

<b>PAGE / PARAGRAPH</b>	<b>DETAILS</b>
Page 1 Paragraph 1	The complaint by Smt. Jakia Jaffri was filed under Sections – 120b, 302, 193,114,186, 153a, 187 of the IPC, Section 6 of the Co/m/mission of Inquiry Act, under the Gujarat Police Act and Human Rights Act (dated-8/6/2016) . The inquiry of the complaint was handed over to Additional Director General of the Police, Gujarat State. No FIR was registered. With the help of Teesta Setalvad (of the Citizen for Justice and Peace), an application for issuance of mandatory direction to register the said complaint as an FIR, an order to submit the investigation to an independent agency. However, this application was dismissed. The aggrieved further filed a SLP before The Supreme Court with same requests. In furtherance to this, the Supreme Court assigned The Special Investigation Team with the inquiry and responsibility to take steps as required in law. The reports of the members (Shri Malhotra and Himanshu Shukhla) were sent to the Learned Amicus Curiae appointed by the Supreme Court. The Supreme Court held the SIT can carry further investigation with respect to the Amicus Curiae’s observation, at its own option.
Page 6 Paragraph 2	In the final report submitted by SIT it says that allegation in respect of the offences under different acts which have been made on the accused member was not found to be true and there was no sufficient evidences to prove offence against any of the accused person and no reasonable cause were found thus, a closure report has been filed. It was later requested by the SIT that to consider the procedure followed accordance with the direction issued by the Hon’ble supreme court and accept the report submitted to them.
Page 9 Paragraph 3	Advocate for the original complainant Shrimati Jakiya Jaffri, appeared in front of the court requested to provide copies of the report produced by the SIT. Advocate for complainant submitted different applications before this court in order to get the copies. During the course of the said applications, parties raised legal points to provide copies of the illegible, half-legible, missing documents and some of the documents which have been collected by the SIT during the course of inquiry have not been submitted. Dispute was raised for not providing them. Due to this dispute, the complainant filed SLP(Criminal) before the Supreme Court for “Conclusive Clarification”. As per the direction of the Supreme Court the SIT had to give the copies of the necessary documents to the complainant.
Page 9 Paragraph 4	The complainant sought relief by submitting that the final report by the SIT must be. It was further prayed by the petitioner that an independent agency (not the SIT) must conduct an intensive investigation and must take necessary steps against persons involved in the commission of the offences stated in complaint dated 8/06/2006 (the concerned person’s name may or may not be included in the complaint). The prayer included consideration of the protest petition, ancillary and electronic documents.
Page 10 Paragraph 5	At the stage of argument, heard the extensive and profound arguments on each of the points along with the judgments of the Hon’ble high courts from the special public prosecutor for the SIT. After advancing extensive arguments of length and discussing legal points. The Hon’able high court has cited their support on behalf all the parties. It does not deem appropriate to mention all these submissions as extensive at the stage of argument but it deems proper to mention significant points of the argument of both the parties at the stage. It has been mainly said in the arguments on behalf of the SIT that, the SIT has been handed over the investigation by the directions as per the hon’ble supreme court. Argument advanced that the complaint of the complainant does not fall

	<p>within the definition of the complaint as per the law and also they have drawn the attention towards the section 2(d) of Cr.P.C, and also the complainant has addressed the DGP and not the magistrate in the complaint. The court also ordered that there should be no examination on Zakia Jafri . The report produced by Shri.Malhotra should also be not taken consideration. There are 3 FIR have been registered in the Meghaninagar police station, these are the proceedings arisen out of them. The advocate has no information in relation to the incident,she knows nothing, and however the submission has been made before the court in relation to the complaint prepared by others,which should not be considered. Also the eye witnessed are not giving their statement as to they have personal information about the incident or they have eye witnessed it.</p>
<p>Page 21 Paragraph 7</p>	<p>Advocate Shri Parikh extensively argued upon the point of the right to take decision of the offence by the magistrate. He also argued that the State Government conspired the Gujarat riots that were spread in entire areas. He also argued that the investigation conducted by the SIT was neither neutral nor legal, and that it had limited its purview against the Supreme Courts instructions. The occurrence of more than one incident is indicative of a mass conspiracy; SIT must conduct investigations taking this possibility into consideration. It was also argued that the courts must take cognizance of the offence on the basis of material available on record whereby the trial can be conducted.</p> <p>Shri Mihir Desai drew attention of the court to provisions of the IPC which state that circumstances under which any act is committed by the person or his group unanimously; there can be abetment or assistance by the person. Also. Circumstantial evidence must be considered in order to initiating proceedings for abetment. It was pointed out that the administrative department of the State Government had information about the Gujarat riots, no actions were initiated, and the said act is equivalent to a mass conspiracy. The Tehlka Sting operation must be considered within the meaning of circumstantial evidence for implicating the accused in this case. It is the duty of the court t examine the possibility of the statements as per law, the SIT did not take into consideration the authenticity of the statements produced in front of it. The SIT showed sympathy towards the State Government and hence the final report by the agency must be dismissed.</p>
<p>Page 27 Paragraph 8</p>	<p>On the basis of the aforesaid submissions made by the parties, relying upon the evidences in relation to the facts in this case, it appears proper at this stage to decide the allegations made on the merits.</p> <p>The Complainant Zakiya Jaffri has given a complaint of the offences under Sections 302, 123(b), 114, 186, 153(a), 187 of the IPC and under the Commission Of Inquiry Act, Section-6 of the Gujarat Police Act and under the Protection Of Human Rights Act against total 63 accused persons in the complaint.</p>
<p>Page No-28</p>	<p>Looking to the legal position in relation to the Protest Petition of the complainant in the final report of the SIT, the court is of the opinion that it deems fit for this court to interpret it by mentioning some of the directions of the order passed in the case of SLP by the Supreme Court</p>

Page No-29, 30	<p>As per the facts of Para No-8 the Supreme Court has given such direction that at this stage, the competent court should consider the present investigation under the Section- 173, 173(8) of the Cr.P.C.</p> <p>The competent Court can use the rights as the law for conducting further investigation as per Section- 173(8). In short considering the report under Section- 173(2) of the Cr.P.C of the SIT by the Competent Court, it is to be decided as to whether further investigation for taking cognizance against the accused is necessary or it is only to the extent of filing the charge sheet.</p> <p>The Supreme Court has believed that this final report of the SIT as the report under Section- 173(2) of the Cr.P.C and all the scope of rights of conducting all procedure as per Section- 173(2) of the Cr.P.C have been given to the competent court.</p>
Page No- 31, 32, 33	<p>As per the directions issued by the Supreme Court in paragraph no- 9, the materials which have been collected by the SIT during the course of investigation has been directed to be produced before the court who has taken the cognizance of the offence of Meghaninagar Crime Report.</p> <p>After receiving the copy of the report produced along with the report before the competent court has been given such direction that in connection with the complaint of the complainant, as satisfactory evidences or reasonable reasons are not available in the report for conducting proceedings against the accused persons mentioned in the complainant.</p> <p>Further it has been also directed that, if the satisfactory ground is not available for conducting proceeding against some of the persons mentioned in the FIR, in this regard also the Magistrate should issue notice to the person providing information and afford sufficient opportunity of hearing and thereafter the report should be taken into consideration.</p>
Page 33 – 38	<p>SC: directed SIT to look into the matter and take steps as required in law, submit report to court.</p> <p>Limited interpretation of the said complaint has been made, entire scope not taken into consideration.</p> <p>Jakia Jaffri complaint should be connected with all riots that took place post Godhra Carnage,</p> <p>Investigation for high level conspiracy is then included.</p> <p>The scope for interpretation does not arise, as the court orders were clear.</p> <p>Direction by authority has to be implemented.</p> <p>Writ petitions issued by SC to some of the states- NHRC's point stating that witness can give evidence without any influence, relief was sought in the way of competent prosecutor who is impartial before the court.</p>
Page 38 - 43	<p>The order starts with "coming to the complaint" which states that the supreme court has issued an order which says that the case shall be examined by the SIT and the SIT should give its report within 3 months. The preliminary inquiry was</p> <p>Considered as reports of further investigation, SIT should consider all evidence even in gulberg society and naroda patiya case. Even after 9 years of the incident the SIT report throws up a number of unanswered questions. Amicus curiae was given free hand to interact with any of the witnesses even who had been examined by the SIT.</p>

<p>Page No- 44, 45, 46, 47, 48.</p>	<p>The SIT has complied with the order passed by the Supreme Court as per para- 8 of the SLP after looking into all the reports of the SIT. The SIT has made suspicious interpretation of the direction of the Supreme Court in the procedure of this investigation and therefore it should not be believed.</p> <p>The SIT has made investigation only by taking into consideration the limited direction of the Supreme Court and duties. In these circumstances also, when the Supreme Court has passed the order to make investigation after looking into investigation of 9 cases and the complaint, the SIT cannot do the act of investigation additional to the above direction of the Supreme Court. The Supreme Court has also said that the report of SIT is not as per the direction of the Supreme Court.</p> <p>At this stage, direction cannot be given to the SIT for more investigation with regard to this point. In addition, Shri Jamuaar has drawn attention of the court towards the relief which has been sought for by the applicant in writ petition no 221/2002 of the Supreme Court. Also accordingly, the Supreme Court has made clear direction to the present complainant regarding jurisdiction of investigation. In these circumstances, it had been submitted that, the argument of the complainant is not acceptable in respect of interpretation of jurisdiction.</p> <p>Upon reading the relevant paras of SLP the Supreme Court produced during above submission and argument of the parties, the court agrees to the argument of the parties, then the court agrees to the argument of Shir Jamuaar with regard to this point. The Supreme Court has clearly directed to “look into” the complaint of the complainant along with additional investigation of 9 cases assigned to the SIT.</p> <p>It was submitted by the complainant to take cognizance of the offence on the basis of the report of the SIT. In that connection, an Advocate of the complainant has argued that, when the SIT as produced the report as per section- 173(2) of the C.r.P.C., this court is only to see as to whether such evidence that a cognizance of the offence can be taken is prima facie available on the record or not.</p>
<p>Page no 49 to 50</p>	<p>The statement starts with From the provision it says that the magistrate have several court open to them and proceed to record statements of the complaint and witness under sec.200. if in the opinion of magistrate there is no sufficient ground for proceeding then he may dismiss it under sec.203. Under,204 he may proceed if there is sufficient ground. The magistrate can postpone the issue of process and he can also appoint any investigation officer. After appointing the officer, the officer then have to submit the report to the magistrate after which he may issue the process straight way to the accused. The magistrate is not bound by the opinion of the police officer has to whether an offence has been made out or not.</p>
<p>Page 51-55</p>	<p>Magistrate is to see as to whether there is such evidence or not that it is prima facie satisfied that a proceeding in respect of offence can be done on basis of investigation of papers.</p> <p>After taking cognizance on the basis of the charge sheet in the case of 67/2002 Meghaninagar Police Station, magistrate has committed the case to learned session court.</p> <p>On the basis of materials produced before the court, the court has to think on the basis of prima facie evidence and only thereafter, court can take decision for further procedure.</p>

