CASE NO.:
Appeal (crl.) 472 of 2008

PETITIONER:
Divine Retreat Centre

RESPONDENT:
State of Kerala & Ors.

DATE OF JUDGMENT: 11/03/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT
(Arising out of S.L.P. (Crl.) No. 2234 of 2007)
B. SUDERSHAN REDDY, J.

1. Leave granted.

2. What is the scope, content and ambit of the inherent power conferred on the High Court under Section 482 of the Code of Criminal Procedure, 1973 (for short, \023the Code\024) is the central question that falls for our consideration in this appeal.

3. The relevant facts, giving rise to this appeal, have been set out in the impugned judgment of the High Court but they have to be recapitulated in order to enable us to give our reasons for the findings which we will be arriving at on the interpretation.

4. This appeal by grant of special leave is directed by Divine Retreat Centre assailing the judgment and order dated 10.3.2006 of the High Court of Kerala rendered in Criminal M.C. No. 405 of 2006, directing investigation of Crime No. 381 of 2005 of Koratty Police Station to be taken away from the Investigating Officer and entrusting the same to a Special Investigation Team headed by Vinson M. Paul, I.P.S. Inspector General of Police, presently working as Managing Director of Kerala Police Housing Construction Corporation, Thiruvananthapuram. The High Court also directed the same authority to investigate/inquire into various other allegations leveled in an anonymous petition filed against Divine Retreat Centre. The impugned judgment and order arises out of the proceedings suo motu initiated by the Court on the basis of anonymous petition addressed to Justice Padmanabhan Nair.

5. The tell-tale facts disclosed from the record may have to be noted in some detail. One Mini Varghese, a female remand prisoner, sent a petition to the District Judge, Kozhikode, inter alia, alleging that while she was taking shelter in Divine Retreat Centre she had been subjected to molestation and exploitation and became pregnant from Father Jose Thadathil (later identified as Father Mathew Thadathil). When she came out of Centre to attend her sister\022s marriage she was implicated in a false theft case and lodged in the jail.

6. The District Judge having received the petition on 28.7.2005 forwarded the same to the concerned Magistrate on 9.8.2005 to do the needful. The Judicial Magistrate First

Class, Koyilandi recorded the statement of the victim on 11.8.2005 and thereafter the matter was transferred to the Judicial Magistrate First Class, Chalakuddy. The learned Magistrate having received the records ordered investigation. A case was registered in Crime No. 381 of 2005 under Section 376(g) I.P.C. at Koratty Police Station.

7. For whatever reasons, the District Judge sent a copy of the petition received by him to the Registrar of Kerala High Court which was placed before Thankappan, J. who in turn directed complaint to be forwarded to the Superintendent of Police, Thrissur to cause an inquiry and if necessary to register a case and report to the Court. The Superintendent of Police as well as the Circle Inspector of Police (Investigating Officer) submitted their reports duly informing the Registry that a case has already been registered and was being investigated.

8. On 28.10.2005, District Judge, Kozhikode, addressed a letter to the Registrar General, High Court of Kerala enclosing anonymous Petition dated 26.10.2005 received by him addressed to Justice K. Padmanabhan Nair. The Petition was accompanied by photocopies of certain press reports and three Video C.Ds. In his covering letter, the District Judge referred to the facts leading to the registration of Crime No. 381 of 2005 on the file of Koratty Police Station on 31.8.2005 under Section 376(g) I.P.C. and further stated:
\023In the meantime, Smt. Mini Varghese delivered. The Local Police, while arresting her in connection with a theft case had seized a mobile phone from her. The police produced that mobile phone in the J.F.M.C., Koyilandy. That mobile phone was forwarded to the J.F.M. Chalakuddy for investigation as the concerned priest was said to have made several calls to the lady in that mobile phone. Later, I happened to see some press reports (I am enclosed the 3rd page of the N.I.E. dt. 13.10.05 which carried a report, \021DNA Test? Oh No\022) to the effect that the police is not properly investigating the case and instead, are more interested in tracing her antecedents and alleged bad character. They did not reportedly collect the details of calls to the mobile phone seized from the lady, which would have given some clue regarding the alleged connection. Nor did they attempt a DNA test. The lady had complained to me that she is afraid to come out of the jail on bail as she is under threat. I do not know what is the present stage of the investigation.\024

9. The matter was accordingly placed before Padmanabhan Nair, J. by the Registry who in turn directed the matter to be placed before the Registrar General for necessary action by his endorsement dated 21.12.2005.

10. The matter was accordingly placed before Padmanabhan Nair, J. on 24.1.2006 by the Registry in the following manner:

\023Shri Thomas P. Joseph, District Judge, Kozhikode has sent a communication dated 28.10.2005, enclosing a complaint addressed

to the Hon\022ble Mr. Justice K. Padmanabhan Nair. The communication of the learned District Judge and the complaint are self-explanatory.

