IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 205 of 2014

FOR APPROVAL AND SIGNATURE:
HONOURABLE MS JUSTICE SONIA GOKANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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ZAKIA AHSAN JAFRI....Applicant(s)

Versus

SPECIAL INVESTIGATION TEAM - SIT & 1....Respondent(s)

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Appearance:
MR MIHIR DESAI, SR. COUNSEL with MR MM TIRMIZI, ADVOCATE for the Applicant(s) No. 1
MR C.S. VAIDYANATHAN, MR HARISH VAIDYANATHAN SHANKAR, MR RC KODEKAR, SPL. P.P. For Respondent 1
MS SHRUTI PATHAK, ADDL.PUBLIC PROSECUTOR for Respondent No.2

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CORAM: **HONOURABLE MS JUSTICE SONIA GOKANI**

Date : 05/10/2017

CAV JUDGMENT

1.0 This revision application is preferred, under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, by the applicant revisionist, Ms. Zakia Ahsan Jafri, aggrieved by the judgment and order passed by the

learned Metropolitan Magistrate, Dated 26.12.2013, in relation to the directions issued by the Hon'ble Apex Court in Special Leave Petition (Criminal) No. 1088 of 2008 and clarificatory order rendered in SLP 8989 of 2013 dated 07.02.2013 in connection with the complaint dated 08.06.2006 made by the present applicant in pursuance of the directions issued by the Apex Court on 12.09.2011 and 07.02.2013.

FACTS OF THE CASE:

2.0 Factual matrix leading to the present revision application shall be needed to be capsulized at this stage.

In the aftermath of the Godhra incident of 27.02.2002(where due to burning of the train, 59 persons were killed), the violence racked 14 districts of the State of Gujarat, leading to loss of thousands of lives and also registration of various complaints in different parts of the State. National Human Rights Commission, New Delhi (for short, 'NHRC'), gave its interim report between 01.03.2002 to July, 2002 and Shri K.P.S. Gill, in the month of May, 2002, was sent by the Central Government to quell the disturbance, which continued for a long time.

2.1 Citizens for Justice and Peace preferred a petition before the Apex Court, seeking the transfer of investigation of major incidents to the Central Bureau of Investigation ('CBI' in brief), on the basis of the report of the NHRC. Report of the All Party Parliamentary Committee and of the Central Election Commission on the strength of the report of the State Intelligence Bureau and that of the Addl. Director General of Police came in the month of August, 2002. Thereafter, the report of Citizens' Tribunal, Crimes Against Humanity, 2002, was given by the Committee headed by Hon'ble Mr. Justice V.R. Krishna Iyer, Hon'ble Mr. Justice P.B. Sawant (Both former Judges of the Supreme Court of India), Mr. Justice Hosbet Suresh (Former Judge High Court of Bombay).

In the meantime, on account of acquittal of the accused in 'Best Bakery Case' by the Sessions Court, Vadodara, on 27.06.2003, NHRC filed a petition for retrial and transfer of the said case from Gujarat and some of the witnesses of the said case also filed SLP before the Apex Court.

2.2 In the month of November, 2003, a notice came to be issued by the Apex Court in T.P. (Criminal) 194-2002 of 2003, and thereby, the

Apex Court stayed 8 major trials, i.e. (1) Godhra Train Carnage Case, (2) Sardarpura, (3) Gulberg Society Case, Meghaninagar, (4) Naroda Patiya case, (5) Dipda Darwaja Case, (6) Oad Massacre Matter, Anand, (7) British Nationals' killing case and (8) Naroda Village case. The investigation, in the case of Bilkis Banu, was transferred to CBI and the Sessions Case was also transferred to Mumbai, which was numbered as Sessions Case No. 634 of 2004 [Old Sessions Case No. 634/2004). The Apex Court also, in the month of April, 2004, transferred the trial of 'Best Bakery Case' to Mumbai, quashing and setting aside the impugned judgment and order of this Court in that matter.

2.3 In the aforesaid background, the original complainant filed a complaint dated 08.06.2006 before the Addl. Director General of Police, alleging against 62 persons, politicians, bureaucrats and police officers, who are arraigned as accused. They are alleged to have aided and abated the co-accused involved in mass carnage, which shook the entire country between February to May, 2002. It was alleged that the deliberate and intentional failure on the part of the State Government to protect the lives and properties of the innocent citizens of the country through a well executed conspiracy

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amongst the accused named in the said complaint, resulted in the breakdown of the constitutional governance in the State. A categorical allegation is levelled that when the mass carnage was orchestrated by the most powerful, using state machinery and compromising and thwarting law and order, there had also been attempts to pressurize and intimidate victims, survivors and those, who were marginalized.

2.4 In nutshell, it is alleged that law, order and constitutional governance has been successfully subverted for a period of 4 years in the State of Gujarat. Against each person arraigned as accused, the role alleged is that they were engaged in subversion of law and order and deliberate attempt to breakdown of legal machinery. A request, therefore, was made to register and the FIR and to investigate the same, in accordance with law. This complaint is running into 68 pages, giving the complete details of what had transpired in aftermath of Godhra incident and various other incidents that had followed.

While the complainant urged that she has substantiated her version with certain statements of some of the officers and also has sought to rely upon the documentary evidences to bring home

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the point that many of the officers have grossly shown dereliction in discharging their duties and other Sr. Executives also have connived, raising a serious question mark on the *bona fides* of the government. She has named about 13 persons, as witnesses, in support of her complaint. She has urged to lodge an FIR for the offence punishable under Section 302 read with Section 120(B), Section 193 read with Section 114 and Sections 185, 153A, 186, 187 of the Indian Penal Code and under Section 6 of the Commission of Inquiry Act and also under various provisions of the Gujarat Police Act and the Human Rights Act, 1991.

PETITION BEFORE THE HIGH COURT:

2.5 On her failure to get such an FIR registered, the applicant approached this Court by preferring Special Criminal Application No. 421 of 2007 under Article 226 of the Constitution read with Section 482 of the Code, seeking to register the FIR and also for a further direction to get the same investigated by an independent agency, i.e. CBI. This Court after detailed hearing of the matter, dismissed the same.

2.6 The High Court noticed the pendency of various cases, like Naroda Patiya Case, Gulberg

Society, Sardarpura Massacre etc. On the ground that the petitioner never filed any private complaint for the reliefs sought for in the petition filed before this Court and instead, straightaway preferred a petition under Article 226 of the Constitution, seeking the relief of issuance of a writ of mandamus, it has chosen not to entertain. This Court, thus, did not deem it fit to grant relief by directing the respondent to consider the complaint as FIR. The Court also stated that petitioner No.2 in that petition (NGO) would have no *locus* to file such a petition. The relevant observations made by this Court reads thus:

> *30. At the outset, it is required to be noted that present petition is filed by the petitioners under Article 226 of the Constitution of India for an appropriate Writ, direction and/or order directing respondent no.2 D.G.P., State of Gujarat to register the complaint submitted by petitioner no.1 dated 08.06.2006 as FIR. It is also further prayed for an appropriate Writ, direction directing that said complaint after registration as FIR be investigated by independent agency i.e. C.B.I. It is also required to be noted that in the said complaint petitioner no.1 has basically referred to incident / cases which are as under :*
>
> *1.Naroda Patia case registered as*

Naroda Police Station C.R.No.I 100/2002.

2.Gulberg Society registered as Meghaninagar Police Station C.R.No. I- 67/2002.(in which petition no.1 is victim and/or affected party as she has lost her husband).

3.Sardarpura village of Mehsana District which is registered as Visnagar Police Station I-C.R. No. 46 of 2002.

4.Best Bakery case.

5.Case of Kidiyad of Sabarkantha District

6.Oad Village, Anand District case by which 2 FIR C.R.No.23/2002 and C.R.No.27/2002 have been lodged."

At the outset, it is also required to be noted that it is not disputed that petitioner no.2 has never filed complaint for which aforesaid reliefs are sought. This petition is preferred under Article 226 of the Constitution of India in which petitioners have sought reliefs of Writ of Mandamus by directing respondent no.2 to register the complaint given by petitioner no.1 as FIR. Therefore, when petitioner no.2 has never filed any complaint before the concerned respondents and/or Police Officer, there is no question of granting relief in favour of petitioner no.2 directing respondent no.2 to register the complaint as FIR as there is no

complaint by petitioner no.2 which is required to be registered as FIR. Under the circumstances, no Writ can be issued in favour of petitioner no.2. Thus, so far as petitioner no.2 is concerned, present proceedings at the instance of petitioner no.2 for the aforesaid reliefs is not required to be entertained. So far as present proceedings are concerned, it can be said that petitioner no.2 has no locus to file present petition and ask for reliefs which is sought in the present proceedings. There is another reason also why petitioner no.2's presence is not required in the present proceedings. Petitioner no.1 has given complaint dated 08.06.2006 to respondent no.2 which is not registered as FIR by respondent no.2 and therefore, present petition is filed by petitioner no.1 and therefore prayer is sought for issuance of Writ, direction directing respondent no.2 to register the complaint as FIR for which petitioner no.1 has approached this Court by way of present petition. Therefore, when petitioner no.1 as aggrieved party whose complaint is not registered as FIR, has approached this Court and is able to come to this Court by way of present proceedings, petitioner no.2's presence in the present proceedings is not required. Petitioner no.2 might be N.G.O. Struggling for legal rights of the victims survivors and might be party to Justice Nanavati and Shah Commission of Inquiry and might be associated with the proceedings before the Justice Nanavati and Shah

Commission of Inquiry; the activities of such NGO is appreciable but the question is when affected party has been able to come to this Court by way of present proceedings and there are no averments in the present proceedings that petitioner no.1 is unable to come to this Court for redressal of her grievances, in that case how far presence of petitioner no.2 is necessary. Only in a case where affected party and/or aggrieved party is not in a position to approach the Court for redressal of his or her grievance, then and then only proceedings at the instance of such N.G.O. Is required to be entertained and considered. Under the circumstances, and more particularly as stated above, Writ cannot be issued in favour of petitioner no.2 directing respondent no.2 to register the complaint as FIR, which is not given by petitioner no.2, and therefore, present petition at the instance of petitioner no.2 is not required to be entertained for the relief sought in the present proceedings by holding that petitioner no.2 is not entitled for any relief as sought in the present proceedings. However, it is made clear that aforesaid observations are with respect to the present petition and this Court has not expressed any opinion with regard to credibility of petitioner no.2 NGO and or their activities. Aforesaid observations are required to be confined to the prayer sought in the present petition under Article 226 of the Constitution of India directing respondent no.2. To

register the complaint given by petitioner no.1 as FIR."

2.7 This Court also relied on the various decisions of the Apex Court to hold that when the complaint is given and no action is taken on the said complaint and an FIR is not registered, the remedy available to the aggrieved party is to take recourse under Section 190 and 200 of the Code and therefore, a petition is not maintainable. Moreover, in connection with all these incidents, which had taken placed in the year 2002, since, separate FIRs have already been registered and the charge-sheets have also been filed and the matters were pending for trial, the Court chose not to entertain the said petition. The Court, further, held and observed as under:

*"41. Now, so far as reliance placed by the learned Advocate General upon the decision of the Division Bench of this Court in case of **Shamji Ladha V/s. State of Gujarat** reported in **1998 (1) GLH 992** by submitting that this Court has taken the view that the this Court has no power to direct the CBI to hold an enquiry or investigation invoking the powers under Article 226 of the Constitution of India is concerned, it is required to be noted that as observed by the Division Bench of this Court in that case the learned counsel representing the petitioners did not advance any arguments that*

this Court has got power to direct the CBI to hold any enquiry invoking the powers under Article 226 of the Constitution of India. Now, so far as the powers of this Court under Article 226 of the Constitution of India are concerned, are very wide and in an appropriate case the High Court may direct the CBI to hold any enquiry into the cognizable offence invoking the powers under Article 226 of the Constitution of India, however, still the question whether the same can be done without the consent of the State Government still requires to be considered which is referred to the Larger Bench of the Hon'ble Supreme Court. Even otherwise, in the facts and circumstances and looking to the averments and allegations in the complaint dated 8.6.2006 which are general in nature and which are solely based upon some affidavits / statements of third parties in the proceedings before the Inquiry Commission and without there being any further concrete material evidence, the petitioner is not entitled to the relief of directing the said complaint to be investigated by the CBI.

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42. Now, so far as the question whether second FIR is maintainable or not, it is the contention of the petitioner No.1 that the averments and allegations in the complaint dated 8.6.2006 are not there in the FIRs already filed and therefore the said aspect is kept open and it will be for the learned Magistrate to consider the same and for which this Court has not expressed any opinion

and this Court has relegated the petitioner No.1 to invoke the remedy under section 190 r.w. section 200 of the Criminal Procedure Code and as the aforesaid question is kept open, this Court has not dealt with all the authorities cited on behalf of the respective parties as ultimately it may affect either parties.

43. For the reasons stated above, present petition is dismissed. As the petitioners had not adopted the procedure of to file the complaint under section 190 r.w. section 200 of the Criminal Procedure Code, the petitioner No.1 is relegated to file appropriate private complaint to invoke the provisions of section 190 r.w. section 200 of the Criminal Procedure Code by filing the private complaint and the same shall be considered in accordance with law and on merits after following due procedure under Criminal Procedure Code. It is, however, made clear that this Court has not expressed any opinion on the merits of the case in favour of either parties. Rule discharged."

PETITION BEFORE HON'BLE THE APEX COURT, SLP (Cri.) No. 1088 OF 2008 AND OTHERS:

2.8 Aggrieved by the judgment and order of this Court dated 02.11.2007, the petitioner approached the Apex Court by preferring Special Leave to Appeal (Criminal) No. 1088 of 2008. The Apex Court found that the order of the High Court

did not render the petitioner remedy-less. However, considering the fact that there were various important aspects requiring consideration, it had issued notice to Respondent Nos. 1 and 2 vide its order dated 03.03.2008, which reads as under:

> *" The High Court's order does not render the petitioners remedyless. But, various aspects arise for consideration.*
>
> *In a given case, a person who has knowledge of the commission of a crime may not be examined by the police. The question is what is the remedy available to such person? We, therefore, issue notice only to respondent Nos. 1 and 2 and the Union of India. Though, in the proceedings, the Central Bureau of Investigation is respondent No.3, there is presently no need for issuing any notice to the CBI, as we would like to have the views of the Union of India also.*
>
> *Mr. Prashant Bhushan, learned counsel has agreed to assist the Court as an Amicus-Curiae. We would also request other learned senior members of the Bar to assist the Court, as the question is of vital importance in the administration of criminal justice."*

2.9 It would be worth to make a reference, at this stage, to the Writ-petition No. 109/2003 preferred by the NHRC, as mentioned herein

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above, on the ground that communal harmony is the hallmark of democracy, such a petition of the NHRC was entertained by the Apex Court and the Apex Court created a Special Investigation Team (for short, 'SIT'), which consisted (1) Shri R.K. Raghavan, Retd. Director of CBI,(2) Shri C.B. Satpathy, Retd. D.G., Director, Uttar Pradesh, Police College, Moradabad, (3)Ms. Geeta Johri, (4) Shri Shivanand Jha, (5) Shri Ashish Bhatia.

2.10 A notification to that effect was issued by the Apex Court and the SIT was to be headed by the Chairman, Shri R.K. Raghvan, who was the Chairman of the Committee and Ms. Geeta Johri was the Convener. The State was to provide necessary infrastructure and resources for effective working of the SIT. The SIT was to furnish the report to the Apex Court, on completion of the investigation or inquiry, for which the period of three months had been granted. After such a report was submitted, further action was to be directed by the Apex Court. This arrangement was permitted in all the cases mentioned, herein above.

