness stated before the investigating agency that the car did not have any number plate. He claimed to have noticed two persons of the age range 26 to 30 years in the front seat of the car. According to him, the vehicle was of a new model and had a yellow border along the sunscreen. According to this witness, on hearing the sound of firing, he along with other members of the staff of his office went indoors and after he came out he could come to learn that one person had been killed by some miscreants who had fled in the said Maruti Car. In his evidence at the trial, he just mentioned about a Maruti Car near the place of occurrence.

96. P.W.27, Kajal Khan his statement under Section 161 Cr.P.C. on this aspect referred to one Neptune Blue Maruti car owned by one of the uncles of Samar Kakati. He, however, indicated in his statement that if tapped properly useful information could be elicited from Ms. Chendi to identify the persons involved in the assassination of Sri Parag Das and the conspiracy in connection therewith. This witness was declared hostile at the trial and was confronted with the statements made by him on aspects pertaining to the reactions of Samar Kakati @ Mridul Phukan to the disagreeable role of the deceased in facilitating attacks by the ULFA activists upon their SULFA

counterparts necessitating his elimination and also seeking the assistance of the witness in that regard.

97. Bitupan Deori in his statement under Section 161 Cr.P.C. stated that he suspected that the Neptune Blue Maruti Car which was involved in the incident belonged to Mitra Dev Manahta, a renowned businessman of Guwahati who was shot dead on 23.9.97 subsequent to taking over of the investigation by the CBI as the killers might have apprehended disclosure about their identity by him.

98. P.W.26, Sunil Nath in his statement under Section 161 CrP.C. referred to a blue colour Maruti Car which actually belonged to Mridul Pkuhan but driven by Diganta Baruah. He stated that a Neptune Blue colour Maruti 800 Car was involved in the assassination of Parag Das and that, therefore, the removal of the said vehicle to Siliguri after the incident could not be ruled out. This witness was declared hostile at the trial and was confronted, amongst others, with this statement of his the making whereof he, however, denied.

99. P.W.7, Rohan Kr. Das, son of the deceased though in his statement in course of the investigation recalled to have seen

a blue colour Maruti Car in front of the school gate with 3 /4 persons inside it, he did not reiterate this statement at the trial.

100. Though it has been emphatically argued that the Neptune Blue Maruti Car established to have been used in the commission of the offence had been dispatched by the Investigating Officer (P.W.49) to Siliguri of his own and that thereby the investigation is incurably faulty, the testimony of this witness to this effect, as relied upon by the revisionist for this accusation, in our understanding, does not unmistakably suggest the same. Though the necessity of further vigorous steps to track this vehicle in the face of its involvement as disclosed in the investigation cannot be trivialized, the ground realities including the considerable the time lag at this distant point of time are formidable factors weighing against the utility of further investigation on this count after long sixteen years.

Role and purport of unauthorized firearms possessed by the chargesheeted accused persons:

101. P.W.14, Sarju Khan in his statement under Section 161 CrP.C. while stating that Nayan Das @ Guli was a desperate SULFA activist and very close to Mridul Phukan, clarified that

Kajal Khan was not involved in any case. He further stated that this group had huge arms and ammunition and money. He elaborated further as hereunder:

> "At that time are Sten machine carbine/Gun was given to Mridul by Sourav Gogoi. It is still with him. He also used to keep with me to avoid any leakage of the information oif possession of such fire arms with him to police, army etc. I remember Mridul kept the Gun with me since one month prior to murder of Parag Das. He took back the said fire arm from almost 10/15 days earlier the death of Parag Das. After death of Parag Das he again kept the gun with me. It had two magazines. Gulie also had a M.20 Pistol and he kept it with Mridul @ Samar. Once I collected a .38 revolved from the ULFA activist and Mridul took it from me. Gulie also has AK 47 rifle. Mridul also has many fire arms.".

In his deposition at the trial, he abridged the above version to state that Nayan Das @ Guli and Mridul Phukan were SULFA activists along with Sourav Gogoi, Tapan Dutta and Jugal Kishore Mahanta and they all carried arms and sometime used to keep the same in his custody when going out. This witness was declared hostile and confronted with his statements under Section 161 Cr.P.C. which he denied to have made in course of the investigation.

