

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

Crl. Rev. Petition. No. of 2013

(filed against the order dated 18.9.2012 in Crl M P No. 59 of 2012 in SC No. 1114 of 2011 on the file of the Court of the Special Judge (SPE/CBI), Thiruvananthapuram)

Revision Petitioner/ Petitioner

Jomon Puthenpurackal,
Puthenpurackal House,
Neendoor P O, Kottayam District.

Vs.

RESPONDENTS/RESPONDENTS:

1. Central Bureau of Investigation,
Plot No.5-B, 6th floor, CGO Complex,
Lodhi Road, New Delhi – 110 003,
Represented by its Director.
2. Sri. A P Singh IPS,
Former Director of CBI, Central Bureau of Investigation,
Plot No.5-B, 6th floor, CGO Complex,
Lodhi Road, New Delhi – 110 003.
3. Sri. V K Reghu Kumar,
Superintendent of Police, CBI
Thiruvananthapuram Branch, Nanthancode,
Thiruvananthapuram – 695 003.
4. Sri. Nandakumar Nair,
Additional Superintendent of Police, CBI
(Chief Investigation Officer in Sister Abhaya Murder Case)
Thiruvananthapuram Branch, Nanthancode,
Thiruvananthapuram – 695 003.
5. State of Kerala, represented by the Public Prosecutor, High Court of Kerala,
Ernakulam, Kochi – 682 031

Address for service of the notice and other process on the Revision Petitioner is that of his counsel, M/s Thomas Abraham, Merciamma Mathew, K.S. Haridas, and V. Renjith Kumar Advocates, Soumya Nagar, Alinchuvadu, Edapally P.O, Kochi and that of the respondents are as shown as above.

MEMORANDUM OF CRIMINAL REVISION PETITION FILED UNDER SECTIONS 397, 401 AND 482 OF THE CODE OF CRIMINAL PROCEDURE

STATEMENT OF FACTS

Revision Petitioner approaches this Hon'ble Court deeply aggrieved by the patently erroneous order dated 18.9.2012 passed by the Learned Special Judge

(SPE/CBI) Thiruvananthapuram in CrI. M. P. No. 59/2012 in S.C. No. 1114/2011. Revision Petitioner herein filed the above Criminal Miscellaneous Petition under section 173(8) of the Code of Criminal Procedure seeking further investigation in the above Sessions case on the file of the Court of Special Judge (SPE/CBI) Thiruvananthapuram. The Revision Petitioner is witness No. 108 in the case. It is apparent that some serious lapses have occurred in the investigation by the Central Bureau of Investigation, the 1st respondent herein. The 3rd and 4th respondents were the officers who were in charge of the investigation in the above case. Revision Petitioner had categorically pointed out that the lapses in the investigation would certainly have deleterious effect on the entire case and only through a proper further investigation can the errors be rectified. The true copy of the said application dated 20.6.2012 filed before the CBI Court is produced herewith and marked as **ANNEXURE 1.**

2. Before filing Annexure 1 application, Revision Petitioner had approached the Director of Central Bureau of Investigation, the 2nd respondent herein and submitted a representation dated 08.02.2012 apprising the need for conducting further detailed investigation in the backdrop of revelation of facts revealing the complicity of more persons. The true copy of the said representation dated 08.02.2012 is produced herewith and marked as **ANNEXURE 2.**

3. Another application seeking the same relief of further investigation was filed by one Shri. Neyyattinkara Nagaraj, Advocate. The said application was numbered as CrI. M. P. No. 3/2012. Revision Petitioner had produced a number of documents as Annexures in support of his case for further investigation along with CrI. M. P. No. 59/2012, whereas along with CrI. M. P. No. 3/2012, the petitioner therein did not produce even a single document. The facts stated and grounds urged in both the petitions were different. The callous approach adopted by the petitioner in CrI. M. P. No. 3/2012 is apparent. As a matter of fact, CrI. M.P. No. 3/2012 has been filed by the Petitioner therein only to deflect the relief sought by the revision petitioner herein for further investigation on the basis of cogent and legally sound reasons.

4. CBI Court heard the matter and passed a common order dated 18.9.2012 in CrI. M.P. No. 59/2012 as well as CrI. M.P. No. 3/2012, rejecting the request for further investigation. The common order was passed by the Court below considering both the petitions as identical. As a matter of fact, the learned Special Judge (SPE/CBI), Thiruvananthapuram egregiously erred in having reached at the finding that “the grounds or facts stated in both petitions are more or less same”. Even a cursory glance through the two petitions would reveal that the said finding of the Court below is incorrect. Therefore the learned Special Judge (SPE/CBI), Thiruvananthapuram ought not have disposed of both the aforesaid petitions by the impugned common order. The Certified copy of the said common order dated 18.09.2012 is produced herewith and marked as **ANNEXURE 3.**

5. The case in question relates to the sensational incident in which a 21 year old nun named Abhaya was brutally murdered by another nun named Sister Sephy who was also an inmate of the same convent and two illegal intruders namely Fr. Thomas M. Kottoor and Fr. Jose Poothrukkayil. The shocking incident occurred during the early hours on 27.3.1992 at St. Pious Xth Convent, Kottayam where Sister Abhaya stayed and also studied in BCM College, Kottayam in second year Pre-Degree class. Her body was found in the morning on 27.3.1992 in the well situated near the kitchen of the convent.