2.11 Later on, there had been certain changes in the constitution of SIT. Then, the judgment was rendered by the Apex Court which is reproduced as '***NATIONAL HUMAN RIGHTS COMMISSION***

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VS. STATE OF GUJARAT' in (2009) 6 SCC 767. Some of the findings and observations of the Apex Court would be beneficial to be reproduced at this stage:

> *"2. The State Government issued a Notification dated 1.4.2008 constituting the SIT. On 11.2.2009 the SIT has submitted its consolidated report. It has indicated therein that since its constitution the SIT has made considerable progress in respect of each of the nine cases and the current status is as follows:*
>
> *1: Godhra Railway Police Station Cr. No 09/02*
>
> *Applications received 63*
> *Witnesses examined 183*
> *(125 old & 61 new)*
> *Number arrested –*
> *Charge sheets filed -*
> *stage of investigation Completed*
>
> *2: Khambholaj Police Station Cr. No 23/02*
>
> *Applications received 17*
> *Witnesses examined 85*
> *(30 old & 55 new)*
> *Number arrested Court is requested to issue process*

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against 16 accused

Charge sheets filed	*Amended separate charge sheet-1*
Stage of investigation	*Completed*

3: Khambholaj Police Station Cr. No 27/02

Applications received	*17*
Witnesses examined	*39*
Number arrested	*-*
Charge sheets filed	*-*
Stage of investigation	*Completed*

4: Naroda Police Station Cr. No 98/02

Applications received	*06*
Witnesses examined	*450*
Number arrested	*20*
Charge-sheets filed	*02*
Stage of investigation	*Nearly complete*

5: Naroda Police Station Cr. No 100/02

Applications received	*88*
Witnesses examined	*341*
Number arrested	*17*

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Charge sheets filed	01
Stage of investigation	Nearly complete

6. Meghaninagar Police Station Cr. No 67/02

Applications received	59
Witnesses examined	227
Number arrested	18
Charge sheets filed	03
Stage of investigation	Nearly complete

7: Visnagar Police Station Cr. No 60/02

Applications received	05
Witnesses examined	42
Number arrested	03
Charge sheets filed	01
Stage of investigation	Nearly complete

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8. Vijapur Police Station Cr.No.46/02

Applications received	13
Witnesses examined	39
Number arrested	21
Chargesheets filed	02
Stage of investigation	Completed

9. Prantij Police Station Cr. No.100/02

Applications received	*10*
Witnesses examined (14 old and 10 new)	*24*
Number arrested	*-*
Charge sheets filed	*-*
Stage of investigation	*Completed*

3. In separate sealed covers the IO's report in each case accompanied by the Supervising IGP and the Chairman's comments were submitted. The other members of the team are Shri C.B. Satpathy, Smt. Geetha Johri, Shri Shivanand Jha and Shri Ashish Bhatia. The last three are officers of the Indian Police Service from the Gujarat cadre. Pursuant to the directions given by this Court copies of the report were supplied to learned Amicus Curiae and learned counsel for the State of Gujarat. Suggestions have been given by learned Amicus Curiae, learned counsel for the State and some of the parties in the proceedings.

4. Several important aspects need to be noted in these cases. Firstly, due to the efforts of SIT, persons who were not earlier arrayed as accused have now been arrayed as accused. From the details indicated

above it appears that in most of the cases a large number of persons have been additionally made accused. Besides this, a large number of witnesses were also examined in each case. This goes to show the apparent thoroughness with which the SIT has worked. Therefore, the SIT shall continue to function until the completion of trial in all the cases and if any further inquiry/investigation is to be done the same can be done as provided in law, more particularly, under Section 173 (8) of the Code of Criminal Procedure,1973 (in short the 'Code').

5. A few important aspects concerning the cases need to be noted.

(1) Fair trial

(2) Modalities to ensure that the witnesses depose freely and in that context the need to protect the witnesses from interference by person(s) Connected with it is the protection of victims who in most cases are witnesses.

(3) Able assistance to court by competent public prosecutors.

(4) Further role of SIT.

XXX XXX XXX

39. It appears that in these petitions, which sought various reliefs including the transfer of some of the ongoing trials, and a reinvestigation / further investigation into the various incidents on the basis of which charges had been filed in these trials, this Court, in the first instance, granted a stay of these ongoing trials.

(a) Crime No. 9/02

(b)Crime No. 100/02

(c) Crime No. 23/02

(d) Crime No. 98/02

(e) Crime No. 46/02

(f) Crime No. 67/02

(g) Crime No. 60/02

(h) Crime No. 26/02

(I) Crime No. 27/02

The reports of the SIT, in respect of each of these cases have now been received.

40. We have considered the submissions made by Mr. Harish N. Salve, learned Amicus Curiae, Mr. Mukul Rohtagi, learned counsel for the State, Ms. Indira Jaisingh and other learned counsel. The following directions are given presently:

(i) Supplementary charge sheets shall be filed in each of these cases as the SIT has found further material and/or has identified other

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accused against whom charges are now to be brought.

(ii) the conduct of the trials has to be resumed on a day-to-day basis keeping in view the fact that the incidents are of January, 2002 and the trials already stand delayed by seven years. The need for early completion of sensitive cases more particularly in cases involving communal disturbances cannot be overstated.

(iii) the SIT has suggested that the six "Fast Track Courts" be designated by the High Court to conduct trial, on day-to-day basis, in the five districts as follows:

i) Ahmedabad (Naroda Patia, Naroda Gam)

ii) Ahmedabad (Gulberg).

iii) Mehsana (for two cases).

iv) Saabarkantha opened(British National case)

v) Anand

vi) Godhra Train Case (at Sabarmati Jail, Ahmedabad).

(iv) It is imperative, considering the nature and sensitivity of these nominated cases, and the history of the entire litigation, that senior judicial officers be appointed so that these trials can be concluded as soon as possible and in the most satisfactory manner. In order to ensure that all concerned have the

highest degree of confidence in the system being put in place, it would be advisable if the Chief Justice of the High Court of Gujarat selects the judicial officers to be so nominated. The State of Gujarat has, in its suggestions, stated that it has no objection to constitution of such "fast track courts", and has also suggested that this may be left to Hon'ble the Chief Justice of the High Court.

(v) Experienced lawyers familiar with the conduct of criminal trials are to be appointed as Public Prosecutors. In the facts and circumstances of the present case, such public prosecutors shall be appointed in consultation with the Chairman of the SIT. The suggestions of the State Government indicate acceptance of this proposal. It shall be open to the Chairman of SIT to seek change of any Public prosecutor so appointed if any deficiency in performance is noticed. If it appears that a trial is not proceeding as it should, and the Chairman of the SIT is satisfied that the situation calls for a change of the public prosecutor or the appointment of an additional public prosecutor, to either assist or lead the existing Public Prosecutor, he may make a request to this effect to the Advocate General of the State, who shall take appropriate action in light of the recommendation by the SIT.

(vi) If necessary and so considered

appropriate SIT may nominate officers of SIT to assist the public prosecutor in the course of the trial. Such officer shall act as the communication link between the SIT and the Public Prosecutor, to ensure that all the help and necessary assistance is made available to such Public Prosecutor.

(vii) The Chairman of the SIT shall keep track of the progress of the trials in order to ensure that they are proceeding smoothly and shall submit quarterly reports to this court in regard to the smooth and satisfactory progress of the trials.

(viii) The stay on the conduct of the trials are vacated in order to enable the trials to continue. In a number of cases bail had been granted by the High Court/Sessions Court principally on the ground that the trials had been stayed. Wherever considered necessary, the SIT can request the Public Prosecutor to seek cancellation of the bails already granted.

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(ix) For ensuring of a sense of confidence in the mind of the victims and their relatives, and to ensure that witnesses depose freely and fearlessly before the court:

In case of witnesses following steps shall be taken:

(a) Ensuring safe passage for the witnesses to and from the court precincts.

(b) Providing security to the witnesses in their place of residence wherever

considered necessary, and

(c) Relocation of witnesses to another state wherever such a step is necessary.

(x) As far as the first and the second is concerned, the SIT shall be the nodal agency to decide as to which witnesses require protection and the kind of witness protection that is to be made available to such witness.

(xi) In the case of the first and the second kind of witness protection, the Chairman, SIT could, in appropriate cases, decide which witnesses require security of the paramilitary forces and upon his request same shall be made available by providing necessary security facilities.

(xii) In the third kind of a situation, where the Chairman, SIT is satisfied that the witness requires to be relocated outside the State of Gujarat, it would be for the Union of India to make appropriate arrangements for the relocation of such witness. The

Chairman, SIT shall send an appropriate request for this purpose to the Home Secretary, Union of India, who would take such steps as are necessary to relocate the witnesses.

(xiii) All the aforesaid directions are to be considered by SIT by looking into the threat perception if any.

(xiv) The SIT would continue to function and carry out any investigations that are yet to be completed, or any further investigation that may arise in the course of the trials. The SIT would also discharge such functions as have been cast upon them by the present order.

(xv) If there are any matters on which directions are considered necessary (including by way of change of public prosecutors or witness protection), the Chairman of the SIT may (either directly or through the Amicus Curiae) move this Court for appropriate directions.

(xvi) It was apprehension of some learned counsel that unruly situations may be created in court to terrorise witnesses. It needs no indication that the Court shall have to deal with such situations sternly and pass necessary orders. The SIT shall also look into this area.

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(xvii) Periodic three monthly reports shall be submitted by the SIT to this Court in sealed covers."

The above judgment was delivered on 01.05.2009.

3.0 In nutshell, it can be said that considering the discharge of duties by the SIT in all these matters, it was directed to continue the monitoring till the completion of the trial in each of these cases. The SIT was also to complete the pending investigation and also permitted further investigation, if any required in the course of trial. It was also permitted to file supplementary charge-sheets in the cases concerned, where, the SIT found further material or identified other accused persons. The Chairman of the SIT was also directed to keep the track of the progress of the trials and to submit quarterly reports to the Apex Court with a specific permission to move the Apex Court for any further direction, if, found necessary. The Court also dealt with the issue of witness protection *in extenso*.

4.0 The petition preferred by the revisionist Ms. Zakia Jafri being Special Leave Petition (Criminal) No. 1088 of 2008, was directed to be heard with the petition of the

NHRC, since the same was pending at that stage and the Apex Court directed SIT to look into complaint dated 08.06.2006 of Ms. Jafri.

4.1 It is apt to record, at this stage, that various orders came to be passed by the Apex Court periodically in the original petition of the NHRC in SLP (Cri.) No. 1088 of 2008, wherein, it had been assisted by the eminent senior counsel as *Amicus Curiae* and the reports made periodically by the SIT had been scrutinized by the *Amicus Curiae*, who assisted the Apex Court exclusively on each issue. The Apex Court went on directing the SIT to carry out further investigation, if, any material had been found or any issue had been brought to its notice.

In nutshell, for every issue that was raised before the Apex Court, all possible efforts and endeavors were made by the SIT, as per the directions of the Apex Court, to investigate into the same vide order dated 15.03.2011, SIT Chairman was directed to look into the observations made by the *Amicus Curiae* and investigate further in SLP (Cri.) No. 1088 of 2008.

4.2 SIT on further investigation, in Gulberg Society case, under Section 173(8) of the Code,

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submitted its report on 24.04.2011. On reading such report the order dated 05.05.2011 came to be passed by the Apex Court, which reads as under:

> *" SLP (CRL.) NO. 1088/2008*
>
> *Pursuant to our order dated 15th March, 2011, the Chairman, Special Investigation Team (SIT) has filed report on the further investigations carried out by his team along with his remarks thereon. Statements of witnesses as also the documents have been placed on record in separate volumes. Let a copy of all those documents along with the report of the Chairman be supplied to Mr. Raju Ramchandran, the learned Amicus Curiae.*
>
> *The learned Amicus Curiae shall examine the report; analyze and have his own independent assessment of the statements of the witnesses recorded by the SIT and submit his comments thereon. It will be open to the learned Amicus Curiae to interact with any of the witnesses, who have been examined by the SIT, including the police officers, as he may deem fit.*
>
> *If the learned Amicus Curiae forms an opinion that on the basis of the material on record, any offence is made out against any person, he shall mentions the same in his report."*

4.3 The final order came to be passed by the Apex Court on 12.09.2011. The Court has recorded

therein the history that after the appointment of *Amicus Curiae* and the constitution of SIT, which had been constituted vide order date 26.03.2008 to carry out further investigation into 9 cases in writ-petition No. 109 of 2003, the complaint of the present petitioner had been given to the Director General of Police, Gujarat, on 08.06.2006. Shri A.K. Malhotra, (Ex.) DIG, examined a number of witnesses and he also looked into large number of documents and a report was submitted on 12.05.2010 by the Chairman of the SIT concurring with the findings of Mr. A.K. Malhotra. The Court also took note of the fact that Shri A.K. Malhotra, recommended the further investigation under Section 173(8) of the Code in Gulberg Society Case against the police officers and a Minister in the State cabinet, which was done and the report was submitted by the SIT on 17.11.2010.

4.4 On 23.11.2010, Shri Raju Ramchandran, Sr. Advocate, and Shri Gaurav Agarwal, who replaced the previous *Amicus Curiae*, had expressed their willingness to continue. A preliminary note was submitted through Shri Raju Ramchandra on 20.01.2011, wherein, vide order dated 15.03.2011, the SIT was directed to submit its report, after carrying out necessary further investigation, in light of the observations made

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in the said note.

4.5 The SIT concluded further investigation under Section 173 (8) of the Code in I-C.R. No. 67 of 2002, registered with Meghaninagar Police Station, which is also known as 'Gulberg Society Case'. Such a report was submitted before the Apex Court on 24.04.2011. The Court passed an order on 05.05.2011, where, the statements of the witnesses so also the documents in separate violence cases were directed to be given to the *Amicus Curiae*, Shri Raju Ramchandra with a request to examine the same and to form his opinion on assessment of the statements of the witnesses recorded by the SIT and to submit his comments. He was also given option / liberty to interact with any of the witnesses, who have been examined by the SIT, including Police Officers, if, he deemed so fit. On the strength of such interactions and on the basis of the material on record, if, *Amicus Curiae* formed any opinion, he was free to make a mention of the same in his report. Accordingly, final report of the *Amicus Curiae* came to be submitted on 25.07.2011.

4.6 In light of the said final report of the *Amicus Curiae*, the apex Court passed the following order on dated 12.09.2011, which has been reported as '***JAKIA NASIM AHESAN JAFRI &***

ANOTHER VS. STATE OF GUAJARAT AND OTHERS', (2011) 12 SCC 302, some of the paras thereof would be necessary to be reproduced herein below:

> *"8. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173 (2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in M.C. Mehta (Taj Corridor Scam) v. Union of India & Ors. [JT 2006 (11) SC 621 : 2007 (1) SCC 110], in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.*
>
> *9. Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire material collected by the SIT, to the Court which had taken cognizance of Crime Report No.67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to the SIT*

to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said Court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code. However, at this juncture, we deem it necessary to emphasis that if for any stated reason the SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint, dated 8th June 2006, before taking a final decision on such `closure' report, the Court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in Bhagwant Singh v. Commissioner of Police & Anr. [1985 (2) SCC 537]. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

10. Having so directed, the next question is whether this Court should continue to monitor the case any further. The legal position on the point is made clear by this Court in Union of India & Ors. v. Sushil Kumar Modi & Ors. [1998 (8) SCC 661], wherein, relying on the decision in Vineet Narain & Ors. v. Union of India & Anr. [JT 1996 (1) SC 708 : 1996 (2) SCC 199], a Bench of three learned Judges had observed thus:

'…that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive.'

11. In M.C. Mehta v. Union of India & Ors. [JT 2007 (12) SC 18 : 2008 (1) SCC 407], a question arose as to whether after the submission of the final report by the CBI in the Court of Special Judge, pursuant to this Court's directions, this Court should examine the legality and

validity of CBI's action in seeking a sanction under Section 197 of the Code for the prosecution of some of the persons named in the final report. Dismissing the application moved by the learned Amicus Curiae seeking directions in this behalf, a three-Judge Bench, of which one of us (D.K. Jain, J.) was a member, observed thus:

"The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order

passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in."

12. Recently, similar views have been echoed by this Court in Narmada Bai v. State of Gujarat & Ors. [JT 2011 (4) SC 279 : 2011 (5) SCC 79]. In that case, dealing with the question of further monitoring in a case upon submission of a report by the C.B.I. to this Court, on the conclusion of the investigation, referring to the earlier decisions in Vineet Narain (supra), Sushil Kumar Modi (supra) and M.C. Mehta (Taj Corridor Scam) (supra), speaking for the Bench, one of us, (P. Sathasivam, J.) has observed as under :

"70. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8) of the Code. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this Court by way of an

application."

13. Deferentially concurring with the dictum of this Court in the aforenoted decisions, we are of the opinion that in the instant case we have reached a stage where the process of monitoring of the case must come to an end. It would neither be desirable nor advisable to retain further seisin over this case. We dispose of this appeal accordingly.

Pursuant to these directions, SIT submitted its closure report before the Court of learned Metropolitan Magistrate, Ahmedabad, on the issue of non-supply of all reports including that of the *Amicus Curiae,* complainant approached the Apex Court.

4.7 Special Leave to Appeal (Criminal) No. 8989 of 2012 was preferred, where, the present petitioner had mainly pleaded that she was unable to file an appropriate protest petition against the closure report filed by the SIT, till the investigation report submitted by Shri A.K. Malhotra, before the Apex Court along with the documents referred to, therein, were supplied to her. She pleaded that in absence of such report, it would be impossible for her to file her objections to the closure report submitted by the SIT and the Gujarat Police was relying on the

report of Shri A.K. Malhotra. The apex Court numbered it as Criminal Appeal No. 273/2013 and on 07.02.2013, directed the learned Magistrate to supply the copies of the report dated 12.05.2010 in two volumes, excluding the Chairman's comments, forwarded to the Apex Court to be supplied to the petitioner. The relevant findings and observations read thus:

> *"The complainant is the appellant. She filed an application before the Metropolitan Magistrate claiming supply of all the documents filed along wit the closure report dated 07.10.2012 by the SIT.*
>
> *Before considering the claim of the appellant, it is relevant to refer to the earlier order of this Court dated 12th September, 2011 made in Criminal Appeal No. 1765 of 2011. After going into various aspects, this Court issued the following directions to the SIT:*
>
> *"9. Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire material collected by the SIT, to the Court which had taken cognizance of Crime Report No.67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to the SIT to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said Court will deal with the matter in accordance with law relating to the trial of the*

accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code. However, at this juncture, we deem it necessary to emphasis that if for any stated reason the SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint, dated 8th June 2006, before taking a final decision on such `closure' report, the Court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in Bhagwant Singh v. Commissioner of Police & Anr. [1985 (2) SCC 537]. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

Pursuant to the above direction, the SIT submitted a final report to the Court concerned. Before the said Court, the appellant/complainant made an application for supply of

all the materials filed before the said Court. According to the appellant pursuant to the directions of the Magistrate though she was supplied certain materials, still the SIT has not provided all the required documents. Not satisfied with the order of the learned Magistrate, the appellant has filed this appeal.

