

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO.532 OF 2023 (GM-RES)

C/W

WRIT APPEAL No.668 OF 2023 (GM-RES)

R

IN W.A. No.532 OF 2023

BETWEEN:

1. SRI. K. VISHWANATH
S/O LATE M. KRISHNAPPA
AGED ABOUT 48 YEARS
R/O NO.11/1, JAYARAM LAYOUT
BANNERGHATTA, ANEKAL TALUK
BENGALURU DISTRICT
(CIRCLE INSPECTOR)

2. SRI. HARISH
S/O LATE R. VENKATAREDDY
AGED ABOUT 38 YEARS
R/AT KODUGODI OFFICE QUARTERS
KODUGODI
BANGALORE-560 067
(SUB INSPECTOR OF POLICE)

...APPELLANTS

(BY SRI. ASHOK HARANAHALLI, SENIOR COUNSEL FOR
SRI. NARASIMHARAJU, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
REPRESENTED BY THE
HOME DEPARTMENT
BENGALURU-560 001

- 2 . THE DIRECTOR GENERAL OF POLICE
NRUPATHUNGA ROAD
BENGALURU-560 051
- 3 . THE SUPERINTENDENT OF POLICE
BENGALURU RURAL DISTRICT
NO.5, MILLERS ROAD
BENGALURU -560 052
- 4 . THE DEPUTY SUPERINTENDENT
OF POLICE, ANEKAL SUB-DIVISION
BENGALURU-562 106
- 5 . SRI. RUDRAPPA
S/O LATE MUNISWAMY
AGED ABOUT 67 YEARS
R/O CHAMBENAHALLI VILLAGE
SARJAPURA HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT
- 6 . SRI. C. VENKATESH
S/O CHIKKANNA
AGED ABOUT 47 YEARS
OCCUPATION: EMPLOYED
T.C.HALLI, SARJAPURA HOBLI
ANEKAL TALUK, BENGALURU RURAL

...RESPONDENTS

(BY SMT. B. SUKANYA BALIGA, AGA FOR R1 TO R4;
SRI. R. SUBRAMANYA, ADVOCATE FOR
SRI. S. RAJU, ADVOCATE FOR R5;
SRI. C.H. JADHAV, SENIOR COUNSEL FOR
SRI. B.B. SAGAR, ADVOCATE FOR R6)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED
ORDER PASSED BY THE LEARNED SINGLE JUDGE IN WRIT
PETITION No.12787/2021 DATED 30.03.2022, CONSEQUENTLY
ALLOW THIS APPEAL BY DISMISSING THE WRIT PETITION
No.127872021 IN THE INTEREST OF JUSTICE AND EQUITY.

IN W.A. No.668 OF 2023**BETWEEN:**

SRI. RUDRAPPA
S/O MUNISWAMY
AGED ABOUT 67 YEARS
R/AT CHAMBENAHALLI VILLAGE
SARJAPURA HOBLI
ANEKAL TALUK,
BENGALURU RURAL DISTRICT

...APPELLANT

(BY SRI. R. SUBRAMANYA, ADVOCATE FOR
SRI. S. RAJU, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY THE
HOME DEPARTMENT
BENGALURU-560 001
- 2 . THE DIRECTOR GENERAL OF POLICE
NRUPATHUNGA ROAD
BENGALURU-560 051
- 3 . THE SUPERINTENDENT OF POLICE
BENGALURU RURAL DISTRICT
NO.5, MILLERS ROAD
BENGALURU -560 052
- 4 . THE DEPUTY SUPERINTENDENT
OF POLICE, ANEKAL SUB-DIVISION
BENGALURU-562 106
- 5 . SRI. K. VISHWANATH
S/O LATE M. KRISHNAPPA
AGED ABOUT 48 YEARS
R/O NO.11/1, JAYARAM LAYOUT
BANNERGHATTA, ANEKAL TALUK
BENGALURU DISTRICT

6 . SRI. HARISH
 S/O LATE R. VENKATAREDDY
 AGED ABOUT 38 YEARS
 R/AT KODUGODI OFFICE QUARTERS
 KODUGODI, BANGALORE-560 067