102. P.W.26, Sunil Nath in his statement before the CBI while giving a clean chit to Dhekial Phukan vis-à-vis the incident, stated as follows:-

> "From my enquiry I am sure to say Parag was not killed by ULFA. He might have been killed by any SULFA activists and were involved in the killing as we suspect. I know both 'Goolie'@ 'Mridul' visited Guwahati at the house of a questionable lady 'Sandra' one day prior to the occurrence of death of Parag. They also left on the next day. Both of them carry fire arms like Sten Gun, A.K.47, Pistol. One being asked I state that the notorious 'SULFA' activist Diganta used to stay at Siliguri where sometimes Jugal Kishore, Mridul, Goolie used to go and meet them. Diganta also used to come to Dibrugarh and Guwahati. I have information he also came Guwahati on the day before killing of Parag. He was not found at Guwahati after death of Parag. Diganta is a good driver. He also owned one blue coloured Maruti Car which actually belonged to Mridul. In the killing of Parag Das a Neptune Blue coloured Maruti Car (800) is involved. So after the incident removing the car to Siliguri cannot be ruled out. Diganta has many Bengali friends there at Siliguri. On being asked I further state that Goolie never used to visit Guwahati without Mridul Phukan. They used to come by Mridul's Car. Later Goolie also purchased a car and Mridul was his guarantor. On being asked I state that I know my life will be at stake if I say it in the Court but I think truth should come out.".

He was declared hostile at the trial and was confronted with his statement as above which he denied to have made in course of the investigation.

103. P.W.27, Kajal Khan who was also declared hostile at the trial was confronted with the following statement claimed to have been made by the investigating agency :

> "Once I cannot remember the exact date, at about 2100 Hrs. while I was coming from the dhaba of Ranjit to my house met Samar on the road. Samar took me at his house and offered me meat and alcohol. Samar never drink but keeps an arrangement of drinks at his residence for the guest. He also used to pay all the expenses of drinks at the dhaba for me whenever he met me there and offering the drinks and foods. On that night, Samar was alone at his residence and in course of taking meal and drinks he told SULFAs were becoming the victim of killing by ULFA almost all the day. He disclosed himself as a SULFA leader and expressed he had to do something against this. He also told accusing Parag Das, the editor of Dainik Assomiya Praditin that he was the man who was indicating the SULFA people to be the victim of ULFA killing by way of his writing in the paper. He also tried to contact Parag Das over telephone from his residence twice/ thrice, but no telephonic contact was made. It was about 12 O Clock night so I left his house for my residence as I was also fully drunk.....
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> .....
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> .....I can remember that about ¾ days prior to death of Parag Das, Samar also met me at the Dhava in the evening and he made me drunk and by the by he told to arrange for killing Parag Das. He also expressed that if an ULFA leader like Parag Das is killed, then the frequent attack of ULFA activists upon the SULFA activists will be reduced in a degree. He proposed me to kill Parag Das and he blamed Parag Das was the man who was indicating the SULFA

activists by way of his criticision in the paper as the tartets of ULFA. As I had no interest with Parag Das and he was not my enemy by any means and was also knot know to me. So, I denied this proposal. I never saw the face of Paraga Das even and would not know what does he stay and he did not cause any harm of me. But all the same Samar was insisting me and provoking to be a member of this group to kill Parag Das. On this continuous insistment, I demanded a sum of Rs. 2 lacs from him to kill Parag Das but hearing my demand Samar refused and I disclosed that why should I be involved in killing of Parag Das unnecessarily and the mater was ended there.".

Vis-à-vis possession of firearms by Samar Kakati, he further had stated as hereinbelow:-

"Samar has a unlicensed US Carbine, licensed M-20 pistol. Pumping Action Gun (Nagaland licensed), two unlicensed .38 Reolver and one 9 MM Firearms, Goolie has also one Ak-17 Rifle and 32 Pistol. One AK-47 Rifle of Goolie is kept with Samar. He also takes it with him always whenever moves by his car for any place as he has been provided with PSOs so police never checked his car and the PSOs could manage the Policemen detailed on check gate duty on the road.

I used to move with Samar earlier to ONGC Shibsagar as I had also business with him so I know the matter of keeping AK-47 Rifle with him. He also brought one .38 revolver from Biju Khan which was kept by me with him and the same revolver has been given to Shri Parag Raj Konwar of Lakra a man who looks after the work of Samar at the sight for his security.".

