

Before Mehinder Singh Sullar, J.

ATMA SINGH BHULLAR AND OTHERS—Petitioners

versus

STATE OF PUNJAB & ANOTHER—Respondents

Cr.I.M. No. M-7861 of 2005

14th May, 2012

Criminal Procedure Code, 1973 - Ss. 197 & 482 - Indian Penal Code, 1860 - Ss. 34, 120-B, 201, 343, 364, 365 & 302, - Punjab Disturbed Areas (Amendment) Act, 1989 - Ss. 4, 5 & 6 - Armed Forces (Special Powers) Act, 1990 - S. 7 - After completion of investigation, CBI registered different charge sheets against the petitioners, on accusation of having committed the offences punishable under sections 120-B, 342, 364, 365, 302 and 201 read with Section 34 IPC - Petitioners moved applications for dropping the proceedings/discharge, for want of sanction under Section 6 of the Punjab Disturbed Areas (Amendment) Act, 1989 on ground that all acts were performed in discharge of official duty - Which applications were dismissed - Present revision petitions under section 401 Cr.P.C. and petitions under Section 482 Cr.P.C. to quash the criminal proceedings on grounds of no sanction - Question arising for determination is whether the act done by the petitioners-accused have any connection in discharge of their indicated official duties and any such prior sanction under section 6 of the amended Act or Section 197 Cr.P.C. was essential to prosecute them or not- Held - The sine qua non for the applicability and protection under section 6 is strictly restricted only to those acts or omissions, relatable to the acts described in section 4 and not otherwise - Petitions dismissed

Held, That the main object of protection under section 6 is intended to guard and to protect the responsible law abiding public servants, (not the offenders of heinous crime) against the institution of possibly vexatious and malicious criminal proceedings for offences alleged to have been committed by them while achieving the purpose and in exercise of powers contained in Sections 4 and 5 of the amended Act and not otherwise. The policy and

intention of the Legislature engrafted under section 6, appears to afford adequate protection to public servant to ensure that they may not face the false prosecutions. Neither this section extends its protective cover to, nor to put a wall around, a guilty public servant, pertaining to every illegal acts and omissions. In order to invoke the protection, the acts of the accused, complained of, must be such that the same cannot be separated from the discharge of official duties squarely within the frame-work of Section 4 of the amended Act. Possibly, the commission of heinous offences of illegal detention, kidnapping and elimination in the sequence as described here-in-above by the petitioners-accused, indeed cannot and would not be termed to be a part of their official duties under section 4 of the amended Act. The sine qua non for the applicability and protection under section 6 is strictly restricted only to those acts or omissions, relatable to the acts described in section 4 and not otherwise.

(Para 35)

Further held, that if the acts of, heinous offences, hatching a criminal conspiracy, to do an illegal act by illegal means, picked up the helpless persons (deceased) from their respective residences & other places, abducted, kidnapped in order to murder, illegally detained, brutally tortured, staged drama of false encounters, murder them and cremated their dead bodies as unidentified, without post-mortem examinations, in order to cause disappearance of evidence of offence to screen the offenders, not only that, those persons (deceased) were brutally killed in the indicated manner, but the police officers have lodged false cases, concocted false version of encounters and prepared the false record in this relevant connection and totality of the other facts & special circumstances, material and legal position as discussed here-in-above, are put together and analyzed in a right perspective, then, to my mind, the conclusion is inescapable and irresistible that the commission of such heinous offences, indeed, cannot and would not be termed to have any remote connection with the acts complained of in exercise of powers conferred by Section 4 of the amended Act. The petitioners-accused are at all neither entitled to the umbrella of protection under section 6 of the amended Act nor under section 197 Cr.PC. Thus, no sanction whatsoever is legally required to prosecute them for commission of the pointed heinous offences in this relevant behalf.

(Para 42)

Vikram K. Chaudhri, Pankaj Bhardwaj, Deepak Thapar and
T.P.S. Tung, Advocates, *for the petitioners.*

Sumeet Goel & S.S. Sandhu, Advocates for CBI.

Jasdev Singh Brar, DAG Punjab for the State.

MEHINDER SINGH SULLAR, J.

(1) As illogical as it may seem, but strictly and truly speaking, the tendency and frequency of such police personnel, who have been charged by the Central Bureau of Investigation (for brevity "the CBI") for the commission of heinous offences of criminal conspiracy, illegal detention, kidnapping and murders etc., to delay the disposal of criminal cases, on one pretext or the other, for the reasons best known to them, have been tremendously increasing day by day. The instant matters originated from two decade's old occurrences, are the burning example of such like cases. At the same time, the judicial system also cannot escape its liability in this respect, for variety of reasons, perhaps mainly on account of paucity of infrastructural capability and capacity. God knows who is to be blamed for it.

(2) Be that as it may, since the identical questions of law and facts are involved, so, I propose to decide all the above indicated petitions, by virtue of this common judgment, in order to avoid the repetition. However, the relevant facts and material, which need a necessary mention for the limited purpose of deciding the core controversy, involved in the instant petitions, recapitulated from main petition (1) CRM No. M-7861 of 2005 titled as "**Atma Singh Bhullar & Ors. Vs. State of Punjab & Anr.**" at the first instance and thereafter the prosecution versions of CBI in other connected cases, would be referred in subsequent part of this judgment for ready reference in this context.