7. SRI. C. VENKATESH
 S/O CHIKKANNA
 AGED ABOUT 47 YEARS
 OCCUPATION :EMPLOYED
 T.C.HALLI, SARJAPURA HOBLI
 ANEKAL TALUK
 BENGALURU RURAL

...RESPONDENTS

(BY SMT. B. SUKANYA BALIGA, AGA FOR R1 TO R4;
 SRI. ASHOK HARANAHALLI SENIOR COUNSEL FOR
 SRI. NARASIMHARAJU, ADVOCATE FOR R5 & R6;
 SRI. C.H. JADHAV, SENIOR COUNSEL FOR
 SRI. B.B. SAGAR, ADVOCATE FOR R7)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED ORDER PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION No.12787/2021 DATED 30.03.2022, CONSEQUENTLY ALLOW THIS APPEAL BY DISMISSING THE WRIT PETITION No.12787/2021 IN THE INTEREST OF JUSTICE AND EQUITY.

THESE WRIT APPEALS HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT OF THIS DAY, **RAMACHANDRA D. HUDDAR J.**, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
 AND
 HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

CAV JUDGMENT**&****ORDERS ON I.A.No.1/2023 in****WA No.532 OF 2023 and WA No.668/2023**

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

On hearing the learned counsel for the parties both on main appeals as well as on I.As filed by the appellants, main appeals as well as I.As are disposed of together.

2. These two intra-Court appeals are filed by the respective appellants questioning the orders dated 30th March 2022 passed in WP No.12787/2021 by the Single Judge of this Court "directing the respondent no.2, IG and DGP to entrust the investigation of case in Crime No.195/2020, 49/2021 and 51/2021 registered with Sarjapura Police Station and also to conduct further investigation in Crime No.103/2021 to the COD Police with further direction to respondent No.2 to appoint any Superintendent of Police to make an enquiry against respondent Nos.5 and 6 about the veracity of the complaint and registering the FIR in the name of Rudrappa

in Crime No.103/2021 and also obtaining two different search warrants by keeping in mind about the opinion given by Mudra Associates and initiate proceedings against respondent nos.5 and 6 if they found guilty in forging the signature of respondent No.7 Rudrappa and take action at their end and report to this Court within six months from the date of receipt of copy of this order".

3. Writ Appeal No.532/2023 is filed by respondent nos.5 and 6 and Respondent nos.7 has filed WA No.668/2023 so arrayed in the said writ petition. For convenience, the parties to these appeals are referred as per their rank before the Writ Court.

The facts leading to filing of Writ Petition by the petitioner Sri C.Venkatesh are as under:

4. The petitioner has sought writ of mandamus against respondent no.2 to entrust the investigation to COD in PCR No.214/2021 and PCR No.219/2021 pending on the file of Principal Civil Judge and JMFC, Anekal and also has sought the similar writ directing respondent no.2

to entrust the investigation to COD in Crime No.195/2020, 49/2021, 51/2021 and 103/2021 registered with Sarjapura Police Station and further directing the respondent no.3 the Superintendent of Police, Bengaluru Rural District, Bengaluru to initiate disciplinary action against respondent nos.5 and 6 i.e., Circle Police Inspector and PSI of Sarjapura Police Station and grant such other directions for which the circumstances warrant.

5. It is the case of the petitioner before the writ Court that, he is an employee of Aratukulam Developers LLP from 19.2.2019 entrusted with a work to supervise construction activities, secure the documents with regard to permit and clearance etc., towards development of project work undertaken by his employer. It is stated that, his employer undertook a project to develop a land in survey no.129 of Chambanahalli village, near Sarjapura which was under dispute between one Muniswamy the grand father of respondent no.7 i.e., Rudrappa and vendor of employer by name P.C.Murugesh. It is stated that, there was a compromise with regard to the said dispute in

OS No.1887/2006 on the file of Sr.Civil Judge, Anekal wherein the defendant in the said suit was considered to be the owner of the land. The said Murugesh sold the property to the employer of the petitioner under registered sale deed dated 25.10.2014. But, there was a complaint filed against vendor Murugesh in Crime No.195/2020 for the offences under section 428,471, 406, 465, 419 read with Section 34 of IPC. It is stated that, in this regard, respondent no.6 recorded the voluntary statement of Murugesh and he recorded that, it was Murugesh who created a false and fabricated document in respect of the said survey no. It is alleged that, respondent-Police in this regard conducted search of the house of the petitioner on 2.6.2021.