If any steps are to be taken with regard to the matter may kindly be indicated.\024

The learned judge on the same day made the following endorsement:
\023Please verify and report whether the FPR Mini Varghese had sent any petition to this Court and if so what action was taken on that petition?\024

Thereafter the Registry re-submitted the whole file before Padmanabhan Nair, J as under:

\023It appears that Smt. Mini Varghese, FRP 287, District Jail, Kozhikode had sent a complaint to the Hon\022ble High Court, narrating her agonies. The matter was placed before the Hon\022ble Mr. Justice K. Thankappan, since His Lordship was dealing with the petitions sent from jail. As per the order of the Hon\022ble Judge, the petition was sent to the Superintendent of Police, Thrissur for an enquiry and if found necessary, to register a case. It was also directed that the Superintendent of Police would file a report before this Court within a reasonable time.

Presumably, in pursuance of the said direction, it appears that Crime No. 381/2005 under Sec. 376(g) of the IPC was registered in the Koratty Police Station on 31.08.2005.

When the above matter was reported to this Court, the Hon\022ble Judge, as per His Lordship\022s order dated 22.12.2005 directed that the matter be closed.

The entire file is submitted.\024

On re-submission of the file, the learned judge passed the following order on 8.2.2006 thus:

\023I have carefully gone through Anonymous petition and the documents endorsed along with. One of the documents enclosed alongwith the petition is a petition submitted by FPR 287, Mini Varghese raising an allegation of rape against the head of the Divine Centre Muringoor Rw. Fr. Mathew Thadathil. Of course in the petition she had given the name as Jose Thadthil but there is no room for any doubt regarding the identity of the person.

It is seen that this court had forwarded the petition received from Smt. Mini Varghese to the Suptd. Of Police TCR for necessary action on 7-9-05. The Suptd. Of Police had filed a

statement on 5-11-05 to the effect that a Crime as Case No.381 of 2005 at Koratthy Police Station u/s 376(g) of I.P. Code is registered and the same is being investigated by the C I of Police Chalakkudy. The CI of Chalakkudy had also submitted a similar statement on 31-10-05.

It is seen that on 8-11-05 the report of the CI was brought to the notice of the Hon\022ble Judge who was dealing with the petition received from jail. He passed an order on 22-12-05 to close the file.

In the meanwhile another petition is seen received from the FPR 287. That petition was forwarded to this court on 11-11-05 and received in this court only on 21-11-05. The Registry had noted that the file was already put up to KT(J) and the petition was to be incorporated in the file.

In the above said the FPR 287 had raised serious allegation regarding the investigation. It is stated that two police men went to the jail but they did not make enquiry regarding her allegation of rape alleged against the priest. Even though there is an order to close the file Crl.PP 57929/05. I am of the view that subsequent petition ought to have treated a separate petition praying for an order for proper investigation and separate action taken. I am of the view that petition can also be clubbed with the anonymous petition.

A perusal of the anonymous petition dated 26-10-05 shows it contains serious allegation. So it is only just and proper the matter is taken on the judicial side especially in view of the allegation of involvement of senior IAS and IPS officers.

So there will be direction to the Registry to treat the anonymous petition alongwith petition of FPR 287 received in the court on 21-11-05 as petitions praying for an order for proper investigation and Register as a suo motu Crl. Misc. Case. Serve a copy of the above stated petition to the Director General of Prosecution. The copies of the documents except the CDs may also be given to him. Keep the CD under safe custody for the time being till a decision is taken in the matter.

Register the Crl. Misc. Case and post for admission.\024

11. Be it noted that the complaint/Petition dated 27.10.2005 received from Mini Varghese by the Registry on 21.11.2005 was placed in the same file based on which Thankappan, J initially ordered an inquiry. Thereafter the entire matter was placed before Thankappan, J on 22.12.2005 itself and the learned Judge directed the closure of the matter thus: \023No further probe is necessary. Close the file.\024 This fact was also brought to the notice of Padmanabhan Nair, J.

12. However, the learned Judge was of the view that the subsequent petition sent by Mini Varghese dated 27.10.2005 ought to have been treated as a separate petition praying for an order for proper investigation. The learned Judge was also of the view that the said petition was required to be clubbed with the anonymous petition.

13. The Registry in compliance with the directions so issued by the learned judge promptly registered a case in Criminal M.C. No. 405 of 2006 under Section 482 of the Code in which the persons against whom accusations were made have been duly impleaded as the respondents. The matter was listed for admission in the court on 10.2.2006 and was adjourned to 15.2.2006 for serving a notice upon the learned Director General of Prosecution (Public Prosecutor). The learned Judge heard the matter and reserved the case for order. The impugned order was passed on 10.3.2006.