(3) Exhibiting the deep concern of violations of rule of law, human rights and taking cognizance of the Press Note dated January 16, 1995, which, in substance, is as under:-

"The investigation team decided to work in the Amritsar area and its neighbouring police districts. It was learnt that the police regularly bring bodies to the municipality cremation

grounds for cremation, declaring them as unclaimed. The team found that 400 unclaimed bodies had been brought for cremation to grounds. Bodies brought to the Patti municipality committees cremation grounds came from as far as Khalra 40 Kms., Kairon 10 Kms, Harika 15 Kms, Valtoha 30 Kms, Bhiki 25 Kms 700 unclaimed bodies to the Tarn Taran municipality cremation grounds. The only record of these unclaimed bodies is available from the receipt book through which firewood was issued for the disposal of the bodies. The receipt book has the date and number of bodies brought recorded on it.

In Amritsar district the maximum unclaimed bodies brought for cremation was to the cremation grounds near the Durgiana Mandir. From 1st June 1984 to the end of 1994 about 2000 bodies have been cremated as unclaimed. The officials of the Durgiana Mandir cremation grounds expressed their inability to show any records, but suggested that details will be available with the Amritsar Registrar of Births and Deaths. The details which could be gathered at the registrar's office are given below.

During the 1st year of the govt. of Mr. Beant Singh, 300 unclaimed bodies were brought to the Durgiana Mandir cremation grounds by the police department. Out of these 300 bodies names of 112 have been given and the rest were declared as unidentified. 41 persons have been recorded to have died of bullet injuries or police encounters. No reason has been recorded for the cause of the death of 259 persons. Post-mortems were conducted only on 24 bodies by the Amritsar Medical College. No post-mortem was conducted on 276 bodies, 5 bodies of females, as per the record, out of which names of 3 have been recorded. The details of the 3 female bodies are : Harpal Kaur Vill. Dhulka dated 25.12.1992. Achint Kaur & companion dated 30.9.92. Two bodies are of those of Kashmiris of Sopore, cause of death, "encounter". One unclaimed body is from, near Chamkaur Saheb, in Roper District.

Bhagel Singh alias Gurdarshan Singh of village Deriwal was nabbed by the Punjab police in Bihar. News Punjab press. Various organizations in Punjab apprehended him being eliminated in a fake encounter. This was around the last week of Nov/first week of Dec./91. On 19.1.1992 the police knowing fully well the identity of Bhagel Singh and his village, brought to cremation grounds for cremation a unidentified and unclaimed.

Mr. Piara Singh S/o Shingara Singh, Director of Central Cooperative Bank in Amritsar, Paternal uncle of Harminder Singh Sultanvind (Militant), Mr.Piara Singh has gone to a relatives' farm in Pillibhit in Uttar Pradesh. One morning a jeep drove up to the farm house, a team of doctors attired in white coats, sporting stethoscopes approached the residents of the farm requesting them that a VIP was coming to the neighbouring village to inaugurate a govt. medical clinic and some respectable citizens should also grace the occasion. They requested (sic) Mr.Piara Singh ended up at the Durgiana Mandir cremation ground on 16.12.92. Mr.Pargat Singh 'Bullet' was undergoing treatment at the Guru Nanak Hospital Amritsar he was abducted by the Raja Sansi police and his "unidentified" body was brought to the Durgiana Mandir cremation ground on 5.11.92",

The Hon'ble Apex Court in case **Mrs.Paramjit Kaur versus State of Punjab (1)**, issued the following directions:-

- (i) *We, therefore, direct the Director, Central Bureau of Investigation to appoint an investigation team headed by a responsible officer to hold investigation in the kidnapping and whereabouts of Khalra. We further direct the Director General of Police, Punjab, all concerned Punjab Police Officers, Home Secretary and Chief Secretary, Punjab to render all assistance and help to the CBI in the investigation.*

(ii) *The second issue highlighted in this petition is equally important. This Court cannot close its eyes to the contents of the Press Note dated January 16, 1995 stated to be investigated by Khalra and Dhillon. In case it is found that the facts stated in the Press Note are correct – even partially – it would be a gory tale of Human Rights violations. It is horrifying to visualize that dead bodies of large number of persons -allegedly thousands -could be cremated by the police unceremoniously with a label “unidentified”. Our faith in democracy and rule of law assures us that nothing of the type can ever happen in this country but the allegations in the Press Note -horrendous as they are – need thorough investigation. We, therefore, direct the Director, Central Bureau of Investigation to investigate into the facts contained in the Press Note dated January 16, 1995. We direct all the concerned authorities of the State of Punjab including the Director General of Police, Punjab to render all assistance to the CBI in the investigation. All authorities of the Punjab Government shall render all help and assistance to the CBI team as and when asked by any member of the said team. We give liberty to the CBI to seek any further directions from this Court from time to time as may be necessary during the investigation.*

(4) In pursuance of the first direction, the CBI registered and investigated the case against accused Prithipal Singh, Satnam Singh, Surinderpal & Jasbir Singh etc., for hatching a criminal conspiracy, causing disappearance, kidnapping and murder of Jaswant Singh Khalra, General Secretary, Human Rights Wing of Shiromani Akali Dal (popularly known as Jaswant Singh Khalra’s case). Having completed all the codal formalities, the accused (therein) were convicted and sentenced by the Additional Sessions Judge, Patiala, for the commission of offences punishable under Sections 120-B, 302, 364 and 201 read with Section 34 IPC, by way of judgment of conviction and order of sentence dated 18.11.2005. Their appeals were also dismissed by this Court, vide judgment dated 8.10.2007.

(5) Still aggrieved by the judgment of conviction & order of sentence, the appellants-accused (therein) filed CRA Nos.523 to 528 of 2009, which were dismissed as well, by the Hon'ble Supreme Court, by means of judgment, reported as **Prithipal Singh Etc. versus State of Punjab and another etc. (2)**.