6. It is further stated that, respondent no.7 filed a civil suit in OS No.106/2021 on 20.3.2021 seeking injunction which is still pending. It is alleged that, when the petitioner was engaged with his field work, respondent no.7 came to the said place along with his henchmen and gave a life threat to him and assaulted him. Therefore, a

complaint came to be filed against respondent no.7 before Sarjapura Police Station which is registered in Crime No.49/2021 for the offences punishable under Sections 427, 504, 506,447 323, 324 read with Section 34 of IPC. It is specifically alleged by the petitioner that, the said respondent no.7 in collusion with respondent no.5 and 6 registered a false case against petitioner on 24.3.2021 in Crime NO.51/2021 for the alleged offences under Sections 143, 418, 419, 420, 447,468, 323, 504 and 506 read with Section 149 of IPC and conducted investigation. Likewise, respondentno.5 and 6 in collusion with respondentno.7 registered another Criminal case in Crime No.103/2021 for the offences punishable under Sections 147, 148, 149, 307 and 354 of IPC against the petitioner. It is specifically alleged that, these respondent nos. 5 and 6 by forging the signature of respondentno.7 registered a false case against the petitioner in crime no.103/2021. In the said Crime, the petitioner was arrested and detained in police custody. It is alleged that, not only that, petitioner and other accused were brutally assaulted during their custody

by respondent no.5 and 6. It is alleged that when the petitioner was produced before the Magistrate, these respondent nos. 5 and 6 gave a threat not to make any complaint regarding ill treatment or harassment when they were in police custody and further, threatened that if the petitioner disclose any harassment or ill treatment to the Magistrate, they gave a threat that, they will register false 'ganja and prostitution' cases against him, his wife and his family members. Having scared of the same, he did not complain any ill treatment or harassment during his police custody by these respondent nos.5 and 6. After his production before the Magistrate, he was remanded to judicial custody.

7. When he was in judicial custody, he sent a complaint from the jail itself to the Sessions Judge which was treated as private complaint and it was referred to the Dy. Superintendent of Police for investigation but, the Asst. Superintendent of Police investigated the complaint and filed a 'B-report'. So also in a complaint filed by another accused, similar 'B-report' was filed. Therefore,

these PCRs Nos.214 and 219 of 2021 are required to be handed over to COD for investigation.

8. It is further alleged that, these respondent nos. 5 and 6 by registering crime no.103/2021 have forged the signature of respondent no.7 and in that regard, the expert opinion from 'Mudra Associates' is obtained. It is alleged that, these respondent nos. 5 and 6 are in habit of registering false cases against petitioner. Though the crime no.195/2020 filed by the petitioner is pending against respondent no.7, but, no investigation was conducted properly. Therefore, another complaint was registered in Crime No.49/2021 and that complaint is not investigated. Respondents. 5 and 6 by calling upon respondent no.7 obtained a false complaint against the petitioner as a counter complaint which is registered in Crime No.51/2021. On the next day of filing the complaint, a search was conducted in the house of petitioner on 24.03.2021 and police created a false complaint styled as complaint filed by respondent no.7. No charge sheet has been filed with regard to the complaint filed by the

petitioner. These respondent nos.5 and 6 have man handled the petitioner. In the complaint filed by him, they have filed B-report, therefore, the petitioner is not expecting any fair investigation in the hands of local police. Thus, the petitioner had prayed to grant the writs so prayed in the petition.