SUBMISSIONS:

14. The validity of the said order is impugned in this appeal on various grounds. Shri Anil B. Divan, learned Senior Counsel appearing on behalf of the appellant submitted that the whole procedure adopted to entertain and initiate proceedings culminating in passing the impugned order suffers from incurable procedural and substantive infirmities rendering the order void. It was further contended that the impugned order suffers from lack of jurisdiction. The jurisdiction of the High Court under Section 482 of the Code is not available to order investigation into any case by the police. The learned senior counsel proceeded to contend that the directions issued by the High Court could not have been issued even in a public interest litigation under Article 226 of the Constitution of India. On merits, the learned senior counsel submitted that neither the complaint of the victim nor the anonymous petition discloses any irregularity in the matter of investigation. The directions issued by the learned Judge are inquisitorial in nature and sweeping in their width and amplitude directing the Special Investigation Team (SIT) to find out as to whether the appellant committed any crime and if so to investigate into such crime. Such a course is impermissible in law.

15. Shri P.P. Rao, learned senior counsel appearing on behalf of the respondents supported the impugned order. It was submitted that there are no limits imposed in the matter of exercise of jurisdiction under Section 482 of the Code so long as the directions do not run counter to statutory provisions. It was alternatively contended that if for any reason the impugned order is not traceable to Section 482 of the Code the same could be considered as the one passed by the High Court under Article 226 of the Constitution of India. It was also submitted that the appellant has no locus to challenge the impugned order inasmuch as it is not an accused in any criminal case. It was also contended that even the accused in a criminal case has no right of hearing until filing of a report under Section 173 of the Code.

NATURE OF JURISDICTION UNDER SECTION 482 OF CODE QUA THE REGISTRATION OF A CRIME AND INVESTIGATION:

16. The well defined and demarcated functions in the field of crime detection by the police and its subsequent adjudication by the Courts is so well known and had been recognized way back in Emperor Vs. Khwaja Nazir Ahmad . The Privy Council observed that just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. It is held:

\023In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under S. 491, Criminal P.C., to give directions in the nature of habeas corpus. In such a case as the present, however, the Court\022s functions begin when a charge is preferred before it and not until then. It has sometimes been thought that S. 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act.\024 (emphasis supplied)

17. In S.N. Sharma Vs. Bipen Kumar Tiwari & ors. , this Court took the view that there is no mention of any power to stop an investigation by the police. The power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case, the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. \023The power of the police to investigate has been made independent of any control by the Magistrate.\024 It is further held:

\023though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate

cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers.\024

This position has been made further clear by this Court in its authoritative pronouncement in State of Bihar & anr. Vs. J.A.C. Saldanha & ors. thus:

\02325. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in King Emperor v. Khwaja Nazir Ahmad\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005
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pp26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.\024 (emphasis is of ours)

18. The observations of this Court in M.C. Abraham & Anr.Vs. State of Maharashtra & ors. in this regard deserve to be noticed. In the said case it was held:

\023The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The Investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation.\024

19. In State of West Bengal Vs. S.N. Basak , this Court reiterated the principle that the police has statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and that power of the police to investigate cannot be interfered with by the exercise of power under the inherent power of the High Court. In Hazari Lal Gupta Vs. Rameshwar Prasad & Anr. Etc. , this Court while explaining the nature and purport of the inherent jurisdiction of the High Court observed that in exercising jurisdiction under Section 561-A of the Criminal Procedure Code, 1898, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily enquire as to whether the evidence is \021reliable or not\022. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code the High Court dos not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Code of Criminal Procedure.

20. In Nirmaljit Singh Hoon Vs. The State of West Bengal & Anr. this Court held that:

\023The police authorities have under Sections 154 and 156 of the Code a statutory right to investigate into a cognizable offence without requiring any sanction from a judicial authority and even the High Court has no inherent power under Section 561-A of the Code to interfere with the exercise of that statutory power.\024

21. In State of W.B. & Ors. Vs. Sujit Kumar Rana [2004) 4 SCC 129], this Court while dealing with the nature of inherent powers of the High Court held that the inherent power of the High Court is saved only where an order has been passed by the Criminal Court which is required to be set aside to secure the ends of justice or where the proceedings pending before a court amounts to abuse of the process of Court. The

power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a criminal court or where a power is exercised by the Court under the Code of Criminal Procedure.

22. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the Section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

23. Chandrachud, J. (as His Lordship then was), in Kurukshetra University Vs. State of Haryana while considering the nature of jurisdiction conferred upon the High Court under Section 482 of the Code observed:
\023It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.\024

24. Shri P.P. Rao, learned Senior Counsel contended that in the instant case the High Court properly exercised its inherent power in entertaining the grievance of victim alleging bias on the part of the Investigating Officer which is also one of the allegations made in the anonymous complaint. The submission was that the power available to the High Court under Section 482 of the Code is so wide and cannot be subjected to any limitation, except in cases where there is a specific provision in the Code to provide adequate remedies to the aggrieved person. The inherent power is co-extensive with the text of the Code and it can be exercised in respect of any of the matters covered by the Code, be it investigation, inquiry or trial. The learned counsel in support of the submissions relied upon the decisions of this Court in State of Karnataka Vs. L. Muniswamy & Ors. , Central Bureau of Investigation Vs. Ravi Shankar Srivastava, IAS & Anr. & Popular Muthiah Vs. State Represented by Inspector of Police .

25. In Muniswamy (supra) the learned Sessions Judge refused to discharge the accused therein and proceeded for framing specific charges as made out from the material on record against the accused persons. The High Court of Karnataka in the exercise of its inherent power quashed the proceedings initiated by the State of Karnataka and accordingly discharged the accused. The High Court as well as this Court found that there was no material on the record on which any court could reasonably convict the accused for any offence. It is under those circumstances this Court came to the conclusion that it would be a sheer waste of public time and money to permit the proceedings to continue against the accused. In that regard this Court observed:

\023The saving of the High Court\022s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose

which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.\024

26. In Central Bureau of Investigation (supra) this Court cautioned that the inherent power should not be exercised to stifle a legitimate prosecution and the High Court should refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court.

27. In Popular Muthiah (supra) this Court summarized the law as to when the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. The law was stated in the following manner:
\023(i) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) However, the power under Section 482 Cr.P.C. is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.\024

28. In our view, none of the decisions upon which reliance has been placed lend any support to the submissions made by the learned counsel on behalf of the respondents. On the other hand, in Popular Muthiah (supra) this Court held that the High Court was not correct in issuing direction to take advice of the State Public Prosecutor as to under what section the appellant therein has to be charged and tried and directing CB,CID to take up the matter and reinvestigate and prosecute the appellant therein. \023Such a power does not come within the purview of Section 482 of the Code of Criminal Procedure. Investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency unless there exists an extraordinary situation.\024 This Court further held that the High Court cannot issue directions to investigate the case from a particular angle or by a particular agency.

29. The question that arises for our consideration is whether the contents of the petition submitted by the victim and as well as the allegations made in the anonymous complaint reveal any cause for issuing directions relieving the Investigating Officer of his statutory power and duty to investigate Crime No. 381 of 2005 under Section 376(g) of the Indian Penal Code?

30. The allegations in the anonymous complaint are in two parts. The first part relates to Crime No. 381 of 2005 wherein it is alleged that investigation in crime has been \021put to cold storage due to influence exerted at high places\022. This is required to be considered along with the petition sent by the victim herself making certain allegations against the police in general. The allegations are against two police constables that they have tortured her mentally in connection with the investigation of the case. She complained that truth will never come out if the case is entrusted to the police for investigation. She prayed for a \023confidential investigation\024. Neither the anonymous petition nor the complaint made by the victim has been directed against the Investigating Officer complaining of any bias or any attempt on his part to destroy the available evidence.

31. Be it noted that Thankappan, J. vide order dated 22.12.2005 having perused the file including the petition submitted by the victim directed the matter to be closed as it required no further probe.

32. Be that as it may, Crime No. 381 of 2005 itself was registered pursuant to the order of the Magistrate under Section 156 (3) of the Code. We are unable to appreciate as to how the learned Judge could have ordered investigation by Special Investigation Team constituted by himself on the strength of such wild, imaginary and vague allegations. It is difficult to discern the basis for arriving at the conclusion that the entire attempt of the Investigating Officer was to exonerate the accused and make the complainant as accused. The investigation was in progress as is evident from the case diary. The Special Investigation Team also proceeded on the same lines as that of the Investigating Officer and similar observations as the one made by the Investigating Officer are to be found in the report of the Special Investigation Team submitted to this Court. The facts gathered by the Investigating Officer about the victim were part of the result of the investigation. This Court in M.C. Mehta Vs. Union of India [(2007) 1 SCC 110] upon analysis of the relevant provisions of the Code held that after completion of the investigation if it appears to the Investigating Officer that there is no sufficient evidence, he may decide to release the suspected accused. If, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he has to take necessary steps under Section 170 of the Code. \021In either case, on completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form who is required to consider the report judicially for taking appropriate action thereof\022. We do not propose to deal with the options available in law to the Magistrate and even to a victim or informant as the case may be.

33. The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one\022s own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.

34. In our view, the High Court in exercise of its inherent jurisdiction cannot change the Investigating Officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither the accused nor the complainant or informant are entitled to choose their own investigating agency to investigate a crime in which they may be interested.

35. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an Investigating Officer mala fide. That power is to be exercised in rarest of the rare cases where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

36 Even in cases where no action is taken by the police on the information given to them, the informant\022s remedy lies under Sections 190, 200 Cr. P.C., but a Writ Petition in such a case is not to be entertained. This Court in Gangadhar Janardan Mhatre Vs. State of Maharashtra & ors. held:

\023When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees\022 Union (Regd.) V. Union of India . It was specifically observed that a writ petition in such cases is not to be entertained.\024

WHETHER THE HIGH COURT WAS JUSTIFIED IN ENTERTAINING ANONYMOUS PETITION?

37. The second part of the anonymous letter relates to allegations that: (a) in the past two years number of unidentified dead bodies were found on the National Highway and the railway track situated near to the Retreat Centre; (b) there is a practice of burying the dead bodies in the public burial ground without following any procedure; (c) recently the dead body of a lady aged about 30 years was entrusted with one Karyavelu for burying the dead body in the burial ground. When the dead body was taken for burial, Karyavelu noticed number of injuries on that dead body. He is alleged to have informed the Priest of the Divine Centre that henceforth he will not undertake any burial of such bodies. It is alleged that Karyavelu himself died in the suspicious circumstances and a case was registered under the caption \023unnatural death\024; (d) there is a gang in the retreat centre and one Sr. Teresa and two helpers were helping the gang to carry on anti-social activities. It is alleged that the leader of the gang is Rev. Father Mathew Thadathil. Sibi was his right hand person who also died under the mysterious circumstances.

38. One of the documents enclosed to the anonymous petition is a magazine by name \021Divine Voice\022 published by the appellant. In one of the volumes published in June, 2005 the names of senior I.A.S and I.P.S officers were mentioned as the members of the Advisory Board; one such named officer is stated to have decided some matter in favour of the appellant. The High Court in writ petition (c) No. 22543/05 made some observations to the effect that the said officer was really associated with the appellant centre, the order passed by that officer in favour of the appellant is a nullity. Thereafter the name of that officer was deleted from the names of persons of the Advisory Board. Based on such vague and indefinite allegations the High Court gave the following directions without even issuing notice to the appellant:

(i) Government shall issue notification under Section 17 of the Prevention of Corruption Act conferring power to the Special Investigation Team constituted by the court to investigate the offences under the Prevention of Corruption Act;

(ii) The Special Investigation Team shall also inquire into the allegations of foreign exchange violation;

(iii) The Special Investigation Team shall also inquire into the allegations of unnatural deaths stated in the petition.

39. The Special Investigation Team was entrusted with power to investigate into any other cognizable offence in case the Team gets information about the commission of any such cognizable offence. The learned Judge accordingly issued appropriate directions to the Government, the Director General of Police and all other departments of the Government to cooperate and render necessary assistance to the Special Investigation Team.

40. On a careful perusal of the order passed by the learned Judge, we find that the learned Judge initiated suo motu proceedings without even examining as to whether the contents of the anonymous letter and material sent along with it disclosed any prima facie case for ordering an investigation. The question is: can investigation be ordered by the High Court in exercise of its inherent jurisdiction under Section 482 of the Code based on such vague and indefinite allegations

made in unsigned petition without even arriving at any prima facie conclusion that the contents thereof reveal commission of any cognizable offence? Whether such directions could have been issued by the High Court even in exercise of its jurisdiction under Article 226 of the Constitution of India?

41. In Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Ors. Vs. Sahngoo Ram Arya and Anr. , this Court took the view that a decision to direct an enquiry against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by an Investigating Agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. This Court relying upon its earlier decision in Common Cause, A Registered Society Vs. Union of India & ors. held that a direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person\022s involvement is prima facie established, but a direction to investigate whether any person has committed an offence or not cannot be legally given.

42. Just to point out that there is no prima facie finding by the High Court while directing an investigation by the impugned order, we would like to quote the following few sentences:

\0237. As I have already stated there are various other allegations leveled against the Retreat Centre. One of the documents produced in a magazine the front page of a publication by name \023Divine Voice\024 published by the Divine Retreat Centre at Muringoor. It is captioned as a spiritual congregation of the Government Officials. In the 9th volume published in June 2005, the names of a Senior I.A.S. Officer and a Senior I.P.S. Officer, were stated as the members of the Advisory Board. It is seen that a Writ Petition was filed against the Retreat Centre by an orphanage as W.P.(C) No. 22543 of 2005 before this Court in which a specific allegation of bias was raised against that I.A.S. Officer. It was alleged that she was associated with the running of the Divine Retreat Centre. This Court held that if she is really associated with the Retreat Centre, the order passed by the appellate authority in that case is nullity. Strangely enough from the next month onwards, the name of that officer was deleted from the list of names of persons in the Advisory Board. But still the name of a Senior I.P.S. Officer is stated as the member of the Advisory Board. It is necessary to investigate the role of Government Officials in the running of the Centre and whether any of such public servants have committed the offences punishable under the provisions of the P.C. Act and take appropriate action taken. Along with the complaint a number of documents and three CDs are enclosed. In the paper cuttings appended in the petition, it is alleged that a number of deaths took place under mysterious circumstances in and around the Retreat Centre. There is allegation of receipt of foreign