(6) Sequently, in compliance with the second direction of Hon'ble Apex Court, the CBI registered many other similar criminal cases, including the present cases. Some of the cases were also registered by the CBI, as per the directions of Hon'ble Supreme Court in Writ Petition (Criminal) Nos.214, 220, 240 & 241 of 1994 titled as "Sukhjeet Singh etc. Vs. State of Punjab & Ors" and of this Court in Criminal Writ Petition No.290 of 1994 & other similar petitions and orders of the Human Rights Commission, vide separate FIRs, on accusation of having committed the pointed offences. Accordingly, the CBI investigated all such matters and submitted the respective charge sheets, like (Annexure P2) against the accused in this regard.

(7) The matrix of the facts and material, culminating in the commencement, relevant for the disposal of the present petitions and emanating from the record of the (main) case, is that, complainant Smt.Rita Kumari moved an application dated 19.8.1996 that on 21.12.1992 at about 5 P.M., a police party headed by the SP of Amritsar abducted her husband Rakesh Kumar in her presence while he was proceeding to hire an auto rickshaw from Bus stand, Pathankot. He was **illegally detained and tortured for five days in CIA Staff**. Ultimately on 26.12.1992, he was brutally killed in a fake police encounter and his dead body was cremated as unidentified by the Amritsar Police at Durgiana Mandir Cremation Ground.

(8) During the course of investigation by the CBI, inter-alia it revealed that on 21.12.1992, Rakesh Kumar (deceased) alongwith his wife Rita Kumari (complainant) reached bus stand, Pathankot at about 5 p.m. As soon as, they were about to hire an auto rickshaw, in the meantime, the police officer came there and forcibly made him to sit in white coloured Gypsy and went towards Gurdaspur. On 25.12.1992, a Sikh person visited the house of the complainant and informed them that Rakesh Kumar was in illegal custody of CIA Staff and his condition was critical due to severe tortured by the Punjab police. He also conveyed them to get Rakesh Kumar

released within one or two days, otherwise the police would eliminate him. Thereafter, they collected the respectable persons, including MLA Baldev Raj Chawla for help to get Rakesh Kumar released, where they found him in the custody of CIA Staff. But he was subsequently eliminated in the garb of fake encounter near village Mohkhampura on 26.12.1992 by the police party headed by petitioners SI Atma Singh Bhullar and other police officers. It was alleged that on the contrary, the police concocted a false version, prepared the false record of encounter and illegally recorded the FIR, bearing No.394 in Police Station Sadar Amritsar against Rakesh Kumar (deceased).

(9) Likewise, the version of the CBI in RC No.5/S/2001-SIU.20/SCR.II dated 10.5.2001 (subject matter of CRM No.M-10057 of 2011) is as under:-

“Shri Kuldeep Singh was once summoned by S.H.O. Police Station Varowal in the month of March, 1992 but was let off. Sometimes in May, 1992 police party visited the residence of Shri Kuldeep Singh at Village Kotli Sarukhan and made enquiries but he was not present there. The police party visited his working place at Amritsar but did not find him there also. Shri Kuldeep Singh did not attend his duties in the bank after 12.05.92. Because of fear of apprehension to his life or illegal detention by the Punjab Police, Shri Kuldeep Singh avoided his appearance before the police. On 01.06.92 Shri Teg Bahadur Singh, ASI of Police Station Varowal visited the residence of Shri Gurdeep Singh at Village Dhote and picked up Shri Amarjeet Singh who was available there and handed him over to CIA Staff Taran Taran. On the next morning i.e. on 02.06.92, police party headed by Shri Gurdev Singh, Inspector CIA Staff Taran Taran and accompanied by Shri Amarjeet Singh conducted raids on the house of S/Shri Harpal Singh at Circular Road, Amritsar and Joginder Singh at Lawrence Road, Amritsar one after another in search of Shri Kuldeep Singh. Shri Kuldeep Singh was not found at the house of Shri Harpal Singh. However, the police party picked up S/Shri Kharag Singh and Mahal, two of his private security Guards. Shri

Kuldeep Singh was found in the house of Shri Joginder Singh and the police party picked him up along with S/Shri Balkar Singh, Kanwaljeet Singh, Jaswinder Singh, Gajinderpal Singh and Satnam Singh in the presence of Shri Joginder Singh and his family members. All the above persons were taken to CIA Staff Taran Taran Distt. Amritsar. On the same day i.e. on 02.06.92 Shri Teg Bahadur, ASI also raided the house of Shri Kuldeep Singh at Village Kotali Sarukhan and picked up his elder brother Shri Mukund Singh (since dead). Shri Mukund Singh was wrongfully confined by Varowal Police for about a fortnight. Out of the aforesaid persons picked up from Amritsar S/Shri Kharag Singh and Mahal Singh were released on the same evening i.e. 02.06.92. S/Shri Jaswinder Singh and Kanwaljeet Singh were released after 2/3 days followed by S/Shri Balkar Singh and Gurjinder Pal Singh. Shri Satnam Singh (The Complainant) was released after about a fortnight and Shri Amarjeet Singh was released on 21.06.92. Shri Kuldeep Singh was confined in illegal detention of CIA Staff Amritsar. During detention Shri Kuldeep Singh was being interrogated by S/Shri Gurdev Singh, Inspector and Jhirmal Singh, Hd. Const./Gunman and others. At that time Shri Gurmeet Singh was Dy. SP (D) supervising the work of CIA Staff. Shri Kuldeep was physically and mentally tortured and was in very bad shape. The family members and villagers of Shri Kuldeep Singh had been making consistent efforts to get Shri Kuldeep Singh released but were not successful. He was seen in the custody of CIA staff Taran Taran till 04.07.92 S/Shri Ratan Singh of village Bania, Rudh Singh of village Mallah, Sajjan Singh to village Kajiyal and Waryan Singh of village Purewal, who were also detained by CIA Staff during the said period, confirmed the illegal detention and torture of Shri Kuldeep Singh at CIA Staff Taran Taran. The Vorewal police again raided the house of Shri Kuldeep Singh on 06.07.92 and picked up his elder brother Shri Kulwant Singh, a Manager in Amritsar Co-operative Bank, telling the family members