6. Right from the inception, there was a heinous attempt on the part of interested persons to somehow hush up the incident and depict the death of Sister Abhaya as a suicide. The convent where the incident occurred belonged to Knanaya Catholic Arch Diocese of Kottayam. The Revision Petitioner herein also belongs to the same Christian denomination. Revision Petitioner, who was just 23 years old at that point in time, was an active social worker. He personally tried to bring the actual truth to light and as part of the same took initiative to form an Action Council. A group of persons, who had deep concern about the glaring illegalities in the investigation of the mysterious death of Sister Abhaya, joined together to form the Action Council. A meeting was convened for the same on 31.03.1992. Shri. P. C.Cherian Madukani, the then Municipal Chairman of Kottayam was elected as the President of the Action Council and the revision petitioner herein was elected as the Convener. The then Kottayam M.L.A., Late Shri. T. K. Ramakrishnan, the then Kottayam M.P. Shri. Ramesh Chennithala and several other important personalities were also elected as members of the Action Council. Representatives of almost all political parties and youth organizations and other social organizations also actively associated with the Action Council. Revision Petitioner has been fighting for justice relentlessly for the last more than 20 years.

7. Crime No. 187/1992 of Kottayam West Police Station was registered under section 174 of the Code of Criminal Procedure initially. The investigation was going at snail's pace. Because of the sensation involved, within 17 days, the investigation of the case was transferred from the local police to the Crime Branch and the case was renumbered as 142/Cr/92 of CBCID. The CBCID conducted investigation for about 9 ½ months and filed final report on 30.1.1993 before the Sub Divisional Magistrate's Court, Kottayam. The investigation was conducted by Sri. K. Samuel, the then Dy. Superintendent of Police CBCID Kottayam under the supervision of Sri. K T Michael, the then S P CBCID Kottayam. Dehors various glaring facts and circumstances sufficient for the CBCID to find that the death of Sister Abhaya was a cold blooded murder, the finding in the final report strangely was that the death of Sister Abhaya was a case of suicide by drowning.

8. In the meantime, the Action Council not satisfied with the investigation of the Crime Branch, represented before the Chief Minister, Government of Kerala, to get the case investigated by the Central Bureau of Investigation, as a result of which the investigation of the case was subsequently handed over to the CBI by the order of the Government of Kerala. The defacto complainant in the CBI FIR dated 29.3.1993 is one Sister Benicassia CMC Superior, General President, General Chapter, Congregation of the Mother of Carmel, Mount Carmel Generalate, Alwaye-6 (KERALA).

9. Sister Abhaya case Action Council submitted a memorandum signed by the President, the Convener (Revision petitioner) and several other important personalities and met the then Chief Minister of Kerala, Sri. K Karunakaran in person on 13.5.1992 and the request was considered and acted upon by the Chief Minister on 18.5.1992. But the representation of Sister Benicassia was seen by the Chief Minister only on 1.6.1992 (15 days later than the memorandum submitted under the leadership of the revision petitioner and others). The case RC8 (S) 93-SPE/KER dated 29.3.1993 was registered in the Cochin Branch of CBI, on the request of Government of Kerala.

10. The investigation in this case was entrusted with Sri. Varghese P Thomas, the then Dy. Superintendent of Police, CBI, who found on evidence within a very short period of 9 months of investigation that the death of Sister Abhaya was not suicide but homicide which fact was also recorded in the Case Diary by him. But the then S. P CBI Sri V Thyagarajan pressurized him to wind up investigation as one of suicide. The ultimate result of this was that the Dy. S P Sri. Varghese P Thomas had to resign his job with effect from 31.12.1993 by leaving behind a long service of about 9 ½ years because of the harassment and pressure exerted on him by the CBI S P Sri. V. Thyagarajan.