104. P.W.33, Prafulla Bora @ Dhekial Phukan was also declared hostile. He, however, denied to have made the statement in the following extract before the CBI in course of the investigation :

> " It was done by another group. The group belongs to Dibrugarh. One Gooly was involved in the case directly and he belongs to the said Dibrugarh group. I think brain behind the incident and also to guide Gooly, Tapan Duta, Kishore and Saurav played and important role"
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> .....
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> .....
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> "But later I came to know from Bitopan that Gooly and some others are involved in this incident. I am sure that Gooly is involved in this case along with another Samar Kakati. Once I also made contact with DIG Borah and informed him the fact of involvement of gooly in the incident of killing of Parag Das and I think if Gooly is detained for 2/3 days in police custody nder a chase then he will disclose everything. I also told the same statement to him which I have told now regarding arrival of Gooly at Guwahati with Bitopan and his meeting with me at my residence and also we moved together for the residence of Aloknath, Guwahati as I stated earlier and after that he became disappeared.".
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> .....
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> .....
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> "On 16th morning hour, Gooly met me at my residence with Bitopan. On 17th, I did not see him and do not know here he was. I came from Bitopan and Gooly met him on 18th afternoon and when Bitopan asked Gooly that whey he has done this type of work, Gooly replied him to know whether there was any more work of this type or not and he will also do those works before leaving Guwahati. When Bitopan

wanted from Gooly to know about the persons who were also with him in the killing of Parag Das, then Gooly refused to say. Bitopan was with me and he may disclose everything to you.".

.....

.....

"I am sure that Gooly and Samar are involved in this killing of Parag Das and their leaders of Dibrugarh groups are the brain behind this incident. Kajol talked with Samar about this incident directly and Bitopan talked with Kajol directly and face to face who knows about the incident. So it is my thinking that you can ascertain everything from Bitopan and Kajal. Besides Samar and Gooly there may be some persons also involved in this case.".

105. Sri Bitopan Deori stated in course of the investigation that he strongly believed that Guli was involved in the incident and that his close associates and guides Samar Kakati, Diganta and Pahar might also be involved in the killing of Parag Das. He further stated that these persons had 'very good fund' and were in possession of a large number of very sophisticated arms and ammunitions. He also referred to an occasion when he had accompanied Dhekial Phukan to the residence of Sri R.M. Singh, IPS, then the SP(City) along with his (Dhekial Phukan) PSO with whom he (Dhekial Phmukan) deposited his M-20 Pistol before entering his residence.

106. The statements of these witnesses before the CBI do suggest that in course of the investigation it had come to light that the persons named therein were in possession of sophisticated arms and ammunitions and that they used to carry the same along with them. That at the relevant time an atmosphere of mistrust and confrontation between the ULFA and the SULFA activists prevailed exposing the members of both the groups to armed attacks and counter attacks is also indicative therefrom. Nonetheless, from these disclosures alone the investigation conducted by the CBI culminating in the chargesheet of the aforenamed four persons cannot be readily discounted and condemned to be unworthy of any credit.

Fear psychosis of the witnesses camouflaging facts bearing on the conspiracy and the consequential assassination of Parag Das:

107. P.W.21, Rahul Phukan though in his statement under Section 161 Cr.P.C. had disclosed that both Nayan Das @ Guli and Mridul Phukan used to visit their house and did so on 17.5.96 and further stated to have identified both of them in the two photographs shown to him, he did not express any fear or apprehension of any kind. He was declared hostile at the trial

and was confronted with his statement under Section 161 Cr.P.C.

108. P.W.24, Smt. Chantal Sandra Phukan had stated before the investigating agency about her acquaintance with various SULFA leaders i.e. Sunil Nath and Kalpajyoti Neog on whose initiatives she got the job of PRO in Hotel Bluemount, Beltola, Guwahati. She also stated to have closely known SULFA leader Dhekial Phukan, co-proprietor of the said hotel, Guli, Mridul Phukan etc. who used to visit her house as well. While expressing her ignorance as to who had killed Parag Das, she, however, affirmed that Mridul @ Samar and Guli used to accompany each other when they came to the hotel. She stated that Guli was of dangerous type and that if the statement made by her was leaked, he or Samar or anyone of their group would kill her and her children and, therefore, it would not be possible for her to give any evidence against them in Court. This witness after being declared hostile at the trial was confronted with her statement under Section 161 Cr.P.C. She, however, denied to have made the same.

109. P.W.25, Rodney Phukan had stated in course of the investigation that, amongst others, Guli, Mridul, Sunil etc. used

to visit their house and stated further to have seen Guli handling firearms in a room of the Bluemount hotel where her mother served as PRO. He further stated that 'Guli Uncle' was a very dangerous m an and that his mother had warned him not to disclose any activity of his or else he would kill him (witness). He, however, identified Guli and Mridul on the basis of the two photographs shown to him.