9. Before the Writ Court, all the respondents appeared through their respective counsels and resisted the petition by filing detailed objections denying the entire assertions and allegations made in the writ petition. It is contended by them that, on conducting the fair investigation, as there was no case made out in the complaint filed by the petitioner and another accused, B-reports were filed. There is no harassment or ill treatment by respondent nos.5 and 6 at any point of time. Based upon complaint of respondent no.7 only, crime was registered against the petitioner. It is contended that, to put a pressure on R 5 and 6 to withdraw the complaint filed by respondent no.7, the petitioner has filed private

complaint. By denying all the other allegations, it is prayed by all the respondents to dismiss the Writ Petition.

10. The learned Writ Court, considering the rival submissions of both the side, disposed of the writ petition by allowing the writ petition in part by issuing the aforesaid directions.

11. Now the respondents 5, 6 and 7 are before this Court by filing these intra-Court appeals questioning the very direction issued by the learned Single Judge of this Court.

12. The learned counsel for the respective appellants in both these writ appeals, though admit about filing of a complaint by the petitioner and another accused so also admits filing of B-report in the complaints so filed by them, he would submit that, based upon the complaint filed by respondent no.7, as they were the cognizable offences, the petitioner and another accused were apprehended and arrested after conducting the search in the house of the petitioner and on interrogation, the

petitioner gave his voluntary statement admitting the guilt. Therefore, in a fair manner, these respondent nos. 5 and 6 have conducted the investigation. He would further submit that, the learned Writ Court has erroneously observed that, there is no proper investigation as per the guidelines of Hon'ble Apex Court in ***Lalita Kumari vs Govt.Of U.P.& Ors*** reported in ***AIR 2014 SC 187***, and has wrongly allowed the writ petition in part. In support of his submission, learned Sr.Counsel Sri Ashok Harnahalli submits that, there is no merit in the writ petition and it is filed just to ill-treat and harass the respondents therein who were the appellants in these intra-Court appeals. He would submit that, the reasons assigned by the learned Single Judge for issuing directions to respondent no.2 are not the sound reasons and prays to allow the writ appeals and set aside the impugned order passed in the Writ Petition.

13. Per contra, learned Sr.Counsel Sri.C.H.Jadhav, appearing for petitioner now the respondent in these appeals justifies the reasons assigned by the learned

Single Judge of this court while disposing the said writ petition. It is his submission that, the respondent nos. 5 and 6 were under the thumb of respondent no.7 and they acted according to his will and wish. Being influenced by respondent no.7, they acted beyond their powers and wrongly and illegally arrested the petitioner and other accused which has affected the personal liberty of the petitioner granted under Art.21 of The Constitution of India. He would further submit that, as the petitioner never expected any fair investigation in the hands of State Police especially that of, respondent nos. 5 and 6 who are the appellants, therefore, he was constrained to file the aforesaid writ petition by seeking directions to entrust the investigation to the COD to get justice to him. Learned counsel for the petitioner/respondent in this appeal submits that, false and frivolous writ appeals are filed though the order of the learned Single Judge is valid in the eyes of law and he submits that under Art.226 of Constitution of India, the writ Court has properly exercised its jurisdiction.

14. As a rejoinder to this submission, the learned Sr.Counsel for the appellants would further submit that, there are number of judgments that in similar circumstances as alleged by the petitioner in the writ petition, the State Police agency has to conduct the investigation and such allegations so made in the petition cannot empower the Writ Courts to direct the COD to conduct the enquiry. According to him, the grounds so urged in the appeal do suggest that, how far the learned Writ Court has committed error in directing the investigation to be conducted by the COD. There are documents to show that based upon the truthful evidence 'B reports' were filed. The allegation with regard to assault on petitioner-complainant by respondent nos.5 and 6 is far from truth. If there was any assault, the petitioner could not have kept silent for a period of 10 to 15 days prior to filing of the complaint. While recording the statement under Section 164 of Cr.PC, it was admitted by the complainant himself that, the complaint is signed by respondent no.7 and it has got its own evidentiary value

therefore, there was no occasion for fabrication of the signature by these respondent nos. 5 and 6. He further submits that, even the Human Rights Commission has held that, there is no fault on the part of respondent nos. 5 and 6 and there was no assault on respondent no.7 i.e., complainant. The search warrants are obtained duly from the competent Magistrate and these respondent nos. 5 and 6 never misused their official capacity. The whole allegation with regard to search warrant and branding the complainant as Rowdy-Sheeteer is in accordance with law.