11. Though CBI found that the death of Sister Abhaya was homicide, to trace the truth behind the death, CBI maintained a lethargic approach. This approach of CBI is clearly demonstrated by the three refer reports filed before the Chief Judicial Magistrates Court, Ernakulam on 06.12.1996, 12.07.1999 and on 30.08.2005. But the Chief Judicial Magistrates Court, Ernakulam rightly rejected all the three reports and directed the investigation to continue. This direction of the Chief Judicial Magistrates Court, Ernakulam was not fruitless as revealed by the subsequent developments. However, against the three refer reports filed by CBI as stated supra for quite strange reasons, the defacto complainant in the CBI registered case, did not care to raise any objection despite the receipt of notice from CBI as well as the Court below after the filing of each report. In 2008, however, Sister Benicassia passed away and nobody else from the Church took any initiative in following up the matters related with the case. It was the revision petitioner who took initiative for filing all the subsequent petitions before various fora seeking justice in the matter.

12. After a prolonged investigation of 15 years, CBI arrested three persons, two priests together and a nun on 18.11.2008 and 19.11.2008 respectively. On 17.7.2009, the CBI filed the charge sheet under Section 173 (2) of the Code of Criminal Procedure for offences punishable under Sections 302, 201, 449 & 34 Indian Penal Code before the Chief Judicial Magistrate's Court, Ernakulam arraigning Fr. Thomas M Kottoor, S/o Sri K T Mathew, aged 63 years, Chancellor, Knanaya Catholic Arch Diocese of Kottayam, (Kottoor House, Kidangoor P. O, Kottayam District) (Accused No.1); Fr, Jose Poothrukkayil, aged 57 years, S/o Sri Kora, College Principal, Rajapuram Pious Xth College, Kasargode District (Poothrukkayil House, Velloor, Kottayam District) (Accused No.2); Sr. Sephy, aged 49 years, D/o Joseph, St. Joseph's Congregation, S H Mount, Kottayam (Kanjirathummoottil, Kurumulloor, Kottayam District) (Accused No.3) and V. V Augustine, S/o Varghese, Vazhakkadu House, Ithithanam P. O, Changanacherry, Kottayam (committed suicide on 25.11.2008) (Accused No.4).

13. However, the serious lapses in the investigation by the CBI are certain to weaken the factual and legal substratum of the case. Right from the beginning, there were concerted attempts from the part of interested persons to turn the investigation into a farce. The Crime Branch converted its final report into a compendium of strange, baseless and bizarre findings not supported by any cogent reasoning or convincing evidence.

14. Even the case properties were destroyed and the malafides behind the same is apparent. The case properties destroyed were collected at 2 stages. One set consisting of 5 items of personal clothing recovered from the body of the deceased Sister Abhaya during inquest and 3 items, one plastic bottle, one pair of lady's chappals and one white veil recovered from the place of occurrence, were collected and produced in the court of Sub Divisional Magistrate, Kottayam by V.V. Augustine, the then Additional Sub Inspector, Kottayam West Police Station on 27.03.1992. Another set of properties were collected during a search conducted in the room occupied by Sister Abhaya in the convent. The said search and recovery of articles was on 15.4.1992 by Shri. K. Samuel, the then Deputy Superintendent, CBCID, Kottayam. He recovered a personal diary of Sister Abhaya as well as other articles and produced the same before the SDM's Court Kottayam as early as on 6.7.1992.

15. The said officer filed the final report on 30.1.1993 stating that the death of Sister Abhaya was a case of suicide by drowning. The sequence of events thereafter reveals that steps for destroying the case properties were taken at amazing speed. The highly shocking aspect is that the properties were destroyed after the State Government decided to entrust the investigation with CBI. The case properties were ordered to be destroyed vide order dated 07.06.1993 of Shri. S.G.K. Kishore, the then SDM, Kottayam.

16. The Court below in the impugned order has made a feeble and legally untenable attempt to justify the destruction of the case properties stating the reason that CBI had not issued any notice/communication to the Sub Divisional Magistrate Kottayam regarding the entrustment of the investigation with them. Even assuming (without admitting) that the CBI did not inform the SDM Kottayam that they are entrusted with the investigation, the destruction of case properties which are invaluable evidence in the case cannot be justified at all as all the major dailies in Kerala published the said decision of the Government with much importance.

17. CBI took over the investigation and registered the case on 29.3.1993 and news items regarding the same were published with prominence in all news papers as stated above. The important decision taken by Government to entrust the investigation of a sensational case like Sister Abhaya case cannot miss the attention of an officer of the stature of SDM Kottayam and therefore the order issued by the said officer on 07.06.1993 i.e. after two months and four days after the CBI took over the investigation and registered FIR, to destroy the valuable evidence cannot be justified in the manner the court below has attempted to do in the impugned order.

18. On the basis of the finding recorded by Sri. Varghese P. Thomas, Dy SP. CBI in the Case Diary that the death of Sister Abhaya was homicide and not suicide, the CBI officials who conducted investigation later at three stages for filing three refer reports could not detract from the stand that Sister Abhaya had been killed. The true copy of one such refer report of the CBI dated 09/07/1999 in which the role played by Shri. K. T. Michael is discussed in detail depicting him as a person responsible for derailing investigation is produced herewith and marked as **ANNEXURE 4 (a)**.