110. P.W.23, Bimal Pachari in his statement under Section 161 Cr.P.C. mentioned about Kajal, Mridul @ Samar and Guli as SULFA activists having links with police and army. He referred Guli to be of dangerous type and suspected that Mridul was involved in the incident. He, however, expressed apprehension of danger to his life and that of his family members if the statement got leaked. Though this witness on oath only stated to be knowing Kajal Khan and Mridul Phukan who belonged to SULFA, neither he was declared hostile nor was his statement before the investigating agency referred to confront him therewith. As a matter of fact, this witness substantially reiterated at the trial the statement made by him under Section 161 Cr.P.C.

111. P.W.15, Biju Buragohain stated before the investigating agency about the assassination of Binu Chetia, a Congress-I candidate from Margherita Constituency of the State reportedly by ULFA following which Samar @ Mridul Phukan, Jugal Kishore Mahanta and few others went to the house of Binu (since deceased) and Mridul touching the feet of the mother of the deceased promised to take revenge by eliminating ULFA activists. The witness further stated that this group was well connected with the police and Army in anti ULFA operations and used to be in possession of huge arms and ammunitions for which many ULFA activists were also afraid of them. Stating that these persons were dangerous, he confided in the investigating agency that it would not be possible to depose against them in Court as otherwise his safety and security and that of his family members would be at stake. In Court this witness claimed to know Mridul @ Samar and on being hostile, he was confronted with the police statement as above.

112. P.W.18, Hema Gogoi who was at the place of occurrence but had not seen the actual incident in his statement under Section 161 Cr.P.C, however, had mentioned about a Maruti Car with tinted glass but without a number plate being parked opposite to the gate of the office of 'Technotype Eastern

Pvt. Ltd.' at Rajgarh Road just before the occurrence. He further stated to have noticed two persons sitting in the front seat of the car which sped away immediately after the incident. He, however, declined to give any evidence against the assailants or to identify before Court or in the police station as they were dangerous elements and would kill him otherwise. He, however, identified the driver of the vehicle as Diganta Baruah from the photographs shown to him. In his deposition in Court, he, however, referred to a Maruti Car near the place of occurrence.

113. In contradistinction to the above, the attention of this Court has been drawn on behalf of the respondent No.3 to the statement/ evidence of other witnesses who, amongst others, of the journalist fraternity were very close to the deceased and were expected to be conversant with the developments attendant on the incident much prior thereto in minutest details, but did not express any such apprehension or fear and had testified without any such reservation.

114. P.W.7, Rohan Das, son of the deceased while had narrated the incident in sufficient details in course of which he also sustained injuries on his right hand, neither in his statement before the investigating agency nor at the trial could

identity the assailants. Noticeably, he did not express any apprehension to his life and safety as the reason therefor. Though this witness at the time of the incident was minor and a student of Class-III of the school, namely, Asom Jatiya Vidyalaya, the incident had occurred before his eyes. He was aged 17 years on the date of recording of his deposition in Court and though, as has been held by the Apex Court in *State of U.P. –vs- Krishna Master & Ors.* (supra) that usually when a child of tender age witnesses a gruesome incident like murder he is not likely to forget the same for the whole of his life and can certainly recapitulate the facts in his memory notwithstanding an appreciable time gap, it is not unlikely that this witness at that tender age being dazed and bewildered by the sudden spurt of events in succession could not have retained a first hand impression on the features of the assailants, he himself being in excruating pain from the injuries suffered. Be that as it may, as expected, this witness, however, did not express any apprehension to his safety and security in narrating the incident as recollected by him before the investigating agency as well as at the trial.

115. P.W.8, Jyotirmoy Borpujari who was at the relevant time a student of Class VII of the aforementioned school though

before the investigating agency identified Mridul Phukan as one of the assailants on being shown his photograph, he did not express any apprehension or fear in doing so. This witness though did own his signature on the backside of the said photograph, at the trial he could not identify the respondent No.3 in Court. He even denied a suggestion made on behalf of the defence that he had put his signature on the back of the photograph on being asked by the police.

116. P.W.9, Ritupaban Deka, also a student of the same school before the investigating agency identified Mridul Phukan @ Samar Kakati in the photograph shown to him as one of the assailants. This witness also did not express any apprehension and owned his signature on the back of the said photograph (Exhibit-6).

117. P.W.11, Umesh Deka while had offered his version of the incident which he claimed had occurred in his presence, he could not identify the assailants even on seeing the photographs produced before him by the investigating agency. His evidence at the trial is substantially in the same lines. Noticeably, he did not express any apprehension or fear of retaliation from any quarter.