Page no 55 to 57	<p>In a recent decision of the supreme court it has pointed out that the legislature has been stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. It was very essential for the magistrate to highlight the perusal of the court and also the court is not accepting the prayer made in the protest petition and it is also necessary that session has not looked into the case same as magistrate court. The court of session would have viewed the matter from the perspective as the magistrate, the court in the first instance it will discharge the responsibility of determining to whether frame the charges or not. The magistrate then has to examine all the issues within the area of law and also not being influenced by the reasons. An order passed in the circumstances noted hereinabove , without outling the basis therefor, would have injudicious.</p>
Page No-57, 58	<p>Scope and jurisdiction with regard to this proceeding just as observed by the Supreme Court in para- 8. As per the established principles of law also, when order is clear, this court can only consider the proceeding as per the direction of the Supreme Court. In these circumstances, the Supreme Court has passed different orders and issued SLP and Writ Petition filed by the SIT and after conducting procedure of investigation on the basis of it, the SIT has produced investigation report time to time before the Supreme Court.</p> <p>The learned Advocate Shri Sanjay Parikh for the complainant has submitted that, when additional new fact comes on record against the accused persons by the documents with the protest petition, by considering the protest petition as a complaint, order of further investigation should be passed with regard to new facts.</p>
Page No- 59	<p>The Supreme Court has clearly directed in para no- 9 of SLP that, “The said court will deal with the matter in accordance with law relating to the trail of the accused, named in the report/charge sheet including matters falling within the ambit and scope of Section 173(8) of the court.</p>
Page No- 60, 61, 62.	<p>Taking into consideration above all the facts, this court believes that, the report produced by the SIT in the present proceeding is final report that means on the basis of the said report, in the present proceeding, this court cannot pass the order of further investigation of new facts created from the documents produced with protest petition. Considering the provisions of section- 190 of Cr.P.C., this provision clearly shows that the Magistrate can consider the options of this section on the basis of the report produced in connection with compliant before the magistrate.</p> <p>Final report as per Section 173 of Cr.P.C. is to be made. Considering the provision of Cr.P.C on the basis of complaint, when any person states any fact before magistrate in written or oral form and a magistrate takes it in the form of complaint and thereafter, he passes order to conduct proceeding under sections 200 and 202 of Cr.P.C., the complaint is mentioned inly in those circumstances.</p> <p>Smt Jakiya Jafari was not satisfied with the procedure conducted by him; she has filed a writ petition in the Gujarat High Court in the form of complaint.</p>

<p>Page No- 63, 64, 65</p>	<p>The court believes that the said complaint cannot be considered as FIR or private complaint. However, Supreme Court has included the report of SIT under section-173(2) of Cr.P.C. Taking into consideration the provision of section of the said Code and all sub-provision of section 173 of Cr.P.C., as per section 173(8) of Cr.P.C., the orders of further investigation can be passed by magistrate or higher police officer, but the Supreme Court has included the report of SIT in the purview of section 173(8) o Cr.P.C in Para no- 9 of the SLP filed by the complainant.</p> <p>The complainant has drawn attention of this court towards the provision of section 190 of Cr.P.C. In respect of taking cognizance. It is not consistent with the proceeding of this case.</p>
<p>Page no-66-67-68</p>	<p>On the basis of the judgment and record put in front of the court. Direct evidence cannot be available to establish prima facie conspiracy but it can be proved by circumstantial evidence. In its support, the judgment of the case of zahira habibulla vs state of Gujarat. Beside this the complainant has drawn attention of this court towards the provisions of section 107 and 102 of the indian penal code in connection with abetment and it has been submitted that their essential factors are satisfied in the case of investigation and the following judgments have been produced in its support. The SIT report says that they haven't found anything or any evidence against the accused person and also the court has no right to take the decision in connection with the definitions of the sections. The court can go out of its jurisdiction with regard to this point.</p>
<p>Page 71-75</p>	<p>Adv Desai argued that Haren Pamdya's statement is acceptable in spite of his death. (Section 32(2) of the evidence act)</p> <p>Mihir Desai submitted that the SIT relied upon the statements of only such witnesses who have been joined as co-accused persons in the complaint. – SIT findings in respect of absent Haren Pandya is mistaken. Statement placed before the “concerned citizen tribunal” was relied upon, truthfulness can be decided only after taking evidence.</p> <p>Rule 461 and 462 of the Bombay Police manual States that - duties of State Intelligence Bureau includes that in case of a meeting regarding law and order, the presence of the officers of the State Intelligence Bureau is necessary.</p> <p>Narendra Modi , in his reply to the SIT, stated that the Sanjiv Bhatt was not present in the meeting (as D.C.I) However statements by the drivers and other witnesses state otherwise.</p> <p>The evidence proving the presence of Sanjiv Bhatt was destroyed.</p>
<p>Page NO- 75, 76, 77.</p>	<p>Sanjiv Bhatt and disbelieving his statement, the SIT has tried to defend the accused persons.</p> <p>It was submitted that there is clear discrimination in the investigation of the SIT and has argued that, in the cases of any other officers, the SIT has not verified past of the concerned officers.</p> <p>The said statement is excluded in the case of investigation and the court can decide only during the trial as to whether the said reason which has been shown by the SIT in its closure report for this, is true of false.</p> <p>The SIT has no right to give such finding. It has been submitted to believe that by giving the report accordingly, an attempt has been made to defend the accused persons.</p>

	<p>The SIT has not accepted the evidence neutrally, the SIT has not accepted the evidence against Narendra Modi only by recording the statements of other persons connected in the criminal conspiracy. In that way the SIT has not performed duty honestly as an investigation agency.</p>
<p>Page No- 78, 79, 80, 81</p>	<p>In the protest petition, the complainant has relied upon the opinion of ‘amicus curiae’ appointed by the Supreme Court. The learned Amicus Curiae Shri Rajuramchandran has submitted with regard to the note produced before the Supreme Court.</p> <p>On the basis of the Amicus Curiae, it has been opined that the offence under section 153-A, 153B(1), 166 and under section 505(2) of I.P.C. occurs only at prima facie against Narendra Modi and the accused persons.</p> <p>In these circumstances, the court is to decide as to whether summons should be made or not against the said accused person under the above offences.</p>
<p>Page on 81 to 85</p>	<p>On the basis of the report of amicus curiae, it has been opined that the offence occurs only at prima facie against Narendra Modi and other accused person, in the following circumstances only court can decide as to whether summons should be made or not against the said accused persons under the offences. The amicus curiae’s opinion on the presence of Sanjiv Bhatt in the meeting. In his report it is said that sanjiv has gone to CM’s office and also the call recordings were submitted and presented in front of the court, Bhatt then said that he will only speak under an legal obligation and it is unlikely that a serving police officer would make such a serious allegation against the chief minister of the state without some basis.. it is very difficult to accept that Bhatt’s comment and statement is motivated because he has an axe to grind with the state Govt. over issues concerning career and it may not be proper to disbelieve Bhatt at his stage only because other officers have not supported his statement. The disbelieve cannot be only based on the delay of the statement. Bhatt has also companied the CM in the past many meetings though he used to wait outside with the file and so he wasn’t directed to attend the meeting. The phone record also doesn’t contradict the statement provided.</p>
<p>Page no 86 to 90</p>	<p>Against the above mentioned argument by the advocate of the complainant there has been a question on the reliability of the statement of sanjiv bhatt. It was argued that snajiv was present as an witness for the first time he gave his statement during the investigation conducted by the SIT. Bhatt has taken such a stand that he had not previously mentioned facts known to him during the inquiry done by the SIT. Because he was under the oath of secrecy and he remained silent because of the same. Further there is clear evidence found during the investigation of SIT that if bhatt had any personal information about the incident of Godhra railway station or the riots that have taken place then he should include that in the affidavit. But the statement given by bhatt is not to relied upon and the court also should not rely on the same. It was also argued that the meeting that took place was not a secret meeting and it was said that considering the facts present in the chakravarti in his statement the evidence and facts provided by sanjiv bhatt is untrue and should believe or rely on that.it was also clear that sanjiv bhatt was pressurized to give support to the false statement. The SIT then decided to check the past of sanjiv bhatt so that they can see the intention of the witness. Sanjiv bhatt has fabricated two messages subsequently with malicious intention and the same is supported by oral and written evidences.</p>

91-96	<p>After the investigation made by the SIT regarding presence of Sanjiv Bhatt due to reasons of this email communication, the finding is correct that Sanjiv Bhatt was absent, statement of Haren Pandya is not believable.</p> <p>Investigation also pointed that Sanjiv Bhatt has hatched a conspiracy to pressurize the judgments of the court through media card by being in contact with certain interested persons and misguiding the media. – Court should admit findings of SIT.</p> <p>The Special Public Prosecutor submitted that the investigation of any offence has to done as per provisions of the Cr.P.C. As per law – no other persons are excepting the complainant, the Investigating Agency, the accused persons and the court having competent jurisdiction.</p> <p>The purpose of appointment of Amicus Curiae is only to help the court.</p> <p>The submission of complainant regarding the opinion and note of the Amicus Curiae is not acceptable.</p> <p>The fact that sanjiv Bhatt is nit believable on the basis of the email communication between Sanjiv Bhatt and Rahul Sharma, further even K. Chakravarthi’s statement supports this.</p>
96,98,99	<p>Sanjiv Bhatt has stated I his statement of the SIT that he was given instruction by the State I.B. Control Room and State Police Control Room to remain present in the meeting of the Chief Minister and it was informed that Shri K. Chakravarti desires that he remains present in this meeting with him. Whereas Sanjiv Bhatt has stated in his statement that except the Chief Minister no other Minister were present in this meeting.</p> <p>Considering the facts admitted by Shri Rajuramchandran in his report, he has mentioned the following important facts in his report and tis court believes that I is proper for the above stated decision.</p> <p>“I am conscious of the fact that though Shri Bhatt has been contending that he would speak only when under a legal obligation to do so, his conduct after making his statement u/s 161 of Cr.P.C has not been that of a detached police officer, who is content with giving his version. I am left with no doubt that he is actively “strategizing” as in touch with those, who would benefit or gain mileage from his testimony.”</p>
100	<p>The SIT has mentioned in the closer report that the officers of administrative department were present in the meeting held at the residence of the Chief Minister and this meeting was regarding law and order, therefore, this meeting was regarding law and order, therefore, this meeting cannot be called a meeting for intelligence. Under such circumstances, there is no question of secrecy or oath, because no such discussion was to be made in this meeting that if the issues are made public, the public interest would be in danger.</p> <p>Further in the closer report it was mentioned that the Investigating Officer has used the Official Secret Act after the delay of 9 years, which causes doubt on the conduct of Sanjiv Bhatt.</p> <p>The court agrees with the finding of the SIT that just on the basis of being present in a meeting as an Intelligence Officer, the meeting does not become a secret meeting.</p>