money without proper authority. It is also necessary to enquire into the allegation that the Centre is getting foreign aid in violation of Foreign Exchange Law and take appropriate action in accordance with law if any violation is established. In view of the allegation that Senior I.A.S. and I.P.S. Officers, are associated with the functioning of the Retreat Centre, and because of the allegations leveled against the Investigating Officer, I am of the view that it is only just and proper that the investigation of Crime No. 381 of 2005 is taken away from the present Investigation Officer which is entrusted with a Senior Police Officer below the rank of Inspector General of Police. It is also necessary to see that the person who is appointed is having some knowledge about the working of the Retreat Centre.

10. The Special Investigation Team shall also enquire into the allegation of unnatural deaths stated in the petition. The team shall enquire as to whether a person by name Karyavelu worked in the burial ground and whether he died under mysterious circumstances. In any case was registered in connection with the death of Karyavelu the present stage of that investigation shall be verified and appropriate action taken. The Team shall also enquire whether there was a person by name Raju attached to the Retreat Centre and whether he died under suspicious circumstances. In case the team gets information regarding any cognizable offences, those matters shall also be investigated in accordance with law.\024

From the above, we find that the High Court has merely quoted certain allegations made against the appellant and others and proceeded on the basis of those allegations made in the anonymous petition without forming any prima facie opinion with regard to those allegations.

43. It is evident from Sections 154, 156 and 157 of the Code that even a police officer can act on the basis of information received or otherwise and proceed to investigate provided he has reason to suspect the commission of a cognizable offence which he is empowered to investigate under Section 156 Cr.P.C. If the essential requirements of the penal provisions are not prima facie disclosed by a First Information Report and the police officer has no reason to suspect the commission of a cognizable offence, no investigation can be undertaken by him based on the information received or otherwise. Can the High Court set the law in motion against the named and unnamed individuals based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence. Setting Criminal Law in motion is fraught with serious consequences, which cannot lightly be undertaken by the High Court even in exercise of its jurisdiction under Article 226 of the Constitution of India. In our view, the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a Special Investigation Team on the strength of anonymous petitions. The High Courts cannot be converted into Station Houses.

PRINCIPLES OF NATURAL JUSTICE: WHETHER THE APPELLANT HAS NO LOCUS?

44. The order directing the investigation on the basis of such vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice. It was, however, submitted that accused gets a right of hearing only after submission of the charge-sheet, before a charge is framed or the accused is discharged vide Sections 227 & 228 and 239 and 240 Cr.P.C. The appellant is not an accused and, therefore, it was not entitled for any notice from the High Court before passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one\022s own reputation. In our view, the impugned order of the High Court directing enquiry and investigation into allegations in respect of which not even any complaint/information has been lodged with the police is violative of principles of natural justice.

45. It is unnecessary to go into the question as to whether Divine Retreat Centre is not a \023person\024 contemplated by Article 21 of the Constitution and express any opinion as to whether any right guaranteed by Article 21 of the Constitution has been infringed. Suffice it to note that, the Director of the appellant \026 institution has been impleaded as a party respondent in the criminal petition and the whole of the allegations in the anonymous petition are leveled against the appellant and in such a situation it was imperative for the High Court to put the appellant on notice before passing the impugned order.

The appellant undoubtedly is aggrieved by the impugned order and, therefore, entitled to invoke the jurisdiction of this Court under Article 136 of the Constitution of India. The decisions in Janata Dal Vs. H.S. Chowdhary (supra) and Union of India & Anr. Vs.W.N. Chadha laying down the law that hearing to the accused is provided by the Code under specified circumstances are not relevant to decide the issue of locus in cases where challenge is to a judicial order under which institutions and/or persons connected therewith are subjected to inquiry and investigation.

46. Here is a case where no information has been given to the police by any informant alleging commission of any cognizable offence by the appellant and the persons associated with the appellant \026 institution. It is a peculiar case of its own kind where an anonymous petition is sent directly in the name of a learned judge of the Kerala High Court, which was suo motu taken up as a proceeding under Section 482 of the Code. The High Court ought not to have entertained such a petition for taking the same on file under Section 482 of the Code.