118. Ms. Jyotirupa Bora, P.W.13 following her recitation of the incident before the investigating agency identified Biswajit Saikia @ Tapan Dutta from the photographs shown to her as one of the assassins. Though at the trial she did not depose on this aspect, no apprehension or fear was expressed by her in narrating the incident.

119. P.W.12, Ajanov Mazumdar identified Guli @ Nayan Das as one of the assailants from the photographs shown to him by the investigating agency and made a statement to that effect under Section 161 Cr.P.C. He also stood by this identification at the trial on being shown the related photograph from a bundle (Exhibit-6). This witness also did not express any fear or alarm in offering his testimony.

120. P.W.17, Dhiraj Kalita though before the investigating agency on the basis of the photograph identified Guli @ Nayan Das as the person who had opened fire on the deceased and had put his signature on the backside thereof in presence of witnesses, at the trial he stated to have forgotten as to why he had put his signature. Noticeably, he did not express any apprehension or fear of reprisal from the assailants or their associates.

121. P.W.18, Hema Gogoi though had not seen the incident as such, he referred to the presence of an Ash Blue colour Maruti 800 Car parked opposite to the office of Technotype Eastern Pvt. Ltd at Rajgarh Road just before the incident and fleeing of the assailants in the same. This witness before the investigating agency though had identified Diganta Baruah @ Palash to be the driver of the car on the basis of the photographs shown to him, he expressed his inability to give any evidence against the assailants or to identify them before the Court or in the police station as he apprehended that he might be killed if he did so.

122. Sri Ajit Kr. Bhuyan, P.W.4, founder editor of 'Sadin' and a journalist friend and colleague of the deceased was not an eye witness and stated, amongst others, of a meeting of MASS held in the forenoon of the date of the incident whereafter he along with the deceased and his wife had dispersed. Before the investigating agency this witness stated that though they had suspected Dhekial Phukan to be involved in the incident, later on it turned out to be baseless. Though he referred to SULFA activists of Dibrugarh area, namely, Sourav, Jugal Kishore, Tapan Dutta, he expressed his ignorance as to whether they

were involved in the incident or not. In his deposition before Court, he stated that he had no knowledge as to who had killed Parag Das.

123. P.W.6, Haider Hussain, Editor of Asomiya Pratidin being, amongst others, a member of the journalist fraternity was an friend of the deceased. He was not an eye witness and had stated before the investigating agency to have inferred that Dhekial Phukan and Manoj Hazarika, SULFA activists might have been involved in the incident but had no evidence to that effect. At the trial in clear terms this witness stated that he did not know as to who had killed the deceased.

124. Sri Manjit Mahanta, P.W.28, Executive Editor of Asomiya Pratidin also not an eye witness had reached the place of occurrence on receiving the information of the deadly attack on the deceased. Before the investigating agency though he mentioned the name of Dhekial Phukan, he clarified that he had no evidence that he was involved in the murder. He, however, disclosed that one month before the incident SULFA activists, namely, Jugal Kishore, Sourav and Tapan had visited their office following which there were heated exchanges between them and Parag Das. That these persons were dangerous and cruel apart

from being sound financially maintaining close touch with influential officials of Army and Police was also stated by him. In his testimony before Court though he referred to the visit of the SULFA men to the office chamber of Parag Das and the altercation that followed, he did not express any apprehension or fear of any adverse consequence. The witness was also not declared hostile.

125. Sri Jayanta Baruah, P.W.36, owner of Asomiya Pratidin, Nandini and Satsari on oath at the trial stated that he could not say as to who had killed Parag Das. He did not express any apprehension either.

126. Dr. Jyoti Kr. Das, P.W.34, brother of the deceased referred only to the factum of death of the deceased in the incident of firing and that of injury of Rohan Das before the investigating agency. When asked, he expressed his ignorance as to whether before his death Parag Das had been threatened or that he had any enemy. He stated that he did not notice anything unusual in the deceased before the occurrence.

127. P.W.38, Prasanta Saikia who at the relevant time was the organizing Secretary of MASS in his statement under Section

161 Cr.P.C. stated that on 17.5.96 there was some meeting of the said Body which was attended, amongst others, by the deceased. After the meeting had ended the deceased along with others including Sri Ajit Bhuyan had left the office of MASS at about 1315 Hrs. whereafter one SULFA activist named Mouth @ Subham Saikia who was known to the witness came to the office hiding one hand behind him and enquiring about Parag Das. The witness further stated that on being told that Parag Das had left the office, Mouth @ Subham Saikia also immediately left the place on a motor cycle waiting outside and driven by another fair and a slightly taller person. With reference to the photograph shown to him, he stated that he could identify Mouth @ Subhan Saikia and Jugal Kishore Mahanta. The witness, however, expressed his inability to identify the persons in Court or testify against them considering the risk and danger to his life. At the trial this witness, however, narrated about the visit of Mouth @ Subham Saikia in the office of MASS enquiring about Parag Das. The plea of apprehension in the face of this testimony of the witness, therefore, is of no consequence.