We have heard learned counsel appearing for the appellant. State as well as the learned Amicus Curiae.

On going into the earlier direction of this Court as well as the impugned order passed by the Magistrate, we issue the following directions. The applicant is entitled to have copies of the report dated May 12, 2010 in two volumes, excluding the Chairman's comments forwarded to this Court. The appellant is also entitled to have copies of reports dated November 17, 2010 and April 24, 2011 filed under Section 173(8) of the Criminal Procedure Code, 1973.

Since the statements recorded contain signature, it is clarified that if the signed statements are supplied, the same shall be treated as statements made under Section 16 of the Code of Criminal Procedure, 1973.

It is further clarified that the statements recorded in the inquiry shall only be used in the proceedings relating to the complaint dated June 8, 2006 filed

by the appellant and shall not be used for any other purpose or in connection with any other case. WE also clarify that the present order is confined to the facts and circumstances of the complaint dated 8th June, 2006 and shall not be treated as a precedent, in any other case. ..."

4.8 Thus, the Apex Court permitted the present petitioner to prefer Protest Petition on getting the copies within a period of 8 weeks from the date of getting copies of the report, as mentioned in the said order.

5.0 It is not in dispute that the petitioner received copies, as has been directed by the Apex Court, and filed a protest petition.

Learned Metropolitan Magistrate, after extensively hearing the parties, accepted the closure report, denying to lodge the complaint and thus thereby, the protest petition of the petitioner was not entertained.

GRIEVANCE OF PETITIONER AND PRAYERS:

6.0 Aggrieved petitioner is, therefore, before this Court seeking the quashment of the said order passed in exercise of revisional jurisdiction.

6.1 It is the grievance on the part of the petitioner that Magistrate, who delivered the judgment dated 26.12.2013, refused to take cognizance and issue the process against the accused named in the complaint dated 08.06.2006 and instead, he accepted the report submitted by Respondent No.2. According to the applicant, the legal and factual aspects have been presented by the petitioner in detail before the Court concerned and they have been supported by various documents. The impugned order, therefore, is attacked being grossly illegal, erroneous and unsustainable and deserves interference in revisional jurisdiction. The same, according to the petitioner, has resulted into serious miscarriage of justice and hence, inherent powers of this Court under Section 482 of the Code need to be exercised.

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6.2 It is necessary, according to her, for the Court to examine, whether the material produced had given rise to reasonable case to take cognizance and it was not necessary for the Court to go into the veracity or truthfulness of the facts to conclude that the same would lead to conviction of the person arraigned as accused or not. Against each person, who has been named in the complaint, separate material had been placed

for establishing the alleged act of conspiracy and abetment in a heinous crime. The order of the Apex Court has not been understood in the appropriate perspective by the Court concerned and he has utterly failed in exercising its jurisdiction. He also has chosen not to exercise his powers and was bogged-down by the fact that the Apex Court had monitored the investigation of SIT. In wake of the abundant material to rely upon to issue process, it is urged by the petitioner that the revisional jurisdiction is needed to be exercised with the following prayers:

> *"267. …*
>
> *(a) YOUR LORDSHIPS be pleased to quash and setting aside the order dated 26.12.2013 passed by the Learned Metropolitan Magistrate, Ahmedabad, in the Closure Report dated 8.2.2012 filed by SIT in the interest of justice and the Protest Petition of Smt. Zakia Ahsan Jafri filed in Compliance with the Order of the Supreme Court dated 12.09.2011 in SLP (Criminal) No. 1088/2008.*
>
> *b) YOUR LORDSHIPS be pleased to reject the Closure Report dated 8.2.2012 filed by SIT and direct that cognizance be taken against the persons listed in the Complaint of the petitioner dated 8.6.2006 annexed at **Exhibit C Colly** to this Petition in respect of the offences*

listed out therein and against any other person against whom an offence is made out in respect of the events detailed in the said Complaint.

C) YOUR LORDSHIPS be pleased to order further investigation with respect of the offences set out in the Complaint dated 8.6.2006 as also in respect of the issues, events and individuals more particularly set out in this Revision Application and the Protest Petition dated 15.4.2013, by an independent authority and that the accused not named in the Complaint but against whom investigation reveals evidence be arraigned as accused in the present case.

d) For an order/s as may deem fit and proper in the interest of justice;

e) Pass such other order or order as it may deem fit and proper in the facts and circumstances of the present case;"

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ORAL AND WRITTEN SUBMISSIONS (PETITIONER'S COUNSEL):

7.0 Learned Sr. Advocate, Mr. Desai, appearing with learned Advocate, Mr. M.M. Tirmizi, for the petitioner has strenuously and elaborately made their submissions oral as well as in writing.

7.1 According to the learned Counsels, the

following could have been the options available to the learned Magistrate:

(i) With the closure report submitted by the SIT under Section 173(3) of the Code, on being convinced that no case is made out for trial, the same could have been accepted and the proceedings could have been closed;

(ii) He could have formed opinion that the closure report disclosed commission of an offence and he could have taken cognizance of the Same under Section 190(1)(b) of 190(1)(c) of the Code, notwithstanding contrary opinion in the SIT report;

(iii) He could have formed the opinion that the closure report was not based on full facts and since, the investigation was not satisfactory, it was incomplete and he could have directed further investigation under Section 173(8) of the Code;

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(iv) He could have treated the Protest Petition as a complaint and could have proceeded to deal with the same as provided in '***POPULAR MUTHIAH VS. STATE REPRESENTED BY INSPECTOR OF POLICE***', (2006) 7 SCC 296.

It is lamented that the learned Magistrate erred in holding that he had no power to direct further investigation. His reliance on the decision of the Apex Court dated 12.09.2011 in Criminal Appeal No. 1765 of 2011 to explain these options is contrary to the settled position of law. It is, therefore, urged by the learned Counsel that the refusal on the part of the learned Magistrate to exercise statutory powers and therefore to limit his own powers in respect of the closure report, should amount to perversity.

7.2 It is, further, the submission on the part of the learned Counsel that the Court Could not have entered into the veracity or truthfulness or otherwise of the material on record, as that is permissible at time of trial only. He was required to examine the material on record to find out, whether the reasonable suspicion arises or not for taking cognizance

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against the accused, as is held by the Apex Court in '***S.K. SINHA, CHIEF ENFORCEMENT OFFICER VS. M/S. VIDEOCON INTERNATIONAL LTD. & OTHERS***', (2008) 2 SCC 492.

It is, further, urged that the said order is plugged by major factual lacunae and legal deficiencies, inasmuch as there had been extensive documentary evidences to fall back upon six major heads, viz. conspiracy, abetment, hate speeches, lack of fair investigation and need for further investigation, statement or evidence of Shri R.B. Sreekumar and Shri Rahul Sharma and role of the *Amicus Curiae*.

7.3 It is urged that the incidents of violence across the state were encouraged and condoned with the overt support of a political party and actions and omissions on the part of the State machinery and at the instance of the elected representatives. It is, further, alleged that the illegal actions of the conspirators and the willful passiveness of the constitutional and statutory authorities, attracted the ingredients of abetment under under Section 107 of the IPC.

It is also his case that the Protest Petition contains various incidents of hate speeches by the then Chief Minister of the State,

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Mr. Narendra Modi, and some of the prominent Members of the RSS and that ought to have weighed with the Court concerned. Much is argued on the statement given by Shri R.B. Sreekumar and Shri Rahul Sharma, Former IPS Officers. It is urged on the strength of the detailed discussion of various documentary evidences and the incidents that had followed in the aftermath of Godhra that there was conspiracy not just to generate hatred towards minority community, but, also to commit violence against the persons and the properties of the minority community and aid and abet actions of such omissions and actions, liable to be performed under the law their duties under the Constitution. According to the applicant, abetment writs large in not taking actions as or otherwise required of the state machinery. There are hate speeches and even where there is a denial of SIT, the learned Magistrate ought to have considered the sting operation of Tahelka also.

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7.4 Learned Advocate, Mr. Desai, has emphatically urged that the Court materially erred in limiting this conspiracy to the Gulberg Society incident. The Court ought to have appreciated that the complaint of the applicant pertains to the larger conspiracy and not limited to the Gulberg Society incident only. In support

of his submissions, he has relied on the following decisions:

(1) ***'ABHINANDAN JHA VS. DINESH MISHRA'***, AIR 1968 SC 117;

(2) ***'SATYANARAYAN MUSADI VS. STATE OF BIHAR'***, (1980) 3 SCC 152

(3) ***'BHAGWANT SINGH VS. COMMISSIONER OF POLICE'***, (1985) 2 SCC 537;

(4) ***'SHEONANDAN PASWAN VS. STATE OF BIHAR & OTHERS'***, (1987) 1 SCC 288;

(5) ***'INDIA CARAT PVT. LTD. VS. STATE OF KARNATAKA'***, (1989) 2 SCC 132,

(6) ***'STATE OF MAHARASHTRA VS. S.V. DONGRE & OTHERS'***, (1995) 1 SCC 42;

(7) ***'UPSC VS. S. PAPAIAH & OTHERS'***, (1997) 7 SCC 614;

(8) ***'JAGDISHRAM VS. SATE OF RAJASTHAN & ANOTHER'***, (2004) 4 SCC 432;

(9) ***'GANGADHAR JANARDHAN MATHARE VS. STATE OF MAHARASHTRA AND OTHERS'***, (2004)

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7 SCC 768

(10) '***POPULAR MUTHIAH VS. STATE REPRESENTED BY INSPECTOR OF POLICE***', (2006) 7 SCC 296;

(11) '***CHIEF ENFORCEMENT OFFICER VS. VIDEOCON INTERNATIONAL LIMITED***', (2008) 2 SCC 492;

(12) '***KISHAN LAL VS. DHARMENDRA BAFNA & ANOTHER***', (2009) 7 SCC 685;

(13) '***SUMAN VS. STATE OF RAJASTHAN & ANOTHER***', (2010) 1 SCC 250;

(14) '***NUPUR TALWAR VS. CBI***', (2012) 2 SCC 188;

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ORAL AND WRITTEN SUBMISSIONS (RESPONDENTS' COUNSEL):

8.0 Learned Sr. Counsel, Mr. C.S. Vaidyanathan, appearing for the Respondent along with learned Special Public Prosecutor, Mr. R.C. Kodekar, vociferously resisted this application. Learned Counsel also submitted his written-submissions after making detailed oral submissions. Some of the issues, which have been

raised before this Court could be divided into following parts.

(i) Scope of exercise of revisional powers;

(ii) Foundation of the entire matter does not survive after the judgment of the Apex Court in '***SANJIV RAJENDRA BHATT VS. UNION OF INDIA AND OTHERS***', (2016) 1 SCC 1;

(iii) The applicant has no personal knowledge of any of the events and the Protest Petition is based on the affidavit and alleged diary of Shri R.B. Sreekumar;

(iv) Chronology of the events in appreciating the controversy and the exercise of the powers by the Magistrate;

(v) Dealing with all allegations and the complaint and dealing the Protest Petition by the learned Magistrate by a thorough consideration;

8.1 It is emphatically urged by the learned Counsel that there is no merit in the Revision

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nor is there any scope for interference, as such an application is nothing but abuse of process of law of this Court, as it seeks to expand the scope of the entire matter and the questions and process to be expressly approved by the Apex Court.

8.2 The learned Counsel further urged that only to keep alive as a political gambit, present matter is preferred. There is absolutely no substance in this revision.

8.3 He has sought to rely on the following decisions to urge that unless, there is perversity or the order is grossly erroneous or glaringly unreasonable or the decision is based on no material or the material facts have been completely ignored that the Court would be justified in interfering in revisional jurisdiction:

(1) '***GANESHA VS. SHARANAPPA***',(2014) 1 SCC 87;

(2) '***SURYAKANT DADASAHEB BITALE VS. DILIP BAJRANG KALE***', (2014) 13 SCC 496;

(3) '***SHLOK BHARDWAJ VS. RENUKA BHARDWAJ***', (2015) 2 SCC 721;

(4) '***Sanjiv SINH RAMRAO CHAVAN VS. DATTATRAY GULABRAO PHALKE***', (2015) 3 SCC 123

8.4 The emphasis on the part of the learned Counsel was that the heavy reliance is placed on the presence of Shri Sanjiv R. Bhatt, in a meeting, that was held on 27.02.2002 at the residence of the then Chief Minister. The decision of the Apex Court rendered in the case of '***Sanjiv RAJENDRA BHATT VS. UNION OF INDIA AND OTHERS***' (Supra), would be required to be looked into and thus the main foundation of the entire case has collapsed. According to him, the present case is unscrupulously connected with Shri Sanjiv Bhatt. Particularly, in respect of his presence in the meeting that held on 27.02.2002. In this background, the Apex Court has held previously against him that he had acted in deliberation and consideration with rival political party, NGOs and has been tutored by the lawyers of the NGO and these activities of his, it can be held that the present applicant has not approached this Court with the clean hands. He urged that the petitioner has no personal knowledge of any of the events and the protest petition is based on the affidavit of Shri Sreekumar, a former IPS Officer.

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8.5 He urged that affidavit of Shri Sreekumar, had not been believed by the SIT. In the written-submissions under the heading of Statement and Diary of Shri Sreekumar, it is pointed out as to how, in the closure report of the SIT submitted to the learned Magistrate on 08.02.2012, the SIT has concluded that Shri Sreekumar had not made any disclosure about such a register in his deposition before the Court on 31.08.2004 or in any of the two affidavits filed by him on 15.07.2002 and 06.07.2004, respectively and the register he produced, saw the light of the day for the first time in the year 2005, when he filed his third affidavit before the Nanavati-Shah Commission on 09.04.2005. This was after the order of his superannuation in February, 2005. He also urged that every statement and evidence adduced before the learned Magistrate has been discussed aptly while accepting the closure report. Even though, the requirement at the stage of considering the closure report was not to flame the opinion that the same was lead to conclude the Court having found substance in the closure report has accepted the same. It is urged that each circumstance explained in the closure report has been properly dealt with by the Court concerned, and therefore, there is no requirement to interfere in the revisional

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jurisdiction, which is circumscribed by the law. He has urged that so far as the allegations of the hate speeches by the then Chief Minister and also the issue of sting operation of Tahalka are concerned, the Court concerned in the impugned order concluded with regard to the steps taken by the administration for controlling the riots and while so holding, also have found support from the report of *Amicus Curiae* and had agreed to the findings of the SIT to hold that hurling of such allegations against the then Chief Minister was inappropriate.

SCOPE AND AMBIT OF REVISIONAL Jurisdiction (COURT):

9.0 On, thus, having carefully considered the oral as well as the written submissions of both the sides and on extensively examining the material placed on record, the moot question that arises for the consideration of this Court is, as to whether this Court would be justified in interfering with the order impugned in revisional jurisdiction. As is well settled, the law requires interference of this Court in revisional jurisdiction only if, it is shown that the order under challenge is perverse or untenable in law or that the decision is based on no material or where, the material facts are wholly ignored or

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where the judicial discretion is exercised arbitrarily or the decision is grossly erroneous or glaringly unreasonable. The petitioner, if, succeeds in establishing all these parameters, the Court shall be justified in interfering in revisional jurisdiction. Apt would be here to refer to Sections 397 and 401 of the Cr.P.C.:

> ***"397. Calling for records to exercise powers of revision.*** *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, -recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.-All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398. (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other*

proceeding. (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. 397. Calling for records to exercise powers of revision. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, -recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.-All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398. (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

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*401. **High Court's Powers of revisions**. (1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392. (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. (3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court Is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice 989 so to do, the High Court may treat the application for revision as a petition of appeal and*

deal with the same accordingly."

9.1 Revisional jurisdiction of the High Court needs to be exercised in exceptional circumstances for securing the ends of justice.

9.2 In '***JAGGANATH CHOUDHARY AND ORS. Vs. RAMAYAN SINGH AND ANR.***', (2002) 5 SCC 659, the Apex Court, while considering powers of revisional Court, relied on the judgments of the Apex Court in '***K. CHINNASWAMY REDDY VS. STATE OF ANDHRA PRADESH***' (Supra) and in '***D. STEPHENS VS. NOSIBOLLA***', AIR 1951 SC 196.

9.3 In '***D. STEPHENS VS. NOSIBOLLA***'(Supra), what has been held and observed by the Apex Court is as under:

> *"The revisional jurisdiction conferred on the High Court under S.439 of the Code of Criminal Procedure is not to be lightly exercised when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under s.417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. This jurisdiction is not*

ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or mis-appreciated the evidence on record."