19. As the investigation progressed, CBI officials openly accused the officers in Crime Branch as persons responsible for destroying valuable evidence including case properties. In the statement of reply submitted by the 4th respondent officer of the CBI before the Special Judge, CBI/SPE, Thiruvananthapuram, against the petition filed by Shri. K. T. Michael, it is stated clearly that Shri. K. T. Michael had even interacted with the 3rd accused and other sisters as early as on 26.03.1992/27.03.1992 when he had no official responsibility relating to the investigation of the case. It is also categorically stated by the 4th respondent that Shri. K. T. Michael failed to put the police into action and also that the inquest report of the dead body of Sister Abhaya was fabricated by Late Shri. V. V. Augustine, at the behest of Shri. K. T. Michael. These shocking revelations about the role played by Shri. K. T. Michael in thwarting the investigation of the case at the vital preliminary stage are made in the aforesaid reply statement, dated 04.09.2012. The true copy of the relevant reply filed by the CBI officials, dated 4.09.2012 evidencing this fact is produced herewith and marked as **ANNEXURE 4(b)**.

20. The Revision Petitioner herein in Crl.M.P.No.59/12 had stated that the CBI has not conducted any proper investigation regarding the role played by Shri. K.T.Michel, the then S.P, CBCID, Kottayam in the destruction of the case properties and the scuttling of investigation by the CBCID resulting in the filing of the sham and untenable final report as stated above. It is also stated that the CBI has not conducted any proper investigation regarding the involvement of Shri. S.G.K Kishore, the then SDM, Kottayam, Shri. K.N Muralidharan who was then working as LDC, in the office of SDM, Kottayam in the destruction of the case properties more than two months after the CBI took over the investigation. But in the impugned order, the Court below unfortunately did not consider these vital aspects with the importance the same deserve, which is a patent error.

21. Another important aspect raised in Crl. M. P. No. 59/12 was the need to conduct further investigation against Sri. V. Thyagarajan, former Superintendent of Police, CBI/Cochin for the offence under Section 217 of the Indian Penal Code committed by him. The said officer, a "public servant" who was mainly in charge of the investigation of Sister Abhaya case, "disobeying the direction of law with the intent to save", the 4 persons now arraigned as accused in the murder case, "from punishment"; had abused the powers vested in him and pressurized Sri. Varghese P. Thomas, the then Dy. Superintendent of Police, CBI to wind up investigation of the case as one of suicide. The Learned Sessions Judge, in the order impugned refused to consider this as a genuine aspect.

22. Another prayer of the Revision Petitioner herein before the Court below was to order further investigation by the CBI for the offence under Section 179 of the Indian Penal Code against Sister Sherly, roommate of Sister Abhaya and the kitchen servants Achamma and Thresiamma of the St.Pious Xth Convent, Kottayam and initiate prosecution against them under Section 195 of the Code of Criminal Procedure.

23. It is pertinent in the above respect to see that CBI had succeeded in obtaining favourable orders both from CJM's Court as well as this Hon'ble Court for conducting Narco-Analysis Test against Sister Sherly and the 2 kitchen servants namely Achamma and Thresiamma. But consequent to an order dated 30.10.2012 passed by the Hon'ble Apex Court in Crl. Appeal Nos. 1727 and 1728/12 filed by them, the Narco- Analysis Test could not be conducted. A similar order was obtained by CBI from the CJM's Court against Shri. Michael also. But he challenged the same before this Hon'ble Court and the said case appears to be pending.

24. The cardinal question is whether CBI can decide not to resort to other modes of investigation to prove the complicity of the aforesaid persons even if their attempt to conduct Narco-Analysis Test failed. If they have taken such a decision, the same sans justification as the investigation to find out the involvement/complicity of a suspect

cannot be decided to be closed solely on the reason that one method of investigation attempted to be done failed owing to a highly technical reason. The Revision Petitioner, in his petition, CrI. M. P. No. 59/12 had categorically pointed out that the entire conspectus of the case will be clear only when the investigation with respect to the role played by the aforesaid persons also is done. This crucial aspect is totally ignored by the Court below, but without stating any cogent, convincing and legally sustainable reason for reaching at such a conclusion.

25. Yet another serious error committed by the Court below is the approach adopted to the prayer of the Revision Petitioner to conduct further investigation with respect to the irregularities/corrections noticed in the Work Register maintained by the Chief Chemical Examiners Laboratory, Trivandrum under the State Government. The final chemical analysis report and the copies thereof being typewritten, the corrections and other manipulations done in the Work Register which forms the basis of the said report had never come to light before 12.04.2007 on which date a news report appeared in the New Indian Express daily revealing that there were manipulations in the test results pertaining to the examination of vaginal swab and vaginal smear of Late Sister Abhaya. The true copy of the relevant page of the aforementioned newspaper dated 12.04.2007 is produced herewith and marked as **ANNEXURE 5**.