128. P.W.39, Lachit Bordoloi, also a journalist and associated with MASS and P.W.40, Pranab Acharya, journalist of the daily 'Aji' and 'Asomiya Pratidin' did not depose any fact

pertaining to the incident but stated about the seizure made of the newspapers and magazines as referred to by them.

129. On an appraisal of the statements and the evidence of the witnesses as above, it is apparent that neither the son of the deceased nor his intimate colleagues had expressed any apprehension or fear in making the same either before the investigating agency or at the trial. Those who had conveyed their alarm or fear of detrimental consequences did not pin-pointedly involve any person or persons either in the actual murder of Parag Das or in the conspiracy leading thereto. Noticeably, they either referred to the activities of some armed members of the SULFA group in general or hinted at the vehicle in which the assailants had escaped from the place of occurrence. Significantly, the statements of these witnesses under Section 161 Cr.P.C. *per se* even if construe to be substantive in nature and legally acceptable, do not identify with precision and unambiguity the plotters of the gruesome murder or the executor(s) thereof.

Role of Mouth @ Subham Saikia

130. The statement of P.W.38, Prasanta Saikia before the investigating agency and his deposition at the trial has been

adverted to hereinabove and for the sake of brevity repetition is avoided. In addition, one Khagen Talukdar (who died during the trial and had not been examined in Court) in his statement under Section 161 Cr.P.C. also disclosed the sequence of events as narrated by P.W.38. He stated to have seen two persons standing near the office of MASS at 1245/1300 Hrs. on 17.5.96 and that the shorter of the two entered the office and enquired about the whereabouts of Parag Das. He further stated that on being told that Parag Das had left the office, the person went back facing him keeping one hand behind his back and left the place on a motorcycle with the other person. He, however, could not identify anyone from the photographs shown to him. The statement/ evidence as above though is inferably suggestive of something ominous vis-à-vis Parag Das, neither is it feasible in the face of the investigation conducted nor any further evidence to that effect to identify Mouth @ Subham Saikia to be one of the conspirators or the assailants of Parag Das. The visit of Mouth @ Subham in the office of MASS on the very same date of the incident in a suspicious manner though a circumstance which viewed in the retrospect cannot be delinked with the incident of murder that followed shortly therafter, the same *ipso facto,* having regard to the investigation and the final report submitted

on the conclusion thereof, cannot be construed to be adequate enough to nix the inquest undertaken by the CBI.

Seizure of bullets and forensic reports:

131. As had been disclosed by P.W.3, Rameswar Lalung, Investigating Officer of Assam Police, he had recovered 14 empty cartridges from the spot which were later on forwarded to the Central Forensic Science Laboratory, Calcutta. The evidence of Sri SS Murti, Senior Scientific Officer, CFSL, Chandigarh discloses that these 14 cartridges along with other seized articles were duly examined and a report was submitted to the CJM, Guwahati. The witness has proved the report as Exhibit-15 under his signature.

132. The progression of events since the date of the occurrence as has been recorded hereinabove demonstrate that the investigation in connection therewith was initiated by the Assam Police with the FIR to that effect lodged on the very same date. It was thereafter that the investigation having been entrusted to the CBI, it took up the same after 13.8.97 and on completion thereof submitted chargesheet on 20.11.2000. Out of the four chargesheeted persons, three were killed before the trial, on the conclusion whereof, the respondent No.3 was acquitted.

The records disclose that the witnesses were examined at the trial during 2004 to 2009 and the judgment of acquittal was pronounced on 28.7.2009. Admittedly, during this long period of 12 years no question was raised with regard to the validity or sufficiency of the investigation made by the CBI neither before the learned Court below nor any higher forum. Instead, as referred to hereinabove, an interim application was filed (registered as MC 2035/2006) before this Court in PIL 26/2000 (disposed of on 4.1.2001) complaining against the delay in the progress of the trial. By order dated 22.6.2006, this interim application was disposed of with a direction to the learned Court below to hear the case on day to day basis. The family members of the deceased were permitted to appoint a lawyer to be present in Court during the proceedings, if such a prayer was made. Admittedly, the family members of the deceased were allowed to be represented by their learned counsel Sri Pallab Kataki and Sri Manas Haloi. No objection and/or reservation even thereafter during the trial was raised on behalf of the family members of the deceased before any forum vis-à-vis the quality of the investigation and/or the trial. Instead, the written arguments submitted on their behalf, to reiterate, exhibited absolute endorsement of the investigation conducted seeking conviction of

the respondent No.3 on the basis thereof as well as the evidence adduced in the sessions proceedings.