9.4 In '***LOGENDRATHAN JHA VS. SHRI POLAILAL BISWAS'***, AIR 1951 SC 316, the Apex Court observed thus:

"Though subs-s. (1) of S.439 of the Criminal Procedure Code authorizes the High Court to exercised in its discretion any of the powers conferred on a Court of appeal by S.423, yet sub-S. (4) specifically excludes the power to 'convert a finding of acquittal into one of conviction'. This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court can in the absence of any error on a point of law reappraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stops short of finding the accused guilty & passing sentence on him by ordering a retrial."

9.5 Relying on these decisions of the Apex Court, in case of '***JAGGANATH CHOUDHARY AND ORS. Vs. RAMAYAN SINGH AND ANR.'*** (Supra), the Apex Court held thus:

"(8) … Incidentally the object of the revisional jurisdiction as

envisaged under Section 401 was to confer upon superior criminal court a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to individuals. (See in this context the decision of this Court Janata Dal v. H.S. Chowdhary and Ors., [1992] 4 SCC 305). The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction.

While it is true and now well-settled in a long catena of cases that exercise of power under Section 401 cannot but be ascribed to be discretionary - this discretion, however, as is popularly informed has to be a judicious exercise of discretion and not an arbitrary one. Judicial discretion cannot but be a discretion which stands "informed by tradition, methodised by analogy and disciplined by system" - resultantly only in the event of a glaring defect in the procedural aspect or there being a manifest error on a point of law and thus a flagrant miscarriage of justice, exercise of revisional jurisdiction under this statute ought not to be called for. It is not to be lightly exercised but only in exceptional situations where the justice delivery system requires interference for correction of manifest illegality or prevention of a gross miscarriage of justice. In Nosibolla : Logendranath Jha and Chinnaswamy Reddy (supra) as also in Thakur Das (Thakur Das (Dead) by Lrs. v. State of Madhya Pradesh and Anr., [1978] 1 SCC 27 this Court with utmost clarity and in no uncertain terms recorded the same. It is not an appellate forum wherein scrutiny of evidence is possible neither the revisional jurisdiction is open for being exercised simply by reason of the factum of another view being other wise possible. It is restrictive in its application though in the event of there being a failure of justice there can said to be no limitation as regards the applicability of the revisional power.

> *The High Court possesses a general power of superintendence over the actions of court subordinate to it. On its administrative side, the power is known as the power of superintendence. On the judicial side, it is known as the duty of revision. The High Court can at any stage even on its own motion, if it so desires, and certainly when illegalities or irregularity resulting in injustice are brought to its notice call for the records and examine them. This right of the High Court is as much a part of the administration of justice as its duty to hear appeals and revisions and interlocutory applications - so also its right to exercise its powers of administrative superintendence. Though however, the jurisdictional sweep of the process of the High Court, however, under the provisions of Section 401 is very much circumscribed, as noticed herein before."*

9.6 As held by the Apex Court in case of '***AMAR CHAND AGARWALLA VS. SHANTI BOSE AND ANOTHER ETC.***', as reported in AIR 1973 (4) SC 799, that the object of this jurisdiction is to confer upon the superior criminal Court the kind of paternal or supervisory jurisdiction so as to curb the miscarriage of justice arising from misconception of law and similar infirmities. Although, these powers are wide enough, this Court is not expected to reappraise the evidence, except, in

exclusive cases to prevent flagrant miscarriage of justice. Unlike the Court of appeal, in revisional jurisdiction, reappreciation of evidence is not permissible, even if, there is an irregularity, but, no illegality and no prejudice has resulted on account of the order impugned, revisional power are not to be exercised.

9.7 In ***'SHLOK BHARDWAJ VS. RENUKA BHARDWAJ'*** (Supra), the High Court allowed the revision petition filed by the respondent and set aside the order of the learned Judicial Magistrate, Ghaziyabad, and remanded the matter back to the trial Court for afresh decision in accordance with law.

9.8 An appeal had been preferred against such a judgment and order and the question that raised before the Apex Court was, whether, in exercise of revisional powers, the High Court was justified in setting aside the order, having regard to the facts and circumstances. The Apex Court had an occasion to consider the scope of Section 401 of the Code. The Court held that even if, there is wrong view of law or there is an error in appreciation of the evidence, there may not be any justification in interfering with the impugned order in exercise of revisional jurisdiction. The parameters are well-laid down

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for such exercise of revisional powers under Section 401 of the Code. The law is well settled that the High Courts will not, ordinarily, interfere with the jurisdiction, except, in exceptional circumstances, where the interest of public justice requires for correction of manifest illegality or for preventing gross miscarriage of justice.

9.9 In case of '***SURYAKANT DADASAHEB BITALE VS. DILIP BAJRANG KALE***' (Supra), an appeal was directed against the judgment and order of the High Court, which under criminal revisional jurisdiction remanded the matter to the learned Sessions Judge. Reference is made to the decision on revisional jurisdiction in '***K. CHINNASWAMY REDDY VS. STATE OF ANDHRA PRADESH***', AIR 1962 SC 1788, where the Appellate Court wrongly refuted the evidences, which were admissible in law. The High Court was, therefore, justified in interfering with the said order by quashing and setting aside the same with a direction to reappraise, after taking into consideration the evidence, which were wrongly refuted as inadmissible. It, further, held that the High Court should restrict, itself, only to the extent of inadmissibility and it should not further reappraise the evidence also.

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9.10 In Criminal Revision No. 50 of 2011 titled as '***RAJINDERSINGH VS. STATE OF HIMACHAL PRADESH***', decided by the High Court of Himachal Pradesh on 13.09.2017, the scope of Criminal Revision has been delineated in the following manner:

> *"12. In Amur Chand Agrawal vs. Shanti Bose and another, AIR 1973 SC 799, the Hon'ble Supreme Court has held that the revisional jurisdiction should normally be exercised in exceptional cases when there is a glaring defect in the proceedings or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.*
>
> *13. In State of Orissa vs. Nakula Sahu, AIR 1979, SC 663, the Hon'ble Supreme Court after placing reliance upon a large number of its earlier judgments including Akalu Aheer vs. Ramdeo Ram, AIR 1973, SC 2145, held that the power, being discretionary, has to be exercised judiciously and not arbitrarily or lightly. The Court held that "judicial discretion, as has often been said, means a discretion which is informed by tradition methodolised by analogy and discipline by system".*
>
> *14. In Pathumma and another vs. Muhammad, AIR 1986, SC 1436, the Hon'ble Apex Court observed that High Court "committed an error in making a re-assessment of the evidence" as in its revisional*

jurisdiction it was "not justified in substituting its own view for that of the learned Magistrate on a question of fact".

15. In Bansi Lal and others vs. Laxman Singh, AIR 1986 SC 1721, the legal position regarding scope of revisional jurisdiction was summed up by the Hon'ble Supreme Court in the following terms:

"It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial court, that the High Court is empowered to set aside the order of the acquittal and direct a re-trial of the acquitted accused. From the very nature of this power it should be exercised sparingly and with great care and caution. The mere circumstance that a finding of fact recorded by the trial court may in the opinion of the High Court be wrong, will not justify the setting aside of the order of acquittal and directing a re-trial of the accused. Even in an appeal, the Appellate Court would not be justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial Court on the appreciation of the evidence. The revisional power of the High Court is much more restricted in its scope."

16. In Ramu @ Ram Kumar vs. Jagannath, AIR 1991, SC 26, Hon'ble Supreme court cautioned the revisional Courts not to lightly

exercise the revisional jurisdiction at the behest of a private complainant.

17. In State of Karnataka vs. Appu Balu, AIR 1993, SC 1126 = II (1992) CCR 458 (SC), the Hon'ble Supreme Court held that in exercise of the revisional powers, it is not permissible for the Court to reappreciate the evidence.

18. In Ramu alias Ram Kumar and others vs. Jagannath AIR 1994 SC 26 the Hon'ble Supreme Court held as under: "It is well settled that the revisional jurisdiction conferred on the High Court should not be lightly exercised particularly when it was invoked by a private complaint."

19. In Kaptan Singh and others vs. State of M.P. And another, AIR 1997 SC 2485 = II (1997) CCR 109 (SC), the Hon'ble Supreme Court considered a large number of its earlier judgments, particularly Chinnaswami vs. State of Andhra Pradesh, AIR 1962 SC 1788 ; Mahendra Pratap vs. Sarju Singh, AIR 1968, SC 707; P.N. G. Raju vs. B.P. Appadu, AIR 1975, SC 1854 and Ayodhya vs. Ram Sumer Singh, AIR 1981 SC 1415 and held that revisional power can be exercised only when "there exists a manifest illegality in the order or there is a grave miscarriage of justice".

20. In State of Kerala vs. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452, the Hon'ble Supreme Court

held as under:

"In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

21. In State of A.P. vs. Rajagopala Rao (2000) 10 SCC 338, the Hon'ble Supreme Court held as under: "The High Court in exercise of its revisional power has upset the concurrent findings of the Courts below without in any way considering the evidence on the record and without indicating as to in what manner the courts below had erred in coming to the conclusion which they had arrived at. The judgment of the High Court contains no reasons whatsoever which would indicate as

to why the revision filed by the respondent was allowed. In a sense, it is a non-speaking judgment."

9.11 The revisional powers of the High Court are thus provided under Section 397, which are linked with Section 401 of the Code and they are to be exercised to examine correctness, legality and propriety of any finding, sentence or order recorded by any Criminal Court below and even as to the regularity of proceeding of any lower Court.

9.12 The Court when finds any glaring defect in procedure or manifest error of law and consequently flagrant miscarriage of justice, such powers need to be exercised only in exceptional circumstances. To set right grave injustice the same can be exercised and not for curing every mistake.

9.13 These are well settled principles based on law, as to when the revisional powers could be exercised. This Court needs to consider merit of the matter on hands, as to whether, this is a fit case for exercising revisional powers.

JUDICIAL EVALUATION:

10.0 It is utmost essential to mention, at

this stage, that in the background mentioned herein above, the petitioner had moved the Director General of Police for lodgment of the FIR under Section 302 read with Section 120B of the Indian Penal Code and various other sections of the IPC and also under other provisions of law, however, as mentioned herein above. When no registration of the FIR was done, instead of preferring an application under Section 190 of the Code before the learned Metropolitan Magistrate, the complainant chose to approach this Court under Article 226 of the Constitution of India read with Section 482 of the Code and essentially on two grounds, as mentioned herein above, namely that she had an option available to approach the Court concerned under Section 190 of the Code to file a private complaint, the Court chose not to entertain such a petition.

10.1 The Court was also actuated by the fact that in all the incidents, which she had narrated in the complaint, separate FIRs have already been registered and those matters were before the respective Courts for trial. However, without concluding as to whether there was, still a possibility of lodgment of such an FIR, the Court did not entertain the petition.

10.2 The petitioner was, thus, not made

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remedyless in rejection of such a petition. However, aggrieved by the decision of this Court, she approached the Apex Court by preferring Special Leave Petition (Criminal) No. 1088 of 2008.

10.3 Since, the Apex Court was already considering the petition of the NHRC, which had questioned the manner of investigation conducted by the investigating agency of the State in all cases of rioting, it had already constituted SIT so also had appointed an *Amicus Curiae*. It had tagged along with the matter of NHRC, the petition of the present petitioner. In exceptional and extraordinary circumstances, the Apex Court had directed the SIT to investigate into all these matters and had also monitored such investigation, periodically. The report of the *Amicus Curiae* appointed by the Apex Court was examined, scrutinized and the directions were issued to the SIT. The SIT also enjoyed enormous powers and all the infrastructure was directed to be provided to the SIT by the State for reaching to the truth in all these matters. The final decision came to be arrived at in the matter of NHRC and initial stay granted qua nearly nine Sessions' Trials, came to be lifted by the Apex Court.

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10.4 So far as the petition of the present petitioner is concerned, the final order came to be passed by the Apex Court on 12.09.2011. Thus, SIT also had conducted further investigation under Section 173(8) of the Code in connection with I-C.R. No. 67 of 2002 registered with Meghaninagar Police Station and submitted its report.

REPORT OF AMICUS CURIAE:

11.0 The report submitted by *Amicus Curiae* pursuant to the directions of the Apex Court on 25.07.2011, is forming the part of the record. If, one looks at the said report, it refers to examination of more than 160 witnesses by Shri Malhotra, a Member of the SIT. He recommended further investigation under Section 173(8) of the Code against some of the officers and also against Shri Gordhan Zadafiya, the then Home Minister of the Gujarat State. The SIT concluded that the material was not sufficient enough to prosecute any of them. However, against the police officers, for their unbecoming of Sr. Police Officers, departmental proceedings were recommended.

11.1 The main plank of the allegation was with regard to the high level meeting held on

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27.02.2002 at the residence of the then Chief Minister of the State of Gujarat, Shri Narendra Modi. In the preliminary report and also in the report of the Chairman of the SIT, no reliable material was found of any instruction issued to the Sr. Police Officer and to the bureaucrats not to deal with the Hindu rioting mobs, and thereby, permit them to vent their anger against minority community.

11.2 According to the *Amicus Curiae*, further investigation, after he took over, was recommended and the statement of the then Dy. Commissioner, Intelligence, Shri Sanjiv Bhatt, was directed to be recorded. It was done and 48 statements of the witnesses were recorded. The assessment was made by the *Amicus Curiae* of the statement of the witnesses in respect of Shri Sanjiv Bhatt, the then DGP (Intelligence). The *Amicus Curiae* noted that the SIT had concluded that his version was not believable for various reasons. It also opined that the statement of Shri Sanjiv Bhatt was motivated and cannot be relied upon. It was also, further, pointed that he was actively involved in the matter and was in touch with those, who would be benefited and would gain mileage from his testimony. However, it was his opinion that “such factors cannot be the grounds for ignoring his statement, at this

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stage". Since, the other officers did not deny the statement of Shri Sanjiv Bhatt, *Amicus Curiae* was of the opinion that it would not be appropriate to disbelieve him, at this stage. The delay of 9 years in making his statement also in view of his explanation would form a valid ground not to disbelieve him at the first go. He recommended that Shri Sanjiv Bhatt should be put through the test of cross-examination like others, who had denied his presence at the time of meeting held on 27.02.2002.

11.3 The then Chief Minister of the State is alleged to have placed two of his Cabinet colleagues at the State Police Control Room and at the Ahmedabad City Police Control Room. The SIT concluded that those ministers did not interfere with the function of the police. Since, there was no material found with regard to any interference in the functioning of the police department or of their giving instructions to the police authority and learned *Amicus Curiae* did not much differ on this issue with SIT.

11.4 In absence of any material to indicate that the alleged hate speech made by the then Chief Minister had been implemented by the Ministers and / or the Police Officer, who had participated in the said meeting of 27.02.2002,

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the SIT did not agree on investigation whereas the *Amicus Curiae* was of the opinion that making of such a statement, itself, was an offence and *prima facie*, the offence under Section 153A (1) (a) & (b), 153B(1)(c), 166 and 505(2) of the IPC would be attracted.

11.5 So far as the two Sr. Police Officers, Mr. Tandon and Mr. Gondia are concerned, the SIT found them negligent but with no *mens rea*, recommended departmental actions against them, whereas, the *Amicus Curiae* opined that they must face trial under Section 304A of the IPC.

11.6 This reference of report of *Amicus Curiae* has been insisted by the Apex Court because at the time of final order passed by the Apex Court, it had directed the SIT to place such a final report before the concerned Court, which had taken cognizance in the matter being I-C.R. No. 67 of 2002 in the matter. The Apex Court held that it would be open to the SIT, to obtain from the *Amicus Curiae*, the copies of his report and the concerned Court would deal with the matter in accordance with law, “relating to the trial of the cases named in the report, including the matter falling within the ambit and the scope of Section 173(8) of the Code. The Court also emphasized that if, the SIT is of the opinion in

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its report that there was no sufficient reason or material for accepting the complaint dated 08.06.2006 given by her, before taking a final decision on such final report of closure, the Court would issue notice to the complainant and make her available the copies and other documents and other material, strictly in accordance with the law laid down in case of '***BHAGWANT SINGH VS. COMMISSIONER OF POLICE***' (Supra).

11.7 The SIT has chosen to submit a closure report and not to proceed against any of the persons, as according to it, there was no sufficient evidence or grounds to proceed against the persons named in the complaint dated 08.06.2006. The petitioner needed to approach the Apex Court for seeking the final closure report dated 12.05.2010. It was granted along with the statements recorded during the inquiry.

11.8 In the given set of facts and circumstances, after receiving the copy of the closure report and entire material along with additional statements etc., which had been recorded, the learned Magistrate chose not to accept the Protest Petition, as it had accepted the closure report, while passing elaborate reasoned order and also deliberating over each evidence and in such circumstances, whether there

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is any scope of interference in the order impugned in revisional jurisdiction needs to be examined.

OPTIONS AVAILABLE TO THE LEARNED MAGISTRATE AND SCOPE OF FURTHER INVESTIGATION:

12.0 This Court notices that, as rightly pointed out by the learned Advocate for the petitioner, that the learned Magistrate had various options available and one of them was to accept the closure report and not to proceed any further. It has, thus, chosen to avail that option.