101-105	<p>Further, as the SIT considered the investigation regarding the call message as per the statement of Sanjiv Bhatt, different editions of certain language used by the Chief Minister in the said meeting is available on record in which-</p> <p>There is a finding in the report of the Investigating Officer of the Special Investigation Team that the further claims of Sanjiv Bhatt that he had to send some messages related to law and order in Gujarat State are proved false after the observation of the available record.</p> <p>Smt Jakia Jafri has made a claim in her complaint that a high level meeting was convened by the Chief Minister, wherein Senior Officers were called and they were given clear instruction that “not to deal with Hindu rioting mobs”.</p> <p>Sanjiv Bhatt has made such a claim in the statement given before the Special Investigation Team that the Chief Minister told the Officer present in the said meeting that, “for too long the Gujarat Police had been following the principles of balancing the actions against the Hindu and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims are taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindu and it was imperative that they be allowed to vent out their anger”.</p> <p>Further Smt. Teesta Setalwad informed that Shri Haresh Pandya informed us that such clear instruction was given by the Chief Minister in the meeting that let the Hindus vent out their anger tomorrow and no one should do anything about it.</p> <p>It was published in the Outlook Magazine on 3rd June 2002 under the title “A Plot The Devil’s Liar”.</p> <p>Information with Outlook shows that a senior minister from his own cabinet has blown the whistle on Modi... The Minister told the tribunal that in the two- hour meeting, Modi made it clear that there would be justice for Godhara the next day, during the VHP called bandh. He ordered that the police should not come in the way of the Hindu backlash.</p>
Page No- 106, 107.	<p>Regarding the statements made in the meeting held at the residence of the Chief Minister in the presence of Sanjiv Bhatt and the submission made by the Amicus Curiae regarding this issue, is taken into consideration, there is no reason to believe that the statements made by the senior officer before the SIT, who were present in the meeting, are false.</p> <p>As per the established principle of law, when statement of any witness is recorded under section 161 of Cr.P.C. the witness has to state required facts regarding the delay in his/her statement. Sanjiv Bhatt is an intellectual witness of IPS cadre. He has not mentioned about the meeting anytime earlier in the statement before the SIT and he has not clarified regarding the secrecy. Under such circumstances, the court believes that it is proper that the statement of Sanjiv Bhatt is not taken into consideration by the SIT.</p>
Page No- 108, 109, 110,111.	<p>One issue should be considered that there is no evidence on record that instructions regarding the alleged charges have been passed on for the lower level police officers or employees. Therefore, on the basis of produced record, this court does not agree with the findings of the inquiry of Concerned Citizen Tribunal. Considering the documents and arguments submitted by the SIT, there is no reason not to believe that the details declared by Sanjiv Bhatt after a long time is not trustworthy. Moreover, the Id Advocate of the SIT has mentioned about the record regarding the registered offences against</p>

	<p>Sanjiv Bhatt and documentary evidences have been produced in support of the same. If the same has taken into consideration, Sanjiv Bhatt is prejudiced against the government and he has produced such evidence before the court due to some unknown reasons and if the same at taken in to consideration with legal purview at the first stage, these details or evidences are not prima facie satisfied.</p> <p>Thus, under the above circumstances, the court has to check the truthfulness of the facts found on the basis of record and evaluate the same. The court has to use the authority in the interest of justice carefully and cautiously. Under such circumstances, this court believes that if the evidence is taken into consideration without judicial examination on the basis of the said charges and if the further procedure is undertaken by believing the prima facie charges against the respective persons, then there is possibility of infanticide of the justice.</p>
111-122	<p>Decision of Government to bring dead bodies from the incident to Ahemdabad and to have a procession of the same dead bodies, was an instigation which in turn caused communal tension. (dead bodies handed over to Jaydeep Patel of VHP) – Postmortem conducted in such a way so that it was seen by the public and photographs were allowed to be taken.</p> <p>The said charges are included in the protest petition, further the postmortem was said to conduct by following an illegal procedure. (such evidence was ignored by the SIT)</p> <p>A curfew was imposed at 11 hours in Godhra, there were many violations of the curfew and no record to state that action was taken against those violating the curfew.</p> <p>Under procedure of criminal law, the respective officer has to take decision of postmortem only after inquest panchanama of the body, facts of the present case are not indicative of any such procedure being followed.</p> <p>SIT has not conducted detailed investigation – no investigation as to who was pulling the strings of the postmortem against the usual procedure, no investigation regarding the person who allowed the said publications of the photographs and publications of the VHP.</p> <p>The administrative head should be held responsible.</p> <p>Material on record indicates that the decision taken by Modi to hand over bodies to Jaydeep Patel was part of a carefully hatched conspiracy.</p> <p>Modi addressed political workers at Godhra and stated that the police will not disturb taking revenge against innocent muslims. (Statement corroborated by IAS officer Shankar Menon before the SIT.)</p> <p>It was submitted that messages were sent bylocal police officers for getting protection and bandobast in view of possibility of creating riots. No investigation was conducted to test the authenticity of the said messages.</p> <p>SIT ignored records of wireless messages and other documentary evidence.</p> <p>Special Public Prosecutor submitted that according to order given by Supreme Court the SIT is supervising 9 criminal cases of the Godhra Riots. No direction has been given to the SIT regarding investigation of these cases or further investigation about any new incident or charge. In the present case, the submission regarding the postmortem is not worth taking into consideration. The charges regarding the procession of dead bodies to be instigating are vague and unclear. It was argued that if the process of identification of dead bodies were to be followed the situation would not be in favour of maintenance of law and order.</p>

	<p>As Jaydeep Patel had encouraged the travel to Ayodhya, he would know some of the people and hence the dead bodies were handed over to him.</p>
<p>Page No 122, 123, 124, 125, 126.</p>	<p>The arrangement for protection made by the Godhra Police for handing over the dead bodies and accordingly the arrangement of the escorts made for the vehicles should be considered. Such is stated in the argument to believe that the SIT has done proper analysis of the documentary evidence and statements of the witnesses produced in the closer report of the SIT on this issue.</p> <p>Shri Jamuar ha argued refuting the enumerative argument of the complainant regarding the procession of the dead bodies that 35 brunt dead bodies were identified by the relatives till 13.00 hrs on 28/2/2002 and entry in this regard has been made by the doctors of Sola Hospital, Ahmedabad and the dead bodies were handed over to the relatives. The remaining unidentified dead bodies were cremated after collecting DN samples under the protection of police and administrative officer at crematorium house of Gota.</p> <p>Further Shri Jamuar has argued regarding the illegal procedure of the post-mortem examination as mentioned by the complainant that Supreme Court has established that if the cause of death is clear and established and if post-mortem is conducted, then it is not a drawback and the result of the case is not affected by the same.</p> <p>The dead bodies were taken out of the couch and were burnt. Fire as a cause was established. Under the circumstances, the examination of the dead bodies to find the cause of death was not necessary. Under the circumstances, as the procedure of the post-mortem was just a formality, the charge should not be believed that the intention of performing the post-mortem in the open was to instigate communal hatred. Shri Jamuar has also refuted such charges of the complainant that as the post-mortem was performed in the open, majority community of Goghra got angry and instigated.</p> <p>Moreover, appeal against the judgement given by the Ld. Designated Court in this case is pending in the Supreme Court. In that way also, the judgment of the Ld. Designated Judge should be believed sub-judice. Therefore the conclusion given by the court in the above judgment regarding this issue should not be taken into consideration in the present case.</p>
<p>Page No- 127, 128, 129, 130.</p>	<p>Raju Bhargav, Superintendent of Police Of Godhra at the respective time has stated in his statement that as curfew was imposed in Godhra city, he made arrangement of trucks to transport the dead bodies. Police escorts were also arranged and these vehicles left from Godhra at mid night. On the basis of this fact court should discard the finding of the investigation that sufficient steps were taken by the investigation that sufficient steps were taken by the authority o that no untoward incidents take place by the majority community in connection with the incident.</p> <p>The Ld. Special Public Prosecutor has drawn the attention of the court to the main portions of the investigation of the SIT on this issue and it is submitted that according to the same also the reason for bringing the dead bodies for Godhra to Ahmedabad is appropriate.</p> <p>Under the circumstances, this court does not feel it appropriate to discuss and take</p>

	<p>decision on the finding of the above mentioned Designated Court on that issue.</p> <p>Further the court has made an observation on the basis of the submission of the parties that life of many people has been lost due to burning of S-6 coach of Sabarmati Express and while taking out the dead bodies, the way the condition of the dead bodies were seen many of them were not in condition to be identified. Further, viewing the circumstances of the present case, no truth is found. The submission made for the complainant regarding the legitimacy of the post-mortem. Naturally the purpose of the post-mortem is to find the cause of death, whereas, in the present case, the death of the persons has been caused due to fire.</p> <p>By keeping in mind the situation arose in Godhra city after the incident of Godhra train, when the decision to shift the dead bodies has been taken by the authorities, it does not appear appropriate to see this step with guilty mind and this Court agrees with the findings given by SIT in respect of this issue.</p>
131-140	<p>Late Ashok Bhatt (then Health Minister) and Mr. I. K. Jadeja (then Minister of Urban Development) remained present at the Police Control Room, Ahmedabad City and at the office of Director General of Police under the instructions of Narendra Modi.</p> <p>Ld. Advocate Mihir Desai argues that this was done to prevent the police from interfering in the riots and preventing them from carrying out constitutional work. Jadeja inactivated the work if Chakravarti (DG) Sanjiv bhatt in his statement before the SIT confirmed the presence of Jadeja in the police control room.</p> <p>Surrendering to the pressure of the said authority – police is punishable under s/186 of IPC.</p> <p>The 2 ministers could have worked to defuse the riots, or could of informed he CM about the said situations in Gulberg.</p> <p>Ld. Amicus Curiae stated in his report that there could have been a dampening effect on the working of the police officials because of the presence of the 2 ministers.</p> <p>In a report by the SIT it was stated that no evidence is available to suggest that they ever interfered with the police operations to bring the situations under control or that they conspired in the perpetrations of the riots.</p> <p>The very presence of political personalities unconnected with the home portfolio at the police control rooms is circumstantial evidence of the CM's directions, requesting r allowing them to be present.</p> <p>No material to prove their interference</p>
141-162	<p>No prima facie evidence to cognizance for the procedure u/s 186 of the IPC- SIT findings inappropriate.</p> <p>Allegations by complainant:</p> <ol style="list-style-type: none"> <li>1. Gujarat Govnt Officers were given illegal instructions by CM Narendra Modi (orally) – stated by R. B. Kumar in third affidavit before J. Nannavati Commission 9/4/2005</li> <li>2. R. B. Kumar sent report stating to maintain certain attitude against minorities – 24/4/2002, 20/8/2002. No steps taken by govnt</li> <li>3. Mr. G. C. Murmu – Home Secretary of state was frightening officers who were to depose before the Nanavati Commission</li> <li>4. No action was taken against Chakravati, P. C. Pande and other government officers who filed unclear, incomplete affidavits. (fourth affidavit – R.B.</li> </ol>