to produce Shri Kuldeep Singh so that Shri Kulwant Singh could be released. They were also told that Shri Kuldeep Singh had escaped from the custody of CIA Staff. However, Shri Kulwant Singh was released after about 10 days. No complaint was, however, lodged with Punjab Police.

During investigation all the persons named above have confirmed the picked up and detention of Shri Kuldeep Singh, since they also were picked up and detained at CIA staff at one point or the other. It is also revealed that Ex-Subedar Kartar Singh and Shri Gurdeep Singh along with other eminent persons of the area had met Shri A.S.Sandhu, the then S.S.P. Taran Taran and Shri Gurdev Singh, Inspr. CIA Staff on a number of occasions for the release of Shri Kuldeep Singh. They had even arranged Rupees one Lakh to be paid to Punjab police officers as it was said that police releases detained persons after money is paid Ex-Subedar Kartar Singh had approached Army Authorities in 1993 and the Army had taken up the matter with S.S.P. Taran Taran but were informed that Shri Kuldeep Singh was not picked up or detained by Taran Taran police. He had submitted a written complaint to NHRC on 08.06.94, which was enquired into by NHRC officials and NHRC had directed Punjab Police to register a case.

S.S.P. Taran Taran had given a certificate that photograph and description of Shri Kuldeep Singh did not match with that of unidentified dead found in the District during the relevant period. During investigation, records of 10 cases registered at Police Station Harike, Varowal, Patti, Sarhali, Goindwal, Valtoha and Bhikhiwind were scrutinized in which many unidentified persons were killed in police encounters, but no clue about the whereabouts of Shri Kuldeep Singh could be found there also."

(10) Similarly, in the wake of the statement of Sukhwant Kaur, the CBI registered a criminal case, vide RC No.11 of 6.3.1997 (subject matter of CRM No.M-16451 of 2010) with the allegations that on 31.10.1992

ASI Avtar Singh picked up Sukhdev Singh and Sulakhan Singh from the residence in the presence of their family members. The police whisked them away in police vehicle on the ground of questioning. Ujagar Singh, father of Sukhdev Singh, retired Inspector of police, met both the arrested persons in the premises of Police Station Sarhali. Surinder Pal Singh, SHO of the police station assured that the detained persons would be released after questioning, but thereafter, both Sukhdev Singh & Sulakhan Singh were killed by the accused in a fake encounter and later on denied to have picked them up from their houses. The version of complainant Sukhwant Kaur was corroborated during the investigation and the CBI concluded that there is sufficient evidence that ASI Avtar Singh entered her (complainant) residence in the presence of family members. In spite of their protest, he forcibly took Sukhdev Singh and Sulakhan Singh in police vehicle. They were illegally detained, kidnapped, tortured and subsequently killed in fake encounters.

(11) In the same manner, RC No.3(S)/97/SIU-XVI/JMU dated 27.2.1997 was registered against the petitioners-accused on the ground that they have kidnapped Jagdeep Singh on 18.11.1992 and when his mother-in-law intervened, she was shot dead. Subsequently, Jagdeep Singh was also eliminated in a fake police encounter on 30.11.1992. In RC No.7(S)/97/SIU-XVI/JMU dated 27.2.1997, a criminal case was registered with the allegations that Balwinder Singh of village Jhabbal, was illegally kidnapped by the police party and his whereabouts are not known. Similarly, other cases were also registered against the accused for kidnapping and eliminating Gurdev Singh from village Galalipur, Distt. Amritsar, Sukhwinder Singh, Arur Singh of village Manochahal and three others, Gurbinder Singh from village Pheruman, Daljit Singh from village Khaila, Balbir Singh, Piara Singh (Ex-serviceman), Harphool Singh, Gurdip Singh of village Jiobala, Kesar Singh son of Banta Singh, Gurdev Singh alias Jagdev Singh from village Beni, Gurmej Singh son of Kesar Singh and his son Balwant Singh, Meja Singh, Baba Charan Singh, Kuldeep Singh and others. I have carefully perused the CBI and counter Punjab Police versions in all the cases. Instead of repeating the sequence of events in all cases and in order to avoid the repetition, suffice it to say that the similar allegations of hatching criminal conspiracy, abduction, kidnapping, murder, illegal detention, fake encounter, preparing false record of encounter, concocting the false story and registering the false cases, have also been assigned to all the accused in all connected matters in this relevant connection.

(12) Levelling a variety of allegations and narrating the sequence of events in detail, mentioned in the respective charge sheets, like (Annexure P2), in all, the CBI claimed that all the petitioners-accused hatched a criminal conspiracy, to do an illegal act by illegal means, picked up the helpless persons (deceased) from their respective residences & other places, abducted, kidnapped in order to murder, illegally detained, brutally tortured, staged drama of false encounters, murder them and cremated their dead bodies as unidentified, without any postmortem examinations, in order to cause disappearance of evidence of offence to screen the offenders. Not only that, subsequently, those persons (deceased) were brutally killed by the petitioners-accused, in the manner depicted hereinbefore. On the contrary, the police officers have lodged false cases, concocted false version of encounters and prepared the false record in this relevant direction. The story/version put forth by the police and the recovery of the articles, weapons used were found to be totally false in a professional & scientific investigation by the CBI. In the background of these allegations, the CBI has registered the different RCs against the present accused, on accusation of having committed the offences punishable under Sections 120-B, 342, 364, 365, 302 and 201 read with Section 34 IPC in the manner described hereinabove.