133. It is for the first time that misgivings in emphatic terms have been aired before this Court in a proceeding under Section 397/401 of the Code. As the records would reveal, on an application filed by Prof. (Dr.) D.P. Barooah, former Vice Chancellor, Gauhati University seeking the intervention of this Court for judicial redress following the acquittal of the respondent No.3, this Court took suo motu cognizance thereof and, consequently, Criminal Revision (suo motu) No. 371/2009 was registered. In the said proceeding the respondent No.3 was impleaded and was represented by his counsel. This was prior to the institution of the present revision petition. Criminal Revision (suo motu) 371/2009 was closed on 15.9.2009 in the face of the instant revision petition filed by the brother of the deceased and, that too, after hearing the learned counsel for the parties. No objection was raised to the closure of the suo motu proceedings initiated in the exercise of this Court's extraordinary power under Article 226/227 of the Constitution of India. It cannot be gainsaid that the revision petition filed by the brother of the deceased under Section 397/401 of the Code, thus, permitted, in the teeth of the regnant judicial pronouncements tested by time,

a very limited scrutiny of the points urged in course of the deliberations.

134. Be that as it may, vis-a-vis the highlighted deficiencies, defaults and shortcomings in the investigation, it is noteworthy that neither the vehicle, more particularly the one referred to by the witnesses with varying features, nor any firearm had been seized. Though the whereabouts of the vehicle is said to be untraceable, no explanation as such is forthcoming for the failure to seize any firearm used in the murder inspite of the fact that the investigating agency, according to it, could zero in on the persons involved and accordingly chargesheet them. There is noticeably a considerable time lag between the date of the incident and the entrustment of the investigation in connection therewith to the CBI. Though P.W.3, Rameswar Lalung had commenced the investigation immediately after the incident and had pursued the same for about a month till he was transferred, it is obscure as to what had happened thereafter till the exercise was taken up by the CBI. Meanwhile, to reiterate, about 14 months had elapsed and understandably all tangible clues and leads to unearth the plot and to identify the culprits might have been lost or were in the process of fading into oblivion. This must have been a serious setback for the CBI,

in our comprehension, in its endeavour to brush up the relevant contacts and sources to vivify the inquisition and to put it back on the rails.

135. A conjoint reading of the evidence of P.W.3, Rameswar Lalung and P.W.9, Samir Ranjan Bandopadhyay, Investigating Officer of the CBI would demonstrate that the latter had taken up the thread of the investigation from the stage left buy the Assam Police and had conducted the same with due reference to the progress already made by it (Assam Police) supported by the records in connection therewith. P.W.49 has been categorical in stating that several persons indicated by the Assam Police had been examined by him as witnesses. The evidence of P.W.3 and P.W.44 evince that the seized articles including 14 blank cartridges had been subjected to forensic examination and a report to that effect had been proved at the trial. Though severe criticism has been made about the failure of the Investigating Officer to seize the Neptune Blue colour Maruti car which he allegedly had dispatched to Siliguri presumably to shield the culprits, the materials on record are not convincing to endorse this impeachment. Though the presence and use of a vehicle in connection with the incident has been referred to time and again by several witnesses, a close reading of their testimony exhibits

inconsistencies in the essential features thereof. Though some of the witnesses have stated that this vehicle was without any number plate, according to P.W.49, a Maruti 800 Car bearing registration No. AS-01-C-2026 had been seized by him and given in zimma of one Nazrul Haque. Having regard to the fact that meanwhile long 16 years have elapsed, the prayer for further investigation on this count lacks pursuasion.

136. Vis-à-vis the identification of all the persons involved in the crime or in the conspiracy related thereto, it is significant to note that the statements made by the witnesses under Section 161 Cr.P.C, as has been examined by this Court in the background as already mentioned, even if taken on their face value do not pinpoint any person or persons as the conspirators or the perpetrators of the gruesome killing. In this context the declaration of several witnesses to be hostile by the prosecution and the confrontation with their statements made in course of the investigation vis-à-vis the plea of apprehension or fear psychosis is not of any decisive relevance. It is worthwhile at this stage to record that according to the CBI, the investigation revealed that the persons chargesheeted were responsible for scheming and executing the offence of murder. That before the trial three of the chargesheeted persons were killed and that on

the culmination thereof the respondent No.3 was acquitted by the learned Trial Court on an evaluation of the evidence adduced before it on merits is a different proposition whatsoever.