26. It was alleged that the original entry in the Work Register was "Semen present" and the same was erased and corrected as "Semen not present" by re-writing or overwriting. Similarly, with respect to the presence of Spermatozoa, a correction was made to erase "Positive" and change it as "Negative". The true copy of the aforementioned final Chemical Analysis report dated 24.04.1992 is produced herewith and marked as **ANNEXURE 6**.

27. Pursuant to Annexure 5, Revision Petitioner herein filed CrI. M. P. No. 1889/07 seeking enquiry into the same. During the course of the enquiry, the Work Register was seized and produced before CJM's Court Trivandrum and it was sent to the Assistant Government Examiner of Questioned Documents, Hyderabad. The true copy of the relevant page of the Work Register is produced herewith and marked as **ANNEXURE 7**. Assistant Government Examiner of Questioned Documents, Hyderabad opined that unauthorized manipulations were made in 8 places, 6 of those by Smt. M. Chithra and 2 by Smt. R. Geetha in their own handwritings and in a different ink than that of the original entries. The true copy of the said report dated 16.05.2007 is produced herewith and marked as **ANNEXURE 8**

28. The Chief Judicial Magistrate, Thiruvananthapuram, had found that a prima facie case was made out against Smt. Chithra and Smt. Geetha, Assistant Chemical Examiner and Chief Chemical Examiner respectively, of Chief Chemical Examiner's Laboratory and the case was taken into file as CC 111/07. Smt. Chithra and Smt.

Geetha had admitted to have made corrections in the Work Register of the laboratory regarding the analysis of vaginal swab and vaginal smear of the deceased Sister Abhaya but with some queer explanations. The Chief Judicial Magistrate's Court, Thiruvananthapuram, held that the corrections made in the Work Register were made with malafides and framed charge against both of them under Sections 465, 466, 471 and Section 120B r/w 34 Indian Penal Code. The true copy of the said order dated 31.05.2011 in CC 111/07 of the Chief Judicial Magistrate's Court, Thiruvananthapuram is produced herewith and marked as **ANNEXURE 9**. The said case is pending before the Chief Judicial Magistrate's Court, Thiruvananthapuram.

29. The accused in the aforesaid case approached this Hon'ble Court in CrI. Rev. Pet. No. 1839/2011 and CrI. M. C. No. 2229/2011 simultaneously assailing the order. Dismissing the petitions by a common order dated 29.08.2011, this Hon'ble Court held, that "it is no part of duty of a public servant while discharging his official duties to enter into a criminal conspiracy or to indulge in criminal misconduct". This Hon'ble Court further stated that, "by no stretch of imagination, it can be stated, falsification and forgery of records, registers etc. and cheating or misappropriation even if it were done as a public servant could be treated as answerable only for dereliction of his official duty, but not to be proceeded with for such criminal acts". The true copy of the said order of this Hon'ble Court dated 29.08.2011 in CrI. Rev. Pet. No. 1839/2011 and CrI. M. C. No. 2229/2011 is produced herewith and marked as **ANNEXURE 10**. As stated supra, the Court below miserably failed in appreciating the facts stated above as well as the spirit of Annexure 10 order of this Hon'ble Court while rendering Annexure 3 order, holding that there is no need for further investigation regarding the grave errors committed by the above two officials regarding the role played by them in destroying/manipulating the evidence against the accused in Sister Abhaya murder case.

30. The Learned Special Judge (SPE/CBI), Thiruvananthapuram in Annexure 3 reasoned that a further investigation will only cause a delay to the trial as the original incident had occurred 20 years back. The Court below erroneously reached at the conclusion that none of the aforesaid developments including tainting of the Work Register mentioned above warranted a detailed further investigation by the CBI. Out of the 7 persons involved in destructing/manipulating evidence, an offence punishable under Section 201 of IPC, only Shri. V. V. Augustine was implicated as Accused No.4 who is now no more also. The remaining 6 persons namely, i) Shri. S. G. K. Kishore, ii) Shri. K. T. Michael, iii) Shri. K. Samuel, iv) Smt. R. Geetha, v) Smt. M. Chithra and Shri. K. N. Muralidharan are spared ignoring the clinching evidence against them. Atleast the Learned Sessions Judge ought to have exhibited judicial discipline to give due importance to the findings/observations of this Hon'ble Court depicted in Annexure 10 order. Thus the Court below ought not to have held in the impugned order that, "it is not

necessary to conduct further investigation” and that the “circumstances do not warrant further investigation in the case”.