	<p>Kumar)- Neglligence of duty  Affadivits (9) filed by R. B. Kumar constitute a part of the procedure of Nanavati Commission hence should be considered.  Judgment of Court – the material has to be taken into consideration beyond the trial stage, against the accused persons.  S/6 of Commission of Inquiry Act , the disposition of an affidavit before commission can be taken into consideration in the criminal procedure.  Desai argued that - R. B Kumars third affidavit wherein there are entries of illegal instructions given by Narendra Modi , Guj Govnt and other authorities, is sufficient to satisfy responsibility of accused persons in various criminal offences.  SIT has neglected statements of independent and neutral officers.  R. B. Kumar also stated in his affidavit that he was contacted by senior officers, told to avoid any kind of disposition,  Witnesses were threatened through Mr. G. C. Murmu, Dinesh Kapadia, Arvind Pandya.</p> <p>Note mentioned in Amicus Curiae Report 20/1/2011 :</p> <ol style="list-style-type: none"> <li>1. Statements of R. B. Kumar cannot be discarded</li> <li>2. The statement itself could be used as material to possibly prove illegal instructions given out</li> </ol> <p>Public Proecutor submitted that the SIT has no authority to investigate the facts of the affidavit.</p> <p>Mr. Jamuar also argued that in Primary Inquiry stage, the statements of the witnesses were taken with their signature by Mr. A. K. Malhotra, no scope to examine facts by SIT.</p> <p>Mr. O. P. Mathur in his statement said that therecould be a possible forgery by Shreekumar in the records.</p> <p>Shreekumar in his affidavit also stated that the Godhra incident took place in a short span of time before police help could be handed out.</p> <p>Shreekumar had completely supported the Government’s decision regarding the riots in his first two affidavits. He made allegations against the Government in the third affidavit.</p> <p>Jamuar also stated that the affidavits by Shreekumar were given after a significant time since the incident, with a view to defame the Government and authorities.- no promotion, animosity of R. B. Kumar.</p>
Page No- 163, 164, 165.	Special Pubic Prosecutor Mr. Jamuare has submitted such in respect of locus standi of Mr. R.B Kumar in the present procedure that during the days of communal riots, Mr. Shreekumar was performing his duty in A.D.G.P. Armed unit and he had nothing to do with the law and order. Therefore, the fact that Shreekumar states as eyewitness of the riots, in not believable. There is no provision of keeping personal diary in police manual. Moreover, Shreekumar has kept this diary due to some incomprehensible and ambiguous reasons. Special Public Prosecutor Mr Jamuare has argued on the basis of the complaint of the complainant that the entire fact of the said complaint has been prepared on the basis of the facts of various affidavits filed before Justice Nanavati Shah Commission. Such argument has been made that on the basis of the above observation of Gujarat High

	<p>Court and Supreme Court, as the allegations of the complaint are based on the affidavit, the same should not be taken into consideration.</p> <p>Further it was argued in relation to this point that Shreeumar has stated in both the aforesaid affidavits that the information of karsevak was received lately in the evening while returning from Utter Pradesh and such information was not provided by any organisation that the first information in respect of possibility of assault being made by the Muslims on car-savek at Godhra, was not received.</p> <p>On the other side, Mr Januare has argued on this point that as per the viewpoint of Sit the affidavits of desposition of Shreekumar before Justice Nanavati Shah Commission cannot be taken into consideration in the present procedure.</p>
<p>Page No- 166, 167.</p>	<p>The evidence of such type of recording holds the protection of privacy under Indian Evidence Act, 1872 because this talk is between the client and the advocate, which cannot be declared without the consent of both. Moreover, after the study of the aforesaid recording, it does not prove during inquiry that the criminal act has been done by any person. Moreover, after the study of the aforesaid recording, it does not prove during inquiry that the criminal act has been done by any person. Under these issue circumstances, the findings given by the SIT on this issue should be believed.</p> <p>Mr Januare has argued that after this meeting, Shreekumar hasfiled eight affidavits before Justice Nanavati Shah. Though he was independent to mention the aforesaid fact in the affidavits, Shreekumar has not mentioned the fact regarding this recording in any other affidavits. But, the allegations regarding this fact have been started with the third affidavit.</p>
<p>Page No- 168, 169</p>	<p>Mr Januare has made such presentation that after superseding Mr R.B. Kumar, he has provided the necessary material by making the allegations against the authorities of Government and he has adopted the tendency of opposing the policies of Government. Such submission has been made that that facts gets corroboration through his first two affidavits.</p> <p>Moreover, Sreekumar has started making allegations against the authorities of Gujarat Government by third affidavit and he has also alleged that the investigation of SIT is partial. Mr Januare has mentioned para- 4 of the order of Supreme Court dated 1/5/2009-</p> <p>“Due to the effort 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 SIT has worked.</p> <p>Therefore, SIT shall continue the function until the completion of trail 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.”</p>

<p>Page No- 170, 171, 172, 173, 174.</p>	<p>Looking to the submission of the parties and the record produced in the said case, to take adjudication regarding the aforesaid in this case at this stage, it seems necessary to mention the brief fact of the statements given by the officers concerned to this issue during investigation. Such fact has been stated in the statement of Shreekumar before SIT that he took the charge of Additional Director General of Police and with the oral instruction of Mr O.P Mathur- the then I.G.P one register was issued from D.G.P for making entries. The register includes the details regarding said illegal instruction given by authorities such as Chief Minister, Chief Secretary SCS (Home), sail illegal telephonic toing and to remove the persons.</p> <p>After seeing the register with SIT, he has stated such fact during his statement that many changes are seen in the register shown at this stage. The secret entry in the register is shown at present, which he had not seen earlier when he certified the register. Moreover, such came to know on the statement of Mr Mathur on the record regarding register that other examined witnesses have rejected the facts of the register entries of Shreekumar. Mr Ashok Narayan has not corroborated the entry of the register in his statement before SIT I any way. K, Chakravarti has stated in his statement before SIT that the register produced by Shreekumar has not been given any consent from Home Department and the provision to keep such register is not a part of the duty of police officer. He has stated that the entry of register produced by Shreekumar may be prejudiced.</p> <p>The point of maintaining the register has been raised by Mr R.B Kumar for the first time in 2005/ it appears to the court that looking to the material of other record the same has been raised since the promotion of Shreekumr has been rejected in February, 2005.</p>
<p>Page No- 175, 176, 177, 178, 179.</p>	<p>On the basis of the aforesaid facts, that fact cannot be denied at this stage that the entry of the register maintained by R.B Kumar is malafide. The observation that SIT has given regarding his reliability during the inquiry cannot be ignored. In the statement before SIT, the allegation with affidavits made by Shreekumar regarding the role of Gujarat Government Authorities in the communal riots and the incidents thereafter, taking the same into perusal, Shreekumar has made allegations to the effect that State Government has not taken appropriate steps by taking into consideration the secret report stated in the affidavits.</p> <p>As per the statement of R.B Shreekumar, the review of the current situation of law and order in the state had been made by P.H Shah, the then Additional Secretary of Law and Order as had been insisted by him. In this respect report has been send wherein it had been mentioned that communal violence is still going on and it is required to take the measures of abolishing the elements having communal thoughts. In this connection, in the statement before SIT, Ashok Narayan had told Shreekumar to prepare a report reviewing in respect of law and order in the context of rathyatra.</p>
<p>Page No- 180, 181, 182.</p>	<p>“So the mock Commission proceedings then erected by Shri Murmu were an act of insubordination of the commission by entering into the latter’s arena of action and authority. Instruction by hri Murmu to avoid multiple questions and give brief answer to the commission were a contrivance as part of the Government strategy to starne the Commission of relevant information, an act which was illegal by itself.”</p> <p>“It is an instance of Home Department going against the letter, spirit and ethos of the terms of reference of the commission by the State Government.”</p>

Page No- 183, 184.	After the aforesaid fact, as per the averment of Shreekumar, Shri Murmu and Arvind Pandya declared him as hostile before the Inquiry Commission and a notice shall be issued by the Government on the issue of honesty, Shri Murmu had also given consent to it. Shreekumar has stated in his statement the thrust given for pressurizing to give a false deposition and the Sting Operation of Shri Aravind Pandya by Thelka Magazine has been mentioned. In relation to these allegations. Shreekumar has accepted his presence in that meeting, by mentioning the letter of 16-7-1005, whereas, looking to the significant fact in the statement given by G.C Murmu before SIT, when the officers were to be called by the Inquiry Commission by summons, these officers were meeting the advocates for briefing, at that time, those officers remained present with the necessary record.
Page no.185 to 189	The said facts were considered on the basis of truths, that either affidavit have not been filed or incomplete affidavits have been filed by certain police/government officers before the inquiry commission. There were many reforms made to the investigation team. The closure report, after the amendments in the commission of justice Nanavati and justice shah had given written instruction to all the police officers that the police officers have made affidavits before the inquiry commission would make particular affidavits as regards other issues as well before the commission. In relation to this allegation, the statements of the police officers and administrative officers such as the following have been reduced by the SIT. The police commissioner and the ADGP and all other of the various districts and the cities. As per these statements, the officers state that the chief reasons for not filing the affidavits before the inquiry commission of justice Nanavati or filing affidavits regarding the amended reference of the commission is mainly that they did not have any personal information regarding the incident or affidavits had been filed by the concerned officers. SIT has interpreted this in such a way that such a allegation are false that the officers might have been given not to file report by the commission is pending. Under these circumstances, it can be believed at this stage that the finding of SIT regarding the so-called allegation is appropriate. As discussed earlier, taking into consideration the submission made for the complaint in respect of this issue, the entire material produced by SIT a during the inquiry. The court does not agree at this stage to such a fact that the so-called details declared by Sreekumar might be inspired by a bad intention.
190 to 194	The established principle of law is such that when such evidences are produced by the witness before the courts as may satisfy it prima facie to take cognizance in relation to the charge from the material on record only then it remains for the court to pass an order. Whereas in the present case, taking into account entire material on record as declared by sreekumar. It clearly transpires that had come for the duty. The corroboration that narendra modi and others had hatched an extensive conspiracy for the incident of post godhra riots and thereafter they failed in criminal law. Now it is the duty of court that evidences provided by the R.B. Sreekumar that it can be covered in the