137. That thoughit had been sought to be assiduously urged that the learned Trial Court in the face of the apprehension against safety and security of various witnesses, non-production of the Neptune colour Maruti 800 car on seizure and the CBI's failure to seize any firearm ought to have adopted proactive steps by examining them (witnesses) in camera and required the prosecution to resort to detailed cross-examination to elicit the truth and further seek clarification from the investigating agency for its failure on these counts, to reiterate, neither any such plea was taken in course of the trial on behalf of the family members of the deceased who were represented by their learned counsel, nor any prayer for retrial has been made before us urging the same. To the contrary, the investigation was endorsed in all fronts and conviction of the respondent No.3 was sought for on the basis thereof as well as the evidence—oral and documentary adduced at the trial.

138. Noticeably, none of the witnesses who had expressed alarm or apprehension had faced any prejudicial consequences

of the statements made by them before the investigating agency and quoted in details at the trial when confronted therewith. Though this is not to discount the role of a Court of law in a criminal trial where it ought not to be a passive onlooker, the plea alleged omissions on the part of the learned Trial Court, in the singular facts and circumstances does not commend for acceptance. It would be too presumptive for us to infer that had these reservations been expressed before the learned Court below, it would not have responded appropriately within the permissible legal parameters. To reiterate, the judgment and order of acquittal has not been assailed before us on this count as well.

139. The scrutiny of the evidence and the other materials on record has been undertaken as mandated by law strictly on the basis of legally/ precedentially enjoined norms. Justice though being the avowed objective, it cannot be vied for in supercession of law. The enunciation of the Apex Court in *Raghunandan* (supra) to the effect that in a criminal trial the fate of the proceedings cannot always be left in the hands of the parties and that the Court has also a duty to ensure that essential questions are not, so far as reasonably possible, left unanswered though does not admit of any debate, the

application thereof would indubitably be contingent on the attendant facts and circumstances. That the inherent power of the High Court under Section 482 of the Code is residuary in nature and ought to be invoked to do substantial justice between the parties has been held by the Apex Court in *State –vs- Mehar Singh* (supra). It has been was clarified therein as well that the plentitude of this empowerment notwithstanding, justice has to be administered in accordance with law and the Courts would have to evolve a procedure to achieve justice without, however, violating any specific provision of the statute to the contrary. This fully accords with the view expressed by the Apex Court on the scope and ambit of the exercise of power by the High Court under Article 226 of the Constitution of India and Section 482 of the Code in *State of Punjab –vs- Davinder Pal Singh Bhullar* (supra).

140. In the instant pursuit the evidence and the other materials on record have to be essentially viewed in the overall perspective of the law as well as the facts involved. The gamut of the materials on record testifies an investigation on the culmination whereof four persons had been chargesheeted on the basis of the disclosures recorded therein. Inferences of possible outcome of a further comprehensive investigation on the

aspects highlighted on behalf of the petitioner, on a cumulative consideration of the evidence—oral and documentary and other facts, tend to be speculative and unrealistic at this distant point of time. More importantly, it is no longer *res integra* that further investigation as contemplated in Section 173(8) of the Code after submission of the report under sub-Section (2) is not permissible at the instance of the Court after cognizance on the basis thereof has been taken and that it is the investigating agency which, if satisfied, can undertake the process subject to the acknowledged legal sanctions. In the case in hand neither any objection was raised with regard to the quality of the investigation before the learned Court below nor any prayer was made before it for further investigation. The pleas now taken had not been raised before this Court or any other higher forum earlier. At the conclusion of the trial the respondent No.3, the only surviving chargesheeted person has been acquitted. The judgment and order of acquittal as such has not been challenged in course of the arguments. Order for further investigation in this factual premise is legally impermissible as well.

141. Consequently, in the attendant legal and factual conspectus confronting this Court, we are disinclined to accede to the prayer for further investigation at this stage. This

notwithstanding, it is left to the discretion and domain of the investigating authority as well as the State of Assam to take appropriate steps as contemplated in law in this regard, if so advised.

142. Viewed in the entire gamut of facts encompassing the investigation and the trial, we are disinclined to sustain the respondent No.3's claim for compensation.

143. The petition is dismissed with the above observations.

JUDGE JUDGE