(13) After the completion of the investigation in a very fair and scientific manner, the CBI submitted the different charge sheets, like (Annexure P2) against all the petitioners-accused in the competent Court for trial of the pointed offences.

(14) The petitioners-accused in CRR Nos. 1596 of 1999, 56 to 58 and 62 to 64 of 2000 moved applications for dropping the proceedings/ discharge, for want of sanction under Section 6 of the Punjab Disturbed Areas (Amendment) Act, 1989 (hereinafter to be referred as "the amended Act"). After taking into consideration the rival contentions of the parties, the trial Court dismissed their applications, by virtue of impugned orders dated 20.10.1999, 8.5.2000 & 17.4.2000.

(15) Aggrieved by the impugned orders, the petitioners-accused preferred the instant revision petitions under section 401 Cr.PC. Similarly, the petitioners-accused in remaining cases, instead of submitting to the jurisdiction of trial Court, straightway jumped to file the present petitions to quash the criminal prosecutions, invoking the provisions of Section 482 Cr.PC.

(16) The case set up and urged by the petitioners-accused in all cases, in brief, in so far as relevant, was that since the CBI did not obtain the sanction from Central Government, to prosecute them as required under Section 6 of the amended Act and Section 197 Cr.PC, so, the very initiation of criminal prosecution against them is bad in law and all the criminal cases and impugned orders are liable to be set aside.

(17) The contesting respondents refuted the prayer of petitioners-accused and filed the reply, inter-alia pleading that in fact, the CBI has conducted a fair investigation and when sufficient evidence emerged against the accused persons, only then, they were charge sheeted. Instead of reproducing the entire contents of the reply and in order to avoid the repetition, suffice it to say that the CBI has reiterated all the allegations contained in the charge sheets. However, it will not be out of place to mention here that the contesting respondent has stoutly denied all other allegations contained in the main petitions and prayed for their dismissal. That is how I am seized of the matter.

(18) Assailing the initiation of criminal prosecutions, the learned counsel for petitioners-accused have contended with some amount of vehemence that as all the petitioners-accused performed their functions in discharge of their official duties, purported to be done in exercise of powers conferred by Sections 4 & 5, therefore, the statutory sanction of Central Govt. to prosecute them under Section 6 of the Amended Act and Section 197 Cr.PC was essential and in the absence of the same, the criminal prosecution and impugned orders cannot be maintained. Hence, they prayed for acceptance of their petitions.

(19) Hailing the impugned orders and criminal prosecution, on the contrary, the learned counsel for the CBI have vehemently urged as well that as per the version of the CBI, the petitioners-accused have picked up the helpless and innocent victims from their respective houses and other places, without any kind of provocation, in order to extract illegal gratification, to settle their other scores in illegal manners, to claim other service benefits/ appreciation letters & promotions and some of them were actually promoted as well. The argument is that the heinous offences committed by the petitioners-accused are not at all remotely connected with the discharge of their official duties. Therefore, the trial courts have rightly dismissed their applications for dropping the proceedings and rightly initiated the criminal prosecutions against all the petitioners-accused. Thus, they prayed for dismissal of the petitions.

(20) Having heard the learned counsel for the parties at quite some length, having gone through the relevant material on record and legal position with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present petitions in this respect.

(21) At the very outset, there can hardly be any dispute with regard to the ratio of law laid down by Hon'ble Apex Court in cases **Shreekantiah Ramayya Munipalli versus State of Bombay** (3), **Amrik Singh versus State of Pepsu** (4), **Matajog Dobey versus H.C. Bhari** (5), **State of Maharashtra versus Dr. Budhikota Subbarao** (6), **Costao Fernandes versus State of the Instance of D.S.P., CBI, Bombay** (7), **Mansukhlal Vithaldas Chauhan versus State of Gujarat** (8), **State through the CBI versus B.L. Verma and another** (9), **Suresh Kumar Bhikamchand Jain versus Pandey Ajay Bhushan and others** (10), **Gauri Shankar Prasad versus State of Bihar and another** (11), **K.K. Patel and another versus State of Gujarat and another** (12), **P.P. Unnikrishnan and another versus Puttiyottil Alikutty and another** (13), **Abdul Wahab Ansari versus State of Bihar and another** (14), **Rizwan Ahmed Javed Shaikh and others versus Jammal Patel and others** (15), **P.K. Pradhan versus State of Sikkim represented by the Central Bureau of Investigation** (16) and **Raj Kishor Roy versus Kamleshwar Pandey and another** (17), relied on behalf of the accused, that it is not every offence committed by a public servant that requires sanction for prosecution under section 197 Cr.PC; nor even every act done by him while he is actually engaged in the

- (3) AIR 1955 SC 309
- (4) AIR 1955 SC 287
- (5) AIR 1956 SC 44
- (6) (1993) 3 SCC 339
- (7) (1996) 7 SCC 516
- (8) (1997) 7 SCC 622
- (9) (1997) 10 SCC 772
- (10) (1998) 1 SCC 205
- (11) (2000) 5 SCC 15
- (12) (2000) 6 SCC 195
- (13) (2000) 8 SCC 131
- (14) (2000) 8 SCC 500
- (15) (2001) 5 SCC 7
- (16) (2001) 6 SCC 704
- (17) (2002) 6 SCC 543

performance of his official duties; but if the act complained of is directly concerned with his official duties by virtue of the office, then sanction would be necessary.