	<p>provisions of the evidence act. The court should take into consideration such allegations as a part of transaction during procedure. The high court has clearly observed in its judgment that to believe a prima facie evidence, the preceding as before justice . the court is also on argument of the public prosecutor that the observation made in the order of the high court. It stated that there is another reason why present is not to be entertained and it is also required to be noted that considering the averments and allegations in the complaint and it was also noted that the petitioner has submitted the complaint after a period of almost four and a half year of filing of the first FIR.</p>
195 to 199	<p>The facts and circumstances and looking to the averments and allegation in the complaint which are general in nature and which are solely based upon some statements of the third party in the proceedings before the inquiry commission and without their being any further which was investigated by the CBI. On the foresaid observation of the high court the commission should be taken into account in the present proceedings. The recommendations cannot be made in an effective manner in its capacity that is to say the procedure of inquiry commission cannot be included in the definition of judicial proceeding. But, seeing that the commission of inquiry has not judicial powers and its report will purely be recommendatory and not effective proprio vigour and the statement made by any person before the commission of inquiry is under sec.6 of the Act.</p> <p>Facts and circumstances of the case and without being in any way influenced by the view of any person or body, however august or high powered it may be.</p> <p>Talking into consideration the aforesaid judgment of high court, this court has an issue under consideration as to whether the affidavit produced before the commission can be considered in the case of investigation or not. They had been complied with by the state Government. Under these circumstances, this court cannot overlook also such logic that the aforesaid allegation cannot be corroborated in relation to this issue. The intelligence officer does not have such power as police has. He does not have to make any procedure as per the provision of Cr.P.C., the intelligence officer can work either as a government agent or as an agent of some independent intelligence agency. Their work is to collect the secret information in respect of the relevant investigation and send it to the relevant person or institute. The intelligence officer is supposed to separate the true fact on the basis of all the obtained information and to give the instruction to that effect to the state or to the person who has been assigned this work.</p>
200 to 208	<p>On the basis of that, this procedure cannot be given the form of law and it cannot be considered in evidence .when the information of IB Is reliable prima facie, action is taken on the basis of that information by the state. In the present case, after discussing above about the work of intelligence bureau and after considering its jurisdiction, looking to the present proceedings, in this case after taking charge as the head of intelligence bureau.</p> <p>In the said case, examining the issue of the allegations leveled in respect of the recording of the conversation and the then secretary, it is proved at this stage that the conversation that sreekumar had with arvind.</p> <p>In connection with this issue, similar allegation has been leveled in the complaint itself for the persecution that the mentality of narendra modi for muslim community was biased and it should be believed from record hat his acts before the incident of godhra train and after that have been done as based on his mentality. The mentality of narendra modi became clear from the statements given in news channel, print media. In these</p>

	<p>also, in the interview given by modi in zee news, he has clearly shown the post godhra riots as the reaction as newton's law.</p>
208-228	<p>Record of extracts form Tehelka Sting Operation has been produced before the court through SIT. As per judgment, record of Tehelka Sting Operatoin prima facie at this stage for issuance of process against the accused persons. Modi's speech during interviews and in magazines depicts his mentality against the minorities. Extracts from Modi's extract have been mentioned in the protest petition (telecasted on Star News, ZeeNews). He stated that the riots are a reaction to the Godhra Train Incident.</p> <p>Modi was believed to have written letters congratulating newspapers that published provoking articles.</p> <p>THE report produced on 12/5/2010 by SIT before the SC implied towards thee possible discriminatory behavior of the then CM, he travelled 300 kms in a day to visit the Godhra victims, failed to visit local areas seriously affected by the riots.</p> <p>SIT declared allegations by complainant baseless without any substantive investigation. Spl. Public Prosecutor Shri Jamuar countered the issue by stating that the closure report was formed after obtaining evidence in relation to the Tehelka Sting Operation by Id. Sessions judge in Naroda Patiya Case. The Trail Court admitted evidence corroborating the evidence before third person (section 30 of Evidnce Act). Counter argument – supporting requires other independent and direct evidences in relation to the sting operation.</p> <p>Shri Jaamuar states that the issues raised regarding larger conspiracy and evidences in the case of Godhra-riots should be based on Operation Kalank. To investigate the 9 cases in the same way, 6 cases, whose judgments have been declared, will have to be reopened.</p> <p>Complainant – karsevaks had been allowed to go to ayodhya in spite of warning of Intelligence Agency of adverse circumstances. (inadmissible as preventive measures to stop karsevaks were unlawful and unconstitutional)</p> <p>Jamuar stated that Modi cannot be held responsible on the basis of words spoken during an interview (which cannot be termed as a malicious lecture)</p> <p>No lecture of 27/2/2002 has been mentioned in the protest petition.</p> <p>It is also argued that if complainant wants to take the ground of the findings of the concerned Citizen Tribunal of the year 1992, political speeches and other incidents other than the 9 incidents after the Godhra incident then the complaint will be a new complaint ( section 190/200 of Cr.P.C)</p> <p>Modi stated that he never held any step or reaction against innocents as justifiable and would next.</p> <p>r hold it so, he had denied all the allegations in this context.</p> <p>According to the findings of the SIT Modi visited the medical camps of the affected areas, taken measures to control the situation, to restore law and order. On basis of this, allegations against Modi are not established.</p> <p>Pyarasing v. State of Punjab - There is neither such rule or law that extra judicial</p>

	<p>confession cannot be relied upon unless corroborated by some credible evidence . Extra judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the procked conscience, an argument to find excuse or justification for his act, or a penitent r remorseful act of exaggeration of his part in the crime’</p> <p>Thus, extra judicial confessions need not be corroborated in all cases. Witness has to go through rigorous test of touchstone credibility – unbiased, not inimical to accused, no indication of motive to attribute an untruthful statement to accused, words spoken are unambiguous, nothing omitted by the witness.</p> <p>Court was of the opinion that extra judicial of Modi should be taken into consideration in this case. (act provisions of Evidence Act)</p> <p>Cr, P. C. _ extra judicial confession can be made only in front of the magistrate.</p> <p>Modi had made numerous appeals o maintain order through the media.</p> <p>Mr Desai submitted that in order to evaluate the allegations of lack of care, delay in measures taken , three issues are to be considered:</p> <ol style="list-style-type: none"> <li>1. Whether army was called in time?</li> <li>2. In which districts, which places the army was deployed?</li> <li>3. Was the army given power under the law or not?</li> </ol> <p>Sections 129 and 130 of Cr. P. C. should be considered, whether the state government has undertaken the procedure as per Rules of Gujarat Police Manual..</p> <p>SIT intentionally avoided recording of Major Jamiruddin Shah of Army.</p> <p>Delay in giving powers to and deploying the army in diff districts. (Message from Magistrate of Panchmahal, Mrs. Jayanti Rai.)</p> <p>Argued to take cognizance against accused no 3 on the basis of affidavit produced by Rahul Sharma before Nanavati Shah Inquiry Commission.</p> <p>It has been submitted that investigation by SIT on the aforesaid issue was a mere formality.</p>
<p>Page No- 229, 230, 231</p>	<p>After the aforesaid submission of the prosecution, the special public prosecutor, Mr Jamuare has refuted allegations of the Prosecution on this issue and submitted that Shrikumar has corroborated such fact in his first affidavit that the resources of the situation and because of that reason, the state government requested central government to get additional armed forces and such fact was revealed during the investigation.</p> <p>Further, Mr Jamuare has also argued that the finding in relation to the aforesaid issue has been given by SIT on basis of documentary evidences produced in this case. Under the circumstances, the army has undertaken a quick process to deal with the situation of riots. It has been argued that in these circumstances also, the allegations mentioned in the complaint of the complainant are baseless.</p> <p>Moreover, Mr Jamuare has argued that the then Defence Minister Mr George Frnandis was not in favour of the state government.</p>

<p>Page No- 232, 233, 234.</p>	<p>The complainant has made such allegations in her complain that in the orders passed by the Supreme Court in 2004 about communal riots after the incident of Godhra, the cases which were supposed to be reviewed have been reviewed half-heartedly and for furtherance of this work, it was handed over to senior officers.</p> <p>Second allegation is such that, as per the fact mentioned in page NO 13 and 14 of the complaint, by the High Court, the minority community and victims of riots were caused injustice in the investigation of the cases of riots. Though the CBI recommended in its report to hold departmental inquiry against the then Superintendent of Police of Dahod District for his poor investigation and misbehavior, no actions were taken against him.</p> <p>Third allegation is such that in the investigation of the case of Bilkisbanu and Best Bakery, injustice has been caused to the minority and riot victims.</p> <p>Considering the material produced in this case and arguments of Ld. Advocates in respect of the aforesaid allegation, the material can be evaluated properly pertaining to this issue and to avoid its repetition, the aforesaid issue has been considered jointly.</p> <p>Ld. Adv. Me Mihir Desai for the prosecution has made such argument in respect to the aforesaid allegations that looking at the produced material on the record before the court and material of the Protest Petition, sufficient record is available to this court to believe these allegations prima facie. The fact that the aforesaid alleged acts have been committed by Narendra Modi and other authorities of Gujarat should be believed to have been proved on the basis of the material on the record. In order to believe the fact that by the larger conspiracy of the authorities of Gujarat Government and by spreading communal riots, damage has been caused to the minority group, Mr Mihir Desai has taken support of the fact has after the incident of Godhra, riots had spread in 19 districts if Gujarat.</p> <p>Mass killings of muslim people had taken place in the riots and submission has been made to consider it as a part of larger conspiracy. Further, Mr Mihir Desai has made such argument that if the aforesaid authorities would have taken necessary actions at the relevant time to stop mass killing of muslims and strong attempts would have been made to suppress the riots, the massacre would not have taken place.</p>
<p>Page No- 235, 236, 237, 238.</p>	<p>On the basis of such rational argument also, Mr Mihir Desai has argued to believe involvement of the accused persons prima facie in this larger conspiracy. Moreover, he has argued while citing the report of National Human Rights Commission that the commission should transfer the investigation of main cases of these riots to CBI. Based on that, Teesta Satalvad and Davendra Pathak had filed writ petition in the Supreme Court.</p> <p>Along with the above submission, Ld. Adv. Mr Mihir Desai has mentioned an important paragraph of Best Bakery Case during arguments and it has been submitted to peruse the same in this case also. Moreover, he started to believe that on completion of the re- trail of Best Bakery Case, the Supreme Court has supported the involvement of authorities of the state government along with accused persons of Godhra riots. On that basis also it has been argued to believe that the collision of the authorities of the State Government and distrust in State Criminal Judicial system have been exposed.</p> <p>“It is further case of the petitioner that they have received certain material to show that the offence occurred during 27/02/2002, where aided, abetted and conspired with the co-accused persons involved in the mass carnage by the responsible persons in power and</p>