47. It was contended that nomenclature of the petition is not decisive. The High Court can exercise power suo motu either under Article 226 or under Section 482 Cr. P.C. or

under both. It was submitted that if for any reason the petition entertained by the High Court is held not maintainable under Section 482 of the Code, the same can always be treated as the one filed under Article 226 of the Constitution of India. Reliance was placed upon the observations made by this Court in Pepsi Foods Vs. Special Judicial Magistrate . The decision in Pepsi Foods (supra) is an authority for the proposition that nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. This Court took the view that if the court finds that the appellant could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. The observations were made in the context of correcting grave errors that might be committed by the subordinate courts. The decision does not lay down any law that the High Court in exercise of its power under Section 482 of the Code or Article 227 may be resorted to constitute any special Investigating Agency to investigate into allegations made for the first time in an anonymous petition.

48. In our view, the whole of public law remedies available under Article 226 of the Constitution of India and the constituent power to issue writs in the natu
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50. pre of mandamus, certiorari, prohibition and co-warranto are neither echoed nor transplanted into Section 482. May be both the powers to issue writs and pass appropriate orders under Section 482 of the Code are conferred upon the High Court but they undoubtedly operate in different fields.

WHETHER THE ANONYMOUS PETITION IS TO BE TREATED AS PUBLIC INTEREST LITIGATION ?

49. The question that falls for our consideration is whether the anonymous letter sent in the name of a Judge can be entertained as Public Interest Litigation? It is well settled that a public interest litigation can be entertained by the Constitutional Courts only at the instance of a bona fide litigant. The author of the letter in this case is anonymous, there is no way to verify his bonafides and in fact no effort was made by the Court to verify about the authenticity, truth or otherwise of the contents of the petition. It is not the case of the appellant that no Writ Petition under Article 226 of the Constitution of India can be entertained on the strength of a letter addressed by a bona fide litigant to the High Court. This Court in Sunil Batra (II) Vs. Delhi Administration has accepted a letter written to the Supreme Court by one Sunil Batra, a prisoner from Tihar Jail, Delhi complaining of inhuman torture in the jail. In Dr. Upendra Baxi (I) Vs. State of U.P. , this Court entertained letter sent by the two Professors of Delhi University seeking enforcement of the constitutional right of the inmates in a Protective Home, at Agra who were living in inhuman and degrading conditions. In Miss Veena Sethi V. State of Bihar , this Court treated letter addressed to a Judge of this Court by the Free Legal Aid Committee at Hazaribagh, Bihar as a writ petition. In Citizens for Democracy through its President Vs. State of Assam & ors. upon which reliance has been placed by Shri P.P. Rao, this Court entertained a letter addressed by Shri

Kuldip Nayar, an eminent journalist, in his capacity as President of \023Citizens for Democracy\024 to one of the judges of this Court complaining of human rights violations of TADA detenues and the same was treated as a petition under Article 32 of the Constitution of the India. But in none of these cases, the Court entertained anonymous petition and converted the same into a Public Interest Litigation. We do not propose to burden this judgment with various authoritative pronouncements of this Court laying down the parameters of Public Interest Litigation. Suffice it to recapitulate that this Court uniformly and consistently held that the individual who moves the court for judicial redress in cases of Public Interest Litigation must be acting bone fide with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration. The Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular petition filed in Court. In S.P. Gupta & ors. Vs. President of India & ors. , this Court in clear and unequivocal terms observed that it would be prudent for the constitutional courts to \023confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organization which can take care of such cases.\024

50. The law in this regard is summarized in Janata Dal Vs. H.S. Chowdhary thus:
\023It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.\024

51. In Dattaraj Nathuji Thaware Vs. State of Maharashtra & ors. this Court observed:

\023The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is
acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of

meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.\024

52. In State of West Bengal & ors. Vs. Sampat Lal & Ors. , this Court administered a caution stating when communications complaining of violation of rights of the deprived and vulnerable sections of the community are sent to the court, care and caution should be adopted to ensure that the process of the court is not abused or misused. \023The Court should be prima facie satisfied that the information laid before it is of such a nature that it calls for examination and this prima facie satisfaction may be derived from the credentials of the informant, namely, what is the character or standing of the informant or from the nature of the information given by him, namely, whether it is vague and indefinite or contains specific allegations as a result of survey or investigation or from the gravity or seriousness of the complaint set out in the information or from any other circumstance or circumstances appearing from the communication addressed to the court or to a Judge of the court on behalf of the court.\024

53. How to verify the credentials, character or standing of the informant who does not disclose his identity? In the instant case, there is no whisper in the order passed by the High Court about any attempts made to verify the credentials, character or standing of the informant. Obviously, the High Court could not have verified the same since the petition received by it is an unsigned one.