12.1 Being conscious of the fact that this Court is not sitting in appeal, unless there is perversity, where the interest of justice gets jeopardized, the Court is not to exercise the revisional jurisdiction. This Court needs to note that the learned Magistrate has held in no unclear terms that it has no power of further investigation in the matter on hands. This appears to be a clear error in law in limiting his own jurisdiction despite directions of the Apex Court and the mandate of statute. It is one thing to be satisfied with the investigation that had been carried out by the SIT and not to direct any further investigation at all, when the

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closure report was submitted by the investigating agency and it is another thing for him to limit his own powers only on the ground that the Apex Court was *in seisin* of the matter and had monitored the investigation carried out by the SIT. Possibly, because it was in exceptional and extraordinary circumstances that the Apex Court had chosen to monitor the matter for a protracted period and had thereafter, directed the SIT to submit its final report to the Court concerned to act in accordance with law, this error in law has crept in. To say that there was already an investigation by the SIT and hence, he would be powerless to direct further investigation is a material error in law. The Court may not have found any need to direct further investigation nor would it be incumbent upon it to so direct because he has right to so do it and more particularly when exclusive investigation by Special Investigation Team under the guidance and supervision of the Apex Court continued in all the matters, however, this Court may not know whether the Court concerned in fact found any such need but, such self limitation would limit technically the scope of powers of the Court which can be as error in law and jurisdiction and hence, to such limited extent, impugned order warrants interference.

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12.2 It would be relevant, at this stage, to refer to the final order of the Apex Court once again passed on 12.09.2011, wherein the Court had referred to Chapter-XII of the Code and directed even further investigation, if found necessary under Section 173(8) of the Code.

12.3 It will not be out of place to refer to some of the decisions, which pertain to further investigation:

12.4 The Apex Court in '***JAGDISHRAM VS. SATE OF RAJASTHAN & ANOTHER***' (Supra), was considering the scope of Sections 190 and 202 of the Protection of Civil Rights Act to hold that taking of cognizance is exclusively within the domain of Magistrate and that the Magistrate is required to see that sufficient grounds exist or not for further proceeding with the matter. The magistrate is empowered to take cognizance, if, the material on record makes out a case for the said purpose. The Apex Court held that "Cognizance of offence is an area exclusively within the domain of Magistrate". At this stage, Magistrate has to be satisfy, whether, there is sufficient ground for proceeding and not, whether there are sufficient grounds for conviction.

12.5 The Apex Court in the case of

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'***SHEONANDAN PASWAN VS. STATE OF BIHAR & OTHERS***', held that even if in the opinion of police no offence is committed, "a Magistrate still can form an opinion on the facts set out in the report that they constitute an offence and he can take cognizance of the offence and issue process against the accused." The Magistrate may also find, after considering the report, that the involvement is unsatisfactory or incomplete or there is scope for further investigation and in that event, the Magistrate may decline to accept report and direct the police to make further investigation and then decide, whether or not to take cognizance of the offence after considering the report submitted by the police, as a result of such further investigation. It, thus, can be seen that police has no absolute or unfettered discretion, whether to prosecute an accused or not. In fact, in our constitutional scheme, conferment of such absolute and uncanalised discretion shall be violative of equality clause of the Constitution. A Magistrate is, therefore, given the power to struck a balance and to control the decision of the police. If the Magistrate findings that there are reports made by the police either on initial investigation or on further investigation directed by the Magistrate and that, *prima facie*, the offence appears to have been committed, a Magistrate is

empowered to take contents of the evidence, notwithstanding the contrary opinion of the police and if, Magistrate forms an opinion that on the facts set out in the report no offence, *prima facie*, appears to have been committed, though, the police may have given a contrary conclusion, the Magistrate an decline to take cognizance of the offence."

12.6 In '***S.K. SINHA, CHIEF ENFORCEMENT OFFICER VS. M/S. VIDEOCON INTERNATIONAL LTD. & OTHERS***'(Supra), considering the scope of inquiry under Section 202 of the Code, the Apex Court held that "the underling object of the inquiry under Section 202 of the Code is to ascertain, whether there exists *prima facie* case against the accused. It allows him to form an opinion, whether the process should be or should not be issued and what the Magistrate is required to see at that stage, is whether fresh grounds exist for proceeding with the Court and not whether fresh grounds exists for conviction of the accused.

12.7 The Apex Court in '***SATYANARAYAN MUSADI VS. STATE OF BIHAR***' (Supra), which provides that Section 190 provides for taking cognizance of an offence by a Magistrate, where, he may take cognizance in the following manners:

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

LARGER CONSPIRACY DEBATE AND FINDINGS:

13.0 This Court is conscious of the fact that the detailed reasonings have been given by the Court concerned, while accepting the closure report submitted by the SIT. It had given the fullest opportunity to the petitioner, who had submitted the Protest Petition. There was an option open to the Court even to accept the protest petition and to treat the same as complaint, however, the learned Addl. Metropolitan Court had chosen not to so do it for being satisfied with the detailed closure report submitted by the SIT. Nothing precluded the Court from exercising its jurisdiction in law and to direct further investigation.

13.1 It is a matter of record that the incidents alleged have taken place in the year 2002. The complaint is sought to be lodged for larger conspiracy and not restricting to the 'Gulberg Society' incident, in the year 2006, i.e. after about 4 years of the said incident. It is also a matter of record that most of the cases have been tried and in many of them, the designated Courts have delivered their judgment and convicted many of the accused and in some of the matters, appeals before this Court also have been concluded and in others, the appeals are pending. It is almost after 12 years, the question has been raised before the Court concerned to look into the Protest Petition and to consider the question of larger conspiracy for the period between 27.02.2002 to 10.05.2002.

13.2 As has been rightly argued by the learned Sr. Counsel, Mr. Vaidyanathan, that the scope of complaint dated 08.06.2006 was limited to the incident of 'Gulberg Society', and therefore, there is a categorical reference of the same in the final order of the Apex Court. An attempt is made to enlarge the scope, by involving other cases and by alleging a larger conspiracy against those, who are arraigned as accused. If one peruses the complaint itself as

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given by the petitioner dated 08.06.2006, it can be said *prima facie* that the scope in the original complaint had not been limited to the 'Gulberg Society' incident. It had attempted to embrace all cases under the banner of the larger conspiracy, as had been alleged.

13.3 Undoubtedly, various questions have been raised before the Court, which also include the late filing of such a complaint and also that the respective complaints in each riot case with the allegations of conspiracy have already been concluded before the concerned designated Special Judge of various Courts. It would be sufficient and apt to remember that right from the beginning when this petitioner approached the Apex Court in SLP (Criminal) No. 1088 of 2008, the Apex Court was already monitoring further investigation by the SIT and number of witnesses were examined in each case and the Court also directed the very SIT to "look into" this complaint. When Further investigation was proposed by Mr. Malhotra, a team member of SIT in Gulberg Society Case, the same was permitted by the Apex Court and in fact additional witnesses were examined in that case.

13.4 Even the report of *Amicus Curiae* refers to I-C.R. No. 67 of 2002 of Meghaninagar case and final report of the Apex Court on 11.05.2009 also

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directed SIT to submit final report under Section 173(2) of the Code to the Court taking cognizance of I-C.R. No. 67 of 2002 of Meghaninagar.

13.5 Thereafter, when once again, the petitioner approached the Apex Court for supply of report of SIT and other material in SLP (Criminal) No. 8989 of 2012, it made a reference of this very case being Gulberg Society Case.

13.6 Even thereafter, when Mr. Sanjiv Bhatt, IPS, approached the Apex Court with a request to constitute SIT to investigate I-C.R. No. 149 of 2011 of Ghatlodiya Police Station, while referring to earlier proceedings, it observed and referred to the case of Gulberg Society and went to an extent of referring to Sessions Case No. 152 of 2010.

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13.7 Thus, it is quite apparent from the chronology of events and the orders passed time and again by the Apex Court that the complaint of large conspiracy was examined Gulberg Society Case only.

Every major case of riot is already concluded except the case of Naroda Gam case being No. I-C.R. 98 of 2002 and every possible angel in each such case, directly monitored by

the Apex Court, has been investigated by the SIT which continued to report periodically to the Apex Court, of the trials of these cases and hence, additional examination of witnesses by way of further investigation, it has been held by the learned Metropolitan Magistrate to be in case of Gulberg Society case only, no error either of law or otherwise is committed by it.

13.8 A consistent stand that has been taken by the trial Court is that this could not have been investigated, at this point, contemplating as a separate complaint by the Apex Court. It, in fact, had placed along with the case of the 'Gulberg Society' and had treated the same as one vide its orders passed in SLP (Criminal) No. 1088 of 2008.

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13.9 After a detailed discussion on the law and also repeatedly noting various orders passed in SLP (Criminal) No. 1088 of 2008, it concluded that the report which had been submitted by the SIT as its final report, and therefore, even if, from the Protest Petition new facts emerge, the Court cannot pass any order of further investigation. He agreed that as per various decisions pressed into service, under the provision of Section 190 of the Code, the Magistrate has many options, once a final report

is submitted before him. However, as the complaint of Ms. Zakia Jafri dated 08.06.2006, since, was not before the learned Magistrate under Section 190 of the Code and the FIR has not been directed to be registered by any authority, the Court concluded that said complaint cannot be treated as either an FIR or a private complaint. It has reasoned it out by stating that the FIR as has been defined under the Code needs to be recorded and registered by the police and then investigation requires to be undertaken and the report under Section 173 of the Code needs to be submitted, thereafter. If, any complaint is given by any person under the Code either in writing or orally, it can be recorded by the Magistrate, and thereafter, he can initiate process under Section 200 and Section 202 of the Code. Since, the complaint was given by Ms. Zakia Jafri on 08.06.2006 to the DGP, Gujarat State, and not being satisfied by the non action that she had approached the High Court and then to the Apex Court by preferring SLP (Criminal) No. 1088 of 2008, the Apex Court directed the SIT to look into the complaint, and therefore, such a complaint cannot be considered as an FIR or a private complaint. In the very breath, of course, the Court mentioned that the Supreme Court had covered the report of the SIT under Section 173(2) of the Code, and therefore, the Magistrate

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can direct further investigation or police officers themselves can undertake such task under Section 173(8) of the Code. However, since Paragraph-9 of SLP (Criminal) No. 1088 of 2008 is covered under Section 173(8) of the Code, therefore, no cognizance can be taken by the Court under Section 190 of the Code. The allegations of larger conspiracy in the complaint dated 08.06.2006 against the executives and the officers, as alleged, has resulted into miscarriage of justice. The non-examination of various aspects and not taking holistic view also was alleged to be a part of the criminal conspiracy. The agency was required to dispassionately and impartially looked into allegations and yet, it has chosen not to so do it. These aspects have been examined, at length, by the learned Judge of Metropolitan Court.

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13.10 The Court has also reiterated these findings of its by reporting the same at Page-378, where the complaint has been directed to be sent along with I-C.R. No. 67 of 2002 to the SIT, and therefore, the report of the SIT as a part of further investigation of the matter being I-C.R. No. 67 of 2002, registered with Meghaninagar Police Station. Moreover, it was also of the opinion that when this has been linked with I-C.R. No. 67 of 2002, as per the order in SLP

(Criminal) 1088 of 2008, the trial Court would have no jurisdiction to send it for further investigation. It, further, observed that even if, Protest Petition is considered as a part of the complaint, this Court needs to undertake the exercise under Sections 190 and 200 of the Code. However, the Court was not in a position to exercise the powers, as have been detailed in the case of '***ABHINANDAN JHA & OTHERS VS. DINESH MISHRA***' AIR 1968 117. Therefore, the Apex Court in SLP (Criminal) No. 1088 of 2008 had directed merely to look into the complaint dated 06.06.2008 and hence, the report of the SIT under Section 173(2), the Court cannot accept the complaint of the petitioner under Section 2(d) as a complaint. The relevant paras (Pg. 380 to Pg. 381 of impugned order) read thus:

> *"8. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173 (2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in M.C. Mehta (Taj Corridor Scam) Vs. Union of India & Ors.1, in cases monitored by this Court, it is*

concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.

9. Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire material collected by the SIT, to the Court which had taken cognizance of Crime Report No.67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to the SIT to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said Court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code. However, at this juncture, we deem it necessary to emphasise that if for any stated reason the SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint, dated 8th June 2006, before taking a final decision on such `closure' report, the Court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report

strictly in accordance with law as enunciated by this Court in Bhagwant Singh Vs. Commissioner of Police & Anr.2. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

13.11 Thus, it is repeatatively made clear by the trial Court that neither the complaint dated 08.06.2006 nor the Protest Petition can be treated as complaint or the FIR by the Court to exercise its powers under Sections 190 or 200 of the Code by treating the complaint of Ms. Zakia Jafri for investigation, as FIR had already been registered with Meghaninagar Police Station. It, therefore, did not find any need to register the complaint at all.

13.12 This possibly was on the premises that the complaint, which had been lodged was urged to be filed for a larger conspiracy whereas the Apex Court directed the SIT to look into the

same. Of course, there was no formal lodgment of the complaint, as in the ordinary case a complaint is lodged either with the police or before any Court of law, as a private complaint and yet, the matter was looked into by the SIT as per the direction of the Highest Court of the nation in extraordinary circumstances, which were pleaded and it reported to the Apex Court of having found no substance after its detailed investigation. At that state, the Apex Court chose to send the said report along with all other material to the Court which took cognizance of the I-C.R. No. 67 of 2002, which would given an idea that the same was considered, as a part of the complaint of the 'Gulberg Case' registered with Meghaninagar Police Station, as there was a specific direction to place it before the Court, which took cognizance of I-C.R. No. 67 of 2002. So far as the aspect of treating the same as an independent complaint of larger conspiracy is concerned, the Court chose to treat it as a part of the complaint registered as I-C.R. No. 67 of 2002 with Meghaninagar Police Station, which also is a plausible and feasible view that could have been taken, as discussed above.

FACTUAL ALLEGATIONS AND FINDINGS OF LEARNED MAGISTRATE:

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14.0 As discussed herein above, at length, while discussing the scope of revisional Court, this Court is not to reappraise the evidence in its revisional jurisdiction. Although, these are powers, which are wide enough and yet, the revisional Court is not expected to reappreciate the evidence, except, in case of flagrant miscarriage of justice. Even if, there is an irregularity, but, if there is no illegality nor any manifest error of law resulted on account of the order impugned, such powers are not to be exercised.

14.1 To briefly touch upon the six major heads with this, out of 32 allegations dealt with by SIT, which have been emphasized upon, which are as under:

(i) Meeting at the residence of the then Chief Minister on 27.02.2002;

(ii) Posting two Ministers at Police Control Room;

(iii)Parading dead bodies of victims of Godhra carnage;

(iv) Police abdicating their duties during violence;

(v) Subversion of law after

violence;

(vi) Hate speeches;

(C) Evidences sought to be relied upon for the said purpose are as under:

(1) Statement of Mr. Sanjiv Bhatt, IPS;

(2) Statement & diaries of Mr. R.B. Sreekumar, DGP, and that of Mr. Rahul Sharam;

(3) The note of *Amicus Curiae*;

(4) Hate speeches;

(5) IB messages and phone records; and

(6) Reports of constitutional authorities and other dignitaries;

(7) Sting operation of Tahalka;

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14.2 The allegation made, in respect of the statement made by the then Chief Minister in a meeting held on 27.02.2002, was of giving of directions to the Sr. Officers as regards letting the Hindus vent out their anger. In absence of any minutes of the meeting, as noted above and on

the ground that the meeting was called with a view to maintain law and order with none present in the meeting having stated anything on the record. Therefore, the Court found no reason to accept such allegations.

14.3 The preliminary report of SIT was scrutinized by the *Amicus Curiae* under the direct order of the Apex Court and the learned *Amicus Curiae* accepted the report of SIT, except against the then Chief Minster in relation to the meeting of 27.02.2002. With the judgment of the Hon'ble Apex Court in (2016) 1 SCC 1, it would crumble.

14.4 Here, it would be worthwhile to make reference of the note submitted by the learned *Amicus Curiae*, Mr. Raja Ramchandran, before the Apex Court on 20.01.2011, which reads thus:

> *"1. It would be impossible to get any one present in the meeting on 27-2-2002 to speak against Modi, especially the bureaucracy and police officials.*
>
> *2. The other circumstances would also have to be taken into account. There is nothing to show that the CM intervened on 28-02-2002, when the riots were taking place to prevent*

the riots. The movement of Shri Modi and the instructions given by him on 28-02-2002, would have been decisive to prove that he had taken all steps for the protection of the minorities, but this evidence is not there. Neither the CM nor his personal officials have stated what he did on 28-02-2002. Neither the top police not bureaucrats have spoken about any decisive action by the CM.

3. It may not be correct to rule out the presence of Mr. Sanjiv Bhatt, IPS, DC (Int.) since Addl. DG (Int.) Shir. G.C. Raiger was not available. There is no reason for him to make a wrong statement. He was willing to make a statement if he was protected from legal repercussions of disclosing what transpired in the meeting.

4. It is difficult to believe that when the CM came back after the Godhra trip, no Minister was present at his residence. Hence, it may not be totally unbelievable. Shri Haren Pandya is unfortunately dead, but the statements made by Late Haren Pandya to Justice P.B. Sawant (Retd.) and Justice H. Suresh (Retd.) can be used, even if his statement is not been formally reproduced in writing by the Citizen's Tribunal."