15. As against this submission, the learned counsel for the petitioner-complainant submits that, in view of the grounds urged in the complaint so also the allegations so made against these respondent nos.5,6 and 7 who are respective appellants in these appeals do suggest about their exceeding the jurisdiction and harassing the petitioner. He would submit that, without any reason, the petitioner-complainant and another person are arrested and during their custody, they were assaulted and harassed. Even when they were produced before the

Magistrate, a threat was given not to inform about ill treatment to the Magistrate otherwise, different cases under NDPS Act and other provisions will be registered against the petitioner as well as his family members. Because of this threat, the petitioner did not inform about the ill treatment and harassment in the custody by these respondent nos. 5 and 6. Therefore, there is no justification in the grounds urged in the appeal.

16. We have given our anxious consideration to the submission of both the side and perused the record. In view of the rival submissions of both the side, the only point that is to be considered in these writ appeals is, *"Whether order of the Writ Court directing the COD enquiry into the complaints filed by the petitioner require any interference by this Court?"*

17. Our answer to the above point is in the negative for the following reasons:-

As could be seen from the prayer made by the petitioner in the writ petition, he has sought to entrust the

investigation of the crimes stated in the petition registered with Sarjapura Police Station to the COD for investigation. Generally, under the provisions of Cr.P.C and now under the Bharatiya Nagarik Suraksha Sanhita (BNSS) Laws, the investigation has to be carried out by the Police Agency. Chapter-IV of BNSS, 2023 speaks of powers of Superior officers of Police and aid to the Magistrate and the Police. Likewise, the erstwhile Cr.P.C also speaks in similar terms.

18. Whether the complaints so filed by the complaint are to be referred to COD or otherwise, to understand the same, it is just and proper to read the judgments of the Hon'ble Apex Court.

19. There are plethora of judgments of Hon'ble Apex Court to transfer the investigation to the CBI or COD as per the facts of the case. In a judgment of the Hon'ble Apex Court in ***Vishwanath Chaturvedi (3) vs. Union of India*** reported in ***(2007) 4 SCC 380***, it is held by the Hon'ble Apex Court with regard to the powers of writ Courts. It reads as under:

"The above writ petition under Article 32 of the Constitution of India styled as public interest litigation has been preferred for seeking enforcement of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. According to the petitioner, he is an advocate by profession and not connected or related to any political party or parties. According to him, he has filed this petition with an intention to highlight the root of corruption in U.P. Administration. According to him, he has no relation or connection with Congress Party as on date and that the documents which have been enclosed along with the additional affidavit filed by Respondent 3 would go to prove that Respondent 3 is having more access in the office of Congress Party, more than even the members of AICC/U.P. CC and that Respondent 3 with the help of some employees of AICC/U.P. CC succeeded in forging documents to project the petitioner as a sponsored person of Congress. It is also further stated that he is not connected with any alleged PIL cell of the party concerned. The name of the petitioner does not appear in the list which is approved by the office of the Congress Party and that the list annexed by

Respondent 3 along with his affidavit is a frivolous list. It is also further stated that the petitioner never attended the 82nd Plenary Session of AICC at Hyderabad and Annexure A-3 is a frivolous document which is prepared by Respondent 3 with the help of some employees of U.P. CC and that the petitioner also paid some money to an employee of U.P. CC and got some identity cards prepared in the name of Shri Mulayam Singh Yadav, Shri Shivpal Singh Yadav, Shri Akhilesh Yadav and Shri Ram Gopal Yadav. Copies of the said identity cards have also been enclosed as Annexure K-6 to the rejoinder to the counter-affidavit. We have perused the identity cards, namely, Annexures A-3 and K-6. In our opinion, both the identity cards which are xerox copies cannot at all be considered as authenticated documents. In the absence of concrete proof that the petitioner belongs to the Congress Party, his writ petition cannot be thrown out on the question of maintainability and on the ground that the petitioner is an active member of the Indian National Congress and the officer in charge of the Humanitarian Aid and Redressal Public Grievance Cell. We do not, therefore, propose

to deal with this issue any further and proceed to consider the case of both the parties.”