	<p>in connivance and pre-planning with the state administrative and policy machinery of the State of Gujarat”</p> <p>Therefore, petitioner No 1 sought to register the First Information Report against the accused named in the complaint dated 8.6.2006 for the offence punishable under Section 302 read with 120- B of the Indian Penal Code with sections 193 read with 114 of the Indian Penal Code, 186 and 153A, 186, 187 of the Indian Penal Code and under section 6 of the Commission of Inquiry Act; the Gujarat Police Act and the protection of Human Rights Act, 1991.</p>
Page No- 239, 240.	<p>“After having heard learned counsel for the parties, we feel that considering the sensitive nature of the cases involved, appointment of a Special Investigation Team is warranted. Communal harmony is the hallmark of a democracy. No religion teaches hatred. If in the name of religion, people are killed, that is essentially a slur and bolt on the society governed by the rule of law. The Constitution of India, in its preamble refers to secularism. Religious fanatics really do not belong to any religion.</p> <p>We make it clear that SIT shall be free to work out the norms required to be followed for the purpose of inquiry/ investigation including further investigation. Needless to say the sole object of the Criminal Justice System is to ensure that a person who is guilty of an offence is punished”.</p>
Page No- 241, 242.	<p>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. Beside 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 trails 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.</p> <p>The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.</p>
Page NO- 243, 244, 245.	<p>In regard to the investigation in SLP, an interim report has been submitted by the Special Investigation Team. In the said report it has been reported that having regard to the gravity, complexity and vast spread of allegations across Gujarat State, a very large number of suspects and witness have to be examined.</p> <p>It is also reported that a large number of vital documents are still awaited from the Government of Gujarat. The committee has prayed for grant of 5 months further time for completion of inquiry and submission of its final report in the matter.</p> <p>On the basis of above observation, emphasizing on the words of Supreme Court like “across Gujarat State”, Mr Desai has argued that the proceeding therefore, the investigation of SIT is not confined to 9 cases. That means, it has been stated that the Supreme Court has handed over the investigation to SIT regarding all the application filed in connection with the incidents of Gujarat.</p>

<p>Page No- 246, 247, 248.</p>	<p>Complaint of Mrs Jaffri was about the investigation of larger conspiracy in respect of the communal riots broke out in the Gujarat state after the incident of Godhra and it should be confined only to the case of Gulbarg Society. Moreover, other Ld. Adv. R sanjiv parikh of the complainant in this case has further argued pertaining to this issue wherein he has submitted that due to partial attitude of the State Government, the Supreme Court has felt it proper to form special investigation team in respect of the incidents of the riots and it has been directed that entire procedure of the case should be monitored by SIT.</p> <p>Under the circumstances, as per the direction of the Supreme Court, SIT should undertake the investigation without any type of discrimination and for this purpose, the information which may have been given by the witnesses directly or indirectly, should be taken into consideration during the investigation and it should be reported.</p> <p>Mr Sanjay Parikh has produced judgments of Supreme Court and he has drawn attention of this court towards Sec 107 of IPC and submitted that Section 107 of IPC is related to “Abetment of the person in any matter”. In addition to this, Section 108 of IPC has been shown in form of abetment.</p>
<p>Page No- 249, 250</p>	<p>It cannot be held in law that person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor’s guilt depends on the nature of the act abetted and the manner in which the abetment was under section 107 of IPC a person abets the doing of an act in either of three ways which can be instigating any person to do an act; or engaging with one or more person in any conspiracy for the doing of threat act; or intentionally aiding the doing of the act. If a person instigate another or engages with another in conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under section 115 of section IPC, even if the offence is not committed I consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed.</p> <p>“Under the Indian Law of an offence of abetment it is not necessary that the offence should have been committed. A man may be guilty as an abettor whether the offence is committed or not.”</p>
<p>Page No- 251, 252, 253, 254, 255</p>	<p>As per the record produced before this court, satisfactory material is available prima facie to believe the offence of the abetment and larger conspiracy against the accused persons and o this basis cognizance of the offence should be taken. He has requested to consider the prima facie evidences against Narendra Modi and other authorities of the state government who have been mentioned in the complaint.</p> <p>Refuting the aforesaid arguments of the Prosecution, Special Public Prosecutor Mr Jamuare submitted that the Supreme Court has directed SIT to undertake inquiry and investigation of specific matters. Complaints have been registered regarding the incidents occurred in Gujarat state and investigation has also been conducted. Trails of most cases have been completed or they are pending on the pending on the stage of hearing. By the order of the Supreme Court, it does not prove that SIT has been directed to conduct inquiry of all these offences.</p>

<p>Page No- 256, 257, 258, 259, 260, 261.</p>	<p>Supreme Court has observed in a order dated 17/8/2004 that, “that in this matter we are not going to proceed on the basis that entire investigating machinery in the state has failed; that there should be further/more extensive and in depth investigation into cases, numbering 2000. In which “A” summary reports have been filed resulting in closer of cases at the threshold and that the state should consider further/ extended investigations through its own high ranking officers to which none of the concerned parties had any objection.</p> <p>The State Government has followed the order and thereafter, the Amicus Curie appointed by the Supreme Court has filed 6 different notes.</p>
<p>Page No- 262, 263, 264, 265.</p>	<p>The court has no power to consider any evidence of the aforesaid cases and that matter is beyond the aforesaid cases and that matter is beyond the jurisdiction of this court.</p> <p>On the basis of the order of the Supreme Court Ld. Adv. Mr Jamuare has made detailed observation of the judgements of Criminal Miscellaneous Allpication of NHRC, writ petition filed by Mrs mallika Sarabhai and writ petition filed by Ku. Mahasweta Devi. Moreover, Mr Jamuare has raised such issue before this court that Amita Pathak, the then DGP has produced a report before the Supreme Court in July 2013 regarding 2000 cases of communal riots in Gujarat. Local police officers have filed closure reports in all above cases and SIT has worked in accordance with the order passed by Supreme Court with reference to those reports.</p> <p>That means the Supreme Court in all above cases, has not admitted the allegations made against the investigating agency and on this basis also there is no reason to believe that the entire administration has failed in the investigation in Gujarat State.</p> <p>Moreover, he has precisely submitted on the same issue that after the judgment of Supreme Court, it should not be believed that the Supreme Court may have handed over investigation of all cases and investigate them, there will be breach of the order of Supreme Court if the procedure is done in that accordance. Because of these reasons also, the submission of the complainant regarding the allegations of larger conspiracy should not be admitted. Moreover, at present, when all applications and petitions of NHRC are pending before the Supreme Court, the submission made by the complainant about reliability of the investigation agency with reference to the said petition should not be admitted.</p> <p>Mr Jamuare has submitted to consider the issue of Writ Petition filed before the Supreme Court. Those issues follow under:</p> <ul style="list-style-type: none"> <li>• That the Government of Gujarat should not close the relief camps.</li> <li>• To direct the Government of Gujarat to restore the forcibly closed relief camps.</li> <li>• Appoint NHRC or an independent national body to monitor and look into the various aspects of relief and rehabilitation.</li> <li>• Direct that the CBI must forthwith look into all the aspects as to whether the officials or influential persons have been named in the FIRs and also the aspects where the Government Officials have filed to register the case or names in the FIRs,</li> <li>• Such others order as deemed fit.</li> </ul> <p>As per the submission of Mr Jamuare, the Supreme Court has raised following issues in Writ Petition.</p> <ul style="list-style-type: none"> <li>• Direct appointment of Special Investigation Team to investigate all the crimes</li> </ul>

	<p>committed from 27/02/2002 on account of the communal riots which took place in the state of Gujarat.</p> <ul style="list-style-type: none"> <li>• Direct such SIT to invite publicly the complaint from the victims and register such complaints under section 154 of Cr.P.C.</li> </ul>
272-345	<p>As per judgment 12/09/2011 of the SC – court is duty bound to consider all the materials in the proceeding before this court.</p> <p>According to Dpl Leave Petition 8/9/2012 of Smt. Zakiya Jafri – SC observed that the court may consider all the materials collected by/ /the S.I.T in connection with the complaint dated of Zakiya Jafri produced beore Director General, Gujarat State. Material collected during prelimnary inquiry by A.K. Malhotra (of SIT) should be considerd.</p> <p>SC observation in Criminal Miscellaneus App , Writ Oetition (3742/2004 , 221/2002) – review of communal riot cases has been made in a weak manner.</p> <p>Out of jurisdiction of the court to decide the fact that the authorities of the Government of Gujarat have committed injustice with minority community and riot victims in the cases of communal riots.</p> <p>.SIT has looked into, verified the complaint of the complainant , court agreed with the finding.</p> <p>Interpretation of the complaint logically by protest Petition and other documentary evidence against final report of SIT, new evidence and submission made that the larger conspiracy has been hatched by the accused which is not relevant with the direction of the SC.</p> <p>As per principle of law, record of entire case , submission of SIT – material is available on record that diff incidents can be considered as part of the conspiracy on the basis of various judgments of the High Court(pertaining to various provisions of Law) - Amit Anilchand Shah v. C.B.I.</p> <p>AC observed that the principle regarding the larger conspiracy by the SC wherein, the diff incident took place because of one conspiracy and they were the part of one offence, the necessary substances stated in the said principles are not prove with the produced materials , judgments are not applicable in this case.</p> <p>Issue of larger conspiracy must be verified through “consequence test” and “test of sameness”.</p> <p>On observing the allegations – cases registered regarding many incidents are completed, other cases are under the consideration of the concerned courts. Hence, Court is believed to have power to consider the alleged larger conspiracy in connectiob with only the case of Gulbarg Society. – Court did not agree with the complainant and the Id. Advocate representing her.</p> <p>Mihir Desai has produced the judgment of CPI (M) v. Bhartkumar etc – SC declared ‘Bandh’ illegal. State Govnt. Did not take any action against the organizations which gave declaration of ‘Bandh’ – Vishva Hindu Parishad. (Intention to provoke alleged incidents)</p> <p>Orders to take Detention Action at 10:15 pm on 28/2/2002 – delay caused the restless situation to become out of control. Negligence by Modi in illegal declaration of Band.</p> <p>Jamuar submitted that – HC of Kerala 9in the judgment) stated – declaration of bandh is</p>



not legally a fundamental right. SC stated declaration of Bandh is unconstitutional-progress of nation is interrupted. HC Kerala held that State Govnt cannot escape from the responsibility to take action for compensation of the loss from the organizers.

Declaration of Gujarat Bandh – on 28/2/2002 to give a tribute to the persons killed in Godhara incident.

Government did not place any prohibition on the declaration of the bandh. The prohibited orders by considering the local situation issued by Home Department.

No Conspiracy or involvement of Modi proved, only negligence by Government is implied, hence any person or institute that sustained any loss - SC suggested certain remedies in its judgments.

Court agrees with such implied conclusion of the SIT that this allegation is not consistent with the present complaint.