(22) Sequely, while considering the law laid down in a recent common judgment, rendered in **Criminal Appeal No.257 of 2011** titled as "**General Officer Commanding Vs. CBI & Anr. and Criminal Appeal No.55 of 2006** titled as "**Additional Director General Vs. Central Bureau Investigation**" decided on May 1, 2012, again relied on behalf of petitioners, the Hon'ble Supreme Court ruled (para 55) as under:-

"Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. However, there must be a discernible connection between the act complained of and the powers and duties of the public servant. The act complained of may fall within the description of the action purported to have been done in performing the official duty. Therefore, if the alleged act or omission of the public servant can be shown to have reasonable connection inter-relationship or inseparably connected with discharge of his duty, he becomes entitled for protection of sanction. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio for want of sanction. Sanction can be obtained even during the course of trial depending upon the facts of an individual case and particularly at what stage of proceedings, requirement of sanction has surfaced. The question as to whether the act complained of, is done in performance of duty or in purported performance of duty, is to be determined by the competent authority and not by

the Court. The Legislature has conferred "absolute power" on the statutory authority to accord sanction or withhold the same and the court has no role in this subject. In such a situation the court would not proceed without sanction of the competent statutory authority."

(23) What cannot possibly be disputed here is that in order to make special provisions for the prevention of, and for coping with, terrorist & disruptive activities and for matter connected therewith or incidental thereto, the Terrorist and Disruptive Activities (Prevention) Act, 1987 was enforced. Similarly, to make better provision for suppression of disorder and for the restoration and maintenance of public order in disturbed areas in Punjab, The Punjab Disturbed Areas Act, 1983, which was subsequently amended by the provisions of The Punjab Disturbed Areas (Amendment) Act, 1989 was enacted. After considering the amount of peace in some areas, vide notification dated 9.3.1989, the President of India was pleased to declare that only area comprising **Districts Amritsar, Gurdaspur and Ferozpur** will continue to remain as disturbed areas and the other Districts of Punjab State were excluded from the purview of the amended Act.

(24) Above being the legal position and material on record, now the short and significant questions, though important which, arise for determination in these cases are, as to whether the act done by the petitioners-accused have any connection in discharge of their indicated official duties and any such prior sanction under section 6 of the amended Act or Section 197 Cr.PC was essential to prosecute them or not?

(25) Having regard to the rival submissions of learned counsel for the parties, material on record and having carefully gone through the respective CBI versions in each case, to me, the answer must obviously be in the negative in this behalf.

(26) As is evident from the record that the CBI claimed that all the petitioners-accused hatched a criminal conspiracy, to do an illegal act by illegal means, picked up the deceased persons from their respective residences & other places, abducted, kidnapped in order to murder, illegally detained, brutally tortured, staged drama of false encounters, murder them and cremated their dead bodies as unidentified, without post-mortem examinations,

in order to cause disappearance of evidence of offence to screen the offenders. Not only that, those persons (deceased) were brutally killed in the manner depicted hereinbefore, but on the contrary, the police officers have lodged false cases, concocted false version of encounters and prepared the false record in this relevant behalf. To my mind, such barbaric acts complained of, cannot possibly be termed, by any stretch of imagination that, they have any remote nexus in performance of their official duties to achieve the purpose of section 4 and in exercise of powers conferred by Sections 4 & 5 of the amended Act.

(27) Ex facie, the arguments of learned counsel that there are two counter versions of the same incident and since initially, the acts complained of against all the petitioners-accused were done in performance of their official duties and subsequently if they have committed any offence, even then, the statutory sanction under section 6 of the amended Act and section 197 Cr.PC was necessary, in view of the observations of Hon'ble Apex Court in General Officer Commanding's case (supra) are not only devoid of merit but misplaced as well. In that case, it was noticed that on 20.3.2000, 36 Sikhs were killed by terrorists in village Chittising Pora, District Anantnag,, J&K. Immediately thereafter, search for the terrorists started in the entire area. Major Amit Saxena of the Army reported the matter to the Police Station Achchabal stating that during a special cordon and search operation in the forests of Panchalthan from 0515 hr. to 1500 hrs on 25.3.2000, an encounter took place between terrorists and troops of that unit and 5 unidentified terrorists were killed in that operation. Arms and ammunition from 5 unidentified terrorists were recovered by seizure memo, which included AK-47 rifles (5), AK- 47 Magazine rifles (12), radio sets (2), AK-48 ammunition (44 rounds), hand grenades (2) detonators (4) and detonator time devices (2). There had been long processions in the valley in protest of killing of these 5 persons on 25.3.2000 and a demand of independent inquiry into the whole incident was made by the local population. Ultimately, the matter was referred to CBI for investigation. On the peculiar facts and in the special circumstances of that case, it was observed by Hon'ble Supreme Court that the case requires sanction of Central Government to proceed with the criminal prosecution/trial under Section 7 of the Armed Forces (Special Powers) Act (hereinafter to be referred as "the Armed Forces Act"), 1990.

(28) Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the petitioners accused in the instant controversy and the arguments raised on their behalf deserve to be ignored, for more than one following reasons.