54. In Bandhua Mukti Morcha Vs. Union of India & ors. (supra), this Court visualized grave danger inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. It has been observed that the document petitioning the court for relief should be supported by satisfactory verification. This requirement is all the greater where petitions are received by the Court through the post. It is never beyond the bound of possibility that an unverified communication received through the post by the Court may in fact have been employed mala fide, as an instrument of coercion or blackmail or other oblique motive against a person named therein who holds a position of honour and respect in society. The Court must be ever vigilant against the abuse of its process. It cannot do that better in the matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied.

55. In our view, the Public Interest Litigant must disclose his identity so as to enable the court to decide that the informant is not a wayfarer or officious intervener without any interest or concern.

56. In such view of the matter the suo motu action initiated cannot be treated as the one in public interest litigation.

THE IMPORTANCE OF ROSTER:

57. It is clear from the record that the learned Judge was not dealing with any public interest litigation cases as on the date of entertaining anonymous petition. It is beyond pale of any doubt and controversy that the administrative control of the High Court vests in the Chief Justice of the High Court alone and it is his prerogative to distribute business of the High Court both judicial and administrative; that the Chief justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted; and the puisne judges can only do that work as is allotted to them by the Chief Justice or under his directions; that the puisne judges cannot \023pick and choose\024 any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice. (See State of Rajasthan Vs. Prakash Chand & Ors.)

58. This Court in more than one case expressed its reservation about individual judges entertaining the communications and petitions addressed to them to pass orders on judicial side. In Bandhua Mukti Morcha Vs. Union of India & ors. , the Court in clear and unequivocal terms declared that communications and petitions addressed to a particular judge are improper and violate the institutional personality of the court. They also embarrass the Judge to whom they are personally addressed. \023The fundamental conception of the Court must be respected, that it is a single indivisible institution, of united purpose and existing solely for the high constitutional functions for which it has been created. The conception of the Court as a loose aggregate of individual Judges, to one or more of whom judicial access may be particularly had, undermines its very existence and endangers its proper and effective functioning.\024

59. In our view, the learned judge ought not to have entertained the anonymous petition, contents of which remain unverified and made it basis for setting the law in motion as against the appellant as he was not entrusted with the judicial duty of disposing of PIL matters.

60. Institution\022s own reputation is a priceless treasure. History teaches us that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility to resolve the issues which are otherwise not entrusted to it by adopting procedures which are otherwise not known.

61. There is heavy duty cast upon the constitutional courts to protect themselves from the onslaught unleashed by unscrupulous litigants masquerading as Public Interest Litigants. The individual judges ought not to entertain communications and letters personally addressed to them and initiate action on the judicial side based on such communication so as to avoid embarrassment; that all communications and petitions invoking the jurisdiction of the court must be addressed to the entire Court, that is to say, the Chief Justice and his companion Judges. The individual letters, if any, addressed to a particular judge are required to be placed before the Chief Justice for consideration as to the proposed action on such petitions. Each Judge cannot decide

for himself as to what communication should be entertained for setting the law in motion be it in PIL or in any jurisdiction.

62. It is needless to say that none of these aspects have been taken into consideration by the High Court before setting the criminal law in motion as against the appellant. The sweeping directions issued by the Court are in the nature of ordering an inquisition against the appellant and the persons connected with it to find out as to whether they have committed any cognizable offence. Such a course is impermissible in law.

63. For the aforesaid reasons, directions issued by the High Court constituting the Special Investigation Team to investigate into the allegations made in anonymous petition are set aside.

RELIEF

64. However, the fact remains that the Circle Inspector of Police, Chalakuddy having registered Crime No. 381 of 2005 made investigation in exercise of statutory power coupled with duty under the orders of learned Judicial First Class Magistrate, Chalakuddy. The learned Judge having entertained the petition/complaint from the victim ordered further investigation into the crime by the Special Investigation Team headed by the third respondent. The third respondent having completed the investigation arrived at certain conclusions but unnecessarily kept the matter pending on the ground that \023the paternity of the first child is to be verified with the accused and some other persons who were also found closely associated with the victim during the relevant period.\024 This is beyond one\022s imagination as to how and why such an inquiry is required to be made. The First Information Report, material gathered during the investigation, contents of the victim\022s complaint and conclusions drawn by the Special Investigation Team themselves do not justify any such further enquiry.

65. In the circumstances of the case, we direct the third respondent to make available the material gathered during the course of investigation in Crime No. 381 of 2005 to the Circle Inspector of Police, Chalakuddy (Investigating Officer) within two weeks from the date of the receipt of copy of this order. Thereafter, the Investigating Officer shall submit appropriate report in accordance with the provisions of the Code within four weeks before the Magistrate who shall consider the report to be so filed judicially in accordance with law.

66. We make it clear that we have not expressed any opinion whatsoever on the merits of the case.

67. Subject to the above directions the impugned order of the High Court is set aside. The appeal is accordingly allowed.

68. Since the question is one of general importance, we would direct the copies of this judgment should be sent to the High Courts in all the States.