31. The Revision Petitioner therefore, respectfully prays that with a view to secure the ends of justice and to prevent a manifest injustice and prejudice occurring to the entire investigation of a case, which the revision petitioner has been spearheading for the last twenty years, it is highly essential that further investigation is done as prayed for in Annexure 1. Hence, Annexure 3 of the Court below has to be set aside and further investigation has to be done. In view of the unprecedented developments in the case as well as the glaring infraction of justice at the instance of echelons in power, it is essential that such further investigation is monitored by this Hon'ble Court. Under such circumstances Revision Petitioner is constrained to file this Criminal Revision Petition seeking to set aside the order dated 18.9.2012 in Crl M P No. 59 of 2012 in SC No. 1114 of 2011 on the file of the Court of the Special Judge (SPE/CBI), Thiruvananthapuram on the following among other:

GROUND

A. The impugned order is a common order passed in CMP No. 3/2012 filed by Adv. Neyyatinkara Nagarajan and CMP No.59/2012 filed by the revision petitioner herein. The facts stated and the grounds urged in both the aforesaid petitions are not identical. Therefore the learned Special Judge (SPE/CBI), Thiruvananthapuram ought not to have disposed of both the aforesaid petitions by a common order.

B. The learned Special Judge (SPE/CBI), Thiruvananthapuram egregiously erred in having reached at the finding that “the grounds or facts stated in both petitions are more or less same. The Revision Petitioner herein had prayed before the Court below that further investigation has to be conducted against Sri. V. Thyagarajan, former Superintendent of Police, CBI/Cochin for the offence under Section 217 of the Indian Penal Code as the said officer a “public servant” who was mainly in charge of the investigation of Sister Abhaya case “ disobeying the direction of law with the intent to save” the 4 persons now arraigned as accused in the murder case as well as others involved “ from punishment”; had abused the powers vested in him and pressurized Sri.Varghese P. Thomas the then Dy. Superintendent of Police, CBI to wind up investigation of the case as one of suicide. Therefore the impugned order cannot legally sustain.

C. Another prayer of the Revision Petitioner herein before the Court below was to order further investigation by the CBI for the offence under Section 179 of the Indian Penal Code against Sister Sherly, roommate of Sister Abhaya and kitchen servants Achamma and Thresiamma of the Pious Xth Convent, Kottayam and initiate prosecution against them under Section 195 of the Code of Criminal Procedure. But there are no

such prayers in CMP No. 3/2012 filed by Adv. Neyyattinkara Nagarajan and the Revision Petitioner sincerely believes that the malafide motive of the Revision Petitioner in CMP No. 3/2012 is only to deflect the relief sought by the Revision Petitioner herein in CMP No.59/2012 for further investigation on the basis of cogent and legally sound reasons. The Court below failed to notice this important aspect and therefore the order is liable to be set aside by this Hon'ble Court.

D. The destruction of case properties was not considered by the Court below with the seriousness the same deserves. The case properties were collected at 2 stages. One set consisting of 5 items of personal clothing recovered from the body of the deceased Sister Abhaya during inquest and 3 items, one plastic bottle, one pair of lady's chappals and one white veil recovered from the place of occurrence, were collected and produced in the court of Sub Divisional Magistrate, Kottayam by V.V. Augustine, the then Additional Sub Inspector, Kottayam West Police Station on 27.03.1992. Another set of properties were collected during a search conducted in the room occupied by Sister Abhaya in the convent. The said search and recovery of articles was on 15.4.1992 by Shri. K. Samuel, the then Deputy Superintendent, CBCID, Kottayam. He recovered a personal diary of Sister Abhaya as well as other articles and produced the same before the SDM's Court Kottayam as early as on 6.7.1992. The Learned Judge of the Court below failed to appreciate these crucial aspects though the Revision Petitioner herein had categorically stated the same in his petition for further enquiry.

E. The case properties were destroyed after the State Government decided to entrust the investigation with CBI. CBI took over the investigation and registered the case on 29.3.1993 and news items regarding the same were published with prominence in all news papers as stated above. The important decision taken by Government to entrust the investigation of a sensational case like Sister Abhaya case cannot miss the attention of an officer of the stature of SDM Kottayam and therefore the order issued by the said officer on 07.06.1993 i.e. after two months and four days after the CBI took over the investigation and registered FIR, to destroy the valuable evidence cannot be justified in the manner the court below has attempted to do in the impugned order. The Court below miserably failed to notice this important aspect.

F. The Court below in the impugned order has made a feeble and legally untenable attempt to justify the destruction of the case properties stating the reason that CBI had not issued any notice/communication to the Sub Divisional Magistrate Kottayam regarding the entrustment of the investigation with them. Even assuming (without admitting) that the CBI did not inform the SDM Kottayam that they are entrusted with the investigation, the destruction of case properties which are invaluable evidence in the

case cannot be justified at all as all the major dailies in Kerala published the said decision of the Government with much importance.