(Emphasis supplied)

20. Likewise in ***Rubabbuddin Sheikh vs. State of Gujarat*** reported in **(2010) 2 SCC 200** it is held as under:

"Acting on a letter written by the writ petitioner, Rubabbuddin Sheikh, to the Chief Justice of India about the killing of his brother, Sohrabuddin Sheikh in a fake encounter and disappearance of his sister-in-law Kausarbi at the hands of the Anti-Terrorist Squad (ATS), Gujarat Police and Rajasthan Special Task Force (RSTF), the Registry of this Court forwarded the letter to the Director General of Police, Gujarat to take action. This letter of the Registry of this Court was issued on 21-1-2007 (sic 21-1- 2006). After about six months and after several reminders, the Director General of Police, Gujarat, directed Ms Geetha Johri, Inspector General of Police (Crime), to inquire about the facts stated in the letter. A case was registered as Enquiry No. 66 of 2006. From 11-9-2006 to 22-1-2007 four interim reports

were submitted by one V.L. Solanki, Police Inspector, working under Ms Johri."

(Emphasis supplied)

21. Thus, in the aforesaid judgments, the Hon'ble Apex Court has categorically held that, when the officers of the Police Department are holding the public office like Chief Minister in the said case, they could not function under a cloud in their own interest and on that score, the investigation from the State Police was transferred to the hands of independent agency. Therefore, in this case, if allegations made in the complaint are perused, respondent nos. 5 and 6 are the Police Officers and against them, several allegations are made by the petitioner-complainant. Because of act of respondents 5 to 7, it is stated that, it is not only the petitioner but also his family members would be highly prejudiced and according to them, the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, it is submitted that, all concerned including the relatives of the petitioner would feel that investigation was not proper.

22. In the aforesaid judgment of **Rubabbuddin Sheikh** *supra* in para.54 of the judgment the Hon'ble Apex Court held as under:

"54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI Authorities would be an appropriate authority to investigate the case."

(Emphasis supplied)

23. The Hon'ble Apex Court in catena of judgments has held that *"fair and impartial investigation by an independent agency, not involved in the controversy, is a demand of public interest. Even the Court can take the judicial notice of the said fact that if the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice."*

24. We have perused the events that are narrated in the complaint so filed by the petitioner when he was in judicial custody. He also has filed complaints which are registered with Sarjapura Police in Crime Nos.195/2020, 51/2021 and other crimes including the complaint filed by Rudrappa in Crime No.103/2021, and also the allegations made in PCR No.214/2021 and PCR No.219/2021 but, we are refraining from entering the details thereof, lest it may prejudice any of the parties. On perusal of the said complaints in Crime No.195/2020, 49/2021, 51/2021 and 103/2021 registered with Sarjapura Police Station, we think that, since the accusations are directed against the local police personnel i.e. respondent nos. 5 and 6 who are the appellants in one of the appeals, it would be desirable to entrust the investigation to an independent agency like COD for investigation so that all concerned including the petitioner and his relatives may feel assured that, an independent agency is taking care of investigation into the matter and that would lend the final outcome of the investigation credibility. It is true that faithfully, the local

police may carry out the investigation, but, the apprehension of the petitioner is that, the same will lack credibility since the allegations are against respondent nos. 5 and 6, so also against respondent no.7 a private individual. Therefore, with that in mind, it is advisable and desirable, as well, in the interest of justice to entrust the investigation to the COD. If the investigation is done by the COD as ordered by the Writ Court, we do hope that, it would complete the investigation at an early date so that the persons who are involved in the commission of the occurrences as alleged by the petitioner in the complaints one way or the other, may be brought to book.