14.5 In relation to the presence of Mr. Sanjiv Bhatt at the time of meeting held on

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27.02.2002, the learned *Amicus Curiae* opined thus:

> *"1. That Shri Sanjiv Bhatt has brought this former driver Shri Tarachand Yadav and had submitted his affidavit shown on 17.06.2011, which supports Shri Bhatt's version that he had gone to the residence of the Chief Minister on 27.02.2002.*
>
> *2. That Shri Sanjiv Bhatt submitted an affidavit of Shri K.D. Panth Constable affirmed on 17.06.2011 supporting the version of Shri Bhatt about going to Chief Minister's residence on the night of 27.02.2002.*
>
> *3. That Shri Rahul Sharma, DIG submitted and analysis of the call records of senior police officers, which according to Shri Sharma corroborates the statesman of Shri Bhatt.*
>
> *4. That through Shri Sanjiv Bhatt has been contending that he would speak only when under a legal obligation to do so, his conduct after making a statement u/s 161 Cr.PC has not been that of a detached police officer, who is content with giving his version.*
>
> *5. That it does not appear very likely that a serving police officer would make such a serious allegation*

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against Shri Narendra Modi, Chief Minister without some basis.

6. That there is no documentary material of any nature whatsoever, which can establish that Shri Bhatt was not present in the meeting of 27.02.2002 and in the absence of the minutes, as to the participants in the meeting and what transpired at the said meeting. Therefore, it is the word of Shri Sanjiv Bhatt against the word of other officer senior to him.

7. That it is difficult to accept that Shri Bhatt's statement is motivated because he has an axe to grind with the State Govt. over issues concerning his career and it may not be proper to disbelieve Shri Sanjiv Bhatt at this stage only because the other officers have not supported his statement.

8. That the delay in making the statement cannot be the sole ground to disbelieve the statement at this stage especially in view of his explanation that as an Intelligence Officer, who was privy to a lot of sensitive information, he would make statement only when he was under a legal obligation to do so.

9. That Shri G.C. Raiger, Addl. D.G.(Int.) was on leave on 27.02.2002 and DGP Shri K. Chakravarthi does not state that he had gathered intelligence from the office of Shri Raiger. Frther, Shri

P.C. Upadhyay, the then DCI (Political Communal) was on leave on 27.02.2002 and Shri Bhatt was looking after his work. Also Shri Raiger has stated that Shri Bhatt had accompanied him in the past to meetings called by the Chief Minister, though he used to wait outside with files or information and therefore, it is quite possible that Shri Bhatt was directed to attend the meeting on 27.02.2002 at the residence of the Chief Minister.

10. That the phone calls records do not contradict the statement given by Shri Sanjiv Bhatt to the SIT and considering the important and emergent nature of the meeting, the relative juniority of Shri Bhatt need not have come in the way of his attending the meeting especially since Addl. DG (Int.) Shir. Raiger was not available and Shri O.P. Mathur, the IGP (Security & Admn.) who was next in seniority was not called for the meeting and that aspect was of little significance in the context of an emergency meeting called at short notice in response to an escalating situation.

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11. That the discrepancies about the exact language used or the time of meeting at the Chief Minister's residence at Gandhinagar on 27.02.2002, are inevitable considering the lapse of time."

14.6 Vital would be a slight digression and reference to the petition being Writ Petition

[Criminal] No. 135 of 2011, under Articles 21 and 32 before the Apex Court, filed by Mr. Sanjiv Rajendra Bhatt, IPS, wherein, a prayer had been made to direct transfer of investigation arising from I-C.R. No.149 of 2011 registered on the basis of FIR lodged by Mr. K.D. Panth at Ghatlodia Police Station, Ahmedabad (Rural), under Section 189, 193, 195, 341 and 342 of the IPC, to any other independent agency like CBI etc., which is outside the control of the State of Gujarat. An application being Criminal Misc. Application No.15871 of 2015 had been filed before the issuance of the further directions in the changed circumstances to appoint an independent SIT to conduct *de novo* investigation in the said FIR. The proceedings for contempt under Article 129 of the Constitution read with the Contempt of Courts Act were also sought to be initiated against the incumbents named in the FIR and against such other persons, as the Apex Court deemed fit. The Apex Court noted the details of petition along with personal details of the petitioner, Mr. Bhatt, which reads as under:

> *"4. The petitioner has submitted that he joined the service as an IPS Officer way-back in the year 1988 and was allocated to the State of Gujarat. From December, 1999 to September, 2002, he was posted as Deputy Commissioner with the State Intelligence Bureau. He used to look*

after matters pertaining to internal security of the State, Border Security, Coastal Security, security of vital installations, counter intelligence and VVIP security including that of the Chief Minister. He has alleged that he was present in the meeting convened by the then Chief Minister on the night of 27.2.2002. The instant FIR was a counter-blast at the aforesaid action taken by the petitioner. The petitioner has submitted that Ms. Jakia Nasim Ahesan Jafri had filed a complaint on 8.6.2006 which was ordered to be looked into by SIT as per orders of this Court. The petitioner is a close friend of the then AAG. They have been regularly vacationing together for the last so many years. In 2009, they had made a family trip to Goa. At that time, it is alleged, at the request of the then AAG, the petitioner had accessed his e-mail account. The petitioner came across very unusual e- mails received from SIT, (sit.godhracases@gmail.com). It is alleged that someone from SIT was leaking sensitive and confidential contents. A copy of e-mail dated 14.9.2009 (P-4) has been filed.

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5. In November, 2009, the petitioner was informed telephonically by the SIT appointed by this Court. Prior to the scheduled interaction with the SIT, he was approached by the then Minister of State, Home Department, and was sought to be briefed at the office of the then AAG of Gujarat. While appearing before the SIT, he had informed Mr.

A.K. Malhotra, Member, SIT, about the episode and also leaking of information by the SIT to the then AAG. His statement was recorded on several occasions in 2009 and 2010 by the SIT. The petitioner has further averred that he had vacationed again in May-June, 2010 with the then AAG along with family. He was again required to access the e-mail account on several occasions. During the period from February to June, 2010, he came across e-mail exchanges which clearly indicated an unholy and illegal complicity between the then AAG and the functionaries of State of Gujarat. The petitioner has further averred that on 20.9.2010, he briefed the Additional Chief Secretary (Home) about the leakage of the testimony before the SIT. He was advised to meet the then Chief Minister to clear the air. In the intervening night of 3rd and 4th November, 2010, the house of the petitioner's mother was ransacked. The petitioner had lodged FIR (P-5) at Navrangpura Police Station registered as I-CR. No.449/2010. Again the incident was repeated on the intervening night of 8th and 9th November, 2010 and a steel almirah which could not be broken open on the earlier occasion, was broken and searched. FIR (P-6) was lodged at Navrangpura Police Station as I-CR No.456/2010. The petitioner requested for adequate security cover vide letter dated 14.2.2011 (P-7).

6. On 15.3.2011 this Court directed the Chairman, SIT to carry out

investigation and submit a report on the observations made by the Amicus Curiae appointed by this Court. Pursuant thereto the petitioner was summoned by the SIT under section 160 of the Code of Criminal Procedure in connection with the investigation of Meghani Nagar Police Station, I-CR. No.67/2002. He was issued summons (P-10) for 21.3.2011 under section 160 Cr.PC. The SIT started recording of statements of the petitioner on 21.3.2011 which was concluded on 25.3.2011. On 25.3.2011 while recording statement of the petitioner, the SIT expressed its inability to encompass the details indicative of larger conspiracy of official orchestration behind Gujarat riots of 2002. The SIT self-restricted the scope of FIR under investigation. The petitioner had taken Mr. K.D. Panth along with him to the office of the SIT to corroborate the fact of his having attended the fateful meeting at the residence of the then Chief Minister on the late night of 27.2.2002. SIT was averse to record the statement of Mr. Panth including Mr. Tara Chand Yadav who could have corroborated the fact of petitioner's presence in the meeting. Later on, the SIT examined Mr. K.D. Panth. While recording statement, he was subjected to intimidation and coercion by the SIT. The fact was informed to him on 6.4.2011 by Mr. K.D. Panth. The petitioner wrote a letter to the Chairman, SIT about the intimidation meted out to Mr. Panth, and expressed an apprehension as to the

role and intention of certain members of the SIT. On 14.4.2011, the petitioner sent an affidavit to this Court in SLP (Criminal) No.1088/2008 pointing out certain aspects and inadequacies in the manner and approach of the SIT and intimidation of Mr. Panth. In the affidavit he has also mentioned the details of the meeting convened by the then Chief Minister on 27.2.2002. On 27.4.2011, the petitioner was summoned by Justice Nanavati and Mehta Commission of Inquiry (for short 'Justice Nanavati Commission') directing him to appear on 16.5.2011. This Court vide order dated 5.5.2011 (P-18) in SLP (Crl.) No.1088/2008 directed the Amicus Curiae to examine the record of the SIT. He was permitted to interact with the witnesses examined by the SIT. On 27.5.2011, the petitioner was asked by Amicus Curiae to remain at Gandhinagar (Ahmedabad) on 18/19.6.2011."

14.7 On 18.06.2011, Mr. Bhatt met *Amicus Curiae.* Mr. K.D. Panth and Mr. T.C. Yadav also prepared their affidavits at the say of Mr. Bhatt, who met *Amicus Curiae* and they agreed to such a suggestion and requested Mr. Bhatt to arrange for the trustworthy advocate, who can help them in preparing and filing affidavit. Mr. Bhatt also handed over a copy of the affidavit affirmed by Mr. Panth to *Amicus Curiae*. The petitioner, Mr. Bhatt, came to know on 22.06.2011 that Sr. Police Officials had pressurized Mr.

Panth and had made him to affirm an affidavit before the Executive Magistrate, Gandhinagar, negating earlier affidavit sworn by him before Public Notary. Therefore, a written complaint came to be prepared for and on behalf of Mr. Panth and an FIR was registered with Ghatlodia Police Station being I-C.R. No. 149 of 2011. It was his say that the Counsel for the State of Gujarat intimidated him on the ground that he was crossing the line and in the ongoing Sessions Case, he was summoned as a witness.

14.8 Since, Mr. Bhatt, as per his say in the said petition, did not have any hope for fair investigation in I-C.R. No. 149 of 2011 registered with Ghatlodia Police Station, Ahmedabad (Rural), he preferred the said petition before the Apex Court, where, The State of Gujarat in its counter affidavit has *inter alia* raised the question of maintainability of the petition and has submitted that the petitioner is guilty of suppressing certain facts and has made incorrect statement on oath, and therefore, he is guilty of *suppressio veri* and *suggestio falsi*. The State also had taken a stand that all the allegations made by Mr. Bhatt against them had been examined in SLP (Criminal) 1088 of 2008, which was conducted by the Special Bench of the Apex Court. The investigation in the 2002 riot

cases of Gujarat had been completed by the SIT, which was constituted by the Apex Court and the trials in those cases were going on in accordance with the orders passed on 01.05.2009 in '***NATIONAL HUMAN RIGHTS COMMISSION VS. STATE OF GUJARAT***'(Supra).

14.9 In Gulberg Society case, i.e. in '***ZAKIA NASIM AHESAN VS. STATE OF GUJARAT***', (2009) 6 SCC 767, case also an order was passed, where, the complainant Ms. Jafri had already been examined, on 08.06.2006, by the SIT. It was also alleged that he was brought to the scene at the fag end of the of the trial by the political parties, activists and other vested interest groups. He was also alleged to have been in constant consultation and in connivance with the adverse political parties and for keeping quite for nine years, with regard to the meeting dated 27.02.2002, he had no explanation to offer for the same.

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14.10 In this backdrop of facts, the Apex Court further held and observed that the aforesaid exchange of e-mails, which are self-explanatory, indicate that the petitioner was in active touch with leaders of rival political party, NGOs and their lawyers tried to play media

card and he was being tutored by NGOs and possible obligation of his position as an IPS Officer, he acted not *bona fide* to exert pressure upon *Amicus Curiae* and also the Bench of the Apex Court. The Court after an elaborate recording of chronology of events, went to an extent of saying that his conduct inspired no confidence and it held in no uncertain terms that he not only had not approached the Court with clean hands but, he had also misled the Court. Profitable would it be to reproduce relevant findings and observations:

> *"55. The aforesaid exchange of e-mails which are self-explanatory indicate that the petitioner was in active touch with leaders of rival political party, NGOs., their lawyers tried to play media card, was being tutored by NGOs. The manner in which he acted is apparent from the aforesaid e-mails and need not be repeated. Petitioner had probably forgotten that he was senior IPS Officer. In case he was fairly stating a fact after 9 years he ought not to have entered into the aforesaid exercise and kept away from all politics and activism of creating pressure, even upon 3-Judge Bench of this Court, amicus and many others. Thus the entire conduct of petitioner indicates that he was not acting bona fide and was catering to the interest elsewhere. Even if we ignore his antecedents vividly mentioned in reply of SIT for time being, his aforesaid conduct does*

not inspire confidence.

56. The petitioner has initially in writ petitions prayed for investigation by CBI or by other independent agency. In an application for directions filed in 2015, the petitioner has stated that he has no faith in the CBI also and the cases should be investigated by SIT which may be constituted by this Court. It was strenuously urged by learned senior counsel appearing for the petitioner that considering the ramifications of the case and also the fact that the petitioner was present in the meeting dated 27.2.2002 is also to be looked into. As such it is the duty of this Court to direct investigation by SIT.

57. We are not impressed by aforesaid submissions. It cannot be said that the petitioner has come to this Court with clean hands. Firstly the petitioner kept quiet for a period of 9 years as to the factum of meeting dated 27.2.2002. Then he was exchanging e-mails for ascertaining the time and presence of the persons at Ahmedabad. In case he was present in the meeting it was not required of him to ascertain those facts. Petitioner did not state fact of meeting dated 27.2.2002 in statement recorded by SIT in 2009. The explanation offered by the petitioner for said omission that his statement was recorded in the year 2011 before SIT under section 161 Cr.P.C. as such he made all disclosures. The SIT was same,

having same powers all the time. Petitioner is a senior IPS officer thus the explanation of the petitioner does not appear to be prima facie credible.

[Emphasis Supplied]

58. *This Court had earlier appointed SIT and petitioner had made unwarranted and serious allegations on the SIT constituted by this Court whose performance has been appreciated by this Court a number of times. Petitioner after keeping quiet for 9 years had taken Mr. K.D. Panth with himself to the SIT on 25.3.2011 and insisted that Mr. Panth should be examined in his presence. It was not expected of a senior officer like petitioner to act in the aforesaid manner. Effort of petitioner to examine Mr. K.D. Panth on 25.3.2011 in his presence by SIT was indicative of pressure tactic employed by him. The SIT ultimately examined Mr. Panth on 5.4.2011 and Mr. Panth has not supported the stand of the petitioner that he attended the meeting dated 27.2.2002. Later on petitioner as per his own case, got drafted and obtained the affidavit of Mr. Panth and Mr. Tara Chand Yadav and he had provided legal assistance to them and had handed over the affidavit of Mr. Panth to the Amicus Curiae appointed by this Court; whereas Mr. Panth did not turn up to handover his own affidavit.*

59. It is also apparent that the

petitioner had acted in deliberation and consultation with the leaders of rival political party, NGOs. and had sent the e-mails to the effect that he was not fully exploited by a counsel of the rival political party while his statement was being recorded before Justice Nanavati Commission. He had exchanged e-mails with rival political party leaders and was being tutored by the lawyer of NGO and its activist. Ghost questions and answers were also prepared as to what the petitioner was required to speak before Justice Nanavati Commission. Petitioner has used the media card, has even sent the e-mails to influence the judicial proceedings of a 3-Judge Bench of this Court and has tried to influence the Amicus Curiae. The e-mails also indicate that he tried pressure groups and tried to invoke media pressure. He sent e-mail account details of the then AAG to the media channels but they did not oblige the petitioner as it would not have been appropriate in their opinion to do so. Petitioner inspite of being a senior IPS officer was interacting with the top rival political leaders of Gujarat. He also suggested to a correspondent that he was required to state that he was present when he was leaving for the meeting dated 27.2.2002. The e-mails of interactions with journalists, press, media, NGOs., conduct reflected in e-mails exchanged during the course of inquiry before Justice Nanavati Commission, made it clear that he has not come to the Court with clean hands. No relief can be granted if a

person approaches this Court with unclean hands as laid down by this Court in Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114.