G. Another important aspect raised in Crl. M. P. No. 59/12 was the need to conduct further investigation against Sri. V. Thyagarajan, former Superintendent of Police, CBI/Cochin for the offence under Section 217 of the Indian Penal Code committed by him. The said officer, a “public servant” who was mainly in charge of the investigation of Sister Abhaya case, “disobeying the direction of law with the intent to save”, the 4 persons now arraigned as accused in the murder case, “from punishment”; had abused the powers vested in him and pressurized Sri. Varghese P. Thomas, the then Dy. Superintendent of Police, CBI to wind up investigation of the case as one of suicide. The Learned Sessions Judge, in the order impugned refused to consider this as a genuine aspect.

H. Whether CBI can decide not to resort to other modes of investigation to prove the complicity of the aforesaid persons even if their attempt to conduct Narco-Analysis Test failed. If they have taken such a decision, the same sans justification as the investigation to find out the involvement/complicity of a suspect cannot be decided to be closed solely on the reason that one method of investigation attempted to be done failed owing to a highly technical reason. The revision petitioner, in his petition, Crl. M. P. No. 59/12 had categorically pointed out that the entire conspectus of the case will be clear only when the investigation with respect to the role played by the aforesaid persons also is done. This crucial aspect is totally ignored by the Court below, but without stating any cogent, convincing and legally sustainable reason for reaching at such a conclusion.

I. The original entry in the Work Register was “Semen present” and the same was erased and corrected as “Semen not present” by re-writing or overwriting. Similarly, with respect to the presence of Spermatozoa, a correction was made to erase “Positive” and change it as “Negative”. Pursuant to Annexure 5, revision petitioner herein filed Crl. M. P. No. 1889/07 seeking enquiry into the same. During the course of the enquiry, the Work Register was seized and produced before CJM’s Court Trivandrum and it was sent to the Assistant Government Examiner of Questioned Documents, Hyderabad. Assistant Government Examiner of Questioned Documents, Hyderabad opined that unauthorized manipulations were made in 8 places, 6 of those by Smt. M. Chithra and 2 by Smt. R. Geetha in their own handwritings and in a different ink than that of the original entries. Manipulation done in the Work Register is directly related with the murder of Sister Abhaya and therefore when there is prima facie evidence for manipulation of Sister Abhaya’s Forensic Laboratory reports, the same cannot be treated as matters unconnected with the main case. The Learned Special Judge

SPE/CBI, Thiruvananthapuram lost sight of this cardinal point while passing the impugned order.

J. The Chief Judicial Magistrate, Thiruvananthapuram, had found that a prima facie case was made out against Smt. Chithra and Smt. Geetha, Assistant Chemical Examiner and Chief Chemical Examiner respectively, of Chief Chemical Examiner's Laboratory and the case was taken into file as CC 111/07. Smt. Chithra and Smt. Geetha had admitted to have made corrections in the Work Register of the laboratory regarding the analysis of vaginal swab and vaginal smear of the deceased Sister Abhaya but with some queer explanations. The Chief Judicial Magistrate's Court, Thiruvananthapuram, held that the corrections made in the Work Register were made with malafides and framed charge against both of them under Sections 465, 466, 471 and Section 120B r/w 34 Indian Penal Code. The said case is pending before the Chief Judicial Magistrate's Court, Thiruvananthapuram. The Learned Special Judge SPE/CBI, Thiruvananthapuram unfortunately did not consider the pendency of the said case as an important development in the Sister Abhaya murder case and to order further investigation into the various aspects related with manipulation of evidence as further findings can bring in sea changes in the present prosecution case.

K. The accused in the aforesaid case approached this Hon'ble Court in Crl. Rev. Pet. No. 1839/2011 and Crl. M. C. No. 2229/2011 simultaneously assailing the order. Dismissing the petitions by a common order dated 29.08.2011, this Hon'ble Court held, that "it is no part of duty of a public servant while discharging his official duties to enter into a criminal conspiracy or to indulge in criminal misconduct". This Hon'ble Court further stated that, "by no stretch of imagination, it can be stated, falsification and forgery of records, registers etc. and cheating or misappropriation even if it were done as a public servant could be treated as answerable only for dereliction of his official duty, but not to be proceeded with for such criminal acts". As stated supra, the Court below miserably failed in appreciating the facts stated above as well as the spirit of Annexure 10 order of this Hon'ble Court while rendering Annexure 3 order, holding that there is no need for further investigation regarding the grave errors committed by the above two officials regarding the role played by them in destroying/manipulating the evidence against the accused in Sister Abhaya murder case.