25. The position of entrustment of investigation to the independent agency is well discussed by the Hon'ble Apex Court in the case of ***State of Punjab vs. Central Bureau of Investigation*** reported in ***(2011) 9 SCC 182*** wherein, in the said case, considering the sex scandal which has broken out in Punjab in the name of "Moga Sex Scandal" in which several officers alleged to be involved:- it is held that "*the State Police should not investigate and*

the Hon'ble Apex Court directed for investigation at the hands of CBI". Thus, considering the nature of crime alleged against respondent nos. 5 to 7, that has been allegedly committed not by any third party but, by the Police Officers/Officials of State of Karnataka, we are satisfied that, if the investigation is conducted and concluded in the present case by the same local police cannot be accepted. The learned Single Judge, considering all these aspects based upon the various circumstances highlighted by the petitioner-complainant and in the light of involvement of police officials of the State, has categorically held that, it would not be desirable to allow the local police to continue with the investigation. Therefore, accordingly, to meet the ends of justice and in the public interest, the learned Single Judge is right in entrusting the investigation to the COD.

26. On reading the reasons assigned by the learned Single Judge, we find that, the Single Judge is of the view that, if the local police conduct the investigation as respondent nos.5 and 6 are also the Police Officers of

the rank of DSP and CPI, then the local police could not be in a position to investigate fairly and truthfully because Senior Functionaries of the same department have to be named in the investigation and it is difficult for local police or the investigation team to go any further to bring home the truth. Two Police Officers of senior rank are alleged to have been involved in the alleged crime and even already B-reports have been filed in the PCRs so filed by the petitioner and another accused. Therefore, in the peculiar facts and circumstances of this case, the learned writ Court has felt that, justice would not be done to the case, if the investigation remains in the hands of the local police. Therefore, it directed the entrustment of the investigation to the COD. We do not find any error committed by the writ court in passing the impugned order. No doubt, such entrustment of investigation should happen only in rare and exceptional cases but, in view of peculiar facts, such entrustment is just and proper. To have the fair and proper investigation, it has to be understood in a fair manner. In an adversarial system of administration of

justice, fairness of investigation is the very first requirement for the fairness of the trial. Even the criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. When the matter relates to assault on the person of the petitioner and his wrongful confinement, false complaint alleging so many offences and harassment by the police officials in the custody shows that, it really requires fair investigation. Even there was threat to the petitioner and another accused not to inform about the alleged ill treatment before the Magistrate when they were produced before the Magistrate. After production, they were remanded to judicial custody and thereafter, they submitted the complaints to the Sessions Court alleging highhandedness committed by the aforesaid respondents i.e., the present appellants-Police Officers.

27. As discussed above, the learned Writ Court, considering the factual aspects and also the allegations made in the petition and on perusal of the records so produced has directed to entrust the investigation to COD.

Therefore, for all these reasons, we do not find any error in allowing the writ petition in-part. Such an order is not required to be interfered with by this Court in this appeal. Accordingly, the Writ Appeals fail and are liable to be rejected on merits.

Regarding pending IAs filed under Section 5 of Indian Limitation Act to condone the delay in filing appeals:

28. Along with these two appeals, appellant Rudrappa in Writ Appeal No.668/2023 has filed I.A.No.1/2023 under Section 5 of Indian Limitation Act to condone the delay of 404 days in filing the appeal, likewise appellant-Harish in WA No.532/2023 has also filed a similar application to condone the delay of 368 days in filing the writ appeal. Appellant-Rudrappa states in his affidavit, that he was suffering from severe jaundice and he was advised to take medical assistance. Therefore, he took treatment for the said disease for a period of eight months i.e. till December 2022. He further states that, thereafter, he planned to challenge the impugned order. Further, it is his assertion that, he suffered severe back

pain and also spinal issues and thereby he was advised by the doctor to take complete bed rest. Because of this reason, he could not contact his counsel and file the writ appeal. He has got chances of success.