Ld. Advocate of Complainant- Modi kept all the powers of transfer and posting of the police officers with him, misuse the power

State of Gujarat has breached the business rules and played role to give final result of the criminal conspiracy.

Mihir Desai submitted that one of the senior police officers, in his statement as a witness stated that Modi had stated the false fact regarding law and order in his statement given before SIT. Benefit given to officers receiving illegal instructions and communal ideology of co-conspirators compiled.

The said officer has been transferred from Ahemdabad with such appreciation, controlling the situation of law and order in his area.

Special Public Prosecutor- Rahul Sharma treated as witness by the complainant was seen to give opposite opinions, denying the fact that Ahesan Jafri had fired at the crowd.

Rights of transfer of posts is privilege of the State Government, cannot presumed to have malafide intentions.

After investigating the allegations made with support of officers, the SIT has come to the conclusion that the complainant has tried to complicate the situation before the court. SIT has taken statements from the witnesses, on basis of which the conclusion was given.

Rahul Sharma, superintendant of Police in Bhavnagar District, on the basis of phone call from Home Minister functioned in such a way so as to take the communal riots in control. More hindus were killed than muslims in police firings, 21accused were arrested for firing at a mosque. The local leaders pressured release of the person; however, sharma did not comply. He was transferred in D.S.P. Control, Ahemdabad. Hence SIT cannot give conclusion as to in which circumstances, the transfer of Rahul Sharma had been made because the transfer and appointment are in privilege of the Government which should not be connected with the present allegation.

Further investigation led to the submission that the allegations in the complaint cannot be proved.

Jamuar denied allegations that officers supporting the government have been given compensation.

As per documents and witnesses officers were given benefits and promotions as per rules and regulations.

No substance to believe the allegations regarding the transfer prima facie.

Allegation by complainant – Public Prosecutor appointed in riot cases by advocacy of

VHP. Many accused persons were released on bail easily. The Court appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice.

Allegation against Gujarat Government failure to appoint a competent APP in critical cases.

Cases were transferred to the Maharashtra High Court , directions given regarding protection of witnesses for judicial and free trial, appointment of neutral judge, appointment of neutral public prosecutor in legal proceeding etc. Allegations made against APP in the complaint are baseless (SC gave SIT the power to take proper and necessary action in the cases of investigation handed over by SC to make selection of APP)

Jamuar accepted that the six public prosecutors were the members of RSS and VHP in process of selection (no evidence regarding negligence in selection procedure)

It appears to the court that no rules regulations have been breached in appointment of advocate (Section 24, 25 Cr.P.C and Section 34 of the Advocate Act) Lack satisfactory evidence allegations made on the basis of presumption.

Allegation – the organization of the State Government has not made convenient condition for rehabilitation of victims of communal riots.

Shri R.B ShriKumar was instructed to give convenient report regarding the law and situation so that the election may be organized earlier.

Ld. advocate argued that he SIT intentionally did not give importance to extra judicial confessions and sting operation as it would be enough evidence against Narendra modi and many other accused persons in connection with the conspiracy. (ignored Operation Kalank)

The amount of damage suffered by the minority community has not been considered.

SIT has not considered the report of the Central Election Commission – violence continued in July-august 2002. The entire picture of the state has been shown differently with a view to get the election of legislative assembly organized earlier and on the basis of the same also, it must be believed that the mentality of the accused persons is clearly having criminal act.

270 tombs destroyed intentionally – SIT did not consider fact during investigation.

SIT considered that the situation of law and order was normal within 72 hours, report of NHRC March/July 2002 submitted that the conclusion of SIT was false.

Report of chief election commission:

Prominent politician's culprits moving scot free on bail.

Officers who did commendable work to control the violence were soon replaced.

Advocate of the complainant argued that the government officers were filing false or light complaints and used to help the criminals in riots and they were trying to make the judicial system weak.

It has been argued that the State Government has helped in spreading communal riots by giving illegal liberty to the accused persons connected with BJP and Sangh Parivar. (Documents produced by R.B. Shreekumar before the SIT, had of Intelligence Department)

Jamuar argued that the reports by NHRC and Central election Commission cannot be considered.

On the basis of Section 20 of Human Rights Protection Act, 1993 - the annual report or

special report by the NHRC will be presented before the Parliament or the State legislature as the case may be, with a memo of actions to be taken or the recommendation of the commission and the reasons for non-acceptance of the recommendations if any.

Hence Jamuar states that it is not required to consider in Civil and Criminal Proceeding. Supreme Court disposed off - the recommendations by the NHRC. – All the issues raised in the pending writ petitions can be raise before the High court, High Court would have the jurisdiction to consider each of the grievances raised. The SC refused to proceed with the matter on the basis that the entire investigating machinery in the State has failed, it was concluded that there should be more extensive and in depth investigation into cases.

It has been submitted to admit the conclusion of the SIT that the action taken by the State Government keeping in mind all the aspect for rehab and security of the victims in riots affected areas is satisfactory. The SIT in the closure of its report stated that the period of the Legislative Assembly ended before the date of dissolution, all parties demanded to constitute a new Legislative Assembly. 154 constituencies were riot affected. Central Election Commission did not admit the application of the Government for the constitution of a Legislative Assembly earlier.

Jamuar submitted that the allegations made in relation to elections cannot be connected to the present case.

Court is of the opinion that the directions which are given by the NHRC are in the form of directive principles and should be considered at this stage.

Jamuar takes Section 15 of the Protection of Human Rights Act, No statement made by a person in the course of giving evidence before the commission shall be against him, except for giving false evidence, and section 6 of Commission of Inquiry Act (both being related).

Court is of the opinion that the advocate of the complainant has been unsuccessful to show the difference between the present criminal proceeding and the issues arisen in the report of HRC. Court concluded that the facts of the allegations under these issues must be determined on the basis of statements recorded by SIT.

As per Section 146 of the Representation of People Act, the statements before the election commission can be used in civil and criminal proceedings only when the statements become false for the prosecution.

On this issue, the prosecution has produced the compact disc, which was handed over by IPS Rahul Sharma, wherein the details of call records and place of mobile phones in Ahemdabad and Godhra on 28/2/2002 are included. (on the basis of which allegations of conspiracy and abatement are made) Also supports the allegation that Modi had allowed the illegal post mortems to be conducted in public. Modi and the officers had tried to create an alibi to investigation agency.

3 witnesses have made a deposition in the Gulbarg Case that Ehsan Jaffrey has made continuous phone calls to authorities for help, no help was received. SIT has seemed to ignore the evidence regarding the phone records. Jamuar held that it is impossible to draw interference on basis of such details with regards to the fact as to there was a telephonic connection at the premise time. Jamuar stated that it is the system of the Gujarat Government that when the condition of law and order are not normal, its review is made in the meeting of Minister or Superior Officers and for this any written agenda

is not prepared. It is not established that the Guj Govnt has committed any offence. Court must extensively study available records and then deliver judicial decision. Any precise location cannot be determined on the basis of mobile location in call details. It depicts location of a tower and its area is limited, hence the evidence cannot be relied upon. Cannot conclude illegal instructions were given.

Advocate submitted that police officers who were to maintain the law and order situation remained inactive during the bandh period.

The then police commissioner of Ahemdabad city sat as a silent spectator during the riots, he was later promoted to the position of Director General.

No steps taken to prevent the violent incidents as warned by Intelligence branch of the state. – Steps of detention are to be taken agiasnt such persons.

No statements of the Fire Brigade officers were considered.

P.C. Pande who acted as a mute spectator in his cabin at the time of the riots was in constant contact with Modi.

On comparing the different reports presented by the SIT before the court it can be seen that the SIT has changed its opinion regarding Tandon and Gaundiya on order to defend the said accused persons. Relevant findings are ignored in the final closure report. On receiving info regarding the said riots, the officers Tandon , Shivanand Jha and P.C. Pande failed to take required steps and remained mute spectators, held to be negligent according to the Gujarat Police Manual, could be considered to be a part of the conspiracy (submitted by Mihir Desai.)

Role played by Shivanand Jha (then Additional Commissioner) according to protest petition:

1. Did not move out of office until 11 am despite receiving info about the said riots. Proof in CD submitted by Rahul Sharma to the Nanavati Shah Commission, also submitted to SIT.
2. No preventive steps taken the previous night after receiving warning
3. PC Pande stands seriously indicted for the failure to control the violence. Jha was very close to Pande and hence cannot be expected to interrogate Pande and investigate his role.
4. Phone call records reveal that he had placed calls to accused of Naroda Patiya and Gaam accused persons.
5. His constant promotions demonstrate that he has been consistently close to and is a trusted person of the political executive
6. Brought Ahemdabad city under his charge with the permission of Pc Pande, SIT had to investigate why politicians were sitting in the Ahemdabad city police room.
7. He was a Secretary in Home Department in Government of Gujarat for nearly here years, while the pendency of the present complaint in the SC, he consistently took the position and was a party to their affidavits on behalf of the State.
8. He cleared all affidavits that had been filed by the police officers who had been employed in Ahemdabad city at that time, before the Nanavati Commission inquiring into the Gujarat riots. Many of the affidavits were false.

Jamuar stated that the Amicus curiae has given final finding after making analysis of result of further investigation and conversation with witnesses and agreed with

	<p>finding of the SIT, hence the first report by the Amicus Curiae cannot be considered.</p> <p>Observations:</p> <p>Modi took steps to control the riot, P.C. Pande has not visited Gulbarg Society and that the trial court can take appropriate decision against Tandon, Gaundoya and Pande according t Cr.P.C.</p> <p>Jamuar submitted that the witnesses had appreciated the work of Shivanand Jha. Shivanand Jha produced documentary evidences before the SIT in its corroboration, which were verified by the SIT during the inquiry and relying upon them, submission was made that allegations of inactiveness were baseless.</p> <p>Jha gave a statement that he has instructed Deputy Superintendent of Policeo f Railway Police and Police Inspector at 2.5 hours for taking appropriate action untoward incident can be avoided after the train arrives at Ahemdabad Station. He had also instructed Inspector Saher Kotda at 14:30 hours to maintain sufficient bandobast in vijayanagar. He reached with his oown striing force at ahemdabad railway station at 16:40 hours and made bandobast.</p> <p>He instructed the carrying out of intensive patrolling to prevent the communal riots, produced 33 wireless messages of the same.</p> <p>SIT gave finding that Jha had taken necessary steps to control the situation in its final report.</p>
346 - 386	<p>The SIT has also given such conclusion in the closure report that jha has taken steps to exercise control over the situation of law and order in his jurisdiction. The millennium restaurant was set on to fire and police station was called to arrange sufficient bandobast. Even curfew was also imposed in the areas like navrangpura police station. He has not imposed curfew and the fact is mentioned by jha in this regard before the SIT and the evidence is given its corroboration. The police commissioner is supposed to get strict compliance of the curfew. On that day, some 600-700 workers of BJP had gathered at the aforesaid place to protest the meeting in form of anadolan. “After the carnage several police officers suffered for their upright behavior in controlling behavior in controlling violence and preventing further loss of life. Such allegation has been made against jha in the complaint that he has not complied with the prescribed instruction mentioned in the Gujarat police manual. This court is of the opinion that said evidences were produced properly by the SIT. Allegation has been made against the working of step for detention taken in connection with the bandh on 28-02-2002 by the prosecution Further, the name of PC pande was included for the post of DG level in government of India and he denied the fact that the state government may have favored him by giving him the promotion along with his junior. In connection with this point.</p>
Page No- 387, 388, 389, 390	<p>On considering the entire material on record, the Complainant Jakiya Jaffri has lodged the complaint against total 63 persons and the Complainant has included the allegations leveled against all the persons in her Complaint, Protest Petition and concerned documentary evidences. Further, during the arguments, the analysis for responsibility of each accused person has also been carried out by them.</p>