[Emphasis Supplied]

47. As per averments made by the petitioner, he accessed the e-mails of the then AAG in the years 2009 and 2010. In case these e-mails were in his possession, it was the bounden duty of the petitioner to disclose them at the relevant time in appropriate proceedings at an appropriate stage but he did not do so. Even when he has made statement before the SIT on 25.11.2009 and 26.11.2009, it was his bounden duty to disclose the e-mail of 14.9.2009 in case he was in possession of the same. Apart from that when the petitioner's statement was recorded by SIT in March, 2011, it was his bounden duty to hand over e-mails to the SIT and it was also incumbent upon him to mention the same in the unsolicited affidavit dated 14.4.2011 which he had filed in SLP (Crl.) No. 1088/2008 – Jakia Jafri's case but he kept silent as to the e-mails in the said affidavit. When he made such sensational disclosures after 9 years, what prevented him from not disclosing the e-mails and keeping quiet is inexplicable conduct. In the statement before Justice Nanavati Commission also petitioner has failed to state about the e-mails. When he has sent the e-mails to the effect that his potential was not fully exploited by rival political party, what prevented him from stating about the e-mails before Justice Nanavati

Commission also is not understandable. Learned senior counsel appearing for the petitioner in response to the query made by the court why the petitioner kept quiet as to e-mails on aforesaid occasions, fairly and rightly conceded that it was the duty of the petitioner to state on the aforesaid occasions as to the e-mails but their explanation that petitioner was ultimately pushed to the wall by registering a criminal case at the behest of Mr. Panth, then he disclosed the e-mails, is also not acceptable as the petitioner's statement before Justice Nanavati Commission continued even after the date of registration of offence. The aforesaid explanation does not appear to be sound one. The petitioner has filed the e-mails first time in this Court along with affidavit dated 29.7.2011. This was around the time when the report as to hacking of e-mail account and tampering with the e-mails was filed by the then AAG against the petitioner. The questions of delay and explanation are ultimately to be gone into finally in criminal case II-CR. No.3148/2011, without meaning to decide in present proceedings, the overall conduct of the petitioner does not inspire confidence.

[Emphasis Supplied]

61. It was submitted on behalf of the petitioner that since he was present in the meeting dated 27.2.2011 and this aspect is material for the cases in question, as such considering ramifications,

this Court should direct investigation by SIT into the aforesaid allegations. We are not ready to accept the submission for various reasons. Firstly the scope of inquiry in the case I-CR. No.149/2011 on the basis of the complaint lodged by Mr. K.D. Panth is whether his affidavit was obtained by the petitioner under coercion and in the circumstances narrated by him in the First Information Report. This aspect is not required to be gone into and decided in this case whether the petitioner was present in the meeting dated 27.2.2002 and what transpired in that meeting. That is not the issue within the ambit and scope of I-CR. No.149/2011. It is simply a case in which question has to be gone into whether the affidavit dated 17.6.2011 was obtained by the petitioner in the circumstances alleged by Mr. K.D. Panth and after taking him to political luminaries of rival party and whether they were involved in preparation/drafting of the same. Similarly in the case of hacking of e-mail account also the aforesaid question cannot be said to be open for investigation at all considering the scope of the complaint lodged by the then AAG. Thus the submission made by the petitioner to sensationalise the issue by widening the scope of inquiry of the aforesaid two cases and that SIT is required to be appointed for the aforesaid reasons, is too tenuous to be accepted.

62. This Court on 22.4.2009 had directed SIT to look into complaint dated 8.6.2006 of Ms. Jakia Jafri. Apart from that petitioner has himself appeared before the SIT as per the directions issued by this Court for further investigation. On 12.5.2010 SIT had examined number of witnesses and looked into large number of documents and submitted the report and recommended further investigation under section 173(8) Cr.P.C. against certain police officials and a Minister in the State Cabinet who was ultimately tried also. The SIT conducted further investigation and submitted its report dated 17.11.2010 before this Court. On 20.1.2011 learned Amicus Curiae appointed by this Court submitted a preliminary report. This Court on 15.3.2011 directed Chairman, SIT to look into the observations made by the learned Amicus Curiae and to carry out further investigation if necessary in the light of the suggestions made by Amicus Curiae. Thereafter on 21.3.2011, 22.3.2011 and 25.3.2011 the petitioner was examined by the SIT and Mr. K.D. Panth on 6.4.2011. The petitioner had sent an unsolicited affidavit on 14.4.2011 to this Court which was not taken on record. Petitioner was also summoned by Justice Nanavati Commission on 27.4.2011. The SIT conducted further investigation under section 173(8) in the Gulberg Society case and submitted its report on 24.4.2011. This Court examined the report dated 24.4.2011 submitted by SIT and directed on 5.5.2011 that a copy of the same be supplied to the learned

Amicus Curiae who shall examine the reports of the SIT and make an independent assessment of the witnesses statements recorded by the SIT and submit his comments thereon and also observed that it would be open to the learned Amicus Curiae to interact with any of the witnesses who have been examined by SIT including the Police officers. Thereafter, petitioner had appeared before the Amicus Curiae on 18.6.2011 and handed over disputed affidavit dated 17.6.2011 of Mr. K.D. Panth who failed to turn up before the Amicus Curiae. On 25.7.2011 Amicus Curiae submitted his final report before this Court. SIT had prepared a final report in the aforesaid matter and this court on 12.9.2011 disposed of Jakia Jafri's case (supra), and directed the Chairman, SIT to file the final report along with the entire material collected by SIT to the court which had taken cognizance of Crime No.67/2002 in terms of Section 173(2) Cr.P.C. Thereafter, SIT in compliance of the order dated 12.9.2011 has filed the final report before the competent court in Sessions Case No.152/2002.

63. The SIT in its report submitted to the trial court had come to the conclusion that the claim of the petitioner that he was present on 27.2.2002 in meeting held at the residence of the then Chief Minister is not correct. The SIT has made the investigation into the aforesaid aspect and SIT in its counter affidavit has also clearly stated

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that it was found after investigation that the petitioner was not present in the meeting dated 27.2.2002. Thus with respect to the investigation into aforesaid aspect, the matter stands concluded as to the petitioner's presence in the meeting dated 27.2.2002. That investigation had been made by the SIT appointed by this Court and there is absolutely no basis now to order constitution of a fresh SIT to look into the aforesaid aspect. This Court in Jakia Jafri's case (supra) has observed as follows :

"9. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173(2) of the Code to the court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in M.C. Mehta (Taj Corridor Scam) v. Union of India (2007) 1 SCC 110, in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law.

10. Accordingly, we direct the

Chairman, SIT to forward a final report, along with the entire material collected by SIT, to the court which had taken cognizance of Crime Report No. 67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to SIT to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code.

11. However, at this juncture, we deem it necessary to emphasise that if for any stated reason SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint dated 8-6-2006, before taking a final decision on such "closure" report, the court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in Bhagwant Singh v. Commr. of Police (1985) 2 SCC 537. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the

proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

12. *Having so directed, the next question is whether this Court should continue to monitor the case any further. The legal position on the point is made clear by this Court in Union of India v. Sushil Kumar Modi (1998) 8 SCC 661, wherein, relying on the decision in Vineet Narain v. Union of India (1996) 2 SCC 199, a Bench of three learned Judges had observed thus: (Sushil Kumar Modi case (supra), SCC p. 662, para 6) "6. … that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive.*

65. The petitioner has also made

allegations against the SIT to the effect that on 14.9.2009 he came across from two e-mails received from the official e-mail address of the SIT from the inbox of the then AAG of Gujarat when he was accessing the former e-mails. Thus he has accused the SIT of leaking reports to the then AAG. However, position has been made clear by the State of Gujarat and SIT in the counter affidavits. In our opinion, the allegation that the SIT had been leaking very sensitive and confidential details pertaining to the ongoing investigation is totally false and baseless. Two e-mails referred to by the petitioner were sent by Ms. Geetha Zohri, IPS, Additional DG of Police, and the then Convener of SIT from the e-mail of SIT for Godhra cases to the then AAG. Both these e- mails were related to the investigation done in the year 2005 in the Sohrabuddin encounter case by the State Police (Crime) of which Ms. Geetha Zohri IG (Crime) was incharge. She wrongly used the e-mail ID of Godhra cases at her cost to transmit these information pertaining to CID (Crime) to the then AAG. That information absolutely had nothing to do with the matters pending investigation/inquiry/trial with the Supreme Court- appointed SIT for Godhra cases. Petitioner had made deliberate attempt to mislead this Court and has enclosed only the covering text of the e-mails and intentionally avoided the enclosures because the same would have exposed falsity of his stand. The two e-mails dated 14.2.2009 sent by Ms.

Geetha Zohri to the then AAG have been filed along with the enclosures by SIT. A report in this regard had already been submitted by SIT to this Court on 23.2.2011. Thus the petitioner is guilty of suppressio veri and suggestio falsi. He has suppressed the enclosures which he ought to have filed and ought not to have made false allegations in the writ petition that SIT was exchanging sensitive and confidential information with the then AAG. It is unfortunate that on the one hand petitioner has prayed for appointment of SIT and on the other has not spared SIT appointed by this Court and has made false allegations against it. The conduct of the petitioner cannot be said to be desirable."

14.11 On the issue of allegations made into investigation in I-C.R. No. 149 of 2011, whether the same to be investigated by the SIT, the Apex Court held that the same was not warranted, at all. The scope of the case was only, whether the petitioner Mr. Bhatt had obtained the affidavit of Mr. Panth in illegal manner for which the offence had been registered and the charge-sheet had already been filed by the police on completion of the investigation before the competent Court. The statements of various witnesses have been recorded including the scientific evidence of mobile-tower, laptop etc. Statements of eye witnesses under section

164 Cr.PC have also been recorded. Mobile record of the petitioner and the complainant clearly indicated the exchange of calls between petitioner and co-accused during the relevant period. It is also found that the mobile tower location received from the service providers with respect to complainant's mobile and petitioner's mobile established that the complainant was present at the residence of the petitioner at the time stated in the FIR and mobile tower location of rival political luminaries and advocate who happens to be the Chairman of Legal Cell of rival political party. Laptop of the said learned advocate was seized and laboratory had confirmed that affidavit was prepared on the same. The Apex Court on the basis of this overall collection of evidence, therefore, concluded as under:

> *"74. We have already discussed nature of cases in hand applying aforesaid principles. No case is made out to constitute SIT. No doubt about it "be you ever so high the law is above you" is a well accepted principle but in the instant case the conduct of the petitioner cannot be said to be above board. Neither it can be said that he has come to the court with clean hands. Petitioner was a high ranking officer but he too cannot be said to be above law. He must undergo the investigation as envisaged by law in case he has committed the offences*

in question.

75. There is no need to monitor the case any further as this Court has already laid down in Jakia Jafri's case (supra) that once chargesheet has been filed it is not necessary for Court to monitor the case and the case of hacking of e-mail account is not such which needs any investigation by SIT or CBI or court's monitoring.

14.12 On the issue whether the proceedings of criminal contempt be initiated in respect of the preparing of affidavit being I-CR. No.149/2011 or hacking of E-mail account and tampering with it, the Apex Court held that it has not been established that the actions interfered or obstructed the administration of justice and chose to dismiss the said petition.

"80. The petitioner has not been able to substantiate that the aforesaid actions interfered or obstructed in the administration of justice in any manner. Petitioner was not able to establish how the reports could be of any help to anybody so as to subvert the course of justice or action otherwise amounts to interference with administration of justice. The petitioner has himself obtained these SIT reports, as per the then AAG allegedly in illegal manner

whereas as per petitioner by sharing the e-mails of the then AAG. If they were meant to be confidential petitioner has also used them and even sent e- mail particulars of the then AAG to media channels. Therefore the submission advanced does not lie in his mouth. Overall exchange has to be considered in the light of sweeping accusations against the State and its large number of functionaries. The conduct of the then AAG in the circumstances he was placed, has been unnecessarily adversely commented upon, the accusation of criminal contempt is not at all made out."

14.13 It is essential for this Court to refer to this judgment in wake of the heavy reliance placed on the version of Mr. Bhatt, which was extensively recorded by the SIT and also depended upon by the petitioner, herein, heavily. Reference, more particularly, of *Amicus Curiae* having depended upon the same deserves to be mentioned at this stage. Note of learned *Amicus Curiae,* which is much relied upon, insisted on his being cross-examined in the respective matter at the appropriate time in trial. Serious question mark has been raised by the Apex Court of the intent of Mr. Bhatt and also having found the objectionable conduct and deliberate attempt to mislead the Court. His hob knobbing with the rival political parties, NGOs

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and some other players would take away the major edifice of the petitioner, who depended heavily on the version of Mr. Bhatt and his claim, which had come after nine years from the date of the meeting, i.e. on 27.02.2002.

14.14 The learned Judge, whose order is impugned in this revision, was not privy to this decision for having delivered his judgment in the year 2013. However, his non-acceptance of the version of Mr. Bhatt and his acceptance of the report of the SIT get further substantiated by the said decision of the Apex Court rendered in case of '***SANJIV RAJENDRA BHATT VS. UNION OF INDIA AND OTHERS***' (Supra).

14.15 It would not be out of place to record the observations made by the Court concerned with reference to the presence of Mr. Bhatt at the time of the meeting called on by the then Chief Minister. According to the order impugned, the presence of Mr. Bhatt had not been proved and there is no Minutes of the Meeting produced before the Court.

14.16 No ground is made out for interference on this count and more particularly when entire edifice of the report of *Amicus*

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Curiae on this issue has shaken to the root with the later development as discussed above.

14.17 So far as bringing the dead bodies from Godhra to Ahmedabad, it was alleged that it was to trigger the communal frenzy. According to the trial Court, the dead bodies were brought to Ahmedabad as many of them belonged to Ahmedabad and it was the nearest centre for the relatives to identify them. Moreover, the arrangements were also made to ensure that no undesirable or untoward incident occur, while performing the last rites. It, further, held that the evidence produced before the Justice Nanavati Commission cannot be treated as evidence in either civil or criminal proceedings.

14.18 Yet, another allegations was that late Mr. Ashok Bhatt, the then Health Minister and I.K. Jadeja, the then Development Minister, both of Cabinent rank, were posted in DGP Officer and Police Control Room, Ahmedabad, on 28.02.2002. According to the trial Court, there was no exchange of any questionable message in the presence of Cabinet Ministers nor is there any admission on the part of the Sr. Police Officers, i.e. DGP, Gujarat State, Commissioner of Police, Ahmedabad, and these allegations are

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more based on the conjectures and surmises.

On the issue of destruction of police control room logs and vehicles log books and other record of police control room of Ahmedabad city of those dates were collected and produced before the learned magistrate likewise relevant logbooks of the official vehicles also were collected it and after taking due notice of this materials the court in its order in categorical terms held that there is nothing to make out either in the complaint or in the protest petition that any of the message was illegal. There did not appear to be any objectionable message translated in presence of senior ministers shri Ashok Bhatt and Shri I. k. Jadeja ,whose presence at Police control room was objected to severely.

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14.19 On allegations of the communal riots being result of the hate speeches of Shri Narendra Modi, the then Chief Minister of State of Gujarat, all observations made by the SIT, in this regard, have been agreed upon by the trial Court. The SIT was of the opinion that the statements allegedly made by the then Chief Minister have been twisted, who had urged to maintain peace and order to the public at large

and the functioning of the government during chaotic situation also need to be looked into. One of the main allegations was of non-deployment of army and inordinate delay as regards the same, particularly, at Ahmedabad city after 27.02.2002, according to the observations of the SIT, every positive moves were made, and therefore, this aspect by itself was held insufficient to accept the theory of the petitioner.

On the issue of hate speeches by the then chief minister, SIT in its closure report did not find any criminality on record in respect of those allegations. In respect of objectionable statements made on Zee TV and the Times of India and also published by Editors' Guild in its book ,Ld.magistrate after a detailed discussion on the material available concluded that section 153(A) and section 505(2) of the IPC were not attracted. The court also concluded that much emphasis has been made that all the accused persons provoked communal feelings so as to make a breach of unity and peace in the state, it found from the material that sufficient attempts were made by the state government to maintain law and order and and in view of any evidence contrary to the same, it found no justification to uphold the version of the Petitioner revisionist.

Version of the petitioner is that the same were not the simply the failures of political and administrative machineries nor just departmental lapses, but, were criminal offences in respect of each accused who needs to be criminally prosecuted. It is also her say that the speeches were attempts to thwart investigation. It is further her say that the tribunal headed by two former judges of the Apex Court found that there was a conspiracy and abetment in the hate speeches.

It would not be out of place to make a mention that the investigation and further investigation is held to be in the case of Gulberg society case , without upholding the theory of larger conspiracy and the judgment is also delivered in the Sessions case no.152 of 2002 by the learned Special designated Judge , negating the theory of Conspiracy and the said issue is now at large before this Court in Appeal and therefore also, no interference in the revisional jurisdiction would be desirable.

14.20 Shri R.B. Sreekumar, IPS, had sent several reports as regards the government's alleged tendency against the minorities. However,

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it is alleged that no steps were taken. He also had given advice not to effect his transfer, till Mr. KPS Gill arrives. Even the officers, who had appeared before the Justice Shah Commission were threatened by Shri G.C. Raiger not to state anything against investigation. His another allegation was no steps were taken against higher officers for incomplete and fictitious affidavits made by them. Officials, who did not tender affidavits, were accused of not being diligent in their duties. The trial Court accepted the version of the SIT that all allegations made by Mr. Sreekumar were made after he was not given the promotion in the year 2005. There was no official record maintained prior to his first revelation in the year 2005 of all these aspects. Learned Magistrate on clubbing all the allegations dealt with them (from Page 144 to 202) extensively. His non-mentioning of register before Justice Nanavati Commission and in earlier affidavits weighted with Court in regard to his version. Thus, it can be seen that on all the major premises, on which the allegations have been made for lodging a complaint, the Court has agreed by giving extensive reasons in support of his agreeing with the same and concluded against the petitioner.