(29) At the first instance, it is not a matter of dispute that the amended Act is a special Act enacted to deal with the specific situation and will have overriding effect on the provisions of general law. It is well settled principle of interpretation of statute, that the words of an enactment are to be given their ordinary, popular and natural meaning. If such meaning is clear and unambiguous, the effect should be given to a provision of a statute in the same manner whatever may be the consequences. The basis of this principle is that the object of all interpretations being to know what the legislature intended, whatever was the intention of the legislature has been expressed by it through words which are to be interpreted accordingly, because the intention of the legislature can be deduced only from the language through which it has expressed itself. If the language of a statute is clear, the only duty of the Court is to give effect to it and the Court has no business to look into the consequences of such interpretation. The Court is under an obligation to expound the law as it exists and leave the remedy to the legislature, even if harsh conclusions result from such exposition. Equally, it is now well recognized proposition of law that mandatory provisions and command of law have to be complied with in the same manner as envisaged and mandated by any statute and it cannot be interpreted otherwise.

(30) As is amply clear that Section 4 of the amended Act postulates that "any Magistrate or Police Officer not below the rank of Sub-Inspector or Havildar in case of the Armed Branch of the Police may, if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning, as he may consider necessary, fire upon, or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area, prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of firearms, ammunition or explosive substances."

(31) According to Section 5, any Magistrate or Police Officer not below the rank of a Sub-Inspector may, if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made or any structure used as training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence.

(32) Likewise, Section 6 posits that “no suit, prosecution or other legal proceedings shall be instituted except with the previous sanction of the Central Government against any person in respect of anything done or purporting to be done in exercise of the powers conferred by Sections 4 and 5 of the amended Act.”

(33) A plain reading of relevant provisions would reveal that there is an inherent distinction between Section 7 of the Armed Forces Act and Section 6 of the amended Act. Section 7 of the Armed Forces Act extends the protection of sanction in respect of anything done or purported to be done in discharge of official duties in exercise of powers conferred by that Act, whereas, the kind of protection granted by section 6 is limited only to the extent of those acts done in exercise of the powers as envisaged under Sections 4 & 5 of the amended Act and not otherwise. In this manner, the area of operation of section 7 of the Armed Forces Act is very wider, whereas the scope of protection under section 6 of the amended Act is limited only to the extent indicated here-in-before.

(34) A conjoint and meaningful reading of these provisions would reveal that the protection under section 6 is available to that person, not below the rank of Sub-Inspector, that too, only in respect of anything done or purporting to be done in exercise of powers conferred by Sections 4 and 5 and not otherwise. Whereas Section 4 empowers (a) any Magistrate or police officer not below the rank of Sub-Inspector or Havildar in case of Armed Branch of the police may, (b) **after giving due warning** or otherwise, (c) fire upon or otherwise use the force, even to the causing of death against any person, (d) if he is of the opinion that it is necessary to do so for the maintenance of any law or public order for the time being in force in the disturbed area, (e) which prohibits the assembly of five or more persons or (f) the carrying of weapons or of things capable of being

used as weapons or of firearms, ammunition or explosive substances and (g) in exercise of powers conferred by sections 4 & 5 of the amended Act. Meaning thereby, only those police officers can claim the benefit of Section 6, who are not below the rank of Sub-Inspector, if their act squarely falls within the act of essential conditions as contained in Section 4 enumerated here-in-above in exercise of powers conferred by Sections 4 & 5 of the amended Act and not otherwise.

(35) Secondly, the main object of protection under section 6 is intended to guard and to protect the responsible law abiding public servants, (not the offenders of heinous crime) against the institution of possibly vexatious and malicious criminal proceedings for offences alleged to have been committed by them while achieving the purpose and in exercise of powers contained in Sections 4 and 5 of the amended Act and not otherwise. The policy and intention of the Legislature engrafted under section 6, appears to afford adequate protection to public servant to ensure that they may not face the false prosecutions. Neither this section extends its protective cover to, nor to put a wall around, a guilty public servant, pertaining to every illegal acts and omissions. In order to invoke the protection, the acts of the accused, complained of, must be such that the same cannot be separated from the discharge of official duties squarely within the frame-work of Section 4 of the amended Act. Possibly, the commission of heinous offences of illegal detention, kidnapping and elimination in the sequence as described here-in-above by the petitioners-accused, indeed cannot and would not be termed to be a part of their official duties under section 4 of the amended Act. The sine qua non for the applicability and protection under section 6 is strictly restricted only to those acts or omissions, relatable to the acts described in section 4 and not otherwise.

(36) No doubt, the petitioners-accused were engaged to contain terrorist activities but even then the persons engaged in counter-insurgency activities are governed by the established procedure and provisions of rule of law.

(37) Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The Hon'ble Supreme Court has reiterated in Prithipal Singh's case (supra) that the right to life is "supreme" and "basic".

The State-machinery has an overriding obligation to protect the **right** to life of every person within its territorial jurisdiction and must protect the victims of torture, ill-treatment as well as the **human-rights**. The miseries of the families of such victims and their logical consequences must be understood in correct perspective. It is the duty of the welfare State that it must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency/police force. In addition to the protection provided under the Constitution, the Protection of **Human Rights Act, 1993**, also provide for protection of all **rights** to every individual. It inhibits illegal detention. Torture and custodial death have always been condemned by the courts in this country. It has also been held (para 48) that "police atrocities are always violative of the constitutional mandate, particularly, Article 21 (protection of life and personal liberty) and Article 22 (person arrested must be informed the grounds of detention and produced before the Magistrate within 24 hours). Such provisions ensure that arbitrary arrest and detention are not made. Tolerance of police atrocities, as in the instant case, would amount to acceptance of systematic subversion and erosion of the rule of law. Therefore, illegal regime has to be glossed over with impunity, considering such cases of grave magnitude."