L. The Learned Special Judge (SPE/CBI), Thiruvananthapuram in Annexure 3 order stated that a further investigation will only cause a delay to the trial as the original incident had occurred 20 years back. The Court below erroneously reached at the conclusion that none of the aforesaid developments including tainting of the Work Register mentioned above warranted a detailed further investigation by the CBI. Out of the 7 persons involved in destructing/manipulating evidence, an offence punishable under Section 201 of IPC, only Shri. V. V. Augustine was implicated as Accused No.4 who is now no more also. The remaining 6 persons namely, i) Shri. S. G. K. Kishore, ii)

Shri. K. T. Michael, iii) Shri. K. Samuel, iv) Smt. R. Geetha, v) Smt. M. Chithra and Shri. K. N. Muralidharan are spared ignoring the clinching evidence against them. Atleast the Learned Sessions Judge ought to have exhibited judicial discipline to give due importance to the findings/observations of this Hon'ble Court depicted in Annexure 10 order. Thus the Court below ought not to have held in the impugned order that, "it is not necessary to conduct further investigation" and that the "circumstances do not warrant further investigation in the case".

M. The observation of the learned Court below that there is no evidence against Sri K T Michael according to the CBI, is contrary to facts and far beyond truth, as per the Annexures 4(a) and 4(b), objection/report filed CBI officials. It is stated that Sri K T Michael, former Crime Branch Superintendent of Police was the main perpetrator of destroying valuable evidence in Sister Abhaya Case. It is stated in the reports filed by CBI that as a result of the visit of A3, Sister Sephy to his residence seeking his help and the pressure exerted on him by several others, Sri Michael visited the convent by 10 AM on 27.3.1992 and examined the scene of occurrence and helped the concerned to destroy the evidence available there and assured his help as and when the case was transferred to the Crime Branch headed by him. The Court below unfortunately did not pay heed to any of these crucial revelations.

N. In the charge sheet filed by the CBI on 17.7.2009, the Chief Judicial Magistrate, Ernakulam, it is mentioned at Para 15, page 4 that Sri K T Michael, formerly Superintendent of Police Crime Branch, Kottayam, Sister Sherly, room-mate of Sister Abhaya, Achamma and Thresiamma, both kitchen servants of St. Pious X Convent, Kottayam have to be subjected to Narco Analysis test and the report there to would be submitted to the Court. Now that in view of the judgment of the Hon'ble Supreme Court of India dated 30-10-2012 in the Appeal filed by the three women, Narco Analysis test on Sri K T Michael, Sister Sherly, Achamma and Thresiamma can be conducted only after obtaining the consent of all the above four persons. The only option left before the CBI for eliciting entire truth from the above four persons to complete the chain of evidence in Abhaya case, is to conduct further extensive investigation. The Learned Special Judge SPE/CBI, Thiruvananthapuram did not apply his mind to this important aspect.

O. The observation made by the Lower court that during trial, if any fresh evidence emerges, action could be taken, is impossible and impractical in as much as the prosecuting agency, the CBI is objecting to the further investigation. In the facts of the case at hand CBI has taken this view to shield the accused persons. The Revision Petitioner herein is certain not to get an opportunity to raise this point at the stage of trial.

P. The CBI, who had filed Final Reports thrice before the Chief Judicial Magistrate, Ernakulam, praying for closing this case due to external pressure, should not be taken for granted as reflected in the impugned order of the lower court. The fact is that the CBI arrested the three accused in this case, four years back, only because of the intervention of the Chief Judicial Magistrate's Court, Thiruvananthapuram.

Q. That the present Revision Petitioner in CMP 59/12 page 18 had prayed for further investigation against Sri V Thyagarajan former Superintendent of Police, CBI Cochin under Section 217 of the Indian Penal Code, for pressurizing Sri Varghese P Thomas, former Deputy S P, CBI Cochin, who investigated Sister Abhaya case and collected valuable evidence to the effect that Sister Abhaya was murdered, to close the case as one of suicide. The Revision Petitioner had also prayed that against Sister Sherly room-mate of Sister Abhaya and Kitchen servants Achamma and Thresiamma who are natural witnesses further investigation need be conducted for eliciting material evidence regarding the murder of Sister Abhaya. There is no mention about the above prayers of the Revision Petitioner anywhere in the impugned order of the lower court.

For these and other reasons to be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to allow the above Criminal Revision Petition and set aside Annexure 3 order passed by Court of Special Judge SPE/CBI, Thiruvananthapuram finding the same legally and factually untenable and allow the Revision Petitioner's Annexure 1 application for further investigation filed under Section 173(8) of the Code of Criminal Procedure in the interest of Justice.

Dated this the 8th day of January 2013.

Counsel for the Revision Petitioner