29. Likewise, the appellants in WA No.532/23 filed the similar applications to condone the delay and appellant no.1 and 2 have filed their respective affidavits in support of their application. Appellant-K.Vishwanath specifically states that, appellant no.2 has explained delay for preferring the appeal. According to him, due to severe ill health of his elder brother K.Shankarappa, he could not prefer the appeal within time. Even his brothers Shankarappa was severely infected with COVID-19 disease in the month of December 2021 and was in Coma. He could not be able to recover from the said ailments. He further suffered brain stroke and underwent surgery in the month of October 2022 at Narayana Health City Hospital, Bengaluru. He was bedridden. Subsequently, he was inpatient in Vijayashree hospital and was under continuous medication. Even his brother took treatment at Narayana

Health City Hospital. Because of this medical emergency, he could not prefer the appeal.

30. Appellant-Rudrappa has produced a medical document at document No.6 showing the name of one Venkatesha. As per the doctor's opinion, the said Venkatesha fell down 10-15 days back, and there was old contusion on both the buttocks. He was advised to take medicines. The doctor certificate shows that, he was advised to take pain killer. Except these documents, no other documents are produced to show the delay in filing these appeals.

31. As appellants in both these appeals have invoked the provision Sec.5 of Indian Limitation Act to condone the delay, it is their obligation to show sufficient cause in filing the appeals belatedly. No doubt while considering the application for condoning the delay, there should be liberal, pragmatic, justice orientated, non-pedantic approach. Courts are not supposed to legalize injustice but are obliged to remove injustice. The

term "*sufficient cause*" should be understood in their proper spirit, philosophy and purpose and regard being had to the fact that, these terms are basically elastic and are applied in proper perspective to the obtaining fact situation. While considering the application, lack of bona fides imputable by a party seeking condonation of delay is a significant and relevant fact. The concept of liberal approach has to encapsulate the conception reasonableness and it cannot be allowed a totally unfettered free play.

32. In a case of present nature, when such direction is issued by the constitutional court, referring investigation to the COD against these appellants, they must be very diligent. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles are adhered to and applied appropriately depending on the facts and circumstances of a given case.

33. The appellants are admittedly working as police officer in the Department of Police. Though the appellants put forth their plea that, there were sufficient causes for delay, but it is not their plea that, they were on medical leave or on any other type of leave. No such document is produced by the appellants except the so called medical document belonging to other. When they were duty bound to perform their police duties, and when they plead that, there was sufficient cause and one of the appellant has to take care of his brother Shankarappa, to show that Shankarappa took treatment at various hospitals, except his say, there is no material placed on record. When the appellants were on duty continuously their plea that they suffered health issue, which prevented them from filing appeal in time, cannot be believed or appreciated.

34. There is an inordinate delay in filing these appeals. Presently the assertions made in the respective applications and affidavits for condonation of delay lack *bona fide*. The very tenability of such application is questioned. No doubt, no objections are filed to these

applications. When application for condonation of delay is filed, it is bounden duty of the appellants to show the '*sufficient cause*' with acceptable evidence. When the appellants had knowledge about the impugned order passed in the writ petition, but, after substantial delay, they have preferred these appeals. There is no proper explanation offered by any of the appellants to condone the delay so stated in their respective applications so filed by them.

35. On perusal of the grounds urged in the affidavits and the stand put forth by them, *prima facie* appears to be an after-thought and it is a casual approach of these appellants seeking condonation of delay. When they had knowledge about the impugned order, they ought to have preferred the appeal well within time. The Courts come to the rescue of the person who is always active and not to the slumber i.e., who is sleeping. That means, though full proof is not required in dealing with such application, but, the reason so assigned are not convincing. Therefore, in our considered view, no grounds

have been made out to condone the delay so caused in preferring these two appeals. Further it can be stated that, time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the court. Therefore, the legislatures have fixed a life span for each remedy. Unending period of launching the remedy may lead to uncertainty. The law of limitation is thus, founded on public policy.

36. Therefore, both applications in the shape of I.A.1/23 in both the appeals lack merit and are liable to be rejected.

37. Resultantly, we pass the following:

ORDER

- i. Writ Appeal Nos. 532/2023 and 668/2023, so also I.As.No.1/2023 in both the appeals stand **rejected** with no orders as to cost.

- ii. In view of passing of final order, all pending applications if any, stand disposed of.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

Sk/-