(38) The primordial constitutional value is the responsibility of every person in general and public servant in particular, to function within the four corners of established law. The rule of law envisages the frame work within which the public servant is required to act, both to assert his authority and also to initiate, nurture and sustain the rule of law. If such public servant would act illegally, it will inexorably would lead to the loss of force of the Constitution. The rule of law fealty does not, cannot and ought not to permit either the use of such a force or to eliminate people in this respect. The inhuman attitude and violations of rule of law cannot possibly be justified by any one and in any manner in this relevant connection.

(39) It cannot possibly be denied that in the instant cases, instead of following the established procedure and the rule of law, the accused-police officers have taken the law into their own hands, in a very cruel manner, picked up the helpless persons, illegally detained, brutally tortured and subsequently eliminated them and committed the heinous offences in the manner depicted here-in-above. They have also registered the false cases and staged drama of false encounters by concocting coloured versions.

Such counter version has already been disbelieved by the Hon'ble Apex Court in Prithipal Singh's case (*supra*). Therefore, the acts complained of against the petitioners-accused are alien/foreign, are not at all remotely connected in exercise of powers conferred by Sections 4 and 5 of the amended Act and no sanction whatsoever is legally required for their prosecutions. This matter is not *res integra* and is now well settled.

(40) An identical question came to be decided by this Court in cases **Surinder Pal Singh versus Balbir Kaur and another (18)** and **Harpal Singh versus Delhi Special Police Establishment C.B.I. STU-II, New Delhi Branch (19)**. Having interpreted the provisions of Sections 4 to 6 of the amended Act, it was held in Harpal Singh's case (*supra*) as under (paras 11 & 12) :-

"11. A perusal of the above two sections shows that while Section 4 of the 1983 Act empowers (a) any Magistrate or police officer not below the rank of Sub-Inspector or Havildar in case of Armed Branch of the police may, (b) after giving due warning or otherwise, (c) fire upon or otherwise use the force, even to the causing of death against any person, (d) if he is of the opinion that it necessary to do so for the maintenance of any law or public order for the time being in force in the disturbed area, (e) which prohibits the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of firearms, ammunition or explosive substances, the application of this section would require a detailed enquiry into the powers that were conferred on the petitioners, the question as to whether they had given a warning as also whether there was in force any law or order prohibiting the assembly of 5 or more persons, carrying of weapons, arms and ammunition or explosive substances. The facts necessary for attracting the application of Section 4 of the 1983 Act to the acts done by the petitioners will have to be

(18) 2006(4) RCR (Cr.) 299

(19) 2001(4) RCR (Cr.) 304

proved by them before they can seek protection of Section 6 of the 1983 Act. Since the case of the investigating agency is that the stand of the petitioners as taken by them was found to be wrong during investigation and in fact no encounter had taken place as alleged by them, therefore, it would not be appropriate for this Court to opine on the correctness of the case of the prosecution or vis-a-vis the position sought to be put forth by the petitioners in their defence in these proceedings lest any expression on the merits of the case prejudices the case of either parties.

12. *There is another angle from which the stand of the petitioners can be examined and that is the question as to whether the petitioners can be heard to say that the acts alleged to have been done by them which ordinarily may constitute culpable homicide can in law be treated to have been done by them in the discharge of their official duties. The answer to this question would again depend upon whether or not the petitioners are able to prove the stand sought to be put forth by them in defence, after leading admissible evidence in proof of their contentions. Such being the disputed nature of the controversy which is being raised before this Court, I am of the considered view that the relief of quashing of the F.I.R. and the consequential proceedings thereto cannot be given to the petitioners."*

(41) Likewise, the arguments of learned counsel for CBI have considerable force and the contrary contentions of learned counsel for petitioners accused pale into insignificance, "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances, as the ratio of law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the instant cases and is the complete answer to the problem in hand.

(42) Therefore, if the acts of, heinous offences, hatching a criminal conspiracy, to do an illegal act by illegal means, picked up the helpless persons (deceased) from their respective residences & other places, abducted, kidnapped in order to murder, illegally detained, brutally tortured,

staged drama of false encounters, murder them and cremated their dead bodies as unidentified, without post-mortem examinations, in order to cause disappearance of evidence of offence to screen the offenders, not only that, those persons (deceased) were brutally killed in the indicated manner, but the police officers have lodged false cases, concocted false version of encounters and prepared the false record in this relevant connection and totality of the other facts & special circumstances, material and legal position as discussed here-in-above, are put together and analyzed in a right perspective, then, to my mind, the conclusion is inescapable and irresistible that the commission of such heinous offences, indeed, cannot and would not be termed to have any remote connection with the acts complained of in exercise of powers conferred by Section 4 of the amended Act. The petitioners-accused are at all neither entitled to the umbrella of protection under section 6 of the amended Act nor under section 197 Cr.PC. Thus, no sanction whatsoever is legally required to prosecute them for commission of the pointed heinous offences in this relevant behalf.

(43) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(44) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trials of main cases, as there is no merit, therefore, the instant petitions deserve to be and are hereby dismissed as such in the obtaining circumstances of the cases.

(45) Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits, during the trials of the main cases, as the same has been so recorded for a limited purpose of deciding the present petitions. Since the matters are very old, so, the trial Courts are directed to take all the effective steps, including day to day proceedings for expeditious disposal of all the cases in accordance with law under intimation (six monthly progress/status report) to this Court. The Registry is directed to send the copies of this judgment to the trial Courts forthwith for compliance. At the same time, the parties through their counsel are directed to appear before the concerned Courts on 13.6.2012 for further proceedings.