<p>Page No- 391, 392, 393.</p>	<p>There was discussion made earlier on page no 388 to 390. In the facts of the complaint of the complainant and in the documentary evidences with the protest petition, many inconsistent facts have arrived in the notice of this Court. The court says that it is unnecessary to do detailed discussion thereof. But the court takes final decision at the final stage to keep the persons aside from the present procedure against whom the said allegations are false- means not doing any procedure against them.</p> <p>With this point, on considering the record produced by the SIT, regarding the incident took place in village Ode; Mr Jabaliya was not discharging duty in Anand District. It is believed by the court that no evidence on record has been found so that any procedure of offence as per the complaint can be carried out against him and no any sections as per the complaint are applied thereon. In this case, in majority the complainant in the complaint, leveled the allegations of abetment, failure in discharging duty as the public servant, to create obstacles in performing legal duty of the public servant and to abate in hatching conspiracies of the offence like murder, etc. There is also allegation on him for not stopping the damage done to public property.</p> <p>The below given allegations are leveled against the accused no. 13 namely Anil Tribhovandas Patel.</p> <p>Presently the Cabinet Minister of the Gujarat Government, under the oath of the Indian Constitution to defend the Fundamental Rights, the Right to Life and Property of every Citizen regardless of Caste, Creed or Gender, accused of using political influence to prevent the administration and the law and order machinery from carrying out their constitutionally bound duty to prevent violence and protect the citizen.</p>
<p>Page No- 394, 395, 396.</p>	<p>As per the aforesaid allegation, the accused Tribhovandas Patel had taken decision to bring dead bodies of Godhara Train massacre and as per the same, the allegations have been levelled against him in reference of murder case and the offences of abetment. Clear mention regarding the same have been made in para- 485 of the Protest Petition. On considering the same on the basis of the materials of the records, it is proved that no satisfactory record has been produced before this court to prima facie believe the aforesaid allegations. Under the circumstances, this court is of such belief that the conclusions which the SIT has given with reference to the said accused are appropriate.</p> <p>Further, for the said case, Kuldeep Sharma, the then Range Head of Ahmedabad Rural has been stated as the witness in certain places and as the accused in certain places.</p> <p>On considering t by the court the names of the accused persons which have been mentioned in the Complaint and the protest petition, in the protest petition for the accused , certain persons are stated a the accused. Argument advanced by the Special Public Prosecutor fo the Government that at these stage new accused persons cannot be added. The court is not to agree with the same. As per the provision of the law and provision of section- 319 of the CrPC, such a person who has not been detained by the police as the accused but if prima facie evidences are found against him, the Magistrate has the powers to take cognizance against him.</p>
<p>Page No- 397, 398, 399.</p>	<p>Mr Jamuare has also submitted during his argument that aforesaid judgment can be considered along with section 209 and section 190 of CrPC. Judgment is as follow:</p> <p>“.... In the present case there is no question of referring to the provisions of Section 319 of CrPC. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate as holding inquiry as contemplated under Section 2(g) CrPC not the trail had started. He was exerting his</p>

	<p>jurisdiction under Section 190 of taking cognizance of an offence and issuing process. There is no bar under section 190 CrPC. That once the process is issued against some accused on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge sheet.”</p>
<p>Page No- 400, 401, 402</p>	<p>Learned advocate for the complainant has made submission to believe criminal conspiracy as an independent offence, allegations have been made against accused persons for hatching a larger conspiracy and abetting to massacre Muslim community, and considering the submission, which has been made in connection with it, the grounds of their submissions are as under:-</p> <ol style="list-style-type: none"> <li>1. As per Criminal Law Amendment, conspiracy has been added as an independent offence. Therefore, conspiracy hatched to commit an offence also becomes an offence.</li> <li>2. As conspiracy is hatched in private, it is difficult to produce direct evidence. Under those circumstances, it is to be presumed in respect of criminal conspiracy by placing reliance on the different acts committed by various persons in the criminal procedure.</li> <li>3. It is the duty of the prosecution to do positive interpretation of circumstantial evidence in respect of criminal conspiracy.</li> <li>4. There is no visit of two persons for criminal conspiracy, and only implied understanding is sufficient between the persons entering into criminal conspiracy.</li> <li>5. When any offence takes place as a result of conspiracy, even though any person has not played active role in the offence, their criminal responsibility can be decided for all the conspiracies.</li> <li>6. In order to establish the fact of conspiracy, the behaviour of accused persons before the commission of offence and after commission of offence is to be taken into account as a circumstantial evidence.</li> <li>7. Only consent is sufficient to establish the conspiracy, which can be proved only through involvement.</li> <li>8. As per section 34 of the IPC common intention and implied responsibility for the offence, which has been committed, are separate from conspiracy.</li> <li>9. There is no need to prove real words in the conspiracy.</li> <li>10. At the point of time, when the fact makes a conspiracy a crime, it is not necessary that it was resulted from something that had happened.</li> </ol>
<p>Page No- 403, 404</p>	<p>Based on the judgment, it is to be examined as to whether prima facie materials produced in connection with said larger materials produced in connection with said larger conspiracy, give satisfaction or not to issue process against accused persons by this Court. At this stage, a detailed discussion has been advanced based on the all materials on the record regarding all the allegations made in the complaint of complainant. After consideration and study of detailed arguments of learned advocates as per law, this court, at this stage, comes to such a conclusion that allegations made by prosecution are of collective form, unclear and general nature. The court does not find it appropriate to interfere in the findings given by SIT on completion of investigation in connection with these allegations in connection with these allegations in the present</p>

	<p>procedure.</p>
<p>Page No- 405, 406, 407, 408.</p>	<p>All these incidents were as massacre in such a way that conspiracy of authorities of State Government may be implemented in the planned manner, and at this stage, it appears necessary to mention such quotations as have been cited in the complaint and protest petition for the same. Below is the allegation which has been made in the complaint by the complainant.</p> <p>“I beg to bring to your kind notice the deliberate and intentional failure of the state government to protect the life and property of innocent citizens of this country through a well-executed and sinister criminal conspiracy amongst the accused above named that resulted in the breakdown of constitutional governance in the state...</p> <p>I state that within the State of Gujarat, since 2002, when a mass carnage was orchestrated by the most powerful in the state executive using pressure and connivance of the state administration and law and order machinery there has been continued and consistent attempt to further this unlawful and unconstitutional worldwide and mandate by using State Terroe and Pressure to intimidate victim survivors, marginalize (socially and economically the community they hail from)...</p> <p>The blatant and transparent actions of Gujarat State Executive in using a carrot and stick policy to reward those members of the police and administration who fell in with their illegal and unconstitutional plans to permit (or participate in mass murder and sexual violence and systematic destruction of property) and maliciously punish those who stuck, stoically to their constitutional oath is a blatant and continued example of non-constitutional governance in the state of the constitutionally elected Government on Gujarat.</p> <p>The entire and tragic Godhara killings were used and manipulated to justify pre-orchestrated mass carnage that enjoyed the political sanction of the Constitutionally elected Government in Gujarat.</p>
<p>Page No- 409, 410</p>	<p>The communal riots erupted after an incident of Godhra train in the State of Gujarat, have been shown as ‘ethnic cleansing’ and ‘genocide’ in the protest petition by the complainant, and in that regard, the following statements have been made in the protest petition.</p> <p>If a similar, nonsense and non-partisan approach had followed the Godhra incident of Feb 27, by promptly apprehending the suspected criminals, tension would have been contained. And the chances of a revengeful and a highly organized spree of retaliatory killings that demonstrate every element of ethnic cleansing and genocide would have been pre-empted. That this did not happen suggests a lack of intent on the part of those in government to take prompt preventive measures in order to de-escalate the situation.</p>



<p>Page No- 411, 412, 413</p>	<p>Considering the record and arguments produced by both parties in connection with aforesaid allegations of Prosecution, as this court considered over aforesaid aspects regarding incidents, which took place on 27/02/2002, and thereafter, the court is aware of such fact that many violent incidents had spread in the state after incident of Godhra train. But, based on the same, considering statements given by different witnesses in the present case and record of all the documents, the court has to see as to whether incident of Gulbarg Society had taken place due to a larger conspiracy of authorities of State Government, or not, and this incident can be said to be ethnic cleansing and genocide or not, as stated by complainant.</p> <p>“Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions of culture, language, national feelings, religion and destruction of the personal security, liberty, health, dignity, and even the lives of the individual belongings to such groups.”</p>
<p>Page No- 414, 415, 416, 417.</p>	<p>The sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Mis-giving, also prevailed about appreciation of evidence. Without adverting to submissions suffice it to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true.</p> <p>The duty of investigating officers is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction, but to bring out the real unvarnished truth.</p>
<p>Page No- 418 to 436</p>	<p>Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc and doing acts prejudicial to maintenance of harmony-</p> <ul style="list-style-type: none"> <li>• Whoever by words, either spoken or written, or by signs or by visible representations or otherwise promotes or attempts to promote, on grounds or religion, race place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial language or regional groups or any castes or communities, or commits any act which is prejudicial to the maintenance of harmony between different religious, radical, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility or shall be punished with imprisonment which may extent to three years, or with fine, or with both.”</li> <li>• Statements creating or promoting enmity, hatred or ill will between classes-whatever makes, published or circulates any statements or report containing rumour or alarming news with intent to create or promotes, or which is likely to create or promote, on grounds of religion, race place or birth residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional</li> </ul>

	<p>groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with, or with both.</p>
Page No- 436	<p>THE FINAL ORDER</p> <p>THE REPORT GIVEN BY SIT IN CONNECTION WITH COMPLAINT OF COMPLAINANT MRS JAKIA JAFFRI DATED 8/8/2006 IN THE CASE OF SUPREME COURT, HAS BEEN ACCEPTED, AND THE RELIEF SOUGHT BY THE LADY COMPLAINANT IN HER PROTEST PETITION IS HEREBY REJECTED.</p>