14.21 So far as sting operation by the

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Tehelka is concerned, learned special designated court delivered its judgment in the case of Naroda Patiya that is sessions case number 235 of 2002 in the 1st CR number 100 of 2002 and the same is already challenged before this court by way of appeal which also is finally heard and reserved for the judgment. Insistence on the part of the complainant is to rely upon the sting operation which had been done in the case of Naroda Patiya. While concluding on this topic, The learned Metropolitan Magistrate held that no larger conspiracy was revealed and this was the evidence of extra judicial confession. Moreover , this sting operation would have no connection with any conspiracy in Gulberg Society case. As also observed in this order, every incident of riot that had taken place in the aftermath of Godhra incident, extensive investigation had taken place in each of them and more particularly, in nine vital matters , under the direct guidance and gaze of the Honourable the Apex Court and therefore, if the Court does not find this operation and its evidence as the part of larger conspiracy, no error much less a significant error of law can be linked with such findings.

So far as the statements of Justice Sawant and Justice Suresh are concerned ,with

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regard to the deposition of late Shri Haren Pandya before honourable justices, the closure report of Amicus Curie dealt with these allegations and concluded that there was no possibility of his being present at the meeting on 27 February 2002. When the learned Amicus Curie questioned the findings of SIT, it further investigated and concluded that there was no possibility of his being present. Learned magistrate has dealt with these allegations in detail and also referred to email communications made between Shri Sanjiv Bhatt and Shri Rahul Sharma where Shri Rahul Sharma informed to Sanjiv Bhatt on the strength of the call details record available with him that there was no possibility of Shri Haren Pandya being present in the meeting considering the time and Tower location.

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These findings are based on sound reasonings and materials made available.

14.22 This Court finds no reason to dilate these issues any further for having found no material illegality nor any error of law. Again, the learned *Amicus Curiae* rightly differed on two aspects: (i) meeting of 27.02.2002 at the residence of the then Chief Minister and (ii)

involvement of two officer Mr. Tandon and Mr. Gondiya, as discussed in this order. On none of the grounds and material is forthcoming to interfere with the findings arrived at by the Court concerned in the order impugned.

14.23 It is, thus, a matter of record that against each point, in the note prepared by the learned *Amicus Curiae*, the learned Metropolitan Court has taken into consideration not only the version of prosecution and those of the witnesses but also the details submitted by way of the Protest Petition. There is a reference of comparative chart of all vital findings and observations of the order of the learned Magistrate have been place before this Court. It is quite apparent from the chart and also on careful examination of the order impugned that it is a detailed and elaborate exercise undertaken on analyzing the entire material, which had been collected and placed in the form of report / charge-sheet. As noted in the beginning even if this Court can also arrive at a different conclusion on the strength of the evidence that had been adduced before the Court concerned, however, it is not exercising appellate jurisdiction, and therefore, unless there is an outright illegality or perversity in the findings revealed, it would not permit replacing its own

findings and observations as that is the well settled law.

ENTIRE DISCUSSION CAN BE WRAPPED UP IN THE FOLLOWING MANNER:

15.1 It is a unique and novel procedure adopted by the Apex Court, as argued by the learned Sr. Counsel as that seems to have led to some kind of confusion even while arguing the matter before the trial Court as also while conducting the revision application before this Court.

15.2 Undoubtedly, the complaint given in writing to the DGP of the State of Gujarat by Ms. Zakia Jafri on 06.08.2006 was for the period between 27.02.2002 to May, 2002, where it is alleged that the large conspiracy of officers and bureaucrats (63 in numbers) for committing the offence under Section 302 read with Section 120(B) etc. of the IPC has resulted into loss of thousands of lives. Such acts, according to the said complaint, allegedly indicate larger conspiracy for the entire State which has not been restricted to a particular case or an incident of riot. Although, 9 (nine) cases of aftermath of Godhra incident were being tried

before the designated Courts, at that stage. It is a matter of record and undisputed aspect that for every incident that took place of riot in the State of Gujarat during that period, crime is registered before the concerned police station in whose jurisdiction the same is allegedly committed, details of which are referred to at Paragraph-2.11 of this order. Except, one matter of I-*C.R. No. 98 of 2002, i.e.* Naroda Gam (Village) case, where the Sessions Trial is presently going on before the learned Special Judge, Designated Court, rest of all matters are already tried and concluded at the end of Special Designated court and most of the these matters are pending before this Court in appeals. In case of Sardarpura Case appeals also are concluded by this Court and the matters have travelled up to the Apex Court with a further challenge. In case of Naroda Patiya, the appeals are heard and awaiting judgment, whereas, in Gulberg Society case, appeals area admitted by this Court.

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15.3 Not only in such individual case of rioting, there were allegations of perfunctory investigation in the petition of '**NHRC V. STATE OF GUJARAT',** (2009) 6 SCC 342, the Apex Court constituted SIT and directed further investigation for six long years, monitoring continuously and stay against hearing of trial is

in each such matter also lasted long, i.e. till 01.05.2009. It directed SIT to monitor trials and submit report every three months. Serious allegations levelled, specific and general nature in those respective cases, were inquired into by the SIT and reports were periodically submitted by the Apex Court and learned eminent Sr. Counsel acted as *Amicus Curiae* appointed in the year 2003 and replaced in between, who rendered their services effectively.

15.4 In the said backdrop of facts, when such a complaint was lodged encompassing all the matters and allegations made are of larger conspiracy, the Apex Court directed SIT on 27.04.2009 SLP (Criminal) No. 1088 of 2008 arising from Special Criminal Application No. 421 of 2007 to look into the allegations made in the complaint dated 06.08.2006 of Ms. Zakia Zafri.

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15.5 At the cost of reiteration, the events that followed would be important to be recapitulated.

(i) SIT examined number of witnesses and also examined various documents and tendered its report on 12.05.2010.

IT recommended further investigation under Section 173(8) of the Code in Gulberg Society Case against certain Police Officials and ministers in the State Cabinet, Mr. Gordhan Zadafiya, who was also tried eventually.

(ii) SIT on 17.11.2010 submitted a report of further investigation.

(iii) Learned *Amicus Curiae* appointed by the Apex Court gave its preliminary report.

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(iv) On 15.03.2011, the Apex Court directed SIT, Chairman to look into the report of *Amicus Curiae* and carry out further investigation, if, necessary.

(v) SIT conducted further investigation under Section 173(8) of the Code in 'Gulberg Society' case (I-C.R. NO. 67 of 2002 registered with Meghaninagar Police

Station for alleged killing of husband of Ms. Zakia Jafri and others) and submitted its report on 24.04.2011.

(vi) The Apex Court directed on 05.05.2011 to supply a copy of such report to the *Amicus Curiae* who was requested to give his independent assessment of the material and report to the Court, if necessary, by interacting with the witnesses.

(vii) *Amicus Curiae* prepared its final report and submitted on 25.07.2011 to the Apex Court, where also, reference given by it at Paragraph-10 of the 'Introduction of Background' is of I-C.R. No. 67 of 2002, registered with Meghaninagar Police Station (Gulberg Society Case).

(viii) The Apex Court on 12.09.2011 directed the SIT to file the final report along with the material collected to the Court, which had taken cognizance of I-C.R. No. 67 of

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2002 in view of Section 173(2) of the Code as reported in '***JAKIA NASIM AHESAN JAFRI & ANOTHER VS. STATE OF GUAJARAT AND OTHERS***' (Supra).

It, thus, disposed of the petition being SLP (Criminal) No. 1088 of 2008.

15.6 As referred to at Paragraph-4.4 herein above, the Apex Court in its final direction directed the SIT to file its final report under Section 173(2) with the Court taking cognizance of the I-C.R. No. 67 of 2002 registered with Meghaninagar Police Station and also specified its powers to direct further investigation.

15.7 Options open to the learned Magistrate when the complaint is filed before it are detailed in case of '***INDIA CARAT PVT. LTD. VS. STATE OF KARNATAKA***'(Supra). Relevant paragraphs deserve reproduction at this juncture:

"The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even

if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer ;and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Section 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(b) though it is open to him to act under Section 200 or Section 202 also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him."

15.8 The moot question is whether in absence of any complaint / FIR, when SIT looked into the complaint of Ms. Zakia Jafri, as directed by the

Apex Court and found no substance to entertain in its report, could the Court of learned Metropolitan Magistrate committed an error in refusing the lodgment on the ground that an FIR in relation to Meghaninagar incident is already filed and hence, repeat FIR is prohibited under the law.

It is a settled law, of course, that for the very incident, two FIRs are impermissible.

Apex Court in case of '***SAKIRI VASU VS. STATE OF UP & OTHERS***' (Supra) has laid down thus:

> *"10. It has been held by this Court in CBI & another vs. Rajesh Gandhi and another 1997 Cr.L.J 63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.*
>
> *11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense*

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that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

15.9 The Apex Court was, of course, well aware when it directed the SIT to submit its final report before the Court below in the pending matters as further investigation has already been done by the SIT in most of these matters, including in I-C.R. No. 67 of 2002 of Meghaninagar Police Station. The same got over by 2009 and yet, it directed the Court taking cognizance to decide in accordance with law.

15.10 In such a background, it is not unusual for the Court of the learned Metropolitan Magistrate to conclude that the investigation was must for I-C.R. No. 67 of 2002, as such eventuality unspeakably is a rarity. Magnitude of

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crime of rioting and apprehension in the minds of minority community in the aftermath of Godhra had shattered the country and the investigation of the Apex Court at the behest of the NHRC in appointing the SIT was a step towards strengthening edifice of justice delivery system.

(i) No authority, either the High Court or the Supreme Court, of course, has directed lodgment of the FIR. Ordinarily, after the lodgment of the FIR, the process of investigation begins, which would culminate into the report under Section 173(2) of the Code. Such request is neither named as charge-sheet nor a final report under the law and yet, it is this report which leave three courses open for the learned Magistrate:

(1) Either to accept the report, if negated, dismiss the complaint;

(2) not to accept the report and take cognizance of the crime;

(3) direct further investigation under section 156(3) of the Code.

The Apex Court in '***AMRUTBHAI SHAMBHUBHAI***

PATEL VS. STATE OF GUJARAT', (2017) 4 SCC 177, was considering the power of the learned Magistrate of further investigation, at post cognizance stage, however, while so doing, the Court also discussed power of the learned Metropolitan Magistrate at pre-cognizance stage.

15.11 In the case on hand, it is emerging from record that the learned Metropolitan Magistrate while accepting the report of SIT stated three aspects: (i) that no Court has directed it to register the complaint and (ii) there being already one complaint in respect of incident registered with Meghaninagar Police Station, it cannot direct the same once again and (iii) it would have no jurisdiction to direct further investigation in view of the investigation / further investigation by SIT at the direction of the Apex Court.

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The Court, of course, then examined threadbare the closure report of SIT which had not found any substance in the allegations of complaint in the year 2006 of Ms. Jafri and concluded that the report worthy of acceptance by its elaborate reasonings and also provided

further in no unclear terms, the detailed grounds for not accepting the Protest Petition of Ms. Jafri, on availing the complainant an opportunity as per the decision rendered in case of '***BHAGWANT SINGH V. COMMISSIONER OF POLICE & ANR.***' (Supra).

15.12 From the discussion above, this Court is of the firm opinion that the trial Court has rightly concluded on all aspects but has erred only on one material aspect, i.e. that it could not have directed further investigation in the matter.

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It is one thing to say that it is agreeable with the report of SIT and hence, choses not to direct further investigation. But, to say that in the given circumstances, it does not possess such powers is caring under the awe of events that led the SIT to directly look into the complaint.

15.13 Learned Metropolitan Magistrate Court

was directed to consider the final report by the Apex Court in its final order and determine whether the collection of evidence compiled with the report of SIT and the Protest Petition cull out a case of lodgment of an FIR, by even explicitly stating the powers to direct further investigation and hence, to that extent, the conclusion drawn is in contravention of established legal principles.

15.14 Much water has flown as discussed at length and one of the main pillars of the Protest Petition of Mr. Sanjiv Bhatt's evidence has crumbled in wake of the decision of the Apex Court. It has also revealed how the unholy nexus of certain officers with certain other planners led to the Apex Court dismissing the petition of forming SIT for investigating into the crime registered at Ghatlodia Police Station as I-C.R. No. 149 of 2011. This material, of course, was not available to the Court below, who also independently examined this issue to hold against

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the petitioner.

15.15 Report of *amicus cuarie* on this issue essentially harps upon the need for trial to examine veracity of evidence of Mr. Bhatt, however, in wake of developments, which shaped subsequent events, this Court finds no error or illegality in the conclusion arrived at so far as this aspect is concerned.

15.16 His handshakes with various agencies to influence the SIT and course of justice in the case of Ms. Jafri also exponentially revealed the extent to which everything was planned.

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16.0 Various observations made by the *Amicus Curiae* in relation to presence of Mr. Bhatt in the meeting held by the then Chief Minister on 27.02.2002 have been quoted, in fact, in *extenso* in the order impugned from Paragraphs-27 to 81 and after the detailed examination of

rival submissions, the Court has rightly found his version slippery and the conclusion of the SIT, has been found to be more acceptable, which deserves no interference.

16.1 There are extraordinary circumstances, which had led the Supreme Court to direct the SIT without any formal registration of the an FIR on the basis of the complaint made by Ms. Jafri, it is not unusual that the Apex Court undertakes such a task for doing complete justice, as extraordinary circumstances also demand extraordinary responses. However, being fully conscious of the fact that the direction all along were to place the matter before the Court, which had taken cognizance of the I-C.R. No. 67 of 2002 registered with Meghaninagar Police Station. The decision of the Court of not registering a separate complaint for a larger conspiracy, in the opinion of this Court, is also not to be disturbed with. Moreover, in each of the nine cases, which had shocked the country,

the Apex Court had personally monitored the investigation by the SIT with the able assistance of the eminent Senior Counsel of the Apex Court, acting as *Amicus Curiae*, and therefore also, the Court can not insist record of any separate complaint, which has not been accepted by the Court concerned by way of closure report and that decision would require no interference.

16.2 The soul of any democracy is the qualitative co-existence and flourishment of any multi-cultural, multi religious, multi ethnic communities and groups. Any attempt to disrupt or kill this essence would only leave the body without soul. This Court is conscious of the magnitude of violence unleashed in the State in the year 2002 and the toll it had taken not only of innocent citizens and their belongings, but, the same also had left deep marks of separation and fundamentalist tendencies and had created a sharp vertical division amongst the citizens of this Country. This Court is also not oblivious

that injustice anywhere is a threat to the justice everywhere and any miscarriage of justice or demand of complete justice, would necessitate examination of the order impugned, taking a holistic view, in the aforesaid background and yet, being conscious of the extent of power of revisional Court, it can be held and opined that with the very set of evidence, even if, this Court can reach to a different conclusion that also *per se* cannot be a ground for interference with the findings and conclusions in the order of the learned Metropolitan Magistrate. And, moreover, for every event of rioting, the Sessions Cases after a thorough investigation have reached to their penultimate stage and that also resulted in convicting hundreds of guilty persons. All the allegations made in the complaint and in the Protest Petition have been since dealt with by the learned Magistrate after a thorough consideration of material placed before the Court and therefore, except for a limited interference, no interference is

desirable.

17.0 In wake of the discussion above, this revision application deserves to be ***SUCCEEDED PARTLY*** and the order of the learned Metropolitan Magistrate dated 16.12.2013 deserves interference to the extent the trial Court held and self-limited itself of its not having powers of further investigation,. It is the reiterative conclusion on the powers of further investigation that has led this Court to interfere to this limited extent only. Rest of the impugned order is confirmed as the same does not warrant any interference.

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17.1 In wake of the completion of the Sessions Trial of 'Gulberg Society' case being I-C.R. No. 67 of 2002, registered with Meghaninagar Police Station, by the specially designated Court and pendency of appeal before this Court being Criminal Appeal (Against Conviction) No. 1201 of 2016 and the allied appeals, no actual purpose

would be sub-served remanding the matter on this limited aspect, as this Court has also upheld the findings that the investigation and further investigation was made in the case of 'Gulberg Society' in SLP (Criminal) No. 1088 of 2008, as detailed herein above. However, to ensure that this incorrect perception, which results into error of law in the order impugned, does not leave the parties remedyless, instead of remanding this matter for this limited cause, a cause would be sub-served if it is directed that the petitioner, if, is desirous to agitate the issue of further investigation, would be at liberty to raise the same before the Court concerned and to that limited extent, such a plea of the petitioner may be examined by the concerned Court. Only if, it finds any need to direct further investigation, it may so do it in accordance with law bearing in mind the findings and observations of the Apex Court in its decision of '***JAKIA NASIM AHESAN JAFRI & ANOTHER VS. STATE OF GUAJARAT AND OTHERS***' (Supra) and also

the observations and conclusions of this Court in the present revision application.

DISPOSED OF, accordingly.

(MS SONIA GOKANI, J.)

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